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## Report on the Workshop on Refugee and Asylum Policy in Practice in Europe and North America

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# REPORT ON THE WORKSHOP ON REFUGEE AND ASYLUM POLICY IN PRACTICE IN EUROPE AND NORTH AMERICA

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## I. INTRODUCTION

Western nations have struggled to accomplish the dual goals of refugee and asylum policies: (1) identifying and protecting Convention refugees as well as those fleeing civil conflict; and (2) controlling for abuse. The Workshop on Refugee and Asylum Policy in Practice in Europe and North America was organized to facilitate a transatlantic dialogue to explore just how well these asylum systems are balancing the dual goals. The workshop examined key elements of the U.S. and European asylum systems: decision making on claims, deterrence of abuse, independent review, return of rejected asylum seekers, scope of the refugee concept, social rights and employment, international cooperation, and data and evaluation.

The Workshop was convened by the Institute for the Study of International Migration (ISIM) of Georgetown University and the Center for the Study of Immigration, Integration and Citizenship Policies (CEPIC) of the Centre Nationale de Recherche Scientifique, with the support of the German Marshall Fund of the United States. It was held on July 1-3, 1999, at Oxford University. Workshop participants included government officials, scholars, and representatives from non-governmental organizations (NGOs) actively involved in analyzing and implementing refugee and asylum policies.

This report outlines the major points of discussion and the areas of consensus at the Workshop, and emphasizes the issues in need of further analysis and agreement. Through this report, the Workshop seeks to encourage further discussion on refugee and asylum policies in practice in order to clarify, develop, and improve the existing mechanisms for protection.

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## II. SETTING THE CONTEXT

Forced migration presents the countries of North America and Europe with considerable challenges, particularly when people arrive without authorization and seek protection from removal to their home countries. The U.N. Convention relating to the Status of Refugees,<sup>1</sup> adopted in 1951, and its 1967 Protocol<sup>2</sup> remain the principal instruments under which governments fulfill their obligations to protect refugees. The principal obligation is *nonrefoulement*, or non-return to countries in which the refugee has a well-founded fear of persecution on the basis of race, religion, nationality, political opinion or membership in a particular social group. While signatories to the Convention are not obliged to admit refugees, North American and European governments have adopted sometimes elaborate systems for determining which persons applying for protection will be granted asylum or another status permitting them to remain, at least temporarily.

Reflecting the time of its adoption, the Convention framework of protection largely focused on the European victims of fascist and then communist persecution. Participants noted that asylum seekers today do not necessarily reflect this conception of a refugee. Many of today's asylum seekers have fled internal conflicts that result in significant civilian casualties. As one participant commented, the Convention is an inadequate tool for deciding many of these cases, although it remains effective for other asylum applications—for example, those involving victims of ethnic cleansing campaigns.

Another participant argued that the end of the Cold War presented numerous challenges to the asylum system, particularly in the United States where refugee policy tended to serve foreign policy objectives. Western countries tended to offer permanent status to asylum seekers coming from communist countries, but they have begun to follow practices more typical of developing countries. In most of the world, host countries give temporary asylum with the expectation that refugees will return home when conditions permit. Harmonization of policies regarding such temporary protection is the principal challenge faced by European countries, another participant suggested.

An even greater challenge, one participant argued, is addressing the underlying reasons that people require asylum. Only a fraction of those in need of protection are able to reach Europe or North America. The objective should be to promote human rights in the countries of origin. He noted the growing willingness of governments to intervene, even militarily, when egregious violations of human rights provoke humanitarian crises and mass migration.

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1. Convention relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 137.

2. Protocol relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267.

### III. ACQUIRING PROTECTION: THE INITIAL DETERMINATION AND THE APPEALS PROCESS

#### A. *The Initial Determination Process*

Participants focused their attention on what would constitute a fair set of procedures, balancing the dual goals of protection and control of abuse. Discussion centered on both fair access to the process and on fair procedures. Several participants raised concerns about fair access. The difficulty of getting at a refugee's experience and fear of persecution, particularly when procedures are expedited, was stressed. After examining the brevity and quality of such procedures (see fuller discussion of fair hearings below), one participant concluded that fast track procedures do not provide safeguards sufficient for refugees to prepare proper claims. Participants suggested that one way to mitigate protection concerns over such procedures is to have either the United Nations High Commissioner for Refugees (UNHCR) or a recognized refugee organization involved in the determinations. In Spain, for example, UNHCR provides an advisory opinion, while in Denmark, the Danish Refugee Council can veto a rejection.

At the same time, questions were raised about the value of expedited procedures where only a small percentage of applicants were rejected. Participants gave examples of such situations in the Netherlands, the Munich airport (ten percent rejection rate) and the United States (fifteen percent expedited removal rate). The funds expended on the expedited process could better be used to improve the efficiency of the regular asylum system. One participant noted that the regular use of such procedures is valuable preparation for the application of an expedited process during a mass influx. He also observed that the high rate of acceptances may reflect a natural selection on the part of applicants, with only the most likely to succeed applying. Others cautioned that no evidence of such a deterrent effect is available.

In addition to expedited procedures, other mechanisms discouraging access were noted, including: interdiction, airline carrier checks, filing deadlines, designation of safe countries of origin and safe third countries, detention, denial of work authorization, penalizing frivolous claims, charging a fee, and withholding information about the right to apply for asylum. Among these, discussion centered on the safe third country concept. Participants disagreed as to whether returning applicants to safe third countries limited access to asylum for bona fide refugees. One participant claimed that cases of *refoulement* have been documented, and the real question is whether or not these are isolated incidents. This observer concluded that there were indications that such violations of the Refugee Convention were common. Another participant argued that there has been no proof of any violations of

the *nonrefoulement* obligation. Those with concerns as to what was happening in practice suggested that safe third country returns should be limited to the European Union (EU). Currently, EU countries are returning asylum seekers to East European states, whose asylum procedures are relatively new and considered by some to be deficient.

An additional proposal regarding access concerned carrier checks. For those refugees who try to travel by air, carriers verify compliance with the visa requirements of the destination country. In effect, this check is the initial access point for such refugees. Since refugees are not excepted from the visa requirement when they are abroad, one participant proposed a form of in-country processing to overcome this barrier. That is, embassies could issue the needed travel document to refugees. While in-country processing of refugees has a mixed history, several participants considered this proposal worth pursuing.

With regard to fair hearings, discussions focused on four elements: opportunity to prepare, suitable adjudicators, opportunity to be heard during the hearing, and the right to review. Participants characterized adequate preparation in terms of a sufficient amount of time, reasonable assistance in filing an application, and appropriate access to documents and witnesses. With respect to fair adjudicators, independence was the key factor. Adjudicators should have no personal interest in outcomes; independence minimizes any bias with regard to both the applicant and the government. Adjudicator sensitivity to culture and language also contributes to a fair procedure. Regarding the opportunity to be heard, major elements of fairness include the time and opportunity to present evidence, suitable interpretation services, assistance in the presentation of evidence, and privacy. Participants argued that the standard of proof should favor the applicant to compensate for the fact that refugees most often flee without being able to gather evidence of past persecution or their fear of future persecution. Written decisions that explain reasons for rejection are also important. Finally, participants emphasized that initial adjudications improve when the adjudicator knows that his or her decision is reviewable.

Participants observed that the assistance is critical for a fair hearing because the technical requirements of the procedure are too complex for applicants to adequately represent themselves. One participant emphasized the importance of representation at the beginning of the process, noting that it is essential to getting the refugee's story. While participants agreed about representation in adversarial or judicial proceedings, one participant observed that trained asylum officers could meet this need in non-adversarial interviews with applicants. Another participant suggested that where representation is not provided at government expense, funds should be appropriated for demonstration projects to test whether representation improves the system in terms of both fairness and efficiency.

## B. *The Appeals Process*

Two main purposes of review were put forward: the correction of errors in either fact or law, and consistency of decisions below. Participants discussed different models that attempted to accomplish these goals.

The Canadian model places considerable resources in the initial determination on the assumption that such a front-end system will require less of a review process. An adverse decision in the first instance is possible only if both members of the Convention Refugee Determination Division panel reject the claim. Consequently, the appeals focus is largely on issues of law rather than fact. Moreover, there is no guaranteed appeal. Application for leave to appeal the first instance decision is made to the Federal Court Trial Division, which has discretion to grant or deny such leave. No further appeal is available if leave is not granted. One participant raised concerns that the two-member rejection requirement results in a significant number of false positives. Consistency was also raised as a problem, as the decision makers are members of an independent administrative tribunal, and review is somewhat limited.

The German model is quite different. The administrative courts of each Land hear appeals against decisions by the Federal Refugee Office. Further appeals are available to higher administrative courts. German judges in administrative courts are appointed for life. One participant raised concerns about the length of German appellate procedures, intentionally designed to obtain a high level of consistency in asylum decisions. A long process undermines the system and public support. In part, the length of proceedings is related to the very complicated forms of relief available under international law. Asylum is only one of a variety of remedies now available.

In response, another participant argued that some states have made the Refugee Convention work effectively and efficiently, and that states should focus on improving the Convention's application. In France, both first instance and appellate decisions are made within one year of the claim. The French Refugee Appeals Commission is an administrative tribunal consisting of three members: a judge, a representative of the French Office for the Protection of Refugees and Stateless Persons (OFPRA) board (governing the first instance decision maker), and a representative of UNHCR.

A fourth model examined by participants, the U.S. model, is in the midst of reform. The Board of Immigration Appeals (BIA) consists of sixteen (soon to be eighteen) members. While the BIA meets en banc to make precedent decisions, most decisions until recently have been made by panels of three members. The caseload is significant: in fiscal year 1998, 29,000 appeals were heard, and 28,000 new cases were docketed. The pending caseload is 48,000. The priority cases are detained applicants; the BIA tries to complete these cases within 180 days. The non-detained cases are taking more than two years to complete. A new streamlining rule will allow a single BIA member to affirm an immigration judge decision without writing an opinion,

as long as the case meets certain standards (for example, no substantive issues and clear law). With respect to the goal of consistency, one observer noted that BIA precedent cases ensure consistency with regard to law, but that the panel system (which will continue for many cases) results in different decisions on a fact basis.

Another important recent development concerns the responsibility of the immigration judge to ensure that information on the human rights situation in the applicant's country enters into the record. Country condition information often helps adjudicators assess credibility, which is one of the most critical issues in asylum cases. Since many applicants do not have competent representatives, human rights information is often not presented as evidence by the applicant. Recently, the BIA has instructed immigration judges in such cases to take judicial notice of such information. Participants considered access to country condition information a critical component of a fair and efficient procedure.

#### IV. DETENTION AND ALTERNATIVES TO DETENTION

##### A. *Detention*

Detention policies vary considerably among Western states. The Workshop examined detention practices where they are used to ensure the removal of failed asylum seekers and to deter economic migrants.

Article 5 of the European Convention on Human Rights (ECHR)<sup>3</sup> permits detention to prevent illegal entry. The use of fraudulent documents, which has only been encouraged by the imposition of visa requirements, constitutes an attempt at illegal entry. If an applicant for admission requests asylum, though, the use of fraudulent documents is generally not considered to amount to an attempt to enter illegally. If an applicant destroys travel documents, however, then the immigration authority has the discretion to detain or release the applicant.

In the United Kingdom, one of the primary users of detention in Europe, detention guidelines provide a number of factors to guide the exercise of such discretion, including: questions about an applicant's identity and nationality; previous illegal entry or absconding; and the likelihood of prevailing in the asylum claim. The United Kingdom has no mandatory time limits on detention. The determination to detain is reviewed periodically. By contrast, France permits only very limited detention, twelve or twenty days depending on whether the detainee was apprehended in the interior or at the border.

The U.S. system does not detain most asylum seekers. Detention is most likely for those who try to enter by air but who lack documents or present fraudulent documents. Such applicants are held by the Immigration and Naturalization Service (INS) while they have a credible fear hearing, and in

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3. Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, Europ. T.S. No. 5.

many cases even after they demonstrate that they have a credible fear of persecution. As one participant explained, the current purpose of detention in such cases is to deport those who lose. Only five percent of individuals issued a final order of removal who are not detained depart voluntarily. Responding to the low likelihood of removal if an individual is not in detention, in 1996 Congress mandated detention for significant numbers of non-citizens in removal proceedings.

The current use of detention space in the United States, one participant observed, is related more to funding issues than policy priorities. With respect to INS-run detention facilities, the managers work to fill the facility to capacity. Where space is contracted, those facilities lose money if the space is not well used. Thus, the INS has an incentive to detain asylum seekers—even those who meet the credible fear test—to make use of available space in the contracted facilities.

In both the U.K. and U.S. systems, asylum applicants are held for months, many for more than six months and a few for even more than one year. Participants discussed the equity, effectiveness, and efficiency of such practices where claims were credible and individuals were not threats to the community. The consensus was that using detention at the end of the merits hearing was a better policy than detention from the beginning of the process and through the duration of the process.

### B. *Alternatives to Detention*

Governments face several problems with detention of asylum seekers and other migrants. Most governments do not have nor could they have sufficient detention space to hold all of those in removal proceedings. In recognition of this problem, the INS asked the Vera Institute of Justice to test ways to improve the use of detention space through a supervised release program.

As one participant explained, the critical issue is when to detain, as the risk of flight changes during the period of proceedings. Asylum seekers have the hope of obtaining relief, particularly before the merits of their case are heard. Hope motivates applicants to appear for their hearings. By supervising such applicants and increasing such supervision as the decision approaches, the government will not end up detaining bona fide refugees and will not waste detention space.

The Vera Appearance Assistance Project has learned that through supervision, the government can build a history of compliance with the rules of release, reported a participant. As supervision increases towards the decision time, behavior indicative of absconding may be observed. At that time, the applicant should be detained until the hearing process is completed. Those who comply with the rules of release until their hearing should remain in the supervised program. If the immigration judge denies the applicant's claim, the applicant should be detained.

The ultimate result, reported this participant, is more removals per detention bed—if the removal officials choose to remove those with final orders. In addition, because detention space is used more effectively, supervised release



is much less expensive than detention. The success of supervised release is closely connected to one of the key findings of the demonstration project: applicants will appear at hearings even though they know that they will be detained if they lose. With respect to refugees, another interesting finding is that the majority of asylum applicants have community ties that allow them to be supervised. But for supervised release to be successful, this participant concluded, the INS needs to reorganize its removal system so that it gains the will and capacity to detain those who fail to comply with the rules of release and remove those who receive final orders of removal.

One participant wondered how these lessons might apply to the category of refugees in U.S. detention facilities who have committed crimes, served their sentence, but cannot be deported to their home countries. Most of these refugees are from Cuba and Vietnam. The demonstration project showed that most criminal aliens have community ties and are among the best compliers.

## V. RETURN OF FAILED ASYLUM SEEKERS AND THOSE PROVIDED TEMPORARY PROTECTION

### A. *Return of Failed Asylum Seekers*

While participants agreed that failed asylum seekers who were provided a fair process should be removed in a timely fashion, government practices do not often reflect that policy. The Workshop considered numerous reasons why governments return such a small proportion of failed asylum seekers.

First, the longer the system takes to reach a decision, the more likely that the applicant gains ties to and equities in his new community, and the less likely return becomes. Second, the bias and inconsistency of asylum decisions backfired on the U.S. government in the 1980s. The more the public questioned the process that favored nationals who fled from left-wing rather than right-wing regimes, the more the government had to permit those failed asylum seekers to stay. Third, this category of migrant receives very low enforcement priority, particularly compared to criminal aliens. Fourth, the incidence of harsh and violent removals, sometimes resulting in the death of a failed asylum seeker, has shaken public support for removal. Fifth, in order to return a national, the receiving state must have the cooperation of the state of origin. Oftentimes, this is not forthcoming. Finally, while failed asylum seekers may not be Convention refugees, they may qualify for other statuses.

Some states, such as Germany, have formal bilateral readmission agreements with countries of origin. Participants noted that little is known about the effectiveness of the readmission programs in returning failed asylum seekers.

### B. *Repatriation of Those Provided Temporary Protection*

Much of the discussion regarding return centered on the use of temporary protection, which was described as a repatriation-oriented form of protection often used in times of mass influx. The European history of this goes back to the 1930s, when Spaniards fleeing the civil war were provided temporary

refuge in France and Britain. Perhaps the most crucial issue in its current usage is the determination to withdraw protection and require return.

When is it safe for people to return? Those protected often have a different answer to this question than governments or UNHCR. One participant questioned whether governments would grant temporary protection if recipients did not return when conflicts ended. If return is indefinitely deferred because it never appears safe enough, countries may be unwilling to allow persons fleeing conflict to enter their territory. Other participants noted that standards are needed to ensure that return will not contribute to further conflict and instability in the home country. Otherwise, premature return could cause future displacements. A collective system for assessing the safety of return is needed to develop such standards.

Participants discussed various mechanisms to encourage repatriation when it is safe to return. The United Kingdom and the Netherlands, among other European countries, funded exploratory returns after the Bosnian civil war ended. Such "look and see" programs give individuals an opportunity to find out what has happened to their homes, what alternative living arrangements exist if their homes are no longer available, and what economic prospects they will face upon return. Heads of families can thus scout out the situation. One participant also observed that reintegration assistance is a useful mechanism to help people get back on their feet. Such assistance is particularly fitting for a humanitarian program like temporary protection.

The issue of how long protection should remain temporary if conflict continues received considerable attention. Current policies vary considerably, from three years in Holland to seven years in the United Kingdom. One participant proposed the following system to ensure that Convention protection is not diluted by temporary protection: all those who flee receive temporary protection for three to six months; after that period, those who qualify for Convention status are provided permanent protection; all others in need of protection continue with a temporary status for three to five years, at which point they either return if that option is available or they receive permanent status. One advantage of this system, the participant argued, was that it increased pressure on states to intervene to end the conflict.

A Dutch counterproposal was discussed as well. For three years, all those fleeing a conflict would receive temporary protection. Such individuals would possess all the rights provided by the Refugee Convention, except as regards status determinations. Thus, this system would provide the right to work and to family reunification. After the three years, individuals can apply for permanent residence. If they do not qualify, they can also apply for Convention protection before any repatriation occurs.

## VI. SOCIAL AND ECONOMIC RIGHTS

Perhaps one of the greatest policy differences between Europe and the United States concerns the social and economic rights of asylum seekers. The differences originate in the social support systems designed by each society.

In Europe, asylum seekers often are accommodated in reception centers and provided social benefits. In fact, they often cannot receive social benefits if they are not housed in a reception center. Healthcare is generally limited to urgent medical treatment. Asylum seekers generally are not allowed to work. This system has a three-fold purpose, according to participants. As unemployment rates are high, jobs are reserved for citizens and others with the legal right to work. Second, asylum seekers cannot integrate into their host country's society, as they are kept apart economically and socially. Third, the provision of a minimum core of social rights obviates, in European policy-makers' eyes, the threat to social stability (in the form of crime, for instance) that might otherwise be occasioned.

According to one participant, asylum seekers are entitled to many of the economic and social rights that states are obliged to secure to nationals under relevant international human rights standards. The International Covenant on Civil and Political Rights (ICCPR)<sup>4</sup> and the ECHR, with few exceptions, apply to both nationals and non-nationals. The protection offered by the latter is particularly strong: most European nations have incorporated the ECHR into domestic legislation, enabling the courts effectively to enforce the rights it guarantees. Consequently, an extensive case law for non-citizens has built up around the convention, especially on *nonrefoulement*, but also on social and economic rights, at least by implication.

The American position on social and economic rights stands in sharp contrast with the European position. As one participant observed, social benefits are considered by American culture to be shameful, and the international conventions that may guarantee them are considered largely irrelevant by U.S. policymakers and judges.<sup>5</sup> The emphasis is on individualism and self-help, which translates into private sector delivery and limited entitlements. Asylum seekers are not eligible for any government support except for emergency healthcare, disaster relief, and immunizations. Nor do they have any right to work. In fact, the 1995 asylum reforms decoupled work authorization from the asylum application, so that only recognized refugees have a right to work. As one participant noted, many consider this decoupling to be one of the most important factors in ridding the U.S. system of considerable abuse. In effect, asylum seekers must survive on their own in the United States, both in terms of housing and basic material support. According to participants, many rely on family, friends and immigrant organizations, and others work illegally.

This differentiation between the use of social support and employment rights also runs through the rights associated with those provided temporary

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4. International Covenant on Civil and Political Rights, G.A. Res. 2000A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 52, U.N. Doc. A/6316 (1966) [hereinafter ICCPR].

5. For example, the United States ratified the ICCPR only recently in 1992 after much hesitation—15 years after signing. The United States has never ratified the International Covenant on Economic, Social and Cultural Rights. G.A. Res. 2000A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, at 49, U.N. Doc. A/6316 (1966).

protection. In Europe, generally, such protected individuals are not entitled to work, unless a job cannot be filled by a citizen. They are provided social assistance. Sometimes they are accommodated in reception centers, but one participant noted that Germany and other European nations allowed Bosnians to reside in private housing in areas near where their relatives lived.

The U.S. form of temporary protection grants work authorization to recipients. That is the major policy difference from asylum seekers. Emergency healthcare is available, just as it is for asylum seekers. The government's inability to provide social support under the temporary protection law, however, made it an unusable status when the United States evacuated thousands of Kosovars from Macedonian camps in 1999. Instead, Kosovars were admitted as refugees under the overseas resettlement program and were thus allowed both social support and the opportunity to work.

As one participant noted, employment generally translates into several forms of benefits in the United States: unemployment for delimited periods of time when work is not available; retirement; and healthcare. Another participant suggested that retirement benefits for those protected on a temporary basis could be deployed as reintegration assistance to encourage return if that becomes possible. Part of the assistance from these benefits could go to the individual and the other part to the community in the country of origin to which he is returning. This would enable temporary protection to look towards two possible durable solutions at the same time: return in a humanitarian manner, and local integration where return is not possible.

## VII. INTERNATIONAL COOPERATION AND THE PROTECTION PROCESS

Participants looked at international cooperation in several ways: they examined why countries cooperate on asylum, types of cooperation, and problems involved in cooperation.

International cooperation occurs in three fora: between receiving states; between sending and receiving states; and between sending states. Countries cooperate for a number of reasons. Oftentimes, shared borders encourage a need to work together. One participant observed that expulsion policies also bring states together—the receiving country needs the cooperation of the country of origin to accomplish return. Economic integration can be another motivator of cooperation, since freedom of movement goes hand in hand with such policies. Finally, cooperation can be a fig leaf for states that do not want to take responsibility for restrictive decisions.

Several types of cooperation were considered. Practical cooperation occurs through ad hoc channels and is the most popular form of cooperation. For example, one participant noted, when there were still border controls between the Netherlands and Germany, the border authorities effectively pooled their resources to avoid double checks. Bilateral or multilateral legal

arrangements are another mode of cooperation. The Dublin Convention,<sup>6</sup> which set up a filtering system for assigning asylum seekers to particular EU member states, is such an example. Dublin is chiefly a mechanism for ensuring cooperation among EU countries, but it also involves considerable cooperation between the EU and Poland, Hungary, and the Czech Republic. Both their contiguity (making them points of passage for land travel to the EU) and their status as “first wave” applicants for EU membership encourage such cooperation. Such arrangements, however, are difficult to establish, several participants noted. When the United States and Canada tried to develop a legal agreement on how to treat asylum seekers entering from each other’s territories, they were unable to reach an arrangement that met both countries’ interests. A third type of cooperation can be seen in the harmonization of asylum policies among states in a region. Finally, cooperation with countries of origin and transit is another important arrangement that some states have pursued.

Three problems often arise with regard to international cooperation. First, the process is very slow, one participant observed. It takes years to agree to a policy, since approval by all appropriate government officials in each state is required. Second, the policies that result from this process are often fragile compromises, as countries do not want to give up their own national policies. Finally, considerable staff resources are required even to achieve such compromises.

Much discussion focused on one significant attempt at international cooperation that some participants saw as a failure. The Dublin Convention established rules among participating European states to prevent asylum seekers from lodging multiple applications: asylum seekers must apply for asylum in the first EU country they reach or in the one with which they have substantive ties, such as family members. The implementation has failed in various ways. First, one participant noted, participating states still do not have harmonized substantive policies on status (for example, asylum, temporary protection, and other non-Convention statuses allowing residence), so the system currently results in very different outcomes depending on where the hearing takes place. The most discussed example of this was the treatment of non-state actors as persecutors, recognized by some European states (for example, the United Kingdom), but not others (such as Germany). Second, the Dublin Convention’s mechanism for transferring asylum seekers from one member state to another explicitly assumes that they will arrive with travel documents; as it happened, large numbers of asylum seekers destroyed their documents along the way or otherwise arrived without them. When asylum is applied for within the country (rather than at the border), the

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6. Convention Determining the State Responsible for Examining Applications for Asylum Requests Lodged in one of the Member States of the European Communities, June 15, 1990, 1997 O.J. (C 254) 1, 30 I.L.M. 425.

member state in question has no choice but to process the application. Third, the results have been unfair in that certain states on the periphery of the European Union (notably Germany) process most of the applicants for asylum, while interior states have relatively light caseloads. It should, however, be noted that this imbalance preceded the Dublin Convention. Furthermore, there has been something of a convergence in asylum applications more recently, as some countries, such as Germany, have seen applications fall sharply, while others, notably the United Kingdom, have seen them rise. Fourth, the procedures for determining which country must process the application are very long. Finally, applicants can evade the Dublin regime by applying for asylum in one country while remaining illegally in another one and not being caught; as borders within continental Europe have been all but abolished under the Schengen agreement,<sup>7</sup> moving from one country to another is an easy matter.

One final area of discussion concerned cooperation between countries of reception and origin. Most discussions and arrangements to date have involved return or readmission agreements. One promising development occurred at a recent conference between several European and North African states. The North African states articulated their migration concerns after explaining that it is unfair for the Europeans to expect cooperation only on readmission issues when other legitimate matters exist. According to one participant, there was general agreement on the problems of illegal immigration. The North African states raised other important migration problems that, if addressed, would enable them to work on illegal immigration issues at home. These states complained about delays for legitimate travelers to obtain visas: businessmen, diplomats, and academics. They would also like to see more opportunities for students in education and training. Finally, they suggested the notion of a seasonal guestworker program and stressed the need for economic aid and trade. The European delegates indicated a willingness to consider changes to their immigration policies, though little has come of this as yet.

Many participants agreed that cooperation with sending countries could play an essential role in improving asylum systems.

#### VIII. GENERAL CONCLUSIONS OF THE WORKSHOP

The Workshop participants agreed on the following:

1. Independent evaluations of the fast track procedures are needed to understand the effects of such policies on protection and abuse.
2. The implementation of safe third country policies should be studied to determine if bona fide refugees are being *refouled* in violation of the Refugee Convention.

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7. Schengen Agreement on the Gradual Abolition of Checks at their Common Border, June 14, 1985, 30 I.L.M. 68.

3. Where legal representation is not provided at government expense to asylum seekers, funds should be appropriated for demonstration projects to test ways to increase representation and measure its effectiveness in ensuring a fairer and more efficient system.
4. Alternatives to detention, such as supervised release, should be developed. If necessary to ensure compliance and removal, detention should be used at the end of the process (for example, at the merits hearing if relief is denied) rather than at the beginning.
5. The effectiveness of readmission programs should be evaluated.
6. Standards on the withdrawal of temporary protection need to be developed; governments and the UNHCR should consider the establishment of a collective system to develop such standards.
7. Mechanisms to enhance cooperation between sending and receiving countries should be explored, particularly to facilitate readmission of rejected asylum seekers as well as persons granted temporary protection once conditions permit return.

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