

PRESIDENCY CONCLUSIONS

Presidency Conclusions: TAMPERE

UNHCR'S POSITION

Setting the European asylum agenda: UNHCR recommendations to the Tampere Summit (October 1999)

I. Introduction

1. The Office of the United Nations High Commissioner for Refugees (UNHCR) attaches great importance to the convening of the European Council at Tampere in order to give impetus to the establishment of an area of freedom, security and justice under the new provisions of the Treaty on European Union, as revised by the Amsterdam Treaty. The Summit should give priority attention to the asylum issue as one of the important areas of justice and home affairs being subject to "communitarization" or increasing cooperation among Member States according to the relevant provisions of the Amsterdam Treaty.
2. UNHCR would like to see the Tampere summit stake out the political space within which a protection-based approach to asylum can be anchored and the fundamental rights of refugees and asylum-seekers secured. This will require political will in face of current trends. In manifesting such resolve, European States, which have traditionally been in the forefront of refugee law development, would remain a positive example to follow the world over. The significance of the future EU asylum standards and policy orientations go well beyond the European context - they are bound to influence the attitude of non-EU asylum countries.
3. In accordance with Declaration No. 17 to the Amsterdam Treaty, UNHCR hopes to be fully associated with the preparation and subsequent implementation of the relevant parts of the EU migration and asylum strategy to be adopted at the Summit.

II. Implementing the Amsterdam Treaty provisions

4. UNHCR hopes that the Tampere Summit will mark the beginning of a process resulting in the establishment of a comprehensive, concerted and outward-looking asylum and migration strategy for the future - enlarged - European Union. The various EU legislative instruments and measures to be formulated during the next five years following the entry into force of the Amsterdam Treaty must be developed within a strategic framework which takes account of their inter-relationship and relative importance and establishes the sequence in which these instruments can best be prepared. In the view of UNHCR, a coherent approach requires that common standards for the application of substantive asylum law be developed first, followed by measures for the harmonisation of asylum procedures, complementary protection schemes and temporary protection arrangements
5. Such an integrated strategy must keep a distinct focus on asylum policy and its protection dimension and ensure that asylum is preserved as a legal concept and not subordinated to the political, security and socio-economic dimensions of migration

policy. Asylum is a right rooted in international human rights standards, and not a political offer subject to discretionary administrative measures, such as the establishment of admission quotas.

6. The implementation of the asylum provisions of the Amsterdam Treaty should be aimed ultimately at the full harmonization of procedural and material asylum law. UNHCR calls on Member States to ensure that future binding EU asylum instruments are in accordance with international refugee law and human rights law standards, such as those laid down in the 1951 Convention and its 1967 Protocol, as well as in the European Convention on Human Rights, as stated in Article 6 and Article 63 of the Amsterdam Treaty.
7. In codifying the present set of soft law asylum instruments, the present weaknesses of these instruments - which have led to problems in their implementation - need to be revisited with a view to adopting remedial measures and additional safeguards in order to render the future binding instruments truly protection-oriented. There is also a need to ensure coherence between the legal instruments to be developed under Title IV, in order to avoid that common measures in the areas of immigration and border control impact negatively on the right to seek and enjoy asylum.
8. UNHCR calls on the Summit to commit itself to giving meaningful substance to the asylum provisions of the Amsterdam Treaty. In implementing these provisions, the danger of downward harmonization should be avoided; there is a risk that the unanimity voting procedure may result in movement towards the lowest common denominator unless there is a strong commitment to work by consensus and adopt standards which are in accordance with related international standards of refugee law.
9. Moreover, difficulties of reaching unanimous agreement may lead Member States to empty the asylum provisions of Amsterdam of meaningful substance and to limit their contents to harmonisation of procedural issues of interest to States to the exclusion of substantive protection issues relating to the rights of the refugee. Recently this potential loss of substance has been in evidence in discussions of the European Commission's proposal on temporary protection.

III. Towards a Harmonised EU Asylum Policy

10. EU Member States have made substantial efforts to harmonise their asylum policies and practices, but much remains to be done. A harmonised European asylum policy should, in UNHCR's view, encompass the following five key elements: (i) a proper, common interpretation of the international definition of who is a refugee as contained in the 1951 Convention; (ii) accessible, fair and expeditious asylum procedures, complemented by new approaches to particular refugee situations (such as temporary protection in cases of sudden and large-scale influx); (iii) proper sharing of responsibility for receiving asylum-seekers without shifting the burden to those least able to accept such responsibility; (iv) appropriate systems and procedures for effecting the return of persons not in need of international protection; and (v) a preventive policy to address the human rights violations and other causes of refugee flight and forced displacement.
11. In the view of UNHCR, a future EU asylum policy should take as a starting point the full and inclusive application of the 1951 Convention refugee definition. A future EU instrument aimed at harmonizing the application of the refugee definition should

acknowledge that asylum claims resulting from persecution by third parties come within the ambit of the 1951 Convention, and that the essential criterion for extending international protection is the risk of serious harm befalling the person - the presence of a well-founded fear of persecution - irrespective of the agent of persecution. Those who fulfil the criteria for refugee status under the 1951 Convention should enjoy the full set of rights contained in that Convention and not be given a second-class form of subsidiary protection as a substitute.

12. UNHCR accepts the rationale for developing - and harmonizing - complementary forms of protection to cover protection needs which cannot be addressed by a proper application of the 1951 Convention. Every person determined to be in need of protection should benefit from an appropriate level of legal security and socio-economic well-being derived from a status granted in accordance with objective criteria and not on the basis of administrative discretion. EU Member States, in determining needs for complementary protection are encouraged to consider how best to draw upon UNHCR's expertise in protection matters, taking due account of both the Office's supervisory role under the 1951 Convention and of its mandated activities.
13. UNHCR generally favours the adoption between States of agreements aimed at identifying the country responsible for examining an asylum request, as such agreements may help to avoid the problem of "refugees in orbit" and provide guarantees that an asylum request will be examined in substance by one of the contracting parties. UNHCR therefore has welcomed the entry into force of the Dublin Convention, provided its application is governed by fair and transparent procedures and due respect of protection principles, such as the protection of the family unit.
14. A transposition of the present Dublin mechanism in an EU legal instrument as foreseen by the Amsterdam Treaty needs to be conditioned on the maintenance of an agreed set of criteria to allocate responsibility for the examination of an asylum application in order to guarantee access to the asylum procedure in one of the EU Member States. Such a new mechanism should also provide for a humanitarian clause in order to avoid separation of family members or other situations impacting negatively the protection needs of asylum-seekers as a result of a strict application of the allocation criteria.
15. Harmonization of the criteria and procedures for the determination of refugee status can positively influence the fair and equitable application of the "Dublin" mechanism and ensure non-discriminatory treatment of all asylum applications irrespective of the country determined to be responsible for the examination of the claim.
16. UNHCR expects the Summit to reaffirm that fair and satisfactory asylum procedures, based on international standards of procedural asylum law, are a cornerstone of Member States asylum systems. Such procedures serve the dual purpose of identifying those who need international protection and those who do not and can, in principle, be safely returned home. UNHCR recommends that each Member State adopt a comprehensive procedure for determining in a holistic way all protection needs.
17. UNHCR favours the adoption of a single, unified asylum procedure in the EU in the medium-term. The Office sees this as a means to guarantee the effective harmonization of Member States' asylum procedures and to resolve the existing considerable differences and exceptions which may result in discriminatory treatment and encourage secondary movement of asylum-seekers.

18. A future common asylum system in the EU should result in a streamlining and simplifying of procedures - this being in the interest of asylum-seekers and the authorities alike. The speeding up of the processing of asylum claims can be achieved by, inter alia, a streamlining of the appeal procedure. A well-resourced, fair and efficient first instance determination procedure may provide quicker results and, consequently, ensure legal safety and material security for deserving applicants. By eliminating unnecessary delays, it may also provide less opportunity for misuse and limit the risk that drawn-out procedures becomes in themselves a pull factor.
19. UNHCR supports recourse to temporary protection as a practical device which allows for a principled response by States to an urgent protection need in cases of sudden and large-scale influx of asylum-seekers displaced by war, mass expulsion or generalised violence. In such cases it may be impractical to apply individual status determination procedures. UNHCR believes that it should have a mandatory consultative role in any arrangements regarding the phasing in, review or termination of temporary protection regimes.
20. Temporary protection schemes should be distinguished clearly from complementary forms of protection, the former being applicable in situations of sudden and large-scale influx, whereas the latter are to be the result of individual status determination procedures. Temporary protection arrangements must not be conceived and implemented as an substitute for refugee protection under the 1951 Convention left to administrative discretion, but rather as a variation of admission and temporary refuge based on prima facie or group determination of the need for international protection.
21. Any future temporary protection coordination mechanism established at EU level should include an agreement on standards of treatment for its beneficiaries, and not be limited to procedural and organizational matters only. UNHCR is strongly of the view that beneficiaries of temporary protection need to be accorded a standard of rights which takes due account of the fact that many of them meet all the criteria for 1951 Convention status.
22. European asylum policy should be guided by the notions of international solidarity and burden-sharing. Any future EU burden-sharing mechanism should be complementary to, not at the expense of, global burden-sharing efforts, such as contributing to UNHCR programmes and providing for the resettlement of refugees. Account should be taken of the burden shouldered by countries in the immediate vicinity of the crisis region. While burden sharing can help ensure respect for the basic principles of refugee protection, it cannot be made a prerequisite to providing such protection. It should also take due account of humanitarian factors, such as the protection of the family unit or of cultural considerations which may call for exceptions to the application of distribution criteria.
23. A regional burden-sharing mechanism should be comprehensively conceived to include action at the pre-departure stage (prevention, emergency preparedness, political and military/peace-keeping action), through the influx (protection and assistance to refugees and displaced persons), on to durable solutions (voluntary return, local integration, or resettlement).

24. As with the implementation of a successor instrument to the Dublin Convention, the fair and effective implementation of a burden-sharing mechanism would benefit from the harmonization of conditions for the admission and standards of treatment of its beneficiaries. This can help to avoid discriminatory treatment and subsequent secondary movements.
25. In order to preserve the integrity of the asylum systems in EU Member States, appropriate procedures for effecting the return of persons not in need of international protection need to be developed, provided these persons have been screened out through a formal refugee status determination procedure which properly applies the refugee criteria. Such return programmes can be promoted through the conclusion of readmission agreements and readmission clauses in cooperation agreements. In so far these arrangements include also the return of asylum-seekers whose cases have not been heard to third countries where they could have found protection, they must contain sufficient safeguards that the persons returned can effectively seek asylum in those countries.
26. The European asylum challenge cannot be addressed in Europe alone. It is clearly in the interest of European States to situate their asylum and migration policy within a broader approach which addresses political, human rights and developmental issues in countries and regions of origin. Such a comprehensive approach to asylum and migration must encompass the entire continuum of forced population movements, from their causes to their eventual solutions. Preventive action addressing human rights violations and other causes of refugee flight and forced displacement is a key element of such an approach.
27. UNHCR supports efforts to move the asylum debate out of a framework premised on restrictiveness and deterrence into one which engages more constructive foreign policy initiatives. In the view of UNHCR there are strong grounds to institutionalise the inter-pillar cooperation on migration and asylum issues that has recently been tested in the work of the High Level Working Group on Migration and Asylum.
28. UNHCR hopes that sufficient attention will be given to the protection dimension of the country plans which have been developed by the High Level Working Group so far, as well as those to be designed and implemented in future. Programmes for reception in the region, and/or return to countries of origin, need to be inspired by a number of protection principles such as physical safety, legal security and socio-economic well-being.
29. Measures to strengthen the protection capacities of countries in the region of origin do not absolve Member States of their responsibility to fulfil their protection obligations towards those who are seeking asylum on their territory.

IV. Concluding remarks

30. It is UNHCR's strong belief that a future harmonised European asylum policy must be firmly rooted in the proper and inclusive application of the 1951 Convention. The right to seek and enjoy asylum must be maintained as a human right and its further development and enforcement in Europe should be strengthened by the EU harmonisation process.

31. A comprehensive and forward-looking asylum policy in Europe that respects international standards for refugee protection will be to the benefit of refugees, asylum-seekers and States alike. The implementation of the relevant provisions of the Amsterdam Treaty represent an important opportunity to achieve this goal.

32. An important factor in the process to harmonise asylum policy and practice in the European Union is the future enlargement of the Union through the accession of candidate countries in Central Europe. These countries need to be further assisted in developing sustainable and comprehensive asylum systems which meet the requirements of EU membership as well as international standards for the protection of the refugee. Preparations for future EU membership are a unique opportunity to help these countries to adopt and implement the necessary legislative and administrative arrangements to develop the required institutional capacity, and, hence, to turn from transit countries for asylum-seekers into countries of destination for refugees.

23 July 1999

TAMPERE, October 1999

Presidency Conclusions - Tampere, 15 and 16 October 1999

The European Council held a special meeting on 15 and 16 October 1999 in Tampere on the creation of an area of freedom, security and justice in the European Union. At the start of proceedings an exchange of views was conducted with the President of the European Parliament, Mrs Nicole Fontaine, on the main topics of discussion.

The European Council is determined to develop the Union as an area of freedom, security and justice by making full use of the possibilities offered by the Treaty of Amsterdam. The European Council sends a strong political message to reaffirm the importance of this objective and has agreed on a number of policy orientations and priorities which will speedily make this area a reality. The European Council will place and maintain this objective at the very top of the political agenda. It will keep under constant review progress made towards implementing the necessary measures and meeting the deadlines set by the Treaty of Amsterdam, the Vienna Action Plan and the present conclusions. The Commission is invited to make a proposal for an appropriate scoreboard to that end. The European Council underlines the importance of ensuring the necessary transparency and of keeping the European Parliament regularly informed. It will hold a full debate assessing progress at its December meeting in 2001.

In close connection with the area of freedom, security and justice, the European Council has agreed on the composition, method of work and practical arrangements (attached in the annex) for the body entrusted with drawing up a draft Charter of fundamental rights of the European Union. It invites all parties involved to ensure that work on the Charter can begin rapidly.

The European Council expresses its gratitude for the work of the outgoing Secretary-General of the Council, Mr. Jürgen Trumpf, and in particular for his contribution to the development of the Union following the entry into force of the Treaty of Amsterdam.

Given that one of the focal points of the Union's work in the years ahead will be to strengthen the common foreign and security policy, including developing a European security and defence policy, the European Council expects the new Secretary-General of the Council and High Representative for the CFSP, Mr. Javier Solana, to make a key contribution to this objective. Mr. Solana will be able to rely on the full backing of the European Council in exercising his powers according to Article 18(3) of the Treaty so he can do full justice to his tasks. His responsibilities will include cooperating with the Presidency to ensure that deliberations and action in foreign and security policy matters are efficiently conducted with the aim of fostering continuity and consistency of policy on the basis of the common interests of the Union.

TOWARDS A UNION OF FREEDOM, SECURITY AND JUSTICE: THE TAMPERE MILESTONES

1. From its very beginning European integration has been firmly rooted in a shared commitment to freedom based on human rights, democratic institutions and the rule of law. These common values have proved necessary for securing peace and developing prosperity in the European Union. They will also serve as a cornerstone for the enlarging Union.
2. The European Union has already put in place for its citizens the major ingredients of a shared area of prosperity and peace: a single market, economic and monetary union, and the capacity to take on global political and economic challenges. The challenge of the Amsterdam Treaty is now to ensure that freedom, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice accessible to all. It is a project which responds to the frequently expressed concerns of citizens and has a direct bearing on their daily lives.
3. This freedom should not, however, be regarded as the exclusive preserve of the Union's own citizens. Its very existence acts as a draw to many others world-wide who cannot enjoy the freedom Union citizens take for granted. It would be in contradiction with Europe's traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory. This in turn requires the Union to develop common policies on asylum and immigration, while taking into account the need for a consistent control of external borders to stop illegal immigration and to combat those who organise it and commit related international crimes. These common policies must be based on principles which are both clear to our own citizens and also offer guarantees to those who seek protection in or access to the European Union.
4. The aim is an open and secure European Union, fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity. A common approach must also be developed to ensure the integration into our societies of those third country nationals who are lawfully resident in the Union.
5. The enjoyment of freedom requires a genuine area of justice, where people can approach courts and authorities in any Member State as easily as in their own. Criminals must find no ways of exploiting differences in the judicial systems of Member States. Judgements and decisions should be respected and enforced throughout the Union, while safeguarding the basic legal certainty of people and economic operators. Better compatibility and more convergence between the legal systems of Member States must be achieved.
6. People have the right to expect the Union to address the threat to their freedom and legal rights posed by serious crime. To counter these threats a common effort is needed to prevent and fight crime and criminal organisations throughout the Union. The joint mobilisation of police and judicial resources is needed to guarantee that there is no hiding place for criminals or the proceeds of crime within the Union.
7. The area of freedom, security and justice should be based on the principles of transparency and democratic control. We must develop an open dialogue with civil

society on the aims and principles of this area in order to strengthen citizens' acceptance and support. In order to maintain confidence in authorities, common standards on the integrity of authorities should be developed.

8. The European Council considers it essential that in these areas the Union should also develop a capacity to act and be regarded as a significant partner on the international scene. This requires close co-operation with partner countries and international organisations, in particular the Council of Europe, OSCE, OECD and the United Nations.
9. The European Council invites the Council and the Commission, in close co-operation with the European Parliament, to promote the full and immediate implementation of the Treaty of Amsterdam on the basis of the Vienna Action Plan and of the following political guidelines and concrete objectives agreed here in Tampere.

A. A COMMON EU ASYLUM AND MIGRATION POLICY

10. The separate but closely related issues of asylum and migration call for the development of a common EU policy to include the following elements.

I. Partnership with countries of origin

11. The European Union needs a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. This requires combating poverty, improving living conditions and job opportunities, preventing conflicts and consolidating democratic states and ensuring respect for human rights, in particular rights of minorities, women and children. To that end, the Union as well as Member States are invited to contribute, within their respective competence under the Treaties, to a greater coherence of internal and external policies of the Union. Partnership with third countries concerned will also be a key element for the success of such a policy, with a view to promoting co-development.
12. In this context, the European Council welcomes the report of the High Level Working Group on Asylum and Migration set up by the Council, and agrees on the continuation of its mandate and on the drawing up of further Action Plans. It considers as a useful contribution the first action plans drawn up by that Working Group, and approved by the Council, and invites the Council and the Commission to report back on their implementation to the European Council in December 2000.

II. A Common European Asylum System

13. The European Council reaffirms the importance the Union and Member States attach to absolute respect of the right to seek asylum. It has agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement.

14. This System should include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the refugee status. It should also be completed with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection. To that end, the Council is urged to adopt, on the basis of Commission proposals, the necessary decisions according to the timetable set in the Treaty of Amsterdam and the Vienna Action Plan. The European Council stresses the importance of consulting UNHCR and other international organisations.
15. In the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union. The Commission is asked to prepare within one year a communication on this matter.
16. The European Council urges the Council to step up its efforts to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States. The European Council believes that consideration should be given to making some form of financial reserve available in situations of mass influx of refugees for temporary protection. The Commission is invited to explore the possibilities for this.
17. The European Council urges the Council to finalise promptly its work on the system for the identification of asylum seekers (Eurodac).

III. Fair treatment of third country nationals

18. The European Union must ensure fair treatment of third country nationals who reside legally on the territory of its Member States. A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia.
19. Building on the Commission Communication on an Action Plan against Racism, the European Council calls for the fight against racism and xenophobia to be stepped up. The Member States will draw on best practices and experiences. Co-operation with the European Monitoring Centre on Racism and Xenophobia and the Council of Europe will be further strengthened. Moreover, the Commission is invited to come forward as soon as possible with proposals implementing Article 13 of the EC Treaty on the fight against racism and xenophobia. To fight against discrimination more generally the Member States are encouraged to draw up national programmes.
20. The European Council acknowledges the need for approximation of national legislations on the conditions for admission and residence of third country nationals, based on a shared assessment of the economic and demographic developments within the Union, as well as the situation in the countries of origin. It requests to this end rapid decisions by the Council, on the basis of proposals by the Commission. These decisions should take into account not only the reception capacity of each Member State, but also their historical and cultural links with the countries of origin.
21. The legal status of third country nationals should be approximated to that of Member States' nationals. A person, who has resided legally in a Member State for a period of

time to be determined and who holds a long-term residence permit, should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens; e.g. the right to reside, receive education, and work as an employee or self-employed person, as well as the principle of non-discrimination vis-à-vis the citizens of the State of residence. The European Council endorses the objective that long-term legally resident third country nationals be offered the opportunity to obtain the nationality of the Member State in which they are resident.

IV. Management of migration flows

22. The European Council stresses the need for more efficient management of migration flows at all their stages. It calls for the development, in close co-operation with countries of origin and transit, of information campaigns on the actual possibilities for legal immigration, and for the prevention of all forms of trafficking in human beings. A common active policy on visas and also documents should be further developed, including closer co-operation between EU consulates in third countries and, where necessary, the establishment of common EU visa issuing offices.
23. The European Council is determined to tackle at its source illegal immigration, especially by combating those who engage in trafficking in human beings and economic exploitation of migrants. It urges the adoption of legislation foreseeing severe sanctions against this serious crime. The Council is invited to adopt by the end of 2000, on the basis of a proposal by the Commission, legislation to this end. Member States, together with Europol, should direct their efforts to detecting and dismantling the criminal networks involved. The rights of the victims of such activities shall be secured with special emphasis on the problems of women and children.
24. The European Council calls for closer co-operation and mutual technical assistance between the Member States' border control services, such as exchange programmes and technology transfer, especially on maritime borders, and for the rapid inclusion of the applicant States in this co-operation. In this context, the Council welcomes the memorandum of understanding between Italy and Greece to enhance co-operation between the two countries in the Adriatic and Ionian seas in combating organised crime, smuggling and trafficking of persons.
25. As a consequence of the integration of the Schengen acquis into the Union, the candidate countries must accept in full that acquis and further measures building upon it. The European Council stresses the importance of the effective control of the Union's future external borders by specialised trained professionals.
26. The European Council calls for assistance to countries of origin and transit to be developed in order to promote voluntary return as well as to help the authorities of those countries to strengthen their ability to combat effectively trafficking in human beings and to cope with their readmission obligations towards the Union and the Member States.
27. The Amsterdam Treaty conferred powers on the Community in the field of readmission. The European Council invites the Council to conclude readmission agreements or to include standard clauses in other agreements between the European Community and relevant third countries or groups of countries. Consideration should also be given to rules on internal readmission.

B. A GENUINE EUROPEAN AREA OF JUSTICE

28. In a genuine European Area of Justice individuals and businesses should not be prevented or discouraged from exercising their rights by the incompatibility or complexity of legal and administrative systems in the Member States. V. Better access to justice in Europe
29. In order to facilitate access to justice the European Council invites the Commission, in cooperation with other relevant fora, such as the Council of Europe, to launch an information campaign and to publish appropriate “user guides” on judicial co-operation within the Union and on the legal systems of the Member States. It also calls for the establishment of an easily accessible information system to be maintained and up-dated by a network of competent national authorities.
30. The European Council invites the Council, on the basis of proposals by the Commission, to establish minimum standards ensuring an adequate level of legal aid in cross-border cases throughout the Union as well as special common procedural rules for simplified and accelerated cross-border litigation on small consumer and commercial claims, as well as maintenance claims, and on uncontested claims. Alternative, extra-judicial procedures should also be created by Member States.
31. Common minimum standards should be set for multilingual forms or documents to be used in cross-border court cases throughout the Union. Such documents or forms should then be accepted mutually as valid documents in all legal proceedings in the Union.
32. Having regard to the Commission's communication, minimum standards should be drawn up on the protection of the victims of crime, in particular on crime victims' access to justice and on their rights to compensation for damages, including legal costs. In addition, national programmes should be set up to finance measures, public and non-governmental, for assistance to and protection of victims.

VI. Mutual recognition of judicial decisions

33. Enhanced mutual recognition of judicial decisions and judgements and the necessary approximation of legislation would facilitate co-operation between authorities and the judicial protection of individual rights. The European Council therefore endorses the principle of mutual recognition which, in its view, should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union. The principle should apply both to judgements and to other decisions of judicial authorities.
34. In civil matters the European Council calls upon the Commission to make a proposal for further reduction of the intermediate measures which are still required to enable the recognition and enforcement of a decision or judgement in the requested State. As a first step these intermediate procedures should be abolished for titles in respect of small consumer or commercial claims and for certain judgements in the field of family litigation (e.g. on maintenance claims and visiting rights). Such decisions would be automatically recognised throughout the Union without any intermediate proceedings or grounds for refusal of enforcement. This could be accompanied by the setting of minimum standards on specific aspects of civil procedural law.
35. With respect to criminal matters, the European Council urges Member States to speedily

ratify the 1995 and 1996 EU Conventions on extradition. It considers that the formal extradition procedure should be abolished among the Member States as far as persons are concerned who are fleeing from justice after having been finally sentenced, and replaced by a simple transfer of such persons, in compliance with Article 6 TEU. Consideration should also be given to fast track extradition procedures, without prejudice to the principle of fair trial. The European Council invites the Commission to make proposals on this matter in the light of the Schengen Implementing Agreement.

36. The principle of mutual recognition should also apply to pre-trial orders, in particular to those which would enable competent authorities quickly to secure evidence and to seize assets which are easily movable; evidence lawfully gathered by one Member State's authorities should be admissible before the courts of other Member States, taking into account the standards that apply there.
37. The European Council asks the Council and the Commission to adopt, by December 2000, a programme of measures to implement the principle of mutual recognition. In this programme, work should also be launched on a European Enforcement Order and on those aspects of procedural law on which common minimum standards are considered necessary in order to facilitate the application of the principle of mutual recognition, respecting the fundamental legal principles of Member States.

VII. Greater convergence in civil law

38. The European Council invites the Council and the Commission to prepare new procedural legislation in cross-border cases, in particular on those elements which are instrumental to smooth judicial co-operation and to enhanced access to law, e.g. provisional measures, taking of evidence, orders for money payment and time limits.
39. As regards substantive law, an overall study is requested on the need to approximate Member States' legislation in civil matters in order to eliminate obstacles to the good functioning of civil proceedings. The Council should report back by 2001.

C. A UNIONWIDE FIGHT AGAINST CRIME

40. The European Council is deeply committed to reinforcing the fight against serious organised and transnational crime. The high level of safety in the area of freedom, security and justice presupposes an efficient and comprehensive approach in the fight against all forms of crime. A balanced development of unionwide measures against crime should be achieved while protecting the freedom and legal rights of individuals and economic operators.

VIII. Preventing crime at the level of the Union

41. The European Council calls for the integration of crime prevention aspects into actions against crime as well as for the further development of national crime prevention programmes. Common priorities should be developed and identified in crime prevention in the external and internal policy of the Union and be taken into account when preparing new legislation.

42. The exchange of best practices should be developed, the network of competent national authorities for crime prevention and co-operation between national crime prevention organisations should be strengthened and the possibility of a Community funded programme should be explored for these purposes. The first priorities for this co-operation could be juvenile, urban and drug-related crime.

IX. Stepping up co-operation against crime

43. Maximum benefit should be derived from co-operation between Member States' authorities when investigating cross-border crime in any Member State. The European Council calls for joint investigative teams as foreseen in the Treaty to be set up without delay, as a first step, to combat trafficking in drugs and human beings as well as terrorism. The rules to be set up in this respect should allow representatives of Europol to participate, as appropriate, in such teams in a support capacity.
44. The European Council calls for the establishment of a European Police Chiefs operational Task Force to exchange, in co-operation with Europol, experience, best practices and information on current trends in cross-border crime and contribute to the planning of operative actions.
45. Europol has a key role in supporting unionwide crime prevention, analyses and investigation. The European Council calls on the Council to provide Europol with the necessary support and resources. In the near future its role should be strengthened by means of receiving operational data from Member States and authorising it to ask Member States to initiate, conduct or coordinate investigations or to create joint investigative teams in certain areas of crime, while respecting systems of judicial control in Member States.
46. To reinforce the fight against serious organised crime, the European Council has agreed that a unit (EUROJUST) should be set up composed of national prosecutors, magistrates, or police officers of equivalent competence, detached from each Member State according to its legal system. EUROJUST should have the task of facilitating the proper coordination of national prosecuting authorities and of supporting criminal investigations in organised crime cases, notably based on Europol's analysis, as well as of co-operating closely with the European Judicial Network, in particular in order to simplify the execution of letters rogatory. The European Council requests the Council to adopt the necessary legal instrument by the end of 2001.
47. A European Police College for the training of senior law enforcement officials should be established. It should start as a network of existing national training institutes. It should also be open to the authorities of candidate countries.
48. Without prejudice to the broader areas envisaged in the Treaty of Amsterdam and in the Vienna Action Plan, the European Council considers that, with regard to national criminal law, efforts to agree on common definitions, incriminations and sanctions should be focused in the first instance on a limited number of sectors of particular relevance, such as financial crime (money laundering, corruption, Euro counterfeiting), drugs trafficking, trafficking in human beings, particularly exploitation of women, sexual exploitation of children, high tech crime and environmental crime.

49. Serious economic crime increasingly has tax and duty aspects. The European Council therefore calls upon Member States to provide full mutual legal assistance in the investigation and prosecution of serious economic crime.
50. The European Council underlines the importance of addressing the drugs problem in a comprehensive manner. It calls on the Council to adopt the 2000-2004 European Strategy against Drugs before the European Council meeting in Helsinki.

X. Special action against money laundering

51. Money laundering is at the very heart of organised crime. It should be rooted out wherever it occurs. The European Council is determined to ensure that concrete steps are taken to trace, freeze, seize and confiscate the proceeds of crime.
52. Member States are urged to implement fully the provisions of the Money Laundering Directive, the 1990 Strasbourg Convention and the Financial Action Task Force recommendations also in all their dependent territories.
53. The European Council calls for the Council and the European Parliament to adopt as soon as possible the draft revised directive on money laundering recently proposed by the Commission.
54. With due regard to data protection, the transparency of financial transactions and ownership of corporate entities should be improved and the exchange of information between the existing financial intelligence units (FIU) regarding suspicious transactions expedited. Regardless of secrecy provisions applicable to banking and other commercial activity, judicial authorities as well as FIUs must be entitled, subject to judicial control, to receive information when such information is necessary to investigate money laundering. The European Council calls on the Council to adopt the necessary provisions to this end.
55. The European Council calls for the approximation of criminal law and procedures on money laundering (e.g. tracing, freezing and confiscating funds). The scope of criminal activities which constitute predicate offences for money laundering should be uniform and sufficiently broad in all Member States.
56. The European Council invites the Council to extend the competence of Europol to money laundering in general, regardless of the type of offence from which the laundered proceeds originate.
57. Common standards should be developed in order to prevent the use of corporations and entities registered outside the jurisdiction of the Union in the hiding of criminal proceeds and in money laundering. The Union and Member States should make arrangements with third country offshore-centres to ensure efficient and transparent co-operation in mutual legal assistance following the recommendations made in this area by the Financial Action Task Force.
58. The Commission is invited to draw up a report identifying provisions in national banking, financial and corporate legislation which obstruct international co-operation. The Council is invited to draw necessary conclusions on the basis of this report.

D. STRONGER EXTERNAL ACTION

59. The European Council underlines that all competences and instruments at the disposal of the Union, and in particular, in external relations must be used in an integrated and consistent way to build the area of freedom, security and justice. Justice and Home Affairs concerns must be integrated in the definition and implementation of other Union policies and activities.
60. Full use must be made of the new possibilities offered by the Treaty of Amsterdam for external action and in particular of Common Strategies as well as Community agreements and agreements based on Article 38 TEU.
61. Clear priorities, policy objectives and measures for the Union's external action in Justice and Home Affairs should be defined. Specific recommendations should be drawn up by the Council in close co-operation with the Commission on policy objectives and measures for the Union's external action in Justice and Home Affairs, including questions of working structure, prior to the European Council in June 2000.
62. The European Council expresses its support for regional co-operation against organised crime involving the Member States and third countries bordering on the Union. In this context it notes with satisfaction the concrete and practical results obtained by the surrounding countries in the Baltic Sea region. The European Council attaches particular importance to regional cooperation and development in the Balkan region. The European Union welcomes and intends to participate in a European Conference on Development and Security in the Adriatic and Ionian area, to be organised by the Italian Government in Italy in the first half of the year 2000. This initiative will provide valuable support in the context of the South Eastern Europe Stability Pact.

UNHCR'S POSITION

ASYLUM AFTER TAMPERE

The EU asylum agenda following the Tampere Summit

The Tampere Summit Conclusions represent an important landmark in the development of a European asylum and migration strategy. The Conclusions in themselves do not prescribe the contents of the future European Union asylum and migration instruments to be developed pursuant to the entry into force of Title IV of the Amsterdam Treaty. Yet they give political impetus to, and set the main orientations for, the future EU policy in the area of asylum and migration.

Asylum vs. Migration

The Conclusions include a reaffirmation of the right to seek asylum and call for the full and inclusive application of the Geneva Convention. This is to be welcomed as a positive signal that the future EU asylum system is to be developed on the basis of international protection standards. It is refreshing to see that asylum policy is dealt with up-front in the Conclusions rather than as a final afterthought. Also, protection considerations precede those of border control and measures aimed at stemming illegal immigration.

The separate chapter aimed at improving the integration of third country nationals residing legally on the territory of Member States also includes a number of positive intentions, including efforts to step up the fight against racism and xenophobia. The Conclusions also underline the need for approximation of national legislations on the conditions for admission and residence of aliens.

The Conclusions refer to asylum and migration policies as distinct, although inter-related areas, and contain separate paragraphs on asylum, legal migration, illegal immigration and cooperation with source countries. The Conclusions affirm that asylum is an absolute human right, while migration is seen as being conditioned by socio-economic, demographic, judicial and police cooperation factors. Yet the close relationship between asylum and migration calls for a reflection over the inter-linkage of the various legal instruments and common policies to be developed in these areas, as well as the sequence of their development.

While the Conclusions affirm the need for guarantees for those who seek access to and protection in the EU Member States, they also call for vigorous measures to stem illegal immigration, reinforce border controls and combat trafficking in human beings. The Conclusions do not spell out how to balance guarantees to offer protection to those in need of it with measures to stem illegal immigration. There is, therefore, a risk that access to territory and to the asylum procedure will be undermined if stringent controls are put in place without sufficient guarantees addressing the situation of persons seeking protection.

Towards a single or a common asylum system?

The Tampere Conclusions spell out a clear commitment to iron out the differences between the asylum policies and laws of individual EU Member States. The Conclusions establish the main

elements of a common European asylum system, in terms of asylum procedures, reception conditions and, eventually, a uniform refugee status. The intention as expressed in the Conclusions to establish a common asylum system should be taken as a clear signal that EU Member States want to move beyond minimum levels of harmonisation and approximation of their asylum laws and policies. Whether this will be realised remains to be seen.

In this context it is important to note that the Summit Conclusions call for a common asylum system, not a single system. This is probably more than merely a semantic issue, since clear differences of opinion on the future of the Union's competence in asylum matters underlie this question. A single, uniform system implies full harmonisation of standards and procedures.

Yet a number of Member States have expressed doubts about the feasibility or desirability of establishing such a system and prefer to identify a set of common standards arising from a comparison of the standards governing their asylum policies and practices. While UNHCR would certainly see advantages in a single system, the key issue for the Office is that the sights of Governments remain firmly fixed on high protection standards.

What level of protection?

Despite their overall positive tone, the Tampere Conclusions do not actually set the detail nor the level of future protection standards for the future common asylum system. While Conclusions of this kind cannot be expected to do so, it is now up to the drafters of the future asylum instruments (the Commission), as well as for those who will have to negotiate their adoption (the Council, and to a certain extent, the European Parliament) to agree on the contents of the protection offered in the future instruments.

Some Member States have already announced that they will stick to a strict interpretation of the language of the asylum provisions of the Amsterdam Treaty, that is the adoption of minimum standards. This entails the risk that the minimum will develop into the maximum, particularly if the rule of unanimity voting is to be maintained during the next five years of negotiations on draft instruments.

In order to avoid the acceptance of the lowest common denominator, Member States should be called upon to negotiate a consistent set of common standards for each instrument, to be developed within a coherent framework, and not by comparing the standards and singularities of their present policies and practices. Moreover, the Commission may need some encouragement to develop comprehensive proposals setting high protection standards, prior to putting these on the negotiating table.

Partnership with countries of origin

The Tampere Conclusions include a brief chapter endorsing a comprehensive approach to migration and asylum addressing political, human rights and development issues in countries and regions of origin and transit, as pioneered recently by the EU High Level Working Group on Migration and Asylum. Partnership with countries of origin and third countries concerned will be a key element for the success of such a policy. The Conclusions call for a continuation of the mandate of the High Level Working Group and the drawing up of further Action Plans following the adoption of a first set of such Plans as elaborated by the Group. UNHCR has welcomed the establishment of the Group and has provided inputs into the drawing up of the Action Plans.

Now that the implementation phase has begun, UNHCR will see to it that the protection dimension of the Action Plans receives at least as much attention as the control measures spelled out in the Plans. Implementing the Action Plans needs to be predicated upon Member States' continued acceptance of asylum-seekers and migrants on their territory, combined with efforts to address effectively the root causes of flight and migration, measures strengthening the reception and protection capacities of countries neighbouring countries of origin, and increased political and financial support for voluntary return programmes, provided the security and political situation in countries of origin allows for sustainable reintegration.

The post-Tampere asylum agenda

Now that the Tampere Summit has promulgated its political guidelines for the EU asylum law-making process, the Commission and Member States are preparing for an intensive period of elaborating and negotiating proposals for Regulations and Directives. The Commission is at present drawing up its "scoreboard" in order to set an agreed agenda and time-table for the introduction and adoption of the various legal instruments. The 1998 Vienna Action Plan of the Council and Commission identified a time-table of two and five years for the adoption of the various asylum and migration instruments, yet this has proven to be too ambitious. A revision of this time-table offers an opportunity to re-think the sequence with which the various asylum instruments can best be prepared and adopted.

UNHCR reiterates its call that the EU Member States and the Commission seize the opportunity to rethink the order of priority for developing the various asylum instruments. A coherent, protection-based asylum strategy should start with a common understanding of the interpretation and application of the definition of a "refugee" and the content and legal basis of the refugee status. Following agreement on the scope and contents of the refugee status, a common approach to complementary forms of protection can be developed. Simultaneously, the Council and Commission should work towards common standards for asylum procedures. Once these core elements of material and asylum law have been adopted, the Council and Commission can elaborate a common approach to practical devices such as a common temporary protection regime in situations of mass influx, a functioning "Dublin" mechanism regulating allocation of responsibility for examining asylum applications, or a European burden-sharing mechanism. It should be recalled that the Tampere Conclusions contain rather timid language on these subjects.

It is in the hands of the Council, Commission and the European Parliament to ensure that the asylum-related provisions of the Amsterdam Treaty do not simply reinforce the restrictive trends of the 1990's, but that they place refugee protection on a proper footing in harmony with the aims of freedom, security and justice to which the European Union aspires. The Tampere Conclusions constitute a positive point of departure towards achieving this end.

The Tampere Conclusions affirm that asylum is an absolute human right, while migration is seen as being conditioned by socio-economic, demographic, judicial and police cooperation factors.

A coherent, protection-based asylum strategy should start with a common understanding of the interpretation and application of the definition of a "refugee" and the content and legal basis of the refugee status.

EU Declaration On the 50th Anniversary of the 1951 Geneva Convention

EU DECLARATION ON THE 50th ANNIVERSARY OF THE 1951 CONVENTION RELATING TO THE STATUS OF REFUGEES

On the occasion of the 50th anniversary of the 1951 Convention relating to the Status of Refugees, the European Union, founded on the indivisible, universal values of human dignity, freedom, equality and solidarity, reaffirms its commitment to this unique instrument as the foundation of the international regime for the protection of refugees.

The European Union recalls its solemn declaration made at the Tampere Summit that the future Common European Asylum System must be based on the full and inclusive application of the 1951 Convention, and reaffirms its attachment to the absolute respect of the right to asylum, as recognised in particular in the EU Charter of Fundamental Rights.

The European Union calls on all States that have not yet done so to ratify the 1951 Convention and 1967 Protocol, and calls on those States which have made geographical limitations and others reservations to reconsider these, so as to ensure universal application of its provisions.

The European Union recognises the unique mandate of UNHCR and the importance of its efforts to protect, and promote durable solutions for, refugees and other people in need of international protection who are of its concern. It notes the significant importance for Contracting States to cooperate with UNHCR in order to facilitate its duty of supervising the application of the provisions of the Convention. The European Union stands ready to continue its partnership with UNHCR in order to ensure effective refugee protection and assistance.

On this auspicious day, the European Union reaffirms its strong commitment to assist and protect all those, men, women and children, who are compelled against their will to leave their homes and their country in order to escape fear of persecution and severe human rights violations

Presidency Conclusions: LAEKEN

UNHCR'S POSITION

STRENGTHENING THE TAMPERE PROCESS

UNHCR's recommendations to the Laeken Summit

I. INTRODUCTION

1. The special meeting of the European Council on 15-16 October 1999 in Tampere was a landmark in the development of common asylum and migration policies. The Tampere Council underscored that the freedom, security and justice enjoyed by citizens of the European Union must be accessible to "those whose circumstances lead them justifiably to seek access to [the Union's] territory."
2. The United Nations High Commissioner for Refugees (UNHCR) hopes that the Laeken European Council will give further impetus to the development of a common European asylum system based on, as proclaimed by the Tampere Council, the "full and inclusive application of the Geneva Convention" and "the absolute respect of the right to seek asylum." In this 50th anniversary of the 1951 Convention, UNHCR calls on the Laeken Summit to reaffirm the primacy of the Convention and its 1967 Protocol for the international refugee protection regime.
3. The Laeken Summit takes place at a time of mobilisation of concerted action at the European and global levels to combat effectively international terrorism. UNHCR recalls that the 1951 Convention does not offer a safe haven for terrorists, nor does it extend immunity from criminal prosecution. In fact, the Convention offers States the necessary tools to exclude from refugee protection those guilty of terrorist acts.

II. DEVELOPING THE COMMON ASYLUM SYSTEM

4. UNHCR notes with appreciation that the Commission has put forward the entire set of legislative proposals in the field of asylum set out in Article 63 of the Amsterdam Treaty. UNHCR also welcomes the adoption in Council of two asylum-related Community measures, namely, a Council Decision establishing a European Refugee Fund and a Council Directive on minimum standards for giving temporary protection. With the Laeken Summit taking place half way the five-year transition period set by the Amsterdam Treaty for the establishment of the area of freedom, security and justice, greater political resolve is required to achieve the Treaty's objectives and timetable.
5. In its comments to the various asylum-related legislative proposals from the Commission, UNHCR has indicated how full compatibility between the key provisions of the proposed instruments and international standards could be ensured. UNHCR therefore reiterates its call on Member States to show strong commitment so that the instruments to be adopted in Council will be based on high protection standards meeting the requirements of justice for refugees. The result of Council negotiations must avoid the lowest common denominator of protection.
6. The development of a common asylum system should have as its priority focus a harmonised interpretation of the refugee definition within a full and inclusive application

of the 1951 Convention. A common understanding of who qualifies as a refugee and who does not should inform all other elements of the common asylum system. UNHCR hopes that the Laeken Conclusions will provide policy guidance for the negotiations of the future Community instrument on minimum standards for the qualification as a refugee or as a beneficiary of subsidiary protection.

III. MANAGING MIGRATION FLOWS

7. Irregular migration is of concern to both receiving countries and countries of origin. The issue of irregular migration is also currently entangled with that of asylum. UNHCR therefore has a legitimate interest in ensuring that the problem of irregular migration is effectively dealt with in a way that upholds refugee protection principles while addressing the legitimate concerns of European States.
8. UNHCR hopes that the Laeken Summit will provide political guidance and set policy orientations for constructive immigration policies for labour, family reunification or studies. In UNHCR's view, such policies could result in an easing of the pressure on asylum systems and switch the approach to where it should be: managing migration through migration policies and managing the asylum system through asylum policies.
9. UNHCR also hopes that, as the European Union develops a common policy for labour admission, attention will be given to the skilled and talented refugees in first countries of asylum who can make a positive contribution to the labour market of the Union. A special resettlement quota would simultaneously serve economic, humanitarian and migration management objectives.

IV. THE EXTERNAL DIMENSION

10. UNHCR notes the increased attention for the development of the external dimension of the European Union's policies and practices. UNHCR welcomes such development and calls on the Union to include a meaningful asylum component in EU assistance programmes for third countries. UNHCR believes that assistance to, and co-operation with, third countries in asylum and migration matters must be based on a proper identification of the needs and priorities of these partner countries. UNHCR stands ready to assist in developing more successful programmes aimed at ensuring protection and achieving solutions.
11. UNHCR hopes that the Laeken Summit will call on the candidate countries in Central Europe to strengthen their legislative and administrative arrangements in order to ensure that their asylum systems meet European and international standards. Since the candidate countries may not have adequate means to achieve these objectives and thereby transform themselves from mere transit points to truly refugee-receiving countries, further pre-accession assistance from the EU is needed -- including increased financial support to UNHCR's current and planned capacity-building activities in those countries.
12. As acknowledged by the Tampere Summit, a comprehensive approach is key to a common European asylum and migration policy. UNHCR believes that the EU High Level Working Group on Asylum and Migration can contribute to the implementation of comprehensive, cross-pillar EU strategies to address irregular migration and mixed

population movements in a protection-oriented manner. UNHCR calls upon the Laeken Summit to provide the High Level Working Group with the necessary political and financial support for a successful continuation of its work.

13. Achieving durable solutions for protracted refugee situations is a central element of an integrated approach to forced population displacement. UNHCR has appealed to States world-wide to support its efforts towards durable solutions for refugee situations: voluntary repatriation to the country of origin, local integration in the countries of first asylum or resettlement in other countries. The political, financial and humanitarian costs of not finding durable solutions to the problems of refugees are much greater: refugees will be degraded having to stay in camps for many years or they will be forced to go on the move illegally using criminal networks. UNHCR therefore calls on the Laeken Summit to reserve a certain percentage of EU development budgets for durable solutions in countries of origin or of first asylum in the region, and to promote the ownership of host governments to support these solutions.
14. UNHCR calls on the Laeken Summit to recognise the role of UNHCR as a partner in meeting the challenges of effective refugee protection and solutions. UNHCR and the European Union have a range of common interests: the European asylum agenda, the asylum dimension of European enlargement, the interface between asylum and migration, the prevention and management of humanitarian crises and the provision of humanitarian aid, as well as the active search for durable solutions. It is hoped that the Laeken Summit will give due consideration to the policy and funding considerations of strengthened partnership between the Union and UNHCR.

UNHCR Geneva
November 2001

LAEKEN, December 2001

EUROPEAN COUNCIL MEETING IN LAEKEN 14 AND 15 DECEMBER 2001

IV. STRENGTHENING THE AREA OF FREEDOM, SECURITY AND JUSTICE

37. The European Council reaffirms its commitment to the policy guidelines and objectives defined at Tampere and notes that while some progress has been made, there is a need for new impetus and guidelines to make up for delays in some areas. Holding Justice and Home Affairs sessions at shorter intervals will help speed work up. It is also important that decisions taken by the Union be transposed speedily into national legal systems and that conventions concluded since the Maastricht Treaty came into force be ratified as soon as possible.

A true common asylum and immigration policy

38. Despite some achievements such as the European Refugee Fund, the Eurodac Regulation and the Directive on temporary protection, progress has been slower and less substantial than expected. A new approach is therefore needed.
39. The European Council undertakes to adopt, on the basis of the Tampere conclusions and as soon as possible, a common policy on asylum and immigration, which will maintain the necessary balance between protection of refugees, in accordance with the principles of the 1951 Geneva Convention, the legitimate aspiration to a better life and the reception capacities of the Union and its Member States.
40. A true common asylum and immigration policy implies the establishment of the following instruments:
- the integration of the policy on migratory flows into the European Union's foreign policy. In particular, European readmission agreements must be concluded with the countries concerned on the basis of a new list of priorities and a clear action plan. The European Council calls for an action plan to be developed on the basis of the Commission communication on illegal immigration and the smuggling of human beings;
 - the development of a European system for exchanging information on asylum, migration and countries of origin; the implementation of Eurodac and a Regulation for the more efficient application of the Dublin Convention, with rapid and efficient procedures;
 - the establishment of common standards on procedures for asylum, reception and family reunification, including accelerated procedures where justified. These standards should take account of the need to offer help to asylum applicants;
 - the establishment of specific programmes to combat discrimination and racism.
41. The European Council asks the Council to submit, by 30 April 2002 at the latest, amended proposals concerning asylum procedures, family reunification and the "Dublin II" Regulation. In addition, the Council is asked to expedite its proceedings on other drafts concerning reception standards, the definition of the term "refugee" and forms of subsidiary protection.

UNHCR'S POSITION

UNHCR : ASYLUM AFTER THE LAEKEN SUMMIT

On 14 and 15 December 2001, Heads of State and Government gathered in Laeken, Belgium, to prepare for the future of the European Union. The Summit's Conclusions on asylum and migration do not go beyond the ambitions set by the Tampere Conclusions, and call for new impetus in implementing the asylum agenda. The Conclusions are silent on the need for integrated, comprehensive strategies to address refugee challenges in the world at large.

One of the main agenda items for the Laeken Summit was a review of progress made in the establishment of the area of freedom, security and justice as called for by the Amsterdam Treaty. Back in 1999, the Tampere Summit had set the political orientations and identified the key elements of this process. The Laeken Summit was to provide the necessary impetus to the negotiations on a number of important dossiers. It was also expected to comment on the developing external dimension of the Union's migration and asylum policy.

The Laeken Conclusions include, indeed, various paragraphs on the common asylum and migration policy. The Conclusions reaffirm the EU's commitment to the policy guidelines and objectives defined at the Tampere Summit. They also acknowledge the need for new impetus and guidelines to complete the building of the common asylum system in the short term. A separate report evaluating progress since Tampere and submitted by the Presidency in advance of the Summit had confirmed that the Amsterdam timetable and the Tampere orientations must continue to serve as the basic guidance for developing the common policy and strategy in justice and home affairs.

The Presidency report had acknowledged that in certain specific matters impetus must be given to unblock the current stalemate in negotiations. This, it was recognised, is particularly the case of some of the asylum instruments, such as those on asylum procedures, reception conditions for asylum-seekers and the successor instrument to the Dublin Convention, as well as for the instruments regulating family reunion and the status and right of long-term residents.

The Laeken review of the Tampere process took place at a time when some Member States were questioning the extent to which harmonisation in asylum and migration is needed. Some observers had also expressed doubts whether the package of individual asylum instruments as proposed by the Commission was the way forward to put in place a coherent and complete system. In the end, the Laeken Summit endorsed the approach decided on in Tampere, by calling on the Council to continue negotiating the proposed legislative instruments in asylum and migration, albeit on the basis of some modified proposals, including revised draft Directives on asylum procedures and family reunion.

The asylum legislative agenda

Prior to the Laeken Summit UNHCR had submitted a list of recommendations arguing that the quality and detail of the asylum instruments as proposed by the Commission must be preserved, as well as the timetable for their adoption. Following the Laeken Summit, it remains to be seen whether the Council will live up to the expectations to put the common asylum system in place by 2004. In the view of UNHCR, the main challenge will be to adopt

common standards of sufficient quality and detail, in accordance with standards developed at the international level during the last decade. Member States should avoid adopting a minimalist approach based on the lowest common denominator by scaling down their ambitions through a mere approximation of national policies and practices.

Some Member States appear to favour the adoption of asylum instruments setting out general principles of law and policy and leaving them a large margin of discretion to regulate the detail of their asylum systems. UNHCR believes there is need for a more prescriptive approach, through the adoption of a set of binding common standards which are sufficiently detailed to ensure a consistent implementation of key elements of procedural and material asylum law throughout the Union. Failing this, some Member States will continue to be confronted with serious pressures on their systems as a result of a disproportionate number of applications, whereas others will be much less affected. The adoption of a coherent set of common standards and guidelines is both in the interest of asylum administrations and to the benefit of asylum-seekers, ensuring a similar level of protection and efficiency in asylum practice throughout the Union. The adoption of the various elements constituting the common asylum system could best follow an agreed sequence, based on a common understanding of who qualifies as a refugee and who does not. Otherwise there is a risk that the common asylum system will be built in a fragmentary manner and ultimately will lack the necessary coherence.

Asylum vs. Migration

The Laeken Conclusions refer to the need to balance Member States' protection obligations with the need to adopt sound and manageable admission policies for migrants. According to the Conclusions, the capacities of Member States to admit third-country nationals must be a factor in developing common asylum policies. UNHCR recalls that, while burden-sharing arrangements are essential to preserve the viability of asylum and protection systems, the number of applicants seeking asylum on the territory of the European Union has been limited so far in comparison to other regions in the world at large. Moreover, Member States have an obligation, as reiterated at the Tampere Summit, to ensure access and offer protection to those who seek safety on their territory.

The need to develop common asylum standards and common migration policies in parallel remains one of the important challenges for the Union. The Union's preoccupation with illegal immigration, migrant smuggling and human trafficking is legitimate and common measures are needed to address these phenomena. Recently, the risk of abuse of admission policy - for asylum or migratory purposes - by those involved in terrorism has been highlighted. Common measures addressing irregular movement and criminal behaviour must, however, include protection safeguards in order to ensure that those with legitimate protection needs will not be prevented from seeking access to safety.

The Laeken Conclusions call for an action plan to prevent and combat illegal immigration and smuggling and trafficking in human beings, to be based on a recent Commission Communication on the issue. The Conclusions also emphasise the need to conclude readmission agreements with third countries. The various measures aimed at preventing and controlling irregular movement should be balanced, however, with Member States' obligations to provide protection to all those whose movements, while often irregular, are propelled for refugee-related reasons. Migration instruments must include protection safeguards and practitioners must be trained to implement these in practice.

The external dimension

The Laeken Conclusions emphasise the integration of migration policy into the European Union's foreign policy, yet remain silent on how this is to be achieved. There is no mention of the external dimension of the developing common asylum and migration policy. Nor is there a critical analysis of the work undertaken so far by the High Level Working Group on Migration and Asylum, aimed at improving the Union's migration management from an integrated, cross-pillar policy perspective.

UNHCR had called on the Summit to highlight the need for asylum capacity-building in EU assistance programmes for third countries, particularly candidate countries, based on a proper identification of the needs and priorities of these partner countries. Such assistance should include support for developing fair and efficient asylum procedures, as well as facilities for humane reception of asylum-seekers and sustainable reintegration of refugees. The current interest of the Union to support countries in Eastern Europe, the Western Balkans and the Mediterranean basin in improving their capacity to control migratory flows, strengthening their border management and combating various forms of organised crime, including human trafficking and the terrorist threat, must be complemented with support for institution-building in asylum.

Towards comprehensive approaches

The Tampere Summit recognised the need for the Union to develop a comprehensive approach to migration addressing political, human rights, and development issues in countries of origin and transit. It also called for greater coherence of internal and external Union policies, based on strengthened partnership with third countries, in order to bring the Union's foreign policy, trade and aid, social policy and action in justice and home affairs together when addressing particular refugee and migration challenges.

The Laeken Conclusions do not comment on this essential element of the Union's developing migration and asylum strategy. Comprehensive strategies are however needed to address the cycle of (internal) displacement, reception in the region, admission in industrialised countries, and return to the country or region of origin. Such strategies include preventative action, measures to address root causes of forced migratory flows and support for durable solutions, inter alia through the promotion of respect for human rights, participatory democracy and strengthening of the rule of law, the delivery of humanitarian aid, reconstruction and development assistance and economic support as well as co-operation in societal, judicial and law enforcement matters. The involvement of the European Union in the crisis recently experienced in the former Yugoslav Republic of Macedonia shows that such an integrated approach, based on the use of the various policies and instruments as well as the involvement of various actors, is possible and have the desired results.

Achieving durable solutions for protracted refugee situations remains a central element of any comprehensive strategy to address forced population displacement. The political, financial and humanitarian costs of not finding durable solutions to such situations are much greater: refugees having to stay in camps close to their country of origin for many years see no other solution than to go on the move illegally, often using criminal networks, and bearing increasing societal and financial pressure on asylum systems in the industrialised world.

UNHCR had proposed to the Laeken Summit to reserve a certain percentage of EU development budgets for durable solutions in the countries of origin or of first asylum in the

region, and to promote the ownership of host governments to support these solutions. In addition, UNHCR has called on the Union to develop a common policy for resettlement of refugees with special needs or skills from refugee camps to EU countries, provided this is considered as complementary and without prejudice to proper treatment of asylum applications lodged spontaneously at the borders or on the territory of EU Member States.

UNHCR believes that the High Level Working Group can contribute to the implementation of comprehensive strategies, provided its mandate and its activity undertaken so far be reviewed. Its action should include a distinct focus on refugee protection and assistance to balance the various activities aimed at better management and control of migratory flows. Increased co-ordination between involved departments is needed, and, generally, sufficient political and financial support for a successful continuation of its work.. Also, meaningful partnership with third countries can be achieved only if the latter are involved in drawing up joint operational strategies at an early stage.

UNHCR has called on the European Union to strengthen its partnership with UNHCR in the search for durable solutions of refugee problems. A range of common interests tie the Union and UNHCR together: the European asylum agenda, the asylum dimension, the inter-face between asylum and migration, the prevention and management of humanitarian crisis and the provision of humanitarian aid, and last but not least the search for durable solutions to often protracted refugee problems. It is hoped that the Union will show the necessary political will and release the financial and human resources needed to realise this common agenda.