

***POSITION ON
THE ENLARGEMENT OF THE EUROPEAN UNION
IN RELATION TO ASYLUM***

**BY
THE EUROPEAN COUNCIL ON REFUGEES AND EXILES**

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EXECUTIVE SUMMARY

In this position paper, the European Council on Refugees and Exiles (ECRE) has compiled the concerns of its member agencies, consisting of some 63 refugee-assisting NGOs working in 23 European countries, with regard to the impact of the EU enlargement process on asylum. ECRE has, in particular, consulted closely with the 15% of its membership which is based in central Europe, as well as with a range of other non-governmental experts in the region¹. In July 1998, ECRE gathered some twenty NGO representatives in Prague to discuss the points contained in this paper over the course of a two day seminar. Thus the paper represents a unique perspective on enlargement, based upon the non-governmental sector's work with, and on behalf of, asylum seekers and refugees in central and eastern Europe. It is addressed to governments in central, eastern and western Europe, as well as to UNHCR, the EU institutions and other influential actors.

The process of enlarging the European Union has profound implications for the protection of refugees. The process itself takes place simultaneously at three levels: (1) The 'Structured Dialogue', which became fully operational in 1995 and implies regular meetings at ministerial level concerning, *inter alia*, asylum and immigration (2) Financial and technical assistance, primarily through the EU 'PHARE' and 'TACIS' programmes, and (3) A complex web of bilateral and multilateral relationships between the 15 EU States and the Associated States, including a process of evaluation which is increasingly co-ordinated. In summary, ECRE believes that independent analysis of this process is vital in order to counter-balance the tendency of States to focus the negotiations and training programmes on the enforcement of migration controls, especially measures to deter 'abusive' claimants from entering the asylum system. Emphasis on fair and efficient asylum procedures is equally important; EU enlargement should not simply mean the enlargement of 'Fortress Europe'.

This paper acknowledges that transposing EU standards to central and eastern Europe will have an overall positive impact on the protection of refugees in those countries, and NGOs are at the forefront of pressing for these reforms. However, there are also flaws in the current process and its content which deserve attention. Where EU standards fall short of international standards, for example, it is crucial that these failings are not replicated. Where common standards are absent or not yet formalised, models of best practice should be implemented. Otherwise asylum seekers will continue to transit through the region in search of better conditions.

Additionally, ECRE argues that the non-governmental role requires far greater emphasis throughout the process. NGOs deserve support not only as service providers but also as advocates of refugee rights and democratic values within national systems. In this spirit, the present paper is a contribution to the debate.

ECRE Position on

The Enlargement of the European Union in Relation to Asylum

Conclusions and Recommendations

1. ECRE generally **welcomes the increased attention now devoted to improving refugee protection standards** in the Associated States, which is a by-product of the EU enlargement process. Such harmonisation, in line with human rights standards, needs to urgently resolve the many legal and social problems which asylum seekers and refugees currently face in the region.
2. However, ECRE also wishes to point out that the EU *acquis communautaire* contains merely minimum standards and, in some cases, grossly inadequate standards. The guidance of UNHCR and other international experts should be followed in order to **avoid replication of EU failings**.
3. The enlargement process as a whole is **overly focused on control of illegal migration** and deterring abusive claimants from asylum procedures. Training and assistance relating to fair and efficient asylum procedures should be integral to the process and not regarded merely as a “luxury” element.
4. Where the current EU *acquis* provides no guidance on common standards, **best practice and the standards of human rights law** should be implemented. This relates, in particular, to issues of refugee integration and forms of protection beyond the 1951 Refugee Convention.
5. Where issues are currently under negotiation within the EU, the position of the Associated States should be fully taken into account in order to create **regional systems that are sustainable and equitable in an enlarged European Union**.
6. In its evaluations of whether an Associated State meets the Justice and Home Affairs accession criteria, the EU should **ensure that conformity with international standards is not merely a matter of legislation but also a matter of consistent State practice**. Monitoring with regard to the implementation of adopted standards is required in both the Associated States and the current Member States.
7. There is a need for **training** to be provided to everyone involved in the asylum process, not only interviewers and decision-makers. Interpreters, legal counsellors, police and border guards, in particular, require training, and such training is best conducted jointly with NGOs and UNHCR.
8. **Assistance** to the “second tier” of Associated States and to other central and eastern European States should be maintained at current levels in recognition of the strains which will be put upon their asylum systems following EU enlargement.
9. ECRE calls for far greater **transparency** (both public debate and access to information) with regard to Ministerial negotiations, European Commission preparatory committees, and training and assistance programmes in the Justice and Home Affairs component of the enlargement process.
10. The **non-governmental sector** in the region should be consulted on accession evaluations relating to asylum and immigration, where possible through roundtable meetings, and their concerns taken into account. NGOs in the region should also be actively supported and assisted, in recognition of their important role as bridges to the host societies and as service providers to refugees.

GENERAL CONCERNS

1. In general, ECRE welcomes the changes which are being promoted by the EU in central and eastern Europe regarding asylum policy and practice. They are likely to result in an overall rise in standards and a significant improvement of conditions for asylum seekers and refugees. Efforts to harmonise which are in line with international human rights standards deserve support and encouragement. In particular, ECRE emphasises that the human rights elements of the *acquis communautaire*² [such as the European Convention for the Protection of Human Rights and Fundamental Freedoms which, in accordance with Article 6 (ex Article F) of the Treaty of Amsterdam, shall guide future Community Law³] are non-negotiable and should be given high priority in negotiations and evaluations relating to Justice and Home Affairs. It is not sufficient that the applicant countries should only “honour the commitments resulting from compliance with the Schengen standard”, as is implied by the work programme of the Austrian EU Presidency⁴.

2. The efforts of the EU States to assist the Central and Eastern European Countries (CEECs) with preparation for accession in terms of asylum and migration policy are overdue.⁵ In 1995 the European Commission ‘Langdon Report’ highlighted the need for widespread reform in the field of asylum, and in 1998 there remain many serious gaps between CEEC and EU (and UNHCR) protection standards⁶. Most serious amongst these gaps are those relating to *refoulement* at the border and other failures to permit access to asylum procedures, as well as confusion between pre-screening and determination responsibilities. Other areas of concern in the region include:
 - (i) lack of access for asylum seekers to independent or free legal advice;
 - (ii) obstacles to registration and provision of documents to asylum seekers and refugees;
 - (iii) restrictive access to work permits;
 - (iv) failures of data protection;
 - (v) lack of interpretation facilities;
 - (vi) restrictive time limits for the submission of asylum applications;
 - (vii) lack of public information campaigns on the needs and rights of asylum seekers;
 - (viii) lack of State-funded social assistance (such as vocational training, housing, welfare payments, healthcare, psychological counselling);
 - (ix) overly wide interpretation or misapplication of the 1951 Convention exclusion clauses (eg. exclusion of persons persecuted in the context of civil war);
 - (x) arbitrary detention of asylum seekers and rejected asylum seekers;
 - (xi) inconsistent adjudications in asylum claims.

3. Readmission agreements with States in eastern Europe and 'safe third country' returns to these States have been implemented over recent years, regardless of the dangers for individual asylum seekers. ECRE fears that EU States' keen interest in widening the circle of 'safe third countries' may lead to premature and overly optimistic assessment of the protection standards afforded to refugees in certain countries. These interests may override more objective evaluation in relation to the accession criteria.
4. It is noted that until the countries of the region are - in fact as well as in theory - safe and durable destinations of asylum, many refugees will continue to transit without legal travel documents through the region. The "crackdown" on illegal migration, to which the EU gives priority within the Justice and Home Affairs component of the enlargement process, is therefore likely to have a negative impact on a large number of persons in need of international protection unless it is modified to be more responsive to their particular situation.
5. ECRE is concerned that the negotiations and training/ assistance programmes relating to migration control are being handled in isolation from, and to the detriment of, those dealing with asylum. For example, the '*Guide for effective practices for control of persons at external frontiers*'⁷, which was sent by the EU Council of Ministers to the CEECs, fails to mention how to handle a claim for asylum at a border. This lack of connection between the two issues is very damaging to asylum practices, which risk being perceived as merely a "luxury" for consideration only after firm controls have been established.

6. ECRE observes that the European Union's strength of negotiating position may lead to rapid adoption of standards by the Associated States without the related development of institutional and infra-structural capacity needed to implement those standards. In its evaluations, the EU should ensure that conformity with international standards is not merely a matter of legislation but also a matter of consistent State practice. Consultation with NGOs is vital in verifying whether this is the case.

Many of the non-binding measures which are part of the *acquis* have not been implemented within the existing EU Member States⁸. There are also widely differing applications of EU measures, some based on formal reservations entered at the time of adoption⁹ and others utilising the margin of discretion afforded within the texts. Monitoring of implementation is certainly required in the Associated States. However, taking into account the failures of implementation in the current Member States, ECRE believes that such monitoring would be more acceptable and legitimate when practised by the EU as a whole¹⁰. The CEECs should seek the advice of UNHCR and other international legal experts with regard to which Member States' applications of the EU texts are the most suitable models.

7. ECRE urges the European Union institutions to carefully consider the effect of the 'tiered' policy of accession on asylum movements, recognising that there will be particular strains upon the countries of the first tier¹¹ if they become the main recipients of asylum applications under the terms of the Dublin Convention¹², and a related strain upon those countries of the second tier¹³ which will become the final destination of asylum seekers unable to transit further west due to EU border controls. The EU programmes concentrate on assisting the first tier. Therefore, other inter-governmental bodies (the Council of Europe, the OSCE, UNHCR) should at least maintain their current level of commitment to institution building and assistance in the second tier States. ECRE emphasises that a spirit of solidarity on the asylum issue must be maintained within the region.

8. ECRE calls for the European Union enlargement negotiations relating to asylum and immigration, including the negotiation of technical and financial assistance programmes between EU States and the Associated States, to be conducted with a far greater degree of transparency. Reports of Ministerial meetings should, as far as possible, be made publicly available in both the EU States and in the region. Documentation relating to the process, such as analyses of country situations and collective evaluations, should involve consultation with non-governmental sources and should be made available for public scrutiny and comment. Finally, it should be made clear exactly where responsibilities lie within the European Union institutions for the different aspects of the process¹⁴.

TRANSPOSING THE EU ACQUIS TO THE CEECs

9. As stated above, ECRE is generally supportive of the considerable attention now devoted to improving protection standards in the CEECs which is a by-product of the enlargement process. On the other hand, there are a number of problems with the measures of the EU *acquis* being used as a basis for training or as a legislative model. **Examples of major deficiencies in the current asylum-related *acquis*, which should not be transposed to the CEECs, are listed below:**

(A) Appeal Rights in Asylum Procedures

The 1992 EU ‘*Resolution on Manifestly Unfounded Applications for Asylum*’ and the 1995 EU ‘*Resolution on Minimum Guarantees for Asylum Procedures*’ fail to guarantee the right of appeal in such cases and omit the guarantee of suspensive effect even where a State opts to permit appeal. The absence of suspensive effect amounts to the lack of an effective remedy (Article 13 ECHR), making a mockery of the appeal right if refugees are deported back to their persecutors while their case is still pending. Several CEECs have suspensive effect guaranteed in law but not in practice, while others do not implement removals but have no right to suspensive effect in law. As a common standard, the adoption of this EU Resolution’s standards would be a significant backwards step for the region. It is in clear contradiction to the advice of UNHCR that “in order to be meaningful...the appeal should have suspensive effect allowing the applicant to remain in the country pending the review of his or her case”¹⁵

(B) The Definition of ‘Refugee’

In its June 1995 position paper¹⁶, ECRE highlighted several major flaws in the (then forthcoming) EU *‘Joint Position on the Harmonised Application of the Definition of the Term “Refugee” in Article 1 of the Geneva Convention of 28 July 1951 Relating to the Status of Refugees’*. These relate to:

- the exclusion from the refugee definition of persons who are persecuted by agents other than the State in situations where the State is simply unable - rather than unwilling - to prevent the persecution. This is clearly contrary to international refugee law and the well-established practice of the majority of EU Member States. Paragraph 65 of the UNHCR *‘Handbook on procedures and criteria for determining refugee status’* and the March 1995 UNHCR *‘Information Note on Article 1 of the 1951 Geneva Convention’* both support the simple but fundamental principle that “Persecution that does not involve State complicity is still, nonetheless, persecution”;
- the promotion of the concept of an internal flight alternative, meaning that States refuse protection if the asylum seeker fears persecution only in a specific area or part of the country of origin. This concept is not contained in the 1951 Convention which refers consistently to a refugee’s *country* of nationality or former habitual residence. ECRE urges the CEECs to follow the guidance of UNHCR in the March 1995 *‘Information Note’* (Section 6): to never apply the concept to situations of persecution by the State, to never use it within accelerated determination procedures, and to ensure that such an internal flight alternative is genuinely durable.

(C) Safe Third Country Practice

EU States continue to implement the 1992 *‘Resolution on a Harmonised Approach to Questions concerning Host Third Countries’* without observing basic safeguards¹⁷, such as ensuring that the receiving State will admit the asylum seeker to a fair and efficient refugee determination procedure, or providing the asylum seeker with an opportunity to appeal against the decision and rebut the presumption of safety. The CEECs similarly implement safe third country returns without observing sufficient safeguards and ECRE is concerned that the accession process will only confirm and consolidate this bad practice. Furthermore, the promotion of a “parallel Dublin Convention”¹⁸ in central and eastern Europe should not replicate Article 3(5) of the current Dublin Convention, which provides for onward return of asylum seekers to Third States. ECRE acknowledges that such a “parallel Dublin Convention” might bring additional safeguards to the process of transferring responsibility for an asylum applicant from one central European State to another, but it would need to be implemented in a humane and flexible manner¹⁹. Moreover, it would require the precondition of asylum systems that are already harmonised to respect international standards if it were to function fairly – thus it should be promoted only following the closure of the ‘protection gaps’ listed above in paragraph 2.

(D) The Amsterdam Treaty Protocol on Asylum

ECRE is extremely concerned that the protocol to the Treaty of Amsterdam *‘on asylum for nationals of EU Member States’* (Protocol No. 29 of consolidated text) will be

extended to cover further countries at the point that they accede to the Union. This Protocol represents a serious threat to international principles of refugee protection and, in UNHCR's view, "violates the object and purpose of some of the basic provisions of the Refugee Convention".²⁰ In practice it may prove particularly dangerous where there is a transition period, following accession, with regard to freedom of movement. ECRE urges the central and eastern European States to enter reservations to this protocol in the same manner as Belgium.

10. Thus the EU *acquis* does not contain, on a number of points, adequate standards and safeguards concerning refugee protection. ECRE believes that the CEECs should be made aware of these failings, in particular where they amount to violations of international refugee law, so that they are not imported into newly developing systems. Unfortunately, in many cases, recent legislation in the region already reflects the restrictive measures of EU policy and CEEC jurisprudence increasingly follows west European courts. Nevertheless, ECRE believes it is not too late to urge the CEECs to implement higher standards wherever EU standards have been found, by UNHCR or other international experts, to be clearly deficient²¹. The CEECs should seek to enter reservations on the points described above, and to negotiate a parallel Dublin Convention which is more workable than the original, in order that EU enlargement does not simply mean the enlargement of 'Fortress Europe'.

11. The EU *acquis* related to migration control, however, is perhaps more important in its negative impact on would-be asylum seekers than any of the measures listed above. Though control of entry to its territory is the legitimate interest of a State, ECRE emphasises that **the following deterrent measures fail to pay sufficient heed to their impact on refugees' access to determination procedures:**

(A) Carriers Sanctions

Pursuant to Articles 26 and 27 of the Schengen Convention (which under the Treaty of Amsterdam will become part of the EU *acquis*), all but one of the Member States have introduced sanctions on airlines and other carriers which bring undocumented aliens, including asylum seekers, to their territory. UNHCR, ECRE and other human rights NGOs have opposed these measures which have the consequence of preventing asylum seekers from fleeing their countries or forcing asylum seekers to resort to clandestine entry. As a minimum, UNHCR has advised conditions on their use which would mitigate their worst deterrent effects²². ECRE is therefore concerned that the enlargement process should not carry with it, as part of the *Schengen acquis*, an expansion of carriers liability, nor put pressure on those CEECs which already have carriers sanctions to implement them more vigorously.

(B) Visa Policy

In combination with carriers sanctions, and pursuant to Article 23 of the Schengen Convention, visa requirements have been used by Member States to deterrent effect. More than any other measure, visa policy has had a major impact on the access of refugees to protection in western Europe. In 1995, the Council adopted a Regulation²³ determining those countries whose nationals are required to possess a visa in order to cross the external frontier of the Community. When Associated States become Members, they will have to follow that visa list. ECRE has observed that some of the States on the harmonised visa list are accused of gross and systematic violations of human rights, and indeed EU States have deliberately applied visa requirements in order to stem certain refugee arrivals²⁴. This is contrary to UNHCR's position that "it would be desirable for states not to impose [visa requirements] where considerable human rights violations occur..."²⁵ ECRE therefore calls on the CEECs to avoid succumbing to the political pressure to include refugee-producing countries on their visa lists during the pre-accession period.

Intended to curb immigration, such measures are in direct contravention of Article 31 of the 1951 Geneva Convention (and, in the case of carrier sanctions, Annex 9 of the Chicago Convention on International Civil Aviation). More generally, the CEECs should also ensure that asylum seekers are made exempt from penalties for illegal entry which may hinder or prejudice their application for asylum.

(C) Technical Measures to Assist with Border Control and Deportation

In addition to the above, a wide range of other migration control measures are being exported from western to central and eastern Europe. These are not necessarily part of the *acquis* but are technical assistance activities intended to secure the eastern border of an enlarged Union. These measures include, for example, funding to assist with the deportation of rejected asylum seekers and information exchange to facilitate such returns, using CIREA²⁶ and CIREFI²⁷. Information exchange on illegal migration patterns is also well underway, via the 'Budapest Process', and other inter-governmental fora²⁸. Funding for reception/detention facilities and border control equipment is provided to the CEECs in ever increasing quantities, without corresponding provision for monitoring of detention facilities in order to ensure detainees rights are protected. Again, ECRE accepts that border control and effective deportation systems are the legitimate concern of States, but calls for a better balance between these programmes and those concerned with the admission and protection of refugees (and migrants). ECRE recommends that the expenditure of aid in the field of Justice and Home Affairs should not be left to the discretion of the recipient CEECs, but should as far as possible include requirements such as human rights and refugee law training.

12. As a general policy, it should be recognised by the EU that maintaining some flexibility in the control of migration movements within the region (particularly the movement of ethnic minorities spread across borders) is in the interests of the CEEC economies and trade relations, as well as the interests of refugee protection. To establish overly rigid border and visa controls between the CEECs will be neither workable nor useful, and will undermine the asylum systems as more asylum seekers are deterred from entry or forced to enter illegally.

THE FUTURE OF EU ASYLUM POLICY?

13. Temporary Protection and ‘Burden Sharing’

The European Commission has announced, on 24 June 1998, two Proposals for Joint Actions, one concerning the temporary protection of displaced persons and the other relating to solidarity (i.e. - “burden sharing”) in the reception and residence of beneficiaries of temporary protection. These initiatives are the subject of intense debate within the EU. In the meantime, the EU States and UNHCR will no doubt advise the CEECs on the inclusion of temporary protection in their systems, and an inequitable burden sharing between the EU and central Europe will continue in the form of bilateral readmission agreements which involve financial incentives for the readmission of persons²⁹. ECRE is, above all, concerned that temporary protection should not be promoted in the CEECs beyond the limited scope (relating to mass influx) which is defined in the Commission proposals and in particular that it should not be used by the CEECs as a secondary level of refugee status. Furthermore, ECRE is concerned that the current negotiations concerning European ‘solidarity schemes’ should give careful consideration to the post-accession situation as well as to the needs of those States which will remain outside the Union but may be affected by a regional refugee crisis.

14. Convention/ Directive on Asylum Procedures

A proposal from the European Commission is also expected shortly on a Convention or (after the entry into force of the Amsterdam Treaty) a Directive harmonising asylum procedures in the EU. In the context of enlargement, ECRE would particularly emphasise the importance of such an instrument providing for articles on: the availability of free legal assistance and interpreters, suspensive effect on appeal, training of decision makers, information for the applicant on his or her rights, and data protection.

15. **Gaps in the Current *Acquis***

Pursuant to Article 63 (consolidated version) of the Treaty of Amsterdam, a range of issues will require harmonisation within five years of its entry into force, of which some already correspond to existing EU measures, while others have no corresponding EU measure yet adopted. The process of EU enlargement will overlap, in timeframe and in substance, with this complicated process of building a European asylum policy under the First Pillar. The EU is expected to proceed with re-interpretation of a number of articles which are contained in the 1951 Convention – for example, the cessation clauses or the rights of recognised refugees – and these re-interpretations will be simultaneously exported to the CEECs. Regional standard setting may therefore override the global norms and the supervisory advice of UNHCR as a result of economic and political pressure for compliance with EU accession criteria. To date, EU harmonisation has tended towards the lowest common denominator and, under the institutional arrangements of the Treaty of Amsterdam, this is likely to continue. Post-enlargement, the necessity of unanimity voting on more legally binding measures related to asylum and immigration may put even greater downward pressure on EU standard setting. These are matters of serious concern to ECRE.

16. In relation to the present training of and negotiation with the CEECs, it should be noted that no harmonised EU standards yet exist in relation to two important areas of policy:

(A) Social Reception of Asylum Seekers and Integration of Refugees

The issues relating to social support to refugees and asylum seekers in the CEECs are similar to those in southern Europe, and the main host States of the EU are concerned to make these countries more attractive, from a socio-economic point of view, as final destinations of asylum/migration. Thus material assistance is being provided for this purpose, but without a clear policy framework. ECRE believes that the needs of refugees and asylum seekers should primarily be considered within general policies of social protection and a rights framework.

(B) The Provision of Subsidiary (non-Convention) Forms of Protection to Displaced Persons

Although there are various legal obligations relating to protection beyond the 1951 Convention, in relation to Article 3 of the European Convention for the protection of Human Rights and Fundamental Freedoms and Article 3 of the Convention Against Torture for example, there is a general absence of European harmonisation on this issue. ECRE has highlighted the need for a supplementary refugee definition in Europe, and called for States to address the issue of *de facto* refugees at a regional level.

The EU and UNHCR do not have a formal position on either of these issues, neither a recommended set of minimum standards nor a definition of best practice. Thus it is difficult to see how these issues will be negotiated with the CEECs. Policy and practice may be transferred bilaterally, with uncertain results, and multilateral projects, such as the BAFI Plan³⁰, can only attempt to overlook this absence of common policy. Given this situation, ECRE calls on States to use the opportunity of the enlargement process in order to look broadly for examples of best practice from around the world, involving the non-governmental sector actively in this search, and to enter into genuine dialogue with the CEECs on these two issues. Human rights and international refugee law instruments should form the starting point for this work³¹.

17. On issues which are currently under negotiation within the EU, the CEECs should be brought, informally, into the discussions in order to develop regional systems which will be sustainable and equitable in the post-enlargement period. The Austrian EU Presidency has stated that it will explore this possibility, but if no modality for CEEC participation in the EU discussions can be found within the EU structures, then the Council of Europe and other pan-European fora may be utilised.

TRAINING

18. ECRE emphasises the need for training of *everyone* involved in the asylum process, not just those formally involved in interviewing and decision-making. In particular, ECRE calls for increased training of police and border guards, legal counsellors (including support for legal networks), and interpreters. A Council of Europe Parliamentary Assembly Recommendation in 1996³² indicated a lack of training on asylum issues for border guards across Europe, and therefore joint east-west training may be most desirable.
19. Furthermore, ECRE emphasises the need to monitor and evaluate the results of all training. On-site follow-up visits to see how the training is put into practice should be undertaken and these findings should contribute indirectly towards accession criteria assessment reports which better reflect the situation on the ground.
20. Wherever possible, NGOs should be actively involved in training on how to meet refugees' needs, and/or governmental and non-governmental agencies should participate in joint training. This has the added benefit of building dialogue and understanding between these sectors. UNHCR has played an important role in the delivery of training in the region and should continue to do so throughout this crucial pre-accession period.

THE ROLE OF NGOs

21. This paper raises the concerns of CEEC NGOs as advocates of human rights standards, with a democratic interest in a process which will bring enormous social change to their countries. If standards are to be meaningfully respected and not merely imposed 'from above', it is vital to engage the public in genuine debate. In this regard, ECRE repeats its call for greater NGO access to information and recommends that national (or even regional) roundtables should be established for discussion and consultation between NGOs and governments on the enlargement process in relation to asylum and immigration. In particular, the expertise and experience of NGOs in the region should be used to corroborate the EU's accession criteria assessment reports relating to asylum policy and practice. UNHCR can play a special facilitating role in such consultations.
22. More generally, the role of NGOs in central and eastern Europe should in itself be the subject of training and EU advocacy. ECRE believes that the role of a "value-led" civil society sector is to act as a bridge between refugees and the host society, to advocate refugees rights and needs in this context, and to enhance (rather than replace) government functions and responsibilities with regard to the asylum and integration processes. Human rights NGOs should also have a significant role in the provision of country of origin information. In order to perform these multiple roles, NGOs require a secure and fair legislative framework³³, adequate funding, as well as access to information and to their clients at all stages of the procedure.
23. A regional forum for refugee-assisting NGOs in central Europe (CEFRAN) has only recently been established in 1996. It is providing invaluable mutual support to the NGOs and their projects. ECRE notes that the tiered stages of the enlargement process and uneven amounts of EU assistance provided to NGOs in the different countries will pose challenges to CEFRAN and to future co-operation between the CEECs. In this context, there is a need for diversification of funding for NGOs, as well as continued support, in the short to medium term, from UNHCR and other traditional donors.

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¹ ECRE has worked with NGOs in the region since 1992, with a focus on legal training and capacity building. In March 1996, a Central European Forum of Refugee-Assisting NGOs (CEFRAN) was established under the auspices of ECRE. CEFRAN is the first regional forum of its kind, involving agencies from Bulgaria, the Czech Republic, Hungary, Poland, Romania, Slovakia and Slovenia. The Nordic members of ECRE have taken the lead in initiating capacity building work with NGOs in the Baltic region, and in 1997 ECRE also commenced a programme of work in Belarus, Russia and the Ukraine.

2 The *acquis communautaire* is still developing and does not yet have one set definition. Annex 3 of the Report and Proceedings from the 3rd International Symposium on the Protection of Refugees in Central Europe, 23-25 April 1997, Budapest (UNHCR European Series) lists the main elements in the *acquis* as of that date. All binding and non-binding measures adopted by the EU Council of Ministers in relation to asylum form part of the *acquis*. The EU also cites the 1951 Refugee Convention as an element of the *acquis*, in which case ECRE would argue that other UN human rights treaties with relevance to asylum cases – such as the UN Convention on the Rights of the Child and the UN Convention against Torture – should also be included.

3 Note, in particular, the relevance of ECHR Articles 3,5, 8 and 13 in relation to asylum cases.

4 ‘Work Programme for the K4 Committee for the period 1 July to 31 December 1998’, from the future Austrian Presidency, Brussels, 9 June 1998 (9375/98).

5 Multilateral exchanges of experience at a technical level were not undertaken until October 1997, for example, at the Prague meeting of International Centre for Migration Policy Development (ICMPD) on combating illegal immigration.

6 The 1997 Factual Document on Asylum stated that “much remains to be done in terms of building up the necessary institutions and introducing the procedures for managing effective and just asylum policies”.

7 Document from Committee of Permanent Representatives, 21 May 1997, 8271/97 ASIM 97

8 ‘Mind the Gap - Ineffective Member State Implementation of European Union Asylum Measures’ by Steve Peers (ILPA/ BRC), May 1998. See also the EU Council of Ministers Decision on monitoring the implementation of instruments adopted concerning asylum, No. 8270/97.

9 For example, see reservations entered by Sweden and Denmark on the EU Joint Position on the refugee definition.

10 See the EU Council Decision on monitoring the implementation of instruments adopted concerning asylum, adopted in May 1997.

11 Poland, Hungary, the Czech Republic, Estonia and Slovenia

12 The Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities (European Communities No.40 - 1991).

13 Lithuania, Latvia, Bulgaria, Romania and Slovakia

14 Currently there is a lack of clarity concerning the different evaluation/ assessment missions and activities conducted by the Commission under DG1 and DG5 and under the Council framework.. This lack of clarity will hopefully be remedied by the decision of 28 May 1998 to establish a Council Working Party on Evaluation.

15 UNHCR Position on Manifestly Unfounded Applications for Asylum

16 ‘Note from ECRE on the Harmonisation of the Interpretation of Article 1 of the 1951 Geneva Convention’

17 In 1995 ECRE published its report ‘*Safe Third Countries: Myths and Realities*’ (followed in 1997 by the Danish Refugee Council report entitled ‘*Safe Third Country - Policies in European Countries*’), highlighting NGO concerns with regard to this practice. See ECRE’s summary of Recommendations and UNHCR’s Position on the 1992 Resolution.

18 A parallel Dublin Convention has been proposed on a number of occasions, most recently in connection with the EU Action Plan on the ‘Influx of Migrants from Iraq and the Neighbouring Region’, 22 January 1998.

19 ECRE ‘Position on the Implementation of the Dublin Convention in the light of lessons learned from the Schengen Convention’, December 1997.

20 Statement by the Director of International Protection at the 8th meeting of the Standing Committee of the Executive Committee of UNHCR, June 1997.

21 List of selected sources of ‘higher’ standards: eg. UNHCR Handbook and Conclusions; Council of Europe Resolutions and Recommendations; ECHR jurisprudence (in particular *Chahal v. United Kingdom*, *Ahmed v. Austria*, *HLR v. France*, *D. v. United Kingdom*, *Amuur v. France*, and *Gul v. Switzerland*) ; CAT jurisprudence (in particular *Mutumbo v. Switzerland*, *Alan v. Switzerland*, *Kisoki v. Switzerland*, *Tala v. Switzerland*, *Gorki Ernesto Tapia Paez v. Sweden*, and *Seid Mortesa Aemei v. Switzerland*); etc.

22 See ‘UNHCR Position on Conventions Recently Concluded in Europe (Schengen and Dublin Conventions)’, August 1991

23 Regulation 2317/95 implementing Article 100c

24 They have done so unilaterally as the common visa list is, at present, far from fully implemented.

25 See 'An Overview of Protection Issues in Western Europe', UNHCR European Series, Vol 1, No 3, page 41.
26 Centre for Information, Research and Exchange on Asylum - EU body under the Council framework
27 Centre for Information, Discussion and Exchange on the Crossing of Borders and Immigration - EU body
under the Council framework
28 The most recent set of conclusions from the Budapest Process were adopted on 29-30 June 1998 and con-
cerned illegal migration via south east Europe.
29 In the context of negotiating readmission agreements, Germany offered financial and administrative assistance
to Poland and the Czech Republic for immigration control and for the development of institutions which deal
with the examination of asylum applications. Based on reports by the German government to Parliament, most
of the money has been spent on the former (for example, 87% in the case of Poland). Source: UNHCR Bonn.
30 Part of the Phare Horizontal Program on Justice and Home Affairs, funded by the German Federal Office for
the Recognition of Foreign Refugees (April 1998).
31 The importance of the ECHR and CAT in relation to standards of return for non-Convention refugees was
emphasised, for example, at the June 1998 Standing Committee of UNHCR.
32 Recommendation 1309 (96) and more particularly the supporting document 7683.
33 This implies, for example, certain tax exemptions, applied to NGOs without discrimination.