

WORKING GROUP ON IRREGULAR MOVEMENTS  
OF ASYLUM SEEKERS AND REFUGEES

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STUDY OF IRREGULAR MOVEMENTS OF ASYLUM SEEKERS AND REFUGEES

The problem of irregular movements of asylum-seekers and refugees was raised in the Executive Committee at its thirty-fifth session. Following a request by several members of the Executive Committee to prepare a study on the subject, the High Commissioner appointed a Consultant, Mr. Gilbert Jaeger, to undertake the task. In co-ordination with the Chairman of the Executive Committee, the High Commissioner also established a governmental Working Group to consider the results of the Study before the matter is referred to the Executive Committee at its thirty-sixth session. The Working Group, initially composed of 14 Governments, decided at its first meeting in April 1985 that because of the interest expressed in the subject by other Governments, all member States of the Executive Committee could, if they so wished, participate at its second meeting. The study prepared by the Consultant to be considered at this second meeting is hereby presented to the Working Group.

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(Prepared by Gilbert Jaeger,  
Consultant to the High Commissioner for Refugees)

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## Foreword

The Consultant wishes to express his appreciation to all those who have assisted him with information and advice to enable him to carry out this Study. He is particularly grateful to officials of the Office of the United Nations High Commissioner for Refugees, both at UNHCR Headquarters in Geneva and in field offices.

He is fully aware of the shortcomings of the Study, largely due to lacking statistical material and time constraints which have not allowed for a fuller investigation of irregular movements by individuals or groups.

Unless otherwise attributed, responsibility for the assessments made and views expressed in this Study is exclusively that of the Consultant.

Geneva, July 1985

Gilbert Jaeger

## IRREGULAR MOVEMENTS OF ASYLUM SEEKERS AND REFUGEES

### I. Introduction

#### Origins of this Study

1. It is inherent in the refugee problem that refugees move from one country to another until they can settle satisfactorily in a new human environment. They may be able to settle in the first country of arrival but in many cases they may need to travel further on to resettle in a third country. The solution may also be found by travelling back to the country of origin, through voluntary repatriation. It is not surprising that the first international legal instrument on refugees had as its only purpose to provide for the issuing to refugees of a "certificate of identity" to serve as travel document.<sup>1</sup>

2. Since the late '50s, the number of refugee situations has constantly increased. An ever larger number of countries has received refugees from neighbouring States and also from far away countries. Also, the size of refugee flows is larger than before. The average size of post-war refugee movements ran into scores of thousands, sometimes hundreds of thousands of persons. In more recent times several refugee flows have been measured in millions of persons: refugees from East Pakistan/Bangladesh into India in 1971/72, a problem which could be solved rather quickly; refugees in and from the Horn of Africa as from 1967, refugees from South-East Asia as from 1975, refugees from Afghanistan as from 1979. According to current estimates there are now some 13 million refugees worldwide,<sup>2</sup> out of whom four-fifths still need some form of assistance, while they are all in need of international protection.

3. The numerical increase of international refugee situations, the larger numbers of persons in the position of asylum seeker or refugee, their geographical spread to all continents and practically to every country, have also led to an increase in the movements of asylum seekers and refugees. This concerns not only movements organised by governments and international organisations, e.g. resettlement schemes, but also spontaneous, unscheduled movements. The latter may be unavoidable when they are an aspect of the original flight from the country where persecution is feared. Spontaneous movements which are not an aspect of the original flight may be considered unnecessary, e.g. when the refugee has been granted durable asylum in a country where he can settle satisfactorily. Hence the concern about 'irregular movements' which add to the strain which is necessarily associated with all unscheduled arrivals of refugees in any country.

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<sup>1</sup> Arrangement with regard to the issue of certificates of identity to Russian refugees, signed at Geneva, 5 July 1922; League of Nations, Treaty series, Vol. XIII, No. 355.

<sup>2</sup> See Table I

4. The problem of irregular movements of refugees was mentioned during the discussions on international protection at the thirty-fifth session of the Executive Committee of the High Commissioner's Programme in October 1984. Reference should be made in particular to paragraph 76 of the Report of the Thirty-Fifth Session which reads as follows:

"76. Reference was made by a number of speakers to the changing character of refugee flows in recent years and to the interrelationship between refugee problems and economic factors. Several representatives referred to the problem of irregular movements of refugees from countries of first asylum to other countries, which were often left in the position of either accepting a fait accompli and admitting such refugees, or placing them 'in orbit', which was undesirable and also involved risk of a refoulement. The view was expressed that situations of this kind required concerted action between countries of 'first' and 'second' asylum and UNHCR. Several representatives called upon UNHCR to undertake a study of the irregular migration of refugees in its broadest aspects, focusing on identifying flows both at source and at destination. Such a study should also examine questions connected with the fraudulent documentation of refugees forming part of such movements. They suggested that a working group be established and that its findings be presented to the thirty-sixth session of the Executive Committee. Reference was also made by several speakers to the suggestion contained in the Note on International Protection (A/AC.96/643) for the establishment of consultation mechanisms to examine problems relating to movements of refugees between countries of first and second asylum in the context of international solidarity and

burden-sharing. One representative considered that such mechanisms should be established on an ad hoc basis and within the UNHCR framework, and that arrangements outside this framework should be the exception. Another representative expressed a preference for multilateral consultations on specific issues with all concerned parties, including countries of origin."<sup>3</sup>

5. In its conclusions on international protection, the Executive Committee noted inter alia:

"that special international protection problems have arisen due to the changing character of refugee movements, expressed satisfaction at the steps taken by the High Commissioner to address these problems, and looked forward to any further initiatives which the High Commissioner might find it appropriate to take in this regard;"<sup>4</sup>

6. Pursuant to the above suggestion of the Executive Committee, the High Commissioner has appointed a consultant and requested him to make a study on the question of irregular movements of asylum seekers and refugees. In co-ordination with the Chairman of the Executive Committee, the High Commissioner has also established a Working Group composed of experts delegated by fourteen member States of the Executive Committee, to consider the results of the study before the matter is referred to the Executive Committee at its thirty-sixth session.

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<sup>3</sup> A/AC.96/651

<sup>4</sup> A/AC.96/651, para. 87(1)b)

### Purposes of this Study

7. The purposes of the present study are:
  - (a) To identify the various forms of irregular movements.
  - (b) To describe these various forms, taking into account views expressed by governments and assessing, wherever possible, the size and numerical incidence of the movements.
  - (c) To analyse the problem from the point of view of the interests of States, of the fundamental principles of international refugee law and in the light of humanitarian considerations.
  - (d) To review possible solutions to the problems arising (or which might arise) from the various aspects of irregular movements.

### II. Identification of Irregular Movements

#### A. Persons participating in refugee movements

8. This study concerns irregular movements of asylum seekers and refugees. A clarification of these concepts and of the mutual relationship between 'asylum seeker' and 'refugee' is therefore required.

#### Asylum Seekers

9. An asylum seeker, from the point of view of refugee law, is a person who seeks asylum because he believes that he is a refugee as defined in legal instruments on refugees. It is an accepted principle of refugee law that an asylum seeker need not be formally recognised as a refugee in order to be intrinsically a refugee. On the other hand, an asylum seeker, whatever his personal belief, may prove ultimately not to be a refugee according to the criteria of refugee law. This ambiguity inherent in the concept of asylum seeker, the dual character of asylum seekers as a category, is a fundamental aspect of the problem of irregular movements.

10. Irregular movements as understood for the purposes of this study refer prima facie to movements of persons who are no longer considered to be in immediate need of asylum as they have already received asylum elsewhere. Two questions arise, therefore: what is the nature of asylum which is given at present, in the practice of States, to asylum seekers; and when is the status of asylum seeker of a given person normally supposed to cease.

11. According to current practice of States and current terminology, an asylum seeker permitted to enter the territory of a State may expect to receive one of the following kinds of treatment:

- shelter, without any conditions, benefits or appropriate legal status attached to it;

- shelter and protection against refoulement (in the meaning of Article 33 of the 1951 Convention, i.e. against forcible return "to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality or membership of a particular social group or political opinion");
- temporary asylum;
- durable asylum.

12. The asylum seeker may also be recognised de jure or considered de facto as a refugee (cf. paras. 17 to 24 below). While there is an obvious connection between asylum and refugee status it must also be emphasised that the recognition of refugee status does not necessarily entail the grant of asylum. Specifically, it is not associated in all cases with the grant of durable asylum. In this part of the present analysis it is more important to assess the kind of protection or asylum that has been given than to investigate whether the person concerned has been recognised or considered as a refugee.

13. It requires no demonstration that mere permission to enter a territory and to receive some kind of shelter without any appropriate legal status is not a form of asylum.<sup>5</sup> The possibility for the asylum seeker to subsist in such circumstances will depend in many cases on the nature and extent of relief made available to him by governmental, inter-governmental or non-governmental agents. He will remain an asylum seeker de facto and de jure.

14. It has sometimes been asserted that a person protected against refoulement - in the meaning of Article 33 of the 1951 Convention - has received asylum and does not any longer belong to the category of asylum seekers stricto sensu. This view is not shared by the Executive Committee as is apparent from its Conclusion No. 22 (XXXII) on "Protection of Asylum Seekers in Situations of Large-Scale Influx". In this conclusion, the requirement that "the fundamental principle of non-refoulement - including non-rejection at the frontier - must be scrupulously observed" is viewed as a general condition of temporary asylum. This does not detract from the general position as asylum seekers of those who enjoy this indispensable protection.<sup>6,7</sup>

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<sup>5</sup> The notion of 'shelter' is related to that of 'temporary refuge' (cf. Conclusion No. 19 (XXXI) of the Executive Committee on Temporary Refuge). We have refrained from using the term 'temporary refuge' inter alia to avoid any possible confusion with 'temporary asylum'.

<sup>6</sup> We have quoted the text as in "conclusions on the International Protection of Refugees adopted by the Executive Committee of the UNHCR", published by the Office of the United Nations High Commissioner for Refugees - UNHCR, Geneva 1980. Conclusions of the Executive Committee will henceforth not be referenced.

<sup>7</sup> Cf. para. 70 below on case-law in the Federal Republic of Germany.

15. As regards temporary asylum the Executive Committee has defined, also in Conclusion No. 22 (XXXII), standards for the "treatment of asylum seekers who have been temporarily admitted to a country pending arrangements for a durable solution". While these standards are only recommendations it can nevertheless be assumed that the present consensus on the material content of "temporary asylum" is broadly that defined in Conclusion No. 22.

16. The present state of international refugee law provides a distinctly more solid basis for apprehending the concept of durable asylum. While durable asylum entails by definition an indefinite right of residence, its actual content as to civil, political, economic, social and cultural rights have been defined by the 1951 Convention relating to the Status of Refugees. The very aim of this Convention is in fact to afford a comprehensive and precise legal status to those persons who, on account of their refugee character, have been granted asylum by a Contracting State.

### Refugees

17. A refugee is a person who fulfills the criteria of the definition of 'refugee' contained in a legal instrument (international convention or municipal law) on refugees. As already recalled the recognition of refugee status is stricto jure not a prerequisite for the refugee character of the person concerned. On the other hand, a refugee cannot in practice claim the full benefit of the provisions in municipal or international legal instruments relating to refugees until he is formally recognised. For the purposes of this study it is necessary to examine very succinctly the various modalities of recognition as well as the connection between the various kinds of refugee status and the related degree of protection and asylum.

### Recognition of refugee status by States

18. The recognition of refugee status according to a specific international instrument of refugee law, is incumbent on the authority which is called upon to implement that instrument. As regards in particular the Convention of 1951 and the Protocol of 1967 relating to the Status of Refugees as well as the OAU Convention of 10 September 1969 governing the Specific Aspects of Refugee Problems in Africa, recognition of refugee status is incumbent upon Contracting States.<sup>8</sup> Formal recognition of refugee status under any of these instruments normally carries with it the grant of asylum to the refugee concerned. In actual fact, many States do not engage in the process of determining the refugee status of an asylum seeker if they have not resolved that the person concerned would be granted asylum provided he fulfils the criteria of refugee status. Normally, a phase of temporary asylum is a preliminary to the actual recognition of refugee status.

19. It is common knowledge, however, that the 1951 Convention and the 1967 Protocol are not international instruments on asylum. While Articles 31 and 33 of the Convention contain provisions which at least imply the grant of temporary asylum before and after recognition of refugee status, they do not create an obligation for the Contracting State to grant durable asylum to those refugees whom it has recognised. The grant of durable asylum is the

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<sup>8</sup> Cf. 1951 Convention, Art. 9 and OAU Convention, Art. I.6.

normal consequence of refugee status as already mentioned, but in some States exceptions can be - and are in fact - made.<sup>9</sup> In those cases, the recognised refugee remains an asylum seeker.

20. As to the OAU Convention, it contains excellent provisions on the granting of temporary asylum which by virtue of Article II.3. is a specific obligation of Contracting States. These States are not, however, obliged to grant durable asylum as is evident from Article II.4.<sup>10</sup> In States parties to the OAU Convention, recognised refugees would always benefit, therefore, from temporary asylum but not necessarily from durable asylum. In that sense, even recognised refugees may still belong to the category of asylum seekers.

21. A State which is not a party to the above mentioned international refugee instruments may nevertheless in some manner recognise asylum seekers in its territory as refugees, either individually or collectively. This applies particularly to non-contracting States which have received in their territory, generally from an immediate neighbour, large groups of asylum seekers who are referred to by the government as 'refugees'. It is obvious, however, that the term 'refugee' is used in a loose manner and that the legal position of such refugees in the territory of the State concerned is an ad hoc status, whether regulated by some municipal text or not.<sup>11</sup> This ad hoc status may not include formal protection against refoulement, nor will it necessarily satisfy the standards of temporary asylum spelled out in Conclusion No. 22 (XXXII) of the Executive Committee and in practically no case will it have the essential content of durable asylum as formulated by the 1951 Convention. The refugees concerned may still be asylum seekers.

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<sup>9</sup> According to Section 208(a) of the United States Immigration and Nationality Act, as amended by the Refugee Act of 1980: "an alien physically present in the United States or at a land border or port of entry ...may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such alien is a refugee within the meaning of section 101(a)(42)(A)." (emphasis added)

<sup>10</sup> Excerpts from Article II : Asylum :

"3. No person shall be subjected by a Member State to measures such as rejection at the frontier, return nor expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out in Article I, paragraphs 1 and 2.

4. Where a Member State finds difficulty in continuing to grant asylum to refugees, such Member State may appeal directly to other Member States and through the OAU, and such other Member States shall in the spirit of African solidarity and international co-operation take appropriate measures to lighten the burden of the Member State granting asylum."

<sup>11</sup> "In accepting these people we in ..... do not apply a strict definition to the term 'refugee'." (Statement by a Government Observer at the Consultations on the Arrivals of Asylum Seekers and Refugees in Europe, Geneva, 28-31 May 1985)



Recognition by the High Commissioner

22. As already recalled, in Contracting States the duty to determine refugee status is incumbent upon the State concerned. In such States the High Commissioner for Refugees will normally abstain from recognising a person as a refugee according to the Statute of his Office. There are, however, exceptions in cases where there is a need formally to assess the refugee character of a person according to international refugee law, and where, for one reason or another refugee status cannot or will not be determined by the State in whose territory the person finds himself.

23. The determination of refugee status under the UNHCR Statute may be an indispensable requirement when asylum seekers sojourn in a non-contracting State. Such determination may be of a collective nature where large numbers are concerned.

24. Whatever the nature, however, of recognition of refugee status according to the UNHCR Statute, it has no asylum effects of its own. Unless there are constitutional or other municipal provisions on asylum, the State concerned has no obligation with respect to asylum, not even temporary asylum, as the act of recognition is not related to any of the relevant conventions. Such asylum, temporary or durable, as may be granted to these refugees will depend on adherence by the authorities to the customary principles of asylum, enhanced as they might be by co-operation between States and the High Commissioner for Refugees. The same considerations apply as at the end of paragraph 21 above: refugees recognised under the Statute of UNHCR but not by the State of sojourn will have a status which may not include formal protection against refoulement, may not satisfy the accepted standards of temporary asylum, and may not offer the essential characteristics of durable asylum. The refugees concerned may, therefore, still be asylum seekers.

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\* \*

25. Formal recognition of refugee status - and even less de facto recognition - is not in itself a safe criterion for evaluating the position of a person as an asylum seeker. A careful analysis of the circumstances is required in each case.

26. A refugee ceases to be an asylum seeker when he/she has been granted durable asylum.<sup>12</sup> The contents of durable asylum are specified in great detail in refugee law. As long as durable asylum has not been granted, the refugee will remain in a precarious position; the degree of precariousness will vary from from case to case.

B. Regular versus Irregular Movements

27. The term 'irregular' is usually not to be found in the English version of international legal instruments dealing with refugees, specifically not in the 1951 Convention.<sup>13</sup> The French version of the Convention refers in

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<sup>12</sup> It is also being held that durable asylum needs to be effective from a social and economic point of view. Cf. para. 70 below.

<sup>13</sup> The Convention on Territorial Asylum done at Caracas on 28 March 1954 refers to "the fact that a person has entered...irregularly..." (Art.5).

Article 31, under the title "Réfugiés en situation irrégulière dans le pays d'accueil" to "entrée ou....séjour irréguliers". The English version refers to "illegal entry of persons" and the title reads "Refugees unlawfully in the country of refuge".<sup>14</sup>

28. Irregular movements as understood in this study are not necessarily unlawful or illegal movements. At the present stage at least, the semantic problems arising out of the English and French versions of the 1951 Convention may be disregarded.

#### Categories of Movements

29. A systematic review of the movements of asylum seekers and refugees from one country to another may enable us to identify those movements which might or should be called 'irregular'. Movements of asylum seekers and refugees may be listed as follows:

##### Spontaneous, unscheduled movements

- direct arrival in a country immediately neighbouring the country where persecution is feared;
- direct arrival after overflying other countries or after transitting through one or more intermediate countries;
- arrival - for resettlement purposes or otherwise - after a sojourn of some duration in one or more countries where the asylum seeker/refugee had been given neither protection nor asylum;
- arrival - for resettlement purposes or otherwise - after a sojourn of some duration in one or more countries where the asylum seeker/refugee had been given some form of protection or asylum;
- spontaneous repatriation.

##### Authorised movements

- authorised direct arrival from the country of nationality or habitual residence (orderly departure, family reunification);
- resettlement from a country where the asylum seeker/refugee had been given only shelter or also some form of protection or asylum, including durable asylum;

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<sup>14</sup> Similarly, Articles 15, 17, 18, 19, 21, 23, 24, 26, 28 and 32 of the Convention include in the English version "lawfully staying in their territory", while the French version refers to "résidant régulièrement" or "qui résident régulièrement" or "se trouvant régulièrement".

- normal travel for business, family visits, etc.;
- voluntary repatriation authorised on an individual basis or within the framework of an organised movement.

30. Authorised movements are by definition 'regular' and need not be further examined within the framework of the study. Spontaneous, unscheduled movements require careful examination.

#### Direct arrivals

31. Direct arrival of asylum seekers from the country where they fear persecution in an immediately neighbouring country constitutes the original flight, the primary movement by which the person concerned becomes a refugee, as soon as he has walked across the frontier of the country of his nationality or of his habitual residence. This movement is normally unscheduled.

#### Documents

32. On this original flight, the refugee will in many cases not carry any personal documents whatsoever, e.g. if he belongs to a flow of rural refugees moving across the border into a neighbouring country. In other cases he may hold some personal documents, e.g. if he is an urban dweller using some kind of public transportation. Very often he may not possess a travel document such as a valid passport and a visa. Such movement across the border without the necessary documentation is technically speaking unlawful or illegal, in the meaning of Article 31 of the 1951 Convention. It is, however, not illegitimate since by virtue of the same article:

"The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence." (Art. 31.1)

33. Another movement of the asylum seeker very similar to the above is his arrival in the country where he seeks asylum from the country where he fears persecution after overflying one or more intermediate countries. This is another modality of the original flight of the refugee which also falls very clearly within the purview of Article 31 of the 1951 Convention. In this case the asylum seeker is likely to carry some kind of travel document, although his documentation may not be sufficient: the travel document may have expired, it may not carry a visa, etc. The lack or insufficiency of documentation should not, however, be held against a bona fide asylum seeker.

34. In the Federal Republic of Germany lack of travel documents or insufficient documentation (e.g., lack of visa for specific nationalities) is in principle an offence (as it is in other countries), but courts have acquitted asylum seekers arriving 'directly' (also after transit through several countries) from the country where they allege fear of

persecution.<sup>15</sup> In a judgment of 8 January 1985 the Amtsgericht (District Court) of Frankfurt am Main acquitted an asylum seeker who declared upon landing that, during the flight from Paris to Frankfurt, she had destroyed the false passport which she had purchased in the first country of arrival and which had enabled her to travel to France and therefrom to the Federal Republic.<sup>16</sup> However, a fine is imposed on the asylum seeker if he does not arrive 'directly'<sup>17</sup> or if he does not report forthwith to the competent authorities.<sup>18</sup>

35. In both cases of direct arrival (paras. 31 and 33) the asylum seeker may report to the border authorities of the country where he seeks asylum with false or fraudulent documents. If the use of false or fraudulent documents is a necessary means for the refugee's flight, it cannot easily be objected to. It may be expected that the asylum seeker will indicate at an early stage of the asylum procedure (not necessarily at the border) that he carries false or fraudulent documents, and announce his real identity. His refugee character may not, however, be questioned only on account of the possession and use of false or fraudulent documents.

36. "Refugees and asylum seekers are commonly subject to the same law as is applied to aliens or to nationals. They may thus be exposed to prosecution, punishment and/or detention, on account of illegal entry, entry without documents or with falsified documents....<sup>19</sup>

The treatment of asylum seekers/refugees arriving with false or fraudulent documents is not identical in States parties to the Convention or Protocol. In the Federal Republic of Germany asylum seekers/refugees arriving with false or fraudulent documents are acquitted of penalties if they are considered to have arrived 'directly' and provided they declare the use of such documents upon entry. On 12 August 1983 the Amtsgericht Hamburg acquitted an asylum seeker who had bought a false passport with a false entry visa on account of his 'Notstandssituation' (state of necessity); an acquittal was pronounced in a

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<sup>15</sup> Cf. the judgment of 17 March 1983 of the Amtsgericht Hannover (AG Hannover 114 Ds 57 Js 40584/83) and the decision of the Bundesverwaltungsgericht (Federal Administrative Court) of 19 Mai 1981 (BVerwG I C 168/79).

<sup>16</sup> AG Frankfurt am Main 2 Js 32400/84 - 95 Ds 124.

<sup>17</sup> OLG Düsseldorf 5 Ss 17/84 - 36/84 I (28 May 1984)

<sup>18</sup> LG Paderborn 4 Ns 20 Js 554/80 - AK 20/81 (25 March 1981) upholding AG Höxter Cs 20 Js 554/80 (664/80)

<sup>19</sup> Cf. Goodwin-Gill, Guy S.: International Law and the Detention of Refugees and Asylum-Seekers, revised version of a paper submitted to a Working Group on the Treatment of Refugees with particular reference to the Problem of Detention, organised in Florence, 3-5 June 1984, by the International Institute of Humanitarian Law under the auspices of the United Nations High Commissioner for Refugees, mimeographed; p. 11.

similar case by the Amtsgericht Karlsruhe on 19 September 1984.<sup>20</sup> In its judgment of 4 June 1984 the Amtsgericht Bergheim imposed a fine on an asylum seeker who had entered the Federal Republic with a false document without revealing the fact upon arrival. The Landesgericht Freiburg rejected on 12 March 1984 an appeal against the judgment of the Amtsgericht Lörrach of 6 May 1983 which had imposed a fine on an asylum seeker who had refused to concede having used a fraudulent Convention Travel Document.<sup>21</sup> In Italy the Pretura of Rome (court of first instance) decided on 4 November 1979 that in application of Art. 54 of the Penal Code on the 'State of necessity' the use of a false passport by an asylum seeker may be excused. It is worth noting that the asylum seeker had come from Africa and that on account of the geographic limitation he did not fall in Italy under the Convention or Protocol.

37. In other countries the use of false or fraudulent documents may be a genuine obstacle to the grant of asylum. In the United States the Board of Immigration Appeals asserted that "Attempting entry into the United States by way of fraudulently obtained documentation has consistently been considered a strong negative discretionary factor." with respect to the discretionary power of the Attorney General to grant asylum.<sup>22</sup> In a number of countries use of false or fraudulent documents may be a cause for (sometimes protracted) detention. According to recent research on the implementation of Art. 31 of the 1951 Convention:

"Only a few states" (out of forty-five surveyed states) "have taken any formal steps to incorporate exemption from penalties. Recent legislation seems to be the exception, however, and new laws in Portugal, Spain and Zimbabwe provide that persons who enter illegally for the purpose of seeking asylum will not be punished. In a number of other countries, illegal entry is often tolerated in practice, provided that asylum-seekers report promptly to the authorities. A formal distinction in law between refugees and others is rare, however, and was present in the legislation of six only of the states reviewed. In Belgium the law provides for the issue of appropriate documents to asylum-seekers who arrive without passport or visa."<sup>19</sup>

38. If Contracting States apply in its full scope Article 31 of the Convention, the use of false or fraudulent documents should not be a problem where direct arrivals of bona fide asylum seekers/refugees are concerned. If such documents are used by a mala fide applicant, this is obviously an infringement of the law which should be handled accordingly. A problem has reportedly arisen in recent years, however, on account of the large numbers of applicants for asylum who either use false or fraudulent documents or allege that they have lost their travel document. This aspect of the phenomenon of 'irregular movements' appears to be closely related to that of manifestly unfounded or abusive applications which is dealt with below (cf. paras. 48-50).

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20 AG Hamburg 188 Ds/132 Js 334/83; AG Karlsruhe 13 Cs 2/84 Hw.

21 AG Bergheim 43 Ds 22 Js 547/83 2/84; LG Freiburg Ns 100/83 I X AK 105/83

22 Cf. Matter of Salim, BIA 1982.

Transit through third countries

39. The asylum seeker may report at the frontier (or airport) of the country where he seeks asylum after transitting through one or more intermediate countries. This raises the wellknown problem of the interpretation of the phrase "coming directly" in Article 31.1 of the Convention. These words have been interpreted in a variety of ways by States and this has given rise to the problem known as "refugees in orbit" or "refugees without an asylum country".<sup>23</sup>

40. It is hardly possible to review in this study the manifold interpretations given by States in law or in practice to this aspect of Article 31.1. In a number of Contracting States the lapse of time allowed for transit, or for the asylum seeker to be "en route" between the country where persecution is feared and the country where asylum is sought, is determined by municipal law and may amount to a week, two weeks and in some countries to three months. In other cases there is no fixed lapse of time and the matter is left to the discretion of the authority which examines the request for asylum or for recognition of refugee status. In some cases the requested State will not accept applications for asylum if the asylum seeker has merely transitted overland through an intermediate country or has made a stopover at an intermediate airport. In practically all cases, however, transit through intermediate countries is accepted only if the refugee has not requested asylum (let alone been granted asylum) in an intermediate country.

41. The problem of refugees 'in orbit' was examined by the Executive Committee at its thirtieth session and the Committee adopted Conclusion No. 15 (XXX) on Refugees without an Asylum Country. Quite obviously, if States would implement the recommendations of this Conclusion, the problems related to transit of asylum seekers through intermediate countries would be solved to a very large extent. In paragraph (h) of Conclusion No. 15 (XXX) it is recommended that States should make "an effort ... to resolve the problem of identifying the country responsible for examining an asylum request by the adoption of common criteria" and principles are listed for the elaboration of such criteria. An attempt to agree on such criteria has reportedly been made at regional level by States members of the Council of Europe, but so far without a final positive result.

42. It is a moot question whether the arrival of an asylum seeker at the frontier (or airport) of a State where he requests asylum, after transitting through one or more intermediate countries, should be considered 'irregular' if his application falls outside the rules or the practice of that State relating to modalities of considering asylum claims. Whatever the case may be, this potential aspect of irregular movements could and should be disposed of if governments were able to reach a consensus on a set of fairly simple rules. The movement of a "refugee without an asylum country" is part of his original flight from the country where he fears persecution, and should,

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<sup>23</sup> We are concerned here only with refugees "in orbit" on their original flight. Cf. Collection of Notes presented to the Sub-Committee of the Whole on International Protection by the United Nations High Commissioner for Refugees, 1977-1980, published by the Division of International Protection of the UNHCR, Geneva, 1981: Note VII, paras. 4-18.

therefore, not be considered an 'irregular' movement. If this view is nevertheless taken, it is not excessive to contend that the 'irregularity' results from insufficient co-operation between States.

Direct arrivals in non-contracting States

43. We have examined so far direct arrivals of asylum seekers in the territory (or at the border) of States which are parties to the 1951 Convention and the 1967 Protocol. Contracting States may also be parties to regional instruments relating to asylum and/or refugees. As recalled earlier<sup>24</sup> the OAU Convention includes very positive provisions on temporary asylum, and difficulties of interpretation of the concept of direct arrival do not normally arise in States parties to the OAU Convention. The provisions of the OAU Convention have been strengthened by the recommendations adopted by the Conference on the Situation of Refugees in Africa, held in Arusha in May 1979,<sup>25</sup> and these recommendations have been endorsed by the Assembly of Heads of State and Government of the Organisation of African Unity as well as by the General Assembly of the United Nations.<sup>26</sup> These provisions concerning asylum in Africa are not applicable, therefore, only by States which are formal parties to the OAU Convention but are at least a political obligation for all member States of the Organisation of African Unity.

44. At the time of writing, out of 159 member States of the United Nations 63 States are not yet parties to the 1951 Convention or the 1967 Protocol, or to the OAU Convention. While in non-contracting States Article 31 of the 1951 Convention may be considered a normal and useful standard of international law it has obviously no treaty value. This does not mean that non-contracting States have no juridical basis for dealing with direct arrivals. In addition to the customary right to grant asylum they may rely on - and indeed feel bound by - the United Nations Declaration on Territorial Asylum which is based on the Universal Declaration of Human Rights. They may also be guided by a number of conclusions on international protection of refugees adopted by the Executive Committee, including Conclusion No. 5 (XXVIII) on Asylum, No. 6 (XXVIII) on Non-Refoulement, No. 15 (XXX) on Refugees without an Asylum Country, No. 19 (XXXI) on Temporary Refuge, No. 22 (XXXII) on Protection of Asylum-Seekers in Situations of Large-Scale Influx, No. 23 (XXXII) on Problems related to the Rescue of Asylum-Seekers in Distress at Sea and No. 26 (XXXIII) on the Report of the Working Group on Problems related to the Rescue of Asylum-Seekers in Distress at Sea.

45. With regard to American States attention should be drawn to various American conventions on asylum, particularly to the Convention on Territorial Asylum signed at Caracas on 28 March 1954 and to Article 22.7 and 22.8 of the

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<sup>24</sup> Cf. para. 20 above.

<sup>25</sup> A/AC.96/581.

<sup>26</sup> General Assembly Resolution 34/61

American Convention on Human Rights of 22 November 1969, also called the "Pact of San José, Costa Rica". States in (Africa and) Asia may also be guided by the "Principles concerning Treatment of Refugees" as adopted by the Asian-African Legal Consultative Committee at its eighth session in Bangkok, in 1966.<sup>27</sup>

46. Apart from international obligations or standards, the requested State will have to deal with direct arrivals of asylum seekers also on the basis of constitutional or other municipal law provisions relating to asylum or refugees.

47. It may be concluded at this stage that direct arrivals of asylum seekers (with or without transit aspects) are the primary movement of refugees, the original flight from the country where they fear persecution; that whatever the administrative aspects of these movements (e.g., insufficient documentation) they cannot or should not be considered 'irregular'; and furthermore, that States - whether or not parties to the principal international instruments on asylum and refugees - can avail themselves of a wealth of international and national instruments in order to grant at least the minimum of protection against persecution which asylum seekers require.

#### Manifestly Unfounded or Abusive Applications

48. While States may still have reservations with respect to transit through intermediate countries, a majority of States accept the fact that direct arrivals of asylum seekers from the country where they fear persecution do not fall within the concept of irregular movements, whatever the administrative aspects may be at the time when the asylum seeker enters their territory. However, this attitude of States concerns bona fide asylum seekers, even if they may finally not be granted asylum for substantive reasons; it does not extend to persons who submit "manifestly unfounded or abusive applications" for refugee status or asylum.

49. "Clearly abusive" or "manifestly unfounded" applications "are to be defined as those which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the Status of Refugees nor to any other criteria justifying the granting of asylum"<sup>28</sup>. The movement of persons who submit such applications might well fall within the concept of irregular movements and may create a real problem if there are a great number of such applications or if they represent a large proportion of the total number of applications for refugee status or asylum submitted to the authorities of a given country. This would appear to be the case when networks (filières) come into play<sup>29</sup>.

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<sup>27</sup> It seems not necessary to refer to European regional instruments adopted by or concluded under the auspices of the Council of Europe, as States members of the Council are also parties to the Convention and Protocol.

<sup>28</sup> Cf. Conclusion No. 30 (XXXIV) on The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum, para. (d).

<sup>29</sup> It needs no emphasis that bona fide asylum seekers are frequently using such filières as are available to leave the country where they fear persecution. Inasmuch as they are coming 'directly', this is of course not objectionable from the point of view of refugee law.



50. The problem of manifestly unfounded or abusive applications was discussed in great detail by the Executive Committee at its thirty-fourth session when the Committee adopted Conclusion No. 30 (XXXIV) on The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum. It is not the purpose of this study to duplicate the examination of the problem. It will be noted, however, that while the Executive Committee recognised the existence of unfounded or abusive applications it also agreed that it is difficult to establish their "manifestly" unfounded or abusive character and finally, that these applications would have to be dealt with in a manner not essentially different from the procedure used in the case of normal asylum applications.

Extra-regional arrivals

51. One aspect of contemporary direct arrivals is the fact that many asylum seekers/refugees do not flee overland to a neighbouring country but by air to a country located sometimes thousands of miles away from the State where they fear persecution.<sup>30</sup> The fact that direct arrival by overflying several countries is facilitated through the considerable extension of air traffic need not be stressed. While such arrivals fall very clearly within the scope of Article 31 of the 1951 Convention and should not be considered 'irregular', a number of governments believe that such movements are abnormal.<sup>31</sup> This belief has been strengthened by the fact that in recent years the international community, moved by humanitarian considerations or otherwise, has been able to solve or attempt to solve a number of refugee crises, e.g. in Latin America or in South-East Asia, through resettlement - chiefly, if not only - in very distant countries; these refugee situations have not led to spontaneous extra-regional arrivals. The belief has also been strengthened through the occurrence, already referred to, of networks (filières).

52. These governments consider that refugee problems should be solved as much as possible within the geographical region where they arise and the phrase 'regional solution' has frequently been used in recent years in connection with large-scale refugee problems. At its thirty-first session the Executive Committee:

"Recognized the value of examining problems of international protection in a regional context with a view to arriving at appropriate solutions;".<sup>32</sup>

At its thirty-second session the Executive Committee concluded that:

"Primary consideration should be given to the possibility of finding suitable solutions within the regional context".<sup>33</sup>

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30 Cf. para. 33.

31 Cf. Annex IV.

32 Cf. Conclusion No. 16 (XXXI), para. (i).

33 Cf. Conclusion No. 22 (XXXII), section IV, para. (2)

53. These regional preoccupations raise a question of principle, i.e. the free choice of the State from which an asylum seeker/refugee proposes to seek asylum and recognition of his refugee status, and a more factual question, i.e. whether in a given case asylum is available within the geographical region concerned. The factual aspects will be examined later in this study.<sup>34</sup>

54. As to the matter of principle there is no provision in the instruments of international refugee law which limits the choice of the country of asylum. The question was discussed - at least implicitly - by the Executive Committee at its thirtieth session within the framework of the problem of refugees without an asylum country. Conclusion No. 15 (XXX) of the Executive Committee affirms that:

"(d) Decisions by States with regard to the granting of asylum shall be made without discrimination as to race, religion, political opinion, nationality or country of origin;"

and recommends that:

"(h) - - - - -  
- - - - -

(iii) The intentions of the asylum-seeker as regards the country in which he wishes to request asylum should as far as possible be taken into account;"<sup>35</sup>

55. At this stage it should be noted that, in accordance with existing international refugee law, direct arrivals from distant geographic regions should not be handled differently from other direct arrivals. We should also note, however, that if 'regional' grant of asylum could be achieved in a manner fully compatible with the principles of refugee law, this would meet the present preoccupations of a number of governments.

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<sup>34</sup> Cf. paras. 268 - 274.

<sup>35</sup> In a recent decision (BVerwG 9 C 92.83, 5 June 1984) the Bundesverwaltungsgericht (Federal Administrative Court) of the Federal Republic of Germany has upheld the principle that the refugee "is as free in the choice of the country where he will go upon leaving the country of persecution as he is in the choice of the final country of refuge". Other similar decisions: VG Minden 10 K 10.018/81, 15 December 1982; VGH Bad.-Württ. A 13 S 292/82, 17 January 1983; BVerwG 9 C 90.83, 5 June 1984. In a matter relating to the right of an asylum seeker to travel outside Belgium during the examination of his request of recognition of his refugee status, a Belgian court stated: "They" (the asylum seekers) "should indeed be permitted during the initial period of their expatriation, to choose the 'pays d'accueil' most appropriate to their situation..." (Khan c/Etat belge, Tribunal de Liège (référé), 23 April 1985).

Arrivals of unprotected asylum seekers/refugees

56. Asylum seekers may sojourn in a country adjacent to the State which they left for fear of persecution, or in a country further away from the State of their nationality or habitual residence, for several months and sometimes several years without having received any formal protection against refoulement, let alone temporary or durable asylum. We have referred to this in para. 11 above as 'shelter'. In this situation the asylum seeker has not been recognised as a refugee by the State of residence except perhaps in a loose manner (cf. para. 21 above) but he may have been recognised as a refugee - implicitly or explicitly - by the High Commissioner for Refugees under the Statute of UNHCR.

57. If they travel, these unprotected asylum seekers/refugees are in a situation not unsimilar to that of the "refugees without an asylum country" discussed in paras. 39-42. The difference relates essentially to the length and nature of the transit period. If the "common criteria" referred to in Conclusion No. 15 (XXX) should include an agreed period of permissible transit for direct arrivals, this should allow for a distinction between the two categories, although a 'grey area' may admittedly continue to exist.

58. An unprotected asylum seeker may wish to travel to other countries for normal travel purposes (family visits, business, etc.) and may be able to do so either with a national passport or an aliens passport, a laissez passer or another document. He may obtain the necessary entry visas and his documentation may permit him to return to the country of shelter where his status may be that of a resident alien. This type of movement is merely one aspect of international travel and will in fact pass unnoticed by the various immigration or frontier authorities.

59. The asylum seeker who has only been given 'shelter' may also wish to seek durable asylum and resettlement conditions in a third (or fourth, etc.) country despite and indeed because of the length of his precarious sojourn outside the country where he fears persecution. He may do so after having obtained a resettlement visa from a consular or diplomatic representative of the third country. In this case the movement is authorised and requires no further consideration here.

60. He may, however, travel to the country where he proposes to seek durable asylum with a short term visa for visiting purposes, without a visa although he would need one, with false or fraudulent documents or without documents (cf. paras. 35-38 above). Such an asylum seeker would therefore infringe the immigration rules of the country of arrival. The question arises, however, whether his endeavour to seek durable asylum without prior authorisation should be considered irregular.

61. The reply to this question will depend on the circumstances of the case. If the general situation in the country of shelter is not subject to any dramatic change, let alone upheaval, if the asylum seeker can apply for a resettlement visa from consular or diplomatic representatives of the requested State in the country of shelter, and if such a visa will normally be issued albeit after a reasonable waiting period, the voyage of the asylum seeker to the requested State should indeed be considered 'irregular'.

62. If any or several of the above conditions are not met the reply may be different. If a sudden change in the economic or political situation occurs in the country of shelter, the asylum seeker may legitimately feel that given his precarious legal position he cannot wait for the issuance of a visa.<sup>36</sup> The State in which he wishes to resettle may not be directly represented in the country of shelter or may not issue resettlement visas in view of its immigration policy. In such cases (and naturally other assumptions could be made) the unprotected bona fide asylum seeker is subjected to objective and subjective pressures which compel him to move.<sup>37</sup> The spontaneous arrival of the asylum seeker at the border (or airport) of the country where he wishes to resettle is a legitimate step from the vantage point of the person concerned, while it may still be a matter of preoccupation or even embarrassment for the requested State.

63. A fundamental aspect of such a case is the fact that the asylum seeker has not received in the country of shelter the necessary protection and that the need to receive such protection, the fact that his situation is "of concern to the international community",<sup>38</sup> cannot be negated.

#### Arrivals of protected asylum seekers/refugees

64. An asylum seeker/refugee who has been given some form of protection or asylum in the country where he sojourns may wish to travel to other countries for normal purposes (family visits, business etc.), a circumstance which we have referred to in para. 58. He will normally not use a national passport; his travel document will depend on his status: a Convention Travel Document, if he has been formally recognised as a refugee by the State of residence and on the assumption that the latter is a party to the 1951 Convention and 1967 Protocol; an aliens passport, a laissez passer or some similar document if he has merely the status of an asylee, e.g. "B" status in some countries of north-western Europe. He may need an entry visa which will be normally obtainable and his documentation will normally permit him to return to the State which has afforded protection. As in the case mentioned in para. 58, this type of movement is merely one aspect of international travel.

65. The asylum seeker/refugee who has been given some form of protection or asylum in his country of residence may wish to travel to a third (or fourth, etc.) country in order to seek conditions of durable settlement in that third country, or better conditions if he had already been granted durable asylum. He may do so after having obtained from the consular or diplomatic representation of the third country a settlement or resettlement visa in which case his travel falls in the category of authorised movements and need not be further discussed.

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<sup>36</sup> Cf. also para. 67 below.

<sup>37</sup> A full analysis of these compelling pressures is to be found in Chapter V. A., paras. 216-236.

<sup>38</sup> United Nations Declaration on Territorial Asylum, Art. 2.1.

66. He may also, however, travel for resettlement purposes with a short-term visitor's visa, or he may travel without an entry visa although he would need one on account of the entry regulations prevailing in the third country.<sup>39</sup> He could also, as envisaged in para. 60 above, travel with false or fraudulent documents or without documents. In all these cases the journey could be considered prima facie as an 'irregular movement', but this should now be further discussed.

67. Mention should be made of one type of situation in which an asylum seeker/refugee - due to a sudden change of political conditions on account of which the asylum seeker/refugee is subject to, or may have well-founded fear of persecution in the meaning of Article 1, Section A(2) of the 1951 Convention - may need to travel from his country of residence to a third country with or without the necessary documentation and where his travel does not fall in the category of irregular movements. Such a situation occurred in South America in September 1973, when refugees were suddenly exposed to conditions of persecution following a coup d'état in a country which was a party to the Convention and Protocol and where, until the coup d'état, refugees did enjoy conditions of durable asylum. Other examples in Latin America or elsewhere could also be quoted. Such movements of asylum seekers/refugees are in fact direct arrivals and we may revert for their analysis to paras. 31-47 of this study.<sup>40</sup>

68. A similar situation arises if the physical safety or freedom of the asylum seeker/refugee is in jeopardy. In its Conclusion No. 15(XXX) the Executive Committee stated:

"(k) Where a refugee who has already been granted asylum in one country requests asylum in another country on the ground that he has compelling reasons for leaving his present asylum country due to fear of persecution or because his physical safety or freedom are endangered, the authorities of the second country should give favourable consideration to his asylum request.

69. Quite apart from the need to seek second asylum from persecution or physical danger referred to in paragraphs 67-68, there are a number of circumstances in which the asylum seeker/refugee, while having been given some form of protection or asylum, in fact still needs asylum. It has already been shown (cf. paras. 11-16 above) that unless a person has been granted durable asylum he is still an asylum seeker and cannot be expected to sojourn indefinitely in the country which has given him some lesser degree of protection. It may be argued, however, that the asylum seeker/refugee should apply for a resettlement visa from the consular or diplomatic representative of the third country and that he should not present himself at the border - or enter the territory - of that third country without such a resettlement visa. If he nevertheless does so his journey may be considered an irregular movement.

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<sup>39</sup> He may not need a visa if his country of residence and the third country are both parties to the European Agreement of 20 April 1959 on the Abolition of Visas for Refugees.

<sup>40</sup> Art. 55 of the Belgian Aliens Law of 15 December 1980 makes specific provision for second asylum to refugees compelled to leave a first country of asylum.

70. Such irregular movements are not treated in all countries in the same manner. There is considerable case law on 'protection elsewhere'. The most demanding jurisprudence, as regards the standards of 'protection elsewhere',

is undoubtedly that of the Federal Republic of Germany. The "Asylverfahrensgesetz" (Law on Asylum Procedure) of 16 July 1982 mentions "anderweitiger Schutz" (protection elsewhere) or "Schutz vor Verfolgung" (protection from persecution) as reasons for refusal of asylum. Protection elsewhere requires not only protection against refoulement but also the possibility of "sojourning otherwise than in a temporary manner". The jurisprudence has concentrated on developing this concept of durable sojourn. The lapse of time spent in a third country is not a criterion by itself ('protection elsewhere' was found by courts to be insufficient despite a sojourn of 4 years, 6 years, in one case 13 years), neither is recognition of refugee status; "...protection implies positive measures such as admission, assistance, accommodation, support and care and further, the absence of measures which could have a negative effect on the protection of the asylee"; "...in a State which is not a party to the Geneva Convention 'protection elsewhere from persecution' must be shaped in such a manner as to correspond to the principles of the Convention". According to the Administrative Court (Verwaltungsgericht) of Gelsenkirchen:

"...there can be protection in another country only if the conditions of life in that country satisfy at least such human dignity as is according to (our) Constitutional Law 'unrenounceably' (unverzichtbar) inherent in each human being, i.e. they should allow for a minimal measure of free personality development, in the meaning of determination of a person's own life and of framing a person's own environment."

Whereas Federal German case-law is by no means consistent throughout or devoid of contradictions:

"With respect to protection from persecution a trend seems to have emerged during recent years, despite all contradictions, to place high demands on the substantive content of sojourn in third countries."<sup>41, 42</sup>

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<sup>41</sup> Cf. Marx, Reinhard: Asylrecht, Band 1, Rechtsprechungssammlung mit Erläuterungen, 4. Auflage, Nomos Verlagsgesellschaft, Baden-Baden, 1984; pp. 91-126. Quotations and other facts are taken mainly from this work which contains a full and detailed analysis of jurisprudence in the Federal Republic of Germany, including references to primary judgments, decisions on appeal etc.

Cf. also Hildner, Guido: Untersuchung zur Frage des Schutzes vor Verfolgung afghanischer Flüchtlinge in Pakistan (Research on the question of protection from persecution of Afghan refugees in Pakistan), ZDWF-Schriftenreihe Nr. 2, Zentrale Dokumentationsstelle der Freien Wohlfahrtspflege für Flüchtlinge e. V. (ZDWF), Bonn, September 1982.

71. In France the Commission des recours (which reviews upon request decisions made by the Office français de protection des réfugiés et apatrides - OFPRA) has given importance essentially to the intentions of the asylum seeker/refugee.<sup>43</sup> More recently the Conseil d'Etat statuant au Contentieux (i.e. the Supreme Court in administrative matters) has decided that an asylum seeker who had lived several years in a third country without formal protection should be recognised as a refugee if he otherwise satisfies the criteria of the 1951 Convention. This decision also refutes the validity of the principle of the 'first country of asylum'.<sup>44</sup>

72. In Anglo-Saxon countries, the fact that the third country is or is not a State party to the 1951 Convention and the 1967 Protocol and that protection - albeit only de facto - against refoulement is or is not being afforded, are major considerations in deciding whether an asylum seeker/refugee has received 'protection elsewhere'. In the Netherlands also considerable attention is devoted to the concept of 'genoegzame bescherming' (sufficient - or satisfactory - protection) in a third country. Principal considerations are the fact that the third State is or is not a party to the Convention or Protocol, that the asylum seeker/refugee is or is not protected in the third country against refoulement, that his sojourn was - or was not - of a merely transient character and whether "having regard to local circumstances" his situation in the third country "should be considered a reasonable one." The jurisprudence is naturally in a state of flux but on the whole would appear to be less demanding, regarding conditions in third countries, than case-law in the Federal Republic of Germany.<sup>45</sup>

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42 The jurisprudence in the Federal Republic of Germany would undergo a radical change if the Law on Asylum Procedure ("Asylverfahrensgesetz") would include the following amendment recently proposed by the Bundesrat (Upper House):

"If an alien, before travelling into the territory for which this law is valid, has stayed more than three months in a State where he is not threatened by political persecution, it is assumed that he has found there protection from persecution, unless the alien makes it credible that he has not been afforded protection from persecution."

(Bundesrat : Entwurf eines Zweiten Gesetzes zur Aenderung des Asylverfahrensgesetzes, Anlage zum Schreiben des Präsidenten des Bundesrates an den Bundeskanzler vom 14. Juni 1985)

43 Cf. Decisions No. 10.158 of 23 October 1979, No. 10.375 of 28 February 1980 and No. 10.494 of 4 March 1980 by which the Commission decided that sojourns of one month or more in a third country did not mean that the refugee had found another 'pays d'accueil'. Earlier positive and negative decisions on the matter in Jurisprudence de la Commission de recours des réfugiés . . . ., Paris, Librairie Dalloz, 1961.

### Spontaneous Repatriation

73. Voluntary repatriation is generally considered as the best durable solution to an individual or collective refugee problem. That is not always the opinion, however, of countries of origin to which the refugee wishes to repatriate. A number of situations can be referred to where the State of origin has refused as a matter of principle to consent to repatriation, has refused to give the necessary authority for repatriation, has refused leave to enter to spontaneous repatriants or has taken sanctions, e.g. detention, against spontaneous repatriants.<sup>46</sup>

74. From the point of view of States of origin who have developed negative attitudes and negative principles with respect to voluntary repatriation, unauthorised repatriation might be considered an 'irregular movement'. This somewhat paradoxical aspect emphasises, if need be, the fact that 'irregular movements' is necessarily a relative, an essentially contingent concept.

75. From the point of view of a majority of States and of general international law, spontaneous repatriation can hardly be considered 'irregular', at least as far as repatriation of refugees to the country of their nationality is concerned. The right of nationals to enter or return to the country of their nationality is affirmed in the Universal Declaration of Human Rights (Art. 13.2), in the European Convention for the Protection of Human Rights and Fundamental Freedoms (Protocol No. 4, Art. 3.2), and in the American Convention on Human Rights (Art. 22.5). It is also affirmed, though in a qualified manner, by the International Covenant on Civil and Political Rights.<sup>47</sup>

76. As far as refugees are concerned, the Convention and Protocol do not deal with voluntary repatriation. The OAU Convention deals extensively with the subject and provides inter alia that:

"Refugees who freely decide to return to their homeland, as a result of such assurances or on their own initiative, shall be given every possible

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<sup>44</sup> Decision No. 20.527 of 16 January 1981. Cf. Tiberghien, Frédéric: La protection des réfugiés en France, Economica, Paris/Presses universitaires d'Aix-Marseille, Aix-en-Provence, 1984; which reviews (pp.36-38) recent developments in French jurisprudence.

<sup>45</sup> Cf. Fernhout, mr. R. : Rechtspraak Vluchtelingenrecht (Refugee Case-Law), Ars Aequi Libri, Nijmegen, 1985 (being published); paras. 69-79.

<sup>46</sup> Cf. also Collection of Notes: Note IX, para. 23.

<sup>47</sup> "No one shall be arbitrarily deprived of the right to enter his own country." (Art. 12.4)



assistance by the country of asylum, the country of origin, voluntary agencies and international and intergovernmental organizations, to facilitate their return." (Art. V.5)

The Principles concerning Treatment of Refugees adopted by the Asian-African Legal Consultative Committee are no less precise:

"A refugee shall have the right to return if he so chooses to the State of which he is a national or to the country of his nationality and in this event it shall be the duty of such State or Country to receive him." (Art. IV)

77. Whether refugees have an unqualified right to repatriation to the country of their habitual residence if it is not the country of their nationality, is less clear. There is no obligation of States to re-admit non-nationals to their territory, except of course if a special authorisation (return visa, etc.) has been given. The question might also arise of spontaneous repatriation of former nationals to the country of their former nationality. It has been held:

"that at present no rule of universal customary international law can be proved to exist which binds States to admit former nationals who have not acquired another nationality."<sup>48</sup>

As far as refugees are concerned, the OAU Convention refers to "country of origin"; the Principles to "the State of which he is a national or to the country of his nationality"; and Conclusion No. 18 (XXXI) on Voluntary Repatriation refers systematically to "country of origin".

### C. Conclusions

78. Direct arrivals of asylum seekers/refugees from the country where they fear persecution are, as a matter of principle, 'regular movements'.

79. The direct arrival of persons who make manifestly unfounded or abusive applications for refugee status or asylum is an irregular movement as understood for the purposes of this study. These arrivals frequently include non-refugees who use false or fraudulent documents or allege not to have any documents.

80. The movement 'in orbit' of refugees without an asylum country, embarrassing as it may be (in the first instance for the refugees themselves), should not be considered irregular in as much as it is an aspect of the direct arrival of asylum seekers/refugees. It is nevertheless a problem whose solution is overdue.

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<sup>48</sup> Cf. Weis, P.: Nationality and Statelessness in International Law, second edition, Sijthoff & Noordhoff, 1979; see Part One, 3. The Duty of Admission, p. 57.

81. Extra-regional arrivals are not irregular per se. Furthermore, they should not be considered irregular movements in as much as they are an aspect of direct arrival. They raise, however, a problem in certain countries inter alia for numerical reasons and should be further analysed.

82. Unscheduled spontaneous arrivals in order to seek durable asylum or resettlement opportunities by unprotected asylum seekers who have sojourned for some time in other countries should be examined from the point of view of conditions in the country of sojourn, particularly as regards availability and effectiveness of emigration facilities. If such facilities are available and effective, spontaneous unscheduled arrivals for durable asylum and resettlement purposes may be considered irregular movements.

83. Spontaneous, unscheduled arrivals for resettlement purposes of protected asylum seekers/refugees are prima facie irregular movements. The quality and effectiveness of 'protection elsewhere' as well as the availability and efficacy of emigration facilities in the country of protection are nevertheless important considerations.

84. Spontaneous, unscheduled arrivals of asylum seekers/refugees who have been living elsewhere - with or without protection - are not irregular movements if they have to flee a new situation of persecution or danger of persecution. They are another aspect of direct arrivals.

85. As a matter of principle, spontaneous repatriation of refugees should be considered a regular movement. In a limited number of cases, and particularly if non-nationals are concerned, it may nevertheless be considered irregular.

### III. Description and analysis of irregular movements

#### A. Numbers

##### Statistical material

86. Early in 1985 the Office of the United Nations High Commissioner for Refugees (UNHCR) requested 41 governments, chiefly those of States members of the Executive Committee,<sup>49</sup> to provide figures which should make it possible to assess with some accuracy the arrivals of asylum seekers in their respective countries. The proposed table (cf. Annex I) was meant to make a distinction between direct arrivals and arrivals after transit through third countries and further, between asylum seekers arriving with or without regular documentation.

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<sup>49</sup> Figures have not been requested from the Holy See and the UN Council for Namibia. Statistics have been obtained also from Portugal and Spain.

87. Governments which could not provide figures within the period originally requested have been reminded that their figures were expected. As of 15 June 1985, country figures have been received as follows:

- 3 governments have provided figures generally in accordance with the suggested pattern;
- 15 governments have provided overall figures without sufficient details regarding the manner of arrival (directly or after transit) and documentation;
- 2 governments have given partial figures which cannot be easily compared with those concerning other countries;
- 21 governments have not provided any figures.

Some governments have given explanations concerning the situation in their country, including estimates regarding asylum seekers transitting through other countries or arriving without regular documentation.

88. The numerical data used in this chapter of the Study are based on figures and explanations provided by governments as mentioned above, on other data available to UNHCR and on general statistical material, usually from United Nations sources (e.g., population figures).

#### World-wide statistical background

89. In view of the distinctly international character of this study and given the necessarily limited nature of the geographical sample on which our analysis is based, a reminder of the overall, world-wide size of the refugee phenomenon seems to be called for. The attached Table I provides an overview of the numbers of refugees at the end of 1983 in all countries where significant figures are available and of the total population in those countries. It also gives an overview of unscheduled arrivals of asylum seekers.

90. With certain exceptions, statistical material on asylum seekers and refugees is difficult to obtain and the figures are seldom accurate. The notes to Table I provide a full explanation of the method applied in composing the table. While their poor scientific quality must be recognized, the figures nevertheless provide a world-wide framework within which the problem of irregular movements should be considered.

#### Manifestly unfounded or abusive applications

91. We have concluded in Chapter II that the arrival of asylum seekers who submit manifestly unfounded or abusive applications for the grant of asylum/the recognition of refugee status is to be considered an irregular movement. On the other hand, the manifestly unfounded or abusive nature of the application can be established in many cases only after the claim has been examined according to a normal, albeit an accelerated procedure.

92. But for one country (see para. 94) the available statistical material provides no indication regarding manifestly unfounded or abusive applications. Some clue might be given by the number of applicants who carry fraudulent documents but data are too scanty to permit any firm conclusions to be drawn from erratic figures.

93. In countries which operate an effective procedure for determining refugee status or for granting asylum, some general conclusions might be drawn from the number of applications refused. Available figures indicate for a number of significant European countries of asylum a rate of positive determination of refugee status varying between 19 per cent and 97 per cent of applications examined in 1984. The average of positive decisions is almost exactly 50 percent. The manifestly unfounded or abusive applications are necessarily included in the remaining 50 per cent. However rejected applications are often counted together with applications shelved for a variety of reasons: withdrawn applications, departure of the applicant to another country, death of the applicant, etc. Furthermore, rejected applications include refusals for both formal and substantive reasons.

94. While this study was being drafted, the Government of the Federal Republic of Germany published global data on determination of refugee status by the "Bundesamt für die Anerkennung ausländischer Flüchtlinge" (Federal Office for the Recognition of Alien Refugees) in recent years.<sup>50</sup> These data include figures concerning refusals of "offensichtlich unbegründet" (manifestly unfounded) applications. As shown in Table IV, while the proportion of positive decisions has increased in a noticeable manner from 1982 to (the first trimester of) 1985, from 16 per cent to 45 per cent of all decisions made during the periods concerned, and the total proportion of refusals has decreased correspondingly, the proportion of applications considered to be manifestly unfounded has fluctuated between 3 per cent and 23 per cent. As the numbers do not refer to applications submitted, but to applications handled during each period, it is not possible to detect in any valid manner a trend in the proportion of manifestly unfounded claims.

95. Unless other governments provide figures of the same nature as those published by the Federal Republic of Germany, preferably a longer chronological series, the only method of assessing the numerical importance of manifestly unfounded or abusive claims would be to examine, possibly on a sampling basis, rejected applications with a view to determining which of them "are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the Status of Refugees, nor to any other criteria justifying the granting of asylum".<sup>51</sup> Statistical methods should then make it possible to draw valid numerical conclusions. Meanwhile the writer is led to believe from the scanning of figures, including those of Table IV, from conversations with

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<sup>50</sup> Bundesregierung: Probleme des Asylrechts; Antwort der ... auf die Kleine Anfrage der Abgeordneten Wartenberg ..... - Drucksache 10/3197; Deutscher Bundestag, 10. Wahlperiode; Drucksache 10/3346, 14.05.85, Sachgebiet 26. (Summary translation: Reply of the Federal Government to a parliamentary question relating to Problems of the right of asylum). According to the Law on Asylum Procedure (Asylverfahrensgesetz) the Bundesamt may reject an application for asylum as "manifestly unfounded".

<sup>51</sup> Cf. Conclusion No. 30 (XXXIV), para. (d).

Government and UNHCR officials and from personal experience that the proportion of manifestly unfounded or abusive claims is in industrialized countries normally 10 per cent to 15 per cent of the total number of applications but may reach in some countries 40 per cent or more.

96. This percentage may vary greatly according to the geographical origin of applicants and also according to the country in which the application is submitted. It must be emphasized that persons submitting such applications are by definition mala fide asylum seekers and therefore not refugees. They are a fringe aspect of the overall phenomenon of economic or socio-economic migration which interferes with refugee movements. The percentage is likely, therefore, to be higher in groups most affected by the need to migrate (for other than refugee reasons) and in countries which attract large numbers of migrants.

#### Asylum seekers without regular documentation

97. Only five governments have provided figures on asylum seekers arriving with or without regular identity or travel documents. Table V gives an overview of absolute numbers and Table VI of the same figures expressed in per cent of all unscheduled arrivals in the respective countries. It will be noted that these figures relate to all unscheduled arrivals without regular documentation: i.e. asylum seekers who arrive directly from the country where they fear or allege to fear persecution as well as asylum seekers who arrive after transitting through one or more third countries.

98. We have discussed in Chapter II the 'regularity' of direct arrivals without regular documentation and have concluded that with due reservation for cases of fraud and with due regard to the fact that in some countries legislation, regulations or judicial decisions are at variance with the provisions of the 1951 Convention, these arrivals are in principle regular. In order to assess correctly the problem of insufficient, lack of or fraudulent documentation it would be more relevant, therefore, to analyse separately the documentation carried by asylum seekers arriving after having transited through intermediate countries.

99. In view of the material received such an analysis is possible only for three countries: Canada, the Netherlands and Spain. The absolute numbers are given in Table VII and the percentages in Table VIII. Before any further discussion a methodological remark is in order: these two tables concern all arrivals after transit, including asylum seekers who may have stopped 'en route' for a very limited period, e.g. to change planes. In a majority of countries these asylum seekers are normally counted as direct arrivals, in accordance with the normal interpretation of Article 31 of the 1951 Convention. Except for Canada and Spain (see paras. 105-110), the available material does not permit, however, the tabulation of arrivals after transit according to the duration of the transit period.

100. Although the available series are short (5 years, 4 for Canada) and the trends somewhat erratic, there is nevertheless a tendency towards a proportional increase of asylum seekers who arrive without regular documentation. The total percentages for 1984, which range from 25 per cent to 53 per cent of all unscheduled arrivals, should be a matter of legitimate preoccupation for all those concerned with refugee movements.

101. The incidence of asylum seekers who arrive after transit without any documentation ranges in 1984 from 5 per cent to 32 per cent of all unscheduled arrivals. The percentages are not evenly spread among asylum seekers of all origins but concentrate on a limited number of nationalities. The detailed Canadian figures for 1984 show, for instance, that only 4 nationalities out of 41 are involved. There is an obvious presumption that asylum seekers in this category were hiding some kind of identity or travel documents upon arrival, or destroyed them before arrival.

102. The figures relating to insufficient documentation are probably less significant. Insufficient documentation may mean lack of a passport (while a document of identity may be available), a passport with expired validity, lack of visa. If the holder of such insufficient documentation is a bona fide asylum seeker the matter is clearly of less concern than total absence of identity or travel documents. It may be observed that reported figures are particularly erratic and that no data have been listed by one of the three countries of arrival included in Tables VII and VIII.

103. The column "fraudulent documents" is obviously the most worrying. In percentage of all unscheduled arrivals the proportion of asylum seekers arriving after transit with fraudulent documents ranged in 1984 from 12 per cent to 17 per cent. Fraudulent documents can also be related to specific geographic origins, as we have observed in paragraph 101. The added percentages of arrivals without and with fraudulent documentation ranges from 20 to 50 per cent of all arrivals.

104. It should further be noted that there is in this statistical material a specific structure related to the country of arrival. That is due probably less to any specific blend of arrivals according to areas of origin than to the particular modalities of handling applications for asylum/recognition of refugee status in each country of arrival.

105. If unscheduled arrivals after transit are further broken down according to whether the asylum seeker has spent less or more than 30 days in intermediate countries a different picture emerges. Figures can be broken down with some accuracy only for Canada and Spain. Tables IX, X, XI and XII give respectively absolute numbers and percentages.

106. In both countries the majority of asylum seekers who have transited through intermediate countries arrive after a transit of less than 30 days: in Canada 7 974 persons out of 8 986 over the four-year period 81/84; in Spain 2 206 persons out of 3 203. Such short transit is normally accepted under the 'en route' provision and such arrivals are considered as direct arrivals. In Canadian or Spanish practice transit even of a longer duration than 30 days is not an obstacle to determination of refugee status and to the eventual grant of asylum.

107. In both countries the majority of asylum seekers arriving after a transit of less than 30 days include the majority of those who arrive, after transit, without regular documentation: in Canada 2 100 persons out of 2 694 over the four-year period; in Spain 1 415 persons out of 1 744. (For reasons of comparison, these Spanish figures do not include asylum seekers holding 'insufficient documents'). Whether direct arrival without any documents or

with fraudulent documents is irregular cannot be determined merely through statistical analyses. As earlier discussed, these facts cannot be held against bona fide asylum seekers if they acted in a state of necessity.<sup>52</sup> While either in Canada or in Spain the fact of carrying no documents or the holding of fraudulent documents does not add to the credibility of the application, and while in Canada it may lead to initial detention, it is in neither of the two countries an obstacle to determination of refugee status and the possible grant of asylum. Nevertheless it is likely that a proportion - the exact numbers could be assessed only through screening of individual case files - of asylum seekers arriving in Canada or Spain without any or with fraudulent documents do not act out of necessity and/or are not bona fide asylum seekers. They would be part of an irregular movement. The upper limit of this movement has increased in Canada from 5 per cent of all arrivals in 1981 to 19 per cent in 1984. In Spain the proportion has varied between 2 and 13 per cent.

108. The proportion of asylum seekers arriving in Canada after a transit of more than 30 days has increased from 1 per cent of all arrivals in 1982 to 6 per cent in 1984. In Spain it has fluctuated over the four-year period between 12 and 30 per cent. The majority of them arrived without any documents. Their treatment in the Canadian or Spanish procedures is not different from that of asylum seekers who come after a shorter transit.

109. As regards those who arrive with regular documentation in Canada their proportion in the global number of arrivals is significant only in 1983 (3.5 per cent). In Spain the proportion has fluctuated between 1 and 11 per cent. It is not clear from the available information whether these asylum seekers had a Canadian or Spanish entry visa. According to the title of the statistical table, they came "without prior authorization". It is nevertheless not easy to assess whether their movement is regular or irregular. A major factor is "protection elsewhere".<sup>53</sup>

110. As to asylum seekers who arrive without any or with fraudulent documentation, the 'state of necessity' which may explain and indeed justify resorting to irregular documentation is less probable as the length of transit increases. Their movement should be considered prima facie as irregular. The proportion of this category has increased in Canada from 0.3 per cent of all arrivals in 1982 to 5.3 per cent in 1984. In Spain the figures are more erratic and vary between 2 and 16 per cent.

#### Protection in transit countries

111. In Chapter II we have made a distinction between protected and unprotected asylum seekers, according to the availability of protection and particularly to the kind of protection afforded in the country of transit. Only the Canadian Government has provided figures which give any insight into this aspect of unscheduled arrivals by indicating the country or area through which asylum seekers have transitted before reaching Canadian territory.

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<sup>52</sup> Cf. paras. 32-38.

<sup>53</sup> Cf. paras. 70-72.

112. The availability of protection in transit countries is relevant only if the transit is of some duration. In Tables XIII and XIV the arrivals after a transit of more than 30 days have been broken down according to whether the asylum seekers transitted through States parties to the Convention and Protocol ("countries of potential protection") or through States which have not acceded to these instruments ("other countries").

113. Two facts emerge from the scanning of these tables:

- asylum seekers with regular documentation arrive mainly after having transitted through States parties to the Convention or Protocol;
- the overwhelming majority of asylum seekers arriving without any or with fraudulent documents have transitted through "other countries", i.e. through non-contracting States.

Any precise interpretation of these findings would require an investigation of individual case files. The general impression is, however, that this category of asylum seekers includes a high proportion of irregular movements. As mentioned in paragraph 108, the whole category represents between 1 per cent (1982) and 6 per cent (1984) of all unscheduled arrivals in Canada.

114. Comparable figures are not available for countries other than Canada. An analysis of European statistical material, if it were available, would in all likelihood show that a large proportion of asylum seekers arriving, after protracted transit, in European countries have travelled through countries in Asia and Africa where protection is not readily available, either because those transit countries are not Contracting States or for other reasons.

#### Extra-regional arrivals

115. Without regard to the regular or irregular character of their movements, many governments are preoccupied by the fact that asylum seekers arrive in increasing numbers from outside the geographic area to which their, i.e. the government's, country belongs.<sup>54</sup> The available material allows, in a majority of cases, for a breakdown between arrivals "from within the region" (i.e. from countries located in the same continent) and arrivals "from outside the region" (i.e. from other continents). The figures are given in Tables II and III separately for 'industrialized' and 'other' countries.

116. As regards 'industrialized countries' a statistical distinction can be made between countries where the proportion of arrivals from outside the region was under 40 per cent in 1980 (or 1981) and those countries where the figure was higher than 40 per cent. To the first category belong Australia (34 per cent in 1980), Austria (10 per cent), the Federal Republic of Germany (37 per cent), Sweden (29 per cent in 1981), Switzerland (36 per cent in 1980) and the United States (33 per cent). In two of these countries, Austria and the United States, no real trend emerges over the admittedly very short period 1980-1984. In the four other countries, the proportion of extra-regional asylum seekers rises steeply and had reached 83 per cent in Australia in 1984, 66 per cent in the Federal Republic of Germany, 79 per cent in Sweden and 88 per cent in Switzerland.

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54 Cf. Annex IV



117. In Canada (69 per cent), Denmark (54 per cent), France (76 per cent), the Netherlands (63 per cent) and Spain (78 per cent), the proportion of extra-regional asylum seekers was already high in 1981. The very short series does not show any particular trend in Canada, France and Spain. In the two other countries, for which 1980 figures are also available, there is a steep increase in 1984, particularly in comparison with the 1980 figure: Denmark from 57 to 87 per cent; in the Netherlands from 41 to 70 per cent.

118. The overall analysis shows that with exceptions (Austria, the United States), arrivals in industrialized countries came, in 1984, predominantly from outside the region in a proportion varying between 60 per cent and more than 85 per cent. In some States the high percentage of extra-regional arrivals belongs, from a statistical point of view, to the 'specific structure' of country figures. There has been a recent steep increase in the proportion of extra-regional arrivals in six countries out of the eleven reviewed.

119. Data on extra-regional arrivals have not been made available by governments of non-industrialized countries. It is well known, however, from general information outside the framework of this Study that non-industrialized, developing countries receive asylum seekers chiefly if not only from within their own geographic region. The large numbers of new asylum seekers recorded for 1983 in Table I arrived in Ethiopia (20 400), Iran (200 000), Malaysia (10 900), Mexico (10 000), Pakistan (700 000), the Sudan (54 000), Uganda (17 000), Tanzania (21 000), Thailand (29 900), Zambia (14 000) and Zimbabwe (46 000) from immediately neighbouring countries.

#### Overall figures

120. The very scanty statistical material leads to the following approximative assessment of irregular movements:

- Asylum seekers who have made manifestly unfounded or abusive claims represented in 1984 an estimated 10 per cent to 15 per cent of unscheduled arrivals in industrialized countries.
- The percentage of unscheduled asylum seekers who arrived, after transit, without documents or with fraudulent documents, reached in 1984 a figure of 20 to 25 per cent, with higher proportions (up to 50 per cent) in specific countries.
- Asylum seekers who arrived without prior authorization after transitting for more than 30 days through countries of potential protection would represent insignificant proportions of all arrivals.
- The above three aspects of irregular movements are not cumulative; they overlap to a very large extent. A very tentative estimate would put the global proportion of irregular movements in the range of 20 to 30 per cent of all unscheduled arrivals, with distinctly higher figures (50 per cent or more) in specific countries, specific years, etc.

121. The above findings relate to industrialized countries, the only ones for which indicative statistical material is available. On the basis of Table I the following rough estimate can be made for 1983:

	<u>All Arrivals</u>	<u>Irregular Movements</u>
Industrialized Countries	104 000	25 000
Other Countries	<u>1 168 000</u>	...
World Total	1 272 000	...
	=====	=====

122. The number of irregular movements towards industrialized countries was in all likelihood higher in 1984. On the one hand, the total number of asylum seekers had risen to an estimated 140 000 and furthermore, phenomena such as hiding or destruction of travel documents seem also to be on the increase as indicated by the figures analyzed earlier.

123. The problem of irregular movements is certainly not limited to industrialized countries. We have, however, no numerical indications as of now concerning non-industrialized, developing countries. On the other hand the overwhelming majority of asylum seekers admitted on the territory of developing countries in Africa, Asia and Latin America are direct asylum seekers from neighbouring countries. The writer is tempted to believe, therefore, that the incidence of irregular movements is statistically not significant outside the industrialized world.

#### B. Further analysis

124. In order to perceive the problem of irregular movements in all its aspects an attempt should be made to identify their causes and background and, therefore, to investigate:

- conditions (legal, economic, social) in countries of departure;
- the social background of asylum seekers and refugees who form part of irregular movements;
- possible historical or cultural links between such asylum seekers and refugees and countries of arrival;
- conditions (legal, economic, social) in countries of arrival.

125. This examination could extend to the causes and background of extra-regional arrivals. Although, as has been repeatedly stated, extra-regional arrivals are not intrinsically irregular movements, they are a main source of preoccupation for governments and furthermore, there is a very distinct overlap of irregular movements and extra-regional arrivals.

#### Conditions in countries of departure

126. With respect to irregular movements the term 'country of departure' has two distinct meanings:

- Where direct arrivals are concerned, it may refer to "the country of his nationality or ... of his former habitual residence", in the meaning of para. 6. B of the UNHCR Statute, i.e. to 'countries of origin'. In principle,

direct arrivals are not part of irregular movements but an exception should be made for asylum seekers who make manifestly unfounded or abusive claims.

- In all other cases irregular movements concern asylum seekers and refugees who arrive after transit. In these cases the term 'country of departure' refers to the 'country of transit'.

127. As regards extra-regional arrivals, the term 'country of departure' also has both the meanings just referred to: 'country of origin' or 'country of transit', according to whether extra-regional arrivals arrive directly or after transit.

128. The term 'country of transit' is not used here in the habitual meaning of a country where the asylum seeker makes a technical stopover or spends a limited time 'en route' before reaching his intended destination. For present purposes the expression is used essentially from the subjective point of view of the asylum seeker/refugee: it designates any country (on the way between the 'country of origin' and the 'country of arrival') where the asylum seeker sojourns for a few days or a few months, sometimes for a longer period, but where he cannot or does not wish to remain on a durable basis.

129. As the term 'country of departure' seems to refer to a large number of unspecified countries, the examination of conditions in countries of departure might appear to be an impossible exercise which could be carried out only in specific cases where all elements are known. It should be recalled, however, that the two overlapping phenomena of irregular movements and extra-regional arrivals are of primary significance and concern to industrialized countries. It is proposed, therefore, to limit the analysis to the relation between 'countries of departure' and industrialized countries.

130. As regards industrialized countries, a distinction should be made between industrialized countries in Asia, Europe and North America respectively:

- The available material shows that irregular movements and extra-regional movements of concern to industrialized countries in Europe originate chiefly in developing countries of Africa, Asia and, to a lesser extent, Latin America.

- Movements towards North America find their origin not only in developing countries but also in industrialized or semi-industrialized European countries which perform a traditional and significant transit rôle.

- For industrialized countries or territories in Asia (mainly Hong Kong, Japan and Singapore) extra-regional arrivals and also irregular movements were until recently of little significance. They are more recently on the increase although the absolute numbers are small.

#### Countries of origin

131. The conditions in 'countries of origin', the reasons which prompt asylum seekers to leave the country of their nationality or habitual residence out of fear of persecution are those to which implicit reference is made in the definition of the term 'refugee' in the Statute of the UNHCR and also in the 1951 Convention and the 1967 Protocol. A social and political climate prevails, unfavourable to the free exercise of civil and political rights and

also of economic, social and cultural rights. The 'country of origin' is very often beset with tensions between ethnic, religious, social and political groups. These conditions explain the flight of bona fide refugees, i.e. of a substantial proportion of extra-regional arrivals in industrialized countries.

132. They do not necessarily explain the irregular movements of asylum seekers who submit manifestly unfounded or abusive claims. As repeatedly stated, the irregular movement of these asylum seekers is fundamentally a migratory movement and not a refugee phenomenon. More often than not, when the 'country of origin' belongs to the group of developing countries, it shows various characteristics typical of slow development: a low per capita income and a low standard of living, a discrepancy between demographic expansion and economic growth, severe unemployment and underemployment, insufficient educational opportunities at all levels, deficient or non-existent social protection and social security. All these factors make for a powerful propensity to emigrate. The statistical material indicates that asylum seekers filing manifestly unfounded or abusive claims come from developing countries which are also countries of origin of refugees.

#### Countries of transit

133. The process of irregular movements can neither be explained nor understood without referring to conditions in 'countries of transit' (in the meaning of para. 128). It is proposed to describe succinctly the conditions in two typical groups of transit countries: developing countries, particularly in Africa and Asia, and countries of transit in the Mediterranean area of Europe. Reference will also be made to conditions in other, industrialized countries of Europe.

134. The social situation in developing countries is characterized inter alia by unsettled relations between social groups and categories; as mentioned earlier, by insufficient educational opportunities at all levels, by the absence or insufficiency of social protection and social security measures. From an economic point of view, per capita incomes as well as standards of living are low; there is a difficult co-existence of various forms of economic activities, ranging from traditional activities to the incipient forms of an industrialized economy; there is severe unemployment and underemployment.

135. The situation with regard to refugee law differs greatly, according to whether the developing country concerned is a Contracting State of the Convention and Protocol (and in Africa, of the OAU Convention) or is merely, from the point of view of protection, a country of shelter.<sup>55</sup> A further distinction ought to be made with regard to the actual implementation of the Convention and Protocol, particularly regarding the determination of refugee status and the practical possibilities of benefitting from the legal status provided for by the international legal instruments, with due regard to prevailing economic and social conditions. In countries where there is a procedure for the determination of refugee status, conditions prior to recognition of status may also vary greatly.

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<sup>55</sup> cf. paras. 11 to 13.

136. It goes without saying that if the degree of protection falls short of the minimum standards of temporary asylum<sup>56</sup> or if recognized refugees cannot in actual practice benefit from the legal status provided for by the Convention and Protocol, the asylum seeker or refugee will try to move on to other countries.

137. The transit countries of Mediterranean Europe either belong to the group of industrialized countries (cf. para. 154 below) or occupy, from a social and economic point of view, an intermediate position between industrialized and developing countries. The relevant factors from the point of view of this Study are the conditions with respect to refugee law and particularly the legal and administrative practices concerning asylum and migration.

138. The four Mediterranean countries (Greece, Italy, Turkey and Yugoslavia), are parties to the Convention and Protocol. Italy and Turkey, however, maintain the geographic limitation contained in Article 1, Section B (1)(a) of the Convention. These countries have traditionally practised a liberal policy of admission to their territory (in the case of Italy and Turkey, also on behalf of asylum seekers falling under the geographic limitation). Asylum seekers and refugees are, however, admitted pending resettlement in other countries. Asylum seekers are very often confined to reception centres and, with exceptions, are not in a position to earn their own living. Austria is also chiefly a country of transit where similar conditions prevail.<sup>57</sup>

139. These countries are a typical example of States parties to the Convention or Protocol where powerful incentives to move on to countries of durable asylum prevail.

140. The industrialized countries in Europe (outside the Mediterranean area) cannot be entirely omitted from our examination of conditions in 'countries of transit'. A proportion of irregular movements towards North America - or, for that matter, between European countries - originates from industrialized countries in Europe. Their numerical significance is difficult to assess.

141. Social, economic and legal conditions in these countries are distinctly good, certainly if compared with those in many other regions of the world. There are, however, also in these countries, specific factors which provide an incentive to irregular movements:

- the difficulties related to the initial consideration of requests for asylum/recognition of refugee status;
- in certain countries, the measures of deterrence applied to asylum seekers;

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<sup>56</sup> Cf. paras. 14 and 15.

<sup>57</sup> Cf. Oesterreichische Kommission "Iustitia et Pax": Die Asyl- und Flüchtlingsproblematik Oesterreichs in den achtziger Jahren, Bestandsaufnahme und Anregungen, Institut für Ethik und Sozialwissenschaften der Kath.-Theol. Fakultät der Universität Wien, Wien, 1985.

- the low rate of recognition of refugee status/grant of asylum in specific countries;
- the high level of unemployment;
- negative attitudes towards aliens in general.

142. There are in all 'countries of transit' more or less powerful incentives prompting the asylum seeker or refugee to undertake further travel with a view to obtaining durable asylum elsewhere and/or to resettle in a better economic, social and legal environment. This further travel may or may not take the shape of an irregular movement. An all important factor, though not the only one which determines the regularity or irregularity of such movement, is the existence or the absence in the country of transit of efficient migration facilities. This factor is essentially under the control of countries of potential arrival and depends much less on the 'country of transit', although admittedly the consent and concurrence of the transit country is necessary.

143. It is obvious that an asylum seeker or refugee who cannot remain in the 'country of transit' because minimal protection is not available, or who merely wishes to move on for lack of any reasonable prospect of normal living, and who, for whatever reason (real or presumed family support, historical or cultural links, the aura of the New World, etc.) has set his mind on a particular third country, will do anything to get there. He will normally make an application to the immigration office concerned, provided there is one. He will wait if he knows from personal experience or from hearsay that he should expect a positive outcome of his application after a few months, possibly a year or more, if he can hold out. He may try an alternative country of destination or several countries at the same time. Finally, however, he will try to move, regularly or irregularly.

#### Social background

144. It would appear from available information (including government statements,<sup>58</sup> individual case files, personal experience, etc.) that asylum seekers and refugees who take part in irregular movements, as well as those who engage in extra-regional travel, are chiefly urban dwellers who would belong to any section of the middle class: from the lower to the upper middle class, including tradesmen, white collar employees, members of the liberal professions, etc.

145. Extra-regional movements of asylum seekers and refugees, and also irregular movements, are very often a fringe aspect of massive exodus. When large numbers of refugees leave their country of origin, those who belong to the rural population or to the low income categories of the urban population, and who cannot afford long-distance travel even if they should sell all their belongings, will flee merely to an adjacent country. On the contrary, refugees in higher income groups will flee to an adjacent country only as a first means of safety; they tend to move on to seek better protection and

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58 Cf. para 272.

better prospects for the future, particularly if they do not find these conditions in the adjacent country. This split exodus according to income and social categories is typical of large outflows of refugees from countries with low human rights standards and with low standards of living.

#### Historical and cultural links

146. The question arises whether extra-regional arrivals are motivated by economic considerations, or possibly by historical or cultural links between the country of the refugees' nationality and the country of arrival. In four cases, Canada, France, Spain and the United Kingdom, an attempt has been made to distinguish, among the countries of the asylum seekers'/refugees' nationality, those countries which can be reasonably presumed to have historical or cultural links with the country of arrival (Canada, France, Spain or the United Kingdom) and other countries. The results of this investigation are given in Tables XV and XVI.

147. This exercise is not very conclusive, probably because the chronological series available are much too short. The percentages for Canada and France seem to indicate a trend towards the proportional increase of arrivals from 'related countries'; the Spanish figures show rather a diminishing trend. In the case of Canada this increase is to be ascribed exclusively to arrivals from 'related countries' within the region, i.e. from Commonwealth countries. In the cases of France, Spain and the United Kingdom there are hardly any 'related countries' within the same continent (Europe).

148. Canada and Spain have provided figures which allow for an analysis of the historical and cultural links as related to travel documents presented at the border by asylum seekers. Tables XVII and XVIII show that an increasing proportion of asylum seekers arriving in Canada from 'related countries' within the region present insufficient documentation (8 per cent of all unscheduled arrivals in 1984). In this category of asylum seekers there are none presenting fraudulent documents or claiming to have no documents.

149. The latter - i.e. those who present fraudulent documents or claim to have no documents - almost all arrive from 'other countries' outside the region: the proportion of those without documents reached 12 per cent of all unscheduled arrivals in 1984 while 9 per cent arrived with fraudulent documentation. Only one-fifth of this group of asylum seekers have presented the required documents at the Canadian border in 1984.

150. A similar pattern is shown by the Spanish figures in Tables XIX and XX. A proportion of asylum seekers from within the region (in this case from 'other countries') arrives without regular documentation but their absolute numbers as well as their percentages are small and rather diminishing. The same applies to arrivals from 'related countries' outside the region. The phenomenon of irregular (including lack of) documents, which is on the increase, concentrates among arrivals from 'other countries' outside the region: in 1984 the proportions reached 7 per cent for lack of documents and 15 per cent for fraudulent documents. Higher proportions are on record for the period 1982/1983.

151. Some additional indications may be found in Tables XXI through XXIV which analyze the same material separately for arrivals after transit. The Canadian figures (Tables XXI and XXII) show very clearly that lack of documents and use of fraudulent documents is an absolute monopoly of arrivals after transit from 'other countries' outside the region. There is, statistically speaking, a very distinct negative correlation between historical and cultural links and irregular documentation. The same is true for the Spanish figures (Tables XXIII and XXIV), although in this case a very slight contribution to the phenomenon of irregular documentation is made by other categories of asylum seekers arriving after transit.<sup>59</sup> These sets of figures are a further indication of the overlap between irregular movements and extra-regional arrivals.

152. A correct interpretation of these figures (Tables XVII to XXIV) would require a case by case analysis which, for reasons of time and for other reasons, could not be carried out within the framework of the present Study. It may be assumed, also from the scanning of a limited number of individual case files and from other indications, that the destruction of documents before arrival or the hiding of documents upon arrival indicate much more the fear of immigration rules than the lack of fear of persecution at the time of the original flight. The specific fear inciting fraudulent behaviour is that the authorities will be led to believe, if presented with normal documents, that the asylum seeker had received 'protection elsewhere'.

#### Conditions in countries of arrival

153. The conclusion has been reached that irregular movements and also extra-regional arrivals are particularly relevant to countries of arrival in the industrialized group in Europe, in North America and to a lesser extent in a few Asian countries. The social, economic and legal conditions in industrialized countries are common knowledge but it may nevertheless be in order to describe them very succinctly for the sake of completeness.

154. From a social point of view, the majority of industrialized countries are characterized by a relative stability of social structures, of relations between social groups; by highly developed systems of education, including access to education at all levels; by social protection and social security. From an economic point of view, the average per capita income is high, as is the standard of living. In a majority of industrialized countries, particularly in Europe, there are as yet unsolved structural adjustment problems associated with the transition towards new production techniques and towards a service economy. This is one of the reasons for the high level of structural, long-term unemployment, which in several countries reaches 12 per cent or more of the labour force; in a few industrialized countries the rate of unemployment is distinctly lower.

155. From the point of view of refugee law, the legal status of recognized refugees is satisfactory and often very good, sometimes better than the standards prescribed for refugees by the international legal instruments to which practically all industrialized states are parties. Legal and administrative problems exist, nevertheless, with regard to asylum seekers: there are difficulties relating to the initial consideration of requests for asylum/recognition of refugee status, specifically when the asylum seeker has

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<sup>59</sup> Cf. paras. 105-113 and Tables IX to XIV.



transitted through other countries; in certain countries, measures of deterrence are applied to asylum seekers; the rate of recognition of refugee status and therefore the proportion of asylum seekers to whom formal asylum is refused varies greatly between countries and points to structural differences of administrative practice and jurisprudence.

156. There are also differences relating to immigration law and practice and, more generally, to attitudes towards absorption and integration of aliens, including refugees. In this respect notable differences exist between traditional immigration countries, e.g. Canada or the United States, and industrialized countries in Europe. In traditional immigration countries the annual intake of new immigrants is an integral part of the social and economic system. In Europe massive immigration of aliens is a fairly new phenomenon which developed between the late 50s and the early 70s. It was initially perceived as an economic necessity; the presence of millions of aliens is now perceived more as a fact of life than as a principle for the building of a new nation.

157. It goes without saying that this description (paras. 153-156) is necessarily very general and cannot do justice to the specificity of each country's situation.

158. The question arises as to whether conditions in countries of arrival exert an influence on irregular movements. Obviously the overall conditions in these countries (legal status, social protection and social security, educational opportunities, employment opportunities despite the high level of unemployment) exert a powerful attraction on all categories of immigrants: political immigrants, i.e. refugees, as well as economic immigrants. This attraction is evident from the increasing proportion of extra-regional arrivals chiefly from developing countries, which has been described in paras. 115-119.

159. The inherent limitations of immigration rules and policies and, even more so, the immigration stop practised by industrial countries in Europe as from 1973-1974, the overall attraction exerted by industrialized countries and, finally, the open-door policy practised as a matter of principle with regard to bona fide asylum seekers have had a combined effect: manifestly unfounded or abusive requests for the grant of asylum/recognition of refugee status.

160. The mechanics leading to the hiding or destruction of travel documents or to the presentation of fraudulent documentation are more complex. These malpractices may coincide with manifestly unfounded or abusive claims. They are, however, also imputable to persons who from every other point of view are bona fide asylum seekers or refugees. They are related to the fear - entertained rightly or wrongly - that the presentation of regular documentation to the immigration authorities could result in refusal of leave to enter the desired country. This fear is obviously justified when the asylum seeker or refugee has received genuine and full protection elsewhere. In other cases the fear is not justified by the facts but instilled by hearsay and strengthened by ignorance. But in all cases the fear of bona fide asylum seekers or refugees is based on an assumption concerning the law or practice of the country of arrival.

161. If the authorities of the country of arrival refuse to examine a request for the grant of asylum or for the determination of refugee status in implementation of the principle of the 'first country of asylum', the asylum seeker is compelled to move to another country and may become a 'refugee in

orbit'. As stated earlier<sup>60</sup>, movements of 'refugees in orbit' are not intrinsically irregular in as much as they belong to the original flight from the country where persecution is feared. There is, however, more than a hypothetical risk that on his first or on a further journey 'in orbit' the asylum seeker will resort to hiding or destroying his identity or travel document.

162. Other aspects of conditions in countries of arrival may be a cause of irregular movements: e.g., deterrence measures applied to asylum seekers, abnormally low rates of recognition of refugee status entailing high rates of refusal of asylum, the lack of immediate employment opportunities. These factors may incite asylum seekers or refugees to leave the industrialized countries of arrival at any stage before or after the competent authorities have taken a decision on their asylum request, and to move on to other (industrialized) countries. In doing so they may or may not follow normal immigration procedures. If they do not they might be tempted to resort to malpractices relative to their identity or travel documents and would engage in irregular movements.

163. There are also indications that conditions in countries of arrival may incite asylum seekers to avoid countries where conditions are not, or are no longer, those which they expected and to try to go to another industrialized country. Tables XXV to XXVIII show the 'redistribution effect of conditions in countries of arrival'.

164. Tables XXV and XXVI are a record of arrivals of major nationality groups of asylum seekers in fifteen countries of Europe and North America during the years 1981 through 1984. The six groups of asylum seekers have been given code letters from A to F according to the country of origin (one European, two African and three Asian countries). Countries of arrival are coded N to Z. The reading of the percentages given in Table XXVI shows, for instance, that arrivals from country B in the main country of arrival N has fallen steeply from 88 per cent in 1981 to 38 per cent in 1983 and has increased again to 47 per cent in 1984. During the same period there has been a significant increase in arrivals in neighbouring countries, e.g. P, Q and R. The movement is similar for the nationality groups A, C and D. As regards groups E and F, the decrease in the main country of arrival O is a continual movement.

165. Tables XXVII and XXVIII allow for an easy reading of this 'redistribution effect' which is shown separately for countries of arrival in Europe and in the 'ensemble' of Europe and North America. It goes without saying that many detailed conclusions could be reached through a more detailed analysis of each figure as related to policy changes in the country of arrival concerned. Our limited purpose is to demonstrate that conditions in countries of arrival exert a direct influence on the distribution of arrivals over the group of industrialized countries. The figures also show that changes in policy can stem the flow of arrivals in a specific country, but not globally. Furthermore, the drop in arrivals is a temporary one, as indicated by the increases recorded in 1984. These increases coincide with a proportional rise in various categories of irregular movements.

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<sup>60</sup> Cf. paras. 39-42.

IV. Analysis of irregular movements from the point of view of the interests of States and of the fundamental principles of international refugee law

The interests of States

166. There is no standard definition of 'interests of States' in relation to refugee problems. It is obvious, however, that "the system of protection of and assistance to refugees is a dynamic compromise between the requirements of the refugees and the willingness and capacity of States to satisfy these requirements in accordance with the principles of refugee law".<sup>61</sup>

167. Although purporting mainly to provide a status for refugees, the 1951 Convention contains a number of provisions clearly meant to protect the interests of States, viz.:

- The geographic limitation as well as the limitation 'ratione temporis': "events occurring in Europe before 1 January 1951" contained in Article 1.B (1)(a) - fortunately removed (at least in a majority of countries) by the Protocol of 1967 - were meant to protect Contracting States from unknown future developments.
- The 'general obligations' of refugees (Article 2) are meant to protect the Contracting State against situations not compatible with its legal and political system.
- The 'provisional measures' of Article 9 are meant to protect the national security of the Contracting State.
- The restrictions with respect to wage-earning employment provided for by Article 17 are meant to protect the labour market.
- The possibility of making reservations (Article 42) is also meant to enable a Contracting State to protect its economic and social system. This possibility is, of course, a general provision of international treaties.

168. The interests of States with respect to refugees, particularly with regard to the grant of durable asylum, may be listed as follows:

- to preserve the existing political, economic and social system;
- to preserve the standard and also the pattern of living of the population of the State concerned;

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<sup>61</sup> Cf. Preliminary Note on the Study of irregular movements of asylum seekers and refugees (WG/M/1), para. 19.

- to prevent tensions within the resident population and/or between the resident population and the State authorities;
- to prevent tensions, or conflicts, with neighbouring or other States. 62

169. The question arises as to whether irregular movements of asylum seekers and refugees have or could have an adverse effect on the interests of States. It is proposed to examine this question with respect to each category of irregular movement.

170. The direct arrival of persons who make manifestly unfounded or abusive applications for refugee status or asylum has been identified as an irregular movement.<sup>63</sup> The handling of such applications may be an additional strain for the authorities entrusted with the examination of asylum applications. This is particularly true as this category includes persons who use false or fraudulent documents or allege that they have no documents. In regard to manifestly unfounded or abusive applications the Executive Committee has:

"Noted that applications for refugee status by persons who clearly have no valid claim to be considered refugees under the relevant criteria constitute a serious problem in a number of States parties to the 1951 Convention and the 1967 Protocol. Such applications are burdensome to the affected countries and detrimental to the interest of those applicants who have good grounds for requesting recognition as refugees;"<sup>64</sup>

171. It must be assumed that the authorities will ultimately detect these applications and that the applicants will finally be removed from the territory of the State where they have sought asylum in an abusive manner. Nevertheless, the strain on the administrative machinery is considered all the more detrimental to the interests of the State concerned where this particular irregular movement assumes large dimensions. In such cases the embarrassment and the additional financial outlay for administrative purposes are felt to be excessive.

172. With regard to the movement 'in orbit' of refugees without an asylum country, we have concluded that on account of its being an aspect of the direct arrival of asylum seekers/refugees, it should not be considered irregular. It may be useful to note, however, that this type of movement has on occasion caused tension between (neighbouring) States. Indeed, the authorities of State A may suspect the authorities of (neighbouring)

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62 In the Preamble to the 1951 Convention:

"The High Contracting Parties

.....

Express(ed) the wish that all States, recognizing the social and humanitarian nature of the problem of refugees, will do everything within their power to prevent this problem from becoming a cause of tension between States,".

63 Cf. para. 79.

64 Cf. Conclusion No. 30 (XXXIV), para. (c).

State B of facilitating the transit towards State A of asylum seekers whom State B does not wish to admit.<sup>65</sup> Such suspicions, which on occasion are reflected in the press,<sup>66</sup> do not contribute to good-neighbourly relations.

173. Another aspect of irregular movements are the unscheduled, spontaneous arrivals in order to seek durable asylum or resettlement opportunities by asylum seekers who have sojourned for a protracted period in other countries, particularly if these movements are effected by 'protected' asylum seekers/refugees. These arrivals are undesirable specifically from the point of view of immigration rules and immigration policy. The relation between such arrivals and the interests of States exists, therefore, mainly at the level of the authorities. Indeed, where small numbers are at stake, these legal and administrative inconveniences are not perceived by the public at large and their impact on the interests of States is of a limited nature.

174. The situation is different where large numbers are involved: in this case the administrative difficulties and the legal embarrassment are compounded by adverse reactions from the public. The numerical analysis has not made it possible to assess the respective sizes of unscheduled arrivals from other countries of fully protected asylum seekers/refugees and of unprotected (or insufficiently protected) asylum seekers/refugees. Whatever the position may be, in the general perception of both the authorities and the public, these unscheduled arrivals are, on account of their geographic origin, part and parcel of extra-regional arrivals.

175. We have also analyzed the problem of extra-regional arrivals and have concluded that inasmuch as they are a form of direct arrivals they should not be considered irregular movements. They may nevertheless raise a problem for numerical reasons because refugees arriving from far away areas integrate with much greater difficulty in the economic and social fabric of countries of asylum on account of cultural and ethnic differences. The numerical analysis as well as recent statements by government officials show that the extra-regional factor is probably a major reason, if not the reason, for the present preoccupations of governments.<sup>67</sup> The increased numbers of extra-regional arrivals, although still very small in comparison with the total resident population, are perceived as a particular difficulty with regard to the preservation of the existing political and social systems and of the existing standards and patterns of living of national populations. Furthermore, the increased numbers of extra-regional arrivals elicit adverse reactions within the population and are, or may be, a cause of internal tensions.

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<sup>65</sup> Cf. also paras. 163-165 and Tables XXV to XXVIII on the 'redistribution effect of conditions in countries of arrival'.

<sup>66</sup> Cf. The Daily Telegraph, London, 13 June 1985.

<sup>67</sup> Cf. Annex IV.

176. Finally, the analysis of available figures and the above considerations point to the following conclusions:

- (a) The irregular movement which most obviously affects the interests of States is that of non-refugees who make manifestly unfounded or abusive applications for recognition of refugee status and/or the grant of asylum.
- (b) As regards other movements of asylum seekers/refugees the interests of States do not seem to be seriously affected merely on account of their technical irregularity; the irregular aspect is perceived as a problem principally by the authorities concerned.
- (c) The interests of States are affected in the main by adverse reactions from the population and by ensuing tensions which are related chiefly to increasing numbers and to the extra-regional nature of arrivals, whether regular or irregular.
- (d) Tensions between (neighbouring ) States are not normally caused by the irregular character of refugee movements. Tensions between countries of origin and countries of arrival may be caused, however, by large numbers of direct arrivals, for historical and geo-political reasons which are not being discussed in the present Study.
- (e) Tensions between States can also occur on account of conditions of admission in countries of arrival and of treatment of asylum seekers in these countries during the pre-asylum period, e.g. if they cause movements 'in orbit'.

#### Fundamental principles of international refugee law

177. An overview of the period of more than 60 years since the appointment of the first High Commissioner for Refugees by the League of Nations in 1921 shows that a complex international system of protection and assistance to refugees has evolved. This system includes conventions and other treaties, solemn declarations of principles, resolutions and interpretative texts by political or other bodies, and institutional arrangements with corresponding practices in refugee matters. The general principles on which this system is based are fairly simple ones:

- the refugee is entitled to protection from persecution;
- the refugee has duties towards the State which affords him protection;
- the refugee is entitled to a durable solution to his/her problems and specifically to a satisfactory status as regards his/her civil, economic, social and cultural rights.

178. It is largely on account of these principles that it has been possible in Section II of this study to distinguish between 'regular' and 'irregular' movements of asylum seekers and refugees. Direct arrivals of asylum seekers/refugees from a country where they fear persecution are regular movements because to consider them irregular from the point of view of international refugee law would amount to a denial of protection from persecution.

179. The only category of direct arrivals which should be considered irregular is that of persons who make manifestly unfounded or abusive applications for refugee status or asylum, precisely because well-founded fear from persecution is not at stake and because these persons are, therefore, not entitled to protection from persecution. The difficulty of identifying persons in this category during the actual procedure of determining refugee status and/or examining asylum requests does not invalidate this principle position.

180. The travel of asylum seekers/refugees to a third (or fourth, etc.) country has also been examined from the point of view of fundamental principles. There is a considerable difference between the unprotected or insufficiently protected asylum seeker/refugee who still requires durable asylum and the protected asylum seeker/refugee who wishes merely to resettle, albeit for very legitimate economic, social or personal reasons.

181. We need not repeat here our analysis of paras. 56 - 72 above. Available figures have not shown whether irregular movements are more significant where protected asylum seekers/refugees are involved or, on the contrary, whether irregular movements to third (or fourth, etc.) countries are numerically more significant where unprotected or insufficiently protected asylum seekers/refugees are concerned. Hence the paramount importance of examining in each case whether full protection from persecution had been afforded and whether a genuine durable solution was available in the country of 'shelter' or 'first asylum'.

## V. Discussion of possible solutions

### Preliminary remarks

182. Arrivals of asylum seekers/refugees raise problems. Arrivals of asylum seekers/refugees who come within the framework of irregular movements create additional and sometimes very specific problems. We have noted in the preceding sections of this study that the situation varies greatly according to the country of asylum or potential asylum with regard to both the type of irregular movement and its numerical scope and impact. The question arises whether these irregular movements can be prevented or averted.

183. In view of the diversity of irregular movements, and of the differing significance of each type of irregular movement for the various countries of asylum or potential asylum, we propose - in accordance with the approach followed throughout this study - to review possible solutions with respect to each type of irregular movement.

184. The analysis has shown that there are structural links between the various aspects of irregular movements. The most obvious common factor is the movement from developing countries towards industrialized countries. The question arises, therefore, whether in addition to specific measures in

specific situations, solutions can also be envisaged which would have a general effect on several types of irregular movements.

185. Similarly, the movement from developing towards industrialized countries is a main characteristic of contemporary migratory movements. This reminds us that while refugee movements are primarily a phenomenon of fear and flight, they may under certain circumstances take the shape of a migratory movement. The phrase 'political migration' has been used as opposed to migration in general or to 'economic migration'. The connection between refugee movements and general migratory movements should be kept in mind particularly with regard to multi-purpose solutions.

186. Whatever solutions might be envisaged with a view to preventing irregular movements of asylum seekers/refugees, no illusions should be entertained as to the possibility of complete prevention. Human actions cannot be completely checked by administrative or legal measures. If any one or more of the solutions envisaged could merely diminish the numbers of asylum seekers/refugees who engage in irregular movements, this would be a modest, realistic and worthwhile objective.

#### A. Possible solutions to the various aspects of irregular movements

##### Manifestly unfounded or abusive applications

187. As stated repeatedly in this study, the most obvious irregular movement is that of persons who make manifestly unfounded or abusive applications for recognition of refugee status and/or grant of asylum. It has also been shown that we are not dealing in this case with a refugee movement. By definition, these persons are not refugees and will not be recognized as refugees. They belong to a specific group of migrants which has to be handled within a refugee context because they have chosen to circumvent immigration policies and immigration rules under the false pretence of fear of persecution. The fact that persons making manifestly unfounded or abusive applications are non-refugees, but are nevertheless an integral part of a flow of arrivals which includes bona fide asylum seekers/refugees, should be a major consideration in the search for solutions.<sup>68</sup>

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<sup>68</sup> These considerations apply to 'manifestly unfounded or abusive applications' as defined by the Executive Committee in its Conclusion No. 30 (XXXIV) - cf. Annex II. A trend seems to be emerging, however, to enlarge this definition to applications which may be unfounded for substantive reasons but which are not necessarily 'abusive' nor 'manifestly' unfounded. In the Federal Republic of Germany the Bundesrat has proposed the insertion in the "Asylverfahrensgesetz" (cf. para. 70, note 42 of the following new provisions:

"If an alien derives the persecution alleged in his asylum request from the persecution claimed by a dependant, his asylum request is to be refused as manifestly unfounded if the asylum request of the dependant has been refused without possibility of appeal (unanfechtbar) or if against the dependant an order to leave (the territory) has been issued which may be implemented (vollziehbar) despite the pending asylum procedure and is enforceable (vollstreckbar)" (new paragraph 7 a)

"An asylum request is in particular manifestly unfounded when it is obvious that the alien has entered the territory for which this law is valid only for economic reasons or in order to escape from a situation of general distress or from a war-like conflict." (to be added to paragraph 11.1)



188. With a view to containing arrivals of persons making manifestly unfounded or abusive applications States, starting with the period 1980/1981, have reimposed the obligation of entry visas on travellers of specific nationalities. The reintroduction of visa requirements was meant not only to counteract irregular immigration (for economic reasons) but specifically "to contain the abuse of asylum".<sup>69</sup> In order to promote international relations, particularly as regards business and tourism, considerable progress has been made in recent decennia in the lifting of visa requirements. The visa requirement remains nevertheless (subject, of course, to treaty obligations) a matter of domestic jurisdiction of States and is recognised as a legitimate method of controlling the entry of aliens. Whether it is a legitimate means if it is used to prevent deliberately the arrival of asylum seekers is a matter for discussion. It may well be inconsistent with accepted principles of asylum.

189. In an attempt to stem arrivals of persons making manifestly unfounded or abusive applications an increasing number of States have also resorted in recent years to 'measures of deterrence' which are being applied indiscriminately to all categories of asylum seekers. The principal measures of deterrence are the following:

- compulsory assignment to reception centres or other types of collective accommodation;
- prohibition to take up work either for a limited period (one to two years) or throughout the entire period of pre-asylum;
- withholding facilities for language tuition, vocational training, etc.;
- restrictive regulations regarding subsistence allowances and/or medical services;
- in extreme cases, detention well beyond the short period which may be required for identification purposes.

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69 "To contain the abuse of asylum the following immediate administrative measures have inter alia been taken: the reintroduction of the visa requirement for aliens from the main countries of origin of asylum seekers, the prohibition to take up employment during the first two years of the asylum procedure, the suppression of children allowances to asylum seekers, the grant of social assistance - whenever possible - in kind, the accommodation of asylum seekers in collective facilities ....."

(Cf. Bundesregierung: Probleme des Asylrechts, p. 2 - see note 50 to para. 94)

In a "Resolution of the Bundesrat with a view to containing the abuse of asylum" the Upper House believes that it is necessary, inter alia, to suppress "the stop-over privilege" for nationals of the main countries of origin of asylum seekers; to compel air transport companies to carry to the Federal Republic of Germany only aliens with the necessary entry or transit visa "in order to prevent aliens ...from requesting asylum at a stop-over in the Federal Republic of Germany"; to agree with member States of the European Communities on similar visa requirements. (Cf. Bundesrat: Entschliessung des Bundesrates zur Eindämmung des Asylmissbrauchs, Drucksache 100/85 (Beschluss), 14.06.85)

190. These measures of deterrence have elicited adverse reactions not only from non-governmental organizations concerned with refugees or more generally with human rights<sup>70</sup> but also from inter-governmental organizations<sup>71</sup> and from governments.<sup>72</sup> The objections against these measures of deterrence are manifold:

- the very concept of deterrent measures is not consistent with the fact that the States concerned are parties to international legal instruments relating to refugees and human rights;
- some measures of deterrence (e.g. abusive detention,<sup>73</sup> compulsory assignment to collective accommodation as a specific deterrent) are not consistent with provisions of the 1951 Convention relating to the Status of Refugees;
- specific measures of deterrence are not compatible with international legal instruments on human rights to which States are parties;
- specific measures of deterrence (e.g. work for food) are not compatible with other international obligations undertaken by the States concerned;<sup>74</sup>
- measures of deterrence may affect the physical and mental health of asylum seekers/refugees.<sup>75</sup>
- measures of deterrence are applied in an indiscriminate manner to asylum seekers who submit manifestly unfounded and abusive applications as well as to bona fide asylum seekers.

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<sup>70</sup> Cf. inter alia European Consultation on Refugees and Exiles: Restrictive Asylum Policy in Europe, Report of the Seminar held in Zeist, the Netherlands, 16-18 January 1985, London, 1985.

<sup>71</sup> The Committee on Migration, Refugees and Demography of the Parliamentary Assembly of the Council of Europe is examining at the time of writing the living and working conditions of refugees and "refugee applicants". Documents are not yet available for quotation.

<sup>72</sup> Cf. para. 246 below.

<sup>73</sup> Cf. International Institute of Humanitarian Law: The Treatment of Refugees, with particular reference to the Problem of Detention, Conclusions (of the) Xth Round Table on Current Problems in International Humanitarian Law (San Remo, 17-20 September 1984), (San Remo), October 1984.

Cf. also Note on International Protection, submitted by the High Commissioner (to the) Executive Committee of the High Commissioner's Programme: Thirty-fifth session, A/AC.96/643, 9 August 1984, paras. 25-30; Thirty-sixth session, A/AC.96/660, 15 July 1985, paras. 26-29.

191. Another objection of a much more pragmatic character may be raised against the policy of deterrence: it is not effective. The analysis of available figures tends to show that in States practising deterrence the numbers of arrivals declined sharply after the first measures had been introduced. In subsequent years, however, the number of arrivals has again increased while the policy of deterrence has been maintained if not made more stringent.<sup>76, 77</sup> This leads to the conclusion that while a policy of deterrence is objectionable from the point of view of international law, specifically of human rights law and of refugee law, its efficacy is to say the least doubtful.

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<sup>74</sup> Cf. International Labour Conference, 70th Session 1984: Report III (Part 4 A), Report of the Committee of Experts on the Application of Conventions and Recommendations, General Report and Observations concerning Particular Countries, Part Two, Observations concerning Particular Countries, I. Observations concerning Annual Reports on Ratified Conventions (Article 22 of the Constitution), B. Individual Observations, Convention No. 29: Forced Labour, 1930. According to this Report (pp. 76-77) the fact of compelling asylum seekers to perform "socially useful work" ... "if they are to maintain their welfare entitlements" is not in conformity with Convention No. 29.

Cf. also Stolleis, Prof. Dr. Michael: "Ist die generelle Kürzung der Sozialhilfe ( 120 BSHG) für eine gesamte Personengruppe mit dem Grundgesetz und dem System des BSHG vereinbar?" - Ein Rechtsgutachten (A legal opinion on the conformity of the global reduction of social assistance for one group of persons with the Constitutional Law and the Federal Law on Social Assistance), ZDWF-Schriftenreihe Nr. 7, Zentrale Dokumentationsstelle der Freien Wohlfahrtspflege für Flüchtlinge e. V. (ZDWF), Bonn, Januar 1985. This opinion, given at the request of the UNHCR Representative, concludes that curtailment of social assistance on a group basis cannot be legally reconciled neither with the Federal Constitution nor with the relevant Federal Law.

<sup>75</sup> A/AC.96/660, para. 2.

<sup>76</sup> Cf. paras. 159-161 and Tables XX to XXIII.

<sup>77</sup> Cf. Bundesregierung: Probleme des Asylrechts, page 2:

"These measures" (see note 69) "were initially effective; the numbers of applicants for asylum diminished after 1980 (1980: 107 818; 1981: 49 391; 1982: 37 423; 1983: 19 737 persons).

1984 showed on the contrary, with 35 278 persons, again a considerable increase of the number of asylum seekers as compared with the previous year. This may also be ascribed to the fact that the expulsion pressure on minority groups has increased in certain countries. During the first trimester of 1985 the number of asylum applicants, 14 214 persons, has more than doubled in comparison to the same period of 1984 (6 081 persons)....."

192. The problem of manifestly unfounded and abusive applications was recently addressed by the Consultations on the Arrivals of Asylum Seekers and Refugees in Europe held at the initiative of the High Commissioner for Refugees in Geneva from 28 to 31 May 1985. Reference to the problem was made in the "Note by the High Commissioner"<sup>78</sup> and by several government speakers. While one speaker stated that his delegation saw "the concept of manifestly unfounded asylum requests with a certain reservation, particularly as so far no completely satisfying definition could be established",<sup>79</sup> other speakers expressed their preoccupation regarding the numbers of unfounded and abusive requests for the grant of asylum and/or the recognition of refugee status.

193. In so far as some governments tend to consider claims submitted by asylum seekers who flee conflict areas as manifestly unfounded or abusive,<sup>80</sup> it is useful to note the following excerpt from the "Summing Up by the United Nations High Commissioner for Refugees":

" ... Difficulties have however arisen due to the increasing number of arrivals in Europe of persons who do not meet these definitions (of the Convention and Protocol) but who leave their countries of origin in order to escape from severe internal upheavals or armed conflicts. There was general agreement that such persons should be treated humanely and, in particular, should not be returned to areas where they may be exposed to danger. Such humane treatment could be provided within the framework of existing legal structures. These were considered adequate and there did not appear to be any need to revise the international refugee instruments."<sup>81</sup>

194. As already mentioned, the problem of manifestly unfounded or abusive applications was thoroughly examined by the Executive Committee at its thirty-fourth session. The relevant Conclusion No. 30 of the Executive Committee<sup>82</sup> recognizes the legitimate wish of governments to remove as swiftly as possible such applications from the process of examining requests for the recognition of refugee status and/or the grant of asylum and recommends that, at the same time, governments maintain efficient procedural guarantees for the benefit of bona fide applicants.

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78 Cf. Note on the Consultations on the Arrivals of Asylum-Seekers and Refugees in Europe, submitted by the High Commissioner (to the) Executive Committee of the High Commissioner's Programme, A/AC.96/INF.174, 4 July 1985, Annex I.

79 Cf. Plaut, W. Gunther: Refugee Determination in Canada, Proposals for a New System, A Report to The Honourable Flora MacDonal, Minister of Employment and Immigration, (Toronto) April 17, 1985: "I ... have come to the conclusion that the term MUC" (manifestly unfounded claim), "as commonly understood, is a contradiction in itself and should no longer be used." (p. 96)

80 Cf. note 68.

81 A/AC.96/INF.174, Annex V, (a).

82 Cf. Annex II.

Suggestion

195. To the extent that the problem of manifestly unfounded or abusive applications can be handled within the refugee framework, the Working Group may wish to reiterate, within the specific context of irregular movements, Conclusion No. 30 which is in full accord both with the interests of States and with the fundamental principles of international refugee law.

196. Inasmuch as the problem of manifestly unfounded or abusive applications is an aspect of migration movements, it cannot be solved exclusively within the refugee framework. Its solution belongs to the realm of migration and should be considered in this wider context. It is not within the purview of this Study to deal with general migration problems. Attention could be drawn nevertheless to recent international endeavours, e.g., the Seminar organized by the Intergovernmental Committee on Migration (ICM) in April 1983 on "Undocumented Migrants or Migrants in an Irregular Situation",<sup>83</sup> Recommendation 990 (1984) of the Parliamentary Assembly of the Council of Europe,<sup>84</sup> the Colloquy on "Clandestine Migrants in the United States and Europe: National Policy and Human Rights" of June 1985.<sup>85</sup>

Suggestion

197. The Working Group may wish to recommend that in examining migration problems and migration policy and specifically when considering solutions to the problems related to irregular migration movements, governments also take account of the need to attenuate the causes which incite persons who migrate only for general economic reasons to submit manifestly unfounded or abusive applications for the grant of asylum and/or recognition of refugee status.

False or fraudulent documents

198. The problem of false or fraudulent identity documents and travel documents is closely associated with that of manifestly unfounded or abusive applications. It is, however, a separate issue. Although the use of false or fraudulent documents is normally not a problem specific to refugees it has become in recent years a worrying characteristic of the arrivals of

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<sup>83</sup> Cf. Intergovernmental Committee for Migration (ICM): Sixth Seminar on Adaptation and Integration of Immigrants, Geneva 11-15 April 1985, Undocumented Migrants or Migrants in an Irregular Situation, Report of the Seminar, MC/SAI/VI/GEN/VII.

<sup>84</sup> Cf. Parliamentary Assembly of the Council of Europe, Thirty-sixth Ordinary Session: Recommendation 990 (1984) on clandestine migration in Europe

<sup>85</sup> This Colloquy was organised in Strasbourg on 19 and 20 June 1985 by the Secretariat General of the Council of Europe, the Center for the Study of Human Rights, Columbia University, New York, and the International Institute of Human Rights; the report is not yet available at the time of writing.

unscheduled asylum seekers: in some industrialized countries up to 20 per cent of such arrivals came in 1984 with false or fraudulent documents.<sup>86</sup> At the recent Consultations "the practice resorted to by some refugees of moving from one country of asylum to another with fraudulent documentation was deplored".<sup>87</sup>

199. There is no specific method within the refugee context to determine that an identity or a travel document is false or fraudulent. This is a problem which is well known to all aliens police and immigration authorities. The only candid suggestion that can be offered is that new methods of co-operation between States should be sought if authorities feel that they are not sufficiently equipped to deal with the problem. Caution should be exercised, however, with regard to enquiries which the authorities of a State of (potential) protection may wish to make with the authorities of a State where the asylum seeker alleges to fear persecution; immediate family members or more distant relatives of a bona fide asylum seeker - and, of course, the asylum seeker himself - should thereby not be subjected to reprisals.<sup>88</sup>

200. Such measures as the State from which asylum is requested might take against the holder of false documents should depend not only on provisions of municipal law but also on those of international refugee law, specifically if the State is a party to the 1951 Convention. A bona fide refugee may have to resort to false documents and in that case should not incur penalties for his action.<sup>89</sup>

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86 Cf. para. 120.

87 A/AC.96/INF. 174, Annex V, para. (f).

88 According to the Committee of Ministers of the Council of Europe:  
"A ... principle laid down in Recommendation No. R(81)16 is that "the confidential character of the asylum request, of declarations made by the applicant and of the other elements in his file shall be protected" (Principle No. 9). The "travaux préparatoires" for this Recommendation show that this principle was specifically intended to cover relations with the country of origin and the applicant's interest in ensuring the preservation of the confidentiality of his request vis-à-vis his country of origin."

"In the light of the foregoing, it would appear that verifying through enquiries with homeland authorities those assertions of applicants for asylum which concern criminal action could, in certain circumstances, notably the absence of specific examination of information supplied by the authorities of the country of origin, be deemed incompatible with the principles set forth in Recommendation No. R(81)16 of the Committee of Ministers on the harmonisation of national procedures relating to asylum."

(Council of Europe, Parliamentary Assembly: Reply from the Committee of Ministers to Written Question No. 275 by Mr Büchner on procedures for verifying applications for asylum, Doc. 5296, 1 October 1984)

89 Cf. paras. 35 - 38.

Lack of documents

201. As already stated the lack of travel documents and very often of identity documents is a normal aspect of the flight process, particularly where refugees cross a border into a country immediately adjacent to the territory from which they flee.<sup>90</sup> The problem which we have to envisage here is rather that of persons who request asylum and/or claim refugee status after having transitted through one or more countries 'en route' and who report to the authorities of the requested State without documents. This fact raises the question of credibility of the application which should be carefully examined. The suspicion is, of course, that the applicant has hidden or willfully destroyed whatever document he possessed before reporting to the authorities of the requested State.

202. The hiding or destruction of identity and/or travel documents is a growing phenomenon: in one country the proportion of unscheduled asylum seekers arriving, after transit, without documents reached 32 per cent of all arrivals in 1984.<sup>91</sup> There is no doubt that it should be counteracted, both from the point of view of keeping law and order and of eliminating a problem which is detrimental to the cause of bona fide refugees. At the recent Consultations:

"The High Commissioner and other speakers condemned the destruction of their travel documents by some refugees and asylum-seekers upon arrival in the country of destination."<sup>92</sup>

Suggestion

203. Also in this case solutions ought to be found through improved co-operation between States as well as between States and transport companies. A number of measures have reportedly already been taken, also by governments participating in the Working Group. One suggestion might be a more systematic listing of passengers boarding ships or aircraft with an indication of the serial number, type, issuing authority and date of issue of the travel document shown by each traveller upon embarkation. These lists would be made available to the immigration authorities at the port of arrival. Modern reproduction methods should greatly facilitate the preparation of such lists, without adding significant delays to the embarkation process. Other similar methods may be or perhaps have already been devised.

204. Obviously, listing the passengers and their travel documents would have to be a general, non-selective measure. Furthermore, neither the object nor the effect of the exercise should amount to preventing a potential refugee from leaving the country of his nationality (or habitual residence) for fear of persecution. This would contravene the basic principle of the right of asylum as laid down in Article 14(1) of the Universal Declaration of Human Rights.

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<sup>90</sup> Cf. paras. 32 - 34

<sup>91</sup> Cf. paras. 101 - 114 and tables VII - XIV

<sup>92</sup> A/AC.96/INF.174, Annex V, para (f)

205. In looking for solutions to this problem of hidden or willfully destroyed travel documents, governments might wish to remain aware of the obvious danger that a strait jacket of travel regulations might be detrimental to international travel generally and to normal relations between peoples and States, and might be contrary to the fundamental principles of international refugee law. The latter is of course a paramount consideration in the present context.

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206. It has been shown that in certain cases the use of false or fraudulent documents or the hiding or destruction of documents is related to rules or policies governing the admission of asylum seekers/refugees and, more generally, to conditions in 'countries of transit' and 'countries of arrival'.<sup>93</sup> The fundamental solution to this problem of documentation is not to be seen, therefore, in terms of immediate sanctions or of technical prevention but should be sought as part of the overall solutions calculated to prevent irregular movements.

#### Insufficient documentation

207. By insufficient documentation we mean, for the purpose of this Study, documentation which falls short of the requirements which should be met to enter the territory of a given State (e.g. lack of passport or lack of visa) but which is still sufficient to enable frontier police or immigration authorities to identify the traveller.

208. Where direct arrivals are concerned, there is no problem from the specific point of view of international refugee law if the identification of the traveller is made possible and if, therefore, the determination of his refugee status and/or the examination of his request for asylum can take place normally. It would seem that the interests of the State are fully preserved if the holder of insufficient documentation is found to be a bona fide asylum seeker. The situation might be different in States which are not parties to the 1951 Convention and the 1967 Protocol. Irrespective of their decision with regard to asylum, these States may tend to sanction the insufficient character of documentation on account of national migration regulations. This is only one of the many reasons why non-Contracting States should be further encouraged to accede to the Convention and Protocol.

209. A problem of violation of immigration rules would arise in cases where the holder of insufficient documentation is not a refugee or is an asylum seeker/refugee who, on account of a sojourn of some length in a third country, is expected to hold the required documentation.<sup>94</sup>

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93 Cf. paras. 133 - 143 and 158 - 162.

94 Cf. paras. 218 and 238.



Suggestion

210. The carrying of insufficient documentation (as distinct from false or fraudulent documents or lack of documents) should be viewed as a problem only in those cases where the asylum seeker/refugee has sojourned for some time in a third country and obviously also when non-refugees are concerned. As an immediate response the violation of immigration rules should be dealt with in all these instances in accordance with the law. In the long run results should also be expected within the framework of overall solutions to the problem of irregular movements.

Refugees without an asylum country

211. We have referred to movements 'in orbit' under the limited aspect of direct arrivals of individual refugees. At its thirtieth session the Executive Committee examined the problem in a wider context, including the case of refugees who for various reasons lose their right to reside in or to return to their country of asylum, without having acquired the right of residence in another country; the case of refugees who leave their country of asylum for compelling reasons; and further, situations involving a large-scale influx of asylum seekers.<sup>95</sup>

212. Whereas the movement 'in orbit' of asylum seekers/refugees arriving directly (i.e. after transitting through other countries) from the territory where they fear persecution should not be considered an irregular movement from the point of view of international refugee law, it may nevertheless be perceived as irregular by the authorities of the State where asylum is sought. It is indisputably an embarrassing aspect of refugee movements.

213. The current assumption is that the problem is a small one, but there are no numerical data available. Whatever the numbers may be, the solution appears to rest entirely and exclusively within the purview of co-operation between States. It is unlikely that an agreement which would have to deal with fairly complex criteria could easily be reached at world-wide level. The fact should be welcomed, therefore, that member States of the Council of Europe have reportedly made a serious effort to draft an agreement of regional import. At the same time, it can be regretted that such an agreement between European States has not yet come to fruition. The hope can reasonably be expressed that if a regional European agreement could be reached it might later be widened to include other States or alternatively, it might serve as a pattern for other similar regional arrangements.

214. The problem of "refugees without an asylum country" was extensively dealt with at the recent Consultations. In his Note the High Commissioner recommended the "relaunching of the initiative to conclude an agreement on identifying the country responsible for examining an asylum request".<sup>96</sup> References to these "cruel games which discredit" European governments and to the need to reach an agreement were made by several government speakers and also by the spokesman of the non-governmental organizations. In summing up the discussions the High Commissioner stated:

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<sup>95</sup> Cf. Collection of Notes: Note VII, paras. 4 - 18.

<sup>96</sup> A/AC.96/INF.174, Annex I, para. 43 (g).

"It was recognized that the problem of identifying the country responsible for examining an asylum request continues to give rise to difficulties for European States and also for refugees who might find themselves in an 'orbit' situation. It was felt that this problem called for solution and that the initiative taken in this regard within the Council of Europe should be reactivated, possibly with a fresh approach."<sup>97</sup>

Suggestion

215. The Working Group may wish:

- to re-emphasize the importance of elaborating common criteria in order to identify the country responsible for examining an asylum request, along the principles set out in Conclusion No. 15 reached by the Executive Committee at its thirtieth session;
- to recommend that States which have laid the basis for regional co-operation in this matter pursue their endeavours;
- to recommend to other States that they establish the necessary contact at regional level with a view to reaching a regional consensus - and if possible a firm regional agreement - in accordance with the principles formulated by the Executive Committee in Conclusion No. 15.

Unscheduled, spontaneous arrivals of unprotected asylum seekers/refugees

216. The unscheduled, spontaneous arrival for purposes of obtaining durable asylum and resettlement opportunities at the border (or airport) of a given State, of asylum seekers/refugees who have sojourned for several months or several years in one or more countries without having received any formal protection against refoulement, let alone temporary or durable asylum, may be caused by a variety of reasons:

- (a) The asylum seeker (and his family) may be confined to a reception centre or camp (no freedom of movement, no basic legal rights, mere subsistence rations, no income, etc.).
- (b) The asylum seeker can no longer cope with a precarious legal situation: lack of a residence right and/or of a residence permit, threat of refoulement, threat of expulsion, danger of detention.
- (c) This feeling may be strengthened if the political situation in the country of shelter has deteriorated (internal tensions, tensions or conflicts with other States).
- (d) This feeling may also be strengthened by the fact that the asylum seeker cannot or can no longer exercise a gainful occupation, particularly if the economic situation in the country of shelter has deteriorated.

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<sup>97</sup> A/AC.96/INF.174, Annex V, para. (e).

- (e) The asylum seeker and/or his children may not have access or easy access to educational institutions.
- (f) The asylum seeker has no possibility or believes that he has no possibility of obtaining a (resettlement) visa for the country where he expects to find durable asylum and acceptable living conditions.
- (g) The asylum seeker may have failed in his applications for a (resettlement) visa on account either of restrictive quotas instituted by the country of prospective resettlement or of immigration rules.

217. It goes without saying that various reasons prompting the asylum seeker to seek durable asylum may coincide and practically compel the asylum seeker to move on. (We have deliberately omitted from the above list the case where the asylum seeker has to leave the country of shelter for fear of persecution. As already stated, this case must be viewed as another form of direct arrival.)

218. The travel of unprotected asylum seekers/refugees in search of durable asylum and resettlement is prima facie not an irregular movement from the point of view of international refugee law, except if the asylum seeker is in a position to apply for a (resettlement) visa and has reasonable expectations of receiving that visa. This problem was discussed in detail in paras 56-63 of the present Study. On the other hand, there is no specific merit in encouraging unscheduled travel for resettlement if reasonable and durable solutions can be found in the country of shelter. It may be in order, therefore, to examine whether solutions are available, irrespective of whether a given movement is theoretically irregular or not.

#### Improving protection

219. The major problem is that this category of asylum seekers/refugees is unprotected (reasons (a), (b), (d) and (e) in para. 216 above). This situation occurs practically only in States which are not parties to the international legal instruments relating to refugees. To change the situation it would be necessary for the State concerned either to accede to the 1951 Convention and the 1967 Protocol and if it is an African State also to the OAU Convention of 1969, or alternatively to promulgate municipal laws affording to asylum seekers/refugees equivalent provisions of protection. It goes without saying that mere accession to an international legal instrument is not sufficient and that action should also be taken to ensure the effective implementation of these instruments in the territory of the new Contracting State. The kind of legislative measures required for this purpose will depend on the constitutional arrangements prevailing in each State concerned.

220. The High Commissioner for Refugees has from the very outset taken action with a view to:

"Promoting the conclusion and ratification of international conventions for the protection of refugees, supervising their application and proposing amendments thereto".<sup>98</sup>

The General Assembly of the United Nations and also the Executive Committee have adopted practically every year resolutions or conclusions calling upon States to accede to the international legal refugee instruments. These steps have been successful and have resulted in the present situation where 98 States (out of approximately 170 member and non-member States of the United Nations) are parties to the Convention and Protocol. This process, however, has taken more than 30 years!

221. New methods might have to be devised with a view to speeding up accession of the remaining States to the Convention and Protocol. One method might be a series of ad hoc regional consultations. These should include a majority if not all governments in the regional area concerned and should provide a forum where the problems relating to further accessions could be discussed between States which are familiar with their respective difficulties. It may usefully be recalled that considerable progress in the legal field has been made on the African continent as a result of the Conference on the Legal, Economic and Social Aspects of African Refugee Problems held in Addis Ababa from 9 to 18 October 1967<sup>99</sup> and of the Conference on the Situation of Refugees in Africa held at Arusha, United Republic of Tanzania, from 7 to 17 May 1979.<sup>100</sup> Reference should also be made to the Cartagena Declaration on Refugees adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama held in Cartagena de Indias, Colombia, from 19 to 22 November 1984.

#### Refugee camps

222. To the limited extent that unscheduled travel originates from refugee camps - para. 216(a) - the obvious solution consists in providing a durable solution for their inmates through voluntary repatriation, local settlement in the country of shelter or resettlement in a third country. Meanwhile, the situation of camp dwellers could be considerably improved if the government concerned implemented the "measures of protection" recommended by the Executive Committee in Conclusion No. 22 on Protection of asylum seekers in situations of large-scale influx and specifically if the government afforded to camp dwellers the "treatment of asylum seekers who have been temporarily admitted to a country pending arrangements for a durable solution".<sup>101</sup> This Conclusion is relevant for States parties to the 1951 Convention and 1967 Protocol as well as for non-Contracting States.

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<sup>98</sup> Cf. Statute of UNHCR (Annex to General Assembly Resolution 428(V), para. 8(a).

<sup>99</sup> Cf. Final Report, Chapters III and V (stencil).

<sup>100</sup> A/AC.96/INF.158

<sup>101</sup> Cf. Annex III.

223. As to durable solutions for camp dwellers, these have traditionally been a priority problem of international endeavours on behalf of refugees and it is not proposed to elaborate on this subject in the present Study.

#### Improving economic conditions

224. The difficulty or impossibility for the asylum seeker/refugee to earn a living - para. 216(d) - is naturally a powerful 'push factor' of unscheduled travel to other countries. While it is also linked with the absence of a legal protection framework, it results primarily from the economic and social situation in the country of shelter. It is proposed to revert to this major subject in paras. 268-275 below.

#### Education facilities

225. Lack or difficulty of access to education - para. 216(e) - is a significant cause of unscheduled travel particularly as regards asylum seekers/refugees of urban background who are the major component of the category of unscheduled travellers. It is immediately related to the lack of an adequate legal framework. The need for education programmes for refugees has long been recognized and considerable efforts are being made in this field by governments as well as by inter-governmental and non-governmental organizations. Whether those efforts are sufficient in any particular situation will depend upon the circumstances.

226. A general remark could be made: education programmes will prevent unscheduled travel in search of durable asylum and resettlement opportunities only if there is at the same time sufficient economic and social progress in the country concerned to provide young people with employment opportunities when they complete secondary or higher education. Otherwise, education programmes may feed the flow of unscheduled travellers in search of employment elsewhere. This merely underscores the fact that while specific solutions are necessary to counteract unscheduled travel, they must fit into a coherent global approach.

#### Resettlement opportunities

227. The urge of unprotected asylum seekers/refugees to seek durable asylum and resettlement opportunities need not be explained or justified any further than has been done in this Study. It is felt more intensely by asylum seekers/refugees of urban background whose education level ranges from primary to university education. The majority of them are aware of the need to obtain the necessary documents: a passport and a visa. They will, therefore, undertake unscheduled journeys only (or mainly) if they cannot obtain such documentation, if they believe that they cannot obtain it, or if they have failed in their attempts to obtain it - cf. para. 216(f) and (g).

228. Three series of solutions come to mind:

- to provide an alternative durable solution through voluntary repatriation;
- to provide an alternative durable solution through local settlement;
- to provide efficient resettlement machinery.

229. The problem of voluntary repatriation is well known. It is not specific to the question of irregular movements. We propose to revert to it later in this Study (see paras 263-267). As to the alternative durable solution through local settlement, it has been touched upon in paras. 222-224 above but also requires a further discussion.<sup>102</sup>

230. The problem of resettlement opportunities is a fundamental aspect of the question of irregular movements. If resettlement in industrialized countries were a free-for-all we would not need to analyze such disturbing phenomena as manifestly unfounded or abusive applications, fraudulent documents and indeed any other aspect of irregular movements. In his Note submitted to the Consultations, the High Commissioner stated:

"In the present context of arrivals of asylum-seekers and refugees in Europe, the question arises as to what extent the establishment of resettlement programmes could contribute towards a solution. In this regard, it is recalled that the reception by European countries of Indo-Chinese refugees from South-East Asia was an exceptional response to a particular situation and did not reflect the ongoing policies of the Governments concerned. Some European countries do accept refugees from countries of first asylum. The number of such resettlement places is relatively small and even a very substantial increase would not solve the problem of spontaneous arrivals, except as part of a global solution which would have to be co-ordinated with the resettlement programmes of major immigration countries. Such a scheme could, however, facilitate the co-ordination of arrangements to receive refugees and permit more effective utilization of limited resources for those refugees in the greatest need of resettlement, such as emergency or disabled cases. The sine qua non for any such scheme would be that participation would be entirely without prejudice to obligations under international instruments and customary practice with regard to asylum-seekers arriving directly from countries of origin."<sup>103</sup>

and he suggested that:

"Solutions ... could include ... consideration of the appropriateness of establishing limited resettlement programmes as one element in an overall approach to the problem, ..."<sup>104</sup>

231. Eventually during the Consultations, government speakers emphasized repeatedly the need for solutions in the geographic area of origin of asylum seekers/refugees and demonstrated reticence regarding resettlement in industrialized countries. Only two or three speakers referred to "regular

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102 Cf. paras. 268-275.

103 A/AC.96/INF.174, Annex I, para. 31.

104 Ibidem, para. 43(d).

refugee resettlement programmes" or to the "acceleration of resettlement procedures (which) could ... considerably reduce the emergence of irregular movements of refugees or asylum seekers". Finally, the relevant paragraph of the Summing-Up does not refer specifically to resettlement:

"The special burden to which countries of first asylum are exposed due to the arrival of large numbers of asylum-seekers was fully recognized, as was the continuing need for international solidarity and burden sharing. European and other countries of the industrialised world should continue to relieve the burden of countries of first asylum by all appropriate measures, including the provision of durable solutions, to assist in the regions. It was further felt that such durable solutions would be of particular importance because they would help to reduce the incentives for refugees to leave countries of asylum in the developing world by irregular means."<sup>105</sup>

232. The fact remains that solutions to the problem of irregular movements must be related to their actual causes. Regional solutions (see paras 259-276 below) may relieve the emigration pressure in 'countries of departure' but positive results may be expected only in the long run. If the international community wishes to provide an immediate response to the problem of irregular movements it should necessarily include adequate resettlement opportunities. In this respect the differences of attitude concerning resettlement between traditional countries of immigration and other industrialized countries are fully appreciated.

233. Efficient resettlement machinery could be established either unilaterally by governments of the countries of prospective immigration or multilaterally by a series of governments in co-operation with inter-governmental agencies (UNHCR, ICM) and non-governmental organizations. Unilateral action by governments may be sufficient in countries of shelter where the number of potential immigrants is limited. The measures to be taken are well known:

- establishing (or strengthening of) a migration section with the consular or diplomatic representation;
- establishing (or increasing, if need be) a numerical quota per month or per year, etc.

Action of this kind could appropriately be taken by governments of industrial countries who wish to regularize existing irregular movements or who have reason to believe that irregular movements towards their country are impending.

234. Where large numbers of potential immigrants are concerned a resettlement system based on multilateral co-operation is required. Experience shows that adequate international co-operation in resettlement can effectively cope with refugee flows. The still on-going resettlement system on behalf of refugees and displaced persons from South East Asia is undoubtedly the best example. Out of more than two million persons who left the country of their nationality or habitual residence in South East Asia between early 1975 and the end of April 1985, over one million have been resettled to countries of durable asylum, the majority in countries outside the region. (Another million fled directly to countries

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<sup>105</sup> A/AC.96/INF.174, Annex V, para. (b).

of durable asylum, repatriated or are still waiting for solutions.) In this example, the countries of shelter were not and unfortunately are still not parties to the Convention and Protocol.

235. The Executive Committee has at each of its sessions, after reviewing the resettlement activities of UNHCR, constantly encouraged States to facilitate durable solutions of refugee problems by the admission of refugees in need of resettlement. It is well known that resettlement has been from the outset one of the three classical durable solutions to which governments and also UNHCR are committed. At the end of its thirty-fifth session, held in October 1984, the Executive Committee made its customary decisions on UNHCR assistance activities and with respect to resettlement:

- "(a) Reiterated the importance that Governments continue to admit refugees who, in the absence of any other durable solution, are in need of resettlement;
- (b) Noted with appreciation action taken by Governments to facilitate admission of refugees, inter alia, through the establishment of resettlement programmes for refugees;
- (c) Recommended that Governments co-operate with UNHCR in establishing appropriate processing mechanisms for the resettlement of refugees, having full regard to the provision of international protection and material assistance and the desirability of avoiding irregular movements of refugees;
- (d) Welcomed UNHCR's initiatives to arrange meetings and discussion fora on resettlement planning and recommended that efforts to provide updated assessments of resettlement needs and priorities continue with interested Governments;"<sup>106</sup>

Suggestion

236. The Working Group may wish to recommend:

- that emigration facilities in 'countries of departure' and specifically in 'countries of transit' (in the meaning of para. 128) be established or strengthened unilaterally by governments of industrialized countries who are in a position to do so, and

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<sup>106</sup> General Assembly, Official Records: Thirty-ninth Session, Supplement No. 12A (A/39/12/Add.1), para. 122.B.



- that governments implement in co-operation with UNHCR the decisions on resettlement made by the Executive Committee at its thirty-fifth session, with specific reference to decisions (d) and (e) above.

Unscheduled, spontaneous arrivals of protected asylum seekers/refugees

237. The reasons prompting asylum seekers/refugees who have sojourned for several months or several years in one or more countries where they had been given protection, to travel spontaneously to another country to seek resettlement opportunities may be listed as follows:

- (a) The asylum seeker is still in the 'pre-asylum period' and may therefore not have been granted durable asylum on account of a policy of deterrence or otherwise, he is not authorized to work, he is confined to collective accommodation, etc.
- (b) He may have been recognized as a refugee and been granted durable asylum but on account of reservations made by the State of asylum to specific articles of the 1951 Convention (e.g. Article 17) or more likely on account of general economic and social conditions, he cannot earn a normal living.
- (c) The asylum seeker does not feel at ease in the country of asylum, for personal reasons, ethnic reasons or otherwise.
- (d) The asylum seeker has no possibility or believes he has no possibility of obtaining a visa for the country where he expects to find durable asylum and/or acceptable living conditions.
- (e) The asylum seeker may have failed in his applications for a resettlement visa on account either of restrictive quotas instituted by the country of prospective resettlement or of immigration rules.

238. According to our earlier analyses,<sup>107</sup> the unscheduled arrival for resettlement purposes of a protected asylum seeker/refugee should be considered prima facie as an irregular movement. This assumption may not be valid if the asylum seeker/refugee has not found sufficient 'protection elsewhere' or if he is prevented from obtaining the necessary travel document or resettlement visa. As in the case of the previous category of unprotected persons it is proposed to review possible solutions.

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107 Cf. paras. 64-72

Acceleration of procedures

239. The fact that too long a pre-asylum period, i.e. a too protracted procedure for examining requests for asylum and/or determination of refugee status - para. 237(a) - has negative effects from a legal and administrative point of view, but also with regard to economic and social consequences for the refugees themselves and for the country of potential asylum, is being emphasized in practically every discussion on the subject. The effects are all the more negative, specifically as regards the encouragement of irregular movements, if the legal, economic and social conditions during the pre-asylum period are of a deterrent nature.

240. The Note prepared by the High Commissioner for the recent Consultations also dealt with these "substantial backlogs of claims awaiting determination of status (which) have built up as a result of the increased volume of the caseload and the difficulties which the competent authorities have experienced in evaluating the relevant conditions compelling persons to leave countries of origin or of first asylum." To counteract this particular cause of irregular movements measures should be taken by governments towards an "acceleration of asylum procedures to the extent possible while maintaining basic legal guarantees".<sup>108</sup>

241. In his Summing-Up the High Commissioner stated:

"There was general recognition that asylum procedures should be accelerated to the maximum extent possible while, at the same time, maintaining essential guarantees in accordance with the established asylum traditions of European States. Such a speeding up of asylum procedures would be of benefit not only to the asylum-seeker but also to the host country."<sup>109</sup>

242. The speeding up of procedures would also enable governments to relinquish measures of deterrence without encouraging for that matter manifestly unfounded or abusive applications. It is in order to quote the following from Conclusion No. 30 of the Executive Committee:

"The Executive Committee,

.....

(f) Recognized that while measures to deal with manifestly unfounded or abusive applications may not resolve the wider problem of large numbers of applications for refugee status, both problems can be mitigated by overall arrangements for speeding up refugee status determination procedures, for example by:

(i) allocating sufficient personnel and resources to refugee status determination bodies so as to enable them to accomplish their task expeditiously, and

(ii) the introduction of measures that would reduce the time required for the completion of the appeals process."

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<sup>108</sup> A/AC.96/INF.174, Annex I, paras. 18 and 43(a).

<sup>109</sup> A/AC.96/INF.174, Annex V, para. (d).

Suggestion

243. Obviously the measures recommended above can only be taken by each State concerned, but perhaps methods should be devised to encourage States to take such measures. In accordance with Article 35 of the 1951 Convention and Article II of the 1967 Protocol on "Co-operation of the national authorities with the United Nations" the Working Group may wish to recommend that the High Commissioner for Refugees establish and maintain regular consultations with Contracting States on this specific matter of speeding up procedures for determination of refugee status.

Normal pre-asylum conditions

244. Paragraph 237(a) also refers to conditions during the pre-asylum period including the 'measures of deterrence' to which reference was made in paras. 189-191. At the recent Consultations the High Commissioner extensively analysed these "restrictive trends" and "restrictive practices" and suggested inter alia:

"... two guiding principles for co-operation between European governments:

- (a) that international obligations regarding the admission of the refugee/asylum seeker arriving directly from his country of origin should be clearly reaffirmed,
- (b) that practical arrangements for the reception and treatment of refugee/asylum seekers should be in conformity with the particularly liberal and humanitarian spirit in relation to persons who seek asylum on their territory (Council of Europe Resolution 14(1967) adopted by the Committee of Ministers on 29 June 1967), which is part of the common tradition of countries in Western Europe.<sup>110</sup>

245. In the conclusion of his Note, it is stated:

"Solutions should have regard to the need to reaffirm the liberal humanitarian traditions and positive practices of European countries towards asylum-seekers and refugees, particularly as regards admission of the asylum seeker arriving directly from his country of origin, and observance of at least minimum humanitarian standards of treatment. They could include the following:

- (a) ...
- (b) review of the socio-economic situation of asylum seekers awaiting the eventual determination of their claims."<sup>111</sup>

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110 A/AC.96/INF.174, Annex I, para. 33

111 Ibidem, para. 43.

246. During the Consultations several government speakers referred to restrictive practices aimed at asylum seekers. The following excerpts from five different statements may be quoted:

"Finally, my delegation wants to state that in my government's view certain abuses of the present system of refugee protection may regrettably be unavoidable, but fail to justify restrictive tendencies towards incoming refugees."

"Let me in this context add that the question of improving the socio-economic situation of asylum seekers awaiting the determination of their requests is presently under consideration in (my country)."

"The introduction of restrictive and discriminatory practices regarding the recognition of refugee status, the return of some categories of asylum seekers, and the throwing back of responsibility to countries of the region of origin cannot make the solution of the refugee problem any easier."

"Nevertheless, the suddenness and the sharp increase in arrivals of spontaneous asylum seekers in Europe do create problems and lead to sometimes deplorable reactions. What is alarming is the undermining effect of such arrivals on the basic principles of admission and legal protection and on humanitarian standards which have traditionally been recognized and applied to asylum seekers and refugees in Europe. The temptation to restrict admission practices and asylum provisions in individual receiving countries is strong. That temptation should be resisted. Restrictive measures only transfer the problem to other countries which maintain more liberal legislation, procedures, and practices."

"... an irresistible competition between European countries of arrival with respect to the deterioration of material conditions made available by each of them to asylum seekers."

#### Suggestion

247. The Working Group may, therefore, wish to recommend that governments afford to asylum seekers - as long as a final decision on their request for the recognition of refugee status and/or the grant of asylum has not been taken - a legal, economic and social status in conformity with prevailing principles of international law, particularly human rights law; this status should prevent asylum seekers from seeking asylum elsewhere.

Withdrawal of reservations

248. With respect to para. 237(b) Contracting States should be encouraged to reconsider such reservations as they have made to the various articles of the 1951 Convention, particularly those reservations which may be an obstacle to the economic and social integration of refugees in the country concerned and may cause irregular movements in individual cases. In the majority of cases, maintaining these reservations has no real impact on the general economic and social situation of the country of asylum. These reservations are merely an additional difficulty for the very limited fraction, usually much less than 1 per cent, of the resident population with refugee status.

Suggestion

249. The Working Group may wish to recommend that the High Commissioner take renewed steps with States parties to the Convention and Protocol with the specific purpose of achieving the withdrawal of reservations to these instruments, particularly those reservations which hamper the economic and social integration of refugees.

Improving economic conditions

250. This fundamental problem, also referred to in para. 237 (b), will be dealt with - as mentioned earlier - in paras. 268-275 below.

Resettlement opportunities

251. Para. 237 (c) refers to asylum seekers or refugees who do not feel at ease in the country of asylum for personal reasons, ethnic reasons or otherwise. The mention of such psychological conditions of (in a majority of cases) individual refugees may seem derisory in the middle of a 'crisis of asylum' when the general attitude is less one of comprehension than of 'stay where you are'.

252. The fact remains, however, that the refugee is by definition more sensitive to his social environment than other persons and that the assimilation capacity of human societies differs from country to country. The assimilation capacity is greater in big cities than in rural communities; assimilation is faster in traditional immigration countries in comparison with e.g. landlocked countries which opened up to international intercourse only when the jet age started.

253. The response to the inadaptability of individual refugees (or of groups) to their new human environment may possibly be found through adequate social counselling but more often than not the answer will lie in resettlement to another country of durable asylum.

254. This brings us to paras. 237 (d) and (e) which are parallel to paras. 216 (f) and (g) concerning unprotected asylum seekers. We have already considered at length<sup>112</sup> the necessity of improving resettlement opportunities as part of the immediate response which the international community and specifically the governments most directly concerned may wish to give to the problem of irregular movements. This immediate response does not preclude but indeed requires more fundamental actions which will be examined in the final pages of this Study.

## B. Extra-regional arrivals - Regional solutions

### Reactions to extra-regional arrivals

255. It has been seen in Chapter III of this Study that:

- extra-regional arrivals represent in a majority of industrialized countries from 60 per cent to 85 per cent of all unscheduled arrivals of asylum seekers;
- extra-regional arrivals depart essentially from developing countries;
- whereas extra-regional arrivals are in themselves neither regular nor irregular, there is a distinct - albeit far from complete - overlap of extra-regional arrivals and irregular movements.

256. The recent Consultations have confirmed, if need be, that in the perception of many industrialized countries "the major fact is undoubtedly that the overwhelming majority of asylum seekers are of non-European origin". Annex IV contains significant excerpts of statements made by government representatives at the Consultations.

257. The negative reactions elicited by extra-regional arrivals relate in the first instance to numbers. In those countries where extra-regional arrivals represent as much as 60 per cent (or more) of the total number of arrivals of asylum seekers/refugees, the public has a natural propensity to equate 'refugees' with 'aliens from other regions or other continents'. In countries where extra-regional arrivals represent a much smaller but yet significant proportion of the total number of asylum seekers, they are felt to be an additional burden on the country of arrival, a burden which should be avoided. Finally beyond - but also in connection with - the numerical factor, negative reactions are caused by the difficulties of receiving and integrating asylum seekers/refugees of a different cultural and ethnic background.

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112 Cf. paras. 225-234.

258. Reactions on account of cultural and ethnic differences vary greatly according to the immigration pattern of the country of arrival as well as to the historical or cultural links between country of arrival and asylum seekers of a given ethnic, national or geographic origin. These links are specifically those which have been established during the colonial periods. While many colonial links are historically speaking fairly recent and were established only in the latter part of the 19th century, in other cases ties may go back as far as the 16th century. On the other hand, since the decolonisation process was completed, with few exceptions, a quarter of a century ago, while sometimes it took place much earlier, a weakening of historical links may also be observed.

#### Regional solutions

259. In order to stem the flow of extra-regional arrivals governments of industrialized countries have repeatedly advocated the implementation of regional solutions, i.e. durable solutions in the country of first asylum or alternatively in another country of the same geographic area. Conclusions to this effect have been adopted by the Executive Committee. The most comprehensive text was adopted at the thirty-second session:

#### "IV. International solidarity, burden-sharing and duties of States

(1) A mass influx may place unduly heavy burdens on certain countries; a satisfactory solution of a problem, international in scope and nature, cannot be achieved without international co-operation. States shall, within the framework of international solidarity and burden-sharing, take all necessary measures to assist, at their request, States which have admitted asylum seekers in large-scale influx situations.

(2) Such action should be taken bilaterally or multilaterally at the regional or at the universal levels and in co-operation with UNHCR, as appropriate. Primary consideration should be given to the possibility of finding suitable solutions within the regional context.

(3) Action with a view to burden-sharing should be directed towards facilitating voluntary repatriation, promoting local settlement in the receiving country, providing resettlement possibilities in third countries, as appropriate.

(4) The measures to be taken within the context of such burden-sharing arrangements should be adapted to the particular situation. They should include, as necessary, emergency, financial and technical assistance, assistance in kind and advance pledging of further financial or other assistance beyond the emergency phase until durable solutions are found, and where voluntary repatriation or local settlement cannot be envisaged, the provision for asylum seekers of resettlement possibilities in a cultural environment appropriate for their well-being.

(5) Consideration should be given to the strengthening of existing mechanisms and, if appropriate, the setting up of new arrangements, if possible on a permanent basis, to ensure that the necessary funds and other material and technical assistance are immediately made available.

(6) In a spirit of international solidarity, Governments should also seek to ensure that the causes leading to large-scale influxes of asylum seekers are as far as possible removed and, where such influxes have occurred, that conditions favourable to voluntary repatriation are established". (emphasis added)<sup>113</sup>

260. It will be noted that the solutions envisaged do not preclude "providing resettlement possibilities in third countries, as appropriate" but the emphasis is very clearly on voluntary repatriation and on "local settlement in the receiving country".

261. In his Note submitted to the recent Consultations the High Commissioner referred to the extra-regional aspects and suggested that the proposed solutions could include:

(c) study of the possibilities of adapting UNHCR programmes of material assistance to take account of the special needs of particularly relevant categories (e.g. those of urban/ professional background);

.....

(h) examination of the possibilities for concerted action with a view to promoting conditions likely to favour voluntary repatriation;<sup>114</sup>

262. During the Consultations government representatives emphasized repeatedly the need for solutions: voluntary repatriation but mainly local settlement programmes. In his Summing-Up the High Commissioner stressed that:

"... durable solutions would be of particular importance because they would help to reduce the incentives for refugees to leave countries of asylum in the developing world by irregular means."<sup>115</sup>

#### Voluntary Repatriation

263. "To facilitate the voluntary repatriation of refugees" as well as "assisting governmental and private efforts to promote voluntary repatriation" have been from the outset a primary function of the High Commissioner, as laid down in the Statute of UNHCR.<sup>116</sup> Voluntary repatriation is a standing matter of reference in almost every resolution, decision or conclusion of the General Assembly and the Executive Committee. It is recognized as the best durable solution, when feasible, to refugee problems.

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113 Conclusion No. 22 (XXXII), Section IV.

114 A/AC.96/INF.174, Annex I, para. 43.

115 A/AC.96/INF.174, Annex V, para. (b).

116 Annex to General Assembly Resolution 428 (V), paras. 1 and 8(c).



264. In addition to assisting the permanent trickle of individual repatriants UNHCR has an impressive record of successful large-scale voluntary repatriation schemes, particularly in Africa and Asia, which are well known to States members of the Executive Committee. These schemes have been carried out, as have other durable solution schemes, with the co-operation of governments, of other inter-governmental organisations and of non-governmental organisations. There is no doubt that if it had not been possible to repatriate those hundreds of thousands of refugees, extra-regional arrivals as well as irregular movements would have developed into a preoccupation for governments at a much earlier stage.

265. The fact that, starting with General Assembly Resolution 1672(XVI) concerning refugees from Algeria in Morocco and Tunisia, the High Commissioner has been empowered not only to facilitate voluntary repatriation but also to:

"Use the means at his disposal to assist in the orderly return of those refugees to their homes and consider the possibility, when necessary, of facilitating their resettlement in their homeland as soon as circumstances permit;"

has given to UNHCR voluntary repatriation programmes a new dimension, the importance of which cannot be overestimated. For the purpose of this Study it requires emphasis that this comprehensive role of UNHCR in voluntary repatriation should be an essential component of any global attempt to deal with the problems of irregular movements towards and of extra-regional arrivals in industrialized countries.

266. It is accepted that voluntary repatriation is not possible in all refugee situations. Its feasibility presupposes either political (and possibly economic and social) changes in the country of origin or alternatively a favourable attitude towards voluntary repatriation of the authorities of the country of origin and their readiness to provide such guarantees as will be found sufficiently reassuring by prospective repatriants. An overview of large-scale voluntary repatriation programmes facilitated by UNHCR shows that favourable conditions permitting voluntary repatriation can be obtained as a result of sometimes protracted and delicate contacts with countries of origin. In this respect the fact should be welcomed that governments participating in the recent Consultations have stressed the importance of consultations not only between countries of first asylum and industrialized countries of arrival but also with governments of countries of origin. This is reflected in the High Commissioner's Summing-Up of the Consultations:

"It was also necessary to envisage consultative arrangements at the global level comprising countries of transit, receiving countries, countries of origin and relevant U.N. bodies...."<sup>117</sup>

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<sup>117</sup> A/AC.96/INF. 147, Annex V, para. (h).

Suggestion

267. The Working Group may wish:

- to stress the importance of voluntary repatriation as a major durable solution;
- to endorse the principle of consultations between UNHCR, governments of countries of temporary or durable asylum and governments of countries of origin with a view to exploring the feasibility and if possible to facilitating voluntary repatriation of refugees.

Local settlement in 'countries of transit'

268. There is much to be said about the belief or contention that extra-regional arrivals are 'abnormal' and that the outflow of refugees should take place towards neighbouring countries (whether immediately adjacent to the country of origin or not) in the same geographic area. This opinion does not take fully into account the phenomenon of 'split exodus' already referred to.<sup>118</sup> The large numbers of refugees originating in non-industrialized, developing countries, do in fact flee to neighbouring countries in the same geographic area. With exceptions, these large numbers remain in the area until and after a durable solution to their problem is found. The flight of refugees from developing countries is therefore essentially a regional phenomenon. Extra-regional arrivals in industrialized countries are merely the overflow, in a way the very last ripples of refugee waves which have submerged and continue to submerge neighbouring countries in far away regions of other continents.

269. As a result of the 'split exodus' extra-regional arrivals are the 'upper layer' of massive refugee fluxes, the urban dwellers. The concept of regional solutions should, therefore, presuppose that there are in the original geographic area countries willing to accept also urban refugees and capable, objectively speaking, of offering them durable asylum. Such a durable asylum should consist not only of an adequate legal framework (e.g. provisions with respect to civil, economic, social and cultural rights as contained in the 1951 Convention) but should also include the actual possibility of exercising the rights provided for by that framework.

270. In fact and for reasons easily explicable from a geo-political and historical point of view, neighbouring countries, 'countries of transit' in the meaning of para 128, are more often than not in a situation similar to that of the country of origin. They may have a political regime with low human rights standards, they may be poor or in the initial stages of economic and social development. They may also be struggling with all the problems related to a rate of population increase which is not matched by economic growth. In some cases ethnic antagonisms between the peoples in the region are such that accommodation and integration of refugees from neighbouring countries is objectively not possible, even if the technical obstacles could in theory be overcome.

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<sup>118</sup> Cf. para. 145.

271. In addition to these political, economic and social circumstances the basic assumption that neighbouring countries are in a position to offer an adequate legal framework for durable asylum is very often not fulfilled. A close examination of the figures provided by governments of industrialized countries shows that extra-regional arrivals come chiefly from geographic areas where many States have not acceded to the 1951 Convention or the 1967 Protocol. While non-contracting States could and actually do avail themselves of other international and national instruments in order to accord asylum seekers some protection against persecution, the legal framework for durable asylum is often not available. Other States have acceded to the Convention and Protocol without giving as yet full legal effect to their provisions.

272. As far as industrialised countries in Europe are concerned the recent Consultations provided the opportunity for an objective stock taking of the situation described in the preceding paragraphs. In their statements government representatives have generally acknowledged that extra-regional arrivals are a tiny fraction of the large-scale refugee flows in other continents, that local settlement programmes in countries close to 'countries of origin' will require a specific effort and that such programmes should aim at the urban asylum seekers and refugees.

273. In his Note the High Commissioner stated:

"29. As mentioned above, by far the greater number of refugees and asylum-seekers comprised in the large-scale movements into developing countries continue to remain within the regions in which they first sought asylum where opportunities for local settlement on a durable basis have normally been provided by the Governments concerned to the extent that socio-economic and political circumstances have permitted. Financial resources from industrialized countries have contributed to these efforts. While programmes of material assistance have usually been successful in providing for the basic needs of the large majority of such refugees and displaced persons of rural background, they have frequently failed to deal adequately with the special position of the relatively small numbers from urban/professional background, mainly on account of the sometimes limited social, employment and economic facilities in the urban centres of developing countries.

30. UNHCR is ready to explore with Governments, of both first asylum and industrialized countries, the possibilities for adapting its programmes of material assistance with a view to providing more adequately for the needs of refugees of urban/professional background, particularly in the fields of educational and employment opportunities and social counselling. For such programmes in developing countries of first asylum to be effective in achieving their objectives, they would have to take into account the economic and social infrastructures as well as the corresponding needs of the local population. Any meaningful assistance programme would therefore have to be development-oriented and would require

resources on a scale far beyond what is available to UNHCR. The principles relating to refugee aid and development, approved by the Executive Committee in October 1984 (A/39/12/Add. 1, para. 97 (e)), could prove useful in evaluating the feasibility of such programmes.<sup>119</sup>"

274. The latter part of the High Commissioner's statement has been purposely underscored. To bring about in the urban agglomerations of developing countries economic and social conditions which could retain refugees on the spot and prevent further migration is a task fraught with immense difficulties. The UNHCR programmes will have to assume a new dimension if positive results are to be achieved within a foreseeable future.

#### Suggestion

275. The Working Group may wish:

- to recommend measures with the view to providing an adequate (or strengthening the existing) legal framework as a general condition for durable asylum and for local settlement programmes in developing countries (see paragraphs 219-221 and 248-249 above);
- to endorse the views put forward by the High Commissioner in paragraphs 29 and 30 of the Note prepared for the Consultations (see paragraph 273 above);

more specifically, to request the High Commissioner to explore at the earliest opportunity the feasibility of local settlement programmes, in the perspective of the new 'refugee aid and development' policy, aimed at urban refugee populations in 'countries of departure';

- to invite governments to give the High Commissioner the necessary support, financially and otherwise, for the implementation of the above mentioned policy;

#### Regional solutions and direct arrivals

276. Regional solutions as considered in preceding paragraphs would benefit asylum seekers and refugees in countries neighbouring the countries of origin, in 'countries of transit' in the meaning of paragraph 128. These regional solutions would, therefore, exert no influence on direct arrivals from countries of origin, i.e. on:

- asylum seekers who submit manifestly unfounded or abusive claims, in as much as they depart directly from the country of their nationality or habitual residence;

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119 A/AC.96/INF. 174, Annex I.

- bona fide asylum seekers who, within the stream of extra-regional arrivals, come directly from the country where they fear persecution.

Whether international action can have a stemming effect on these two aspects of contemporary movements will be considered in the following section C.

C. Root causes and preventive measures

277. The mechanics of irregular movements have been analysed within the framework of the wider flow of extra-regional arrivals. It is clear, however, that beyond the immediate causes of these movements - lack of or insufficient protection, insufficient economic and social opportunities in 'countries of departure'; insufficient resettlement opportunities; adverse conditions in some of the industrialised 'countries of arrival' - the fundamental causes are those which create refugee situations, particularly large-scale refugee situations in developing countries.

278. As is well known to States members of the Executive Committee two resolutions have been adopted in recent years within the framework of the United Nations, which can be regarded as of historical significance:

- Resolution 30 (XXXVI) on the Question of the violation of Human Rights and fundamental freedoms in any part of the World, with particular reference to colonial and other dependent countries and territories, adopted by the Commission on Human Rights on 11 March 1980; and
- Resolution 35/124 on International co-operation to avert new flows of refugees, adopted by the General Assembly on 11 December 1980.

279. Resolution 30 (XXXVI) led to the appointment of a Special Rapporteur to study the question of human rights and mass exoduses and subsequently, to the Study on Human Rights and Massive Exoduses by the Special Rapporteur, Prince Sadruddin Aga Khan. The impact of this Study on contemporary thinking on refugee problems need not be emphasized.

280. Among the 9 recommendations made by the Special Rapporteur the following may be singled out:

- "(2) A reappraisal of developing countries' economic needs in relation to possible causes of exodus;
- (3) Standardization of international aid criteria;
- (4) Simultaneity in approach to the country of origin and country of asylum to gain a comprehensive view of the overall situation and thus be able to plan better;
- (5) A "bi-multi" aid approach: multilateral aid should take into account bilateral aid, to prevent duplication and ensure an integrated approach;"<sup>120</sup>

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<sup>120</sup> Aga Khan, Sadruddin: Study on Human Rights and Massive Exoduses (E/CN.4/1503), Recommendations, p.(i).

which tie in with the considerations on regional solutions in section B of this chapter.

281. To our knowledge and also to judge from the most recent resolution on the subject (Resolution 39/117 adopted by the General Assembly on 14 December 1984) it would not appear that any practical implementation measures have been carried out so far 'in the field'.

282. As to Resolution 35/124 it led to the establishment of a Group of Governmental Experts on International Co-operation to Avert New Flows of Refugees. A first report of the Group of Governmental Experts was transmitted to the General Assembly but this report had merely a formal character.<sup>121</sup> A substantive report is at present expected.

283. An important document on the question is undoubtedly the memorandum submitted by the Federal Republic of Germany,<sup>122</sup> in particular the suggested "Guidelines for the conduct of States". Whether such guidelines as well as the "Practical preventive measures" suggested by the same memorandum can be put into practice, belongs to the long series of tests on international co-operation which confront the United Nations system and specifically member States.

284. The question of root causes has been taken up also in the Consultations on the Arrivals of Asylum Seekers and Refugees in Europe. The High Commissioner stated in his Note:

"It is evident that many difficulties including those discussed in the present note could be alleviated if refugee problems were to be addressed effectively at their origin. As is known, initiatives to examine the question of the root causes of refugee flows have been undertaken in various United Nations bodies. The High Commissioner attaches great importance to these and to any other relevant initiatives which might be taken to deal with this aspect of the refugee problem. This matter is, however, one falling outside the High Commissioner's competence due to the purely humanitarian and non-political nature of his mandate. It does, however, fall within the terms of reference of other competent United Nations bodies and can also be addressed by States directly either on a bilateral or multilateral basis."

and suggested that solutions could include the

"pursuit of initiatives aimed at removing the root causes of refugee problems."<sup>123</sup>

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121 A/39/327 and Corr. 1

122 A/36/582, pp. 18-27.

123 A/AC.96/INF.174, Annex I, paras. 40 and 43(i).

285. Several government representatives referred during the Consultations to the need to tackle the root causes of refugee problems. They also supported arrangements for consultations between governments with regard to the present problems of asylum seekers and refugees. The Summing-Up by the High Commissioner includes the following paragraphs:

"(c) There was also general recognition of the importance of addressing the root causes of refugee problems in the appropriate fora of the United Nations or by States acting individually or on a bilateral or multilateral basis."

.....

"(h) It was recognized that follow-up action on the outcome of the meeting should be the subject of consultations among concerned governments in co-operation with UNHCR. Existing consultation arrangements (for example those within the Council of Europe) should be fully utilised. The need for informal ad hoc consultative arrangements among interested European Governments was furthermore recognized. Meetings could be called at the initiative of UNHCR or interested countries and should be held under the auspices of UNHCR. It was also necessary to envisage consultative arrangements at the global level comprising countries of transit, receiving countries, countries of origin and relevant U.N. bodies. In this regard, the High Commissioner might wish to consult further with participating countries."<sup>124</sup>

286. It is clear to all readers that tackling the root causes of refugee problems and effectively taking such preventive measures as States might agree upon is a long term process. On the other hand, nothing short of efficient measures in these closely related fields of action will provide the international community with a prospect of a lesser refugee flow and of fewer irregular movements of asylum seekers and refugees. These considerations apply very specifically to irregular movements which depart from 'countries of origin' and more generally to all flows from South to North.

## VI. Conclusions

287. Irregular movements of asylum seekers and refugees consist of:

- A fringe aspect of the world-wide migration problem (manifestly unfounded and abusive applications) which interferes with actual refugee problems.
- The consequences of deficient legal, economic and social conditions in countries adjacent to the countries of origin of refugees, chiefly developing countries, as well as in some industrialized countries of arrival.

288. Irregular movements take place mainly from developing countries towards industrialized countries. They have increased significantly in recent years. At world level the proportion of irregular movements would

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<sup>124</sup> A/AC.96/INF.174, Annex V.

not exceed 2 per cent to 3 per cent of all refugee movements but the proportion reaches from 20 per cent to 30 per cent of unscheduled arrivals in industrialized countries.

289. There is no single solution to the problem of irregular movements. The immediate responses are largely of a technical nature and belong to the classical measures in the field of protection of and assistance to refugees. Most of the remedies have been advocated throughout the years by the Executive Committee of the High Commissioner's Programme. They need to be systematically applied.

290. These technical remedies would improve the situation but are unlikely to bring about fundamental changes. Much more should be expected from a vigorous 'refugee aid and development' policy aimed at urban refugee populations in countries of departure of irregular movements.

291. In the long run, however, results will be achieved only by tackling the root causes of refugee problems and taking constructive measures to avert new flows of refugees. At that level the remedies are no longer of a technical nature but belong to the field of political co-operation between States.

Geneva, July 1985



ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATION IN (country)

YEAR: \_\_\_\_\_

(A) Country of origin	(B) Total number asylum seekers from each country of origin	(C) Indicate number arriving directly from country of origin and number coming via third country				(D) Kind of documentation presented upon arrival				
		(1) "Directly" or via (name of country)	(2) Number	if via third country:		(1) Number with regular document (e.g. passport)	(2) Number with regular documentation			
				(3) in transit for less than (specify)	(4) sojourn of more than (period)		Total	(a) no documents	(b) insufficient documents	(c) fraudulent documents

Remarks: \_\_\_\_\_

\*Please use an asterisk (\*) to indicate estimate or approximate figures

Prepared by: \_\_\_\_\_

Conclusion No. 30 (XXXIV) of the Executive Committee of the  
High Commissioner's Programme

The Problem of Manifestly Unfounded or Abusive Applications  
for Refugee Status or Asylum\*

The Executive Committee,

(a) Recalled Conclusion No. 8 (XXVIII) adopted at its twenty-eighth session on the Determination of Refugee Status and Conclusion No. 15 (XXX) adopted at its thirtieth session concerning Refugees without an Asylum Country,

(b) Recalled Conclusion No. 28 (XXXIII) adopted at its thirty-third session in which the need for measures to meet the problem of manifestly unfounded or abusive applications for refugee status was recognized,

(c) Noted that applications for refugee status by persons who clearly have no valid claim to be considered refugees under the relevant criteria constitute a serious problem in a number of States parties to the 1951 Convention and the 1967 Protocol. Such applications are burdensome to the affected countries and detrimental to the interests of those applicants who have good grounds for requesting recognition as refugees,

(d) Considered that national procedures for the determination of refugee status may usefully include special provision for dealing in an expeditious manner with applications which are considered to be so obviously without foundation as not to merit full examination at every level of procedure. Such applications have been termed either "clearly abusive" or "manifestly unfounded" and are to be defined as those which are clearly fraudulent or not related to the criteria for the granting of refugee status laid down in the 1951 United Nations Convention relating to the Status of Refugees nor to any other criteria justifying the granting of asylum,

(e) Recognized the substantive character of a decision that an application for refugee status is manifestly unfounded or abusive, the grave consequences of an erroneous determination for the applicant and the resulting need for such a decision to be accompanied by appropriate procedural guarantees and therefore recommended that:

- (i) as in the case of all requests for the determination of refugee status or the grant of asylum, the applicant should be given a complete personal interview by a fully qualified official and, whenever possible, by an official of the authority competent to determine refugee status,
- (ii) the manifestly unfounded or abusive character of an application should be established by the authority normally competent to determine refugee status,

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\*A/38/12/Add. 1, para. 97 (2).

(iii) an unsuccessful applicant should be enabled to have a negative decision reviewed before rejection at the frontier or forcible removal from the territory. Where arrangements for such a review do not exist, governments should give favourable consideration to their establishment. This review possibility can be more simplified than that available in the case of rejected applications which are not considered manifestly unfounded or abusive.

(f) Recognized that while measures to deal with manifestly unfounded or abusive applications may not resolve the wider problem of large numbers of applications for refugee status, both problems can be mitigated by overall arrangements for speeding up refugee status determination procedures, for example by:

(i) allocating sufficient personnel and resources to refugee status determination bodies so as to enable them to accomplish their task expeditiously, and

(ii) the introduction of measures that would reduce the time required for the completion of the appeals process.

Conclusion No. 22 (XXXII) of the Executive Committee of the  
High Commissioner's Programme  
Protection of Asylum Seekers in Situations of Large-scale Influx\*

The Executive Committee,

Noting with appreciation the report of the Group of Experts on temporary refuge in situations of large-scale influx, which met in Geneva from 21-24 April 1981, adopted the following conclusions in regard to the protection of asylum seekers in situations of large-scale influx.

I. General

1. The refugee problem has become particularly acute due to the increasing number of large-scale influx situations in different areas of the world and especially in developing countries. The asylum seekers forming part of these large-scale influxes include persons who are refugees within the meaning of the 1951 United Nations Convention and the 1967 Protocol relating to the Status of Refugees or who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of, or the whole of their country of origin or nationality are compelled to seek refuge outside that country.

2. Asylum seekers forming part of such large-scale influx situations are often confronted with difficulties in finding durable solutions by way of voluntary repatriation, local settlement or resettlement in a third country. Large-scale influxes frequently create serious problems for States, with the result that certain States, although committed to obtaining durable solutions, have only found it possible to admit asylum seekers without undertaking at the time of admission to provide permanent settlement of such persons within their borders.

3. It is therefore imperative to ensure that asylum seekers are fully protected in large-scale situations, to reaffirm the basic minimum standards for their treatment pending arrangements for a durable solution, and to establish effective arrangements in the context of international solidarity and burden-sharing for assisting countries which receive large numbers of asylum seekers.

II. Measures of protection

A. Admission and non-refoulement

1. In situations of large-scale influx, asylum seekers should be admitted to the State in which they first seek refuge and if that State is unable to admit them on a durable basis, it should always admit them at least on a

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\*A/36/12/Add. 1, para. (2).

temporary basis and provide them with protection according to the principles set out below. They should be admitted without any discrimination as to race, religion, political opinion, nationality, country of origin or physical incapacity.

2. In all cases the fundamental principle of non-refoulement - including non-rejection at the frontier - must be scrupulously observed.

B. Treatment of asylum seekers who have been temporarily admitted to a country pending arrangements for a durable solution

1. Article 31 of the 1951 United Nations Convention relating to the Status of Refugees contains provisions regarding the treatment of refugees who have entered a country without authorization and whose situation in that country has not yet been regularized. The standards defined in this Article do not, however, cover all aspects of the treatment of asylum seekers in large-scale influx situations.

2. It is therefore essential that asylum seekers who have been temporarily admitted pending arrangements for a durable solution should be treated in accordance with the following minimum basic human standards:

(a) they should not be penalized or exposed to any unfavourable treatment solely on the ground that their presence in the country is considered unlawful; they should not be subjected to restrictions on their movements other than those which are necessary in the interest of public health and public order;

(b) they should enjoy the fundamental civil rights internationally recognized, in particular those set out in the Universal Declaration of Human Rights;

(c) they should receive all necessary assistance and be provided with the basic necessities of life including food, shelter and basic sanitary and health facilities; in this respect the international community should conform with the principles of international solidarity and burden-sharing;

(d) they should be treated as persons whose tragic plight requires special understanding and sympathy. They should not be subjected to cruel, inhuman or degrading treatment;

(e) there should be no discrimination on the grounds of race, religion, political opinion, nationality, country of origin or physical incapacity;

(f) they are to be considered as persons before the law, enjoying free access to courts of law and other competent administrative authorities;

(g) the location of asylum seekers should be determined by their safety and well-being as well as by the security needs of the receiving State. Asylum seekers should, as far as possible, be located at a reasonable distance from the frontier of their country of origin. They should not become involved in subversive activities against their country of origin or any other State;

(h) family unity should be respected;

- (i) all possible assistance should be given for the tracing of relatives;
- (j) adequate provision should be made for the protection of minors and unaccompanied children;
- (k) the sending and receiving of mail should be allowed;
- (l) material assistance from friends or relatives should be permitted;
- (m) appropriate arrangements should be made, where possible, for the registration of births, deaths and marriages;
- (n) they should be granted all the necessary facilities to enable them to obtain a satisfactory durable solution;
- (o) they should be permitted to transfer assets which they have brought into a territory to the country where the durable solution is obtained; and
- (p) all steps should be taken to facilitate voluntary repatriation.

### III. Co-operation with the Office of the United Nations High Commissioner for Refugees

Asylum seekers shall be entitled to contact the Office of UNHCR. UNHCR shall be given access to asylum seekers. UNHCR shall also be given the possibility of exercising its function of international protection and shall be allowed to supervise the well-being of persons entering reception or other refugee centres.

### IV. International solidarity, burden-sharing and duties of States

(1) A mass influx may place unduly heavy burdens on certain countries; a satisfactory solution of a problem, international in scope and nature, cannot be achieved without international co-operation. States shall, within the framework of international solidarity and burden-sharing, take all necessary measures to assist, at their request, States which have admitted asylum seekers in large-scale influx situations.

(2) Such action should be taken bilaterally or multilaterally at the regional or at the universal levels and in co-operation with UNHCR, as appropriate. Primary consideration should be given to the possibility of finding suitable solutions within the regional context.

(3) Action with a view to burden-sharing should be directed towards facilitating voluntary repatriation, promoting local settlement in the receiving country, providing resettlement possibilities in third countries, as appropriate.

(4) The measures to be taken within the context of such burden-sharing arrangements should be adapted to the particular situation. They should include, as necessary, emergency, financial and technical assistance, assistance in kind and advance pledging of further financial or other assistance beyond the emergency phase until durable solutions are found, and

where voluntary repatriation or local settlement cannot be envisaged, the provision for asylum seekers of resettlement possibilities in a cultural environment appropriate for their well-being.

(5) Consideration should be given to the strengthening of existing mechanisms and, if appropriate, the setting up of new arrangements, if possible on a permanent basis, to ensure that the necessary funds and other material and technical assistance are immediately made available.

(6) In a spirit of international solidarity, Governments should also seek to ensure that the causes leading to large-scale influxes of asylum seekers are as far as possible removed and, where such influxes have occurred, that conditions favourable to voluntary repatriation are established.

Excerpts from statements by Government representatives  
at the Consultations on the arrivals of  
asylum seekers and refugees in Europe\*

"(My country) shares your concern about a relatively new feature in this context - the tendency of an increasing number of Non-Europeans to seek asylum in Europe....."

"My country is confident that the recent change in the pattern of incoming refugees with increasing numbers of Non-Europeans will not lead to a reconsideration of the standards embodied in the Geneva Convention."

"In your note you remind us, Mr. Chairman, that many of the current difficulties could be alleviated if refugee problems were to be addressed effectively at their origin. This shows us the global context of the question before us of which the co-operation between European governments and possible solution found inside Europe will always remain just one aspect. In the long run even the most liberal attitude of the European countries will not suffice to provide a solution to the problem. My delegation therefore tends to assume the necessity of a global approach towards the question of Non-European refugees....."

"The difficulties .... are caused first of all by a swift increase in the number of asylum seekers from far away countries who are directed towards our country of which they very often had never heard."

"The Government had to take into consideration the new nature of the asylum requests which confront European countries. In this respect the major fact is undoubtedly that the overwhelming majority of asylum seekers are of non-European origin."

"The root cause for the problems, and this doesn't apply to Europe alone, is the changing character of refugee movements. To the classical situation of a refugee seeking asylum with his neighbours has been added, for quite some time now, that of refugees and asylum seekers wandering from one asylum-country to the next and of those fleeing directly from their country of origin to other parts of the world."

"The biggest number of refugees and asylum seekers to whom European countries can be of any assistance, however, are those whom they materially support towards local integration in countries of first asylum, in their region of origin, in consultation with the Governments of those countries and with UNHCR."

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\*Excerpts from written statements circulated by representatives. French texts have been translated.



"When, for European standards, a relatively large number of asylum seekers arrive while this is not where a durable solution is to be found for them in the first place, harm is being done to the great majority of refugees who depend on durable solutions within their region of origin and indeed, to the local populations in the countries there. Funds that could be used for the financing of projects for them there may have to be used instead for the reception and integration of the few resourceful enough to make their way to Europe. Because of the very high level of facilities for asylum seekers and refugees in countries like my own, a relatively large part of the limited resources that are available are used for the benefit of a relatively small number of persons for whom settlement in Europe is not necessarily warranted."

"..... a more active role in the stemming of unco-ordinated and transcontinental movements of refugees and asylum seekers. As was mentioned in the beginning of our intervention, these unco-ordinated movements are the root cause of the protection problems in Europe today."

"I would like to underline that (my country) strongly supports regional resettlement wherever possible. Settlement within the refugees' own region is in our opinion the solution which over the years has proven to be most beneficial for the refugees themselves."

"In this ... context, we give priority to three policy issues: the combating of root causes through concerted action, the setting up of UNHCR resettlement schemes in non-European first countries of asylum, and the establishing of informal intergovernmental consultations for example with respect to burden-sharing in emergency situations"

"The majority of refugees seeking to leave their country of first asylum are those with an urban professional background. As put forward in the conclusions, this is indeed a complex problem where successful regional solutions are not always obvious. We realize that specialized programmes aimed at helping this category to be able to settle locally would be expensive and difficult. Nevertheless, we feel that all possibilities to reach their end should be explored."

"As to present problems relating to asylum seekers a first assessment has to be made. The greater part of these asylum seekers come from overseas countries, while the specific European migrations are on the decrease."

"The majority of refugee situations emerge today mainly in developing countries which have limited means and it is these countries who admit the largest numbers of refugees. Whether they are countries of first asylum or of transit they are already faced with considerable difficulties in trying to cope with their economic development and they are confronted with problems of surplus population and unemployment."

REFUGEES, ASYLUM SEEKERS AND TOTAL POPULATION IN SELECTED COUNTRIES <sup>a</sup>

1983

Country <sup>b</sup>	Population <sup>b</sup> (in thousands)	Refugees		Asylum seekers <sup>e</sup> (persons)
		in thousands <sup>c</sup>	per cent of population <sup>d</sup>	
<u>Africa</u>				
Algeria	20 500	167	0.81	...
Angola	8 339	96	1.15	...
Botswana	1 007	4	3.97	3 000
Burundi	4 421	256	5.79	...
Cameroon	9 165	4	0.44	700*
Cent. Afr. Republic	2 450	7	0.29	...
Congo	1 651	1	0.06	...
Djibouti	330	23	6.97	...
Egypt	45 915	6	0.01	500*
Ethiopia	33 680	31	0.09	20 400*
Kenya	18 784	7	0.04	1 600*
Lesotho	1 444	12	0.83	...
Morocco	22 109	1	0.00 <sup>5</sup>	...
Mozambique	13 311	1	0.00 <sup>8</sup>	400*
Niger	5 772	6	0.10	...
Nigeria	89 022	5	0.00 <sup>6</sup>	...
Rwanda	5 700	49	0.86	...
Senegal	6 316	5	0.08	...
Somalia	5 269	700	13.29	...
Sudan	20 362	690	3.39	54 000
Swaziland	605	7	1.16	...
Togo	2 756	1	0.04	1 200
Tunisia	6 886	..	0.00 <sup>3</sup>	...
Uganda	14 625	133	0.91	17 000*
Un. Rep. of Tanzania	20 378	180	0.88	21 000*
Zaire	31 151	304	0.97	2 300*
Zambia	6 242	103	1.65	14 000*
Zimbabwe	7 740	46	0.59	46 200*
Subtotal	405 930	2 845	0.70	182 300
Other countries	115 070	25		...
Total Africa	521 000	2 870	0.55	182 300

REFUGEES, ASYLUM SEEKERS AND TOTAL POPULATION IN SELECTED COUNTRIES <sup>a</sup>

1983

Country <sup>b</sup>	Population <sup>b</sup> (in thousands)	Refugees		Asylum seekers <sup>e</sup> (persons)
		in thousands <sup>c</sup>	per cent of population <sup>d</sup>	
<u>America, North</u>				
Belize	156	7	4.49	7 000*
Canada	24 907	353	1.42	6 600
Costa Rica	2 379	17	0.71	1 900*
Cuba	9 884	2	0.02	...
Dominican Republic	5 962	5	0.08	...
Guatemala	7 932	70	0.88	...
Honduras	4 092	40	0.98	6 000
Mexico	75 103	170	0.23	10 000*
Nicaragua	3 058	19	0.62	...
United States	234 496	1 003	0.43	25 500
Subtotal	367 969	1 686	0.46	57 000
Other countries	22 031	4		...
<b>Total North America</b>	<b>390 000</b>	<b>1 690</b>	<b>0.43</b>	<b>57 000</b>
<u>America, South</u>				
Argentina	29 627	12	0.04	300
Bolivia	6 082	1	0.02	...
Brazil	129 662	5	0.00 <sup>4</sup>	300
Chile	11 682	3	0.03	...
Ecuador	9 251	1	0.01	100
Peru	18 707	1	0.00 <sup>5</sup>	...
Venezuela	16 394	1	0.00 <sup>6</sup>	300
Subtotal	221 405	24	0.01	1 000
Other countries	35 595	3		...
<b>Total South America</b>	<b>257 000</b>	<b>27</b>	<b>0.01</b>	<b>1 000</b>

REFUGEES, ASYLUM SEEKERS AND TOTAL POPULATION IN SELECTED COUNTRIES<sup>a</sup>

1983

Country <sup>b</sup>	Population <sup>b</sup> (in thousands)	Refugees		Asylum seekers <sup>e</sup> (persons)
		in thousands <sup>c</sup>	per cent of population <sup>d</sup>	
<u>Asia</u>				
China	1 039 677	277	0.03	4 800
Hong Kong	5 313	13	0.24	3 700
India	732 256	7	0.00 <sup>1</sup>	3 100
Indonesia	159 434	10	0.00 <sup>6</sup>	5 800
Iran	41 635	1 800	4.32	200 000*
Japan	119 259	2	0.00 <sup>2</sup>	700
Korea, Republic of	39 951	1	0.00 <sup>3</sup>	...
Laos	4 209	1	0.02	...
Lebanon	2 635	3	0.11	...
Macau	304	1	0.33	...
Malaysia	14 863	101	0.68	10 900
Pakistan	89 729	2 900	3.23	700 000*
Philippines	52 055	19	0.04	1 800
Singapore	2 502	..	0.00 <sup>1</sup>	1 600
Thailand	49 459	133	0.27	29 900
Turkey	47 279	2	0.00 <sup>4</sup>	900
Viet Nam	57 181	31	0.05	3 000*
Subtotal	2 457 741	5 301	0.22	966 200
Other countries	273 259	2 000 <sup>f</sup>	.	...
Total Asia	2 731 000	7 301	0.27	966 200

REFUGEES, ASYLUM SEEKERS AND TOTAL POPULATION IN SELECTED COUNTRIES <sup>a</sup>

1983

Country <sup>b</sup>	Population <sup>b</sup> (in thousands)	Refugees		Asylum seekers <sup>e</sup> (persons)
		in thousands <sup>c</sup>	per cent of population <sup>d</sup>	
<u>Europe</u>				
Austria	7 549	21	0.28	5 900
Belgium	9 856	35	0.36	2 900
Denmark	5 114	4	0.08	300
Finland	4 863	1	0.02	..
France	54 652	161	0.29	15 500
Fed. Rep. of Germany	61 421	115	0.19	18 400
Greece	9 848	4	0.04	1 200
Ireland	3 508	1	0.03	..
Italy	56 836	14	0.02	2 800
Luxembourg	356	..	0.13	..
Netherlands	14 362	15	0.10	2 000
Norway	4 129	10	0.24	...
Portugal	9 946	8	0.08	600
Romania	22 553	1	0.004	...
Spain	38 228	24	0.06	1 400
Sweden	8 331	43	0.52	2 300
Switzerland	6 482	32	0.49	7 400
United Kingdom	56 377	140	0.25	2 500
Yugoslavia	22 800	2	0.00 <sup>9</sup>	2 200
Subtotal	397 211	631	0.16	65 400
Other countries	91 789	20	.	...
Total Europe	489 000	651	0.13	65 400

REFUGEES, ASYLUM SEEKERS AND TOTAL POPULATION IN SELECTED COUNTRIES <sup>a</sup>

1983

Country <sup>b</sup>	Population <sup>b</sup> (in thousands)	Refugees		Asylum seekers <sup>e</sup> (persons)
		in thousands <sup>c</sup>	per cent of population <sup>d</sup>	
<u>Oceania</u>				
Australia	15 369	317	2.06	200
New Zealand	3 203	11	0.34	..
Papua New Guinea	3 190	1	0.03	100
Subtotal	21 762	329	1.51	300
Other countries	2 238	1	.	...
Total Oceania	24 000	330	1.38	300
U.S.S.R	272 500	...	.	...
<u>World Total</u>	4 685 000	12 869	0.27	1 272 200

Signs and Notes

- . not applicable
- .. less than 1 000 refugees or 100 asylum seekers
- ... not available
- \* net increase of refugee population, cf. e below

a With few exceptions, countries which in 1983 harboured less than 1000 refugees or had received less than 100 asylum seekers have not been included. Countries for which figures on refugees or asylum seekers are not available have also been omitted.

b Population figures are those given in Population and Vital Statistics Report, United Nations Statistical Papers, Series A, Vol. XXXVI, No. 4. The geographical classification of countries has been taken over from the same document. Detailed notes on the calculation of population figures, on inclusion or exclusion of specific categories, specific territories etc., are also to be found in that document.

- c Refugee figures are based on UNHCR publications supplemented by other sources, particularly World Refugee Survey 1984, U. S. Committee for Refugees, New York, 1984. Very few figures are personal estimates.
- d It has been assumed that the number of refugees is not included in the country's population figure. This assumption has generally no significant consequence, except for countries where the refugee percentage is high: Belize, Djibouti, Somalia, etc.
- e Figures on asylum seekers (rounded to the nearest 100) have been found in UNHCR publications or archives or, for a limited number of countries, in statistical material provided by governments for the purposes of the Study. In other cases the number of asylum seekers represents the estimated net increase of the refugee population between the end of 1982 and the end of 1983; these figures have been marked with an \*. Asylum seekers who were admitted during 1983 in more than one country have been recorded in each of these countries.
- f Including refugees from Palestine.

## Regional and Extra-Regional Arrivals

persons

Country	Arrivals from within the region					Arrivals from outside the region					All arrivals				
	1980	1981	1982	1983	1984	1980	1981	1982	1983	1984	1980	1981	1982	1983	1984
<u>Industrialized Countries</u>															
Australia	99	27	14	19	28	52	80	156	164	139	151	107	170	183	167
Austria	7 488	33 828	5 504	4 937	6 137	839	472	810	931	1 171	8 327	34 300	6 314	5 868	7 306
Belgium	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Canada	...	748	1 196	3 410	3 322	...	1 651	1 924	3 188	3 626	...	2 399	3 120	6 598	6 948
Denmark	96	99	183	150	585	128	117	106	192	3 752	223	216	294	342	4 337
Finland	...	5	7	4	1	...	10	5	12	24	...	15	12	16	25
France	...	2 660	3 628	3 195	2 866	...	8 598	10 348	12 277	13 201	...	11 258	13 976	15 472	16 067
Germany, F.R.	68 263	21 121	15 190	6 564	11 548	40 673	25 344	20 379	11 786	22 804	108 536	46 465	35 569	18 350	34 352
Greece	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Israel	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Italy	1 541	2 767	2 395	1 790	2 645	...	...	...	...	...	...	...	...	...	...
Japan	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Netherlands	784	280	539	748	794	546	483	675	1 267	1 809	1 330	763	1 214	2 015	2 603
Norway	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Spain	49	101	307	145	139	731	356	1 994	1 379	831	780	457	2 301	1 524	970
Sweden	...	1 389	1 191	809	2 391	...	535	1 501	1 441	8 925	...	1 944	2 692	2 250	11 316
Switzerland	2 269	2 723	3 844	3 248	930	751	1 503	3 291	4 638	6 505	3 020	4 226	7 135	7 886	7 435
U.K.	...	...	...	114	152	...	...	...	2 338	2 735	...	...	...	2 452	2 887
U.S.A.	9 897	44 751	19 914	16 730	16 567	4 787	13 133	14 404	8 739	7 413	14 684	57 884	34 318	25 469	23 980
Yugoslavia	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Subtotal	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
<u>Other Countries</u>															
Algeria	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Argentina	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Brazil	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
China	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Colombia	...	...	...	67	36	...	...	...	14	2	...	...	...	81	38
Iran	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Lebanon	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Lesotho	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Madagascar	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Morocco	...	...	...	...	17	...	...	...	...	12	...	...	...	...	29
Nicaragua	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Nigeria	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Sudan	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Tanzania	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Thailand	76 857	54 455	22 394	29 880	49 626	...	...	...	...	...	...	...	...	...	...
Tunisia	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Turkey	289	358	415	401	547	...	...	...	...	...	...	...	...	...	...
Uganda	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Venezuela	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Zaire	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Subtotal	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Grand Total	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...

... Not available

<sup>a</sup> States members of the Executive Committee of the High Commissioner's Programme, the Holy See and the UN Council for Namibia are not included; Spain has been added.



ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATION IN SELECTED COUNTRIES<sup>a</sup>

## Regional and Extra-Regional Arrivals

per cent of the total number of arrivals

Country	Arrivals from within the region					Arrivals from outside the region					All arrivals				
	1980	1981	1982	1983	1984	1980	1981	1982	1983	1984	1980	1981	1982	1983	1984
<b>Industrialized Countries</b>															
Australia	65.56	25.23	8.24	10.38	16.77	34.44	74.77	91.76	89.62	83.23	100.00	100.00	100.00	100.00	100.00
Austria	89.92	98.62	87.18	84.13	83.98	10.08	1.38	12.82	15.87	16.02	100.00	100.00	100.00	100.00	100.00
Belgium	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Canada	...	31.18	38.33	51.68	47.81	...	68.82	61.67	48.32	59.19	...	100.00	100.00	100.00	100.00
Denmark	42.60	45.84	63.95	43.86	13.49	57.40	54.16	36.05	56.14	86.51	100.00	100.00	100.00	100.00	100.00
Finland	...	33.33	58.33	25.00	4.00	...	66.67	41.67	75.00	96.00	...	100.00	100.00	100.00	100.00
France	...	23.63	25.96	20.66	17.83	...	76.37	74.04	79.34	82.17	...	100.00	100.00	100.00	100.00
Germany, F.R.	62.90	45.46	42.70	35.78	33.61	37.10	54.54	57.30	64.22	66.39	100.00	100.00	100.00	100.00	100.00
Greece	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Israel	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Italy	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Japan	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Netherlands	58.95	36.70	44.40	37.12	30.50	41.05	63.30	55.60	62.88	69.50	100.00	100.00	100.00	100.00	100.00
Norway	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Spain	6.29	22.10	13.35	9.51	14.32	93.71	77.90	86.65	90.49	85.68	100.00	100.00	100.00	100.00	100.00
Sweden	...	71.46	44.25	35.96	21.13	...	28.54	58.75	64.04	78.87	...	100.00	100.00	100.00	100.00
Switzerland	64.43	64.43	53.88	41.19	12.50	35.57	35.57	46.12	58.81	87.50	100.00	100.00	100.00	100.00	100.00
U.K.	...	...	...	4.64	5.27	...	...	...	95.36	94.73	...	...	...	100.00	100.00
U.S.A.	67.40	77.31	58.02	65.69	69.09	32.60	22.69	41.98	34.31	30.91	100.00	100.00	100.00	100.00	100.00
Yugoslavia	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
<b>Subtotal</b>	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
<b>Other Countries</b>															
Algeria	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Argentina	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Brazil	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
China	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Colombia	...	...	...	82.72	94.74	...	...	...	17.28	5.26	...	...	...	100.00	100.00
Iran	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Lebanon	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Lesotho	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Madagascar	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Morocco	...	...	...	...	58.62	...	...	...	...	41.38	...	...	...	...	100.00
Nicaragua	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Nigeria	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Sudan	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Tanzania	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Thailand	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Tunisia	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Turkey	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Uganda	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Venezuela	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
Zaire	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
<b>Subtotal</b>	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...
<b>Grand Total</b>	...	...	...	...	...	...	...	...	...	...	...	...	...	...	...

... Not available

<sup>a</sup> States members of the Executive Committee of the High Commissioner's Programme; the Holy See and the UN Council for Namibia are not included; Spain has been added.

Table IV

DETERMINATION OF REFUGEE STATUS IN THE FEDERAL REPUBLIC OF GERMANY

Period	Recognition of refugee status	Refusal of refugee status			All decisions
		manifestly unfounded requests	other refusals	all refusals	
Applicants					
1982	5,019	1,103	25,503	26,606	31,625
1983	5,032	4,187	18,437	22,624	27,656
1984	6,566	4,065	7,355	11,420	17,986
01.01-01.03.85	3,127	340	3,512	3,852	6,979
Per cent of all decisions					
1982	15.87	3.49	80.64	84.13	100.00
1983	18.19	15.14	66.67	81.81	100.00
1984	36.51	22.60	40.89	63.49	100.00
01.01-01.03.85	44.81	4.87	50.32	55.19	100.00

## DOCUMENTATION OF ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATION

persons

Country of Arrival	Year	All Arrivals	With regular documents	Without regular documentation			
				Without documents	Insufficient documents	Fraudulent documents	Subtotal
Canada	1980	...	...	...	...	...	...
	1981	2 399	2 240	48	92	19	159
	1982	3 120	2 878	94	26	122	242
	1983	6 598	5 488	374	408	328	1 110
	1984	6 948	4 691	911	545	801	2 257
France	1980	7 865	...	...	...	...	...
	1981	11 258	9 651	...	...	...	1 607
	1982	13 976	11 588	...	...	...	2 288
	1983	15 472	13 076	...	...	...	2 396
	1984	16 067	8 221	...	...	...	7 846
Netherlands	1980	1 330	891	179	38	222	439
	1981	763	377	160	46	180	386
	1982	1 214	766	254	26	168	448
	1983	2 015	1 479	206	17	313	536
	1984	2 603	1 123	859	102	519	1 480
Spain	1980	780	669	1	97	13	111
	1981	457	304	17	65	71	153
	1982	2 301	1 250	39	125	887	1 051
	1983	1 524	621	213	374	316	911
	1984	970	545	81	195	149	425
Thailand	1980	76 857	6 598	70 259	-	-	70 259
	1981	54 455	11 212	43 243	-	-	43 243
	1982	22 394	11 147	11 247	-	-	11 247
	1983	29 880	19 275	10 605	-	-	10 605
	1984	49 626	27 045	22 581	-	-	22 581

DOCUMENTATION OF ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATION

per cent of all arrivals

Country of Arrival	Year	All Arrivals	With regular documents	Without regular documentation			
				Without documents	Insufficient documents	Fraudulent documents	Subtotal
Canada	1980	...	...	...	...	...	...
	1981	100.00	93.37	2.00	3.84	0.79	6.63
	1982	100.00	92.24	3.02	2.43	2.31	7.76
	1983	100.00	83.18	6.18	4.97	5.15	16.30
	1984	100.00	67.52	13.11	7.84	11.53	32.48
France	1980	...	...	...	...	...	...
	1981	100.00	85.73	...	...	...	14.27
	1982	100.00	83.51	...	...	...	16.49
	1983	100.00	84.51	...	...	...	15.49
	1984	100.00	51.17	...	...	...	48.83
Netherlands	1980	100.00	66.99	13.45	2.86	16.70	33.01
	1981	100.00	49.41	20.97	6.03	23.59	50.59
	1982	100.00	63.10	20.92	2.14	13.84	36.90
	1983	100.00	73.40	10.23	0.84	15.53	26.60
	1984	100.00	43.14	33.00	3.92	19.94	56.86
Spain	1980	100.00	85.77	0.13	12.43	1.67	14.43
	1981	100.00	66.52	3.72	14.22	15.54	33.48
	1982	100.00	54.32	1.69	5.43	38.55	45.67
	1983	100.00	40.75	13.98	24.54	20.73	59.25
	1984	100.00	56.19	8.35	20.10	15.36	43.81
Thailand	1980	100.00	8.58	41.42	-	-	91.42
	1981	100.00	19.51	80.49	-	-	80.49
	1982	100.00	49.78	50.22	-	-	50.22
	1983	100.00	64.50	35.50	-	-	35.50
	1984	100.00	54.50	45.50	-	-	45.50

DOCUMENTATION OF ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATIONAnalysis of arrivals after transit

persons

Country of Arrival	Year	All Arrivals	Arrivals after transit					Total
			With regular documents	Without regular documentation			Subtotal	
				Without documents	Insufficient documents	Fraudulent documents		
Canada	1980	...	...	...	...	...	...	...
	1981	2 399	561	58	-	56	114	675
	1982	3 120	538	94	-	72	166	704
	1983	6 598	2 496	362	-	340	698	3 194
	1984	6 948	2 597	911	-	801	1 712	4 309
Netherlands	1980	1 330	792	179	38	222	439	1 231
	1981	763	306	150	46	124	320	626
	1982	1 214	621	241	26	154	421	1 042
	1983	2 015	996	202	17	297	516	1 512
	1984	2 603	743	838	102	448	1 388	2 131
Spain	1980	780	117	1	44	11	56	173
	1981	457	65	13	36	63	112	177
	1982	2 301	456	34	109	860	1 003	1 459
	1983	1 524	198	219	318	284	821	1 019
	1984	970	149	49	189	148	386	535

## DOCUMENTATION OF ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATION

Analysis of arrivals after transit

per cent of all arrivals

Country of Arrival	Year	All Arrivals	Arrivals after transit					Total
			With regular documents	Without regular documentation			Subtotal	
				Without documents	Insufficient documents	Fraudulent documents		
Canada	1980	...	...	...	...	...	...	...
	1981	100.00	23.38	2.42	-	2.33	4.75	28.13
	1982	100.00	17.24	3.01	-	2.31	5.32	22.56
	1983	100.00	37.83	5.49	-	5.15	10.64	48.47
	1984	100.00	37.78	13.11	-	11.53	24.65	62.03
Netherlands	1980	100.00	59.55	13.46	2.86	16.69	33.00	92.55
	1981	100.00	40.10	19.66	6.03	16.25	41.94	82.04
	1982	100.00	51.15	19.85	2.14	12.69	34.68	85.83
	1983	100.00	49.43	10.02	0.84	14.74	25.61	75.04
	1984	100.00	28.54	32.19	3.92	17.43	53.32	81.87
Spain	1980	100.00	15.00	0.13	5.64	1.41	7.18	22.18
	1981	100.00	14.22	2.85	7.88	13.79	24.51	38.73
	1982	100.00	19.82	1.48	4.74	37.38	43.59	63.41
	1983	100.00	12.99	14.37	20.87	18.64	53.87	66.86
	1984	100.00	15.36	5.05	19.48	15.26	39.79	55.15

ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATION IN CANADABreakdown by period of transit and by kind of documentation

persons

Year	All Arrivals	Arrivals after transit					
		With regular documents	Without regular documentation				Total
			Without documents	Insufficient documents	Fraudulent documents	Subtotal	
<u>Transit of less than 30 days</u>							
1981	2 399	561	58	-	56	114	675
1982	3 120	508	94	-	62	156	664
1983	6 598	2 264	200	-	288	488	2 752
1984	6 948	2 541	620	-	722	1 342	3 883
<u>Transit of more than 30 days</u>							
1981	2 399	-	-	-	-	-	-
1982	3 120	30	-	-	10	10	40
1983	6 598	232	162	-	52	214	446
1984	6 948	56	291	-	79	370	426
<u>All arrivals after transit</u>							
1981	2 399	561	58	-	56	114	675
1982	3 120	538	94	-	72	166	704
1983	6 598	2 496	362	-	340	702	3 198
1984	6 948	2 597	911	-	801	1 712	4 309

ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATION IN CANADABreakdown by period of transit and by kind of documentation

per cent of all arrivals

Year	All Arrivals	Arrivals after transit						Total
		With regular documents	Without regular documentation				Subtotal	
			Without documents	Insufficient documents	Fraudulent documents			
<u>Transit of less than 30 days</u>								
1981	100.00	23.38	2.42	-	2.33	4.75	28.13	
1982	100.00	16.28	3.01	-	1.99	5.00	21.28	
1983	100.00	34.31	3.03	-	4.36	7.40	41.71	
1984	100.00	36.57	8.92	-	10.39	19.31	55.89	
<u>Transit of more than 30 days</u>								
1981	100.00	-	-	-	-	-	-	
1982	100.00	0.96	-	-	0.32	0.32	1.28	
1983	100.00	3.52	2.45	-	0.79	3.24	6.76	
1984	100.00	0.80	4.19	-	1.14	5.32	6.13	
<u>All arrivals after transit</u>								
1981	100.00	23.38	2.42	-	2.33	4.75	28.13	
1982	100.00	17.24	3.01	-	2.31	5.32	22.56	
1983	100.00	37.83	5.49	-	5.15	10.64	48.47	
1984	100.00	37.78	13.11	-	11.53	24.64	62.02	



Table XI

ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATION IN SPAINBreakdown by period of transit and by kind of documentationpersons

Year	All Arrivals	Arrivals after transit						Total
		With regular documents	Without regular documentation			Subtotal		
			Without documents	Insufficient documents	Fraudulent documents			
<u>Transit of less than 30 days</u>								
1981	457	23	7	22	2	31	54	
1982	2 301	235	6	34	885	925	1 160	
1983	1 524	169	156	213	225	594	763	
1984	970	133	38	16	96	150	283	
<u>Transit of more than 30 days</u>								
1981	457	50	7	14	67	88	138	
1982	2 301	180	21	65	15	101	281	
1983	1 524	24	57	103	96	256	280	
1984	970	11	14	167	52	233	244	
<u>All arrivals after transit</u>								
1981	457	73	14	36	69	119	192	
1982	2 301	415	27	99	900	1 026	1 441	
1983	1 524	193	213	316	321	850	1 043	
1984	970	144	52	183	148	383	527	

Table XII

ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATION IN SPAINBreakdown by period of transit and by kind of documentation

Per cent of all arrivals

Year	All Arrivals	Arrivals after transit						Total
		With regular documents	Without regular documentation				Subtotal	
			Without documents	Insufficient documents	Fraudulent documents			
<u>Transit of less than 30 days</u>								
1981	100.00	5.03	1.53	4.81	0.44	6.78	11.81	
1982	100.00	10.21	0.26	1.48	38.46	40.20	50.41	
1983	100.00	11.09	10.24	13.98	14.76	38.98	50.06	
1984	100.00	13.71	3.92	1.64	9.90	15.46	29.17	
<u>Transit of more than 30 days</u>								
1981	100.00	10.94	1.53	3.06	14.66	19.26	30.20	
1982	100.00	7.82	0.91	2.82	0.65	4.39	12.21	
1983	100.00	1.57	3.74	6.75	6.30	16.79	18.37	
1984	100.00	1.13	1.44	17.22	5.36	24.02	25.15	
<u>All arrivals after transit</u>								
1981	100.00	15.97	3.06	7.88	15.10	26.04	42.01	
1982	100.00	18.03	1.17	4.30	39.11	44.59	62.62	
1983	100.00	12.66	13.98	20.73	21.06	55.77	68.43	
1984	100.00	14.84	5.36	18.86	15.26	39.48	54.32	

ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATION IN CANADAAFTER HAVING TRANSITED FOR MORE THAN 30 DAYS THROUGHINTERMEDIATE COUNTRIESBreakdown by category of transit countries

Persons

Year	All Arrivals	Arrivals after transit						Total
		With regular documents	Without regular documentation				Subtotal	
			Without documents	Insufficient documents	Fraudulent documents			
<u>Countries of potential protection</u>								
1981	2,399	-	-	-	-	-	-	-
1982	3 120	5	-	-	10	10	15	15
1983	6 598	210	-	-	12	12	222	222
1984	6 948	49	-	-	6	6	55	55
<u>Other Countries</u>								
1981	2 399	-	-	-	-	-	-	-
1982	3 120	25	-	-	-	-	25	25
1983	6 598	22	162	-	40	202	224	224
1984	6 948	7	291	-	73	364	371	371
<u>All transit countries</u>								
1981	2 399	-	-	-	-	-	-	-
1982	3 120	30	-	-	10	10	40	40
1983	6 598	232	162	-	52	214	446	446
1984	6 948	56	291	-	79	370	426	426

ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATION IN CANADAAFTER HAVING TRANSITED FOR MORE THAN 30 DAYS THROUGHINTERMEDIATE COUNTRIESBreakdown by category of transit countries

per cent of all arrivals

Year	All Arrivals	Arrivals after transit						
		With regular documents	Without regular documentation				Subtotal	Total
			Without documents	Insuf- ficient documents	Fraudulent documents			
<u>Countries of potential protection</u>								
1981	100.00	-	-	-	-	-	-	
1982	100.00	0.16	-	-	0.32	0.32	0.48	
1983	100.00	3.18	-	-	0.18	0.18	3.36	
1984	100.00	0.70	-	-	0.09	0.09	0.79	
<u>Other countries</u>								
1981	100.00	-	-	-	-	-	-	
1982	100.00	0.80	-	-	-	-	0.80	
1983	100.00	0.33	2.45	-	0.61	3.06	3.39	
1984	100.00	0.80	4.19	-	1.05	5.24	5.34	
<u>All transit countries</u>								
1981	100.00	-	-	-	-	-	-	
1982	100.00	0.96	-	-	0.32	0.32	1.28	
1983	100.00	3.52	2.45	-	0.79	3.24	6.76	
1984	100.00	0.80	4.19	-	1.14	5.32	6.13	

Table XV

## ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATION

from 'related' and 'other' countries

persons

Country and year of arrival	Arriving from within the region			Arriving from outside the region			All arrivals		
	From related countries	From other countries	Sub-total	From related countries	From other countries	Sub-total	From related countries	From other countries	Total
Canada									
1981	178	570	748	1 047	604	1 651	1 225	1 174	2 399
1982	341	855	1 196	1 367	557	1 924	1 708	1 412	3 120
1983	1 734	1 676	3 410	1 892	1 296	3 188	3 626	2 972	6 598
1984	2 388	934	3 322	1 846	1 780	3 626	4 234	2 714	6 948
France									
1981	-	2 660	2 660	2 528	6 070	8 598	2 528	8 730	11 258
1982	-	3 628	3 628	2 432	7 916	10 348	2 432	11 544	13 976
1983	-	3 195	3 195	3 076	9 201	12 777	3 076	12 396	15 472
1984	-	2 866	2 866	4 962	8 239	13 201	4 962	11 105	16 067
Spain									
1981	-	107	107	179	171	350	179	278	457
1982	-	363	313	742	1 246	1 988	742	1 559	2 301
1983	-	145	145	318	1 061	1 379	318	1 206	1 524
1984	-	158	158	295	517	812	295	675	970
United Kingdom									
1981	...	...	...	...	...	...	...	...	...
1982	...	...	...	...	...	...	...	...	...
1983	-	114	114	935	1 403	2 338	935	1 517	2 452
1984	-	152	152	866	1 869	2 735	866	2 021	2 887

ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATIONfrom 'related' and 'other' countries

per cent of all arrivals

Country and year of arrival	Arriving from within the region			Arriving from outside the region			All arrivals		
	From related countries	From other countries	Sub- total	From related countries	From other countries	Sub- total	From related countries	From other countries	Total
1981	7.42	23.76	31.18	43.64	25.18	68.82	51.06	48.94	100.00
1982	10.93	27.40	38.33	43.81	17.85	61.67	54.74	45.26	100.00
Canada 1983	26.28	25.40	51.68	28.68	19.64	48.32	54.96	45.04	100.00
1984	34.37	13.44	47.81	26.57	25.62	52.19	60.94	39.06	100.00
1981	-	23.63	23.63	22.46	53.92	76.37	22.46	77.54	100.00
1982	-	25.96	25.96	17.40	56.64	74.04	17.40	82.60	100.00
France 1983	-	20.65	20.65	19.88	59.47	82.58	19.88	80.12	100.00
1984	-	17.84	17.84	30.88	51.28	82.16	30.88	69.12	100.00
1981	-	23.41	23.41	39.16	37.42	76.59	39.16	60.84	100.00
1982	-	13.60	13.60	32.25	54.15	86.40	32.25	67.75	100.00
Spain 1983	-	9.51	9.51	20.87	69.62	90.49	20.87	79.13	100.00
1984	-	16.29	16.29	30.41	53.30	83.71	30.41	69.59	100.00
1981	...	...	...	...	...	...	...	...	...
United 1982	...	...	...	...	...	...	...	...	...
Kingdom 1983	-	4.65	4.65	38.13	57.22	95.35	38.13	61.87	100.00
1984	-	5.26	5.26	30.00	64.74	94.74	30.00	70.00	100.00

## ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATION IN CANADA FROM 'RELATED' AND 'OTHER' COUNTRIES

Breakdown by kind of documentation

persons

Type of Country	Year	Total	With regular documents	Without regular documentation			
				Without documents	Insufficient documents	Fraudulent documents	Subtotal
<u>Arrivals from within the region</u>							
	1981	178	150	-	28	-	28
From 'related countries'	1982	341	291	-	-	50	50
	1983	1 734	1 398	-	336	-	336
	1984	2 388	1 866	-	522	-	522
	1981	570	553	-	17	-	17
From 'other countries'	1982	855	829	-	26	-	26
	1983	1 676	1 604	-	72	-	72
	1984	934	911	-	23	-	23
Subtotal	1981	748	703	-	45	-	45
	1982	1 196	1 120	-	26	50	76
	1983	3 410	3 002	-	408	-	408
	1984	3 322	2 777	-	545	-	545
<u>Arrivals from outside the region</u>							
	1981	1 047	1 047	-	-	-	-
From 'related countries'	1982	1 367	1 367	-	-	-	-
	1983	1 892	1 892	-	-	-	-
	1984	1 846	1 544	100	-	202	302
	1981	604	490	48	47	19	114
From 'other countries'	1982	557	391	94	-	72	166
	1983	1 296	594	374	-	328	702
	1984	1 780	370	811	-	599	1 410
Subtotal	1981	1 651	1 537	48	47	19	114
	1982	1 924	1 758	94	-	72	166
	1983	3 188	2 486	374	-	328	702
	1984	3 626	1 914	911	-	801	1 712
All arrivals	1981	2 399	2 240	48	92	19	159
	1982	3 120	2 878	94	26	122	242
	1983	6 598	5 488	374	408	328	1 110
	1984	6 948	4 691	911	545	801	2 257

## ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATION IN CANADA FROM 'RELATED' AND 'OTHER' COUNTRIES

Breakdown by kind of documentation

per cent of all arrivals

Type of Country	Year	Total	With regular documents	Without regular documentation			
				Without documents	Insufficient documents	Fraudulent documents	Subtotal
<u>Arrivals from within the region</u>							
From 'related countries'	1981	7.42	6.25	-	1.17	-	1.17
	1982	10.93	9.33	-	-	1.60	1.60
	1983	26.28	21.19	-	5.09	-	5.09
	1984	34.37	26.86	-	7.51	-	7.51
From 'other countries'	1981	23.76	23.05	-	0.71	-	0.71
	1982	27.40	26.57	-	0.83	-	0.83
	1983	25.40	24.31	-	1.09	-	1.09
	1984	13.44	13.11	-	0.33	-	0.33
Subtotal	1981	31.18	29.30	-	1.88	-	1.88
	1982	38.33	35.90	-	0.83	1.60	2.43
	1983	51.68	45.50	-	6.18	-	6.18
	1984	47.81	39.97	-	7.84	-	7.84
<u>Arrivals from outside the region</u>							
From 'related countries'	1981	43.64	43.64	-	-	-	-
	1982	43.81	43.81	-	-	-	-
	1983	28.68	28.68	-	-	-	-
	1984	26.57	22.22	1.44	-	2.91	4.35
From 'other countries'	1981	25.18	20.42	2.00	1.96	0.79	4.75
	1982	17.85	12.53	3.02	-	2.31	5.33
	1983	19.64	9.00	5.67	-	4.97	10.64
	1984	25.62	5.33	11.67	-	8.62	20.29
Subtotal	1981	68.82	64.07	2.00	1.96	0.79	4.75
	1982	61.67	56.34	3.02	-	2.31	5.33
	1983	48.32	37.68	5.67	-	4.97	10.64
	1984	52.19	27.55	13.11	-	11.53	24.64
All arrivals	1981	100.00	93.37	2.00	3.84	0.79	6.63
	1982	100.00	92.24	3.02	0.83	3.91	7.76
	1983	100.00	83.18	5.67	6.18	4.97	16.82
	1984	100.00	67.52	13.11	7.84	11.53	32.48



## Breakdown by kind of documentation

persons

Type of Country	Year	Total	With regular documents	Without regular documentation			
				Without documents	Insufficient documents	Fraudulent documents	Subtotal
<u>Arrivals from within the region</u>							
	1980	-	-	-	-	-	-
	1981	-	-	-	-	-	-
From 'related countries'	1982	-	-	-	-	-	-
	1983	-	-	-	-	-	-
	1984	-	-	-	-	-	-
	1980	54	15	-	38	1	39
	1981	107	86	2	18	1	21
From 'other countries'	1982	313	269	5	34	5	44
	1983	145	130	2	11	2	15
	1984	158	137	11	8	2	21
	1980	54	15	-	38	1	39
	1981	107	86	2	18	1	21
Subtotal	1982	313	269	5	34	5	44
	1983	145	130	2	11	2	15
	1984	158	137	11	8	2	21
<u>Arrivals from outside the region</u>							
	1980	687	631	-	56	-	56
	1981	179	174	-	5	-	5
From 'related countries'	1982	742	716	-	26	-	26
	1983	318	300	-	22	-	22
	1984	295	271	7	17	-	24
	1980	39	24	1	3	12	16
	1981	171	44	15	43	70	128
From 'other countries'	1982	1 246	265	34	65	882	981
	1983	1 061	191	211	341	314	866
	1984	517	137	63	170	147	380
	1980	726	655	1	59	12	72
	1981	350	218	15	47	70	132
Subtotal	1982	1 988	981	34	91	882	1 007
	1983	1 379	491	211	363	314	888
	1984	812	408	70	187	147	404
	1980	780	669	1	97	13	111
	1981	457	304	17	65	71	153
All arrivals	1982	2 301	1 250	39	125	887	1 051
	1983	1 524	621	213	374	316	911
	1984	970	545	81	195	149	425

## ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATION IN SPAIN FROM 'RELATED' AND 'OTHER' COUNTRIES

Broken down by kind of documentation

per cent of all arrivals

Type of Country	Year	Total	With regular documents	Without regular documentation				
				Without documents	Inefficient documents	Fraudulent documents	Subtotal	
<u>Arrivals from within the region</u>	1980	-	-	-	-	-	-	
	1981	-	-	-	-	-	-	
	From 'related countries'	1982	-	-	-	-	-	
	1983	-	-	-	-	-	-	
	1984	-	-	-	-	-	-	
From 'other countries'	1980	6.92	1.92	-	4.87	0.13	5.00	
	1981	23.41	18.82	0.44	3.94	0.22	4.60	
	1982	13.60	11.69	0.22	1.48	0.22	1.91	
	1983	9.51	8.53	0.13	0.72	0.13	0.98	
	1984	16.29	14.12	1.13	0.82	0.21	2.16	
Subtotal	1980	6.92	1.92	-	4.87	0.13	5.00	
	1981	23.41	18.82	0.44	3.94	0.22	4.60	
	1982	13.60	11.69	0.22	1.48	0.22	1.91	
	1983	9.51	8.53	0.13	0.72	0.13	0.98	
	1984	16.29	14.12	1.13	0.82	0.21	2.16	
<u>Arrivals from outside the region</u>	1980	88.07	80.90	-	7.18	-	7.18	
	1981	39.17	38.07	-	1.09	-	1.09	
	From 'related countries'	1982	32.25	31.12	-	1.13	-	1.13
	1983	20.87	19.69	-	1.44	-	1.44	
	1984	30.41	27.94	0.72	1.75	-	2.47	
From 'other countries'	1980	5.00	3.08	0.13	0.38	1.54	2.05	
	1981	37.64	9.63	3.28	9.41	15.32	28.01	
	1982	54.15	11.52	1.48	2.82	38.33	42.63	
	1983	69.62	12.53	13.85	22.37	20.60	56.82	
	1984	53.30	14.12	6.50	17.52	15.15	39.17	
Subtotal	1980	93.08	83.97	0.13	7.56	1.54	9.23	
	1981	76.59	47.70	3.28	10.28	15.32	28.89	
	1982	86.40	42.63	1.48	3.95	38.33	43.76	
	1983	90.49	32.22	13.85	23.82	20.60	58.27	
	1984	83.71	42.06	7.22	19.28	15.15	41.65	
All Arrivals	1980	100.00	85.77	0.13	12.43	1.67	14.23	
	1981	100.00	66.52	3.72	14.22	15.54	33.48	
	1982	100.00	54.32	1.69	5.43	38.55	45.67	
	1983	100.00	40.75	13.98	24.54	20.73	59.25	
	1984	100.00	56.19	8.35	20.10	15.36	43.81	

## ASYLUM SEEKERS ARRIVING, AFTER TRANSIT, WITHOUT PRIOR AUTHORIZATION IN CANADA FROM 'RELATED' AND 'OTHER' COUNTRIES

## Breakdown by kind of documentation

persons

Type of Country	Year	All Arrivals	Arrivals after transit					Total
			With regular documents	Without regular documentation			Subtotal	
				Without documents	Insufficient documents	Fraudulent documents		
<u>Arrivals from within the region</u>								
	1981	178	9	-	-	-	-	9
From 'related countries'	1982	341	21	-	-	-	-	21
	1983	1 734	136	-	-	-	-	136
	1984	2 388	199	-	-	-	-	199
From 'other countries'	1981	570	208	-	3	-	3	211
	1982	855	191	-	-	-	-	191
	1983	1 676	702	-	-	-	-	702
	1984	934	53	-	-	-	-	53
Subtotal	1981	748	217	-	3	-	3	220
	1982	1 196	212	-	-	-	-	212
	1983	3 410	838	-	-	-	-	838
	1984	3 322	252	-	-	-	-	252
<u>Arrivals from outside the region</u>								
	1981	1 047	-	-	-	-	-	-
From 'related countries'	1982	1 367	64	-	-	-	-	64
	1983	1 892	1 136	-	-	-	-	1 136
	1984	1 846	637	-	-	-	-	637
From 'other countries'	1981	604	341	58	-	56	114	455
	1982	557	262	94	-	72	166	428
	1983	1 296	506	362	-	340	702	1 208
	1984	1 780	318	811	-	599	1 410	1 728
Subtotal	1981	1 651	341	58	-	56	114	455
	1982	1 924	326	94	-	72	166	492
	1983	3 188	1 296	362	-	340	702	1 998
	1984	3 626	955	811	-	599	1 410	2 365
All arrivals	1981	2 399	558	58	3	56	117	675
	1982	3 120	538	94	-	172	166	704
	1983	6 598	2 134	362	-	340	702	2 836
	1984	6 948	1 207	811	-	599	1 410	2 617

## ASYLUM SEEKERS ARRIVING, AFTER TRANSIT, WITHOUT PRIOR AUTHORIZATION IN CANADA FROM 'RELATED' AND 'OTHER' COUNTRIES

## Breakdown by kind of documentation

per cent of all arrivals

Type of Country	Year	Total	With regular documents	Without regular documentation				Total
				Without documents	Insufficient documents	Fraudulent documents	Subtotal	
<u>Arrivals from within the region</u> From 'related countries'	1981	7.42	0.37	-	-	-	-	0.37
	1982	10.93	0.67	-	-	-	-	0.67
	1983	26.28	2.06	-	-	-	-	2.06
	1984	34.37	2.86	-	-	-	-	2.86
From 'other countries'	1981	23.76	8.67	-	0.12	-	0.12	8.79
	1982	27.40	6.12	-	-	-	-	6.12
	1983	25.40	10.64	-	-	-	-	10.64
	1984	13.44	0.76	-	-	-	-	0.76
Subtotal	1981	31.18	9.05	-	0.12	-	0.12	9.17
	1982	38.33	6.79	-	-	-	-	6.79
	1983	51.68	12.70	-	-	-	-	12.70
	1984	47.81	3.63	-	-	-	-	3.63
<u>Arrivals from outside the region</u> From 'related countries'	1981	43.64	-	-	-	-	-	-
	1982	43.81	2.05	-	-	-	-	2.05
	1983	28.67	17.22	-	-	-	-	17.22
	1984	26.57	9.17	-	-	-	-	9.17
From 'other countries'	1981	25.18	14.21	2.42	-	2.33	4.75	18.96
	1982	17.85	8.40	3.01	-	2.31	5.32	13.72
	1983	29.19	7.67	5.49	-	5.15	10.64	18.31
	1984	25.62	4.58	11.67	-	8.62	20.29	24.87
Subtotal	1981	68.82	14.21	2.42	-	2.33	4.75	18.96
	1982	61.67	10.45	3.01	-	2.31	5.32	15.77
	1983	48.32	19.64	5.49	-	5.15	10.64	30.28
	1984	52.19	13.75	11.67	-	8.62	20.29	34.04
All arrivals	1981		23.26	2.42	0.12	2.33	4.88	28.14
	1982		17.24	3.01	-	2.31	5.32	22.56
	1983		32.34	5.49	-	5.15	10.64	42.78
	1984		17.37	11.67	-	8.62	20.29	37.66

Table XIII

## ASYLUM SEEKERS ARRIVING, AFTER TRANSIT, WITHOUT PRIOR AUTHORIZATION IN SPAIN FROM 'RELATED' AND 'OTHER' COUNTRIES

## Breakdown by kind of documentation

persons

Type of Country	Year	All Arrivals	Arrivals after transit					Subtotal	Total
			With regular documents	Without regular documentation					
				Without documents	Insufficient documents	Fraudulent documents			
<u>Arrivals from within the region</u>									
From 'related countries'	1981	-	-	-	-	-	-	-	
	1982	-	-	-	-	-	-	-	
	1983	-	-	-	-	-	-	-	
	1984	-	-	-	-	-	-	-	
From 'other countries'	1981	107	16	-	14	-	14	30	
	1982	313	4	2	34	5	41	45	
	1983	145	3	2	7	1	10	13	
	1984	158	2	-	4	2	6	8	
Subtotal	1981	107	16	-	14	-	14	30	
	1982	313	4	2	34	5	41	45	
	1983	145	3	2	7	1	10	13	
	1984	158	2	-	4	2	6	8	
<u>Arrivals from outside the region</u>									
From 'related countries'	1981	179	28	-	6	-	6	34	
	1982	742	195	-	21	-	21	216	
	1983	318	39	1	8	-	9	48	
	1984	295	47	-	1	-	1	48	
From 'other countries'	1981	171	29	14	16	69	99	128	
	1982	1 246	216	25	44	895	964	1 180	
	1983	1 061	151	210	301	320	831	982	
	1984	517	95	52	178	146	376	471	
Subtotal	1981	350	57	14	22	69	105	162	
	1982	1 988	411	25	65	895	985	1 396	
	1983	1 379	190	211	309	320	840	1 030	
	1984	812	142	52	179	146	377	519	
All arrivals	1981	457	73	14	36	69	119	192	
	1982	2 301	415	27	99	900	1 026	1 441	
	1983	1 524	193	213	316	321	850	1 043	
	1984	970	144	52	183	148	383	527	

## ASYLUM SEEKERS ARRIVING, AFTER TRANSIT, WITHOUT PRIOR AUTHORIZATION IN SPAIN FROM 'RELATED' AND 'OTHER' COUNTRIES

Breakdown by kind of documentation

per cent of all arrivals

Type of Country	Year	All Arrivals	Arrivals after transit					Total
			With regular documents	Without regular documentation			Subtotal	
				Without documents	Insufficient documents	Fraudulent documents		
<u>Arrivals from within the region</u>								
From 'related countries'	1981	-	-	-	-	-	-	-
	1982	-	-	-	-	-	-	-
	1983	-	-	-	-	-	-	-
	1984	-	-	-	-	-	-	-
From 'other countries'	1981	23.41	3.50	-	3.06	-	3.06	6.56
	1982	13.60	0.17	0.09	1.48	0.22	1.78	1.95
	1983	9.51	0.20	0.13	0.46	0.07	0.66	0.85
	1984	16.29	0.21	-	0.41	0.21	0.62	0.82
Subtotal	1981	23.41	3.50	-	3.06	-	3.06	6.56
	1982	13.60	0.17	0.09	1.48	0.22	1.78	1.95
	1983	9.51	0.20	0.13	0.46	0.06	0.66	0.85
	1984	16.29	0.21	-	0.41	0.21	0.62	0.82
<u>Arrivals from outside the region</u>								
From 'related countries'	1981	39.17	6.13	-	1.31	-	1.31	7.44
	1982	32.25	8.47	-	0.91	-	0.91	9.39
	1983	20.87	2.56	0.06	0.52	-	0.59	3.15
	1984	30.41	4.84	-	0.10	-	0.10	4.95
From 'other countries'	1981	37.42	6.34	3.06	3.50	15.10	21.66	28.01
	1982	54.15	9.39	1.09	1.91	38.90	41.89	51.28
	1983	69.62	9.91	13.78	19.75	30.00	54.53	64.43
	1984	53.30	9.79	5.36	18.35	15.05	38.76	48.56
Subtotal	1981	76.59	12.47	3.06	4.81	15.10	22.97	35.45
	1982	86.40	17.86	1.09	2.82	38.90	42.81	60.67
	1983	90.48	12.47	13.84	20.27	30.00	55.12	67.58
	1984	83.71	14.64	5.36	18.45	15.05	38.86	53.50
All arrivals	1981	100.00	15.97	3.06	7.88	15.10	26.04	42.01
	1982	100.00	18.03	1.17	4.30	39.11	44.59	62.62
	1983	100.00	12.66	13.98	20.73	21.06	55.77	68.43
	1984	100.00	14.84	5.36	18.86	15.26	39.48	54.32

## ASYM SENSE ARRIVING WITHOUT PRIOR AUTHORIZATION

## Redistribution Effect of Conditions in Countries of Arrival

persons

Country of origin and year	Country of Arrival													Total
	N	O	P	Q	R	S	T	U	V	W	X	Y	Z <sup>a</sup>	
Country A														
1981	3 378	19	214	3	...	13	...	1	-	1	...	-	2	3 630
1982	4 113	42	702	153	...	73	230	2	4	9	...	-	-	5 340
1983	1 611	82	904	54	...	554	231	31	4	22	...	-	15	3 498
1984	2 670	67	1 159	58	...	314	750	234	7	27	...	28	14	5 328
Country B														
1981	5 100	18	335	9	12	94	-	-	10	-	86	-	6	5 770
1982	3 101	232	275	6	20	56	354	2	1	5	192	-	3	4 247
1983	763	208	663	121	11	29	175	-	3	2	97	56	3	2 132
1984	1 587	99	455	364	407	110	226	1	20	9	53	32	17	3 385
Country C														
1981	2 750	-	951	4	...	...	-	-	-	-	...	-	...	3 705
1982	1 416	-	1 561	109	...	16	1	-	1	2	...	64	11	3 186
1983	2 645	-	2 551	845	...	368	10	4	10	3	...	716	...	7 152
1984	8 063	52	3 071	1 236	...	348	28	5	266	3	553	1 002	5	14 632
Country D														
1981	6 302	48	316	155	84	38	175	-	20	-	49	69	157	7 413
1982	3 654	34	593	1 341	194	38	174	-	41	1	99	69	235	6 473
1983	1 548	35	1 461	1 972	247	21	458	1	54	-	422	74	211	6 504
1984	4 180	14	1 473	2 639	861	53	789	4	176	1	456	29	248	10 923
Country E														
1981	915	7 138	215	84	35	1 509	-	65	17	91	24	95	81	10 290
1982	955	5 863	686	182	223	2 211	31	184	15	1 042	...	156	140	12 281
1983	1 190	4 294	1 062	112	414	1 669	47	503	68	811	89	472	212	11 728
1984	2 658	3 488	1 547	119	1 723	1 140	91	798	2 698	154	341	1 040	394	17 980
Country F														
1981	601	992	113	53	153	100	7	253	7	6	135	57	102	2 584
1982	1 256	1 005	87	153	195	73	6	221	16	12	73	30	71	3 199
1983	906	628	117	153	49	118	3	249	12	7	107	52	16	2 422
1984	2 264	415	98	106	233	113	4	466	52	-	136	17	21	3 925

<sup>a</sup> Three countries

## ASYLUM SEEKERS ARRIVING WITHOUT PRIOR REGISTRATION

## Redistribution Effect of Conditions in Countries of Arrival

percentages

Country of origin and year	Country of Arrival													Total
	N	O	P	Q	R	S	T	U	V	W	X	Y	Z <sup>a</sup>	
Country A														
1981	93.06	0.52	5.89	0.08	...	0.36	...	0.03	-	0.03	...	-	0.03	100.00
1982	77.19	0.79	13.18	2.87	...	1.37	4.32	0.04	0.07	0.17	...	-	-	100.00
1983	46.06	2.34	25.85	1.54	...	15.84	6.60	0.89	0.11	0.63	...	-	0.14	100.00
1984	50.11	1.26	21.75	1.09	...	5.89	14.08	4.39	0.13	0.51	...	0.53	0.26	100.00
Country B														
1981	88.39	2.05	5.81	0.15	0.21	1.63	-	-	0.17	-	1.49	-	0.10	100.00
1982	73.02	5.46	6.47	0.14	0.47	1.32	8.34	0.05	0.02	0.12	4.52	-	0.07	100.00
1983	35.80	9.76	31.11	5.68	0.52	1.36	8.21	-	0.14	0.09	4.56	2.63	0.14	100.00
1984	46.95	2.93	13.46	10.77	12.04	3.25	6.69	0.03	0.59	0.27	1.57	0.95	0.50	100.00
Country C														
1981	74.22	-	25.67	0.11	...	...	-	...	-	-	...	-	...	100.00
1982	44.44	-	49.00	3.42	...	0.50	0.19	-	0.03	0.06	...	2.01	0.35	100.00
1983	36.98	-	35.67	11.81	...	5.15	0.14	0.06	0.14	0.04	...	10.01	...	100.00
1984	55.10	0.36	20.99	8.45	...	2.38	0.19	0.03	1.82	0.02	3.78	6.85	0.03	100.00
Country D														
1981	85.01	0.65	4.26	2.09	1.13	0.51	2.36	-	0.30	-	0.66	0.93	2.12	100.00
1982	56.45	0.53	9.16	20.72	3.00	0.59	2.69	-	0.63	0.01	1.53	1.07	3.62	100.00
1983	23.80	0.54	22.46	30.32	3.80	0.32	7.04	0.02	0.83	-	6.49	1.14	3.24	100.00
1984	38.27	0.13	13.49	24.16	7.88	0.49	7.22	0.04	1.61	0.01	4.18	0.26	2.26	100.00
Country E														
1981	8.91	69.51	2.09	0.82	0.34	14.69	-	0.63	0.17	0.89	0.23	0.93	0.79	100.00
1982	8.17	50.16	5.87	1.56	1.91	18.92	0.26	1.57	0.13	8.92	...	1.33	1.20	100.00
1983	10.88	39.24	9.71	1.02	3.78	15.25	0.43	4.60	0.62	7.41	0.81	4.31	1.94	100.00
1984	16.42	21.54	9.56	0.73	10.64	7.04	0.56	4.93	16.66	0.96	2.11	6.42	2.43	100.00
Country F														
1981	23.30	38.47	4.38	2.06	5.93	3.88	0.27	9.81	0.27	0.23	5.23	2.21	3.96	100.00
1982	39.27	31.43	2.72	4.78	6.10	2.28	0.19	6.91	0.50	0.38	2.28	0.94	2.22	100.00
1983	37.48	25.98	4.84	6.33	2.03	4.88	0.12	10.30	0.50	0.29	4.43	2.16	0.66	100.00
1984	57.68	10.57	2.50	2.70	5.94	2.88	0.10	11.87	1.33	-	3.46	0.43	0.54	100.00

Three countries



ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATIONRedistribution effect of conditions in countries of arrival

persons

Country of origin and year	Europe			Europe and North America			
	Main Country	Other Countries	Total <u>a</u>	Main Country	Other Countries in Europe	North America	Total <u>b</u>
Country A							
1981	3 378	233	3 611	3 378	233	19	3 630
1982	4 113	1 173	5 286	4 113	1 173	42	5 328
1983	1 611	1 805	3 416	1 611	1 805	82	3 498
1984	2 670	2 563	5 233	2 670	2 563	95	5 328
Country B							
1981	5 100	552	5 652	5 100	552	118	5 770
1982	3 101	914	4 015	3 101	914	232	4 247
1983	763	1 104	1 867	763	1 104	264	2 131
1984	1 587	1 662	3 249	1 587	1 662	131	3 380
Country C							
1981	2 750	955	3 705	2 750	955	-	3 705
1982	1 416	1 706	3 122	1 416	1 706	64	3 186
1983	2 645	3 791	6 436	2 645	3 791	716	7 152
1984	8 063	5 515	13 578	8 063	5 515	1 054	14 632
Country D							
1981	6 302	924	7 296	6 301	994	117	7 413
1982	3 654	2 716	6 370	3 654	2 716	103	6 473
1983	1 548	4 847	6 395	1 548	4 847	109	6 504
1984	4 180	6 700	10 880	4 180	6 700	43	10 923

a Fifteen countriesb Seventeen countries

ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATION

Redistribution effect of conditions in countries of arrival

persons

Country of origin and year	Europe			Europe and North America		
	Main Country	Other Countries	Total <u>a</u>	Main Country	Other Countries	Total <u>b</u>
Country E						
1981	1 509	1 527	3 036	7 138	3 131	10 269
1982	2 211	3 458	5 669	5 863	5 825	11 688
1983	1 669	4 508	6 177	4 294	6 649	10 943
1984	1 140	10 523	11 663	3 488	12 703	16 191
Country F						
1981	601	929	1 530	992	1 587	2 579
1982	1 256	907	2 163	1 005	2 193	3 198
1983	906	831	1 737	628	1 789	2 417
1984	2 264	1 229	3 493	415	3 510	3 925

a Fifteen countries

b Seventeen countries

ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATIONRedistribution effect of conditions in countries of arrival

percentages

Country of origin and year	Europe			Europe and North America			
	Main Country	Other Countries	Total <u>a</u>	Main Country	Other Countries in Europe	North America	Total <u>b</u>
Country A							
1981	93.55	6.45	100.00	93.06	6.42	0.52	100.00
1982	77.81	22.19	100.00	77.19	22.02	0.79	100.00
1983	47.16	52.84	100.00	46.06	51.60	2.34	100.00
1984	51.02	48.98	100.00	50.12	48.10	1.78	100.00
Country B							
1981	90.23	9.77	100.00	88.39	9.57	2.04	100.00
1982	77.24	22.76	100.00	73.02	21.52	5.46	100.00
1983	40.87	59.13	100.00	35.80	51.81	12.39	100.00
1984	48.85	51.15	100.00	46.95	49.17	3.88	100.00
Country C							
1981	74.22	25.78	100.00	74.22	25.78	-	100.00
1982	45.35	54.65	100.00	44.44	53.55	2.01	100.00
1983	41.10	58.90	100.00	36.98	53.01	10.01	100.00
1984	59.38	40.62	100.00	55.10	37.70	7.20	100.00
Country D							
1981	86.38	13.62	100.00	85.01	13.41	1.58	100.00
1982	57.36	42.64	100.00	56.45	41.96	1.59	100.00
1983	24.21	75.79	100.00	23.80	74.52	1.59	100.00
1984	38.42	61.58	100.00	38.27	61.34	0.39	100.00

a Fifteen countriesb Seventeen countries

ASYLUM SEEKERS ARRIVING WITHOUT PRIOR AUTHORIZATIONRedistribution effect of conditions in countries of arrival

percentages

Country of origin and year	Europe			Europe and North America		
	Main Country	Other Countries	Total <u>a</u>	Main Country	Other Countries	Total <u>b</u>
Country E						
1981	49.70	50.30	100.00	69.51	30.49	100.00
1982	39.00	61.00	100.00	50.16	49.84	100.00
1983	27.02	72.98	100.00	39.24	60.76	100.00
1984	9.77	90.23	100.00	21.54	78.46	100.00
Country F						
1981	39.28	60.72	100.00	38.46	61.54	100.00
1982	58.07	41.93	100.00	31.43	68.57	100.00
1983	52.16	47.84	100.00	25.98	74.02	100.00
1984	64.82	35.18	100.00	10.57	89.43	100.00

a Fifteen countriesb Seventeen countries