

Viktor Foerster, who practices law in Nürnberg, Germany, is president of the European Forum for Migration Studies, Katharinenstrasse 1, 96052 Bamberg, Germany (Tel: +951-37041/Fax: +951-32888). This discussion of the Schengen Agreement was given at Writers Workshop XIX in Washington, D.C. on October 20, 1995.

Immigration in the European Union

The Schengen Agreements, I and II

By Viktor Foerster

The Schengen Agreement takes its name from a little town in Luxembourg, famous for its vineyards. It is fitting that it lends its name to key concepts of the European Union, for it lies in the center of Europe. Essentially, the agreement is about freedom of movement for individuals and goods between certain nations within the European Union.

Fifty years ago Europe lay in ashes and rubble. The economic, social and political strengths of the Old World had been destroyed by years of war and national conflicts. There was a need to rebuild a new Europe from the ground up — economically, politically and socially — and, at the same time, remove the constant threat of nationalistic rivalry and war which had so often led Europeans to conflict.

Economic recovery was spurred by the far-reaching Marshall Plan in which American aid and investment restored the basic infrastructure and economic base of war-torn Europe. The need to ban the threat of war also meant an equitable distribution of the continent's natural resources. What started as an agreement between France and Germany after the war — an attempt to control any potential for armed aggression by addressing the issue of coal and steel reserves — has become today a complex economic, social and political union that unites 15 European countries and allows for the exchange of goods, capital, services and people in a common market.

The ideal of a European Union has been taken one step further by the Schengen Agreement by stating that there should be a *free* movement of persons and goods *without* any routine customs, passports or other checks at the *internal* borders.

It may be difficult for Americans to understand but in the so-called "united Europe" one was still subject to checks at the border of each country. Think about being a frequent business traveler flying between New York and Los Angeles and having to go through Customs and Immigration. Imagine the delays and bureaucratic effort involved for a trucker to drive his goods from Portland to Miami, stopping at the border of each state for an examination of his load and paperwork, and possibly having the police check his passport and the safety of his vehicle at *each* interstate border. The results for the United States would be horrendous.

It is just such a problem that the Schengen Agreement addresses. Indeed, it was a truck drivers' strike and protest movement in the spring of 1984,

resulting from the sheer frustration caused by long queues at internal European borders, which provided the political ignition for the Schengen Agreement."

On June 14, 1985, Luxembourg, Belgium and the Netherlands joined France and Germany to sign the first Schengen Agreement. Five years later Schengen II was signed allowing for the later accession of Italy, Spain, Portugal and Greece to the Agreement. Since that time Austria has joined the European Union and become a signatory as well.

Denmark has been given observer status in the agreement since that country, as part of the "Nordic Union," is already party to an historical association between Denmark, Norway, Finland, Iceland and Sweden which allows freedom of movement to member citizens. While these nations wish to join the Schengen group, for Norway and Iceland their position as non-European Union members will probably mean that they require some sort of special status. In this regard, a probable solution will be that Denmark, Sweden and Finland will become parties to the Schengen Agreement while Norway and Iceland will be allowed a special observer status.

Similarly the United Kingdom and the Republic of Ireland, being island nations, have historic ties and an existing agreement about freedom of movement between the two countries. In this case, it is the United Kingdom which has expressed its political opposition to joining the Schengen Agreement.

Having surrendered a measure of sovereignty to the European Union by providing open internal borders, the spotlight shifts to such politically sensitive matters as national security, drug trafficking and international terrorism.

The Schengen Agreement provides for both short and long term arrangements to compensate for a perceived loss of security. One of these is the establishment of a supra-national computerized information and data bank along with a more geographically flexible approach to investigations and pursuit by police and customs officials. The Agreement also sets out common procedures to be used at external borders, action to be taken against drug trafficking and terrorism, a common entry visa policy, and judicial cooperation in civil and criminal matters.

"...provides uniform criteria for determining which state will have jurisdiction for dealing with asylum applications..."

In the future it is planned that customs offices will be able to act with more depth and with more resources behind them. Rather than being stationary at internal frontiers, police and customs units will operate on a mobile basis within their countries. The supranational computer information system will assist in identifying target persons and target regions; suspects and "inadmissible" persons will be entered on a central register. Cooperation between the various national law enforcement agencies will be greatly strengthened so that, for example, "hot pursuit" cross border actions will be permitted.

Despite such arrangements to tighten the Union's external borders, several countries — notably France — have expressed reservations about the full implementation of the Schengen Agreement. The concern of the French is only partly that insufficiently stringent procedures in other EU countries will admit unwanted immigrants from outside the EU who will then move unimpeded to France. A much more immediate concern of the French government relates to matters of illegal drug trafficking and criminality from other countries, e.g. the Netherlands. Notwithstanding these reservations, the French government remains fundamentally a firm supporter of the principles and concepts of the Schengen Agreement.

As regards refugees and asylum-seekers, the Schengen Agreement should be considered in the context of the so-called "Dublin Convention" — A Convention Determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Union. The Dublin Convention was signed by member countries of the European Union (both signatories and non-signatories to the Schengen Agreement) and provides uniform criteria for determining which state shall have jurisdiction for dealing with asylum applications lodged within the European Union. Asylum applications are then processed under the national law of the state or country assuming jurisdiction. Generally it can be said that the state which first receives the asylum seeker will have jurisdiction. Thus, a person arriving in Frankfurt on a train from Paris will be subject to French law in any asylum application.

The Dublin Convention should be considered in the context of the Schengen Agreement. Indeed, some alarmists have joined the two to form the establishment of a "Fortress Group" attempting to repel all outsiders. I think such a simplification is unnecessarily alarmist. The emphasis of both agreements — Schengen in terms of freedom of internal movement and the Dublin

Convention in terms of asylum seekers and refugees — has been toward more standardization and harmonization of the previous laws, both substantively and procedurally, within the European context.

In many ways the two agreements should lead to more certainty in the application of the relevant law and its effects. It should be noted that the Dublin Convention serves to decide the matter of jurisdiction for asylum seekers, thereby avoiding the inhumanity of creating a "refugee in orbit" with no country accepting responsibility. But the Dublin Convention does *not* seek to replace the application of *national* law.

Ladies and gentlemen: we do not have a United States of Europe, and any direct comparison with a federal system such as the United States of America is therefore, at the moment, misleading. But I am sure you will see that the Schengen Agreement, by allowing for unhindered border crossings, is an important step on the long road to European harmonization and unity. ■