

Viktor Foerster, an attorney in Germany and a member of The Social Contract editorial board, presents a view of the additional complexity of controlling immigration in general and refugees / asylees in particular when there is no overarching set of laws commonly agreed upon.

The Right of Asylum in Europe

By Viktor Foerster

The political and social significance of the right of asylum in the European Economic Community and in its Member States has increased steadily over the past ten years.

And, in view of the fact that Member States have been unable individually to respond adequately to the challenge posed by the influx of asylum seekers, and because of the coalescing of the Community into a single market, this issue has increasingly become a matter of common interest. Moreover, the removal of controls at internal frontiers on January 1, 1993 makes it particularly important that there should be a uniform right of asylum throughout the Community.

There are two fundamentally different concepts of migration we must distinguish here:

- Firstly, there is "immigration" which is primarily an economic phenomenon. Immigration is, in the first place, determined by the relative economic situation extant in the country of immigration and in the country of origin. Of course, a component of such migration is also the question of family reunions and regroupings. Immigration is subject to the *discretion* of each Member State and depends on numerous economic and other factors — each Member State decides whether or not immigrants may be admitted.
- In sharp contrast, the right of asylum is a question of a legal right as defined by the Geneva Convention. All Member States are signatories to that Convention and recognize it as a fundamental common legal instrument in determining the situation vis-a-vis asylum seekers and refugees. In ratifying the Geneva Convention, the Member States entered into basic humanitarian commitments affording protection to individuals who fear persecution in their own country for political, ethnic, or religious reasons.

"Political refugees" are subject to the individual national laws of the Member State. At present there is no unified European Community law in this area. However, it is important to know that no discretion is permitted in the admission of asylum seekers. In any event, economic considerations are not taken into account in determining whether or not an individual is to be recognized as an asylum seeker. The basis for any such decision is the Geneva Convention. (Indeed,

the definition applied in determining the status of "asylum seekers" in Germany is actually much broader than that laid down in the Geneva Convention.)

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There is also a third category to be considered in this question: that is the group of "de facto" refugees. De facto refugees are those persons who flee their respective countries not in order to escape political persecution, but rather because their individual life or safety is threatened by such conditions as civil war or political unrest.

The Geneva Convention should remain the basis for determining asylum status. But, at the same time, there is a need to prevent any abuse of the rights of asylum. A relatively large and growing number of asylum seekers have in the past had recourse to the asylum procedure even though they do not satisfy the definition of political refugees as laid down in the Geneva Convention. This constitutes an abuse of the asylum procedure aimed at circumventing the restrictions on immigration for employment purposes. Such abuses, particularly in the case of manifestly unfounded applications, or in the case of applications from "safe" countries, must be stopped through the introduction of common procedures among the Member States. These procedures should encompass such matters as the adoption of speedy deportation procedures for rejected applicants and for the consideration of certain "safe country" applications to take place at the external frontier.

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There have also been moves to prevent so-called "asylum tourism" and harmonize the formal right of

asylum in the Community. The Dublin Convention was drafted to determine which State is responsible for examining an application for asylum lodged in one of the Member States. The Convention is designed, among other things, to prevent asylum seekers from becoming "refugees in orbit" and from lodging multiple applications within the frontier-free area. The final aim [of the Dublin Convention] is to achieve harmonization of the laws concerning applications for asylum, the treatment afforded, and the substantive law throughout the frontier-free area of the Community.

The decision by a Member State to vet an application must be recognized in accordance with the Dublin Convention by all the other Member States. The opportunity to submit multiple applications in different Member States should not exist.

At the same time, the Luxembourg European Council has drawn a distinction between measures for the formal and substantive harmonization of the right to asylum among the Member States in the longer term, and the practical preparatory and transitional measures needed to cover the more immediate future before permanent measures can be adopted.

Apart from immediate ratification of the Dublin Convention with a view to its entry into force,* the measures which could be given joint consideration at this stage in order to respond to the influx of asylum seekers could be summarized as follows:

- a) Administrative and court procedures should be speeded up so that decisions can be taken more rapidly and the number of pending applications can be reduced. In this regard, procedures could be dramatically abridged in cases where there are manifestly unfounded applications. But of course, the individual right of the asylum seeker must always be safeguarded.
- b) Harmonization of the rules on refusal of admission at external borders in terms of such matters as the meaning of "first host country" and the definition of "safe country."
- c) Asylum seekers whose applications are turned down should be deported unless they can be allowed to stay under some other arrangement.
- d) A procedure should be established for consultation and the exchange of information in connection with the right of asylum — particularly as regards the situation in the countries of origin and relevant legislation.

Thus, as a general matter, it can be seen that the measures to prevent abuse of the right of asylum are at the same time linked to the wider problem of the need to control economic migration into the area of the European Community. In the longer term, there must

also be a harmonization of the formal and substantive right of migration among all of the Member States of the Community. All of these steps must be taken in consultation with the United Nations High Commissioner for Refugees using the Geneva Convention as the legal foundation for determining such matters. ■

[* At their meeting on June 13, 1991, ministers of the EC countries recommended the ratification of the Dublin Convention with a view to its taking effect no later than January 1, 1993.]