Schengen, ad hoc Immigration Group and other European intergovernmental bodies
in view of a Europe without internal borders

Foreword

This paper is an update of a CCME Briefing Paper on the same subject issued in May 1990[i]. Since then the realisation of a Europe without internal borders has proved to be a lot more complex and complicated than its promoters had imagined.

The unexpected and revolutionary changes that have taken place in the former Communist States of Eastern and Central Europe have not only aggravated the thorny questions to be resolved before the suppression of internal borders, but have also added new ones. Consequently, there has been a multiplication of earlier intergovernmental fora set up to study and elaborate measures to offset the abolition of internal frontiers. New working structures have mushroomed either to deal with issues already within the mandate of existing bodies or to tackle new problems which were not evident before.

Given the present situation, it is obvious that the governments concerned will never allow for a total abolition of the frontiers within their respective countries, especially as far as persons are concerned, without harmonised and effective reinforcement of their external borders. It so happens that many of the offsetting measures that have to be implemented limit the right of entry of persons at the external borders, namely through more numerous entry criteria, and, consequently raise questions of respect for human rights.

For years, the very confidential working methods of intergovernmental bodies have provoked numerous criticisms from ordinary citizens up to national and European politicians, badly or little informed of the myriad of activities carried out by the Member States' governments which are, however, outside Community competence.

Despite efforts made by, inter alia, certain Member States and the European Parliament[ii] to put an end to intergovernmental co-operation in the spheres of justice and home affairs where matters related to the Treaty of Rome are concerned, the Treaty on European Union has not only reinforced the legitimacy of the intergovernmental bodies, but, and for the first time, also stipulates that "administrative expenditure" incurred by the Community institutions for these intergovernmental and therefore non-Community activities "shall be charged to the budget of the European Communities". (Article K.8, para. 2).[iii]

Under the Maastricht Treaty, home and justice affairs will come under the so-called "third pillar"[iv], giving both Member States and the Commission the right of initiative, but such activities will remain intergovernmental with the exception of a common visa

policy vis-à-vis third country nationals (Article 100c). The extent to which the European Parliament will be kept informed has yet to be determined. The Maastricht Treaty certainly provides the possibility of placing some of these areas, notably those of asylum and immigration, under Community competence (Article K.9), and this question will be examined before the end of 1993[v]. However, such a transfer of competence can only take place after a unanimous decision of the Council.

In the meantime, confusion and mystery surround the activities of the intergovernmental bodies, some of which overlap. Whilst it is true that the parliamentary system of each Member State provides for the possibility to control such activities, the questioning and examining procedures are, in such matters, rather theoretical for in practice MPs must first and foremost be well informed of the existence, composition and mandate(s) of these intergovernmental fora, their agenda and their work programme. During the meeting on 17-19 March 1993 in Brussels between the Committee on Civil Liberties and Internal Affairs of the European Parliament and equivalent committees of the parliaments of Member States on co-operation in the field of justice and interior affairs, the participants were almost unanimous in their criticisms against the lack of information and transparency of the intergovernmental activities. It must also be recalled that the request made in April 1992 by the Committee on Civil Liberties of the European Parliament to the Council to have an organigramme of all the intergovernmental bodies has never received a follow-up[vi].

Much has already been said and written on whether these intergovernmental activities are in violation of Community law, the constitutional laws of certain Member States and international human rights instruments[vii]. It is therefore not necessary to add any more arguments here in detail.

The aim of this Briefing Paper is limited to describing, as far as possible, in a precise and succinct manner, the intergovernmental fora dealing with issues of immigration and asylum/refugees, and giving an insight into their activities. Other bodies are also mentioned but only to indicate their areas of work and to correct any false information about them.

There is a great deal more information on the Schengen Group as its activities aimed at the complete free movement of persons are far more advanced and integrated than those of other bodies. Without ever saying so explicitly, the governments of the EC Member States know very well that the free movement within the Community of all persons residing in one Member State, as provided by Article 8a of the EEC Treaty, will not come about in the short term. It is therefore up to the Schengen Group to take up this challenge. Its failure will also be that of the Community.

The Schengen Group

Contrary to the belief of a large number of associations supporting immigrants and asylum-seekers, the idea to create the Schengen Area did not come from the desire of the 5 founding Member States, ie. Belgium, France, Germany, Luxembourg and The Netherlands, to tighten up their frontiers against immigration. It is true that during the process of negotiations leading up to the signing of the Supplementary Agreement, Member States adopted more and more restrictive measures on immigration and asylum in the face of an important increase in the number of asylum-seekers and the growing problem of clandestine immigration. Under these conditions, the final provisions of the Agreement concerning entry and asylum are rather strict.

In fact, the idea originates from a large protest movement of lorry drivers in the spring of 1984, angry at the long queues of lorries at internal European borders. The movement paralysed the crossings at numerous frontier posts. Reacting quickly, and with understanding, to this situation, Germany and France signed on 13 July 1984 one of the "precursors" of the Schengen Agreement, namely the **Sarrebruck Accord** which provides for the gradual suppression of control of persons at the Franco-German border.

These two countries subsequently contacted the Member States of the Benelux whose internal borders for persons have been suppressed since 1960.[viii] The Schengen Group was thus created and less than 12 months after the Sarrebruck Accord, these five countries signed, on 14 June 1985, the **Schengen Accord**. Since then, the General Secretariat of the Benelux has also assumed the secretariat of the Schengen Group.

From the very beginning the Commission of the EC has participated, as an observer, in the ministerial meetings of Schengen. In June 1988, it was also allowed to begin participating, as an observer, in the Central Negotiating Group, following the adoption of a proposal to this effect put forward by the Luxembourg presidency.

The 1985 Accord is more like a work programme containing the principle measures which the Five will have to put in place to realise the total suppression of their internal borders. Only the Netherlands felt that it was necessary to ratify the Accord. This took place without any parliamentary debate. As for the others, they considered the Accord as being only a declaration of intention, and did not submit it for parliamentary ratification. On the other hand, the Five quickly realised that the Accord could not be implemented without a supplementary agreement.

The negotiators then began work on drawing up the supplementary agreement, but their activities were virtually unknown to the public, which gave rise to numerous accusations that the Group had been for years involved in "clandestine" activities without the knowledge of human rights agencies or even the national parliaments of the Member States. Some critics even say that meetings of the Group were held in secret[ix], and that the 1985 Accord was a confidential document.

Others, namely associations in support of asylum-seekers accused the Group of having deliberately excluded the UNHCR from discussions on asylum issues, which would have been a violation of Article 35 of the Geneva Convention on the Status of Refugees, Article II of the 1967 Protocol, as well as Article 8 of the UNHCR Statutes. As already pointed out in the first Briefing Paper[x], up until mid 1989, no formal request for participation had been submitted by the UNHCR to the Schengen Secretariat. Contacts began towards the end of 1989 and since 1990 the UNHCR has been consulted on provisions of the Agreement relating to refugees[xi].

It is nevertheless questionable whether an intergovernmental structure is the appropriate body for negotiations on measures affecting the treatment of persons since there will undeniably be risks of infringing upon human rights. On the other hand, whilst it is true that the various drafts of the Convention were kept secret, which is quite legitimate during the course of intergovernmental negotiations, some of the criticisms against the "clandestine" activities of the Group are not valid, namely those coming from associations in support of immigrants and refugees, taken by surprise of the existence and scope of the work of the Schengen Group.

True enough, the Schengen Group has never carried out an important public relations exercise to make known the project of a Schengen Area without internal borders. But it will be unfair not to recognise the virtual absence of interest in the activities of the Group on the part of the media, and, as a result, of human rights associations. This media apathy lasted until mid-1989 when the Five announced their intention to sign the Convention before the end of that year[xii]. After at least one ministerial meeting in Bonn, there was not one single German journalist present at the subsequent press conference. Only a few members of the Dutch press bothered to attend.

Even today, despite the presence of a larger contingent of journalists, that is to say some 20 persons, information on ministerial meetings are often only published in the newspapers of the country where the event took place. The absence of foreign correspondents is still striking.

Persistent incompetence on the part of those who ought to have monitored the activities of the Schengen Group or of civil servants and ministries involved or, as some still believe, a sinister manoeuvre of the Five to present a fait accompli before the public of their countries? In any case, it must be said that before the second half of 1989, there was hardly any information on Schengen in the main national newspapers, despite press communiqués issued after each and every ministerial meeting. Contrary to the TREVI Groups (see below), the Schengen Group has had a permanent secretariat in Brussels from the very beginning which informs the public of the different areas of its activities. Besides, the text of the 1985 Agreement has been available on request since it was signed, but prior to 1990

almost no association in support of immigrants or refugees had asked for it.

There has therefore always been a certain degree of transparency within the secretariat of the Schengen Group. Such is unfortunately not the case where Member States are concerned, with the exception of The Netherlands. According to the French Senator, Mr P. MASSON[xiii], "in 1989, the French Government had reportedly urged the Dutch Government to avoid systematically informing its national parliament, particularly as regards the provisions of the Convention for applying the Schengen Agreement currently being negotiated, as such a procedure might have set a precedent and could have prompted similar claims from the French parliament." Moreover, the French Interior and Justice Ministers are supposed to have been ignorant of the existence of the Schengen Accord until the beginning of 1989 because the Ministry of Foreign Affairs had neglected to inform them of it.[xiv] As a matter of fact, no parliamentary questioning ever took place in Germany, Belgium, France and Luxembourg between 1985 and 1989.

The role played by the Commission of the EC in the negotiation process is also very much misunderstood. It is almost inconceivable that the Commission, as an observer, could have taken the initiative to inform the public and both the national and European parliaments of matters discussed during meetings of the Schengen Group. It so happens that when the public learnt of the existence of the 1985 Accord, most of the pressure aimed at getting more transparency in the negotiation process was directed against the Commission. The latter could have indeed provided more detailed replies to questions raised by MEPs (which were very rare before 1990). Perhaps the Committee on Legal Affairs of the European Parliament could have taken initiatives earlier to remedy the information deficit, especially towards and as from the end of 1986 when the Member States no longer appeared to want to respect their obligations undertaken in the White Paper of 1985 in matters of immigration and asylum policies.[xv]

With the exception of The Netherlands, none of the ministers concerned were questioned by their respective parliaments on the Accord between 1985 and 1989. As I underlined earlier, MPs may question ministers only on issues known to them. If they do not even know that their country had signed an international agreement aimed at the suppression of internal borders, it is obvious that no question could have been raised!

The situation was well summed up, in his way, by the European Commissioner Martin BANGEMANN during a session of oral questions in the European Parliament on 20 February 1991. Referring to the intergovernmental bodies, Mr BANGEMANN underlined that within the "national administrations in particular, there are a number of people who have absolutely no time for the Community." "This is true", he added, "in the first instance, for the ministers of the Interior. It has been an uphill task to ensure that the Commission was accepted with observer status within the TREVI 92 Group - I was able to succeed in this by having recourse

virtually solely to threats - as it is manifestly an issue that concerns the Single Market".

He then made the following appeal to MEPs: "Up to now, it has merely been a question of co-operation between governments. Why the devil don't you take the necessary steps to give a vigorous prod to a number of your colleagues in the national parliaments ... as they should, after all, ratify all this! It has to be ratified by the parliaments, which means that inter-parliamentary co-operation has a rosy future ahead! Then let's not quarrel over this! We haven't the slightest reason for it! The Commission is on the same wavelength as you are. We are endeavouring to devise Community legislation. But we'll never succeed if you constantly mistake us for your enemy. You should be on the look-out for your real enemy. I would describe him as a died-in-the-wool bureaucrat from one of the national ministries of the Interior. He is the one you should be fighting against."

At the end of May 1993, the **parliamentary procedure of ratification** was completed in six of the nine Member States[xvi], namely France, Luxembourg, Spain, Portugal, The Netherlands, and Belgium by chronological order.[xvii] In Portugal, President SOARES has still not given his signature of approval after having requested, in December 1992, clarifications on certain provisions of the Agreement.

In Germany, the delay is due mainly to the necessity to amend its constitutional right of asylum. The compromise on a constitutional amendment reached in November 1992 between the coalition in power and the opposition Social Democrats finally enabled negotiations on this matter to begin. But it is necessary to take into consideration the consequences a new asylum law will have on Germany's neighbours, ie. the Member States of the Visegrad Group[xviii], especially with regards to asylum-seekers originating from or transiting through these countries[xix]. However, the progress accomplished in the last few months, namely the approval of amendments to the constitutional right of asylum by the Bundestag on 26 May 1993, may enable the new asylum law to come into force by July 1993. Only after the final approval of the constitutional amendment can the parliamentary procedure of ratification begin, although the Bill has already been submitted to the Bundestag.

It so happens that following the afore-mentioned compromise in November 1992, the German delegation assured its partners in the Schengen Group that they would have completed their ratification process by spring 1993. On the basis of this, the Group had hoped to be able to implement the Agreement as of 1st July 1993, and agreed to extend the mandate of the Spanish presidency until the end of the first semester of 1993. We shall see that the Spanish presidency will probably announce at the Schengen ministerial meeting on 30 June 1993 that the suppression of internal borders will have to wait until 1st December 1993[xx], not only because of the delay on the part of Germany.

The ratification procedure in two other Member States, namely Greece and Italy, cannot delay the date of application of the Agreement. In Greece, the Bill is to be submitted before the end of the first semester of 1993. In Italy, the Senate already approved the Bill on ratification in December 1992, and it is now up to the Chamber of Deputies to vote on it.[xxi]

In order to implement the Agreement, two basic conditions are necessary[xxii]: the ratification by the five founding Member States and the readiness of the **Schengen Information System (SIS)** according to the required standards. On the other hand, according to Article 117 of the Agreement, and reaffirmed in Article 126, "each Contracting Party shall, not later than when this Convention enters into force, make the national arrangements necessary to achieve a level of protection of personal data at least equal to that resulting from the principles of the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to the Automatic Processing of Personal Data, and in compliance with Recommendations R (87) 15-17 September 1987 of the Committee of Ministers of the Council of Europe regulating the use of personal data in the police sector."

Although all EC Member States have signed the afore-mentioned Council of Europe Convention, five of them, all Schengen States, have not yet ratified it, namely Belgium, Greece, Italy, The Netherlands and Portugal. Nevertheless, Articles 117 and 126 do not oblige these countries to ratify the 1981 Convention. They simply have to introduce into their national legislation the same level of protection of personal data as that provided in the said Convention.

Let us now examine the organigramme of the Schengen Group. All activities of the working groups or ad hoc committees come under the responsibility of the **Central Negotiation Group (CNG)**.[xxiii]

The SIS which was included among the tasks of Working Group I is now handled by a separate group, the **Steering Committee (OR.SIS)**, which is directly responsible to the CNG. SIS is, in fact, composed of a network of N-SIS (the national SIS in each Member State) and the C-SIS (the Central SIS) which, based in Strasbourg, acts as a technical support. Information is exchanged among the N-SIS which contacts the C-SIS only when in need of verification of data when, for example, there is a problem between two or more States resulting from differences of personal data.

The work to set up C-SIS in Strasbourg began in 1990 under the formal responsibility of France. The system should have started functioning as of 1st March 1993. At present it has reached the operational stage among the Five, but it will need up to two more years to attain perfection to avoid mistakes arising from the transmission of personal data. There are still technical problems of harmonisation in the registration of names. For example, in Portugal and Spain, each person has two surnames, ie. of both parents, not to mention the problems of harmonising the transcription of Arab and Asian names.

Frontier posts are to be equipped with terminals which are linked up with the SIS. The same information will be made available at diplomatic missions abroad for issuing visas.

The Schengen Group has given the assurance that the SIS will never serve as a network of exchange of **information on asylum-seekers**. But nothing has been said on rejected asylum-seekers served with expulsion orders to leave the Schengen Area. Those who do not comply with such orders are officially no longer asylum-seekers but clandestine immigrants. As a matter of fact, Article 96 provides for the inclusion in the SIS of personal data on any "alien (who) has been the subject of a deportation, removal or expulsion measure which has not been rescinded or suspended, including or accompanied by a prohibition on entry or, where appropriate, based on non-compliance with national regulations on the entry or residence of aliens."

In addition, the SIS provides for the possibility of storage of fingerprints and even photos. But the request for such supplementary information of identification will only be made when the elements listed in Article 94 are insufficient.

L'OR.SIS has prepared one of the four existing manuals, namely the **SIRENE Manual** concerning the SIS which is ready and has, with the exception of the annexes, been approved by the ministers. This manual defines the procedures of exchanging information to support the functioning of the SIS.

Work related to the handling of legal and illegal narcotic drugs and psychotropic substances, which was previously under the responsibility of Working Group I, is now carried out by the **Working Group "STUP"**.

Two manuals have been prepared by the **Working Group II "Free Movement of Persons"**, namely the manual for the authorities at external frontier posts (Sub-Group "**Common Manual**") and the **manual for officials at diplomatic missions abroad** (Sub-Group "Visas"). The first is also ready and has been approved by the ministers whereas the second still has to be completed.

As for the **Sub-Group "Visas"**, it has compiled **two common lists** (see Annex A), one of nationals requiring entry visas, and the other of those dispensed from the measure. There is a third list of nationals who require entry visas for certain Schengen States. According to the timetable, a decision should be taken on those on the third list before the end of the Spanish presidency, ie. before 30 June 1993. However, whereas a complete harmonisation of visa policies is desirable, it is not a prerequisite for the abolition of internal borders. It is therefore not excluded that many of the countries on the third list will remain there, implying that their nationals would continue to require entry visas for one or a few Member States, but not all.[xxiv]

During their meeting in Madrid on 15 December 1992, the ministers and State Secretaries in charge of applying the Convention

approved a series of measures related to visa policy such as the basic criteria for being on the visa list, and the status of honorary consuls. They also adopted the proposed uniform visa stamp which will be valid for three months and cannot be counterfeited.

Nationals of third countries in possession of a residence permit issued by one of the Member States are to be exempted from entry visas. According to Article 21, such a person may, "under cover of that permit and of a travel document, both documents still being valid, move freely for up to three months within the territories of the other Contracting parties" provided he can justify the reasons and means of his stay and is not on the list of undesirable foreigners. Moreover, this right of movement applies also to asylum-seekers who, while waiting the outcome of his asylum application, is in possession of a provisional residence permit and a travel document issued by a Schengen State. Those wanting to make use of this right have to declare themselves to the "competent authorities of the Contracting Party whose territory they enter". "Such declaration may be made, at each Contracting Party's choice, either on entry or, within three working days of entry, within the territory of the Contracting Party which he enters."

These lists have been criticised for their lack of coherence and the short period of validity. The common visa policy only applies to short periods of stay. Visas valid for more than three months remain national ones issued by one of the Contracting Parties according to its own legislation despite the fact that those in possession of such visas may travel freely to any other Schengen State.

On the other hand, tourists who will require a common Schengen visa will only have three months to visit all the Schengen States. At present, they are entitled to three months for each Member State, provided, of course, that they apply for each visa separately.

As for the **Executive Committee of Schengen**, the highest judicial authority in The Netherlands, the Raad van State, issued an opinion on 8 April 1991[xxv], criticising the wide powers of the Committee whose "general purpose", according to Article 131, "is to ensure that this Convention is implemented correctly", and "takes its decisions unanimously" (Article 132, para. 2) on all necessary measures. It therefore appears that the Committee not only has executive, but also judicial and legislative powers, which has provoked numerous criticisms as to the compatibility of this body's powers with the different national constitutions, as well as with international instruments protecting human rights. The highest judicial body in Belgium, the 'Conseil d'Etat'[xxvi], the French[xxvii] and Italian Senate, and the French Constitutional Council[xxviii] have all expressed similar reserves with regards to the powers of the Executive Committee.

The Dutch Raad van State also criticised the absence of a supranational body to ensure a uniform interpretation of the

provisions of the Supplementary Agreement. It considers "justifiable" to ask why "the supervision of at least some of the provisions of the Agreement cannot be transferred to the European Court of Justice (ECJ), "as is already the case in other agreements concluded outside the framework of the European Community".

In order to overcome the reserves of the Raad van State, the Dutch Second Chamber adopted in February 1992 a resolution presented by the coalition government (Christian-Democrat and Socialist) according to which the ECJ should have jurisdiction to solve differences between Contracting States, and to interpret the Agreement's provisions when called upon to do so by national courts. The resolution also stipulates that the ECJ should be competent to revise decisions taken by the Executive Committee in order to have the Agreement applied in conformity with obligations under the European Convention on Human Rights and the UN Convention on the Status of Refugees. In a second resolution, which was also adopted, the Second Chambers requests that all measures decided by the Executive Committee be presented to Parliament two months before their application.[xxix]

Reacting to these conditions, the Dutch Minister of Justice, Mr BALLIN, promised to transmit these demands to the Schengen partners without much hope of succeeding. According to him, there would be opposition to having a supranational court of appeal which could, for example, quash decisions of the Executive Committee determining the State responsible for examining an asylum application.

These two main reserves have been handled by the **Working Group on "Treaties and Regulations"**. This same Group is in charge of ensuring the compatibility of the Agreement's provisions on the determination of the State responsible for examining an asylum request with those of the 1990 Dublin Convention (see below), the compatibility of the Agreement's provisions with Community ones, and of the Readmission Agreement signed between the Schengen Member States and Poland on 29 March 1991[xxx], a prerequisite to the suppression of entry visas for Poles wanting to visit a Schengen Member State.

The problem of the extensive powers of the Executive Committee is already solved, unofficially, by stipulating in the Rules of Procedure of the Executive Committee that its decisions, taken unanimously, will enter into force only after all the Member States have notified that the required parliamentary and judiciary procedures have been finalised to enable such decisions to take effect on their respective territories. The formula was approved by the ministers in November 1992, but can be communicated officially only after the creation of the Executive Committee[xxxi]. As a matter of fact, according to Article 131, para. 2, the latter "shall draw up its own rules of procedure", and cannot be set up before the Agreement enters into force which shall be "the first day of the second month following the deposit of the final instruments of ratification, acceptance or approval" (Article 139).

However, as Mr BALLIN had warned, there is opposition within the Schengen Group to granting competence to the ECJ on certain provisions of the Agreement. Only the Belgian and Italian delegations have sided with the Dutch on this point. Among the arguments against is the fact that the ECJ is a supranational court of 12 Member States of the EC among whom only 9 are members of the Schengen Group. It has nevertheless been pointed out that according to the Protocol on Social Policy of the Maastricht Treaty, 11 EC Members agreed to declaring the community institutions, namely the ECJ, competent in this area, particularly in acts and decisions on social policy despite the decision of the United Kingdom to opt out.

The Working Group "Treaties and Regulations" also oversees the **ratification process** in the founding Member States with regards to the **accession of the new members**, namely Italy, Spain, Portugal and Greece. According to Article 140 of the Agreement, the accession of any new member "shall be the subject of an agreement between that State and the Contracting Parties" which "shall be subject to ratification, acceptance or approval by the acceding State and by each of the Contracting Parties".

It must be borne in mind that the accession of these new members can always be questioned, at least theoretically, thus postponing the total suppression of internal borders with these States.

As of 30 May, the accession of Greece has been approved by none of the founding Member States. The accession of Italy has been approved by the Belgian, French, Luxembourg and Dutch parliaments whereas the accession of Portugal and Spain have been approved by the Belgian and Luxembourg parliaments. Germany has, obviously, not approved any.

As for the **Agreement on the readmission of clandestine immigrants**, signed **between the Schengen States and Poland**, it entered into force provisionally since "the first day of the month following the date of signature", that is to say since 1st April 1991. As of 30 May 1993, it was still not ratified by any of the Contracting States, this not being necessary in all Schengen States. Ratification is necessary in Belgium[xxxii], Italy, The Netherlands, Portugal and Spain, but not in Germany, France and Luxembourg.

The **ad hoc Group "Airports"** ensures that the necessary transformation works are carried out at airports to enable the suppression of controls for internal Schengen flights. Airports must be considered as external frontiers for flights to or from third countries and as internal for flights between Schengen States. Long drawn-out discussions have, in fact, been centered on mixed flights (for example, a flight from Bombay to Brussels via Frankfurt). It was decided in Luxembourg on 18 June 1992 that Member States would, by 1st December 1993, ensure a clear separation of passengers of internal flights from those of other flights.

The progress in this area has been delayed because of the conflict between private companies and shareholders of airports and governments of Member States on the costs for the necessary transformations. In The Netherlands, where the costs of moving the duty free shops in Schiphol Airport are very high, private interests have protested against the obligation to assume the costs of a decision taken by the Dutch Government. In order not to be designated as the Member State holding up progress in this area, the Dutch Government is believed to have agreed to pay the costs of transformation with the hope of recuperating these amounts from the private interests concerned one day.

However, judging from remarks made by the French Senator MASSON during an interparliamentary Schengen Conference in the Belgian Parliament on 17-18 January 1992, the problems concerning airports are not limited to The Netherlands. "I have not found anywhere in Europe", he said, "any heads of an international airport ready to modify their present dispositions in accordance with the Schengen provisions. They do not plan to make any changes in the channels, planning or procedures."

The **Committee on "external borders"** was set up in accordance with a decision taken on 6 November 1992 by the ministers to have a better comparative idea of the situation in the different external frontier posts. Between January and April 1993, this Committee visited, every 15 days, external borders of the founding Member States to take note, de visu, of the practical means and organisations of controls. The members visited three borders per country, one maritime, one land and an airport. In the absence of a maritime border, this being the case only of Luxembourg, two land borders were visited. The results of these visits, incorporated in a report, have already been criticised, especially by the French delegation who have asked for a second round of visits after improvements have been made to remedy the drawbacks noted by the Committee. This report is nevertheless to be presented to the ministers at the end of June 1993 for approval.

It thus appears that since the signing of the Agreement there has been a real proliferation of groups working towards its application, with, at the same time, an increase in the number of civil servants designated to the national delegations. Given that the various Schengen working groups often discuss issues dealt with by other intergovernmental fora of the 12 EC States, it would be not only desirable, but also logical that a systematic exchange of information be institutionalised among civil servants of the same country as well as among the different national delegations.

In reality, information exchange is seriously lacking as the different fora dealing with the same issues are often not well informed of what the others are doing, or find out rather late. What is even worse is that certain civil servants must sometimes participate in one meeting after another without having sufficient time to share information with their colleagues participating in other groups. Among certain delegations, there

are civil servants who are members of all or almost all of the groups working on similar issues and are, as a result, far better informed than the others who participate, for example, only in the Schengen working groups. It has already happened more than once that a civil servant participating in a Schengen working group made a proposal in contradiction with a decision already taken in another intergovernmental body.

The question today is whether the Schengen project can still be implemented as planned or is there the risk of one of its initial and fundamental aims, namely the complete suppression of internal borders, being diluted with very stringent internal checks. Bearing in mind the phenomenon of clandestine immigration which appears to be of growing concern, at least in the eyes of governments in Western Europe, and the emigration pressure in the PECO countries[xxxiii], total suppression of controls at internal borders, as is the case within the Benelux, will certainly not happen in 1993[xxxiv].

As for France, it is concerned by what it perceives as the liberal drug laws in The Netherlands and Spain, and views with apprehension the tendency of Italy to follow the example of these two countries. The remarks made at the end of April 1993 by the French Minister for European Affairs, Mr LAMASSOURE, confirms French opposition, if not outright hostility, to the suppression of internal borders unless its Schengen partners adopt the same very tight and thorough checks at their external borders. Speaking before the Committee on Foreign Affairs of the National Assembly, Mr LAMASSOURE said that "the prerequisites to the free movement of persons" within the Schengen Area "will be met neither before the end of 1993 nor even, without doubt, for a fairly long time to come."[xxxv]

Besides, it must be pointed out that there is a very wide **misconception concerning the entry into force of the Agreement** according to which the latter should have been applied as of 1st January 1993. The misconception is essentially due to the fact that the 12 EC States not only have not managed to suppress their internal borders, but also do not share the same interpretation of Article 8a of the EEC Treaty. This issue has divided the 12 into two groups, those belonging to the Schengen Group and those outside.

Contrary to the afore-mentioned Article 8a according to which the EC Member States agree to the delay of 31 December 1992 for the realisation of "an area without internal borders", the Supplementary Agreement "shall only come into force when the necessary conditions for applying it have been met in the signatory States and once external border controls are operational". [Point 2 of the Common Declaration concerning Article 139 (on the application of the Agreement) in the Final Act]. Besides, at the time when the Agreement was ratified by the French Parliament, the French Interior Minister, Mr P. MARCHAND said that he "would undoubtedly have been against calling for its ratification" if the text of the Agreement had "specified a deadline" for its enforcement. "Fortunately", he

added, "it is stated that this Agreement will be operational only once all the guarantees have been provided in respect of external frontiers."

Intergovernmental co-operation among the 12 EC States

As for intergovernmental co-operation among the 12, the proliferation of working groups, the inevitable overlapping of their activities[xxxvi], and the worrying delay in the elaboration of compensatory measures for the realisation of an area without internal borders led the European Council of Rhodes[xxxvii] (December 1988) to decide on the creation of yet another intergovernmental body, the **Group of Co-ordinators on the Free Movement of Persons**. Also known as the "**Rhodes Group**", its aim has been to co-ordinate the activities of the numerous intergovernmental bodies and to try and remedy any delays in the Member States.

Composed of high-ranking officials of the 12 EC States with the participation of the Commission (in principle, DG III, but officials of the General Secretariat and DG V have been involved as well), its first task was the drawing up of a document before the following European council (a delay of six months) which contains two categories of measures, those indispensable for the suppression of internal borders and those which are "desirable", but not indispensable. All these measures, whether they are indispensable or not, are mentioned with a date as to when they can (probably) enter into force. Adopted unanimously by the Group in Las Palmas and subsequently, again unanimously, by the European Council of Madrid in June 1989, the report has since been called the "**Palma Document**".

The Rhodes Group co-ordinates essentially the activities of the following bodies:
. the ad hoc Immigration Group (AHI)
. the TREVI Groups
. the Mutual Assistance Group (MAG)
. the European Committee to Combat Drugs (CELAD)
. the European Political Co-operation Group (EPC)
. the Horizontal Group

The **Ad hoc Immigration Group (AHI)**, whose secretariat is assured by the General Secretariat of the Council of the EC, was created in October 1986 during the British Presidency of the EC. At one point, it was envisaged calling the Group "TREVI IV". However, rather than incorporating it into the TREVI framework, it was put under the co-ordination of the Commission of the EC. Since then, it has been divided into six sub-groups, namely:
. Admission/Expulsion
. Visas
. False Documents
. Asylum
. External Borders
. Refugees of the former Yugoslavia (a special sub-group)

So far, only one draft Convention elaborated by the AHI has been signed, that is the Convention Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of the EC, also known as the **Dublin Convention**, signed on 15 June 1990. Six Member States have so far ratified it[xxxviii]: Denmark, Greece, Italy, Luxembourg, Portugal and the UK. Another draft text, the so-called "**parallel convention**" as it is almost identical to that of Dublin, has been drawn up because only EC States can adhere to the latter and a number of third countries have shown interest in signing a similar international instrument, notably the EFTA Member Countries, the USA and Canada. Although the draft text has already been ready for several months, the formal negotiation process with interested States cannot begin until after all EC States have ratified the Dublin Convention.

Another **draft convention**, that **on the crossing of the external borders** has been ready for almost two years, and should have been signed in June 1991 under the Luxembourg presidency[xxxix] Just as the preceding British presidency did so, the Danish presidency will have to announce in June 1993 during the European Council its failure on this matter.

The other on-going activities of the AHI includes:
a) the setting up of the **European Automated Fingerprint Recognition System (EURODAC)**
This system is to operate like the SIS, in the sense that there will be a C-EURODAC (the central system) and 12 N-EURODAC (the nationals systems in each Member State). This will probably require the drawing up of an agreement because the Dublin Convention, namely its Article 15, does not constitute a sufficient legal base for the envisaged system.[xl]
The feasibility study into a **European fingerprint exchange system** which was envisaged more than a year ago has still not been carried out. The Ministers in Copenhague will probably make a decision on this matter.
b) **Centre for Information, Discussion and Exchange on Asylum (CIREA)**
The Centre has already had several meeting and has contacts with the EPC and the UNHCR. Although some of the information stored by the Centre is meant for the public as well, it now appears that the greater part will remain confidential.
c) **Centre for Information, Discussion and Exchange on the Crossing of Border and Immigration (CIREFI)**
The ministers of the AHI approved the creating of CIREFI on 1st December 1992. Since then, there has only been an introductory meeting on 7 April 1993. The second is scheduled to be held on 10 June 1993. It is within CIREFI that will be examined the consequences of the laws of the various Member States which penalise carriers for bringing in inadmissible passengers, as well as the obligations resulting from international undertakings, especially Annex 9 to the 1944 Chicago Convention on International Civil Aviation.[xli]
d) production and up-dating of a **manual of European asylum practices**;

e) production of a **manual of common instructions to consular posts**;
f) draft resolution on the harmonisation of national policies on **family reunification;**
The Sub-Group "Admission/Expulsion" is believed to have reached an agreement on the text which will be presented to the Ministers for approval on 1-2 June 1993 in Copenhagen.[xlii]
g) draft resolution on **limitation on admission of non-EC nationals to the Member States for employment** (which replaces the draft resolution on the harmonisation of national policies on admission for the purposes of employment).
This issue not being a priority for the Danish presidency, not any more than it was for the preceding British presidency, it is probable that it would be transmitted to the next Belgian presidency;
h) the drawing up of a **common list** of third countries whose nationals require **entry visas**. This list, of some 85-90 countries, is almost identical to the Schengen list, minus the majority of Commonwealth countries.
During their meeting on 30 November - 1st December in London, the ministers of the AHI adopted the following texts:
1. RESOLUTION on **manifestly unfounded applications for asylum**
2. RESOLUTION on a harmonised approached to questions concerning **host third countries**
3. CONCLUSIONS on **countries in which**, there is generally, **no serious risk of persecution**[xliii]
4. CONCLUSIONS on **people displaced** by the conflict in the **former Yugoslavia**[xliv] Another text on the same issue has been prepared for the ministerial meeting in Copenhagen in June 1993, namely the draft resolution on common standards for the reception of certain vulnerable groups from the former Yugoslavia.
The following texts were approved and requires further work before they can be finalised:
5. RECOMMENDATION regarding practices followed by Member States on **expulsion of people unlawfully present in their territories**[xlv]
6. RECOMMENDATION on **transit for the purposes of expulsion**

The so-called **TREVI Group**, composed of civil servants of the Ministries of Interior and/or of Justice of initially the 10 Member States and now the 12, was, in fact, set up in 1976 as an intergovernmental body on police co-operation with the initial aim of co-ordinating efforts to combat terrorism. Contrary to the AHI, the TREVI Group still has no permanent secretariat, and its administrative structure "travels" from one capital to another every 6 months to the country that assumes its presidency which, like the other intergovernmental fora of the Twelve, is the same as that of the EC.[xlvi]

It is widely, albeit mistakenly, held that TREVI is the acronym for "Terrorism, Radicalism, Extremism and International Violence". This is, in fact, an invention of some journalists, but has had so much success that even high ranking officials of the Council and Commission of the EC, as well as of the TREVI Groups themselves, have accepted it as correct! In reality, the name of the group comes simply for the Trevi Fountain in Rome where the first meeting of the group was held under the

chairmanship of Mr FONTEJNE ... (pronounced like "fontaine", meaning fountain).

Besides, there are, in fact, five existing TREVI Groups[xlvii]:
TREVI I which has existed from the beginning and is still dealing with the combat against terrorism.
TREVI II which exchanges information and experiences in matters of police training, equipment used and maintaining public order.
TREVI III deals with combating organised crime, particularly in the field of drug trafficking, and Interpol takes part in its activities as an observer.
Another sub-group of TREVI, created at a meeting on 19 September 1992, let us call it "**TREVI IV**", deals also with organised crime, but unlike TREVI III which is composed exclusively of police authorities, TREVI IV is a mixed group with the participation of judicial authorities.
There is, moreover, an ad hoc sub-group of TREVI that is working temporarily in Strasbourg on the setting up of **Europol**[xlviii] whose initial activities center around the European Drugs Intelligence Unit (**EDIU**) which is, in fact, the precursor of the European Drugs Unit (**EDU**), followed by other matters related to drugs, such as money-laundering and organised criminal networks. In order to ensure the continuity of its activities, this group has been since 1st July 1992 under the British presidency, to be handed over to the Belgian presidency on 1st July 1993.

Europol will be, at least during the first few years, a planning service and not an executive organ carrying out investigations. It will be in charge of international co-ordination of national authorities, Interpol, CELAD, the Pompidou Group, etc. The legal base enabling it to start functioning exists in the form of a ministerial agreement which has not yet been signed by the ministers of the TREVI Group. Besides, an international convention on the exchange and registering of personal data is still necessary. It is likely that the two texts would be put together and presented for signature at the next ministerial meeting in Copenhagen on 1st June 1993.

One of the TREVI Groups, **TREVI 92**, created in 1989 under the Spanish presidency to deal with the consequences of the suppression of internal borders within the EC, ie. the possible "lack of security", was dissolved by decision of the ministers in London on 30 November 1992. This is the TREVI Group referred to by Mr BANGEMANN (see above), and since its creation, the Commission of the EC has been allowed to participate in TREVI meetings. TREVI 92 drew up a programme of action on the reinforcement of co-operation in police matters and in the combat against terrorism and other forms of organised crime, adopted by the TREVI ministers in Dublin in June 1990. The programme, which was the terms of reference of TREVI 92, dealt with, inter alia, rules of police control at the external borders, clandestine immigration, identification of undesirable aliens, and the setting up of the **European Information System (EIS)**. This is often called the "SIS of the 12" as it is to be almost identical to that of Schengen.

The EIS has been for about a year under the responsibility of the **Horizontal Group** which was set up for this purpose. At the request of the European Council of Lisbon in June 1992, this Group is presently working on a draft convention to regulate the EIS and its operation. It is obvious that the EIS will store the same computerised data as the SIS, and some EC States, namely the three which are not members of the Schengen Group, consider the entry into operation of the EIS as one of the prerequisites to the suppression of internal borders. Speaking before a committee of the European Parliament on 17 March 1993, the former Danish Justice Minister, Ms P. GJELLERUP, felt that the EIS would not be ready before 1994.

The **European Political Co-operation Group (EPC)** was set up after the approval of the Davignon Report (also known as the Luxembourg Report) in October 1970, with the aim of having periodic meetings of Foreign Ministers and heads of Foreign Ministry political departments in order to concert and, if possible, harmonize Member States' foreign policy opinions and activities. Among its numerous tasks in the political field, it is involved in promoting and improving co-operation among the criminal justice authorities of the 12 and has a sub-section called the Judicial Co-operation Group on Criminal Law which deals with judicial co-operation in penal and civil matters. The EPC is also involved in the combat against drug-trafficking and terrorism, and has working ties with the TREVI Groups as well as the AHI.

As for the **GAM**, it deals essentially with customs co-operation and is under the supervision of the **CLUB** (director generals of customs). One its three existing sub-groups, the **CIS Management**, has drawn up a draft convention between the Member States of the EC concerning the use of information technology for customs purposes, the so-called **CIS-Convention**. **GAM 92** no longer exists.

The Group **CELAD** was set up to bridge the gaps in the national policies of the 12 on narcotic drugs and make up for their lack of co-ordination. CELAD deals with, inter alia, the setting of a European observatory and measures to combat drugs.

Other fora of intergovernmental co-operation

As for the fora dealing with matters of immigration and/or asylum which also include non-EC States, the most important ones are those operating within the framework of or under the co-ordination of the Council of Europe. Two particularly active bodies in the fields of migration and refugees/asylum-seekers are the European Committee on Migration (**CDMG**) and the Committee of experts on the legal aspects of territorial asylum, refugees and stateless people (**CAHAR**).

The diversity of the CDMG's activities has been described in detail in an earlier Briefing Paper.[xlix] It suffices to recall here that the official mandate of this body is to deal mainly with matters of integration of immigrants or of communities of immigrant origin, and with the organisation of the conference of European ministers responsible for migration affairs, which are

held roughly every three years, as well as the follow-ups. The last one was held in Luxembourg on 17-18 September 1991, and the next, the fifth one, will take place in Greece in November 1993.

The other body, the CAHAR, has had its activities eclipsed since the creation of the AHI by the 12 EC States in 1986. In fact, the CAHAR, set up in 1977, is the oldest of all European fora dealing with asylum issues, and was the main body in Europe for discussion on a European convention on the country of first asylum. In addition to Council of Europe members, Australia, Canada and the USA participate, as observers, in meetings which take place, in principle, twice a year.

As there were very poor prospects of succeeding in having its first draft agreement signed and ratified by a minimum number of Member States, its activities were suspended in 1984. In 1986, its work on this question was resumed, but on a new basis and with different terms of reference. After two meetings, it elaborated a preliminary "Draft Agreement on Responsibility for Examining Asylum Requests" in January 1987 and, at its 27th meeting on 29 November - 2 December 1988, it produced its final draft. However, as some of the more important Member States were known to have been opposed to signing this agreement, the text was shelved. Since then, the 12 have signed the Dublin Convention and envisage having it extended to other States under the so-called parallel convention.

However, the activities of the CAHAR continue, and concern mainly the exchange of views and information among Member States of their concrete problems in matters of asylum and amendments to their legislation.

There is still a third group which has recently been set up to look into the recommendations of the Vienna Conference in 1991 (see below), namely ad hoc Committee of experts for identity documents and movement of persons (**CAHID**).

The Secretariat of the Council of Europe, notably the CDMG, co-ordinates the follow-ups to the recommendations formulated at the Ministerial Conference on the Movement of Persons from Central and East European Countries which was held in Vienna on 24-25 January 1991. The Austrian Foreign Ministry took the initiative of organising this conference with the assistance of the General Secretariat of the Council of Europe[l], and the ministers responsible for immigration of 35 European and non-European countries (Australia, Canada and the USA) took part.

The conference adopted a series of recommendations and senior officials of participating States who were asked to look into them have since been called the **Vienna Group**. The recommendations reflect the concern of the Member States, especially those of Western Europe, to avoid the development of disorganised migratory movements in Europe following the fundamental political changes allowing persons from the former Soviet bloc countries to travel freely. At present, this Group co-ordinates the activities of three main working groups, one on visa harmonisation, chaired

by France, another on the establishment of a special institution for information exchange, chaired by Hungary, and the third on new solidarity structures between States, chaired by Italy. The latter has prepared a report on "Collective European Co-operation with respect to the Movements of People" which will be submitted to a Senior Officials meeting to be held in Strasbourg on 1-2 July 1993 under the Austrian presidency.

Another initiative, linked to the activities of the Vienna Group, is that of the **Vienna Club**, a forum of co-operation set up in 1978 with the participation of the Interior and Justice Ministers of Austria, France, Germany, Italy and Switzerland. This Club meets, in principle, every two years, and is dealing more and more with frontier co-operation in relation to asylum and immigration. At the initiative of the German Federal Interior Minister, Mr SEITERS, a ministerial meeting was called on 30-31 October 1991 in Berlin to which were invited EC States non-members of the Club as well as 13 Central and East European States in order to discuss measures necessary to combat clandestine immigration from former Soviet bloc States.

The so-called **Berlin Group** was subsequently formed under the Austrian presidency to look into the recommendations formulated at the Berlin Conference. A certain number of sub-groups were set up to examine the various aspects of the problem of clandestine immigration and each one prepared a report. At the third meeting of the Berlin Group in Bonn on 12-13 January 1993 a series of recommendations were drawn up on the basis of the reports presented. These recommendations aim at the criminalisation of traffickers of clandestine immigrants and mutual assistance in criminal affairs to prosecute such people, the setting up of special units and services to combat the activities of networks of illegal immigration, procedures and standards on improving border checks, readmission agreements, surveillance of non-guarded external frontiers, the crossing of which is not authorised, and sanctions against sea, air and land carriers for bringing in clandestine immigrants.

The text of the recommendations were discussed during a ministerial conference of the Group in Budapest on 15-16 February 1993, and the participants took note of them. Another text, an Austrian proposal on the signing of a convention aimed at establishing a system of immigration quotas, was not favourably received, particularly by the 12 who felt that it was too ambitious and preferred to deal with the problem of clandestine immigration by stages and by tackling each aspect separately.

The ministers nevertheless agreed to continue this forum of discussion to give follow-ups to the recommendations. The new group, under the co-ordination of Hungary, let us call it the "**Budapest Group**", is, in principle, to be made up of States which assume the presidency of the EC (Denmark for the first semester of 1993, followed by Belgium), the Schengen Group (Spain), the EFTA (Sweden), the Czech Republic, Poland, Slovakia, and, of course, Hungary. It will look into the possibility of either enlarging the readmission agreement signed between the Schengen

Group and Poland to other States (which is possible under the agreement) or drawing up other bilateral readmission agreements, taking the one signed with Poland as a model. It will also draw up a draft convention to regulate assistance for the return of clandestine immigrants and examine the conditions and means of implementing the afore-mentioned recommendations.

Lastly, here is a brief description of the other fora of intergovernmental co-operation and discussions:

* The **Intergovernmental Consultations on Asylum, Refugees and Migration Policies in Europe, North America and Australia (IGC)** whose secretariat is in Geneva. It is a forum of discussion which aims at finding solutions to common problems and at examining the situation of certain groups of asylum-seekers and possible revisions of asylum laws and procedures. Since its beginning in 1985, it has held well over a hundred meetings which dealt with, inter alia, the massive arrival of Kurds following the liberation of Kuwait in 1991, a return programme for Tamil asylum-seekers to Sri Lanka, and the migratory movements from Central and Eastern Europe. Both the IOM and the UNHCR participates in its meetings, the latter having provided an administrative service under a special agreement. Its activities have slowed down a great deal since the autumn of 1992 when negotiations began on the setting up of a new secretariat.

* The **Working Group on Solutions and Protection (WGSP)**, created in 1990 under the auspices of the Sub-Committee on Protection of the Executive Committee (EXCOM) of the UNHCR, brings together Member and Observer States and observer organisations of the EXCOM. The WGSP participates in the elaboration of recommendations on asylum procedures, de facto refugees, asylum applications considered to be "manifestly unfounded", and irregular movements of people.

* The **Working Group on Migrations of the OECD** brings together officials of the 24 Member States and is intended to be a forum for the exchange of views, research and analysis of information on migratory movements.

* The **Continuous Reporting System on International Migration (SOPEMI)**, or the **Migration Observation Group of the OECD**. This is a network of correspondents who submit each year a national report on the recent tendencies of migration movements and policies and of the situation of immigrants in their countries. On the basis of these national reports, an annual report is issued.

* The **G-24** brings together all Member States of the OECD with the aim of co-ordinating economic assistance to Eastern and Central Europe. Recently the G-24 has recognised the importance of the link between economic aid and mass migration.

* The **CSCE** (Conference on Security and Co-operation in Europe) whose secretariat is in Prague. Since the organisation of a special seminar on migration, including refugees and displaced

persons in Warsaw on 20-23 April 1993, a large number of Member States have been asking the CSCE to assume a more important role in these fields.[li]

***** The working group on migration of the **Central European Initiative** (previously the **Hexagonale**) which presently brings together Austria, Croatia, Hungary, Italy, Poland, the Czech Republic and Slovakia. This Group was originally set up during its first meeting in Budapest on 2 November 1990, and examines, inter alia, the consequences of migration on their respective labour markets. It was first called the "**Pentagonale**" because of the composition of five founding members, namely Austria, Hungary, Italy, the former Czechoslovakia and the former Yugoslavia. When Poland joined in, it became known as the Hexagonale.

***** The **Nordic Joint Advisory Group** was set up in 1987 to exchange information on the national and international situation in the fields of migration and refugees in view of approaching the Nordic States' policies and practices. The UNHCR regularly participates in its meetings as an observer.

***** The **International Air Transport Association Control Authority Working Group on Inadmissible Passengers (INADPAX)** brings together, two or three times a year, border control and immigration officials from about 15 West European and North American States. It was set up at the initiative of IATA in response to the increasing tendency among States to fine air carriers for non-admissible passengers.

As for intergovernmental organisations, other than the UNHCR, mention should also be made of the International Labour Office (**ILO**) which is dealing more and more with migratory movements to the West from the countries of the former Soviet bloc, and the International Organisation for Migration (**IOM**) which plays a very important role in programmes of assistance to returning migrants and displaced persons. The IOM is today very active in the countries of the former Warsaw Pact, as well as in the republics of the former USSR.

Antonio CRUZ
May 1993

Prerequisites to the implementation of the Schengen Supplementary Agreement

1. Crossing of external borders
- Determination of obligatory crossing points at the external borders and the definition of rules applicable to minor cross-border traffic as well as maritime traffic.
- Transformation of infrastructures at airports to distinguish intra-Schengen flights from external flights (Art. 4).
- Definition of uniform principles of checks and providing the necessary means for their implementation, especially personnel.
- The setting up of periodic mobile control units between the crossing points.

2. Visas
- Definition of a common visa policy and the harmonisation of methods of processing visa applications at the consulates of the different Member States.
- A common visa stamp.
- Application of Art. 17, notably the ways and means of consulting the central authorities and the conditions of issuing visas at the border.

3. Control of migratory movements
- Practical ways and means of ensuring that foreigners authorised to enter the territory of a Member State fulfill their obligation of reporting to the authorities there.
- Obligations and responsibility of carriers (Art. 26).
- Sanctions against traffickers of clandestine immigrants (Art. 27).
- Transmission of lists of residence or entry permits which entitle the holders to travel within the Schengen Area without visas (Art. 5-3 and 21).
- Practical conditions of applying rules on residence or entry permits and on reporting of persons not to be allowed entry (Art. 25).

4. Processing of asylum applications
- Preparation of a workable system enabling the exchange of necessary information between Member States (Art. 37) and the application of procedures of readmission of asylum-seekers.

5. Police co-operation
- Obligation imposed on any establishment providing accommodation to have any foreigners, including nationals of Schengen or EC States, accurately fill in declaration forms (Art. 45).
- Setting up of lines of cross-border communication (Art. 44).

- Setting up of a system of information exchange on the sale of arms (Art. 91).

6. Customs co-operation
- Setting up of lines of cross-border communication (Art. 44).

NOTES:

1. Antonio CRUZ (1990): "An Insight into Schengen, Trevi and other European Intergovernmental Bodies", Briefing Paper of the Churches' Committee for Migrants in Europe, Brussels, No. 1.

2. Following the protests of MEPs and the adoption of several resolutions, notably that of 29 November 1989 (Doc. B-3-583/89), the Irish Minister of Justice wrote a letter at the end of May 1990 to the President of the European Parliament to inform him of the decision taken on 7 May 1990 by the Ministers of Foreign Affairs of the 12 to initiate a procedure of contact with the European Parliament. This includes a meeting every 6 months between the President-in-office of the ad hoc Group Immigration and the chairpersons of the committees concerned of the European Parliament.

3. The MEP W. TELKÄMPER has already questioned the legality of expenses incurred by the Council's General Secretariat in providing the secretariat for non-Community bodies. Official Journal of the EC, 16.5.88, No. C 127/25 and Debates of the European Parliament, 15.6.88, No. 2-366/194

4. There will thus be a "merger" of the activities of the intergovernmental bodies, and consultations and co-ordination of the Member States' actions in such areas will take place within the Council.

5. See: Luise DRÜKE (1992): "Asylum policies in a European Community without internal borders", Briefing Paper of the Churches' Committee for Migrants in Europe, Brussels, No. 10.

6. The real reason may be simply due to the fact that the various intergovernmental fora of the 12 do not have a common secretariat. Besides, although there are informal contacts between, for example, the Schengen Group, the TREVI Groups, the ad hoc Immigration Group, etc., these bodies are officially separate entities acting independently of each other.

7. See: H. MEIJERS & al. (1991): "Schengen - Internationalisation of central chapters of the law on aliens, refugees, privacy, security and the police", Kluwer Law and Taxation Publishers, 228 pp.
REPORT of the Committee on Civil Liberties and Internal Affairs of the European Parliament on the application of the Schengen Agreements. Rapporteur: Mr L. VAN OUTRIVE, Doc. A3-0288/92 of 5.10.1992
REPORT of the Committee on Legal Affairs of the European Parliament on the free movement of persons and the problems of national security within the Community. Rapporteur: Mr K. MELANGRE, Doc. A3-0199/91 of 25.9.1990

8. A Benelux tourist visa is valid for the three Member States for three months. In some exceptional cases, visas valid only for one Member State are issued. The reason is that some persons considered as "undesirable" in one Member State are not necessarily classified as such by the others. Missions abroad are provided with a Benelux List, which is regularly updated, of persons to whom no visa may be granted without previous authorisation from the Member States.

9. In his article "From Schengen to Dublin: The new Frontiers of Refugee Law" (in Schengen, Internationalisation of ...op. cit.), J.J. BOLTEN claims that the existence of the text of the 1985 Accord "has only been known in select gatherings" in all Member States except The Netherlands.

10. Antonio CRUZ (1990): "Schengen, Trevi, ...", op. cit.

11. This does not, of course, imply that the UNHCR's views have always been accepted.

12. The signing of the Supplementary Agreement, scheduled for 15 December 1989, was unexpectedly called off one day before by the Bonn Government which was occupying the presidency. The main and official reason was the existence,

at that time, of "two Germanies", but all the other Member States were also reluctant to sign for other reasons.

13. Mr P. MASSON was the Chairman of the Control Committee responsible for examining the implementation and operation of the Convention applying the Schengen Agreement of 14 June 1985, established in accordance with a resolution adopted by the French Senate on 26 June 1991. His report, in three volumes, was adopted by a majority of its members during its meeting on 10 December 1991.

14. cf. Le Figaro, 14.5.1989

15. The White Paper of the Commission of 14 June 1985 was approved at the European Council of Milan on 28-29 June 1995 without any reserves.

16. Cf. Migration News Sheet, February & March 1993.

17. These States must still deposit their instruments of ratification with the Government of Luxembourg. This is, however, a mere formality and none of these States are in a hurry to do so as long as Germany has not ratified the Agreement.

18. The Czech Republic, Hungary, Poland and Slovakia.

19. On 7 May 1993, Bonn signed an agreement with Poland relating to conditions on taking back rejected asylum-seekers and clandestine immigrants. Negotiations on a similar agreement with the Czech Republic is being held up because the latter still has an open border with Slovakia.

20. Cf. Migration News Sheet, June 1993

21. It is very likely that the General Election will be called in autumn 1993. The Chamber of Deputies therefore only has a few months to approve the Bill. If not, and elections take place, the Bill will have to be submitted again to the Senate. It so happens that there are two obstacles delaying the ratification process: the question on the competence of the ECJ, and the pressure exercised on MPs by associations supporting immigrants and refugees.

22. See other conditions listed in Annex B.

23. The link between this body and the Schengen ministers and State secretaries is similar to the relation between the Committee of Permanent Representatives (COREPER) and the Council of the EC.

24. See Migration News Sheet, June 1993

25. The document of 26 pages constitutes, in fact, a precedent, being the first time ever that the Dutch Raad van State issued a negative advice on an international agreement.

26. In its opinion of 17 July 1992, the Belgian 'Conseil d'Etat' considers that the "diversified aims of variable importance" of the particular competences of the Executive Committee attributes to it powers which "could, because of their scope and the use of them, naturally give rise to certain fears and bring about certain reserves from the point of view of constitutional law if (...) the decisions of this Committee were not deprived of any direct effect."

27. Before approving the ratification on the night of 26/27 June 1991, the right-wing majority in the Senate voted in support of a resolution aimed at the creation of a control committee responsible for examining the implementation and operation of the Schengen Convention - see note 13.

28. The Constitutional Council ruled on 25 July 1991 that, inter alia, without judicial control, the decisions of the Executive Committee cannot, in order to respect the Constitution, have direct effect on the territories of the Contracting States. This Council decided that all of the Executive Committee's

decisions will have to be submitted for examination to the French judicial bodies within the framework of their respective competence.

29. The adoption of these resolutions enabled the Second Chamber to approve on 25 June 1992 the ratification Bill by a very large majority. Only 23 of the 146 MPs present voted against.

30. See the criticisms of Dutch lawyers against this Agreement with Poland in Migration News Sheet, October 1991.

31. The Commission of the EC is to allowed to be present at the Committee's meetings.

32. It should be noted that the clause of this Agreement (Article 6) on its provisional application (since 1st April 1991) was (or still is?) against the Belgian constitution. Two conventions, both signed in Vienna, one in 1968 and the other in 1986, on the Law of Treaties and the conclusion of agreements between intergovernmental fora and one or several States or between States, were only ratified by Belgium on 1st September 1992. It remains to be determined whether the ratification of two conventions which, inter alia, enables the provisional application of such an agreement, has rendered ligitimate, by retroactive effect, a clause which at the moment of signature was anti-constitutional.

33. Countries in Eastern and Central Europe of the former Soviet bloc.

34. France has been the most vocal in demanding very strict entry requirements at the external borders. It is reported to have once asked Germany not to issue an entry visa to any nationals of the former USSR without first obtaining French approval. Owing to the very large number of persons concerned, this request cannot, at least for the time being, be met. Although France remains officially committed to the suppression of internal borders, a Bill approved by the Council of Ministers on 19 May 1993 aims at enabling the police to carry out identity checks within a zone of less than 30 km between France and a Schengen State as well as at ports, airports and train and bus stations with international connexions (see Migration News Sheet, June 1993).

35. See Migration News Sheet, June 1993, on the angry reactions of some Schengen States to this declaration, in particular those of The Netherlands and Spain.

36. According to a confidential note by the Belgian delegation to the Rhodes Group, dated 24 February 1992, the overlapping of competence among the different working groups "has led to the creation of mixed groupes or obliges the groups to devote a part of their work to exchanging information". "For example", says the note, "the Group TREVI 92 devotes a large part of its agenda to information on the work carried out by other TREVI groups even though the latters' activities and those of TREVI 92 are transmitted for approval to the group of high-ranking civil servants (ie. the Rhodes Group)."

37. Composed of Heads of States or Governments of the 12 Member States. The decision to set up the European Council was taken during the Paris Summit in December 1974 in order to provide heads of States or Governments with an opportunity to meet three times a year and when necessary to discuss not only European issues, but also important questions of foreign policy.

38. According to the Palma Document, this Convention should have entered into force in the course of 1992.

39. Spain does not accept that its frontier with Gibraltar be considered as an internal frontier as long as the Governments of Gibraltar and the UK does not allow, by way of a bi-lateral agreement, the Spanish authorities to control Gibraltar's external borders, including its airport.

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Convention". According to the service, "a system which creates a series of national data banks (...) of all persons who have applied for asylum in one of the Member States would have to be established on the basis of a new convention." Opinion of 18 March 1993.

41. Cf. Antonio CRUZ (1991): "Carrier Sanctions in Five Community States: Incompatibilities between International Civil Aviation and Human Rights Obligations", Briefing Paper of the Churches' Committee for Migrants in Europe, Brussels, No. 4.

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48. See REPORT on Europol of the Committee on Civil Liberties and Internal Affairs of the European Parliament. Rapporteur: Mr L. VAN OUTRIVE, PE 200.599, DOC_EN\DT\205180, 1992.

49. J. MURRAY & J. NIESSEN (1991): "The Council of Europe and Migration", Briefing Paper of the Churches' Committee on Migrants in Europe, Brussels, No. 6

50. Cf. Migration News Sheet, February 1991

51. For a historical and present insight into the CSCE, see: U. GIBSON & J. NIESSEN (1993): "The CSCE and the Protection of the Rights of Migrants, Refugees and Minorities", Briefing Paper of the Churches' Committee for Migrants in Europe, Brussels, No. 11.

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[i] Antonio CRUZ (1990): "An Insight into Schengen, Trevi and other European Intergovernmental Bodies", Briefing Paper of the Churches' Committee for Migrants in Europe, Brussels, No. 1

[ii] Following the protests of MEPs and the adoption of several resolutions, notably that of 29 November 1989 (Doc. B-3-583/89), the Irish Minister of Justice wrote a letter at the end of May 1990 to the President of the European Parliament to inform him of the decision taken on 7 May 1990 by the Ministers of Foreign Affairs of the 12 to initiate a procedure of contact with the European Parliament. This includes a meeting every 6 months between the

President-in-office of the ad hoc Group Immigration and the chairpersons of the committees concerned of the European Parliament.

[iii] The MEP W. TELKÄMPER has already questioned the legality of expenses incurred by the Council's General Secretariat in providing the secretariat for non-Community bodies. Official Journal of the EC, 16.5.88, No. C 127/25 and Debates of the European Parliament, 15.6.88, No. 2-366/194

[iv] There will thus be a "merger" of the activities of the intergovernmental bodies, and consultations and co-ordination of the Member States' actions in such areas will take place within the Council.

[v] See: Luise DRÜKE (1992): "Asylum policies in a European Community without internal borders", Briefing Paper of the Churches' Committee for Migrants in Europe, Brussels, No. 10.

[vi] The real reason may be simply due to the fact that the various intergovernmental fora of the 12 do not have a common secretariat. Besides, although there are informal contacts between, for example, the Schengen Group, the TREVI Groups, the ad hoc Immigration Group, etc., these bodies are officially separate entities acting independently of each other.

[vii] See: H. MEIJERS & al. (1991): "Schengen - Internationalisation of central chapters of the law on aliens, refugees, privacy, security and the police", Kluwer Law and Taxation Publishers, 228 pp.
REPORT of the Committee on Civil Liberties and Internal Affairs of the European Parliament on the application of the Schengen Agreements. Rapporteur: Mr L. VAN OUTRIVE, Doc. A3-0288/92 of 5.10.1992
REPORT of the Committee on Legal Affairs of the European Parliament on the free movement of persons and the problems of national security within the Community. Rapporteur: Mr K. MELANGRE, Doc. A3-0199/91 of 25.9.1990

[viii] A Benelux tourist visa is valid for the three Member States for three months. In some exceptional cases, visas valid only for one Member State are issued. The reason is that some persons considered as "undesirable" in one Member State are not necessarily classified as such by the others. Missions abroad are provided with a Benelux List, which is regularly updated, of persons to whom no visa may be granted without previous authorisation from the Member States.

[ix] In his article "From Schengen to Dublin: The new Frontiers of Refugee Law" (in Schengen, Internationalisation of ...op. cit.), J.J. BOLTEN claims that the existence of the text of the 1985 Accord "has only been known in select gatherings" in all Member States except The Netherlands.

[x] Antonio CRUZ (1990): "Schengen, Trevi, ...", op. cit.

[xi] This does not, of course, imply that the UNHCR's views have always been accepted.

[xii] The signing of the Supplementary Agreement, scheduled for 15 December 1989, was unexpectedly called off one day before by the Bonn Government which was occupying the presidency. The main and official reason was the existence, at that time, of "two Germanies", but all the other Member States were also reluctant to sign for other reasons.

[xiii] Mr P. MASSON was the Chairman of the Control Committee responsible for examining the implementation and operation of the Convention applying the Schengen Agreement of 14 June 1985, established in accordance with a resolution adopted by the French Senate on 26 June 1991. His report, in three volumes, was adopted by a majority of its members during its meeting on 10 December 1991.

[xiv] cf. Le Figaro, 14.5.1989

[xv] The White Paper of the Commission of 14 June 1985 was approved at the European Council of Milan on 28-29 June 1995 without any reserves.

[xvi] Cf. Migration News Sheet, February & March 1993.

[xvii] These States must still deposit their instruments of ratification with the Government of Luxembourg. This is, however, a mere formality and none of these States are in a hurry to do so as long as Germany has not ratified the Agreement.

[xviii] The Czech Republic, Hungary, Poland and Slovakia.

[xix] On 7 May 1993, Bonn signed an agreement with Poland relating to conditions on taking back rejected asylum-seekers and clandestine immigrants. Negotiations on a similar agreement with the Czech Republic is being held up because the latter still has an open border with Slovakia.

[xx] Cf. Migration News Sheet, June 1993

[xxi] It is very likely that the General Election will be called in autumn 1993. The Chamber of Deputies therefore only has a few months to approve the Bill. If not, and elections take place, the Bill will have to be submitted again to the Senate. It so happens that there are two obstacles delaying the ratification process: the question on the competence of the ECJ, and the pressure exercised on MPs by associations supporting immigrants and refugees.

[xxii] See other conditions listed in Annex B.

[xxiii] The link between this body and the Schengen ministers and State secretaries is similar to the relation between the Committee of Permanent Representatives (COREPER) and the Council of the EC.

[xxiv] See Migration News Sheet, June 1993

[xxv] The document of 26 pages constitutes, in fact, a precedent, being the first time ever that the Dutch Raad van Staten issued a negative advice on an international agreement.

[xxvi] In its opinion of 17 July 1992, the Belgian 'Conseil d'Etat' considers that the "diversified aims of variable importance" of the particular competences of the Executive Committee attributes to it powers which "could, because of their scope and the use of them, naturally give rise to certain fears and bring about certain reserves from the point of view of constitutional law if (...) the decisions of this Committee were not deprived of any direct effect."

[xxvii] Before approving the ratification on the night of 26/27 June 1991, the right-wing majority in the Senate voted in support of a resolution aimed at the creation of a control committee responsible for examining the implementation and operation of the Schengen Convention - see note 13.

[xxviii] The Constitutional Council ruled on 25 July 1991 that, inter alia, without judicial control, the decisions of the Executive Committee cannot, in order to respect the Constitution, have direct effect on the territories of the Contracting States. This Council decided that all of the Executive Committee's decisions will have to be submitted for examination to the French judicial bodies within the framework of their respective competence.

[xxix] The adoption of these resolutions enabled the Second Chamber to approve on 25 June 1992 the ratification Bill by a very large majority. Only 23 of the 146 MPs present voted against.

[xxx] See the criticisms of Dutch lawyers against this Agreement with Poland in Migration News Sheet, October 1991.

[xxxi] The Commission of the EC is to allowed to be present at the Committee's meetings.

[xxxii] It should be noted that the clause of this Agreement (Article 6) on its provisional application (since 1st April 1991) was (or still is?) against the Belgian constitution. Two conventions, both signed in Vienna, one in 1968 and the other in 1986, on the Law of Treaties and the conclusion of agreements between intergovernmental fora and one or several States or between States, were only ratified by Belgium on 1st September 1992. It remains to be determined whether the ratification of two conventions which, inter alia, enables the provisional application of such an agreement, has rendered

ligitimate, by retroactive effect, a clause which at the moment of signature was anti-constitutional.

[xxxiii] Countries in Eastern and Central Europe of the former Soviet bloc.

[xxxiv] France has been the most vocal in demanding very strict entry requirements at the external borders. It is reported to have once asked Germany not to issue an entry visa to any nationals of the former USSR without first obtaining French approval. Owing to the very large number of persons concerned, this request cannot, at least for the time being, be met. Although France remains officially committed to the suppression of internal borders, a Bill approved by the Council of Ministers on 19 May 1993 aims at enabling the police to carry out identity checks within a zone of less than 30 km between France and a Schengen State as well as at ports, airports and train and bus stations with international connexions (see Migration News Sheet, June 1993).

[xxxv] See Migration News Sheet, June 1993, on the angry reactions of some Schengen States to this declaration, in particular those of The Netherlands and Spain.

[xxxvi] According to a confidential note by the Belgian delegation to the Rhodes Group, dated 24 February 1992, the overlapping of competence among the different working groups "has led to the creation of mixed groupes or obliges the groups to devote a part of their work to exchanging information". "For example", says the note, "the Group TREVI 92 devotes a large part of its agenda to information on the work carried out by other TREVI groups even though the latters' activities and those of TREVI 92 are transmitted for approval to the group of high-ranking civil servants (ie. the Rhodes Group)."

[xxxvii] Composed of Heads of States or Governments of the 12 Member States. The decision to set up the European Council was taken during the Paris Summit in December 1974 in order to provide heads of States or Governments with an opportunity to meet three times a year and when necessary to discuss not only European issues, but also important questions of foreign policy.

[xxxviii] According to the Palma Document, this Convention should have entered into force in the course of 1992.

[xxxix] Spain does not accept that its frontier with Gibraltar be considered as an internal frontier as long as the Governments of Gibraltar and the UK does not allow, by way of a bi-lateral agreement, the Spanish authorities to control Gibraltar's external borders, including its airport.

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[xlii] See Migration News Sheet, May 1993

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