

**Churches Committee for Migrants
in Europe**

**An Insight into Schengen, Trevi
and other
European Intergovernmental Bodies**

By

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AN INSIGHT INTO SCHENGEN, TREVI AND OTHER EUROPEAN INTERGOVERNMENTAL BODIES

Foreword

For some time now, reference is increasingly being made to various inter-governmental bodies dealing with immigration and refugee/asylum policies, especially in view of fears that a so-called 'Fortress Europe' is in the making.

As the dates and agendas of their meetings are hardly ever diffused by the media, coupled with the fact that all working documents are strictly confidential, the exact nature of their activities and a clear definition of their competence are, in general, not correctly known and this has given rise to some degree of confusion. As a result, steps taken to try to combat what are perceived to be threats to rights of immigrants and refugees/asylum seekers are greatly hampered by a lack of information, misinformation and inaccuracies.

There has been, for example, much criticism voiced against the Community institutions, namely the Council and the Commission, and the secret negotiations going on within various intergovernmental fora on immigration and refugees/asylum policies. Notwithstanding the moral arguments which may fully justify such criticisms, it must nevertheless be underlined that almost all these intergovernmental fora operate under international and not Community law. The Community institutions claim to be powerless (1) to intervene in such activities, and the Commission has pointed out that its request to be present with observer status at some of these 'secret meetings' has been consistently turned down. This is the case of the working group meetings of TREVI.

As the participants of these intergovernmental fora all belong to relevant ministries of EC Member States, there is the common assumption that the texts of agreements under discussion have to be made available for debate in the European Parliament. This would be the case if such fora were under Community Law.

In fact, in having such negotiations behind closed doors without national parliamentary control, such ministries are merely exercising the executive powers entrusted to them by their own parliamentary system. What is lacking is the process of examination in parliament during which MPs should be given the opportunity to voice their concerns, if any, and propose amendments.

As far as the Schengen Supplementary Agreement is concerned, the Dutch parliamentary control exercised over its executive authorities has been quite exceptional, when compared with what has been taking place in the national parliaments of the other 4 partners. Perhaps this explains why much of the 'leaked-out' information on the Supplementary Agreement were from Dutch sources.

All this being said, the work of advocacy for the respect of human rights should be directed at national parliaments in order to limit the degree of autonomous power exercised by the executive.

The purpose of this paper is to provide an outline, as brief as possible of these various inter-governmental bodies, their assigned tasks, their composition and their competence. Only with full and correct knowledge of the framework within which they function will it be possible to act in order to try and influence the decisions to be made.

The Schengen Group

The Schengen Group is composed of the 5 States which signed the Schengen Accord of June 14, 1985, viz. Belgium, the Netherlands and Luxembourg (the Benelux), France and the Federal Republic of Germany. It is the logical extension of an earlier agreement reached on 2.2.1958 among the first 3 States to form the Benelux Economic Union within which internal frontiers have been lifted since 1960 and a common visa policy - the Benelux tourist visa which is valid for all 3 countries (2) - was introduced at the same time.

The 1985 Accord is divided into 2 parts: Title I concerns measures applicable in the short term - which entered into force as of January 1, 1986 - and deals mainly with the free movement of goods and services. Title II, on measures applicable in the long term, deals with steps to be taken to allow for the free movement of persons, and for this aim, it was decided to draw up a Supplementary Schengen Agreement to enter into force, if possible, by January 1, 1990.

Since the signing of the Accord, State Secretaries and Ministers of Justice, of the Interior and/or for Foreign Affairs have held meetings every 6 months, with each State taking its turn to assume the presidency, similar to the EC system, one essential difference being that the Benelux countries are considered as 'one' and each member takes its turn to 'represent' the Benelux. In between such meetings, others of a lower level are held, such as those of the Central Negotiation Group, the working groups composed of civil servants representing the five States, the Editorial Committee who is responsible for the various drafts of the Supplementary Agreement, etc.

Although all members of the Schengen Group are members

of the European Communities, it is strictly outside the competence of the Community institutions. Its secretariat is assured by the General Secretariat of the Benelux Economic Union whose head offices are in Brussels. This has provided the Council and the Commission of the EC with the grounds for brushing aside any questions raised by members of the European Parliament on the Schengen Group by simply stating that they are not competent to make any comments.

In theory, the Commission of the EC only has observer status with the Schengen Group (this was only acquired upon request during the last couple of years) and is represented at meetings by its Vice-President and Commissioner for the Internal Market and Industrial Affairs (DG III), Mr Martin BANGEMANN. In practice, however, Mr BANGEMANN has played an active role in putting forward proposals at meetings.

Whilst it is true that the UN High Commissioner for Refugees was not invited to any of the Schengen Group meetings during the entire negotiation process despite the fact that matters of refugees and asylum are an important component of the Supplementary Agreement (cf. Art. 35 of the 1951 Geneva Convention on the Status of Refugees and Art. II of the 1967 Protocol, as well as Art. 8 of the Statutes of the UNHCR) (3), it must also be said that no formal request of participation was forwarded by the UNHCR to the secretariat of the Schengen Group. The question is whether the 5 Schengen States as signatories to this Convention and additional Protocol have, a priori, the obligation to invite the UNHCR. In any case, the UNHCR was not kept informed by the Schengen Secretariat of proposed measures related to refugees as required under the afore-mentioned articles.

There have been attempts to enlarge the group of

5 to include other EC members and the only other EC State that has come close to membership is Italy. Serious negotiations for Italian membership went on throughout 1988 and Italy assisted as an observer at the Group's meetings, but by mid-1989, it was decided that priority should be given to reaching a common agreement by the 5. Italy would take steps to become a member only after the signing of the Supplementary Schengen Agreement by the 5.

Danish and Austrian membership were also under consideration. Matters could not go very far with Denmark because of its obligations vis-à-vis her Nordic partners, namely the Nordic Passport Control Agreement (4). As for Austria, it has an agreement with the 5 Schengen States on information exchange with the aim of turning the Austrian borders with all neighbouring States except the FRG into de facto external Schengen borders.

Spain has made well known its intention of applying for membership into the Schengen Group, especially when it was assuming the EC presidency during the period of January 1 to June 30, 1989. However, it has never submitted a formal application for membership.

Where free movement of persons is concerned, the Supplementary Agreement rests on 4 main categories of policy measures:

1. measures to be taken to reinforce external borders
2. a common visa policy
3. a common policy on refugees and asylum
4. the setting up of a data base system, known as the Schengen Supplementary System (SIS).

Unlike the other 3 categories of policy measures, the

one dealing with refugees/asylum was not mentioned at all in the 1985 Schengen Accord. It appeared during the negotiation process when after 1985 the 5 'Schengen States', like most of the other EC countries, became confronted with the growing number of asylum applications. Under the assumption that a significant percentage of such applications were for economic motives, the negotiations for harmonized asylum policies was not unrelated to the undertaking of the 5 Schengen States under the 1985 Accord "to take complementary measures to (...) combat illegal immigration by nationals of States that are not members of the European Communities." (Art. 17).

Present stage of negotiations on the Supplementary Agreement

The signing of the Supplementary Agreement, scheduled for December 15 last year, was unexpectedly called off one day before by the Bonn Government which was occupying the presidency. Each State had reasons for opposing the signature: the FRG wanted the GDR to be included in the Agreement; the Netherlands was not satisfied with a harmonization of asylum rules on entry and application only and wanted asylum procedures to be harmonized as well, and, like Belgium, felt that the setting up of the SIS was not accompanied with sufficient guarantees on human rights and privacy; France feared an influx of the FRG's unwanted immigrants, as well as of East Europeans and refugees in Eastern Europe; as for Luxembourg, it had unresolved differences with the Netherlands on measures to combat fiscal fraud.

However, following the legislative elections in the GDR on March 18, 1990 when it became evident that the reunification of the '2 Germanies' was only a matter of time, Bonn actively relaunched the negotiation process

by submitting a note on March 22 to its 4 partners in view of a compromise on 2 basic points: German guarantees of effective border controls at the Eastern frontiers of a unified Germany, and a relaxation of visa policies for nationals of Central and East European countries undergoing democratic changes.

The Central Negotiation Group of senior officials had a very favourable meeting on April 27, 1990 and declared their willingness to arrive at a quick signing of the Supplementary Agreement. A ministerial meeting that followed on May 17 resulted in major decisions and compromises. The application of the Accord and the Supplementary Agreement will be extended to the GDR once the 2 Germanies become unified. In return, the German delegation undertook to inform its Schengen partners of any important developments in the relationship between the 2 German States that may be of any relevance to the Schengen Accord. Accordingly, the 5 decided, in exchange for reciprocity, to lift entry visas for GDR citizens for visits of up to 90 days as from June 1, 1990. Luxembourg finally agreed to accept the measures provided for against fiscal fraud.

The following are other important compromises reached: All decrees concerning the implementation of the Agreement would be made public 2 months before coming into effect, thus allowing national parliaments to raise objections. The SIS will not come into operation until after all 5 Member States have signed and ratified the 1981 Council of Europe's Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, and introduced it into their national legislation. All 12 EC Member States have signed this Convention, but only Denmark, France, the FRG, Ireland, Luxembourg, Spain and the UK have ratified it. Non-EC nationals residing in one of

the 5 Schengen States and wishing to travel within the 'Schengen Area' will no longer need entry visas. Instead, they will have to report to the aliens' police of the country visited, but this practice is likely to be temporary.

The Central Negotiation Group met again on May 31 and decided to sign the Supplementary Agreement on 19 June in Schengen itself. As sufficient progress was made, the ministerial meeting scheduled for June 14 in The Hague was cancelled. The Group decided, i.a., that the SIS will not include more data than what is currently exchanged on a bi-lateral basis and that both the national and European parliaments will be kept regularly informed of its use.

Although the UNHCR has welcomed the fact that a number of its proposals have been integrated into the Agreement, but not all, claims that it has issued a statement that the Supplementary Agreement does not contravene any of the articles of the 1951 Geneva Convention are not true.

Asylum seekers whose requests have been turned down will not be recorded in the SIS. Any Schengen State may, at its own initiative, re-examine the application of an asylum seeker whose requests has been refused by another Member State. Moreover, the 5 States undertook to ensure that measures on asylum seekers be in line with those stipulated in the Convention elaborated by the ad hoc Group on Immigration (see below).

The TREVI Groups

The so-called TREVI Group, composed of the Ministers of the Interior and/or of Justice of initially the 10 Member States and now the 12, was, in fact, set up in 1975 as

an intergovernmental body under international law (outside of Community legislation) with the initial aim of co-ordinating efforts to combat terrorism.

Its field of work gradually extended to include international crime and drug trafficking. As these various issues were dealt by subgroups or working groups within the TREVI framework, this Group is sometimes considered to consist of 3 sub-divisions, TREVI I, II and III.

Although the State holding the presidency of this Group is the same as the one presiding over the EC, it is not a European Community structure and the Community institutions are not competent to make any comments or judgment on their activities. In fact, despite requests for some form of participation, as an observer for example, the Commission of the EC has been excluded from all of its meetings.

Its secretariat is provided by the State which holds the presidency and therefore moves from one EC capital to another within a period of 6 months.

The same holds true for the TREVI 1992 Group, set up on December 9, 1988 in Athens as an ad hoc group to deal particularly with police matters by the same ministers who participate in the afore-mentioned TREVI Group, and baptised with this name under the Spanish presidency at a meeting held in Madrid on April 1, 1989.

It was set up to examine the problems raised by the lifting of internal Community frontiers, namely operational matters of police and security. The TREVI 1992 Group's primary role is to provide a standardized police and security structure capable of offering standardized solutions to

identical problems faced by the TREVI working groups within their respective fields of activities.

Here lies the source of the amalgam that has provoked such strong criticisms by human rights groups: the desire to make use of the same instruments to deal with drug-traffickers, terrorists and internationally organized criminals on the one hand, and irregular immigrants and refugees and asylum seekers on the other.

The TREVI 1992 Group has nourished the ambition, especially during the Spanish presidency (January 1 to June 30, 1989), to set up a European police agency, similar to the Federal Bureau of Investigation (FBI) in the USA. The measures envisaged include reinforced checks on persons (irregular migrants and refugees/asylum seekers included), at the external borders, information exchange with a data base system, similar to that conceived by the Schengen States, training of police officers for external border surveillance, harmonization of criteria of security and of checks in land, air and sea ports, harmonization of legislation providing for issuing of fines to air, land and sea carriers for transporting passengers without adequate and/or valid travel documents, lists of deported persons and of personae non gratae, harmonization of policies on immigration, visas and asylum, etc.

As this Group also does not come under Community law, its area of activity lies completely outside the competence of the Community institutions. As in the case of the TREVI Group, the European Commission has no right of participation, nor is there any formal exchange of information.

The proposal put forward by the Spanish Government in the first half of 1989 to provide this Group with a

permanent secretariat did not gain the approval of all of the 11 other Member States.

The ad hoc Group on Immigration

This Group was set up in London in 1986 on the initiative of the UK Government which was at that time holding the presidency of the EC. At the ministerial level, it is composed of the Ministers of the Interior and may be assisted by high ranking officials of other Ministries dealing with immigration matters.

Unlike the TREVI groups, it has a permanent secretariat at the Council of Ministers, but it is not a Community structure. The Commission participates in its meetings with the status of 'member', and not as a Community institution with the right of participation under Community law.

Probably because of its apparent very close link with the Community institutions, the latter, for political reasons, have issued remarks on the activities of this ad hoc group. However, from a purely legal standpoint, Community institutions may legitimately refrain from making any comments.

This was why during the French Presidency in the second half of 1989, the French Minister for European Affairs, Ms E. CRESSON, in reply to a question on the TREVI and Schengen Groups by an MEP, made a statement on how the European Parliament could be informed of the activities of the ad hoc Immigration Group. (5)

This ad hoc Group has made considerable progress in its elaboration of a draft convention on the determina-

tion of the State responsible for examining an asylum application presented in one of the Member States of the European Communities (6). The draft was last discussed at the ministerial level in Paris on December 15, 1989, under the French Presidency, and its finalised version, scheduled for signing on June 25/26, 1990, may instead be signed earlier, on June 14.

It is also working on another draft convention on all aspects of checks on persons at the external frontiers of the EC Member States. The difficulties with this one are mainly related to a common visa policy. Nevertheless, the 12 EC States hope to have it signed under the Italian presidency, towards the end of 1990.

A number of Member States share the view that a common visa policy is not practical without a common foreign policy. Where there is no consensus on the desirability of certain persons/nationals, the 'Benelux solution' is to issue a visa that is valid only for the State(s) willing to allow entry. For example, a person may be allowed to enter Belgium, but not the Netherlands. This, however, does not work in practice as unless such a person is a well-known criminal or terrorist, there is very little in the way to prevent him from travelling from Belgium to the Netherlands in the absence of frontier checks. Without a common foreign policy (competent fora: the European Political Co-operation Group), divergences among the 12 as to who should be allowed to cross the EC external borders will be far greater.

As the same time, its sub-group 'Visa' is preparing uniform application forms for tourist and transit visas to be issued to Third Country nationals. Sufficient progress towards consensus has already been achieved towards the issuing of a European Community visa.

The Group of Co-ordinators

Owing to the existence of the various fora that examine the problems raised by the lifting of internal borders within the European Communities, the European Council (7) at Rhodes, under the Greek Presidency (second semester of 1988) decided to have their activities co-ordinated.

The Group of Co-ordinators was thus set up and is composed of highranking government officials. As in the case of the other fora, the country that assumes the presidency of this group is the same as that holding the presidency of the European Communities.

Unlike all the other groups described so far, this body was set up by decision of the European Council and is therefore within the framework of activities of the European Communities, ie. both the Council and the Commission are competent to reply to questions raised about this group by members of the European Parliament. The Commission is, in fact, represented in this Group by the same Mr Martin BANGEMANN, Vice-President of the Commission and Commissioner for Internal Market Affairs (DG III).

Its first task, which required an initial 6 month period of regular meetings during the first half of 1989, was to outline the obstacles to lifting the internal frontiers and to propose a time-table as to when these obstacles can be removed. All this is contained in the so-called Palma Document, adopted unanimously by the European Council at the Madrid Summit in June 1989, and is essentially composed of 2 lists of measures: the first list comprises measures that are essential to the lifting of internal borders and the second are "desirable" but

not essential. All measures, whether desirable or essential are accompanied by a timetable as to when they can (hopefully) be implemented.

Since the adoption of the Palma document, the Group of Co-ordinators has tried to ensure that the necessary steps are taken in the 12 Member States so as to meet the deadlines for removing the remaining obstacles to a 'Europe without internal frontiers'. A progress report was thus submitted to the Strasbourg summit in December 1989, under the French presidency.

Other European fora on matters related to the lifting of internal frontiers:

. **The Internal Market Council:** Within the perspective of the European Single Market and the implementation of measures listed in the Commission's White Paper issued in June 1985, the Council examines the Commission's draft proposals, directives and regulations on the problems and issues related to social, monetary, market and other matters required for the proposed lifting of internal frontiers and free movement of goods, services and persons. Its composition depends on the matter examined. For example, if it concerns a draft directive on social affairs, its members are the Social Affairs Ministers of the 12 Member States.

. **The European Political Co-operation Group** 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 various tasks in the political field, it is involved in promoting and improving co-operation among the criminal justice authorities of the 12 Member States and has a sub-section called the **Judicial Co-operation Group on Criminal Law**.

- . **The Pompidou Group**, a Council of Europe body that examines problems and measures to combat drug trafficking within its Members States.

- . **The Co-ordination Group on Drugs**, set up by decision of the European Council in Strasbourg in December 1989, is a Community forum. As its name implies, it co-ordinates measures on how to combat drug trafficking in view of the lifting of internal frontiers.

- . **The Mutual Assistance Group**, composed of representatives of the 12 Member States and the European Commission, handles matters related solely to co-operation in the field of customs control.

- . **The ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum and Refugees and Stateless Persons (CAHAR)**: This Council of Europe Committee is the oldest of all European fora looking into asylum matters, having undertaken to study the question of "the first country of asylum" as from 1978. 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 at the request of the Committee of Ministers in 1984. In 1986, its work on this question was resumed, but on a new basis and in different terms. After 2 meetings, it elaborated a preliminary "Draft Agreement on Responsibility for Examining Asylum Requests"

in January 1987 and, at its 27th meeting on November 29 - December 2, 1988, it produced its final draft. However, as some of the more important Member States are known to be opposed to signing this agreement, the text has been shelved and it is highly unlikely to be presented for approval and signature before the 12 EC Member States reach agreement on their own draft convention (see supra).

. The ad hoc "Consultations on the Arrivals of Asylum Seekers and Refugees in Europe" among Senior Government officials of participating States and the United Nations High Commissioner for Refugees (UNHCR). This forum is not exclusively European (Australia, Canada and the USA, for example, also take part) and although their discussions do at times relate to the lifting of the internal Community frontiers, they are primarily aimed at closer dialogue and co-operation, including exchange of information, on asylum seekers and refugees. First convened at the initiative of the UNHCR in Geneva in May 1985, with the participation of 20 European and 15 non-European States, other similar ad hoc consultations have followed, but with the participation of only industrialized nations: Stockholm (November 1985), The Hague (April 1986), Gerzensee (CH) (February 1987), Oslo (May 1988), Semmering (near Vienna) (June 1989) and the next one is to take place in Geneva at the end of 1990 or early 1991. After Gerzensee, a number of working group meetings and workshops with the participation of government experts have been organised by the UNHCR, namely on Iranians, Tamils, long-term asylum/refugees policy and the migration flux from Eastern to Western Europe.

Antonio CRUZ

Brussels, June 7, 1990

Footnotes:

- (1) On the contrary, some legal experts on refugee matters argue that the Commission, as the guardian of the treaties of the European Communities, (Art. 8) is competent to act. Where the negotiations among the EC Member States on measures concerning refugees held in the absence of the UN High Commissioner for Refugees are concerned, these experts are of the opinion that the 1951 Geneva Convention (Art. 35) and the 1967 Protocol (Art. II) have been violated and, by virtue of, i.a., Art. 5 and 229 of the Rome Treaty, the Commission is competent, as a first step, to "deliver a reasoned opinion" to the Member States concerned (Art. 169).
- (2) In some exceptional cases, visas valid for only one of the Benelux States are issued. This is because persons classified as "undesirables" in one State are not necessarily considered in the same way by other States. 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.
- (3) According to Article 35 of the 1951 Geneva UN Convention, the signatory States "undertake to co-operate with the Office of the United Nations High Commission for Refugees, or any other agency of the United Nations which may succeed it, in the exercise of its functions" and "to provide them in the appropriate form with information and statistical data requested concerning (...) laws, regulations and decrees which are, or may hereafter be, in force relating to refugees. Article II of the 1967 Protocol is identical with Article 35 of the above-mentioned Convention. During the entire process of negotiation leading up to the final draft of the Schengen Supplementary Agreement, which was supposed to have been signed on December 15, 1989, there was never any official exchange of information between the Schengen States and the UNHCR on future laws, regulations and decrees relating to refugees.
- (4) This treaty was signed on 12.07.57 and entered into force on 1.05.1958. Under this treaty, the immigration control officers of any of the

Nordic States have to act on behalf of all five of them. They have, i.a., a common list of deported persons and those categorized as 'personae non gratae'. Prior to this treaty, passports for Nordic citizens were abolished in 1952 for internal Nordic borders and in 1954, the requirement to apply for a residence and a work permit was also abolished for Nordic nationals.

- (5) The reply, given on 11.10.89, pointed out that "the free movement of non-EEC residents, the right of asylum and the possibility of a common immigration policy, are dealt with in the ad hoc Working Party on Immigration. The Committee on Legal Affairs and Citizens' Rights is regularly informed of the outcome of the proceedings of the Ministers responsible for Immigration."
- (6) In their joint declaration issued in Paris on December 15, 1989, the Ministers concerned with immigration of this ad hoc Group "solemnly declare that our objectives shall be achieved in accordance with the international commitments regarding asylum or the humanitarian traditions of our States. In particular, the creation of a space with no internal frontier i.e. a new space of freedom, shall not affect the importance our States attach to the protection of refugees, as enshrined in the Geneva Convention of 28 July 1951, modified by the New-York Protocol of 31 January 1967." Since then, the UNHCR has been consulted for its views on the contents of the proposed draft conventions. As to be expected, some of its proposed amendments have been accepted whereas others have been rejected.
- (7) Composed of the Heads of State of the 12 EC Member countries. The decision to set up the European Council was made at the Paris Summit in December 1974 to provide a framework for Heads of State to meet 3 times a year and whenever necessary to discuss not only European issues, but also important questions of foreign policy.

Further reading:

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Trevi Group: "Declaration of Trevi Group Ministers", Paris, December 15, 1989.

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Tweede Kamer der Staten-Generaal (NL): "Statement by the State Secretaries for Foreign Affairs and of Justice on the proposed Schengen Supplementary Agreement", Tweede Kamer, vergaderjaar 1989-90, Den Haag, 19 326, n° 21. (only in Dutch).

These briefing papers are addressed to those active in the field of migration to provide them with updated information on specific matters of current events which may assist them in developing present or future initiatives.

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