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Conference Summary

The Presidency Conference on
**Future European Union Co-operation in the Field
of Asylum, Migration and Frontiers**
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With the support of the European Commission (ARGO)

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Under the auspices of the The Netherlands' Presidency of the European Union

Conference on Future European Co-operation in the Field of Asylum, Migration and Frontiers

From August 31st to September 3rd, The Ministry of Justice of The Netherlands, in co-operation with the Migration Policy Institute, convened a meeting of over 200 policymakers, government officials, experts and representatives of civil society to discuss the future of EU-level co-operation in the fields of asylum, migration and border control. The conference took place as the European Union is about to welcome a new Commission and prepares for the adoption of a new multi-annual programme on its portfolio. Looking explicitly toward the future and in many ways anticipating key aspects of the constitutional treaty now awaiting Member States' ratification, the purpose of the discussions at the conference was to inform the Dutch Presidency's effort to create, together with its fellow Member States and the Commission, the new multi-annual programme on Freedom, Justice and Security.

In order to promote a practical and policy-focused discussion, one full day of the conference was dedicated to three smaller workshop sessions, in which delegates were able to delve more deeply into their own areas of specialty and concern. These workshops were launched by a discussion of six papers commissioned specifically for the conference, which are available together with the conference programme, keynote speeches and related materials at www.migrationpolicy.org.

Placing Migration Policy in Europe into Context

In numerical terms, the Member States of the Europe Union are now among the most immigrant-dense in the world. Luxembourg, with a population that is 35 to 40 percent foreign-born, is the world's migration leader, while nearly one in four Swiss residents is foreign-born. Germany has Europe's highest absolute number of migrants and a population that is about 13 percent foreign-born. A majority of European Union countries have foreign-born populations that are between 8 and 12 percent of their total population. There is every indication that they will soon be joined by others in this regard, including most new Member States.

The lesson of these numbers is clear: the processes of immigration and immigrant integration in Europe are now too significant to be left to guide themselves. Migration is now a social and economic phenomenon of the first order, with positive and negative potential that European countries cannot afford to ignore. Furthermore, Europe has now reached the point where differences between the immigration experiences of European countries and the "traditional countries of immigration" are growing smaller. No country of the developed world is—or need be—alone in facing the challenge of managing migration.

Unfortunately, the world's countries of immigration *all* share the disappointing reality that their immigration systems are broken: the economic and social promise of immigration is being realized only partially and extremely unevenly, while unauthorized migration and failures in integrating immigrants are growing. Levels of official recognition of these problems are generally low: for example, no European country publishes independently verified estimates of the number of unauthorised residents in their territory.

At the same time, the political perception that migration is out of control is often overwrought or mislaid. Humanitarian migration, the migration “stream” that is a major political preoccupation in the EU and elsewhere, is the type of migration most widely perceived to be out of control, despite evidence that asylum applications rise and fall in response to policy decisions and robust administrative and enforcement actions. The examples of growing unauthorized arrivals and the increasing reliance of such arrivals on trafficking syndicates provide a more plausible demonstration that a loss of control over migration patterns exists. The challenge of organised unauthorised entries is hard to overemphasise. At the most basic level, such entries surrender the decision of who reaches European soil to organized smugglers and the market forces that feed them, with terrible human rights and rule-of-law consequences.

The concept that migration is “out of control” misses a crucial analytical and political point, however. Namely, that large numbers of public and private institutions—ranging from businesses and civil society to governments themselves—have become deeply implicated in migration, making them party to this loss of control. Economic demands, social, labour and foreign policy interests and priorities, colonial history, and political interests together create the conditions that allow and even encourage migration. Reducing this complex relationship to its most obvious form, each and every consumer in the developed world is implicated in migration by the mere fact that he or she benefits enormously from the work of immigrants.

A new and different approach to migration management would recognise this near-complicity, as well as the substantial potential benefits of migration, and proceed to search for “win-win” answers to the difficult questions posed by migration. The acknowledgement of these truths and search for open-ended answers would create the chance to refocus receiving country efforts to reap the benefits of migration. In doing so, the management of migration might be turned into national projects that involve civil society, employers, government and other public institutions alike. The resulting approach would call for a rethinking of what role migration should, realistically, play in society and aim for a practical reassertion of the right to monitor and control who enters, rather than naïve openness *or* restrictionism, or, for that matter, knee-jerk responses to the latest crisis.

The year 2004 finds the European Union having concluded a very productive five years of work on migration. Despite the demonstration of the willingness of the Member States to invest political capital into better migration management, true progress in migration management will ultimately be brought about only through the full engagement of key constituencies in each state on the issue, guided by their own particular problems, assets, goals, and traditions. In this process, the Commission and the Union’s other institutions have played increasingly important supporting, and in some cases, leading, roles—roles that will continue to evolve. Thus, the Conference’s goal was not only to set out an agenda for EU co-operation during the Dutch Presidency and far beyond, but also to further the exchange of ideas, knowledge, practices and strategies for a project that is at once pan-European and profoundly national and even local in nature.

As the EU considers the next five years of its work programme, it faces a set of apparent contradictions in migration-related issues. The need to control borders in a new security context is often at odds with the need to welcome visitors, promote commerce, gain from orderly and selected migration and strengthen the Union's absolute commitment to free movement in a newly enlarged Union of twenty-five Member States. The Union's—and many Member States'—determination to be leaders in humanitarian protection efforts can conflict with the need to ensure that asylum systems are not abused. Labour immigration systems are looked to in order meet the challenges of demographic ageing and to retain "market share" in the global market for talent. However, existing systems have not always ensured that migrants have had legal status, the opportunity to integrate or valued skills. Nor have the interests of the Union's and Member States' own workers been safeguarded, let alone advanced smartly. Yet, none of these contradictions are inevitable. Each is the product of the gap between a phenomenon that is complex and changing, and policies that have too often been simplistic and static.

The discussions showed substantial promise that European policymakers are determined to respond to these seeming contradictions with more than just compromises or partial solutions. Dutch Minister of Immigration and Integration Rita Verdonk made this clear in her keynote address. She was clear about the key challenges that the EU and its Member States face. These include the following:

- The persistence and growth of illegal migration and the "grey economy";
- The need for much greater improvements in security;
- The social and economic challenge of ageing workforces and the goal of creating the world's most competitive economy; and
- The need to maintain confidence in the institution of asylum.

Minister Verdonk called for Europe to meet these challenges with recognition of the benefits of migration and engagement with the phenomenon, saying, "My own vision is of a Europe that is involved with the world and open to it." She cautioned against a return to the strategies of "Fortress Europe" and against allowing security concerns to lead to the creation of "another Iron Curtain." Instead, Minister Verdonk laid out a compelling and uncompromising vision for Europe, highlighting the need for, among other priorities:

- A true "safe harbour" for those in need of humanitarian protection through swift and effective procedures that prevent abuse;
- Strong leadership by Europe in expanding access to protection and durable solutions for refugees in regions of origin while upholding its asylum responsibilities;
- Legal labour migration that meets the labour market needs of a Europe that "can no longer live without migration;"
- Better management of illegal immigration;
- Borders that are both open and secure; and
- A more coherent framework for co-operation on migration issues with third countries.

These lofty goals cannot be achieved by any one Member State alone; thus, European-level co-ordination is necessary. The goals require not only co-operation among Member States, but also demand that migration issues be tied

more closely to policy formation in other fields and that third countries be incorporated as true partners in discussions that truly take into account the interests of all parties. Successful migration management will require dialogue that crosses policy competencies and the Union's borders.

WORKSHOP DISCUSSIONS

Asylum and Refugee Protection

The discussion on humanitarian-based migration policy created a simple but useful distinction between asylum policy and refugee policy. Asylum policy is essentially concerned with the laws, systems and procedures that govern the admission, reception and eventual status of asylum seekers. Consequently, it primarily has a national or regional focus. Refugee policy, however, is a more comprehensive and globally focused concept that includes a range of issues that determine the quality of protection, assistance and solutions that are available to refugees wherever they are located. Throughout the workshop, representatives of Member States, experts and leaders from the civil society sector reiterated their commitment to the protection of refugees, including those who arrive in EU territories and those who reside in other regions.

The first session of the Conference's workshop on humanitarian protection policy focused on asylum policy, more specifically on the potential for agreeing to and implementing single national-level procedures for asylum determinations. The second half of the workshop, in contrast, focused on questions of protection and access to durable solutions in regions of origin, issues which clearly fall within the purview of refugee policy. Both protection issues and durable solutions have been the subject of recent communications from the European Commission.

Single Asylum Procedure

One of the most-developed concepts explored at the conference was that of the single asylum procedure; that is, a single national asylum procedure which considers whether an asylum seeker should be granted refugee status under the 1951 Convention or should receive some other form of protection. The discussion did not specifically address the question of a common asylum procedure to be used by all EU Member States, although building on the Procedures Directive concluded under the Tampere agenda, this was an implicit element in the exchange. The idea of a single asylum procedure contrasts with contemporary asylum systems in some European countries, where claims to refugee status and claims to subsidiary forms of protection are examined separately. In general, discussion of the single procedure was narrowly focused, technical in nature and generally consensual.

The policy brief prepared on the topic set out clearly the potential advantages of the single asylum procedure, many of which relate to the efficiency and integrity of the process. Some of the advantages are as follows:

- Decisions on asylum applications can be taken more quickly and use fewer administrative resources.
- It is more difficult for asylum applicants to make separate or successive claims. Thus, the single procedure acts as a deterrent to abuse.
- Asylum seekers themselves benefit from a simpler and more transparent application procedure, and are not obliged to reformulate their history to meet different criteria.

- The single procedure enables a better link to be established between protection decisions and the enforcement of return for rejected cases.

However, these advantages can only be secured if a number of other issues and problems are addressed first. The most important of these include the following:

- First, the primacy of the 1951 Convention must be maintained. Steps should be taken to ensure that single procedures do not provide adjudicators with an incentive to grant people subsidiary protection when they actually qualify for refugee status. In this respect, procedural safeguards are needed to ensure that protection levels for genuine refugees are not lowered.
- Second, it can be more difficult to correct adjudication errors under a consolidated asylum procedure. To correct this potential flaw, the preclusion of new evidence should not be so stringently enforced as might be the case with a divergent procedure, and an appeals process must be maintained for those claimants who are refused protection under a single procedure.
- Third, while a legitimate distinction can be made between refugee status and subsidiary protection, the rights and entitlements of people falling into these two categories should be identical.
- Fourth, single procedures must be supported by effective and regular adjudicator training, as well as by giving adjudicators access to up-to-date country of origin information.
- Fifth, the quality of a single procedure becomes somewhat irrelevant if asylum seekers do not have access to that procedure or to the territory of the state where that procedure has been established. In this respect, improved access to protection and solutions in regions of origin—another subject discussed in depth at the conference—should not be used as a pretext for denying applicants access to the asylum procedures of EU Member States.

In short, the single procedure offers clear advantages, including the prospect of decreased costs and reduced fraud and abuse, *but only if investments are made to ensure that the system yields fair outcomes*. The need for high standards of process and appeal must guide any European-level movement on introducing a single procedure.

Refugee Protection and Resettlement

Discussion of the broader topic of refugee protection was framed by a policy brief which examined—and generally endorsed—the European Commission's recent communication on refugee protection and access to durable solutions in regions of origin. In contrast to the discussion focusing on the single procedure, discussion on protection and access to solutions in regions of origin was much broader, more political in tone, and characterized by some contrasting and even conflicting perspectives. By the time the session had to end, there was a distinct sense that the debate had not been concluded, and must be continued.

The European Union has in the past two decades been focused and even fixated on the issue of asylum policy. This focus might have been understandable in the late 1980s and 1990s, when the number of asylum seekers entering the EU was particularly high, and when most national asylum systems were failing to keep pace with the demands placed upon them.

However, much about the situation in Europe has changed. The numbers of asylum seekers entering Europe have declined; national asylum systems are generally in better order; and significant steps have been taken towards the development of a common European asylum policy. Given these circumstances, the EU has a historic opportunity to move beyond the limitations of asylum policy and to focus much more systematically on the broader range of issues related to refugee protection and durable solutions in other parts of the world.

To quote from the keynote presentation given to the second session of the workshop on humanitarian migration, "we are talking about a Europe that plays a role commensurate with its international stature by protecting refugees wherever they are, and by working with countries in regions of origin to promote protection there."

This ambitious movement from a European Union *asylum* policy to a European Union *refugee* policy would have some important implications. The following are among the most important prerequisites for a successful shift.

- EU and Member State officials will have to develop a much better understanding of the reality for refugees in regions of origin, a task that will require them to develop policies that meet the needs of their counterparts in other parts of the world.
- Officials within the EU who are responsible for justice, immigration, security, foreign affairs, development and human rights will need to engage in more extensive dialogues and joint policymaking.
- The EU and its Member States will have to determine what needs to be done at a practical level if refugees are to enjoy effective protection and durable solutions within their regions of origin. In making this determination, the needs and concerns of local populations will also have to be addressed.
- Resettlement to the countries of the European Union will have to be used more widely, more systematically and more strategically, so as to expand the durable solutions and opportunities that are available to refugees in other parts of the world.

The workshop reached a good degree of consensus on the need for such progressive reform. Participants noted the fact that millions of people have been trapped in refugee camps across the developing world for years on end, and continue to remain there without any realistic prospect for leaving. During those years, their standards of physical protection and material security have in most instances declined. In other words, rather than enjoying a gradual improvement in circumstances, refugees who entered a country of asylum 5, 10 or 15 years ago have become progressively poorer and more vulnerable. Not surprisingly, a

small number of those people eventually try to find their own solution by attempting to move on to countries in more prosperous parts of the world.

There is clearly a humanitarian challenge here, one that approaches the level of obligation to address and resolve the problem of protracted refugee situations. But there are also some broader, practical considerations to take into account. If the condition of refugees is allowed to deteriorate, if refugees have no hope for the future, and if a harmonious relationship between refugees and their local hosts is not encouraged, the potential for social and political violence only increases. In other words, refugee protection and durable solutions in regions of origin can legitimately be seen as a security concern.

However, the issue of improving refugee protection and access to durable solutions outside of the EU raises important points of concern, uncertainty, and even controversy. These issues might be loosely grouped into four different categories: prioritization, motivation, implementation and negotiation.

With regard to prioritization, it is clear that a focus on protection of refugees in regions of origin should not substitute for EU action targeting the root causes of humanitarian flight such as poverty, conflict, poor governance and human rights abuses. There are no fundamental contradictions among the tasks of prevention, protection and durable solutions, and the European Commission in fact issued a separate communication on the question of root causes in 2002.

The motivation for utilizing a renewed protection regime also derives from a humanitarian basis. Additional attention to protection and resettlement in regions of origin must not be understood as a way to reduce asylum flows or as an excuse for diminished standards of protection for asylees. As several participants acknowledged, there is a temptation to expect efforts to improve protection in regions of origin and expand resettlement possibilities to reduce spontaneous arrivals to Europe. While such a link might be demonstrated in the long term, it is impractical to expect broader refugee protection efforts to create a measurable decline in asylum claims in the short run. In any event, any effort to merely shift the burden of refugee-hosting to the developing countries that already bear the largest part of the world's duty to protect the persecuted, even if accompanied by additional transfers of resources, would set a poor example for third countries. It would also have the effect of undermining Europe's ambitions to be a leader in humanitarian issues and a stabilizing force in the world.

The primary obstacles identified in the approach laid out in the Commission communication are issues of implementation and feasibility. The costs involved in an extensive effort to find durable solutions have not been identified, nor has the source of funding been determined. Also, the approach has not been clearly differentiated from other efforts, such as the Action Plans of the High Level Working Group. In practical operational terms, future efforts to reach a protection agenda must be structured so that the programmes of agencies on the ground learn from, improve on, and move beyond the limits of past efforts.

A final theme critical to improving refugee protection is that of negotiation. Given the complexity of the issue, a renewed emphasis on refugee protection and durable solutions will require a great deal of dialogue and negotiation. Such dialogue and negotiation must take place within the Member States of the EU; among the Member States of the EU; between the different directorates of the

European Commission; and, most significantly, between the EU and those developing states and societies that host the vast majority of the world's refugees.

Legal and Illegal Migration

Immigrants are responsible for 20 percent of the growth of the European Union's workforce. As Europe undergoes a rapid demographic change that will drastically increase the ratio of retirees to workers, immigrant workers will become only more important. Clearly, immigration is but one tool among many for dealing with population ageing, and can thus be only part of the long-"solution." However, with the age profile of the populations of most new Member States changing even more markedly than those of the EU-15 and pension, labour market and other reforms proving particularly resistant to policy change, the labour of migrants from third countries will become an even larger part of Europe's agenda for economic competitiveness.

Europe remains largely closed to labour migration. At the same time that the work of immigrants is becoming increasingly important, most Members States have few policies designed to attract, admit, and benefit systematically from the work of immigrants. Yet, immigration is not an unambiguous benefit: many immigrants do not succeed in the labour market and much of their labour swells the size of the underground economy, particularly in Southern Europe. The workshop on legal and illegal migration addressed issues raised by these contradictions: first, the issue of how European countries can best admit immigrants for work and second, that of how to manage illegal immigration.

Immigration and the European Labour Market

The discussion of labour migration was grounded in new evidence culled from the European Labour Force Survey on the role of the foreign born and their immediate descendants in the European labour market. That evidence gives a complex and mixed picture of the work performed by immigrants. Among the findings reported were the following:

- Immigrants in Europe are overrepresented, relative to native workforces, at both extremes of the skill spectrum.
- There is evidence that immigrants who have spent more time in the EU and who have acquired citizenship perform better in the labour market than those who are recent arrivals.
- Many unskilled immigrants from developing countries continue to struggle in European labour markets.
- Strong differences between the labour market roles of men and women persist, with women from developing countries having low levels of employment and earnings.

The evidence that skilled immigrants have greater economic success (and, it is believed, greater success in other aspects of integration), combined with the potential that immigrant workers can alleviate skill shortages and mismatches, has provided a rationale for policies that select and attract skilled migrants. However, there are also reasons to consider preparing for the migration of less

skilled workers. Chief among them is the substantial demand for unskilled labour, which will likely only grow with population ageing. In many countries, that demand is met by irregular migration.

Given these facts, participants discussed a number of important deficiencies and problems that need to be addressed through policy reform. These needs include the following:

- *The lack of well-conceived and properly tested methods to strategically select immigrants for labour market purposes.* Although examples of well-designed programmes are emerging, the EU has a limited inventory of positive experiences with selecting immigrants. Participants expressed a great interest in using a combination of selection criteria and deliberate openness to improve the labour market contributions of migrants of *all* skill levels, but indicated that there exists little in the way of experience or directed thought as to how migrants should be selected.
- *The need for investment in quick and efficient selection and processing procedures.* Labour migration will only be an economic and societal asset if it works both for employers and immigrants. An important factor in the development of a fair and practical selection policy is an efficient and transparent processing mechanism that protects all workers. Such a policy should be developed through a process that invites input and “buy-in” by employers, labour unions and civil society organizations.
- *The question of how to compete effectively for skilled migrants.* Participants expressed deep concern that EU Member States are not, and perhaps will not be, able to attract the most talented migrants in the face of competition with traditional immigrant-receiving countries such as Canada and the US. In part, this is because the Union, with a few exceptions, currently lacks sufficient openings in national immigration systems for such migrants and because European businesses have little experience with employing such workers. Language issues, general economic and regulatory conditions, and bureaucratic hurdles faced by both employers and migrants also decrease the attractiveness of some European labour markets for talented immigrants. It was also recognized, however, that the security and equality of the legal status offered by the recruiting country, as well as the length of time granted for residence, is a large factor in the attraction of migrants to a particular country. The ability to offer potential immigrants the full benefits of social, cultural, and economic life in European Social democracy was perceived by many as an important step toward allowing Member States to become more competitive in these respects.
- *Continued scepticism about the permanent nature of immigration that is intended to be temporary.* There was still ample evidence of a pervasive “fear” of temporary immigration programmes in the EU. This fear can be traced to the fact that, historically, temporary immigration programmes often resulted in permanent settlement or illegal overstays. These concerns must be addressed clearly in the design of temporary labour programmes if such programmes are to be implemented at a significant scale. Yet, and despite strong misgivings about the potential illegal or quasi-legal “leakage” of temporary worker programmes into permanent

settlement, there was a palpable belief among participants that temporary migration is the best way to meet the labour demands of *many* employers and the desires of *many* migrants. Such programmes were also recognized as an effective way to assist sending countries. This led many participants to posit that temporary labour migration can yet create “win-win” situations.

The discussion also revealed several ideas for addressing the temporary migration challenge. Farsightedness seemed to capture the imagination of many as part of the answer: one of the most powerful ways to encourage foreign workers to return to their country of origin may be to extend to them a real possibility to return in the future. Realistic expectations may be another important ingredient: policies must have a strategy for dealing with the inevitable case in which a migrant wants to stay and their employer wants to continue employing them. Such a strategy might convert this “leakage” from temporary work to settlement into a legal transition that selects settlers in ways that meet national goals. Finally, the issue of enforcement, not only of stay limits, but also of labour and pay standards, came out as one that deserves much increased attention.

- *The ongoing struggle to integrate migrants in labour markets and the broader society.* The integration of immigrants, although not addressed in depth at the conference,^{*} is intimately linked to all of the topics that were discussed in Amsterdam. Integration is particularly close to the minds of policymakers tackling questions of labour migration. The disturbingly high unemployment rate of some migrant populations in many Member States represents not only a serious social problem and a wasted resource in its own right, but also an obstacle to political support for any migration programme. It also offers ample demonstration that there has been insufficient preparation for labour migration and other forms of immigration virtually anywhere within the EU space. The European Employment Strategy identifies the employment of immigrants as a priority for policy intervention—making the integration of migrants into a mainstream employment policy for both the Union and all Member States.

The elaboration of priorities identified by the Thessaloniki European Council and subsequent Council Conclusions and Commission Communications and reports, is another important early step to providing a strong foundation for the integration of immigrants. (It should be noted that The Netherlands is committed to reaching agreement on a set of Common Basic Principles for immigrant integration during its Presidency.) However, many of the immigration topics discussed at the Amsterdam conference directly affect integration. For instance, participants identified secure legal status and transparent rules regarding rights and duties in particular as factors important in achieving good integration outcomes for all migrants.

- *Problems in recognition of qualifications.* The common anecdote of the well-qualified immigrant working a menial job continues to create concern that EU Member States are wasting the human capital of many of their

^{*} This was entirely by design. The Dutch government will be holding a ministerial-level event dedicated exclusively to the issue of integration.

current migrants. Thinking prospectively, many participants showed concern that any labour migrants admitted under any future programmes should be offered better opportunities for their qualifications and experience to be recognized. Realism is nonetheless important here. The recognition of qualifications may not matter where language skills or legal permission to work are the real impediment to successful labour market incorporation or where employers have learned *with experience* that foreign qualifications or work experience are of low value. Still, the convergence between skills sets and employment opportunities was deemed to be of crucial importance and can be improved. Also, greater experience with labour immigrants may reduce the level of uncertainty European employers face when considering hiring a migrant. One way to advance knowledge on this topic may be to study the examples of Canada, Australia, the US and other countries with longer and broader histories of organized labour migration, as well as those of migrant-employing corporations in those countries.

- *Concerns about the development impact of labour recruitment.* The “brain drain” and associated concerns about the impact of labour migration on sending countries are complicated and supported by a very mixed and inconclusive research literature. Even so, participants in this and related workshops still gave strong support to the idea that labour migration programmes should be developed in conjunction with foreign and development assistance policy, and welcomed continued Commission leadership in this area. The facilitation of circular migration and labour migration of workers who are not highly skilled were two policy goals identified as being particularly development-friendly.

In each of these areas, the existence of knowledge, experience and leadership gaps became the subject of intense discussion. In each, the essential unit for decision-making is the individual Member State. Yet, the Union and, more specifically, the Commission, were called upon to play three important roles: First, to provide a framework in which diverse and innovative labour migration policies can be tested at the initiative of the Member States and be rigorously evaluated. Visa policies that are insufficiently flexible, efficient, or far-sighted were identified as inhibiting experimentation with immigrant selection and temporary visa regimes. Second, shared work on research and evaluation may be an effective way of focusing and advancing national policy discussions in which labour migration remains a poorly understood policy option. Finally, in several of the issues discussed in this workshop, such as the recognition of qualifications, work toward facilitating the free movement of EU citizens in the Union’s labour market generate experience, policies and knowledge that might be applied to third country nationals. The anticipated publication this year by the Commission (DG Employment and Social Affairs) of a green paper on economic migration, to be followed by a public hearing in 2005, is a welcome first step toward addressing all of these issues more directly.

Managing Unauthorized Migration

Unauthorized migration is growing as a proportion of total migration into Europe and is a policy problem of the first order for Member States—virtually all of whom serve as significant destinations and/or transit zones for unauthorized migrants. It is by now clear that tighter border enforcement and more restrictive

visa policies will not solve the problem without other measures. In fact, evidence is growing that such policies often have serious unintended consequences, such as the growth of the criminal organizations that provide smuggling and trafficking services. Instead, a consensus is emerging that managing unauthorized migration will also need to consider “pull factors” and will involve a co-ordinated combination of tools drawn from the following categories:

- *Law Enforcement.* Better enforcement of immigration law requires not only more intelligent border controls, but also greater, smarter interior enforcement of immigration and employment law.
- *Efforts to reduce the “grey economy”.* Unauthorized migration and informal employment feed each other, yet in many Member States even natives commonly work irregularly. Controlling irregular employment involves measures that are not directly related to immigration, such as regulatory, legal and economic reforms and adjustments to and better enforcement of taxation and labour laws.
- *Legal Labour Migration.* Giving employers legal access to workers is thought to be a good way of giving employers an alternative to relying on illegal employment. However, this connection is still in the form of a hypothesis, as emerges in a recent communication from the Commission on this topic. The lack of evidence is likely the result both of labour migration programmes that have not yet had the necessary scale or design and the failure of governments to flank such programmes with necessary complementary measures and resources.
- *Removal.* Removing unauthorized immigrants is a necessary part of any credible migration management system, but can be socially and economically disruptive as well as financially and politically costly. Measures such as joint return flights and readmission agreements may reduce these obstacles, but large-scale removals, and particularly the removal of long-term residents, are never a particularly practical option. This is a realization that has and continues to motivate the search for better migration practices.
- *Regularisation.* Like removals, regularisation is a response to the failure of government policy to prevent significant unauthorized entries or stays. It is practiced in different forms by most Member States, often quietly. Far more immigrants are legalized than are removed, with the total number of immigrants who have regularized in Europe in the past three decades approaching four million. (Recidivism remains a major issue in regularization. Many immigrants regularize more than once, as they fail to meet the criteria for staying in legal status and lapse back into irregularity.) Regularisation may also be the way to pass the largest number of “unknown” residents through security and background checks. However, evidence suggests that regularisations do not always lead to substantially improved labour market outcomes and, as noted, regularized immigrants often fail to emerge from informal employment or later drop back into unauthorized status.

Two relatively unexplored ideas about regularisation were put forward in the course of discussion and received the lion’s share of attention from the

participants. The first is that regularisation policies should be explicitly linked to other aspects of migration control. The most significant argument against conducting regularisations is the possibility that regularisation, along with the availability of jobs and the low probability of apprehension after entry, creates a pull factor that encourages further unauthorized immigration. The risk of encouraging future unauthorized migration demands that, to be successful, regularisations only be conducted *in co-ordination with* full investments in other management measures. Until that happens, a number of Member States are likely to continue to be reluctant to make regularisation a substantial part of their migration management strategy in the foreseeable future.

However, the tie between regularisation and the other categories of migration management measures arguably runs deeper than the hypothesis that regularisation may be encouraging unauthorized migration in significant ways. Reducing the number of available irregular migrant employees through regularisation may help make labour migration programmes less prone to abuse and give efforts to reduce informal employment a greater chance of success. Such measures, in turn, reduce the possibility that large-scale regularisations will become an ongoing phenomenon. Regularisation can also be balanced against invigorated enforcement efforts in the political calculation surrounding migration management, in which managing migration becomes a "national project" that both secures legal status for existing migrants and reasserts control over unauthorized entries and stays.

The emerging concept of "earned regularisation" is one example of how regularisation programmes might be more strategically designed in the future. Earned regularisation would allow all unauthorized immigrants to apply for temporary work and residence permission, after registering with authorities and passing through security-conscious background checks. During the period of their temporary stay, regularized migrants would be able to "earn" permanent settlement rights by holding a job, showing signs of language proficiency and social integration, obeying the law and demonstrating other valued behaviours. Points would be accrued for various criteria and only migrants achieving a certain score during the allotted time would be permitted to stay.

Earned regularisation proved to be a concept that generated both great interest and some controversy. Starting with controversy, sceptics felt that applying concepts of immigrant selection and granting settlement rights to some members of a population that has broken the law comes to close to "normalizing" unauthorized migration and making it an explicit part of one's national immigration posture. Countering this concern was the view of many other participants who argued that unauthorized immigration is large and productive enough in many Member States to have reached the point of being a *de facto* labour immigration policy. Establishing rules for extended temporary and more permanent stays, while conceding that unauthorized immigration has not been stopped, may at least regulate the phenomenon and shift policy toward meeting many other national priorities.

Ultimately, there is a large continuum, arrayed in some ways along north-south lines, on how regularisations are viewed. Many Member States from Northern and Eastern parts of the Union seemed certain that regularisation will never play an explicit role in their national policy. Juxtaposed against this perspective were those of others that have repeatedly conducted mass regularisations. One issue

that did not seem to resonate with the participants was the effects of regularisation programmes in one Member State on the others. Hence, there was little interest in involving the Commission more closely in—or even having it look systematically at—Member State regularization policies.

Managing unauthorised migration well is not only a project of controlling the *numbers* of unauthorised immigrants, but also of controlling irregular migration's *consequences* for societies, their institutions and migrants themselves. This aspect of managing unauthorised migration often receives too little attention at the national and EU levels. Two necessary first steps toward controlling better the consequences of unauthorised migration are (1) guaranteeing basic rights for all residents of EU territory regardless of legal status, and (2) involving cities and localities—the levels of government that most directly deal with unauthorised immigrants and their effects—in planning immigration (and integration) management efforts.

European Frontiers and Security

The third workshop explored two very broad areas. The first related to borders, especially—though not exclusively—external borders. Among the key questions explored there were the following: (1) how to manage borders effectively and how to help them become, in fact, the compensatory mechanism for the removal of internal controls that they need to become; (2) how to effect better co-ordination among the Member States and with third countries; and (3) how to utilise the mechanisms that are both currently available and/or envisioned to enhance border management. The second area concerned EU co-operation with third countries, including return and readmission agreements, the broadened discussion of migration and development, and the policy links among migration control, enforcement, development and capacity building efforts for third countries.

Secure and Open Frontiers

The discussion on frontiers focused on maintaining forward momentum in a Union faced with the challenges of enlargement, the threat of increasingly sophisticated people-smuggling and other criminal activities, and the new danger of terrorism as embodied by the September 11 and March 11 attacks. Initiatives such as the Schengen Information System II, the Visa Information System, and the creation of an EU-level agency for border co-operation create the potential for the development of secure borders. However, these programmes have yet to be fully operationalised, and, in the case of the European Border Agency[†], have yet to be given a detailed mission.

Border controls can be conceptualised in terms of “concentric circles” expanding outwards from a nation’s physical borders, as a spectrum of efforts beginning with the initial visa application, or in terms of “multiple borders.” Each of these concepts speaks to a single policy imperative: the need to expand the focus of inspection and security beyond physical borders and fully incorporate consulates and the visa application process into the border management and control regime.

[†] The proper name of the new agency is the “European Agency for the Management of Operational Co-operation at the External Borders.”

The discussion paper on borders noted that, in reality, visa application and issuance processes vary widely from Member State to Member State. Multiple consulates and multiple processes also preclude Member States from taking advantage of economies of scale (a critical liability as technology-driven solutions to security threats become more important) and fuel the phenomenon of “visa-shopping.”

In discussing this problem, an important distinction emerged between visa *issuance*—the actual decision whether or not to issue a visa—and visa *application*—the process through which information is collected about the applicant. The first is informed by national traditions and values and clearly lies within the domain of national sovereignty. The second, however, is far less guided by national values and is essential to the regional security of members of the Schengen area.

The distinction between visa application and issuance uncovers a range of possible strategies that might deliver greater standardisation and efficiency through shared processes while still deferring to key issues of national sovereignty. A far-reaching strategy could thus involve a truly common European application process and even shared physical facilities and personnel for all or part of the visa application process, while leaving the decision-making power exclusively with the Member States. A less ambitious approach would merely expand efforts in standards monitoring, personnel training and information sharing. Immigration Liaison Officers might be given an expanded function and additional resources, possibly including a common set of duties and a more substantive link to the European Border Agency. No matter what approach is taken toward developing an integrated border management system and targeting greater mutual achievements on security, efficiency and service in visa application and issuance, there remain obstacles to a European Union approach to visas. Not the least of these is mounting concern over the sensitive issue of data protection and privacy, a point heard at the conference from both policymakers and civil society representatives.

The importance of co-operation and standards-monitoring among Member States was not confined to the realm of visas. In the control of physical borders, too, there was clear concern over the quality of the existing monitoring processes of the various aspects of the Schengen regimes. Many Member States are believed to not be applying rules uniformly or meeting common standards. It is thus not surprising that participants felt that the system could benefit from a more rigorous inspection and verification process. The policy brief that launched discussion of frontier controls proposed a corps of “multinational external border inspectors” composed of personnel from various areas of competence that would have broad authority to conduct inspection of border operations. The officials would then have the authority to make confidential reports to selected Union institutions and the Member State in question, both under their own initiative or by request of the Member States. The proposal was met with substantial interest.

While this idea for enhanced monitoring of operations received some support, even stronger support was found for several more modest proposals that would improve and enhance the current system, including the work and effectiveness of the current Schengen inspection committee. These include the possibility of developing a rapid-response peer-review assessment system that would provide

confidential results above and beyond the Schengen inspections. Participants also felt that the Schengen inspection system also needs to gain legitimacy through a stronger mechanism for following up on recommendations and findings and exerting pressure on Member States to comply with the findings of current inspections. Exchanges and joint training among existing EU and Schengen countries could also further strengthen local border management.

The third area identified as requiring greater attention at the EU level—particularly by the new European Borders Agency—was horizontal co-operation among the different agencies involved at the border but within individual Member States. Among them are immigration, customs, national police, intelligence services, and humanitarian authorities. As modern smuggling, trafficking and terrorism organisations become more sophisticated, integrated and elusive, and considering how well-financed they are, the problem demands a more integrated approach. The experiences of the United States and Canada, which independently but almost simultaneously and with some co-ordination shifted the majority of their various border-related functions into single agencies, provides one source for learning in this area. Representatives from several Member States showed interest in these models, but most seemed wary of the administrative and bureaucratic culture challenges implied in such consolidation.

Border controls lie clearly within the competency of individual Member States, so the role of the European Borders Agency in encouraging such horizontal co-operation would seem to be limited to providing guidance, making threat assessments and facilitating co-ordination among Member States. In general, there is a great need for better—not just more—co-operation and information sharing both among Member States and with third countries—and there was clearly hope that the new agency will be able to play a key role in facilitating such co-operation. Financing to distribute the burden of border controls is another issue that was mentioned by several participants as a clear priority in the near future.

Participants also cautioned that the Agency should not be burdened with unrealistic expectations as it gets started, and that expanding existing practices of co-operation may be the most realistic path forward. Co-operation along maritime borders, including cross-Channel co-operation among the UK, France, Belgium, and The Netherlands were offered as good examples of contemporary partnerships. Guidelines under development for the Balkans may also soon be available.

In addition to the rather specific operational needs, a multi-year agenda for progress on border controls must be guided by several principles. Chief among them is proportionality—the sense that improving services and better facilitating legitimate trade, travel and migration must be a priority of an order equal to that of improving security. Additionally, there was widespread appreciation of the fact that there is a humanitarian component to managing borders. In other words, principles of protection *need to be integrated into any (re-)conceptualization of borders*. In this light, changes in border policies need to be informed by the concern that stronger controls are likely to imply greater risk to the lives of migrants, especially at sea, and create abuses where police and border controls are not matched with an equally sophisticated adjudication system. Participants also understood that moving the focus of enforcement efforts more towards smuggling rings, terrorist organizations and other forms of organized crime

might offer greater protection for migrants themselves and better migration management results in general.

Co-operation with Sending and Transit Countries

It has become nearly axiomatic to talk about the necessity of co-operation with immigrant source and transit countries. However, there is limited experience with and even less critical thinking about what successful, substantive co-operation means in practice for states and migrants alike. As yet, only a limited array of incentives, penalties and bargaining arrangements has been tested.

The scope of co-operation with third countries is expanding past the point where the control of spontaneous migration was the foremost policy priority and in which the issue of co-operation on migration management was under the almost exclusive responsibility of justice and home affairs ministries. The result of framing the issues in that regard was a focus on arranging readmission agreements, only some of which have proven useful or even functional.

The paper prepared for this discussion called for widening the policy frame to include a greater number of initiatives and involve a broader range of policy actors and institutions. The brief argued for more substantial commitments to and progressive dialogue with sending countries, and for the creation of more robust and cooperative institutional arrangements with countries in the Union's neighbourhood. So far, the Commission has actively promoted various forms of partnerships with third countries. Following the most recent enlargement of the EU, more attention is expected to be given to relations with such countries as the Ukraine, Russia, Algeria, Morocco, and Tunisia. Commission and Member State efforts have been and are expected to continue to rely on the talents and resources of several of their "services" and departments, ranging from foreign relations and development to trade, and of course, justice and home affairs.

Yet, there was clear appreciation among the participants that there is still far to go. Broadening of the policy debate requires considering partnerships in their most substantive form. These ranged from multiplying the value of remittances and addressing, somehow, the issue of "brain drain" to the need for increasing legal channels for work in the Union and reducing smuggling, and, in general, creating a better understanding of and acting more decisively in addressing what sending countries need. There was also a plea of sorts for clearer guidance and greater caution when dealing with third country governments known for human rights abuses and undemocratic governance practices. On a more self-critical note, participants from civil society pointed out that transparency and the sharing of information about the inner workings of the Union are important so that Europe's neighbours, in turn, understand what is happening in Europe. This was deemed to be especially important as the Union increasingly calls on these countries to co-operate with it in customs and police protection.

Examples of bilateral agreements abound, but there is strong need for more systematic learning and policy development. Bilateral agreements to date have been nearly unilateral in their demands, requiring that sending countries satisfy the requirements of readmissions agreements and other demands with little compensation. Real measures to control unauthorized immigration are politically difficult for sending and transit countries, requiring them to demonstrate tangible and substantial benefits if they are to truly co-operate. Measures such as visa

facilitation, work visas, trade concessions in sectors that really matter to them and a realistic hope of accession are some of the tools the EU and its Member States have available in their policy toolbox. The observation by some participants that sending countries may even continue to wilfully allow undocumented migration from their countries to strengthen their bargaining position vis-à-vis the EU reflects the fact that wide-ranging migration agreements have yet to get the full commitment of policymakers on either side of the table. It was a clear judgement of many participants that if relationships with third countries are to become more productive, they must be based on mutual respect and must identify and focus on strengthening shared common interests.

Most participants acknowledged that the issue of third country relationships is not one that the EU can discuss on its own or in isolation from other issues. It is one that requires engagement by a variety of stakeholders, including:

- Migrants themselves, to better understand their motivation for migration and needs;
- Other members of civil society, to understand more clearly public perceptions of migration policy; and
- Third country governments and civil society, which are also impacted deeply by migration and are concerned about the welfare and hope for the eventual return of many of their emigrants.

Humanitarian policy was foremost in the minds of civil society actors and many Member State representatives in this workshop. The discussion focused on capacity building and training programmes to increase not only the levels of individual humanitarian protection in sending and transit countries, but also to promote the better management of third country borders. Other policies, such as EU visa policy, were also discussed at some length, particularly the concern of the new Member States that accession to the Schengen border system must not unduly disrupt customary, benign and even beneficial migration flows with neighbouring countries.

Conference participants brought out several examples that highlight greater co-operation with third countries. One focused on a cooperative Dutch programme with Kenya that links the airports in Nairobi and Schipol, and facilitates the inspection of Kenyan travel documents in exchange for Kenyan assistance with deportations. In another example, Polish border guards are transferring their lessons from co-operation with Germany to their Ukrainian counterparts, focusing on joint patrols, intelligence gathering, training and education.

A third example, the "Migration, Asylum, Refugees Regional Initiative" in the Western Balkans exemplifies a still-evolving "package" of co-operation on migration issues. The effort takes on a comprehensive set of issues, both those directly within the migration field (ranging from issues of border control to the return of refugees) and outside of it (addressing issues of access to housing, for example). The Initiative seeks to gradually increase the ability of Balkan states to take greater responsibility for these issues, building on the incentives of substantial assistance and the goal of accession extended by the region's association agreement with the Union. While the effort needs to be refined and reinforced, it demonstrates the possibilities for a broader and deeper approach to international co-operation.

As with border management, the development of strategic and fruitful partnerships, including those with the corporate sector, will require greater institutional integration among major European institutions and within Member States. It will also require greater focus on what is widely referred to as “policy coherence”—the impact of policies in various fields on each other’s respective goals. The discussion also produced the important cautions that the human dimension of migration and development should not be forgotten and that Europe should strive for transparent and realistic visa policies that potential migrants can understand and by which they can abide.

CONCLUSION

Three themes emerged with considerable clarity both from the workshop discussions and, to an unusual degree, from the plenary sessions of the conference. The first is that of *balance*. That is, the belief that migration policies must meet a broad and deeply diverse set of goals and that, as a result, policies focused too strongly on a single goal would prove practically (in terms of governance) and politically counterproductive. This need for balance applies both within issues areas and across them. For instance, control and security must be balanced with freedom and efficiency; economic interests with humanitarian ones; and national interests with the requirements of thoughtful and principled co-operation with third countries. As one might expect, the quality of the discourse varied from workshop to workshop, as did the degree of consensus that was achieved. The variances were the result of many factors, including the novelty of some of the issues, the extent to which the national interests of the Member States are aligned on a specific issue, and the political priority assigned to each one. Although it is natural that levels of EU-level co-operation vary with the nature of the policy, participants clearly showed a strong interest in maintaining an open and balanced discussion that advances each topic.

The second theme is related to the first, and focuses on the *links across policy portfolios*. The conference was a relatively rare opportunity for officials concerned with labor and social policy, border controls and security, foreign affairs, and humanitarian protection to engage in a relatively open-ended and thoughtful dialogue that “pushed the envelope” in terms of policy ideas. Remarkably, the cross-fertilization of ideas, aided in substantial part by the six policy briefs, was palpable throughout the conference. Issues discussed in one workshop emerged in various forms in the others, and an extraordinary amount of portfolio-bridging discussions occurred both in the plenary sessions and in informal conversation. Participants seemed to have a strong interest in such dialogues continuing and an unusual openness to discussing “out-of-the-box” policy ideas.

Finally, in almost each of the issues raised at the conference there was a strong sense that *actively engaging migration issues*—rather than reacting to crises—*is the best way forward*. Put another way, migration can no longer be regarded either as an issue of intermittent interest or as incidental to other, “bigger,” policy issues. It was accepted instead as a major societal force in each Member State, with powerful positive and negative potential, and more significantly, as one that can respond to policy. The political and practical problems created by ignoring the issue, or by treating it purely in a reactive manner, are by now evident. Participants largely shared an interest in a vision that incorporates more fully this new approach, in which investments in better thinking, better

governance models and practices across the board, and in political courage are used to maximize migration's benefit and minimize the problems associated with it.

There is little doubt that greater and more thoughtful co-operation at the EU level will be an increasing part of managing better this most global of social, economic, and political processes. The challenges and opportunities created by common external borders and the free movement of people within the Schengen space must be able to support and strengthen the Union's larger economic, political, and social aims. In fact, doing well in the former set of issues may be an absolute prerequisite to making even greater progress on the latter set of priorities. But even on issues that are more squarely domestic in nature, the benefits of thinking, learning from, and acting collaboratively and across borders, and the inherent efficiency of smart co-operation, argue for a more complete vision for European co-operation.