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by

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Contents

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Mel Thompson is the editor of the Research Papers in Ethnic Relations Series. The aim of this series is to publish papers based on research carried out at the Centre for Research in Ethnic Relations at the University of Warwick. It will also publish papers from external authors, and the editor welcomes manuscripts from other writers and researchers (including research students) working in the field of race and ethnic relations. The main emphasis of the series will be on original research that will be of interest and relevance for students of race and ethnic relations and for those implementing equal opportunity and anti-racist policies.

I

INTRODUCTION

Professor Freda Hawkins

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These papers were presented in a special series of seminars at The Centre for Research in Ethnic Relations at The University of Warwick in 1990-91. The series was intended to examine the implications for Britain's ethnic minorities, and for British race relations generally, on the completion of the internal market in The European Community in 1992.

These papers were also written before the dramatic and dangerous events of the Gulf War, and the natural and man-made disasters in The Bay of Bengal and the Horn of Africa which have followed. These events have shown us how urgent it is for the international community to develop more sophisticated and more effective forms of international collaboration and collective action, to deal with war and natural disaster. They have also revealed the chronic weakness of The United Nations in peace-keeping and political development. They have shown too that the present policy-making system of the European Community, in relation to issues requiring urgent action, must be improved. And they have shown that the international community must face up now to the central, continuing problem of the control and prevention of tyranny on a large and smaller scale.

As Britain begins to experience the benefits of warmer relations with her European partners and with the Community as a whole, it seems reasonable to suggest that blessings should now be counted. At the end of a century of disastrous wars, the very existence of the European Community is a major achievement - even an astonishing achievement given the difficulty of establishing any effective form of power sharing and collective action in this divided world. The strong belief in the importance of the Community on the part of most if not quite all its members, despite differences as to the best way forward; the direct applications to join or early moves towards joining on the part of six neighbouring countries; and the desire of East European countries to-day to be associated with the EC and to join it as soon as possible are convincing testimony to this achievement.

This is not to say, however, that there are no problems ahead or that the necessary process of 'harmonization' of laws, regulations and practices in many fields, including human rights and race relations, in the Community is not and will not continue to be full of difficulties. In her interesting paper on 'The Problems of International Co-operation in Anti-Racist Approaches within the European community', Ann Dummett has drawn attention, first of all, to two problems which particularly affect British membership of the E.C., namely:-

1) The tendency of the British public, encouraged by the tabloid press, to regard the European Community as an external force, its laws imposed on Britain by outsiders.

2) The failure so far of the British public to grasp the implications of the completion of the internal market in 1992, and to understand that this is part

of a continuous process which began with the signing of the Treaty of Rome in

Nevertheless, there is clear evidence that the British public is firmly pro-Europe now, believing that Britain's future must lie in the Community and not outside it. The woeful lack of public education on E.C. affairs in Britain in recent years can be blamed on many factors, with twelve years of insular, Thatcherite government well to the fore. Even so, the constant traffic between London, Brussels and Strasbourg (not to mention Paris, Bonn, Rome and other cities) of Cabinet Ministers, M.Ps., officials and others; the work of M.E.Ps of all parties in their large constituencies; the twinning of so many towns with their European counterparts; not to mention the general speeding up and improvement of communications within the Community are having their effect in Britain to-day.

Mrs Dummett makes another important point at the beginning of her paper. Are we concerned with combating racism throughout the community or only with the effects of Community laws and policies on minorities in the United Kingdom? She goes on to point out how often it is the latter concern alone which occupies people in Britain, even though it is now impossible to deal with this matter in isolation any more. The habit of 'Thinking nationally' affects the British race relations world just as much as it does other areas of public policy in Britain. Too little thought has also been given in Britain to the contribution which this country can make and is in fact making in the European Parliament - to race relations, non-dissemination in employment and human rights generally in the Community as a whole. As Mrs Dummett also points out, the arts of advocacy and lobbying have to be relearned in a Community context. These skills take time to learn, but it may be that just as public attitudes in Britain towards the European Community have become more positive with the approach of 1992 (and probably more fearful of being left behind), so the race relations world in Britain, and the ethnic minorities it seeks to protect and help, may find more allies in the Community and become accustomed to working in a European context more easily and quickly than might be supposed.

One positive outcome of 1992, devoutly to be hoped for, is that Britain's immigration and refugee policies and laws, as well as her race relations legislation, will now come under wider, continuing scrutiny; will have to meet higher standards and will no longer be able to maintain a system characterized by a good deal of dissemination, inadequate appeal rights, poor immigrant and refugee services and minimum public consultation and participation.

Cathie Lloyd in her paper, 'Race Relations in Britain and France: Problems of Interpretation' has given us a valuable case study in mutual understanding or misunderstanding of race relations policies and experience between two members of the European Community. It shows how important such background papers are. On a more straightforward level, all organizations and activists in the race relations field in Britain now should have a guide to race relations and human rights policies and practice in each of the E.C. member countries, either together or individually - not a book, or a lengthy research study, or a set of conference papers, but a convenient and practical guide. If the preparation of similar material is not already underway somewhere, the idea could be suggested to the Information Directorate of the European Commission in Brussels which has a long record of producing useful, well-researched material of this kind.

Our third paper was originally written by John Wrench in 1989, as one of several bi-annual reports for New Community, journal of the Commission for Racial Equality. It is designed to examine the Single European Act and the Social Charter and their implications 'for employment and the black population'. Like the other papers in this series, it was written before the departure of Mrs Thatcher and the almost instant arrival of a new-found warmth for the European Community on the part of the Major government.

The signing of the Single European Act marked a very important stage in the development of the European Community. The Act did not originate in pressure from the business community, as claimed here, but from the Heads of State, now called the European Council, who were very worried by what seemed to be a stalemate in the early 80s in the growth and development of the Community. The Act has made possible, not only the development of the internal market, which is still not completed of course, but the inter-governmental conferences now about to take place on economic, monetary and political union. It is much too early to tell how all this will affect the Community labour market and what opportunities will be available to different sections of Britain's labour force when the internal market is really completed. Longer-term factors like inevitable population decline in Europe, the demand for labour when expansion gets underway, levels of unemployment throughout the Community and the place of refugees and asylum seekers must be taken into account. Speculation about future labour market opportunities in the E.C. for Britain's labour force is, of course, absolutely in order, but speculation is all it is at present, as the author recognizes at least in part.

The author's views - his speculations - on the opportunities which the Common Market will offer to blacks, non-nationals, the unskilled and other disadvantaged workers are, however, universally pessimistic. No hope is seen on any front. The possible advantages of mobility within the Community to these sections of the labour force are dismissed. The possibility that, if all goes well, the Community may well become much more prosperous and productive than it is to-day is not really considered. Indeed doubt is cast on the validity of the well-known Cecchini Report (carried out for the Commission) involving a large number of independent economists, consultants and research institutes which predicted an increase of about 5% in the Community's gross domestic product resulting from the completion of the internal market. Readers must judge for themselves whether they feel that this degree of pessimism is justified.

Finally we come to refugees - a continuing problem of very large dimensions for the European Community and one for which solutions of any kind are very hard to find. Danišle Joly's paper 'The Harmonisation of asylum policy in Europe', was first published as a Policy Paper in the Policy Papers in Ethnic Relations Series by the Centre for Research in Ethnic Relations in 1989.

The paper examines the growth in the issue of refugees in Europe and the process of consultation and co-ordination which are taking place towards policy formalisation.

The author raises questions about the discourse between government officials and NGO's over the issue of refugees, and highlights an apparent conflict between interpretations accorded by the two sectors.

The resolution of these and other contradictions has the potential for influencing European, and significantly, international conventions and practices.

In a recent study for the Minority Rights Group with Clive Nettleton, Dr Joly stressed the importance of moving towards common European refugee policies and practice, and this is indeed a major task for the European Community.1 Almost all the member countries including Britain have large backlogs now of asylum seekers, seeking entry to affluent countries through claims to refugee status. In a sense, this is a form of competition with genuine refugees for scarce space in Europe to-day. This is only one aspect, however, of a world-wide refugee problem.

In conclusion, we hope that these papers will stimulate discussion on the many aspects of race relations and the European Community, as the Community moves into a critical phase of development, not only involving the completion of the

internal market, but vital decisions on economic, monetary and political union. It should be remembered that the creation and development of the European Community is not only a remarkable endeavour in itself. It is also a model for the other regional associations which are likely to emerge in the next century, one or two of which already exist in a limited form. Although world government and world order are far beyond the human race at present, regional power-sharing and regional management of some common problems are not.

1 Danišle Joly, with Clive Nettleton, Refugees in Europe, Minority Rights Group Report, London, 1990.

II

THE PROBLEMS OF INTERNATIONAL CO-OPERATION IN ANTI-RACIST APPROACHES WITHIN THE EUROPEAN COMMUNITY

Ann Dummett

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1. Introduction

It is hard enough, goodness knows, to mount an effective attack on racism in one country. How much greater are the problems of international co-operation in battling for racial equality in several countries at once. Why do we need even to consider them? Have we not got enough on our hands in the United Kingdom?

The need is forced on us now because of the moves rapidly being made to implement the Single European Act of the European Community. This Act, which came into force in 1986, sets out a programme which required detailed, subsequent legislation by the Community to bring all its provisions into practical effect by 31 December 1992. '1992' has become the name of this specific political change rather than a mere date; it means several hundred new community laws, some of them already in operation, some yet to be passed. No doubt they will not all be in place by the magic date, but it is important to stress that the closer political and economic unity which they are intended to achieve will come, even if some parts of the necessary programme are not ready until the mid-90s or even later. unless there is some cataclysm we cannot now foresee - and of course the events of 1989 have taught us to be wary of prophesying without adding this proviso - we shall soon have most of our immigration policy made at European level instead of at Westminster, and shall be subject to a large new body of Eurolegislation affecting, directly and indirectly, the lives of ethnic minorities.

2. Accepting Responsibility as a full EC Member

Before going any further I want to stress two points that are seldom fully understood in the United Kingdom. One is that it is inaccurate and misleading to think of the European Community as an external force, with the United Kingdom a passive object which this force works upon at the whim of continentals.

The Single European Act was not a law imposed on the British by outsiders. Britain legislates for the Community just as much as other Member States do. The Act was passed with the full participation and assent of the British government, acting on equal terms with the governments of all other Member States. This is hard to grasp when the popular Press in Britain, and our politicians, habitually talk about 'Europe' as something outside. The fact is that British politicians, and likewise the politicians from other Member States, produce a lot of political rhetoric for home consumption about how they will not go along with this or that European measure - but they vote for the measure just the same in the Council of Ministers. We are familiar enough with this sort of political behaviour at Westminster - blame whom you like but don't blame me is the cry of all politicians, when carrying out policies they have declared themselves to be against. The second point follows on: to obtain the sort of European community policies we want, we do not always have to go to Brussels. We have to follow the familiar process of lobbying to change British Ministers' policies and to influence British representative - both in the Westminster Parliament and in the European Parliament. For one of the important changes wrought by the Single European Act is to increase the scope of majority decisions, as against unanimous decisions, in the Council of Ministers; another is to enlarge the powers of the European Parliament.

The British are only beginning to wake up to the implications of 1992. This is because they have never really taken in the implications of joining the Community in 1973. The basic plan for political and economic unification is already latent in the Treaty of Rome of 1957; the Single European Act is simply speeding up a process which was already under way but which some European leaders, notably Jacques Delors, thought had got bogged down by the mid-80s. This speed is too much for all those who did not realise the process had even begun. A few months ago, at the departure desk at Heathrow Airport, I saw an obviously British girl wavering and moving back and forth between the various

notices which said, 'Community passports' and 'Other passports'. She went at last to 'Other' and was of course redirected to 'Community'. Following her, I asked the immigration officer there if many British people did not know they held Community passports. 'Thousands upon thousands,' he answered with feeling, 'the vast majority, I should say. I tell you, the thickest people we get through here are the Brits. Makes you wonder how we won the war'. Then, on my return, I heard on the plane a loud-speaker announcement about landing-cards which referred to people 'travelling between the Common Market and Britain'. So cabin crews, as well as travellers, seem to be unclear about the relationship. And these are all people who actually go abroad to the continent. It is in this sort of context that one can easily become gloomy about the prospects for international co-operation to any political end; we really need to know where we are ourselves before we can usefully talk to people in Community institutions and in other Community countries. And even among people who are strongly interested in politics - in the widest sense, meaning any public policy - there is much confusion about European affairs.

3. Areas of distinctions for anti-racist collaboration

To discuss the problem before us, we have to begin by making a series of distinctions. First, are we concerned with combating racism throughout the Community or only with the effects of Community laws and policies on minorities in the United Kingdom? I have been surprised to find how often it is the latter concern alone which occupies people in Britain. Of course there are both moral and practical reasons why it is a primary concern here, but it seems to me impossible to deal with it in isolation any more. We have also to distinguish between the policies on race and separate national governments and the policies of the Community as such. This remains an important and practical distinction, but as the 'single market' emerges, the line between the two types of policy will keep on shifting. For example, we have our immigration laws and other states have theirs. But if, at Community level, there is a harmonised visa policy agreed for all states, our domestic laws will be altered. There are two ways in which such a policy may be resisted. One, already mentioned above, is to lobby the British government to resist such a visa policy. The other is to seek co-operation with anti-racists in other Member States to mount a united campaign against it, both in relation to their own national governments and in relation to the Community institutions: Parliament and the Commission. For, if we are realistic, we cannot expect British lobbying alone of these institutions to have any success. For one thing, it will come from only one out of twelve countries. For another, Britain is unhappily so notorious in the Community for its insularity, complacency and lack of concern for the Community as a whole that any British lobbying suffers from a severe psychological disadvantage, a mental block on the part of the listener, right at the start. Then, too, most of the issues which concern British Anti-racists concern people in other Member States too, and one cannot expect to produce amendments to Community legislation which will have their support unless one discovers first how they see the problems, what solutions they want, and how one can produce a rival form of harmonisation: a harmonised anti-racism.

This is the central problem. It is really no use to think of a British solution first and then try to sell it to everyone else. We have to understand how racism and anti-racism operate in the other Member States and how alternative solutions might work in different countries: then we may think of solutions on which co-operation is possible, to the advantage of us all.

4. Aliens and third-country nationals in the EC: A need for harmoanisation and classification of political rights

An obvious example of how we could do better is the question of rights for third-country nationals in the EC. Other European countries draw a clear line between citizens and aliens. Their constitutions and laws generally provide

defined rights for citizens which differ from the rights of aliens in their respective jurisdictions. In most cases, alien residents cannot vote, stand for public office or work in the public service, even if they are Community nationals living in a Community country not their own. This means, of course, that alien residents, however long they have lived in a Member State, have no political clout. As they have no votes, politicians need not woo them. As they cannot be elected to national assemblies, their voices are not heard in law-making. As they are barred from a range of jobs in the public service - a very wide range in some countries - an atmosphere is created in which discrimination in employment is thought natural rather than unjust. The British response to this - which I have heard over and over again from people who are active and dedicated anti-racist - is to point out how superior our arrangements are in Britain. Our ethnic minorities do not have to be British to vote, stand for Parliament or work in the civil service: no, we do these things better. This response completely ignores the situation of aliens, from outside the Commonwealth and Ireland, in Britain, whose position is just the same as that of aliens elsewhere in Europe. It is true the Jamaican and Pakistani citizens can vote and stand for office in the United Kingdom, but South African and Burmese citizens cannot. If we want to co-operate with groups on the continent looking for third-country nationals' political rights, let us base our campaign on the needs of these latter, instead of saying how good we are to the former. We might then not only find it easy to have a common platform with anti-racists in other countries but could actually remedy the inequalities that now exist for many long-resident aliens in Britain, who either cannot afford naturalisation, or do not want it because their state of nationality would not allow them to be dual citizens, or do not want to deny their nationality of origin for strong, emotional reasons.

Incidentally, another good reason for championing aliens' political rights is to safeguard Commonwealth citizens' rights for the future. Already, British legislation has moved a certain way towards assimilating the position of Commonwealth citizens to that of aliens: requiring naturalisation, for example, instead of registration. Suppose that the European Parliament succeeds, one of these days, in being empowered to determine how elections to it are conducted. Who will be the electorate? In general, the answer at present is: nationals of all Community countries. But, by an anomaly, the British electoral register includes a significant number of British and Commonwealth people who are not EC nationals. They might well be excluded from a register compiled by the European Parliament. This would open the way for a British government to disfranchise them in the UK. If, however, by then, there had been successful moves to establish rights for third-country nationals throughout the Community so that all could vote within their countries of residence, the European Parliament would include them all on its own register.

But I do not think we should confine our considerations to the prospects of our own residents, whether British, Commonwealth or alien. If the United Kingdom is part of the Community, and if we elect MEPs to its Parliament alongside MEPs from other Member States, we bear some responsibility for what is happening in the other countries. We should not be satisfied with a handful of ad hoc solutions that benefit our own minorities; we should consider too the inequalities suffered by Turks in Germany and North Africans in France, for simple, moral reasons as well as long-term, practical ones. So, although one could consider international co-operations purely in a tactical way, this would not be a genuinely anti-racist attitude but just another variant of British chauvinism.

5. Practical problems in cross-EC anti-racist co-operation

What, though, are the practical problems of co-operation? Here we come up against some severe difficulties. It is hard enough within the United Kingdom to which the claims of those who say they speak for the 'grass-roots' or for

this or that small-c 'community', to evaluate the effectiveness of various organisations, official and unofficial, or to persuade people to work together. How much more difficult it is to envisage a Europe-wide effort at co-operation. At this point, one begins to see the point of many of the European Community activities people grumble about. Why spend millions on translation, for example, of every document and every spoken word? Well, without doing so, how can people in all the Member States be adequately informed, agree on interpretations, or simply talk together in a meeting? How shall we get together grass-roots activists who speak, respectively, German and Turkish French and Arabic, Italian and Swahili, Dutch and Malay, and English and Urdu? Even with simultaneous translation facilities, how readily will they comprehend each others' references to organisations in their own countries, complaints about Trade Union procedures which apply in one country but not in another, to assumptions that everyone knows what the government in their particular country is up to? We smile, too, at the absurdity of transporting people, papers and filing-cabinets in an endless round between Brussels, Luxembourg and Strasburg because no inter-government agreement can be reached on the permanent seat of European government. But consider what the reactions of minority organisations here would be if all co-ordinating, anti-racist meetings were held in Frankfurt or Milan.

Such difficulties loom particularly large in the United Kingdom because of the fragmentation of anti-racist efforts here. In at least some continental countries there are clearer national structures for minority representation. And in practical terms, there are plenty of common concerns that could unite international gatherings once structural and representational problems had been solved and - not least - the solution had been found to the vital question: where does the money for meetings come from? Racial violence, hostile policing, high youth unemployment, inferior housing and health care are all both serious enough and universal enough in the Community to command a united force demanding change. It is the mechanics, rather than the main agenda, which pose problems at the outset. It has to be admitted, though, that while racism and its familiar manifestations occur in all Member States, the character and impact of racism varies considerably from one place to another, so that what appear at first sight to be common problems may require a variety of solutions.

Here we need yet more sets of distinctions: between the northern and southern countries of the Community, for example, and between various manifestations of cultural and religious prejudice whose effects are adverse upon minorities. Broadly speaking, the southern countries, Portugal, Spain, Italy and Greece have a much more relaxed style of administration over illegal immigration than to the northern countries. This is not to say that their laws are perfect or that racism is absent from these countries altogether; it is simply to record the fact that undocumented aliens in their hundreds of thousands live in these countries and are not, in practice, systematically rooted out and sent away as they are from Germany and Britain. Many of them are, in a very wide sense of the word, refugees - fugitives from poverty, civil war and disruption in Africa and the Middle East. Some might fit the UN definition of refugee, which is so much narrower; others would not. But in southern Europe such categories are perceived differently, and so the terms 'illegal immigrant' and 'refugee' are often used inter-changeably in a way that is unthinkable in north European countries. This is an example of how a pan-European debate on, say, refugee policy, can run into difficulties even when conducted between anti-racists seeking just solutions.

Cathie Lloyd has described vividly how great the gulf in understanding can be even between the anti-racists in two countries as geographically and historically close to each other as France and Britain. It would take far too long, and require far more special knowledge than I have, to extend her comparisons to all other Member States - not forgetting the countries likely to join the Community in the next few years, notably Austria and Hungary. But even

on a superficial view, one can perceive problems enough. In Britain, the Netherlands and - despite the high level of racism to be found there - in France, there is some acceptance of the fact that the citizen body includes ethnic minorities who deserve equal treatment. In Germany, whose sense of nationality and community is still based on the mystique of the German Volk, non-Germans can never be full members. In Italy, parties of the extreme Right in the north manifest all the classic characteristics of racism towards Sicilians, Calabrians and Apulians from the south rather than towards the illegal black African migrants one might expect them to hate most. In Denmark, one sees a phenomenon we neglect at our peril - rapid change in the incidence and character of racism. Fifteen years ago, the name of Denmark was synonymous with every sort of liberalism; although its most famous freedom was in unchecked pornography (in those days, unlike now, a mark of the fashionably progressive) it was also known for a generous refugee policy, a relaxed atmosphere for residents and visitors of all racial origins, and a welfare state. Over the last decade, Denmark's refugee policy has been sharply reversed, and expressions of racism and xenophobia have rapidly increased. We shall not succeed in mounting international co-operation against racism unless we watch for changes in other countries.

6. The growth in religious hostility, ethnicity and nationalism: a need for policy response

One of the most important factors in the racial situation in Europe since 1979 has been the growth of religious hostility against Islam. I shall not pause to analyse whether anti-Muslim feeling and activities are purely religious or are cultural or are straightforwardly racial in a religious disguise; these are important questions but too large to discuss here. The important thing is that they have, for whichever reason, profoundly affected race relations. We should therefore be asking: is it enough for us to pursue demands for European Community action against racism, including, say, la Community directive that requires legislation against racial discrimination in all Member States, without asking too for prohibition of religious discrimination? And how could this be achieved?

I have stated quite enough problems to be getting on with, but one more large difficulty must be faced: the possible effects of the upheaval in eastern Europe on ethnic relations within the European Community in the next few years. These are many and complex; but we have to superimpose their criss-cross pattern on the already complicated network of west European problems. Ethnic Germans moving into the Federal Republic of Germany from east Germany, Poland, Romania and the Soviet Union are meeting a mixed reception: part welcoming, part resentful, as pressures mount on housing and services and the economic implications of German unity cause alarm. Poles and others, willing to accept low pay and eager to work in the west, have been crossing into east Germany and then into the west. We are beginning to see competition at the lowest, most vulnerable level of society between the poor non-European and the poor east European - not forgetting the poor west European who feels threatened by both. At the same time, old ethnic hostilities between European groups and against Jews have flared up in the east once the lid of Communist government has been lifted from the embers. We cannot expect these old hatreds to stay tidily on the far side of the line we once called the Iron Curtain; rather, the neo-Nazism and neo-fascism that were already with us in the west before 1989 may be reinforced. However, it may be a mistake to concentrate our fears wholly on such Right-wing extremism, dangerous though it is. The everyday pattern of friction between ethnic groups in Europe at a time of rapid change has its dangers too.

While a substantial number of people throughout the Community is worried about Right-wing extremism and racial violence, there is as yet little appreciation, outside Britain and the Netherlands, of the importance of tackling racial and ethnic inequality in housing, employment, education and so on. This is especially true where the inequalities lie between citizens of the country concerned and aliens who have migrated there. Many European politicians and officials still tend to think of these migrants as temporary additions to the populations, people who will go away again. The great barrier in the way of anti-racist efforts in the Community is, and long has been, a lack of political will on the part of governments to do anything effective against racial discrimination.

The difficulties in the way of progress at Community level are: first, this lack of will on the part of many politicians and officials who make Community policy, and, second, the fact that there is nothing at all in the Treaty of Rome, or in the Single European Act which amends the Treaty, about racial discrimination. Article 119 of the Treaty makes a brief reference to sex equality, in that it provides for equal pay for equal work between men and women. On this small basis, a growing edifice of measures against sex discrimination is being built. But, as women are about half the voters in the Community, they have much more political weight than ethnic minorities.

However, there have been some moves over years past to remedy this situation. A committee of the European Parliament was established in the mid-80s to enquire into the growth of fascism and racism, its report, published in 1986, made a number of recommendations behind which a campaign can unite, and on its initiative a Declaration was issued jointly by the European Council of Ministers, Commission and Parliament against racism and xenophobia. This Declaration is an Addendum to the Treaty of Rome and may be invoked in justification of Community measures to overcome racism. Throughout the Community's history, there have been some voluntary activities by minority organisations, church groups and other agencies in Member States campaigning for rights for third-country nationals and against racism. Several different attempts are now under way to bring together these scattered efforts.

Conclusion

We do not have much time. A special effort is needed now at Community level in the next few years, while there is a chance to amend the measures going through to implement the single market and while patterns for the Community of the future are being laid down. Now is the time to demand a Community directive to establish anti-discrimination laws which, as in the British Race Relations Act, provide for the victim of discrimination to take action instead of having to rely on prosecution by public authorities. This is the main plank of the CRE's policy for Europe at present, so as to ensure that British citizens who emigrate to other Community countries will enjoy the same protection as they do here. Now is the time, too, to demand a charter of rights for third-country nationals, including the right to move freely between Community countries once they have established de facto residence, the right to vote, stand for office and work in the public service, and the right to family unity under the same rules as for Community nationals. Now too is the time to press opposition to the severely restrictive immigration policies and refugee policy which are being developed outside the Community's structure in secret meetings of governments' Ministers of the Interior. But to do anything effective in these directions, anti-racists in European countries will need to select a few, clear, limited objectives on which they can mount a series of 'single-issue' campaigns. There is nothing to prevent people in any country from pursuing other objectives besides. But to overload a common programme with detail is to invite failure.

Such co-operation will need an efficient information service, of the kind which International Alert, a small, voluntary organisation based in London under the direction of Martin Ennals, is trying to establish. International Alert wants to place a permanent office in Brussels which will feed information up to community officials, MEPs etc. about minority needs and demands and down from Community institutions to voluntary groups, so as to help them know what measures are being framed, when they should lobby and whom they should approach. No doubt many other efforts are under way of which we do not yet know. There is some hope that the Single European Act will stimulate a new, pan-European effort to overcome racism.

III

Race Relations in Britain and France: problems of interpretation

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Introduction

Paper given to 1992 and Europe Seminar at Warwick, CRER 8 May 1990 by Cathie Lloyd

This paper argues that there is a powerful anti-racist movement in France with a long history, but different from what exists in this country. These differences have given rise to misunderstandings on both sides. The aim of this paper is to begin to explore the basis of some of these differences.

Recently there has been keen interest in the implications of 1992 and the Single Labour Market for immigration and race relations. But in the process of debating what might happen (and examining some very real fears) we seem to be returning to some rather old debates which refer to long-held national stereotypes and ideas. My concern is also that in failing to understand different viewpoints we will also fail to establish effective ways of working together in this important field. The ideas held by the British about the French and by the French about the British are of particular interest in race relations because they relate directly to older colonial rivalries, some policies having been established clearly in reaction to the way the two countries saw one another developing. If we can allow for the problems of interpretation, not just of concepts which are untranslatable between the two languages but the different framework within which concepts developed in French and British discourse about race relations, there is new information to be found. We have the opportunity of reassessing concepts, models and practises which are currently taken for granted.

I am not arguing that Britain is less racist than France (or vice versa) but that racism expresses itself in different ways in the two countries. Institutions and policies designed to combat racism, discrimination and disadvantage are established within quite different frameworks. Unless we can begin to probe these differences (and points of similarity) it will be difficult to advance either our understanding or cooperation.

In this paper I intend to outline the different models of race relations which have developed in Britain and France, in order to at least qualify certain widely held ideas about race relations in France. I also look at the different approaches to human rights, race relations law, the status of ethnic minority populations. But to begin, what do we think of one another?
The British view of the French would appear to be relatively straightforward. Several writers have simply denied (quite wrongly) the existence of anti-racist legislation in other European countries or while they acknowledge that some provision may exist assert that Britain is well in advance of anywhere else. Usually no explanation is offered for this view. Ann Dummet has recently criticised the British approach in a position paper to the CRE Europe Committee stating that the British approach to Europe is predicated upon the assumption that we are there to take the lead rather than work as equals in a common endeavour. This is most clearly articulated by Mrs Thatcher, not just in her isolated position on many issues within the European Community, but also in her approach to European history, notably the assertion at the time of the bicentennial celebrations that the 1688 Bill of Rights predated the achievements of the French Revolution.

Another aspect of this general approach is the way in which British institutions and politicians have largely focussed their attention on institutions on the European level rather than looking at their counterparts within the different nation states. The realisation of an absence of equivalents has not given rise to an attempt to analyse and understand differences and to find points in common. Perhaps the most important exception here is the Trade Union Congress (TUC), which operates through the European TUC (ETUC), but even here the dominance of the TUC over ETUC structures illustrates my earlier point. These

attitudes are not calculated to facilitate discussion with our European counterparts who see Britain in a very different light.

Last autumn (1989) a number of interesting statements were made by French sources about race relations in Britain. They were in the context of the 'headscarf affair' and the subsequent debate about integration. Well known academics and experts elaborated ideas which seem extraordinary to us. In particular the French criticise the British model of race relations as leading to the separation of communities into ghettoes rather than true integration. For instance Dominique Schnapper,[ ] a member of the recent Committee on Nationality, characterised the British situation:

> Great Britain is a religious and decentralised state which has fewer means of resisting demands which do not conform to its traditions, such as those of Muslims... In English schools one has given in on a number of issues such as sex education or teaching styles...since the mass arrival of populations from the Commonwealth, ghettoes have been constructed in that country. And one should not forget that the Rushdie phenomenon originated in England.

This concept of ghettoes is elaborated further by J. Weydert [ ]

> The UK has a large number of immigrants originating from the Commonwealth (West Indies, India, Pakistan). Coexistence between these groups and with the British population is based on the separation of communities. Coloured people are constituted as minorities whose customs are respected but who live separately.

and Jacqueline Costa-Lascoux [ ] argues strongly that France must avoid English type ghettoes:

> a lobby which has on the local level succeeded in obtaining recognition, does not obtain respect for its values but a space comparable to an Indian reservation in which one is left with a minimum autonomy; where the British police are unable to enter freely and one is not sure whether to put in a coloured police officer or not... In brief, a neo-colonial system where peaceful coexistence (here I weigh my words) is based on the division of territory and of time: a swimming pool will be open between certain hours for young girls to bathe fully clothed, supervised by a woman, because a male lifeguard is unacceptable and they can't share the water with non-Muslim girls. (Liberation 6.1l.89)

Although the term ghettoes has been used fairly loosely in recent French debates it is still a highly charged term. It also forms part of the structure of discourses about the 'seuil de tolerance' [ ] This is a pseudo-scientific concept which denotes the numbers of ethnic minorities who can be tolerated by the 'host' population before problems of rejection emerge. The concept had been widely discredited in the 1980s (although it remained part of 'common parlance') until last December when President Mitterand used it in a speech. It is widely accepted by most political parties in France, although contested by the anti-racists. For example the Mouvement contre le racisme (MRAP) argue 'what is intolerable is exclusion: the only threshold is that of poverty'.[ ]

It is important then in analysing the ideas presented about Britain to know that we are seen as a model to avoid. Immigrants are concentrated in ghettoes, separated from the main population. Even the French anti-racist movement is wary of policies which aim to tackle the specific problems of ethnic minorities because it is feared that 'special pleading' may actually create further tensions of resentment from sections of the French working class who share many of their social and economic conditions.[ ] Although this is an argument which has been effectively countered in Britain, it is important to take the specific

situation in France into account when judging which policies are appropriate for 'transplantation'.

Before we conclude that it will be impossible even to work with French anti-racists, it is important to seek to understand these ideas, and some indication

Ideas of the French Enlightenment, Revolution and Colonialism

The notion of Equal Rights of Man lies deep in French Republican and progressive thought. This has the effect of turning debates with which we are familiar in Britain into unaccustomed directions. It is impossible here to do more than indicate the ambiguous relationship of Enlightenment thinkers to 'non-European' peoples through the couple of the 'noble savage' and equal human rights. Despite the Eurocentrism of these ideas it is clear that even anti-imperialists drew positively from the ideas of the French Revolution: the rejection of the privileges of heredity, popular sovereignty, equality.

The early Revolutionary Assemblies after 1789 included delegates from French colonies in the Caribbean (not all of whom were white settlers) and their demands were for self government and the ending of slavery. The Societe des Amis des Noirs was supported by leaders like Condorcet, Mirabeau, Sieyes, Abbe Gregoire and Robespierre; its main aims being to eliminate slavery and extend metropolitan legislation and rights to the colonies. By May 1791 free black people were entitled to become French citizens and could become members of colonial assemblies. The enactment of legal emancipation of slaves on 4 February 1794 stated:

> all men, without distinction as to colour, who are residents of the colonies, are French citizens and enjoy all the rights assured by the constitution.

Although these enactments were quickly reversed by Napoleon, the residues remained in the form of arguments of legitimation for the assimilationist policies advocated under French colonialism.

Assimilationism was not a unitary concept but it did provide a focus for debates about colonialisation throughout the 19th and some of the 20th century. Assimilation meant different things to different people at different times, sometimes the administrative unity of the colonies with Metropolitan France (provisions which benefited white settlers) sometimes the ideas, again expressed in a wide variety of forms, that colonised people could become completely French. General Galliani's address to the Betsileos population of Madagascar indicates what some colonialists meant,[ ]

> You will always be Betsileos, but you will at the same time be Frenchmen. You should learn the French languages; you should dress yourselves in French fabrics, renowned the whole world over for their good quality; you should above all become the devoted helpers of our French colonists, who have come among you to bring you wealth and civilisation.

On another occasion, Gallieni referred to the popularity of bicycles as demonstrating the 'spirit of assimilation'.

Towards the end of the nineteenth century a major debate took place in France between Assimilationists (some of whom fiercely argued that the Rights of Man should apply to all) and proponents of biological determinism who argued that assimilation ignored 'the heredity of mental characteristics'. Leopold de Saussure [ ] argued that it was a 'futile struggle against the laws of heredity' and Gustave Le Bon that 'a Negro or a Japanese can accumulate all the diplomas possible without ever arriving at the level of an ordinary European'.

So it was in these debates that left-wing republicans argued against racial determinism and for assimilation, which in France was seen as part of a humanistic tradition. Parallels continue today in contemporary debates about immigration, citizenship, civil and political rights.

Concepts and Terms

A brief comment on some concepts which either need to be translated with care or just do not have equivalents in English. In France, the term 'immigrant' is used widely and to us it has connotations of impermanence and reinforces the idea of administrative procedures which separate the 'immigrant' from the 'indigenous' population. Ralph Grillo, however [ ] points out that at the time of his fieldwork in Lyon in the early 1980s 'immigrants' was a term associated with the left and with the acceptance of immigrants. Right-wing organisations and individuals tended to refer to 'etrangers', which as Grillo explains is stronger than 'foreigners'. He reminds us that Camus' book L'etranger is translated as The Outsider in English.

In recent years the populations thus labelled have insisted increasingly on terms they find acceptable, notably, 'beurs' (Parisian backslang for 'Arab') to refer to young people of North African origin and more recently (as beurs became rather a pet term) 'generations issus de l'immigration'. Some writers use the term 'minorities ethniques' but 'black' is seldom used except to refer to this country or the USA.

Other terms, such as 'Assimilation' and 'Integration' are the subject of much current debate. J. Costa Lascoux gives definitions.[ ] But to me there is always some overlapping between 'assimilation' and 'integration', depending on the viewpoint of the person who uses the term. The term 'insertion' does not really have an exact equivalent here. A recent MRAP document helps to present these terms and suggest some of the ambivalences:

> Insertion is a necessary condition for integration: to have employment, decent housing, to live with one's family, that is the material and social conditions, the administrative security which allows one to find one's feet in this society.[ ]

The report goes on to discuss the term 'integration' suggesting that the recent debate implies that failure to integrate is the fault of immigrants, and that a little more effort is needed for their entry into French society. But, if society is a 'living body' made up of different currents it is by opening society to other people, by reciprocal efforts of all members that 'insertion' will take place.

Contemporary Debates

The different experiences of decolonisation in Britain and France serve also to underline divergent approaches. While Britain's aspirations for Imperial domination were certainly present, they were readily subordinated to a more pragmatic approach (as outlined in general terms earlier by Burke 'reform in order to preserve'). The French on the other hand retained the grand design of 'forty million continental Frenchmen and sixty million overseas Frenchmen' white and coloured.[ ] French reluctance to abandon the empire was doubtless connected to issues of national identity and pride following defeats in 1870, 1914 and 1940.

British race relations policies since the 1960s have been highly pragmatic and responsive to events. For instance Race Relations legislation was originally introduced as part of a package of other measures including those to control immigration. This is underlined by Hattersley's statement in 1968 'without integration, limitation is inexcusable; without limitation integration is impossible'.[ ] The 1976 Race Relations Act extended and built upon earlier policies (both in race and gender inequalities). Policies of the 1980s were developed in the wake of Scarman's response to the 1981 riots. Piecemeal attempts have been made to strengthen existing legislative provisions e.g. the CRE's Code of Practice. In France, however, the debate about Immigration,

Racism and Integration has taken a broader and more theoretical dimension, interrogating the concept of French identity.

At the risk of oversimplifying I would suggest that these tendencies are culturally significant, the French tend to operate according to a set of rational principles and to classify ideas, and the British to develop practice in relation to events: to base policy on what works. Institutional factors in France are also important: the party system, government instability, lack of consensus and the emergence of immigration as a key issue in the 1980s in particular.

In France, Governments did little more than to control and regulate the large immigrant populations throughout this century until the mid-1960s. The immigration in France was largely European until the 1940s, and in 1930 the foreign population was 10 per cent of the total, France being the most important country of immigration in the world, including the USA. After 1945 the Office National de l'Immigration (ONI) was set up to control the entry of labour (although employers encouraged illegal immigrants who could be exploited more readily). The Fonds d'Action Social (FAS) was also established to administer social security arrangements for immigrants and establish initiatives.

At present there are about 4,487,515 foreigners living in France (including EEC citizens: about 456,475 and refugees 128,205), comprising 6.8 per cent of the total population and 7.5 per cent of the total economically active population. 1986 figures give Portuguese as the largest single group (628,772), Algerians (588,981), Italian (534,996), Spanish (441,514), Moroccan (385,796), Tunisian (172,615) and Turkish (117,353). The vast majority are manual workers, concentrated in the construction and manufacturing industries and the main urban areas.

Government policies have been thoroughly analysed by C. Wihtol de Wenden.[ ] She points out that it was as late as the 1970s that French governments (seeking to restrict immigration) began to take responsibility for its social aspects. Initiatives were increasingly in recognition of the changes in immigration from contract workers to settlement with families growing up in France with rights to become citizens. Measures in the early 1970s aimed particularly at improving housing conditions, to eradicate the bidonvilles, allow for (restricted) workplace rights and provide for cultural expression. These initiatives were based around 'respect for differences and the protection of identity within a framework of equality' but they were seriously inhibited by the increasing restriction on the right to enter and remain in France. In 1977 assisted repatriation was introduced, although even in its own terms it was not very successful.

Policies since 1984 have been curtailed by fear of the growth of the extreme right; measures introduced by Rocard last December involve the establishment of review bodies to produce more data on the living conditions of immigrants, measures to facilitate action against discrimination in housing and improved training and education. Most resources however will go in to speeding up the process by which French nationality can be acquired; which underlines my earlier argument about the strength of the idea of assimilation.

Race Relations Legislation

The differing approaches to race relations legislation has been cited as important in recent debates about 1992. Perhaps it is indicative that the 1972 French law is known as the 'Law Against Racism', whereas the British law of 1976 is the Race Relations Act. In terms of provisions the two laws are broadly similar, although the French law significantly does not develop the notion so important in Britain today, of indirect discrimination. The French law contains provisions against discrimination in employment, housing, the provision of

services and incitement to racial hatred. The most important difference lies in the provision for implementation of the law and the emphasis in cases actually taken up.[ ] In France in 1987 there were 63 successful cases under the 1972 law (a total of 58 cases, about 90 per cent). Only two cases related to discrimination (3.1 per cent) and three to discrimination in provision of goods and services.

For a rough comparison, legislation completed by the CRE in 1987 amounted to 213 cases (with 1,271 applications for assistance). There were 146 Employment cases amounting to 68.5 per cent of all cases. There are regular Ministerial circulars pressing for better enforcement measures and vigilance in monitoring possible cases from prefects etc., but the lack of enforcement mechanisms is the greatest problem with the Act. It can only be invoked by associations and individuals taking up cases, thus excluding the involvement of trade unions (which is an important area of expansion in Britain).

Recently there have been proposals for the Act to be strengthened,[ ] and for incitement to racial hatred to be incorporated in the general penal code. The French Communist party reportedly pressed for conviction under this section to be accompanied by the penalty of having civil rights withdrawn one assumes a measure to be directed at the Front National (FN). Several anti-racist organisations run legal advice and representation services, and improved liaison with Government departments and regional services are being currently considered.[ ]

It is clear however, that particularly in the realm of anti-discrimination legislation, comparisons between Britain and France are unfavourable in terms of the size of the body of cases tackled every year or the impact on employers or providers of services. One significant area is that of public sector employment which until recently had been completely closed to people who are not French citizens. Both major trade union federations (CFDT and CGT) are now in favour of this barrier being lifted and this change is likely to be accelerated by 1992, although it may not improve the conditions for third country nationals. In assessing anti-racist provisions the French also refer to International agreements such as the United Nations Convention of 7 March 1966 against the 'suppression of all forms of discrimination'.

Anti-Racist Associations

As we have seen, associations are very important in the enforcement of the anti-racist law. Civil society in France contains a number of very active anti-racist associations and immigrant workers groups. Their importance has grown in recent years partly in response to the growth of the FN. They can be divided into cultural groups, those concerned with the promotion of specific interests and responsive organisations. Some, such as MRAP or the Ligue des droits de l'Homme are long standing and date back to anti-racist networks formed during the Occupation. MRAP has a network of local groups throughout France as do more recent creations such as SOS Racisme. This latter organisation has had a role not unlike that of the Anti-Nazi League in Britain during the 1970s. SOS Racisme emerged from grass roots activity of young immigrant origin people in the early 1980s: the original Marche des Beurs aimed to highlight the situation of young second generation immigrants and was followed by marches and concerts demanding equal rights and opportunities. Like the ANL, SOS Racisme used popular culture to mobilise large numbers of young people. Its politics are rather different however, until recently it was closely identified with the Socialist Party and the statements of leading figures serve to underline the way in which ideas of the French Revolution are used to legitimise anti-racism in a specifically French way. Harlem Desir was interviewed on the current affairs programme, 'l'heure de verite' on 19 August 1987. Responding to a question about the meaning of 'assimilation', he stressed his commitment to the values of the French Republic; Liberty, Equality and Fraternity. comparing France with

Britain, Desir said that it was important for France to avoid the racial conflicts that emerge from ghettoisation. France should aim for a sort of melting pot. In a critical article, Mogniss Abdullah [ ] accused Desir of selling the Socialist party programme and ignoring glaring inequalities in contemporary France. Abdullah pointed to Desir's ignorance of important lessons from Britain and the USA. In fact, SOS Racisme is interesting because it reproduces some of the earlier arguments about assimilation and integration in a new, more media conscious form. They were convinced that they could form the nucleus of a new European anti-racist movement, and their rather evangelical, apolitical approach was not well received when they visited Birmingham in 1987.[ ] SOS Racisme tended to operate on the level of attitudes and simplistic slogans, 'Touche pas mon pote' (don't touch my mate), without challenging the structures of racism.

The more politically radical MRAP, together with the trade union federation, CST have a Marxist analysis of racism arising in crisis torn French society. They link immigration with the indebtedness of the Third World, campaigning to raise awareness of the north/south divide, with solidarity actions. This is rather closer to some of the analyses of the left in Britain in the 1970s around the slogan 'We're here because you were there', and recent articles of Sivanandan in Race and Class, in particular linking racism and colonialism and new forms of capital in sophisticated ways.[ ]

There has also been a considerable growth in organisations with instrumental goals. These were the subject of a CERI study by Wihtol de Wenden and Remy Leveau.[ ] They emphasise the shifts to the centre from the spontaneous struggles by immigrant workers in the 1970s to a more integrated and mainstream approach linked to greater political participation of ethnic minorities in France.

In this area, France Plus has had notable success in arranging for people of mainly North African origin to be included on the electoral lists of all major political parties except the FN. The first major test of this approach was a year ago when 506 beurs were elected to local councils.[ ] This development builds on recent initiatives for the right to vote for non-citizens at local level (this was part of Mitterand's election manifesto in 1981). In Amiens and Mons en Barveul, immigrants have elected representatives to consultative committees attached to the municipal council. A conference held to assess this initiative last autumn with representatives from all over Europe, concluded that these efforts were limited and quite frustrating, and there is increasing pressure for full voting rights. The Amiens groups have established a network and newsletter for all ethnic minority representatives in Europe.

Cultural and solidarity groups are also important and have organised successful events, such as the annual Festival Racines in Toulouse, combining Immigrants associations, anti-racist and solidarity organisations with a local (largely white tenants association). In Amiens there is an annual anti-racist film festival.

There is a rapidly changing and quite dynamic situation in France. New influences are present, in particular the increasing political participation of immigrants which is helping to break down the link between political rights and citizenship. On the other hand the right (not just the FN) are strongly opposed to this; but the terms of the debate are changing.

Conclusion

I have attempted to show that although the situation in France is very different from that here, there is a good deal of common ground. Issues of ethnic monitoring and special programmes, ideas of 'positive action', run up against deep rooted hegemonic beliefs in Universal Human Rights and Equality.

Willingness to take risks in adopting new policies is also limited by the defensive reaction to FN electoral gains.

While there are important moves to reinforce the anti-racist law, there is a considerable resource in the various associations, something which has gone into eclipse in this country. There are important areas where exchange of ideas about policy can be fruitful. In particular, the French are quite receptive to ideas of codes of practice, particularly where this relates to professional bodies (e.g. journalists). There is also considerable interest in our experience of the political participation of ethnic minorities, although the example of France Plus suggests that the French electoral and party system could enable this aspect to develop quite quickly.

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Notes

1. Dominique Schnapper, directeur d'etudes et l'Ecole des Hautes Etudes en Sciences Sociales, Le Nouvel Observateur 23.11.1989.

2. J. Weydert, 'L'Europe et les Immigres', Cahiers pour croire aujourd'hui, 15.12.1989

3. J. Costa-Lascoux, Liberation, 6 Novembre 1989.

4. Literally 'threshold of tolerance' although its American equivalent is 'tipping point': E.P. Wolf 'The Tipping point in racially changing neighbourhoods', Journal of the American Institute of Planners, vol. 29, 1963.

5. Mouland Aounit, MRAP General Secretary 'Situation du Racisme, Strategie et Actions du MRAP', Jan. 1990

6. MRAP op cit January 1990.

7. H. Deschamps and P. Chavet (eds.) Galliani Pacifatuer: Ecrits Colonieux de Galliani, Paris 1949 p.218, 314, quoted in M. Denning Lewis, 'One Hundred Million Frenchmen', Comparative Studies in Society and History, Vol. IV, 1961-2.

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12. J. Stern, The French Colonies, Past and Present, New York, 1944.

13. Quoted in A. Sivanandan, 'Race, Class and the State', Race and Class, Spring 1976.

14. C. Wihtol de Wenden, Les Immigres et la politique, Presses de la Fondation Nationale des Sciences Politiques 1988.

15. For an analysis of the French law, see J. Costa Lascoux, France: a Diversified body of laws nd.

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THE 1990s AND BLACK EMPLO~ENT:

BRITAIN AND THE EUROPEAN COMMUNITH

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This paper addresses a number of questions relating to the employment of black people in Britain in the 19905. The discussion Is structured around two events which occured in the late l 980s and which have Implications for the next decade: the UK government's white paper Employment for the 19905 which sets out its future agenda for action, and the Single European Act which lays the ground for the single European market after 1992. Both of these have significant implications for the employment of black people in Britain.

Employment for the l990s

The event that set the agenda for discussion towards the end of 1988 was the release of the white paper Employment for the 1 9QOs, setting out the government's framework for action for the next decade. In the preface, Norman Fowler, the then Secretary of State for Employment, writes:

> We must prevent discrimination in recruitment and employment on grounds of race, sex, disability or age, which hinders the best use of the country's human resources at a time when the population of working age is hardly growing. We must tap energies and develop the talents of people who live in our inner cities (p. 3-4).

The white paper contains a number of proposals of specific concern to black workers, some of them scarcely compatible with the above statement. These will be considered first.

Employment for the 199Os notes the fall in unemployment since 1988. Government manipulation of unemployment statistics causes many to regard official figures with some cynicism. Out of 24 changes in unemployment figures counted by the Unemployment Unit since October 1979, the last 23 have reduced the official measure of unemployment (Guardian 15.3.89). Nevertheless, the independent ~bQur Force Survey figures do show that most of the recent fall in unemployment has been genuine. What is particularly interesting within this trend Is that unemployment amongst black people has been falling at a higher rate than for white (Employment Gazette, December 1988). Between 1984-1987 the unemployment rate for black people Is estimated to have fallen by more than four percentage points to 17.1 per cent compared to the one percentage point drop for white people to 10.5 per cent. Is the apparent convergence of black and white unemployment rates a reflection of a trend towards equality in employment, perhaps showing that racial discri:lnetlon in recruitment is lessening2 Not necessarily. If, as It seems, black workers are

being absorbed into the economy during the current 'upturn' at a higher rate than whites this could just as plausibly be an indication that in fact little has changed In employment inequalities.

At a time of relatively full employment in the early 1 960s the black unemployment rate was comparable to that of whites. With the onset of high unemployment, black workers were amongst the first to lose their jobs, and black workers entering the labour market amongst the last to be taken on, for a number of reasons including, but not only, racial discrinnnation (see Newnham 1986). There is evidence that many of the new jobs are located within what different analysts have described as the 'peripheral sector' or 'secondary labour market'

and are more likely to be found in service industries. Iaany of these new jobs involve work which is part time, low paid, insecure and casual. These are indeed the jobs that Employment for the 1 990s sees as e~d1ng in the future.

Changing patterns of work will develop, with many of the new jobs giving people the chance to follow a more flexible working ~ttern. The proportion working a traditional day, week or year will decline. Parttime working, temporary work, subcontracting and home-working are all likely to increase (p.12).

An above average fall in the unemployment rate for black workers at the time of an economic upturn might simply reflect the fact that black workers are disproportionately located in this sector of jobs, fulfilling the function of a second class reserve workforce, still able to be hired and fired as the market deterllines.

Attempts by unemployed job seekers to resist what has been called 'shit work' and look for something better will be made more difficult, according to Employment for the I 99Os. The white paper announced new arrangements to further scrvtinise the rights of unemployed claimants to benefit. Thfl Is in addition to the already existing 'availability test' where unemployed ciamants can be denied benefit if they fall to answer a questionnaire correctly on their availability for work. The law was to be amended so that unemployed benefit claimants, as well as being capable of work and available for employment, must be 'actively seeking work'. This reflects the view propounded in the white paper that unemployment In ~ndon could be substantially reduced 'if unemployed people looked more intensively and more effectively for work' (~bOur Research, January 1989).

The Removal of 'Barriers to Employment'

Employment for the 1990s talked of the government clearing away 'outdated legislation and regulations which act as a barrier to employment'. The problem is that one person's 'barrier to employment' is another person's safeguard on decent wages, safety levels and working conditions. For example, a 1988 report on clothing workers in the West Midiands shows how the development of sweatshops was reinforced as successive Conservative governments removed or weakened the statutory rights available to workers. The industry continues to be based on the 'chronic exploitation of its highly vuinerable (Asian) female workforce. Illegally low rates of pay, appalling working conditions and outright opposition to trade unions are typical' (Aekta Project, 1988: 6). Changes in the law have now meant that many more part-time and temporary workers are excluded from statutory employment protection. 'Up to a third of all workers in employment now fall into a group of 'flexible' labour which Is excluded for most practical purposes from any legal employment protection' (Deakin, 1988: 15). The latest Employment Bill will further help employers to gain the flexibility to use labour as they wish. Amongst other things it sets out to increase from six months to two years the length of service needed before an individual can be given written reasons for dismissal. The implications of thIs type of rule are shown in the Aekta report. Because of the poor terms and conditions of employment in the clothing industry, staff turnover Is high. Thus many of the Asian women clothing workers are reluctant to pursue their exIsting rights at work because they do not have the two years continuous service with an employer that entitles them to statutory protection against unfair dismissal (Aekta Project, 1988: 22).

The Employment Bill has other proposals of specific implication for black workers. For example, 'weak' cases being put to industrial tribunaIs will need to be accompanied by a deposit of up to œl50. The important question to watch Is how 'weak' will be defined, and whether this will form one further deterrent to those with grievances over racial discrimInation, no matter how valid, particularly since the eventual awards stemming from a successful case can be little more than this figure anyway. (One in six of those who won race discrimination claims in 1986-7 received compensation of less than œ150 -iabour Research, January 1989.)

Employment for the 1990s 'invites views on the proposal that the Wages Council system should be abolished altogether'. The Aekta pamphlet gives a timely example of a case involving the operation of the Wages Inspectorate. In mid l 985, Abdul Karim had been working as a packer and general worker for a clothing manufacturer for six years. After he filled in the Wages Inspectorate forms asking for an investigation into his pay of just œ36.00 for a 42.5 hour week he was sacked. Under the terms of the Wages Councll Order he should have been paid œ68.26 per week, and it was calculated that he had been underpaid by approximately œ3,000 during the previous two years, the period of time for which the Wages Inspector was legally empowered to claim arrears for h~ Instead, the Wages Inspector recovered œ58.02 on hIs behalf. Thus, by calling in the Wages Inspector, instead of receiving an increase in his wage up to the statutory minimum rate and his rightful arrears, Abdui lost his Job and gained œ58.02. After a publicity campaign relating to this and other cases handied by the Inspectorate the Department of Employment admitted that the Inspectorate's handiing of cases had been unsatisfactory, and gave assurances that proper procedures would be followed in the future (Aekta Project, 1988: 9-11). However, now the Employment for the 1990s white paper, warning of the 'damage that can be done by excessive pay settlements', has announced that the government believes that 'the time has come to reconsider the Wages Counciis' future'.

Plans for Trainlng in the UK

Employment for the 1990s revealed the government's plans to hand over a greater share of industrial training to the private sector. Roughiy 100 Training and Enterprise Counciis (TECs) are being set up in England and Wales to oversee the provIsion of local training, including the Youth Tralning Scheme (YTS) and Employment Training (ET), as well as promoting the development of small businesses and self employment. (It was announced later that the network of TECs was to be completed by the end of 1990 - Guardian 17.1.90) Two thirds of the membership of TECs are intended to be top managers from local private sector employers. The rest may be drawn from voluntary bodies, trade unions and so on. At a national level the Training Agency will continue in existence, although it too Is identified as a target for privatisation in the longer tea

The emphasis Is thus still firmly on the actions of employers, directed by market forces. In the white paper Norman Fowler stresses the importance of

investing in the skills and knowledge of people through training, emphasising that 'The prime responsibility for this investment lies with employers' (p.4). The question remains as to how this continuing shift to the private sector will in any way lead to improvements in those areas where the previous arrangements were shown to be failing. A five year study of YTS (lee et al, 1990) argues

that MS has not tackled the problem of skill shortages, but has instead produced too much' traIning in those low level sklls not in short supply. It describes MS as preserving the main weaknesses of the old system, argg that by themselves, market forces simply undermine standards and make skill shortages worse.

Nor have market forces and an employer-led scheme done much for equal opportunity on MS. In 1988 a report on participation in MS for the Midlands noted that black young people were still not getting places in employerbased schemes with the best opportunities for subsequent employment (YBTRU 1988). Using a simple comparIson of statistics for Iiarch 1988 with those of the previous year the report found that the majority of employer-based schemes in the areas they studied still had no black traInees, including some with ostensible connnitments to equal 0pportunitle~ There were, however, some worthy exceptions, with employers such as Rover having responded to earlier criticisms and made positive changes in their recruitment practices, so that now they could held up to be a good example of an employer recruiting black trainees. In 1989 the Rover Group told a Confederation of British Indrrtry conference that a change in its recruitment and try policies to encorage more ethnic minority appllcants had resulted in a 10 per cent rise in applications, despite a fall in the number of school leavers, thus reversing the drop in the number of school leaver appllcations of the previous two years (Financial Times, November 81989). Tllls came about by mane its procedures more accessible and its encounters with applicants more informal - friendly, showing flexibillty over unnecessary academic qualificatIons, - forging line with schools all over the cities, instead of Just in the immediate, often largely white, catchment areas of their plants.

Another report gave further confirmation that a positive equal opportunity image could be valuable for an employer, in circumstances where employs are having difficulties recruiting workert A survey of residents in a housg estate in the South Fast, where relatively high numbers of unemployed co-exist with job vacancies, explored the views of the unemployed thwlv& According to the respondents, the main reasns for the nce of local unemployment and continuing job vacancies in the area were the low levels of pay, the low status and prospects of jobs that 'did not lead anywhere', id discrimination by employers on the basis of both age and colour. Although local employers claimed that they embraced equal opportunities, local residents could see no corresponding changes in the companies' workforces. They remained unconvinced that anything had changed, and were not inclined to put themselves forward for vacancies. The authors concluded that 'Employers must realise that their own workforce is the best (or worst) advertisement to encourage applicants to approach the company' (Mira-Smith and Iadbury, 1989:7).

Demographic Changes

So far, it seems that market forces have falled to deliver either quality or equality in training, yet under the current government market forces will remain paramount. At least the one aspect of the law of supply and demand that may force employers to ermine critically their recruitment policies is the sharp reduction In the numbers of young people coming on to the labour market. Employment for the 1990s reports that the numbers age 16-19 in the population will have fallen by over one million between 1983 and 1993. The iabour force will be older, contain more married women, and more people from the ethnic minorities. The white paper reports that there are around a million people from ethnic minorities In the labour force, and that the proportions with higher-level qualifications are above average. 'Most important for the future is that the proportion of school leavers who are from ethnic minorities will increase

significantly. It Is likely that the ethnic minorities' share of the labour force will increase into the l990L' (p.8) In a speech In September 1988 to the Institute of Careers Officers, employment minister John Cope stated:

The demographic time bomb means that many employers will need to make radical changes to their recruitment patterns as the number of young people fall ... Employers must tap the taient, ofti unused or undervalued, amongst long term unemployed people, amongst women and ethnic minorities (Careers Service Bulletin, Autumn 19a).

Similarly the CRE Chairman, Michael Day, a~essing the rnual conference of the Institute of Personnel Managers in October 1988, stated that the shortage of young people due to demographic changes offered a real opportunity to reduce the discriminatory gap in the labour market (Race and Immigration, December/January 1988). 'Employers in shortage areas who do not recruit from ethnic minorities may find they are unable to recruit at all. Ethnic minority recruitment can no longer be ignored.'

Of course, getting employers to improve their recruitment practices by the laws of supply and demand may in the long term be a poor substitute for legal sanctions and equality targets, such as employers are faced with in the USA The pressure from legIslative measures remains on employers regardless of the ups and downs of demographic trends, business cycles and market forces. Research has shown the lengths that racist employers can get up to if they want to avoid recruiting black people. Employment for the 1990s urges employers to recruit more women and older people. Now that a far higher proportion of young people available for recruitment are going to be black, would it be too cynical to ask whether we will we see a greater enthusiasm by some employers to entice married women and older unemployed people into jobs previously thought of as the preserve of youth?

Europe, the Single Market and Employment

Employment for the 19905 identifies the move towards completing the Single European Market as one of the 'key international developments (which) underline the importance of developing Britain's human resources' (p.10). This paper will now consider the European Community (EC) and the Single European Act in general, and the social dimension in particular, with specific reference to the implications for employment and the black population in Britain. This will of necessity be a somewhat tentative exercise, as the precise effects of the single market on the UK economy are the subject of some debate. Some predictions can be made with a degree of certainty, others are rooted in speculation. It is however, possibly to note some areas for concerned observation, and identify a few of the key questions to be askd

The Single European Act was signed in 1986 and came into force in July 1987, with the aim of creating a single market by removing technical, political and official barriers to trade, so that goods, services, capital and people could move across internal frontiers without restriction. Most measures contained in the Single European Act have in fact already been implem:td More recently, attention has been focussed on the soclal dimension, with the unveiling in May 1989 of the Soclal Charter, and the publicity stemmng from the rough ride it received from Margaret Thatcher after the Madrid summit in the following month.

The pressure for the Single Act came originally from business intern The head of the Italian company Olivetti stated:

In economic terms, 1992 is becoming a self-fulfilling prophecy; the integration of Europe's markets and companies will continue independently of the measures taken by Europe's governments... 1992 is the only possible rational response to market globalisation and to the growing competitiveness of the United States ad Japan. Europe ad its companies have no alternative. 1992 is a necessity (labour Research Department 1989: 4).

Official literature on the Single European Act and the social dImensIon distinguishes between two groups of people within Europe: EC nationals ad non-EC national For the purposes of this paper thls distinction is inadequate. Instead, it is necessary to distinguish between four groups: firstly, EC nationals - white; secondiy, EC nationals - non-white; thirdly, non'EC nationals - legal, and fourthly, non-EC nationals who in terms of their participation in the labour market are illegal or on the margins of legality (e.g may refugees and asylum seekers; undocumented workers etc.).

It has recently been argued that the fact of millions of permanent 'alien' residents brought about in Western Europe by large scale international mIgration necessitates a clear distinction between 'denIzens' ad 'aliens' (Hmar, 1990). Denizens are foreign citizens who, unlike aliens, have secere resident status, pay taxes and normally enjoy full rights of access to the Ibbour market, whilst not being naturaled citizens of the receiving country. The implications of 1992 for black workers within the UK depends on which of groups 2, 3 and 4 they fall in to - in other words, whether they are black citizens, black denizens or black aliens - as well as on ali the other factors of their skills, age, sex, and the occupations, industries ad g cal regions they find themselves in. Thus generalisations will be difficult, acept in those instances where the unitying experience of racism cuts across those differences. Before speculating on the Implications of 1992 for black workers, some observations will be made on the likely changes to affect the UK economy.

The Economic Impact of the Single European Act

A series of EC studies are brought together in the Cecchini Report (1988) which predicts a 7 per cent growth in Co-unity output ad a cut in EC unemployment of around one third as a result of the single markeL Other commentators have criticised this report as unrealistic in its optimism. Whatever the case, it is clear that in the short term there will be a reduction in jobs rather than an increase, partly due to the restructuring and rationalisation of industry following on from the single market. For example, the Cecchini Report predicts for the food industry 'wide scale industry restructuring and consolidation among the largest companies' and for some telecommunications equipment manufacturers 'painful restructuring', with the car Industry being 'substantially more rationalised' (Iabour Research Department 1989: 15-16).

The restructuring will be uneven, hitting certain sectors of the economy more than others. Small and medium size firms in marginal market positions will be at risk, as will many firms not engaged in exporting because of the new competition they will face. In an EC document 'The Social Dimension of the Internal Market' (Social Europe 1988), 'vuinerabie sectors' were defined as 'those which, when suddenly exposed to competition, would be likely to undergo the greatest specific changes', and in many cases these were firms dependent on public sector purchasing. However, this report was careful to emphasise that all sectors of activity will be more or less affected by the completion of the internal market.

The EC has felt that relatively closed national markets have sometimes prevented suppliers from other member states from competing for public contracts on the same basis as domestic suppliers. The new EC rules on public procurement, designed to ensure that potential suppliers from any member state should be able to bid on equal terms for public contracts, will inevitably accelerate the restructuring pressures felt by those industries which depend heavily on purchases from the public sector. (This could have a significant effect in the UK - public procurement accounts for about 15 per cent of the total Community output, and 22 per cent of the UK's output.) Marked out as particularly vulnerable are boilermaking, locomotive making, and telephone exchange manufacture, where much excess capacity across Europe will need to be severely reduced.

In many industrial activities there will be a geographical concentration stimulated by the single market. In the words of the EC working party on the social dimension of the Internal market 'it Is the regional dimension which most clearly illustrates in practical terms the impending problem of adaptation there Is a strong likelihood of polarization between cumulative growth areas on the one hand and cumulative decline areas on the other.' Manyø are worried that in Britain this will further de-industrialise declining Industrial regions in favour of the South East. In September 1989, Bryan Gould, shadow Trade and Industry Secretary, warned that by his own research the single European market would mean 'a loss of 200,000 manufacturing jobs in Britain and a general haemorrhage of investment from the fringes of the European economy to the centre' (Guardian 16.9.89).

In the 1970s the wave of de-industrlallsation had hit black workers hardest, partly because of their over-concentration in severely affected industries and regions. (According to the Iabour Force Survey figures published in 1989 the region with the highest overall rate of ethnic minority unemployment - 26 per cent - remains the de-industrialised West Midiands: labour Research, August 1989.) In the current spate of de-industrialisation, brought on broadiy by the long term internationalisation of production but more immediately by the Single European Act, are we likely to see a repetition of the same? The answer will probably be yes - though the 'declining industries' argument should not be over-state In the last round of de-industrialisation there was evidence to show that the Industrial distribution of black workers had only been a lImited factor in the disproportionate growth in their unemployment rate (Newnhhm 1986: 22). More important was the concentration of blacks in similar job levels - namely unskilled and semi-skilled - across different industries, itself often a function of racial discrimination. 'Discrimination, therefore, has kept black workers in low level jobs, and further discrimination results in blacks being more likely to lose their jobs in these low levels than white workers' (Newnl~ 1986: 22). Indirect discrimination can also apply when black workers lose their jobs, as Illustrated by a case quoted in a 1989 CRE report. When redundancies are planned, a common criteria for selection is length of service, as operated in the 'last in, first out' rule so often supported by trade unions In one Iondon borough the adoption of an equal opportunity policy meant that many of the ethnic minority employees were relatively recent recruits. The CRE 's legal advice was that if the normal pollcy of 'last in, first out' were adopted, this would be indirectly discriminatory (CRE 1989: 26).

The same report also shows how a section of the population more vuinerable to unemployment can also be penalised a second time when employers begin recruiting. In another case described in the report, a man was turned down for a bus conductor's position on the grounds that he had been unemployed for 2 years, and 'it would be difficult to obtain references in such cases'. At a tribunal hearing the bus company agreed that the rule was indirectly discriminatory,

because ethnic minority people are over-represented among the long term unemployed (CRE 1989: 22). The same report noted that research carried out at the Unemployment Research Unit of University College Iondon (Personnel Management Journal, August 1987) found that 65 per cent of employers had doubts about interviewing unemployed people, and 50 per cent screened out those unemployed for more than a year. The authors did not see this to be efficient practice on the part of employers, as time Is wasted pursuing a core of superficially more desirable applicants, Ignoring the Immediate availability of the unemployed (CRE 1989: 22). Efficient or not, in any future expansion of employment brought about by the single market, the operation of such employment practices would make it harder for those earlier made unemployed to benefit.

Thus the issue to watch will be whether the current round of restructuring encouraged by the single market will provide further stimulus for the racially discriminatory treatment of black workers. We might even consider the possibility that over the next few years of industrial restructuring the location of new plants in Britain by foreign companies might be influenced by racial motives. Although at the moment this idea may seem little more than unfounded speculation, its basis lies in a recent study of the location of Japanese car manufacturing and component firms in the USA (Cole and Deskins 1988). This found an 'extraordinary mismatch' between the heavy losses of black employment from the US car manufacturers (who were previously disproportionately high users of black labour) and the small numbers of opportunities for blacks being made at new Japanese plants. The American Equal Employment Opportunities Commission guidelines stress that the racial comoosltion of a plant's workforce should reflect the population of a local area. In the case of Japanese auto plants located in North America 'by siting their plants in areas with very low black populations they, in effect, exclude blacks from potential employment' (p.l3). The authors came to the opinion that 'Japanese plant sitings reflect a pattern in which avoidance of blacks Is one factor in their site location decision'. (A midwestern state official stated 'Many Japanese companies at the time specifically asked to stay away from areas with high minority populations'; a Canadian 'auto industry consultant' reported that 'They ask for profiles of the community by ethnic badkground, by religious background, by professional makeup...' : 17-18). For those who might wish to use the study as an excuse for simple 'Japan bashing' the authors emphasise that the Japanese are only making the location decisions that American firms would like to make, were they not constrained by contractual obligations and sunk costs in old plants. The lesson of this study is that in the process of industrial restructuring in Europe, with the closing down of old plants, the consolidation and relocation into new areas, and the entry into member states of new plants from foreign companies, the implications of the new locations for the black population is something to watch.

Mobility

The abolition of frontier restrictions aims to bring about the free movement of peoples within the EC, something which is likely to increase as firms cross national boundaries, and as public contracts are opened up to other EC member states. The aim is that whenever EC nationals move to work in a different member state they should receive the same treatment in housing, employment and training rights as local workers. The question to ask is what level of mobility will occur - what types of workers, for what types of jobs. Simply removing frontiers will not cause mobility - for that we must look at push and pull factors and social incentives and constraints.

It has been argued that when contracts for major public works are opened up, thIs may entail 'major temporary migrations similar, in some people's view, to

those in the Middle East in the l970s' (Social Europe 1988: 21). However, most commentators predict that it is at the higher level skilled, managerial and professional jobs that the advantages of increased mobility will be felt. In the case of the UK, people at higher level jobs may have an incentive to move outwards into other member states because salaries for skilled workers and professionals are so often higher than in the UK. According to an lMS report (Pearson and Pike 1989) British employers could face a severe shortage of graduates after 1992 because of competition from other EC countries. The report predicts that by the end of the 1 990s the demand for new graduates could rise by 30 per cent, with little growth in their supply. Thus British graduates could well benefit from emigration over the Channel.

As far as young people are concerned, 1992 will coincide with the lowest numbers of 16 years olds across EC member states. Some are now arguIng that the steady erosion of youth wages over the 1 980s by UK employers to compete on price will prove to be short sighted. The decline of the youth cohort in Germany is much higher than in the UK, but the wages and working conditIons are much better there, and already there have been examples of German firms casting their recruitment nets Into Britain for young workers. So will we see an increasing loss of young people to Germany? For young workers with genuine transferable skills, this could be a real possibility.

However, for lower paid and less skilled workers, who are less in a position to face the cost and uncertainty of moving, 'Increased mobility is likely to bring fewer benefits' (MacNeill 1988/9: 18). The Social Europe document, under the heading 'Factors which promote mobility and those which discourage it', shows that it is not only economic factors (demand levels, rate of growth) which must be considered. One major factor contributing to immobility Is unemployment.

Throughout the Community mobility does not appear as a major remedy for unemployment, for the essential factor is qualification. Thus, since throughout the Community relatively few unskilled jobs are on offer, there is little to induce the unemployed to become mobile (Social Europe 1988: 20).

Furthermore, for many people 'local networks based on acquaintance or solidarity' tend to promote immobility. 'To the unskilled, emigration seems a great risk to take.' House ownership also reinforces immobility - 'In some declining industrial areas unemployed persons who own a house are often reluctant to move because of the Investment, both emotional and financial, which it represents' (Social Europe 1988: 20).

Clearly, black workers are over-represented in those categories which are said to make mobility less realistic or less attractive: they are disproportionately represented amongst the unemployed, and in unskilled and semi-skilled work. They are more likely to value 'local networks' which have traditionally provided solidarity and support in circumstances where white institutions, such as trade unions, have been uninterested. And some ethnic minority groups are above average In their rates of home ownership, a necessity In a hostile housing market. (Furthermore, is there anything to stop high paying European companies on UK recruitment drives quietly and systematically avoiding biack recruits?)

There are other factors which will inhibit the mobility of UK lower level young workers. 'For British young people possibly the greatest single obstacle to working abroad Is the language barrier' (Walker 1989: 29). A European Commission survey in 1988 Identified the worst linguists in Europe as the

British and Irish. Any attempts to redress thIs, such as the goverument's announcement In August 1989 that at least one European language Is going to be taught in every secondary school In England and Wales, will take a long time to filter through, particularly given Its insertion into a demoralised teaching profession with a shortage of modem language teachers. In 1988, 27 out of 104 LEAs chose to save money by not recruiting language assIstants, 'often pupils' only contact with a native speaker' (Walker 1989: 29).

In theory there would be an economic incentive for British workers of all leveis to move to other member states to work, because of the better pay and general conditions.

Workers in states with a high level of social welfare provIsion will have little incentive to move to those with less. On the other hand, workers In states with inferior systems will have every incentive to move to those offering superior employment protection and welfare support (Deakin 1988/9:13).

Yet we have already seen a number of reasons why for lower level workers this Is unlikely. In general It has been argued that the enthusiasts for 1992 have overemphasised the supply side of the market, whereas for most employees It is the demand for labour by employers which will determine their future. ' ... the vision of workers searching the landscape of Europe for the best pay and conditions Is somewhat overshadowed by the more powerful spectre of firms seeking the cheapest source of labour available' (MacNeill 1988/9: 19). This will be particularly so In the case of labour Intensive Industries where there is a danger that the single market, by encouraging the uninhibited movement of capital and labour across borders, will Increase pressure on Britain to provide a cheap labour environment (Ma~e1ll 1988/9: 19). Thus another economic force exists to reduce the ability of UK manual workers to improve their prospects through emigration: mobility for them will be less likely If capital Is moving in the opposite direction, towards low wages (DeakIn 1988/9: 13). ThIs leads us to consider something which Is referred to In a number of recent EC documents: the phenomenon of 'social dumping'.

Social Dumping

'Social dumping' refers to the fear that capital - and therefore jobs - will be attracted within the EC to areas of lowest pay and worst employment conditions. The European Commission believes that there must be at least some level of minimum harmonisation of working conditions across the EC, to avoid 'serious distortions' In the operation of the single market. In 1985 the Commission stated:

The beneficial effects of a large market would be dissipated if some Member States were to seek a competitive advantage by sacrificing social achievements. The existence of a European social area should therefore prevent 'social dumping' practices which are so damaging to overall employment (Economic and Social Consultative Assembly 1989: 6)

According to a low Pay Unit survey (Minimum Wages in Europe - low Pay Review No. 37, 1989) Britain has the second lowest minimum wages as a percentage of average earnings of all 12 EC countries. For example, the monthly minimum rate in the UK of œ338 compares with œ4l l in France, œ529 in the Netherlands and œ653 in West Germany (Financial Times 3.8.89). Britain is the only member state where

workers have no legal right to annual paid leave. It has been argued that low wages and minimum levels of employment protection have acted as a form of hidden subsidy, allowing British industries to remain competitive in spite of their lower efficiency. 'This subsidy, along with others considered unfair under the Single Employment Act, will be subject to fierce scrutiny as 1992 approaches' (MacNeill 1988/9: 22).

On the other hand, some within the EC are unconvinced of the dangers. A Commission Working Paper of 1988 was dismissive of union concern and felt that fears of social dumping were 'totally unfounded' except where workers are employed outside the law (Iabour Research Department 1989: 32-33). The European Trade Union Confederation is, however, strongly in favour of the 'Social Charter' to establish minimum standards of employment conditions and prevent social dumping:

For union centres in the more prosperous areas, social dumping threatens the loss of plants and jobs. For those In the poorer parts of the community It means no prospect of improving their working conditions to - say - West German or Danish levels (labour Research Department 1989: 35)

Certainly, many within British unions see 1992 as an opportunity to get Britain In line with the better standards of employment protection exIsting in Europe. The TUC has started moves to give Europe a higher profile among trade unions, with efforts to forge links with unions In other member states, 'particuiarly within multi-national companies and in jobs like construction where workers are mobile'. In a report presented to the TUC annual conference in September 1989, the TUC makes it clear that 'unions will tend to see moves towards a single European market as an opportunity to brIng up real wages and conditions towards the level of the best' (Daily Telegraph 14.8.89).

The Social Charter

The address by the President of the European Commisisslon Jacques Delors to the 1988 annual Trade Union Congress was the first pointer for many trade unionists to the proposed Social Charter. In February 1989 the EC Economic and Social Committee, a consultative body containing representatives of both employers and workers, approved the idea of a charter of basic social rights. Predictably, it was only the British employers who remained opposed to the concept. In May 1989, Ms Vasso Papandreou, Social Affairs Commissioner, unveiled the Commission's proposals for a Charter of Fundamental Soclal Rights. (This turned out to be less wide-rangIng than many had anticipated, concentrating almost exclusively on workers' rights.) The proposals included common agreement on the number of hours In a working week, workers' rights to free circulation throughout the EC, legislation to ensure decent rates of pay, the right to adequate social security, the right to join professional organisations or trade unions, and workers' rights to consultation and participation in the workplace.

At the Council of Ministers meeting in Madrid in June 1989, Britain was the only member state to oppose the Social Charter, which Ms Thatcher described as 'more like a socialist charter'. later, displaying a rather esoteric use of political concepts, she described Commission plans to put workers on the boards of companies as 'Marxist', and argued during the 1989 European election campaign '... we don't need a Social Charter for Europe as a whole. We've got our own - employee share ownership is better than trade unionIsts in the boardroom' (Independent 22.8.89). Meanwhile, a British opinion poll conducted by Gallup

for the European Commission showed a high level of public support for the EC, European integration and the Social Charter, something which was clearly reflected in the June 1989 European elections. By December 1989, the Social Charter had been adopted by Il of the 12 member states, with only the UK remaining opposed.

It has been argued that the black population should embrace the Social Charter and support the campaign for it to be adopted as a declaration by the British government. At a national conference on '1992 and the Black Community' in Birmingham just before the elections, Euro M.P. Christine Crawiey made it quite clear that the Single European Act should be seen for what it Is: 'the codification of a right wing philosophy of radical free marketism to deregulate Europe's economy in the interests of big business'. At the same time she was emphatic that it would be a mistake for activists to therefore boycott any involvement in the processes leading up to 1992, as the Social Charter contained much of value. She felt that it was the most vulnerable workers -amongst them blacks and women - who had most to gain from the protection of the Soclal Charter, 'as they are the ones most in danger from the negative effects of the 1992 juggernaut'. As black people are over-represented in the worst jobs with the worst pay and conditions, then they are likely to benefit from anything which assists in the campaign to set minimum standards of pay and employment conditions and counters the trend towards Britain's status as a low wage economy fit for social dumping (see Johai 1989).

Equal Opportunities

Some commentators see some positive light glowing from the direction of the EC on equal opportunity policies. An article on '1992 and the Personnel Officer' (European Information Service No. 100, local Government International Bureau, 1989) noted the difficulties currently being experienced by local government personnel officers because 'good employer' policies, especially In the field of equal opportunities, are being challenged as uneconomic. However, some personnel officers are looking to the European Community to help strengthen the importance of equal opportunity policies In meetIng the challenge of the l 990s, particularly the shortage of skilled workers' (p.22).

There is already evidence of how provisions on equal pay for women have been at the centre of an 'upward harmonisation' In social legislation, as envisaged by the Social Charter. The provisions were first introduced at the insistence of the French government 'which in the 1 950s already had progressive antidiscrimination laws and feared under cutting by other member states if some measure of equal treatment was not incorporated Into Community law' (Deakin 1988/9: 14). And as a result of EC membership the British government was forced to legislate against Its will to implement the principle of 'equal pay for equal value'. Furthermore, in 1989 the European Commission declared that it was taking the first step in infringement proceedings against the Uk over part of the Sex Discrimination Act 1986 which it regarded as insufficiently strong to comply with EC law (Equal Opportunities Review July/August 1989). Thus it seems that there is a real potential for equal opportunity amelIoration through an upward harmonisation process in EC social agreements. Already there have been five EC Directives on equality, aimed at 'opening up access for women and men to the full range of jobs, vocational training, promotion and working conditions' (Europe Information Service No. 101, local Government International Bureau, 1989).

One flaw In this piece of optimistic logic Is that 'equal opportunities' never refers to inequality between black and white. It Is noticeable that In the 'Social Europe 1988' document, like so many other EC documents discussing the social aspects of 1992, we find virtually nothing on the circumstances of ethnic minority groups within the EC. References to 'equal opportunity' always mean that between women and men, and 'dIscriminatory practices' refer to member states operating unfair practices to exclude nationals from other member states. Routine EC documents appear to be colour blind.

Unemployment and Training in the EC

ThIs colour blindness also is found In 'social dimension' documents on unemployment and training. An EC document of February 1989 (Economic and Social Consultative Assembly 1989: Il) states:

The unfair distribution of wealth between those who are Involuntarily jobless, and those who defend their jobs at all costs, is paving the way for a system which may soon only be governable by authorltarlan means. The major changes underway have led to a situation where labour has become a key factor for equilibrium in our society and in Its political components.

It argues that the identification and allocation of new jobs and a new dIstribution of labour are thus more than just components of economic and social policy; 'they are a prerequisite for safeguarding today's democratic society'. For a racial dimension to unemployment the EC only has to look to Britain. Within the UK, black workers are far more likely to be unemployd The labour Force Survey preliminary results for 1988 show that the rate of unemployment for black people (13.5 per cent) is still nearly twice that for whites (8.3 per cent). (Meanwhile, the Cecchini Report suggests a iarger initial drop in employment for the UK than for the other four largest EC countries, and a lower percentage figure for employment growth after six years.)

EC literature also stresses the fundamental and central role of training, and the fact that 'the social dimension of the internal market must Include the promotion by every means available of both initial and further training' (Social Europe 1988: 57). To create a 'European pool of skills which can be used to amplify the positive effects of the single market', training merits a 'significant investment in terms of financial and other resources'. There has been concern over whether young British people will be in a position to compete with those from countries such as Germany and France. Such countries have a far better record of Investment in vocational training in comparison with what the Financial Times called the 'scrappy and ill~rected efforts of British employers to improve the skills of their workers' (30.8.89). Recent developments in the European Community make the training gap an even more serious Issue for the UK, raising awkward questions about the effect of increased labour mobility among member states. 'The threat to all European economies with Inadequate training arrangments is that they will be attractive only to employers seeking a low-skilled workforce to perform mundane tasks.' Efforts are being made by the European Commission to harmonise vocational qualifications across EC borders. Critics argue that within Britain the establishment of common standards and certification across industry will simply mean, in the European context, that 'a British worker will hold a certificate to show clearly how few skills he or she has' (Financial Times, 30.8.89).

In June 1989 the Council of Ministers adopted a resolution on contintling vocational training, one function of which was seen as 'promoting social

conditions that enable workers to overcome any lack of prospects for improving their skills and qualifications' (European Information Services No.102/3 1989: 46). Again, the example of the UK can demonstrate the folly of ignoring racial Inequality in training. A 1989 survey by Industrial Relations Services concluded that the shortage of skilled people is now restricting the expansion of most of British industry (Guardian, Il September 1989). Yet British investment In vocational training has been disastrous. A major part of the Youth Train1~ Scheme has been nothing to do with Increasing the transferable skIlls of young people to satisfy Britain's skill shortage. It was designed as a form of low level work sociallsation with the aim of lowering youth wages, reducing the unemployment figures, and keeping unemployed youth off the streets. The minority of quality schemes which do provide worthwhIle training in needed skills largely exclude black young people through discriminatory processes which have been well documented elsewhere. The UK government's new arrangements for handing over training to employers via Training and Enterprise Councils, and the further throwing open of training to market forces will simply exacerbate existing processes of inequality. Meanwhile Department of Employment-financed research published in 1990 produced statistical evidence that black young people are in fact more ambitious for jobs with training than their white peers, and yet anecdotal evidence from the same survey suggests that they often avoid submitting themselves to training schemes through their perception of the low standards of training available to them, and the racial injustice they feel they are likely to encounter (Cross et al 1990). This Is at a time when the youth cohort is declining, and when black young people are Increasing as a proportion of the cohort. From Britain's point of view the under-utilisation of these young people's potential is both a moral scandal and national idiocy. From the EC perspective there seems little evidence that the stated desire to 'enable workers to overcome any lack of prospects for improving their skill and qualifications' reflects any awareness of this particular problem.

In short, the EC sees the expansion of training as central to the single market, and the reduction of unemployment as essential for the health and social stability of the whole Community. If this is so, then the EC must be aware that when the divisions of the trained and the untrained, the employed and jobless also fall disproportionately and unjustly into divisions of black and white the potential for sort of social instability they fear is even further magnified. Yet the documents on the social dimension of the internal market give little hint of this recognition.

Under the heading of 'vuinerable groups' Social Europe 1988 states: 'In its fight against the under utilisation of human resources the Community has at its disposal an arsenal of measures on behalf of women, young people and the long term unemployed'. It adds 'this erosion of human resources must be stopped, for in the long term it will undermine the flexibility of the economy as a whole, and the stability of society In general'. The years of evidence from Britain that 'blackness' is also an indicator of the the 'under-utiiisation of human resources' is Ignored. (The concept is similarly absent from the Social Charter.) It Is of course true that measures which target 'women, young people and the long term unemployed' will also be directed at the under-utiiised resources of black people, particularly as they figure disprortionateiy in the last two categories. Nevertheless, the fact that racial Inequality has a dynamic of its own, over and above all the other forms of sttuctured Inequality, is apparently overlooked, as Is the fact that exploitation and injustice along a black/white division are just as lIkely to 'undermine ... the stability of society In general' as are the other forms.

Fortress Europe

So far discussion has centred on issues most relevant to groups 1 and 2 - the EC nationals. A whole range of other concerns are relevant for groups 3 and 4, the non-EC nationals. In the fight by trade unionIsts and other activIsts for the basic rights contained within the Social Charter, there is a dahger that the other side of the coin will be forgotten - the corresponding absence of such rights for other groups of workers within the EC. In 1992 the two legal categories of workers will be EC nationals who can live and work anywhere within the EC, with guaranteed rights (a proportion of these will be black) and non-EC nationals who will have no freedom of movement, no absolute right to family joining them, no absolute right to trade union membership, and so on.

In 1989 the Joint Council for the Welfare of Immigrants produced a report on the EC's unequal treatment of migrants and refugees. It argues that unless there is determined opposition, the freedom for EC nationais will be won at the expense of the rights of 'third country nationals'. The report warns of the creation of 'Fortress Europe - a single Europe with double standards'. It describes two migrant communities within the EC - the roughly 2 million EC natlonaIs who have established themselves in a different member state to find work, and the possibly 15 million non-EC migrant community within EC borders. Non-EC nationals, (denizens), although lawfully resident in a member state, will have no right to cross frontiers to look for work. Sometimes they are prohibited from certain sectors of work, and in some countries cannot form political organisatlons. Third country migrant workers In the member states are entirely dependent for their civil and other social rights on the domestic law of the country in which they reside. There is no protection from racial discrimination In European Community law - EC institutions will not be concerned with recruitment discrimination or unfair dismissal on the grounds of race, or with the right of migrant workers to join a trade union (JCWI 1989: 23). The JCWI report concludes:

After 1992, when the Community's internal market has been completed, the restrictions on the movement of third country nationals across the internal borders of the Community, the lack of protection from discrimination, and the absence of other social benefits enjoyed by people who have the status of an EC national, will become even more acute (JCWI 1989: 28).

Third country nationals will have only limited access to the 5 million new jobs which It is estimated will be created by the completion of the internal market. 'Those structures of the labour market which tend to confine third country nationals to the lowest paid, least prestigious sectors of employment will be reinforced' (JCWI 1989: 28). The result of the EC proposals will be that 'nonEC migrant workers in every state will experience tighter controls aimed at keeping them out or encouraging them to return to their country of origin' (Iabour Research, February 1989). In practice, when there Is a need for people to fill unpopular low skill, dirty, dangerous, jobs, we may see the immigration door left slightly ajar, admitting labour which can can be returned later without having made social demands on the economy. Social Europe (1988) admits that there may be further influx of foreign workers if jobs become available at the bottom of the occupational hierarchy, 'where foreign workers are most competitive'. This is because with unskilled work, 'Eur~' are 'less inclined to move and are more demanding as regards wages and social cover' (Social Europe, 1988: 22).

Most vuinerabie of all will be the fourth group of workers - unauthorised workers who origInally arrived as refugees or asylum seekers, or on student or visitor visas, and whose bargaining position Is restricted by their illegality. The European Commission estimates that one in ten of non-EC migrant workers Is unauthorised. As the rules for work permits have become tighter, more migrant

workers become defined as 'illegal', and thus, as the low Pay unit puts it, 'they are particularly favoured by employers because of their restricted bargaining power' (Iabour Research, February 1989).

With no rights of settlement, rarely the right to work, no right to housing or to medical care, and under the constant threat of deportation, the new migrants are forced to accept wages and conditions which no Indigenous worker, black or white, would accept. They have no pension rights, no social security, the employers do not have to insure them -they are illicit, illegal, replaceable (Sivanandan 1989: 87).

In Britain the Transport and General Workers Union Textile Branch has recently been organIsing sweatshop workers - Including Kurdish refugees and Illegal workers - In North london, with some success in recruiting membership and gaining compensation for unfair dismissal and payment of unpaid wage As All Riza Aksoy, chair of the local TGWU branch put It 'This happens to illegal workers - they work for one or two weeks; when they ask for their wages the boss says: 'No way; if you stay here I'm going to call the police'' (Labour Research, August 1989). In response to repressive developments in Europe migrant workers of different ethnic groups have started to organise and develop links across EC state frontiers, calling for, amongst other things, a general amnesty for 'unauthorised status'. In 1984 more than 100 migrant groups were represented at a conference which spawned the European Migrant, Immigrant and Refugee Manifesto, whose demands included free movment in the EC, the right to stay, and the right to family reunion (Iabour Research February 1989).

On paper, black British citizens, (group 2 workers), should have nothing to fear from the the changes, legal or otherwise, from the Single European Act -hence the near invisibility of the 'race' dimension from documents on the social dimension of the single market. In practice, they stand to suffer disprortionately as a group from the resulting industrial dislocation and rise in unemployment. They will also be less likely to be in a position to benefit from the enhanced opportunities for mobility. Although many black British come from migrant populations who should in theory be more receptive to the idea of moving to improve their life chances, there are, as we have seen, a number of factors which combine to make mobility a less realistic option for such people.

Another major disincentive for emigration by group 2 workers to another member state stems from the measures being developed in relation to groups 3 and 4, the denizens and aliens. As a result of removing internal frontier barriers there will be a greater reliance on internal immigration controls, with random checks on people who 'look' like they might be immigrants, including spot checks by police in the workplace or on the street, and checks on those applying for public services. The JCWI report voices concern that this could lead to discrimination against black people, and warns that:

the prospect of such challenges being made to their right of free movement would ... deter many Community nationals of black and ethnic minority descent from travelling freely within the Community, whether for the purpose of seeking or accepting offers of employment, or even for holiday trips (JCWI 1989: 30).

Conclusion

The juxtaposition of the white paper Employment for the l 990s alongside the documents on social aspects of the single market has drawn attention to the faults within each. The emergence of the white paper In l 988 and the UK government's refusal to endorse the Social Charter in 1989 demonstrate that the polarisation in employment in British society that occurred over the 1 980s is to be allowed to continue, with further erosion of minimum statutory protection of wages and conditions, and with the black population continuing to be over-represented in the most marginalised and exploitative sections of employment. Policies which in the past have assisted in the exclusion of the black population from the opportunities they deserve are re-emphaslsed, and new policies are designed to put workers in a position where they are even less able to resist such exploitation. More specifically, the Intention to leave trainIng in the UK to employers and market forces will do nothing to bring training up to the standard of major European partners, and even less to improve the vocational training prospects of able young black people. This Is despite the fact that reference is made to the problem of racial Inequality in the white paper, albeit motivated by a concern for the needs of employers in the current demographic cycle rather than by higher motives.

The EC documents, on the other hand, reflect the fact that among many member states in Europe, employment policies exist which are superior in many ways to those planned for the UK, with an ostensible desire at EC level to reduce poverty and encourage minimum standards of employment conditions. The EC recognises and emphasises the vital importance of training to the future of the Community. It does not see training as something which can be left to market forces, and is willing to make resources available to develop this area. Yet there is no mention in EC documents of ethnic minority issues or racial discrimination in training and employment. Nor is there any mention of basic employment rights for black 'denizens', and the potentially oppressive post-1992 reality for black citizens. In the fInal draft of the Social Charter, adopted in December 1989, there was simply a statement in the preamble about 'the need to combat every form of discrimination on grounds of sex, colour, race, opinions and belief'. However, there remains no direct reference to these matters in the Charter itself. There are some who argue that the importance of the Social Charter can be overstated, as It is not legally binding. However, separate from the Social Charter is the Social Action Programme, which contains specific proposals for measures to implement and give force to the main principles set out in the Social Charter. For this reason, others argue, It Is important that statements on the right to equality of treatment regardiess of race colour or religion should be written Into the main body of the Charter.

The official position of the European Commission has been that It has no competence to introduce primary legislation on racial equality because this matter Is not included in the Treaty of Rome. Therefore, the question of race relations remains within the domain of each member state. It is true that the Commission, the European Parliament and other institutions have supported the Joint Declaration against Racism and Xenophobia, with a willingness to condemn extreme right wing racIst and fascist groups. But there are two problems here. Flrstly, the EC Is failing to learn from the experience of Britain that a racially discriminatory immigration policy adds respectability to racism within a society, and is therefore in contradiction with any condemnation of racism and xenophobia (see Gordon 1989). Secondiy, many politicians and officials in the EC feel that such declarations are all that is required of them, ignoring the need for practical anti-racist activity at the level of institutions and employment. This stance will be familiar to black activists in Britain in the 1970s who remember those trade unions who were happy to pass vigorously worded resolutions opposing fascism and supporting the activities of groups such as the Anti-Nazi league, whilst setting their faces against any immediate practical measures such as tackling the racial discrimination experienced by their members in

recruitment and promotion, or assisting them in the racism experienced at work or within the union Itself. Over the years, activism produced some shift from this position within British unions, and activism will be needed on the current EC-related Issues too.

Some effort to put these issues on the European Commission's agenda has come from the British Trades Union Congress (TUC). The TUC has been lobbying the European Trade Union Confederation (ETUC) to take on board issues of migrant workers' rights and race equality, drawing attention to the experience in the UK of the necessity of legislation to combat discrimination. Through the ETUC the TUC has pressed for a new clause outlawing racial discrimination to be Included in the Social Charter. The Social Action Programme does contain in Its introduction an explicit reference to the existence of racial discrimination and the need to eradicate It, included after representations by the ETUC.

In comparison with Its European partners, the TUC has taken something of a lead in Europe on the question of racial discrimination and the single market, drawing attention to neglected issues of racial discrimination, and of the status of third country nationals. The fact that the British TUC has taken the Initiative reflects two decades of agitation from within the movement, of a kind not found within union organisatlons In other member states. In the UK this led to a shift within the TUC away from Its 'colour blind' stance of the early l970s, and to the adoption of various initiatives, such as the 1981 publication of 'Black Workers: A TUC Charter for Equal Opportunities'. The many public meetings on the implications of 1992 for black communities over the past year cannot fail to have made the TUC aware of grass roots concern In Britain on this issue. A resolution at the 1989 Congress called for concerted action 'to establish equal opportunities for those of non-European ethnic origin, both from within and outside the EC, who are resident in the EC'. In contrast, black/migrant workers in other European countries are not unlonised to anything like the extent they are in Britain, and have not been in a position to influence union hierarchies in the same way.

On most other matters of trade union concern, the UK comes out rather shabbily in a European comparison. On a whole range of Issues - health and safety, hours of work, minimum wages, and general protection of employment conditions, Britain is the poor relation of Europe, to be pitled by other EC trade unionists, or criticised and feared as a threat to their own working conditions. The one thing that the beleaguered British trade unionist can seize upon is the UK anti~iscrimination legislation and the more heightened political awareness of issues of equal opportunity and anti-racism found amongst large groups of members within a number of trade unions in Britain. Britain may have the worst record on every other issue but at least in this area It has some experiences that others might want to learn from.

Within Individual unions, black and white members will need to press for action to get proper national trade union responses to the implications of 1992 and 'fortress Europe' for black workers, to encourage the organisatlon of 'alien' migrant workers, and to press for the Social Charter to be strengthened and made a legally binding document with specific requirements on governments and employers. There will need to be further EC-wide activity, with links formed between unions across EC member states as well as between ethnic and migrant workers' organisations and pressure groups. And there will need to be lobbying at the level of MEPs and EC institutions for equal opportunity and anti-racIst measures to become part of the EC legal framework. A major objective must be the securing of European legislation to combat racial discrimination. ThIs will give some protection to black British workers who wish to take up jobs in other EC

member states. It will also be important to prevent 'harmonisation' In the wrong direction - a levelling down rather than up in legIslation on race equality - and will make less likely any back-tracking on British domestic race relations legislation.

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V

THE HARMONISATION OF ASYLUM POLICY IN EUROPE

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INTRODUCTION

The issue of refugees in Europe is assuming a greater importance than the numbers Involved for a variety of reasons. From an international point of view European policies can have a strong impact, both in the economic and the political field. European countries do have a major say In international conventions and they can also influence political and economic developments in countries where refugees originate from. The numbers of asylum seekers and refugees in Europe has Increased In the last twenty years and the nature of the refugee movement itself has changed from what It was in the post Second World War years when the majority of refugees in Europe were Europeans. Today's refugees come mostly from the ThIrd World, from distant cultures and societies. Future trends may also include refugees from Eastern Europe. They are arriving at a time when the European economy is in a plight and when Europe is closing its doors to immigration.

These are a few of the elements which set the scene for European asylum policies. The process of consultation and coordination undertaken by European states has been accelerated by the forthcoming elimination of internal borders In 1993. DIscussions and agreements have not been completed as yet but they point to a number of trends emerging from conflicting opinions and Influences.

This study is based on Interviews with government officials, International organisations and agency staff, MEPs and on the analysis of archives. The objective of this paper is to identify the main trends and Issues regarding refugees and asylum seekers in Europe. For methodological reasons these issues have been grouped into two sets, broadiy expounding governmental versus nongovernmental viewpoints, although some nuance has to be Introduced in both categories.

A simple reflection on the connotations of the terms 'asylum' and 'refugees' will Illustrate my classification. When the term 'refugees' Is mentIoned to government officials it immediately brings up to mind the notion of state security and Immigration control. For non-governmental agency staff these terms conjure up notions of human rights and humanitarlan traditlo~ Are these two groups of people working to the same agenda? 00 the two Interpretations interrelate in any way? According to Gerard Souller they stand in direct opposition to one another as they pertain to the contradiction between state and democracy 'iI nest pas un droit, pas une llbertb qul n'alt 6t6 arrachb par Ia Iutte soclale et polltlque contre Ies apparells de Ia domination, c'est ~ dire l'Etat.'.[1] Ensuring the security of the state thus seems to bear little relevance to preserving human rights, part and parcel of democratic rights. European governments perceive refugees as a potential threat to the security of the state and quote 'terrorism' as a reason to tighten up on asylum seekers. Governments claim that the security of the state Is synonymous with the security of citizens but the iatter are rarely asked to voice their opinion on the measures supposed to protect their security. For instance, the three main Intergovernmental consultations e~nIned In this article have been held in secrecy and have not allowed for democratic consultation on the issue. In addition the notion of 'security of the state' Is not neutral. In its name the French Minister of the Interior, Charles Pasqua, with the approval of the Front National, introduced the 'procedure d'urgence absolue' making possible the summary expulsion of foreigners Including recognised refugees. The same Pasqua declared unambiguously 'Ia d6mocratle s'arr6te o0 commence l'Etat'.[2]

In contrast to this it is civil society which has been upholding democratic and human rights including the right of asylum. In Souller's words 'Ie respect din droit d'asile [est] preuve et garant du droit d6mocratlque'.[3] It is civil society which has been campaigning for the right to asylum against government policies. To illustrate thIs, it suffices to mention the Campagne Natlonale pour Ie Droit d'Asile launched in France by non-governmental organisations from January to October 1986, British trade unions pressing for the acceptance of Chilean refugees in the seventies and the intervention of churches in several European countries to protect asylum seekers.

PART ONE GOVERNMENTS' NEGOTIATIONS

This section examrnes the initiatives taken by European governments to harmonize European policy on asylum seekers and refugees.

Three marn bodies have been considered. The -called 'Schengen' group, named after an island where the first meeting took place on 14 June 1985, brought together the ministers of the Interior of Belgium, Germany, France, Luxemburg and the Netherlands with the aim of establishing a one visa area. It discusses the question of asylum within the framework of 'circulation of persons' and 'police and security' issues.

The Council of the 12 comprises the Ministers of the Interior and Justice from all the EEC countries. Their first meeting took place in London on 20 October 1986 and they met again in Brussels (28.4.87) and Copenhagen (9.12.87) to formulate a policy on terrorism, drug and illegal immigration. They have set up an ad hoc group on immigration which created a subgroup on asylum with the responsibility of 1examining the measures to be taken to reach a common policy to put an end to the abusive use of the right of asylum'. Their conclusions serve as guidelines for national policies.

The European Commission, composed of nominated civil servants has prepared a proposal for 'harmonisation'. The subgroup on asylum (part of the Ad Hoc Group on Immigration, not to be confused with the Council of the 12 group mentioned above) has presented an Avant Projet de Directive. As Is expiained by an EEC functionary in a note for Lord Cockfleld dated 8.3.88 'The subject of the proposal is therefore not the harmonisation of the law of asylum in general but only of those provisions and practices vital for the removal of frontier controls.'

The comoosition of these bodies (MInIsters of Interior Justice and senior civil servants) the text of their brief give a good indication of the main thrust of the measures proposed. Refugees are considered in the wake of discussions on terrorism, drugs and arms rackets. They are also identified to fraudulent third world immigrants trying to circumvent immigration controls. Moreover thIs image of refugees is taken up by the media. As is summarised by a senior civil servant involved in the Council of the 12 'the lowering of Internal borders must not jeopardize the security of the state nor the control of immigratlon'.[4] The harmonisation of European policies will thus concentrate on preventing asylum seekers from 'taking advantage of the absence of internal borders'. One risk often quoted by governments Is that of multiple or successive applications for asylum. Not only are they resented because they overload national procedures but because they enable asylum seekers to stay in Europe for years 'under false pretences.' As stated by a French civil servant 'Imagine that an asylum seeker presents an application successively in all the member countries. If the procedure and appeal take an average of three years; with twelve EEC countries, the person could manage to live In Europe for 36 years'.[5]

However the harmonisation of policies does not take place in a vacu~ It has to take into account the existing procedures and situations in each European country. European countries are increasingly developing protectionIst policies with regards to all kinds of immigration, Including refugees. These efforts towards harmonisation might appear to manifest a 'European protectionism' superseding the national one. In reality the Europeanisatlon of policies is

conceived as a means to secure national interests. Part of these interests are common to several or all of the EEC countries in which case an agreement beneficial to all is easily reach- But there are also conflIcting national Interests which are often resolved to the advantage of some and to the detriment of others. One problem frequently cited is the unbalance in the distribution of refugees among European countries.[6] It seems logical that the countries which receive a great number of refugees would want to establish policies designed to prevent them from arriving or to redistlbute them to other countries To cite one example: a large number of refugees arriving in SpaIn and Italy cross the Alps and the Pyrbnkes clandestinely to apply for asylum in France. France is therefore likely to try and persuade Spain and Italy to take responsibility for the asylum seekers landing on their territory. Yet It is probable that these two Southern European countries will resist France's suggestion as it would entail settling a much greater number of refugees Such a discrepancy between national interests has motivated specific association between states. The North-South divide gave rise to the formation of the Schengen group which brought together 'Northern' states (France included) to ensure a better control of the intake of asylum-seekers. It has been stated privately by senior civil servants that the Schengen agreement is also intended to provide a 'model for the 12' which really means that some Northern states are organIsing themselves to impose their viewpoint on the rest of the EEC. Moreover each government is jealous of preserving national sovereignty and prerogatives so that the European Commission's Initiatives are sometimes unwelcome even when Its suggestions do not contradict the national view. Up until thIs date European governments have not accepted that the Co~ssIon had any competence to deal with the harmonisation of asylum policy.

With so many complications involved one may wonder why Europe does not simply close Its doors to these unwelcome refugees. However, thIs Is not possible. Another set of factors has to be taken into account. All the European countries are signatory to several international conventions whIch protect asylum seekers and refugees and cannot flout them flagrantly. Nonetheless these conventions can give rise to varying interpretations. Only the 1951 Convention and the 1967 Protocol are quoted in the agreements proposed by the three bodies studied in this section. Let us now turn to the main items which lay the basis for an harmonisation of European policy on asylum.

l. Which state is responsible for examining requests of asylum

One of the main purposes of harmonisation Is to introduce some order in the handiing of asylum applications. With the aim of avoiding multiple applIcatIons the parties concerned soon established the principle that each applicatIon should be examined by only one state. The most difficult task then became drawing up guidelines to determine which state was responsible. The possibIlity of giving the applicant the choice of the country was rejected as asylum seekers, unlike immigrants are not supposed to plan their emigration but go wherever possible.(7] It is probable that the real reason for thIs decisIon was the desire to avoid the possible congregation of refugees In the more prosperous states with higher standards of living. Governments retain as a guideline the notion of 'country of first asylum'. To define beyond doubt what this meant, the leading idea put forward was that 'the more one state manifested its agreement to the arrival or even to the stay of an asylum seeker, the more thIs state became responsible.' (8]

The granting of a visa was deemed to provide the most crucial indicator. The three bodies studied, the Schengen group, the Council of the 12 and the European

Commission, expressed similar opinion on this. In a summary, the proposed rules are as follows.

The state which granted the visa of 'longest duration' was to be deemed responsible. If a state did not require a visa It was nonetheless deemed responsible as this constituted an 'implicit agreement' to the arrival of the asylum seeker. When a visa was valid in several countries, as Is already the case in Benelux, the country responsible would be the one where the asylum application was handed in. If an asylum seeker was found in an Irregular situation the first border reached would determine which state was responsible. In addition, the Schengen group stated that they aimed to achieve a 'uniform visa area'. In this eventuality, as the Netherlands pointed out, most of the detailed clauses mentioned above would become void and two criteria would remain : the country where the application was handed in (If the asylum seeker's situation was regular) and the border reached first (in an Irregular situation).[9] It appears that these circumstances would lead back to the situation which states feared, whereby the more prosperous countries or those with more perneable borders would attract the buik of refugees. Hence It Is likely that the Schengen group will achieve the uniform visa much quicker than the 12. Another possibility is that the 12 might implement the present French policy of requiring a visa of almost all non EEC citizens, thus considerably restricting access to asylum.

All these proposals are applicable only if all the countries concerned adhere to the 1951 Convention and 1967 Protocol. According to the 1951 Geneva Convention, the statute of refugee is to be awarded to 'persons outside their country because of a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or polItical opinion.' But the Convention also stipulated that these provisions applied only to Europeans victims of events having taken place before 1951. The Bellaglo Protocol (1967) removed the geographical and date limitations, extending to people of all origin and to post-1951 events the provisions of the ConventIon. Italy, which had retained the geographical reservation excluding non-European refugees would have dropped it In January 1990 so that it can now settle ThIrd World refugees. In the discussions involving the 12 a North-South cleavage renders agreements difficult, the 'North' attemptIng to make the 'South' responsible for the asylum seekers it allows In. At the moment most of the asylum seekers are rn transit in the Southern countries and migrate to Northern countries to settle.

The Schengen group, the Council of the 12 and the European Comnls~ion all broached the question of expuIsion In order to reinforce the notIon of responsibility. Indeed, It was not considered sufficient that a state examine an asylum application, it also had to be made to take responsibility for a negative decision. To this end the proposal stipulates that each state must ensure the expulsion of applicants to whom It has refused asylum as thIs would prevent them from drifting into nelghbouring countries. Moreover to protect each country from the 'Irresponsibility' of others a 'readmisslon clause' was included In the proposals of the three bodies under study. Consequently, the country in charge of examining the application will have to take back asylum seekers which may have entered other member countries irregularly.

The general tone of these agreements seems to Indicate that states are reluctant to settle refugees. Their one redeeming feature from the refugees point of view is that such agreements may reduce the risk of remaining 'In orbit', pushed on from country to country. However, as was pointed out by the Dutch Council of State In a note dated 8 April 1991 to the Dutch gobvernment, It may have

precisely the opposite effect, that of increasing the numbers of 'refugees in orbit'.

The Council of the 12 and the Commission introduced an additonal criterion to determine the state responsible for examining asylum requests, that of close family links; and a transfer of responsibility Is planned if need be.[10] They insisted however that this did not establish the right to family reunion. Another document from the Schengen group proposes that the treaty making state that has granted refugee status and residence to an alien must take into consideration an asylum application from a member of his family if all the parties concerned agree to It. In this instance, the definition of member of his family Is deemed to include spouse, unmarried minor children (less than 18), father and mother of unmarried minors. Although Belgium and Holland had expressed reservations about this definition,[111 It was incorporatd into the final text of the treaty. [12] These two bodies also make It possible for another state than the state deemed responsible to examine the request to do so in accordance with its national procedure If It had special ties with the applicant. Within the Schengen group It was pro that asylum requests could be examined by a state which was not responsible 'for special reasons concerning national law'.[13] The Schengen group also included an incentive to ensure a strict application of the agreements; It launched the Idea of creating a common fund designated to cover the costs of deporting 'illegals', the modalities of which have not been decided as yet as reservations were expressed by France and Germany. [141 Such provision does not appear in the definitive text. In a further attempt to control the arrival of asylum seekers the Schengen group discussed the possibility of imposing sanctions upon transport companies carrying foreIgners In possession of Irregular documents. This suggestion has not been taken up as yet as French officlais have expressed their reluctance to hand over the checking of documents to airline employees who might not even be French nationals. It Is worth noting that AIr France and the SNCF have already been fined heavily and have refused to pay the fine.

However, the Schengen states finally agreed on tackling transporters. It imposes on air-sea-land- transporters the obligation of taking back immediately an alien refused entry; they must also take measures to ensure that aliens have the required documents to travel. In order to enforce this, the Schengen states will be committed to introduce sanctions accordingly. [15] They will also Introduce penal sanctions to whoever 'for purposes of gain' helps or tries to help an alien enter the territory without the required documents.[16]

2. Procedures

Procedures have not given rise to a great deal of debate as a concensus was reached rapidiy. The three bodies studied agreed that national procedures should be left as they stood to handie appllcatlons.[17] The Council of the 12 and the Schengen group do not accept any departure from this model.

As for the Commission It put forward the creation of a central EEC wide consultative committee[181 to ensure that decisions taken in one state did not contradict the statute law of another state. In the Commission's opinion this is the only way to secure the respect of 'Community standards' and the enforceability of negative decisions In all the states. The Commission's Directive adds that this Consultative Committee does not constitute yet another echelon in the procedure and purely imparts advice which is not legnlly binding but should be taken into account because of Its 'moral strength'. Despite the Commission's concern to demonstrate that such a committee would In no way

encroach on national sovereignty, European government have expressed their disapproval of this proposal.

Finally the Commission is the only body to have proposed the creation of an 'abridged procedure'. [19] The Commission argues that several states already have one and that it could be generalised and streamlined to help decrease the overloading of applications. This procedure is designed to deal with three situations; successive or simultaneous applications, an application whose responsibility rests with a non-EEC country, and a 'manifestly unfounded application'

3. Exchange of information

All the three bodies studied make mention of an exchange of information on asylum seekers. The Commission proposed to exchange general information. The Council of the 12 Is already circulating statistics. The Schengen goup has prepared a detailed list of the type of information to be gathered, including general information on national procedures, on the monthly arrival of asylum seekers, on the emergence or significant increase of certain groups and more specific information on the countries of origin and on individual asylum seekers, i.e the details pertaining to their identity; this also Includes information on members of the family, [20] their documents, their ltinerarles, and the decisons taken about their cases. The set of information regarding the motives of the asylum application and of the decision is the only information which would be subject to the applicant's consent. [21] French reservations did not preclude an agreement on thbis point.[22]

From the point of view of the asylum seekers, information concerning their countries of origin alone might be beneficial if it is sufficiently accurate. All the other registers of data mentioned above belong to a vast police operation which only appear necessary if asylum seekers are considered a priori unwelcome and a threat to European states.

4. Circulation of foreigners

A broad discrepancy exists between the views of representatives of states and of the Commission concerning the circulation of asylum seekers and refugees within the confines of the EEC. The Schengen proposal treats refugees in the same way as other aliens holding a residence permit from one of the Contracting States. They will be able to move freely within the borders of the Schengen states if they have a valid travel document. But, they will be under the obligation of declaring themselves to the competent authorities on entry or within three days of entry (at the choice of the Contracting Partles).[23] Some asylum seekers might be Included In this provision If they hold a provisional residence permit and a travel document issued by one of the Schengen states.[24] In April 88, the French had raised objections to this proposal on account of the heavy workload that would be involved 'with little effect' ,125] but dropped them thereafter. The Commission adopts a different attitude and argues that the absence of border checks will make It impossible to prevent asylum seekers and refugees from circulating and concludes that It is best to try and put some order In their movements. According to the Commission Directive refugees should be allowed to stay In another EEC state for up to three months without a visa,[26] and asylum seekers who cross an internal border must register with the police within 72 hours, and are allowed to stay up to a month and cannot call upon health and social benefits. This last point will probably have to be modified as It

contravenes the established rules on the rights to benefits granted by the social affairs divlslon.[27] A Convention on controls at EC external borders, still to be signed by the 12, proposed to allow any aolien who holds a residence permit from one of the EC states to travel freely 'for a short stay' within EC borders (If the residence permit still has more than four months to run).[28]

All the documents which constitute the basis for these agreements have been kept confidential while they were discussed internally as well as the meetings of the Schengen group and the Council of the 12 which remain shrouded in secrecy. Observers from Non Governmental Organisations (NGOs) or the United Nations High Commissioner for Refugees (UNHCR) have not been permitted. The Commission was allowed to send an observer to the Council of the 12 which the European Parliament requested to attend as well (without success until now). The Commission has sent its directive to the UNHCR for comments and invited independent experts from European governments to look at it.

Information about these discussions has leaked out and provoked widespread protest. A press conference was held on 14 June 1988 by MEPs and nongovernmental organisations on the theme 'Today the clock Is being turned back 50 years. The doors of Europe are being shut!. Organisatons ca~lgning for the right of asylum submitted a petition to the governments of Belgium, the Federal Republic of Germany, France, Luxemburg and the Netherlands stating: 'The main issue of these discussions seems to be 'How to prevent the admittance of refugees in our countries? The effect of these measures are a diminished opportunity for refugees to reach the 'Schengen' countries, a very restrictive application of the Convention of Geneva and Inhuman treatment of refugees.'

The measures proposed by the three bodies studied cover a limited number of issues which all address the basic concern of European governments, security and immigration controls. As a consequence, 'A reinforcement of controls on the community external borders Is unanimously recognIsed as essential, following the abolition of controls on the community internal borders'.[29] One can infer from those an undoubtedly stricter and more efficient control of the arrival of asylum In Europe.

5. Treaties and conventions

All these discussions and negotiations have led to the setting up of several treaties and conventions. The Schengen group which had suspended Its work in 1989, resumed It in 1990 and signed an agreement in June 1990. Italy, which had no party to the discussion leading to this agreement also signed soon after. However, the Schengen agreement cannot be implemented as yet, because the Dutch Council of State has advised the Dutch government not to introduce the Schengen Convention of 19 June 1990 for ratification by the Dutch Parliament. In addition, the Twelve have moved fast in drafting two Conventions. The first, the Dublin Convention on the determination of the state responsible for examining an asylum application, was signed by all members of the EC with the exception of Denmark In June 1990. Under the Convention the main criteria for determining the state responsible are the conditions of entry of the asylum-seeker - which state authorized entry and/or Issued a visa. It also takes into account family links, the family being defined in the narrow sense as spouse, parents or children, if the latter are minors. It recognizes the sovereign prerogative of states to consider an asylum-request even If they are not bound to do so by the agreement. The Convention includes a re-admisslon clause for asylum-seekers whose request has been definitely rejected by a state If the latter has not taken measures to make them leave their territory. Finally, an

exchange of general and indivual information on asylum-seekers is plahned within the scope of the convention.

The second draft Convention which relates to controls at EC external borders defines what constitutes a point of entry, how to deal with agreements with Third States (non-EC members) and small border traffic. It includes a proposal to draw up a computerized lIst of personno non grata on EC territory. Another of Its significant concerns is the harmonlzation of policies and practices of EC states on the question of visas, with the possibility of Issuing European via Council of Ministers Convention meeting in Rome in December 1990 failed to reach an agreement on this Convention on account of the dispute between Britain and Spain over Gibraltar.

Two additional documents are being considered which may result in further international agreements: a draft convention on the transfer of proceedIngs in criminal matters; and a summary document on the strenthening of police oooperatlon. Finally, a new forum has been established to coordinate all these activities and to create a framework of action and a timetable in the run-up to 1992: the Coordinators Group on the Free Movement of Persons, which was established after the Rhodes summit of the 12 EC heads of governments in December 1988.

PART TWO HUMAN RIGHTS AND HUMANITARIAN ORGANISATIONS

The second part of thIs paper discusses the Issues brought to light by organisations concerned with asylum and human rights. Most of the texts examined emanate from a selected number of organIsatlons preoccupied with European policy on asylum. They include international, European and nongovernmental organisations.

The UNHCR documents have been discussed in particular when they addressed Europe.

The European Parliament has produced numerous recommendations, questions and a detailed initiative report on asylum issues. Several of Its committees have been discussing them, In particular the Political Affairs Committee, the Committee on Legal Affairs and Citizens'rights and the relevant regional committees such as the delegation for relations with the countries of Central America and the Contadora group etc.

The Council of Europe, comprising 23 European countries Issued declarations and agreements on refugees as early as the sixties and continued to do so until this date. Three of its committees have been directly involved, the Parliamentary committee on refugees, migration and demography, the comite ad hoc sur les asiles et les refugies (C~~) and the resettlement fund committee.

The coordination of non-governmental agencies in Europe plays an important role in shaping alternative policies. The European Consultation on Refugees and Exiles (ECRE), the main one, was founded in 1975. A Council of European Churches' working group on asylum and refugees was formed In the late 80's. All these organisations start from a fundamentally human rlghts/humanitarlan viewpoint. The Council of Europe however Is somewhat contradictory as Its Parliamentary committees function publicly in a spirit clearly steeped in human rights whereas CAllAR, a governmental committee composed of representatives of the Ministries of Interior and Justice holds Its discussions in complete secrecy and seems to suare the same outlook as the organisatlons studied in the first part of this article.

It Is not my objective in this section to exhaust the numerous issues pertaining to asylum seekers and refugees in Europe but to identify and explore the more urgent questions which have been focused upon by the organlsatlons mentioned. Many of these issues have arisen from the prominent trend in the policies and practices of European countries which crlstalllsed Into the 'harmonlsatlon' process initiated by governements.

It is noticeable that previous attitudes have considerably change The notions of human rights and soli~rity which prevailed in the wake of the Second World War and inspired several UNHCR declarations are now retreating. Governments and national communities are preoccupied with the preservation of their advantages not only because the struggle against nationalist atrocities and discrimination experienced throughout the 'thirties and early 'forties has receded in people's memory but also because the relatively improved standard of living and the previously buoyant European economies are perceived as insecure.

This is happening at a time when economic and political crises in the Third World have deepened, leading to an increase In the number of refugees to whom modern means of transport have rendered Europe more accessible. European governments have shown little concern for the Third World. Even the spirit promoted by Wlly Brandt, linking up the interests of the Third World with those of the industrialised countries has receded. The European harmonisation of policies demonstrates the strengthening of European chauvinsm against Third World and asylum seekers' Interests. As a consequence the general trend manifested by the organisations studied in this section expresses a defensive position. What were considered as acquired rights and protections are being gradually whittled away.. It follows that most of the points made in this section concern responses to government initiatives which are detrimental to refugees. Other points are issues which governments have Ignored but which the human rights organisations consider as important.

l. Global approach

Unlike European governments which have looked at Issues strictly confined to their national or European situation, human rights organisatlons promote a global approach to the question of refugees. All the organisatlons studied here have adopted this view and advocate an analysis of the root causes of refugee movements. Both the European Consultation on Refugees and Exiles (ECRE)[30] and the report prepared by H.O. Vetter for the European Parliament quote Prince Sadruddin Agha knan's study on 'Human rights and massive exoduses' and underline Europe's responsibility to tackle the root causes of refugee movements. They propose a European intervention not only in the humanltarlan field but also In the area of economics and politics. ThIs presupposes the readiness to broach Issues of underdevelopment and political instability in Third World countries. The problems involved are complex and cannot be developed here.

A global approach Is also put forward by the UNHCR in Its consultation with European governments, where the latter are asked to intervene in conflict ridden areas In order to make satIsfactory voluntary repatriation possIble and secure. The Council of Europe[31] and the European Parliament have emphasised the same idea which entails the granting of European aid to facilitate the reintegration and survival of the refugees in their homeland as well as ensuring guarantees for their safety. In addition, the organisations under study encourage Europe to take its share of the responsibility for assIsting the countries which receive great numbers of refugees and for the refugees themselves in those countries. The UNHCR calls upon European governments to recognise the burden of first asylum countries,[32] the ECRE[33] and the Council of Europe asks them to assIst refugees outside Europe. Numerous resolutions of the European Parliament do likewise and have led to the creation of budget headings to this effect. The Vetter report expounds the historical, philosophical and economic reasons for Europe's responsibility in these matters: 'The Community's responsibility stems fro:

- a general humanitarian and moral obligation towards people in need;

- the special historical role of Europe as a former colonial power;

- the commitment made In international and European treaties..to respect human dignity and human rights and actively promote the~' [34]

European states rarely, officially acknowledge any of these argument They may make a reference to the International Conventions to which they are signatory and the special colonlal responsibility Is sometimes brought up by a state to critlcise another state. For instance France and l?enmark have protested against Britain's shunning of Its responsibIlIty towards Sri Lkanan TamiIs which diverted them to neighbouring countries as they required a visa to enter Britain (confidential source). Human rights organlsations argue that European governments are acting like ostriches. ECRE points out that a global approach could offer them distinct advantages as the tackling of the root causes of refugee movements, assIstance to satisfactory settlement In the countries of first asylum and voluntary rapatriatlon programmes might very well decrease the number of asylum seekers reaching Europe.

These 'advantages' however are never the objectives poslted by ECRE or any of the organisatlons quoted in this section, they merely accrue from a global approach to the refugee phenomenon.[35] As for the governments, they do not examine the decrease of refugees in Europe within the world context, their sole interest in the world refugee movements seems to have derived from their desire to know where the next arrivals will come from, presumably to close Europe's door more efficiently. Hence the exchange of information proposed in the harmonisation process.

The first reference to harmonlsatlon made by the organisatlons studied in this section Is a recommendation produced by the Council of Europe in 1976.[36] It noted the differential practices and procedures In Europe as well as discrepancies in the rates of recognition of, refugees and sought to remedy them. This led to another Council of Europe recommendation In 1981 on the Harmonisation of national procedure related to asylum. The latter text does not promote any formal harmonisation but Invites European states to check that their procedures and practices meet with Council of Europe standards requiring an 'objective and impartial judgement', the referral of the decision to a 'central authority' (not to be the responsibility of immigration officers at the border), 'clear instructions' to immigration officers against refouiement, id the permission for the applicant to remain whllst the asylum request was being examined.'[37]

Since these recommendations were drawn up, a greater sense of urgency has colourod the declarations of the human rights organisatlons as European states have been trying to reduce the number of asylum seekers on their territory through various means.

2. Restrictive practices

One area of concern for human rights orgnnisatlons has been the im~ition of visas which prevent asylum seekers from leaving their country of nationality or residence. H.O. Vetter notes that EEC member states are 'trying to discourage the influx of those applying for asylum by extending the visa requirements to the principal countries of origin', and substantlates his statement by numerous examples from several European countries.[38] Moreover thIs trend promises to become more pronounced. The UNHCR voiced Its concern at the Commission's directive plans to 'tighten up controls on asylum seekers and refugees at external frontiers' [39] Since 1986 France has been implementing a blanket visa policy for almost all non-EEC and Swiss nationals and It Is feared that 1992 Europe may do the same. ECRE warns that 'it Is contrary to international legal principles to impose entry visa requirements exclusively in order to prevent people' from leaving their own country or country of first arrival in order to

seek asylum.'[40] In addition to visas several European countries have also implemented a policy of sanctions to airlines and other transport companies for carrying passengers who do not have adequate documentation. As a consequence, the UHNCR has objected to 'visa requirements which are intended, and/or work often In combination with airline sanctions, to inhibit the entry and therefore the access to asylum procedures by applicants in need of international protection. '[41] The UNHCR sees in these practices not only an infringement of basic principles of refugee protection but also a threat to principles of international cooperation. Indeed they mostly serve to divert asylum seekers into other states.

On the whole what is criticised by the UNHCR Is a restrictive Interpretation of the Convention and Protocol as Tiberghien points out in Le Monde (19 April 1988). In its consultation with European governments the LmIHCR signals restrictive trends in the concept of country of first asylum and the refugee concept itself: 'Restrictive practices have been manifested In different ways and vary substantially in scope and intensity from one country to another. Overall, however, they can be said to amount to a clearly discernible regional trend.'[42] Both the European Parliament and the Council of Europe crltlcise the restrictive interpretation of the concept of refugee and the Increased standard of proof requested of the applicant.[43] The Council of Europe also objected to the unfair treatment dealt to refugees because of 'recent developments in the policies of several countries tending to assimilate the situation of the refugee with that of the ordinary alien or migrant worker.'[44] The European Parliament warns against the risk of an effective restriction on the numbers of spontaneous refugees because numerous quota refugees have been accepted. For many reasons the situation of asylum seekers is made quite

impossible. In some cases asylum seekers are 'punished' for being in possession

of forged travel documents or for making false statements[45] without taking Into account the fact that thIs may derive from the very fear of persecution which motivates their flight and justifies their right to asylum. On other occasions It Is Implied that the possession of regular documents contradicts their claim that they are unable to enjoy the protection of their country of nationality. [46] Finally refugee status Is often refused because of a restrictive interpretation of country of first asylum.

Another issue looming high on the agenda of human rights organisatlons is the increased likelihood of refoulement (deportation). H.O. Vetter signals in his report 'moves to repeal the -principle of non-refoulement' [47] and the European Parliament made several recommendations against refoulement as well as the extradition of recognised refugees. The UNHCR expressed Its concern for the application with increased frequency and rigour of the notion of 'manifestly unfounded' or 'abusive' claims. It proposed a definition for 'manifestly unfounded' which protects asylum seekers qualifying for asylum not only under the 1951 Convention and 1967 Protocol but also under 'any other criteria justifying the granting of asylum'.[48] The risk of refoulement has become such a preoccupation for non-government agencies dealing with refugees that ECRE includes, in its policy for Europe, very clear guidelines about the situations in which It would be acceptable to return asylum seekers to their country of origin or to the country of first arrival. The more frequent cases of refoulement have not been those of asylum seekers being returned to their country of origin but to the country of first arrival considered as country of 'first asylum' by the relevant authorities; this country then had sent them back to their country of origin where they risked torture and death. Moreover, European countries are extending more and more the range of cases where refugees are deemed to have passed through a 'country of first asylum'. ECRE makes sure that it caters for this possibility with the maximum guarantees of safety being

granted to returnees by spelling out the conditions which must prevail in countries where asylum seekers are to be returned. In such countries there must exIst a basic protection (including specific protection against refoulement), and assistance, an effective access to a local procedure, an effective access to efficient and adequate resettlement facilities and facilities for volontary repatrlation.[49] ECRE also reaffirms the need to give favourable consideration to asylum requests If fears are expressed that the asylum seeker's physical safety and freedom would be endangered on being returned.

3. De facto refugees

As a response to the European governments' Increasingly restrictive interpretation of the 1951 Convention on refugees, international and non-governmental organisations have resorted to a variety of other Conventions and declarations to protect asylum seekers. (501 For example the European Convention on Human Rights includes a number of articles which could be applied to asylum seekers. ECRE cites among them article 3 which prohibits Inhumane and degrading treatment, thus preventing refoulement to countries where thIs would take place or article 8 which would stop the deportation of an asylum seeker If it was to disrupt hIs or her family life.[51] Melander explains how states in thIs case have to accept an indirect responsibility for what happens to asylum seekers who have been returnd[521 A new category of refugees have thus been created, sometimes described as 'humaiitarian law refugees' 1531 or de facto refugees(541 for whom an extension of the protection and assistance accorded to Convention refugees Is asked for by the organisations concerned.

This development reflects an actual change In the world panorama and the circumstances bringing about refugee movements. The 1951 Convention has been drawn up with a specific population of refugees in mind, resulting from the reorganisatlon of post-war Europe. In 1985 the UNHCR pointed to changes In the 'nature and scope' of refugee problems and the 'changing character of refugee movements'.1551 Today's refugees come from the Third World and a study carried out by Prince Sadruddin Agha lthan into the causes of mass refugee movements singles out wars, revolts, the break down of law and justice, repression and anarchy, persecution and the denial of social equality of opportunity and general fears about the future.[561

As it reads now, the Geneva Convention does not cover victims of civil war or generalised violence. To cater for these refugees one possibility was to broaden the interpretation of the Geneva Convention to include the: It has even been put forward that post Second World War refugees were not i different as they were flying In order to escape from severe internal upheavals or armed confllct.[571 On other occasions women who had suffered from severe sexual discrimination have claimed Convention status on the basis that they constituted a 'social group'.[581 Agency or tJNEICR representatives argue that all asylum seekers should be given the same treatment as Vietnamese refugees who were not asked to justify Individually of persecution. The European Parliament quoting the UNEiCR guidelines proposed to broaden the concept of persecution to Include cases 'If certain social groups in the population suffer at the hands of another section of the population ... if it happens with the authorities' knowledge or If the authorities refuse or show that they are unable to afford those concerned effective protection. Internal conflIcts, serious unrest or a state of war may mean that a person cannot avail himself of the protection of his country or such protection is ineffective.' [59] The practices of European states have revealed their reluctance to accept any collective notion of persecution as grounds for recognition of refugee status under the 1951 Convention. Rather than broaden the interpretation they have made it more and more restr!ctlve.

The second option open was to propose a rewriting of or an addition to the 1951 Convention. It was mentioned that the OUA Convention could simply be added on. On the whole this option has been abandoned as most agencies and organisatlons dealing with refugees judge that the political climate Is such that It would bring about a new version of the Convention even stricter than the present one. This feeling underlies the UNHCR viewpoint that there Is no need to revise international refugee instruments.[60]

The third strategy widely adopted now among refugee agencies and International organIsatlons has been to argue for the granting of asylum to applicants who do not meet convention criteria but have a valid reason to be granted asylum on humanltarlan grounds. In the consultation between the UNHCR and European governments one of the main issues to be discussed is presented by Mr Moussali as 'the notion of who Is a refugees [sic] and the treatment to be granted to persons who are not refugees according to the traditional concept, but who nevertheless are in need of protection.'[6l]

The Councll of Europe in its Declaration on Territorial Asylum emphasized the right to grant asylum to any person they consider worthy of receiving asylum for humanitarian reasons.[62] as early as 1975, the Council of Europe had already produced a report on the Situation of De Facto Refugees and proposed a definition of de facto refugees as 'persons not recognised as refugees within the meaning of Article l of the Convention relating to the Status of Refugees of 28 July 1951 as amended by the Protocol of 31 January 1967 relating to the Status of Refugees and who are unable or, for reasons recognised as valid, unwilling to return to their country of nationality or, If they__have no nationality, to the country of their habitual residence.'[63] It also proceeds to expiain what Is understood by 'valid reasons'.

'As valid reasons shall be recognised:

a. a person's reasonable belief that he will be
l seriously prejudiced In the exercise of his human rights as proclaimed In the European Convention of Human Rights and Fundamental Freedoms of 30 November 1950 and Protocol No.l thereto, in particular discriminated against for reasons of race, religion, ethnic or tribal origin, membership of a particular social group or political opinion;

ii. compelled to act in a manner incompatible with his conscience.

b. war or warlike conditions, occupation by a foreign or colonial power, events seriously disturbIng public order in either part or the whole of the person's country of nationality, or, if he has no nationality, the country of his habitual residence.' (64]

Moreover, H.O. Vetter argues that some so-called 'economic refugees' could be Included in this de facto refugee category when economic hardship directly results from political oppression. As Vetter explains:

If a person leaves his country for economic reasons the underlying factors must be examined carefully. If his financial situation Is desperate, this may also be the result of persecution by the State. If economic measures adopted In the

home country are directed against a particular section of the population and destroy their chances of economic survival, the object and intention behind the measures may be of a racist, religious or political nature.(65]

In subsequent years refugee agencies have found it more urgent to press for a widespread acceptance of the principles outlined above in order to secure some possibility of asylum to the asylum seekers who needed protection but falled to qualify as Convention Refugees. Such a strategy has had the advantage of obtaining asylum for a greater number of applicants than those to be recognised as Convention refugees. The drawback is that the former constitute an inferior category of refugees with worse socio-economic conditions and civil rights. They also provide an escape for European governments which may seize this opportunity to recognise a lesser number of Convention refugees without risking the blame of contravening the human rights conventions they have signed. Consequently a disagreement exIsts amongst refugee agencies on thls issue, several of the French ones refusing this additional category of refugees.

In the interim several requests have been put forward for an improvement of the de facto refugee situation. The Council of Europe lIsted a series of demands to this effect concerning housing, employment, residence, language and vocational training, the recognition of qualifications, and the authorlsatlon to engage in political activities. (66] However It appears that their mere existence is not envisaged in the discussions of European governments on the harmonisation of refugee policy. The U~CR finds it necessary to remind the Commission to include them in its Directlve.(67] It is difficult to contemplate what will be the fate of de facto refugees when internal frontiers are abolished.

4. Refugees in Orbit

The phenomenon of refugees 'in orbit' being pushed on from one country to the next, as none accepted to examine their asylum requests, made it necessary to consider the state responsible. The Council of Europe has been working on this issue since 1977 without reaching an agreement. It points out that asylum seekers cannot be allowed to remain unattended as it contravenes the European Convention on Human Rights. It also argues that it Is not fair to let countries most accessible by accidents of history or geography be overburdend The latest proposal for discussion which the Ad Hoc Committee of experts on the legal aspects of territorlal asylum, refugees and stateless persons (~AR) has drawn up establishes the general principle that any party authorising a person to enter or stay on its territory shall be solely responsible.(68] In general its recommendations do not differ essentially from the proposals of the Conimission and would fit better within the framework of governmental points of view.

5. Social provisions

There is one area which governments negotiations have not touched but which figures high on the agenda of organisatlons concerned with refugees, namely their socioeconomic and civil rights, their conditions of reception and settlement. Asylum seekers and de facto refugees are the ones who suffer most and are given the worst conditions. H.O. Vetter develops a strong section of his report demonstrating how Insufficient the social provisions for asylum seekers are,(69] and denounces 'deterrence measures' designed to discourage applicants from putting in asylum requests in some countries. The UN~CR stresses to the European Commission the Interdependent relationship between the uneven distribution of refugees and asylum seekers In Europe and the discrepancy

In socio-economic conditIons offered to them across Europe. 'This (uneven distribution) Is in part caused by different standards regarding the treatment of asylum seekers with respect to residence, employment and social assistance.' (701

For H.O. Vetter, the solution Is a burden-sharing approach within the EEC and he proposes the setting up of a community budget for this purpose Most government officials reject this notion on the grounds that It would simply become a pretext for states to shun their responsibility. Finally ECRE proposes a cambaign to restore the positive image of refugees to facilitate their Integration.(71]

Conclusion

Most of the issues explored in this paper remain inconclusive. One reason for this is that none of the agreements discussed and struck by governments have been implemented as yet. In the meantime International organisations and refugee agencies are deploying their efforts to influence those discussions and counteract the prevailing restrictive trends. However, in the last analysis, the power of decision and application rests in the hands of governments. What Is at stake is the character of the Europe which is being built. A Europe of business and market or a Europe of social and human rights.

Notes

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3. Ibidem, p.14.

4. Interview, Paris, 12.7.88, confidential.

5. Ibidem.

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7. Interview, Paris 14.7.88, confidential.

8. Directive, p.3l.

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10. Directive, Art 3 to 13, p.39-43.

11. Schengen, Working Party I et II, Mixed Committee Ad Hoc I et II, 'order security and border-control', Brussells 25 April 1988. Article 36, 25 April 88.

12. Chapter 7, Article 35. 1.2.

13. Accord de Schengen, Chaptre 7, Article 29-4.

14. Accord de Schengen, Sch/M (87) P & 2. Chapitre II p.16.

15 Accord de Schengen, Chapter 6, Article 26 1-a, b, and 2.

16. Schengen, Chapitre 6, Article 27-1.

17. Directive, titre IV p.65, article 17.

18. Directive, p.49.

19. Directive, Titre V, Article 20. 21. p.67, 68.

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28 Article 8, l.b) p.17, July 15.91.

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