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RACISM AND INTOLERANCE VERSUS REFUGEES
IN THE HOST COUNTRY

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Note: The opinions expressed in the paper are those of the author

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A paper submitted by Peter Nobel, Member of CERD, to a "Seminar of Experts on Human Rights, Refugees, Multiracial and multiethnic States" (GA resolution 49/146 para. 7.h.).

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A. DEFINITIONS AND CONCEPTS

1. On Racism

Art.1.1 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, ICERD, refers to unfairness and injustice "based on race, colour, descent or ethnic or national origin". Art 4 speaks about "ideas or theories of superiority of one race or group of persons of one colour or ethnic origin"; and "ideas based on racial superiority or hatred".

Racism is a set up of ideas or attitudes based on the acceptance of the following five preconditions (postulates):

1. Mankind can be divided into a number of distinct races recognisable by physical characteristics.
2. There is a connection between such physical characteristics on the one side and the inherited intellectual, moral, mental or emotional character on the other.
3. It is assumed in a generalising manner that the inherited characteristics are common for all members of the race in question (with the possible - and comfortable - exception for some personal acquaintance or publicly known persons of distinction in the field of e.g. sports or music).
4. The races are classified in a hierarchy depending on the quality of the inherited characteristics, as decided from the racist point of view, offering a picture of "higher" and "lower" or more or less "desirable races".
5. This hierarchical classification justifies - or as the case may be even obliges - members of the "higher races" to dominate, exploit, marginalise, oppress or annihilate those belonging to one or more "lower races".

The 1st of these assumed postulates is highly disputable to say the least. The 2nd and 3rd are absolutely erroneous according to science. The 4th and 5th are evil, inhumane and extremely dangerous to mankind. Still the various forms of racism do appeal to weak minds and souls. One of the lures is that the racist himself in his perverted thinking usually believes that he belongs to the superior race.

Although this schematic description is something that most respectable discussants should be able in principle to agree upon it is not surprising that even experts when confronted with the ever changing phenomena of real life can find themselves in lively debates on what is racism and what is not. (1).

What for example is the proper meaning of the word “xenophobia” and is it different from racism or just a form thereof? Xenophobia originally seems to suggest fear of or hatred towards strangers heightened into neurosis. The German and Scandinavian languages have words missing in English, which describe a less pathological fear or hatred towards strangers as such and which may not amount to racism. The strangers may even belong to the same ethnic group and still they are met with such fear, suspicion or hatred (in German: Fremdenfurcht, Fremdenhass, in Swedish: Främlingskräck, främlingshat).

In legal argument it is important to be exact with words and concepts. The same should go for the public debate, which can be rather harmful if unnecessarily polarised. If someone who is not really a racist is accused thereof, he is not only being insulted without justification but he might also be driven into a corner where he takes a more extreme standpoint than might have been the result of more careful wordings from his opponent.

2. Remarks on religion

Religion is not mentioned among the factors that can be the base of racial discrimination according to ICERD, Art.1.1. Freedom of religion however is firmly enshrined in the International Code of Human Rights. The 1951 Convention relating to the Status of refugees, the Refugee Convention, in its refugee definition in Art. 1.A. (2) also among the reasons of persecution lists religion, together with race, nationality, membership of a particular social group or political opinion. In the Swedish and other domestic legislation one also finds religion among the criteria which might inspire intolerant elements to ethnic or racial discrimination directed at the followers of a specific creed. Although animosity towards the religion of other peoples in most cases is combined with negativism against them also on other grounds, we can not exclude that discrimination and persecution of a purely religious character might again occur. In such a case the Committee on Elimination of Racial Discrimination, CERD, will not have the mandate to deal with the problem. This is mentioned here because intolerance versus refugees in certain host countries quite often is intermingled also with fear for or distrust of their religion. We should also bear in mind the 1981 GA Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

3. About intolerance

Intolerance stands out to this author as the very key word for the oncoming 2001 World Conference on Racism, Racial Discrimination and Related

Intolerance. Tolerance is respect for the Human Rights and Fundamental Freedoms of others. Intolerance is its opposite. It should be one of the main recommendations of that conference to condemn intolerance and to illuminate how instrumental it is for generating racial discrimination. One might fear certain groups; one might disagree entirely with their religious beliefs, political aims or esthetical ideals, one might be deeply critical even disturbed by their culture or whatever. But one is never allowed to infringe on the Human Rights and Fundamental Freedoms of anyone. Who does should be dealt with under the due process of a law that in its turn is based on the full respect for these rights. Intolerance towards refugees in host countries has manifested itself in criminal acts and political programmes incompatible with civilised standards and universally adopted principles of human rights.

Racial intolerance versus refugees is generally speaking most visible in rich and industrialised countries applying a policy of restricted immigration. We will return to this subject further below but let us first look into the concept of refugee.

4. Refugee definition

From the strictly legal point of view a refugee is a person who has been declared to be such by a government or by an agency acting on its behalf following a refugee determination procedure based on the definition of the above mentioned Refugee Convention. (2) This is the classical definition of a refugee which speaks about any person who is outside the country of his nationality because of well founded fear of being persecuted for reasons of race, religion etc as just given above.

This definition excludes those who have fled or been driven away but find themselves still within the territory of their country of nationality. To qualify as a refugee a safety seeker must have crossed at least one international boarder. Those uprooted that have not done so, are referred to as internally displaced persons. They may in some cases benefit from humanitarian assistance or intervention but there is no particular instrument in international law for their protection or assistance. We shall not go into details about this since this paper is about refugees in the host countries.

5. Confusion

The word refugee is seldom used in the restricted legal sense of the Refugee Convention. In fact there is much confusion about refugee hood. The media and the public can seldom distinguish between recognised refugees and asylum seekers. There is a tendency even to see as refugees all persons who enter the country with the hope to be allowed to stay there, whether they arrive for family reunification, as job seekers or for some other reason. Such tendencies gather strength if asylum seekers are put together with other applicants for

permissions of residence in special camps or refugee reception centres more or less isolated from the surrounding society.

An even greater problem is that the definition of the Refugee Convention is rather strict and narrow and therefore covers only a portion of all those who are forced to flee. In the background paper following the invitation to this seminar it is stated that among the some 22 millions persons assisted by the High Commissioner for Refugees, UNHCR, only about 13 millions are refugees in the "conventional sense".

A look at the large refugee movements of the latter part of the 20th century shows that most of them could not be described as persecuted or threatened by persecution directed at each one of them for any or more of the five reasons given in the convention. No, in many cases entire populations have left their homelands, their villages or their cities because of armed conflict, indiscriminate violence or atrocities committed against civilians by armed forces. These or other disasters have made conditions so dangerous or unbearable that it is not reasonable to require the safety seekers to return. Warfare on the Horn of Africa, in Afghanistan and Central America can be given as examples of cruel armed conflicts that have generated refugees in millions or hundreds of thousands. There has been and is among them those who would qualify as refugees under the Convention but the vast majority falls outside. However only in Africa and in Central America have these safety seekers been officially recognised as a category of refugees. Western governments have not been willing to do so.

All these human beings that have in fact been forced to leave their country of origin or nationality but are not protected by the Refugee Convention used to be referred to as de facto refugees by experts and others interested. Western governments however avoided even this term fearing that it would lead to an unwanted extension of refugee definitions. (3) It is worth mentioning that a UN Conference on Territorial Asylum in Geneva 1977 aiming inter-alia at widening the refugee definition failed completely to do so for political reasons.(4) These same governments and their spokesmen have often been heard saying that they would continue with generous refugee policies benefiting those who are refugees under the Convention. The true meaning of such statements in most cases has been a desire to confine the granting of asylum to "Convention refugees" and take a pragmatic approach to the rest. The de facto refugees have then been referred to as "persons in a refugee like situation", "aliens invoking refugee like circumstances", "safety seekers other than refugees" and similar confusing and vague language, when these unhappy individuals have not been downright called "economic refugees", "economic migrants" or "luck seekers". Yet large numbers of precisely these immigrants have been allowed to stay for "humanitarian reasons" or other terms equally designed further to confuse the issue ("Gedultete", "Asielgerechtigden", "Asilé", "Assimilé" etc). Sweden was the only country having enacted, in

1975, a right of asylum for de facto refugees. Following the arrival in Sweden of large numbers of Bulgarian Turks the Government however in the end of 1989 suspended the right of asylum for de facto refugees. (5) In 1996 the immigration law was amended so as to replace the previous description of de facto refugees (and war deserters) as entitled to asylum with a seemingly more restricted reference to “those in need of protection”.

In the meantime it seems that some governments with a very conservative reading of the refugee definition and having a heavy impact on the budget of UNHCR have managed to have the term de facto refugee eradicated from the vocabulary of that body. It seems therefore to have disappeared from the discourse altogether as well as from the doctrine. (6) The unhappy millions of children, women and men, taking the most numerous first, however have not disappeared just because the verbal and legal tools to deal with them in a humanitarian manner is lacking.

In the absence of universal principles for the protection of de facto refugees other approaches to the problem have forced their way. As we shall see regional legal solutions have been found in Africa and to some extent in Latin America. Within the UN framework the GA and ECOSOC have adopted a large number of resolutions and decisions dealing with protection and assistance for refugee populations and relating to the office of the UNHCR. Consequently as we have seen that office is assisting many more than those covered by the definition of the Refugee Convention. The UN instruments just mentioned however are not binding and do not cover all de facto refugees in the world.

These remarks may serve to illustrate the confusion associated with the word refugee. It is safe to say that very few people have a clear idea or knowledge of who is a refugee and who is not. When we speak about intolerance versus refugees therefore we have to realise that those who are intolerant seldom know who is a refugee. The intolerance normally is not directed against refugees as such but against non-nationals, foreigners, minority groups etc, in brief it is part of racist and xenophobic currents in general in the host country. These currents in their turn have to a considerable extent been strengthened by the way the political establishments have handled the refugee issues.

B. EACH REGION IS DIFFERENT

Intolerance versus refugees in the host country is not a subject that could be dealt with in general terms speaking about the whole world at the same time. Conditions are entirely different in the various regions. A short survey is intended to show this. The remaining part of this paper will then be devoted to the western countries, particularly West Europe, where the problem of refugee

intolerance has taken on serious dimensions which also has negative effects for the developments elsewhere.

6. Africa

The peoples and governments of post colonial Africa have demonstrated an impressive tolerance and generosity towards refugees in spite of problems of poverty, underdevelopment and in many places shortage of land. This may have come natural towards refugees from the former apartheid regime or territories still under colonial or white minority rule. But it was clear at an early stage that the majority of refugees in Africa were Africans who had fled from independent states on the continent following the many military coups, political unrest and armed violence there. It is remarked that the militarization of Africa by means of arms exports mainly from western countries and the former Soviet Union may well stand out as an evil fully comparable to the slave trade and the colonial oppression.

Serious ethnic conflicts have taken place mainly in Central Africa. They are probably more the results of the manipulations of so called ethnic conflict entrepreneurs than spontaneous actions by the peoples. There is also research indicating that ethnic identity is something that has basically been fostered among refugees in exile. (7) However these tragedies do not to any greater extent tarnish the bright over all picture of African tolerance towards refugees. There are also in several African countries, refugees from other continents who have been received as generously.

Already in 1969 the OAU Member States adopted their Convention concerning the Specific Aspects of Refugee Problems in Africa. In Art.I.1. the convention confirms the validity in Africa of the definition of the international Refugee Convention. In Art.I.2. the fathers of this OAU Convention wisely have extended the definition to cover also de facto refugees. It reads like this:

“The term “refugee” shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality.”

These well considered wordings have solved many problems for the African refugees and Governments and should serve as a model for other regions. However only in Latin America have they done so.

7. Latin America

The countries in Latin America have suffered coup d'états, dictatorships, police and military cruelties with impunity and political intolerance. But intolerance towards refugees as such has not been part of the overall picture. In opposite it

may well be that the traditional political unrest of the continent has fostered an understanding for refugee hood and the experience that any intellectual political opponent, any courageous labour union official might find himself arrested or in exile. The Spanish language spoken in most of these countries can be assumed to have made life easier for the typical political refugee exiled in one of them.

At International Conferences of the American States in Havana 1928 and Montevideo 1933 Conventions on asylum respectively political asylum were adopted. Through these instruments criminals and fugitives from justice were exempt from an asylum which was traditionally given to safety seekers fleeing from injustice. It is noted that the USA made a reservation against the first and refrained from signing the second because it did not recognise the doctrine of asylum as part of international law. The specific Latin American concept of diplomatic asylum was further dealt with in a convention signed in Caracas 1954. The institute of diplomatic asylum is not found in the legal systems in other parts of the world. Most of the American States are also parties to the International Refugee Convention and the 1967 Protocol thereto that extends its applicability making it the universal instrument for protection of refugees.

The traditions of political and diplomatic asylum and the definition of the Refugee Convention with its focus on persecution for specific reasons seemed well designed to meet the requirements of Latin American refugee situations for a long time. From around 1980 however the situation gradually changed. Very large numbers have tried to leave Caribbean States like Cuba and Haiti to seek asylum mainly in the USA. Many of them have not been recognised as convention refugees and have been rejected. Forced rejection of e.g. boat refugees have occurred. The developments in Central America were even more dramatic. Hundreds of thousands, most of them from El Salvador, Guatemala, Honduras and Nicaragua were driven away by armed conflicts in most cases out of their own countries. Most of them belonged to rural populations with limited or non-existent resources. The situation had more likeness with what had happened in Africa than it had with previous Latin American experience. This was the background to a meeting between the governments of ten states in the area convening in Cartagena in Colombia in 1984. In a declaration unanimously adopted they extended the refugee definition explicitly referring to the widened African definition. With this Cartagena Declaration recognition of de facto refugees got a foothold in Latin America.

8. Asia

It is not possible in any limited space to write anything meaningful about all the Asian sub-continent, their many countries from the largest with enormous populations to the smallest, some highly industrialised and well advanced in technology, others underdeveloped, all their different peoples, religions, languages, cultures and traditions. No important regional convention for the

protection of refugees has been agreed upon. Some countries like China and Japan have a historic tradition of ethnic isolationism. It is often referred to delicate ethnical balances in many of the Asian nations.

Large-scale refugee movements have occurred. Some of them seem more or less to have dissolved themselves following the settlement of the political conflict that generated them. So for example as many as 14 million people were estimated to be on the roads when after the independence of India, Pakistan opted for secession. The absolute majority of all these millions obviously managed to settle in the country dominated by their own religion, Hindus in India and Moslems in Pakistan. Later in 1970-71, when East Pakistan fought for its independence and proclaimed the state of Bangladesh at least 10 million Bengalis became refugees in India but returned home when peace had been achieved. But there are also many reports from Asia about refoulement, rejection at the boarder or long term detention in camps under unsatisfactory, sometimes appalling conditions.

One tragedy that eventually through the media became known all over the world was the plight of the Chino-Vietnamese boat refugees. It started towards the end of the 1970ies when they were refused to land in countries like Malaysia and Indonesia and therefore often perished at the high sea or fell victims to the cruelties of pirates. A conference hastily summoned in Geneva by the Secretary General of the UN in the summer 1979 resulted in the reception of about 200.000 of these refugees in USA, Canada, Australia and a number of European countries. But it also led to an agreement between UNHCR and the Government of Vietnam to limit and control the outflow through "Regular Departure Programmes". To me this is an astonishing innovation. (8) The exodus from Vietnam mostly of Vietnamese of Chinese origin however continued and exactly ten years later there was a new international conference in Geneva on the subject. It endorsed a Declaration and Comprehensive Plan of Action stating inter alia that "the current Orderly Departure Programme, should be fully encouraged and promoted".(9)

The most recent Asian refugee movement internationally observed is the one on Timor. The cause was military and paramilitary mass violence against civilians in East Timor motivated by nationalistic zest possibly fuelled by religious differences. These refugees are supposed to return following international control and peacekeeping in their country of origin.

It is hardly possible to see the plight of refugees in Asia generally as a result of intolerance specifically directed against refugees as such. Rather it is part of something much greater, which is fear for disturbances of ethnical balances and of threats against political and economical power structures. Such fears have inspired much control, brutality and oppression. They should be restrained through tolerance and respect for human rights. It is highly desirable that all governments see this and perform their duties accordingly.

9. Western Countries

It has been found difficult to put the finger on any general intolerance specifically directed towards refugees as such in Africa, Latin America or the Asian regions. Political and economic convulsions are presently experienced by many of the East European Countries. The efforts to build democratic civil societies there guided by the universal principles of human rights must of course also include fostering understanding for the right to asylum and tolerance versus refugees entitled to enjoy that right.

The Western countries remain to be considered. USA, Canada, Australia and West Europe have attracted immigrants and asylum seekers from other parts of the world. The governments have responded to the pressure with legislation and a battery of measures designed to control and restrict immigration. There are similarities but also differences. USA has a tradition of multi-ethnicism and immigration. They also have the dark memories of the slavery of Africans and the annihilation of most of the indigenous peoples on their territory. Australia likewise has suppressed the aborigines of the continent but is also a country with considerably high rate of immigrants gradually becoming more and more multiethnic, which fact has caused political tension. Canada probably is the Western country that has been most generous in receiving refugees and other immigrants and most successful in integrating them in the society.

Many of the countries in West Europe have a past as colonial powers. They have reacted in concert to the pressure of asylum seekers from non-European regions. The intolerance towards refugees as such clearly, more clearly than in other regions, is a problem there. Therefore the rest of this paper will concentrate on West European developments in this respect. First because they are known. Second many of the measures taken in West Europe are also employed in other industrialised countries. Third the European refugee policies have a negative effect in other regions. Political leaders and others there tend to pose the question why they and their countries should be so generous when the rich countries of the West, who like to praise themselves for their high standards of humanitarianism and human rights, are not. West Europe is setting a bad and dangerous example.

C. THE CASE OF WEST EUROPE

10. The first 35 years after World War II

These were the years of rebuilding, economic development and a firm devotion to human rights. Refugees were people who had fled the Soviet Union or its

new satellite states. There was a great need for imported labour to help in the build up of the industry and the cities. Such labour was actively recruited in Eastern and Southeast Europe including Turkey. Former colonial powers also received large numbers of inhabitants from the former colonies. Portugal, Spain, France and Belgium received immigrants from their former colonies in Africa and the Netherlands from South East Asia. I recall John K. Gallbraith joking about Great Britain which had for 150 years ardently defended its empire and was now trying to defend itself against it.

Many of those immigrants of course were in fact refugees but did not bother to go through the cumbersome procedure of refugee determination, as they were welcome directly to take up wage earning activities. I think most Europeans believed that racial intolerance was something that belonged to the past. But it was known that racist ideas and its adherents hibernated. Worse, as the ugliness of racism was more or less axiomatic to most people, there was little of debate about it and no process of weeding out the institutional and partly unconscious racism that is part of the inheritance of the Europeans. It comes to the surface in the attitude of patronising or looking down on other peoples than themselves and their descendants considering the European civilisation as original and superior compared to others. Consequently, the ideological and legal preparedness was weak when in the 1980ies racism in various forms woke up and visibly entered the stage.

Although we now see the 1960-70ies as idyllic years with a high standard of humanitarianism and much hope for the future among friends of human rights, things were far from perfect. People were not treated equal. Italy, who had not signed the 1967 Protocol on the Status of Refugees and therefore did not grant refugee status to anyone from outside Europe, nevertheless hosted thousands of Africans to a large extent from Eritrea, who lived there clandestinely without rights or social security. In France and other countries the situation was similar. Although they did offer an asylum procedure many foreigners were tolerated as “clandestins” as long as they kept quiet and did not demand any rights. Germany and Austria employed an equally negative system of “Gastarbeiter”, which word indicated that they were expected to return home when they were no longer needed.(10) Also in other countries the domestic legislation in these days did not offer sufficient protection for the foreigners against being exploited by landlords and employers. In the UK what came to be known as the Brixton disorders in April 1981 and their aftermath revealed poor living conditions among the black inhabitants and racial prejudice within the police force and other representatives of the society. (11)

11. Building the European Fortress

Somewhere around 1980 there was a change. Instead of the need for foreign labour there was a growing under employment. During the 1980ties foreigners were not needed any more. But many of them needed us and now they came in

great and growing numbers as asylum seekers and suddenly it was the other way around. As it was almost impossible to obtain working-and residence permits, many among them actually seeking a job presented themselves as asylum seekers. More and more of them also came from countries far away like Bangladesh, Sri Lanka, Somalia, Rwanda, others from Iraq, Middle East and Turkey putting the ethnic tolerance of the Europeans at a test that was not always passed to satisfaction. The proclamation of the Islamic Republic of Iran 1979 and the following events led to a considerable pressure on refugee receiving countries particularly in Europe and did much to inspire the restrictive measures which will be described below. This paper is not intended to give statistics or describe refugee movements. It is sufficient to state that the asylum seekers were more different than the East Europeans and Latin Americans to which the West Europeans up till then had got used to – not to mention the refugees from the previous dictatorships in Portugal, Spain and Greece. To give a glimpse also of the increase: 70.000 asylum applications in 1983 grew annually to reach 442.000 during 1990. (12)

These developments of course were reflected in the media with all the simplifications and dramatic exaggerations, that are part of modern news reporting. The public opinion in the West European countries consequently became more upset than there was need to and they were reported by the same media to be more upset than they were. To describe it very briefly, the spirit of humanitarianism step by step gave way to a tendency to see refugees, immigrants and immigration as a complex of problems calling for technical and administrative solutions. There was a certain alarmism and few remembered the refugee movements in the beginning of the century and how limited were their effects in the long run.

The Nazi leadership in Germany during their last months in command coined a propaganda phrase “Festung Europa”. This was intended to make people believe that the European continent should be safe from invasion by the allied forces. In the mid-80ies Francophone NGOs took up this ominous expression to designate how European governments raised walls against asylum seekers from outside (13)

In the construction of this fortress each government acted on its own as policies towards refugees and other immigrants are primarily seen as the concern of the state. However co-ordination developed under the pressure of events. If for example one country after another introduced visa requirements for Iranian citizens the pressure grew on those who had not yet done so. There were also several institutional as well as informal forums for joint deliberations and co-ordination well before the Schengen Treaty. (14)

A short overview will here be given over the most important elements used when building the new European Fortress. They are the typical measures taken by governments to control immigration and prevent asylum seekers from

arriving. In some cases the effects of those measures will also be commented upon.

1. The requirement of entry-visa or of residence- or as the case may be work-permit before admittance into a country. These documents have to be personally applied for at the Embassy of the issuing country in the country of the applicant.

Comment: By definition no one is a refugee as long as he is still in his own country so he cannot apply on that ground. For reasons of security embassies are under constant surveillance by police or other agencies so in many cases it might be dangerous to be seen visiting them. In theory a refugee is entitled to apply for asylum without presenting any documents, but in reality these requirements makes travelling extremely difficult for asylum seekers. This situation has give rise to a large number of operators who assist asylum seekers and illegal immigrants on the route and equip them with false documents and permits. Some of them are crooks economically exploiting their clients. Some help people for idealistic or political reasons often content with having their expenses covered. However the extensive traffic with false documents have added to the intolerance versus refugees in the public opinion. Recent estimates are that 10-15 percent of new arrivals into the rich countries do not have proper documents. (15)

This device of the European governments also has placed the asylum seeker in a sort of "Catch 22"-situation. If he has a passport and necessary permits he obviously has no problems with the authorities of his country so he cannot be a refugee. Otherwise he is assumed to be an illegal immigrant and not a refugee since he has probably thrown away or destroyed his documents.

2. Economic and other sanctions have been introduced against air-companies and other travel carriers, who are found transporting alien passengers who did not have the necessary visa, passport and other documents required.

Comment: The responsibility of governments under international law to determine who is and who is not a refugee thus has been placed with the staff at the checking-in counters abroad.

3. Open or secret diplomacy directed at countries of origin as well as countries of transit and focusing on measures for checking the out flow, orderly departures-arrangements or preventing transit.
4. International police co-operation.
5. Amendments to national penal codes making it punishable to assist against economic compensation asylum seekers with passage, documents etc as well as hiding thereby preventing the expulsion of those who have not been recognised as refugees.

6. The establishment of refugee reception-centres and the like where asylum seekers are detained under conditions so unsatisfactory that in fact they function as deterrents. (16) The situation of the asylum seekers is as a rule aggravated by the fact that the procedure of refugee determination takes a very long time, more than 3 years is not unusual. During this time the asylum seeker is not allowed to work, does not enjoy full social security or health care except in cases of acute illness.

Comment: The isolation of asylum seekers and other immigrants in special compounds makes them stand out as different and less desirable and make them an easy target for all sorts of attacks from verbal slander to arson. Such attacks have been frequent. The cost of the host country for the maintenance of the asylum seekers during their stay in such centres is considerable and is often referred to in the propaganda of those hostile to refugees.

7. The use of terms and expressions when referring to the refugee issue by the media and in the official discourse which are designed to create a general atmosphere of suspicion, confusion and bad will among the public. Such words having been used in an exaggerated manner are "economic refugee", "economic migrant", "mass influx" or "floods of refugees", when there was only a trickle, "refugee invasion", "smugglers", "profiteers", "racketeers", "maffiosi" about those who help asylum seekers, "abuse of asylum", "undocumented", "sans papiers", etc. Reference may also be made to drug dealing and other forms of international crime as well as dangerous diseases.

Comment: This kind of language often reflects the thinking of the speaker, but more seldom facts. So for example the absolute majority of asylum seekers in post war Europe can hardly be called economic refugees. In most cases they have left because of political events and disasters in their respective country of origin. The direct cause seldom is suddenly increasing mass poverty there. Hard language might also be the result of the polarisation of the debate. The harsher the measures by the governments and their agents the more criticism is heard from churches, NGOs and others in the society who defend the right to asylum and the humanitarian values. Their criticism is not always well balanced, but often bitter and one-sided. The defendants of the governments then tend to exaggerate and paint black situations in their efforts to explain the measures taken. Needless to say this has inspired much intolerance towards refugees.

8. The restricted policies towards asylum seekers and others have been implemented through rejections at the boarder and execution of expulsion orders sometimes with brutality. As West European countries are on the whole open societies these dramas have been enacted before the public on television or pictures in the tabloids. We have seen people being dragged away, crying women and frightened and weeping children, suicides, hunger strikes and much more.

Comment: There is a great danger that we are getting used to scenes like these and stop being upset by them. One of the consequences of this refugee- and immigration policy is that the society is brutalised. Of course the enforcement of immigration control is not possible without a certain amount of brutality, so one has to consider its side effects. It must be assumed that the force and the violence thus employed by the society against rejected asylum seekers and others have stimulated intolerance, racism and violence against the same victims.

Through measures like the ones here described the European Fortress had become a reality even before the Schengen Treaty. The mental picture of a flow of economic migrants, which has been criticised above, combined with the concept of abuse of the right to asylum has turned much of the once humanitarian spirit into a sort of police-mentality, diligently inventing new instruments to stop asylum seekers. The truth, that is not so nice as one would wish, is that everything that is done to make it easier for refugees to find safety, will inevitably be used also by others with less serious reasons for leaving their countries. On the other hand everything that is done to stop migrants from moving between the countries will result in failure to save others victimised by persecution or other violence. The Western Europeans maybe do not cut throats but have been busy cutting lifelines.

All these measures have caused harm in different ways, but they have not been very effective. In spite of all legislative efforts, all bureaucratic obstacles, all guarding of borders more than 20 million non-Europeans now have settled in Western Europe forming an average of 5 percent of the populations. (17) This of course is the result of honouring the obligations under the Refugee Convention and humane decisions in distressing circumstances. But it is also a kind of failure. It would have been better to establish clear and humanitarian guidelines from the beginning and stick to them. The intolerance against refugees has been promoted by the double standards and confusing language of the officials.

12. Schengen

In 1985 the State Members of the Benelux Economic Union, France and Germany made an agreement in the spirit of the 1957 Treaty of Rome. This was done in Schengen with the purpose of promoting the free movement of citizens of the contracting State parties, to wind up the boarder controls and to develop police co-operation between them. In 1990 the same States adopted a convention on the Application of the Schengen Agreement, which entered into force in 1995. This Convention is supplemented by the 1990 Dublin Convention Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of the European Communities. It enters into force following the signature by all EU Member states.

This is not the place to present or analyse in detail the provisions related to asylum seekers and refugees in these instruments. Suffice it to emphasise two issues of great concern to those interested in the right to asylum and the elimination of hostilities towards refugees and racial prejudice. First is the fear that as only one country would be responsible for the refugee determination the states with the most restrictive practices will gradually set the standards for the rest. Second, the joint effort to prevent entry of non-Europeans at the same time, as total freedom of movement for Europeans inside Europe becomes a reality.

This "Schengen-spirit" further reinforces all that has led to the establishment of what has been called Festung Europa, the European Fortress. The meaning is clearly that Europeans are desirable in Europe while non-Europeans are not. The impact of this message becomes even stronger when white Americans, Canadians, etc. do not meet any difficulty in obtaining visas – if such are at all required from them. This is much more than the seed of racism, it breeds racism and West Europe can expect justified criticism in this regard from the rest of the world.

This amounts to institutionalised intolerance versus non-Europeans, non-whites, refugees and others alike.

There is the case of the European Romas, most of which live in East Europe. In most of the countries they are exposed to severe racial discrimination frequently amounting to persecution. (18) Violent physical attacks have often occurred in many places. Thousands of them have lost their lives in recent years in Bosnia, Kosovo and other places. (19) A symbolic incident has attracted international interest and much criticism. In the small town Usti nad Labem in Northern Tjechia the local authorities built a wall along the middle of a street to separate the Romas living on one side from the dwellers on the other. This was an obvious violation of ICERD art.3. In the end of November 1999 the wall was taken down in reaction to the criticism. However a high ranking local politician told a visiting journalist that if his country should restrict the possibilities of the Romas to leave the country the EU would be the first to criticise this. At the same time EU is not willing to receive more refugees and least of all the Romas. (20)

13. Racism and intolerance

The 1970-80ies saw the rise of a number of political parties of discontent and populist politicians to lead them. Jean Marie Le Pen with his roots among "Les pieds noires" founded Front National in France 1972 and was a parliamentarian in 1986-88. A Danish lawyer and expert in tax evasion by name Mogens Glistrup founded a "Progressive Party" and was a MP in his country 1973-83, 1984 and 1987-90. Carl I. Hagen has been a member of the Norwegian parliament since 1981. Jörg Haider in Austria entered the political scene in the

mid-80ies and is successfully leading a party since 1995 called “Die Freiheitlichen” (Those for Freedom). There are others in other countries.

These parties and politicians are all different but they have one thing in common. They have challenged the immigration policies of their respective countries and launched campaigns against the presence of refugees and foreigners. They have exploited and accelerated the anxiety of many of their fellow citizens on the issue of unemployment and economic recession thus inciting racist and xenophobic sentiments. This breed of European politicians has contributed greatly to the increasing antagonism against refugees. They have also inspired the underground racist movements and their followers among the street fighters, the arsonists and the murderers.

European racism, has always been around, gradually getting more and more visible during the 1980ies. It consists as far as we know of a large number of small and often loosely organised gangs or cells. They change, dissolve and renew themselves in a way that makes it difficult to keep track of each one of them. The leaders however often are the same individuals appearing again and again. Most of them see the leading nazi racists in the past as their idols. They are extreme nationalists and at the same time internationalists. “Patriots in all countries! Unite!” A message on one of their stickers. Another reads: “White Pride World Wide”. One often sees the same text appearing in different capitals at the same time though translated to the adequate language. There are many other indications on excellent international contacts and good economy. So called White Power music is a source of income as well as a tool of propaganda.

They are also in touch with racists in the USA. One of the American racist movements, that is gaining a foothold in Europe is called The Church of the Creator. Its particularly disgusting message once was illustrated with the following text: “There will be no peace for the white man until the last Jew lies strangled in the last nigger’s guts.”

There has been a tendency in many countries that the governments and police have taken rather lightly on all this. Much of what has happened has been considered as less harmful juvenile delinquency and it has often been maintained that these movements do not constitute a threat to the democratic society. Those who see it like this do ignore that modern European racism has deeply disturbed the peace of our societies and victimised and threatened hundreds of thousands, whom it should have been the obligation of the governments to protect.

In more than twenty years street fighting and hooliganism has been the trademark of racism. Property owned by immigrants has been destroyed, cities, villages and public transport smeared with the slogans of racial hatred.

Homes and reception centres for refugees have been burnt. Humans of non-European origin have been killed, sometimes tortured and often maimed. In some cases the same kind of violence has been directed against homosexuals by the same kind of perpetrators. Threats are another important element in the working methods of the racists. In Sweden during the later part of 1999 two police officers have been shot to death by racists. An anti-racist and official of a labour union was killed by a bomb. An attempt with another bomb was made against a journalist, who was investigating the racists. This has upset people more than before when the victims were not ordinary Swedes but those who were seen as refugees and gay people.

D. RECOMMENDATIONS

The author regrets but time has not allowed the formulating of recommendations. He hopes to be able to submit them separately in connection with the presentation of this paper.

NOTES

1. For debates in CERD on this issue, see Michael Banton: International action against racial discrimination, Oxford 1996.
2. Handbook on Procedures and Criteria for determining Refugee Status, published by UNHCR in Geneva.
3. Göran Melander: The Two Refugee Definitions; and Peter Nobel: Protection of Refugees in Europe as seen in 1987; both articles in Report No.4, Raoul Wallenberg Institute of Human Rights and Humanitarian Law, Lund 1987.
4. For a detailed narrative and analysis see Atle Grahl-Madsen: Territorial Asylum, Almquist & Wiksell, Stockholm and Oceana Publications, New York 1980.
5. Nobel: What happened with Sweden's Refugee Policies? International Journal of Refugee Law 1990, p 265, Oxford University Press.
6. See for example the excellent standard work, Guy S. Goodwin-Gill: The Refugee in International Law, 2nd ed. Clarendon, Oxford, 1998.
7. Liisa H. Malkki: Purity and Exile, Violence, Memory and National Cosmology among Hutu Refugees in Tanzania, University of Chicago Press, 1995.
8. If there had been an agreement about regular departures of refugees with the Government of Chile during the Pinochet regime or with the Soviet Union under Bresjnev, I think many would have found it astonishing.
12. Goodwin-Gill, *ibid.* p.534.
13. Günter Wallraff's shocking report about the living and working conditions of Turkish Gastarbeiter in Germany, "Ganz unten" was published 1985
14. The Brixton Disorders 10-12 April 1981, Report by Lord Scarman, Presented to the Parliament by the Home Office in November 1981.
15. According to UNHCR, cited in Elizabeth G. Ferris: Beyond Borders, WCC Publications, Geneva 1993.

16. La Forteresse européenne et les réfugiés, Actes des 1ères Assises européennes sur le droit d'asile, Lausanne 1985.
17. Ferris *ibid.* p. 249.
18. Carnegie Commission on preventing conflict, New York 1997.
19. Jane Hughes and Fabrice Liebaut (ed.): Detention of Asylum Seekers in Europe: Analysis and Perspective, Kluwer Law International, 1998.
20. Ferris *ibid.* p. 247.
21. Isabel Fonseca: Bury Me Standing – The Gypsies and their Journey, London 1995.
22. Current and reliable information can be obtained from The Roma Rights Centre in Budapest
23. Dagens Nyheter, November 19, 1999, p. 8.