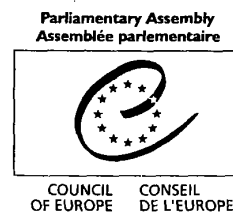


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(First part)

**REPORT**

Seventh sitting

Thursday 26 January 2006 at 3 p.m.

In this report:

1. Speeches in English are reported in full.
2. Speeches in other languages are summarised.
3. Speeches in German and Italian are reproduced in full in a separate document.
4. Corrections should be handed in at Room 1059A not later than 24 hours after the report has been circulated.

The contents page for this sitting is given at the end of the verbatim report.

*Mr van der Linden, President of the Assembly, took the Chair at 3.05 p.m.*

THE PRESIDENT. – The sitting is open.

### **1. Minutes of proceedings**

THE PRESIDENT. – The minutes of proceedings of the fifth sitting have been distributed.

Are these minutes agreed to?

*The minutes are agreed to.*

### **2. Policy of return for failed asylum seekers in the Netherlands**

THE PRESIDENT. – The first item of business this afternoon is the debate on the report on the policy of return for failed asylum seekers in the Netherlands presented by Mrs Zapfl-Helbling on behalf of the Committee on Migration, Refugees and Population, Document 10741, with a statement by Mrs Rita Verdonk, Minister for Integration and Immigration of the Netherlands.

The list of speakers closed at noon today; 10 names are on the list, and no amendments have been tabled. I call Mrs Zapfl-Helbling, rapporteur, who has eight minutes.

Mrs ZAPFL-HELBLING (*Switzerland*) said that the number of asylum seekers in the Netherlands had peaked in the 1990s at over 380 000, but had declined by the year 2000 to just over 269 000. That was due to the tougher stance adopted by the Netherlands Government on immigration and the introduction of tougher asylum legislation. In February 2004 a new policy on asylum had been introduced which set up rules for implementing the return of approximately 26 000 asylum seekers who had applied for asylum before 1 April 2001 and whose applications had been rejected. A number of those asylum seekers had started hunger strikes in protest against their return to their country of origin. In April 2005, more than 200 000 people signed a petition to the Queen asking her to use her royal prerogative to give those 26 000 asylum seekers permission to stay. The subsequent protests against the return of those asylum seekers contributed to the basis of the committee's report.

A number of European countries were breaching human rights legislation through their introduction of tougher legislation on asylum: for example, the United Kingdom and Switzerland. She had visited those two countries as well as the Netherlands and had met Mrs Verdonk, the minister responsible for refugees in the Netherlands and her staff. She had also visited the departure centre in Rotterdam and had met government representatives in Switzerland and various other non-governmental organisations and interested parties. She thanked all three countries for their readiness to provide information for the report.

For the asylum system to be valid it must include a legal remedy and an appeal system must be available for asylum seekers. Many asylum seekers had lived in their new country for many years and were well integrated. It was important not to break those ties, particularly if children had settled into schools. Many asylum seekers could not be guaranteed security if they were returned to their country of origin – for example, those who had come from Chechnya. She had been surprised at the length of time some asylum seekers had been detained in "departure centres", particularly mothers and their children, those traumatised and the sick. In many situations it was not possible to return asylum seekers to their country of origin.

Some countries had been cautious in dealing with irregular migrants, particularly those who had integrated well into their host country. For example, Spain had introduced amnesty procedures as it had approximately 600 000 irregular migrants. Countries had to recognise that they needed those procedures. An amnesty should be considered for those migrants who had lived for some time in their host countries. Voluntary return was always preferable to forced return, particularly in the case of children. Start-up help had been particularly helpful for refugees returned to Kosovo. Non-governmental organisations had accompanied asylum seekers back to their countries of origin rather than leave them to their own devices. Those measures should be considered by all countries trying to grapple with the problem of immigration. It was important to avoid competition between those countries trying to toughen up immigration legislation.

THE PRESIDENT. – Thank you. We now have the honour of hearing a statement by Minister Verdonk, the Minister for Integration and Immigration of the Netherlands, who has agreed to address the Assembly for the debate on the "Policy of return for failed asylum seekers in the Netherlands". Minister

Verdonk has been Minister for Integration and Immigration since May 2003. She is a member of the People's Party for Freedom and Democracy.

Minister Verdonk has a background in criminology and organisational sociology. She has had a career in the Ministry of Justice, where she has held various management positions, including in the prison service department, youth custodial institutions and the hospital orders department. She has also been director of state security in the national security service, and she has worked in the private sector.

As Minister for Integration and Immigration, she is responsible for implementing the policy of return for failed asylum seekers in the Netherlands. She is on record as saying, "A just and equitable asylum policy depends on an effective strategy for the departure of failed asylum seekers".

The Netherlands is not alone in having to tackle the issue of return of failed asylum seekers, and many other European countries are also having to examine how to tackle the issue firmly but fairly. In order for the Parliamentary Assembly to learn from the Dutch experience, it is my pleasure to give the floor to Minister Verdonk.

Minister, the floor is yours.

Mrs VERDONK (*Minister for Integration and Immigration of the Netherlands*) expressed gratitude for having the opportunity to speak to the Assembly. The Dutch repatriation policy had attracted attention from many countries. However, the return of asylum seekers had been the subject of intense political debate in countries other than the Netherlands. She wanted to respond to the positive report from the committee and fully supported its conclusion that an effective policy for returning asylum seekers was necessary for the credibility of the asylum system. It was also necessary for the sake of genuine refugees.

The Netherlands asylum policy and legislation were fully in accord with the Geneva Convention Relating to the Status of Refugees and the European Convention on Human Rights. Refugees were welcomed if they needed protection. However, in recent years the Netherlands had seen a great influx of refugees. The Netherlands had not been prepared, and the system had simply taken too long. In 2001, the new Immigration Act made the system simpler and quicker. Some asylum seekers had started the application process before 2001. The backlog had not been recognised as a problem by previous governments.

In 2003, the present government looked at the situation properly. Since that time, those whose applications were rejected were responsible for their own return. The government was willing to assist and to provide support for those who returned voluntarily. That support was financial and practical – for example, counselling for all failed asylum seekers. Only if asylum seekers were manifestly not prepared to return would forced repatriation be implemented. Asylum seekers were detained in departure centres, but were still given counselling and allowed to make representations against their forced return. Those representations often landed on her desk and she often gave residency permits on compassionate grounds; she had granted more permits than her predecessors. If failed asylum seekers could demonstrate that it was impossible for them to return to their country of origin, they received a residence permit. That had occurred on 700 occasions to date. The results of the new policy were good. Of 26 000 cases outstanding in 2004, 16 000 had now been dealt with. Only 750 people had been forcibly returned. About 2 600 had returned voluntarily and 7 400 had been given residence permits.

She believed that the new policy had better results for all involved. It was much better than condoning illegal immigration, where migrants stayed under conditions of extreme hardship. She reminded the Assembly that the Netherlands only returned failed asylum seekers, those whose claims had been irrevocably rejected. The Netherlands did not send people back to countries where that would cause unacceptable hardship. As the committee had noted, the Netherlands complied with Council of Europe recommendations. Despite the huge effort towards repatriation, the Netherlands did not ignore the possibility of hardship. It used amnesties and special discretion to grant residence permits in these cases and also granted permits where failed asylum seekers found it genuinely impossible to return.

She expressed her reservations regarding large-scale amnesties because that could attract new migrants. As the European Union had no internal borders, such an influx to one country could affect many others. It was necessary to take into account the question of children and family considerations. However, all parents were responsible for their own children, and some parents chose to instigate a prolonged admissions process while being well aware of the possibility of a negative outcome. The Netherlands gave failed asylum seekers a reasonable departure period of two to eight weeks before they were forcibly removed. Detention was used only as a very last resort and only for reasons of public order. A full appeals process and judicial review was provided.

She thanked the Assembly for the opportunity to explain the Dutch policy on immigration and repatriation. It was a difficult subject which would continue to be discussed in the future.

THE PRESIDENT. – Thank you. I call Mrs Wohlwend, who will speak on behalf of the Group of the European People's Party.

Mrs WOHLWEND (*Liechtenstein*) thanked Mrs Zapfl-Helbling and her secretariat for the report, on behalf of the European People's Party. As its title showed, it was about legislation in the Netherlands, but its proposals were relevant to all member states, and they should all be keen to see them implemented. The law governing asylum seekers went to the core of human rights. Decisions made on people seeking asylum were fundamentally concerned with human dignity. As Mrs Verdonk had said, previous Council of Europe recommendations had set much in motion on refugee policy. The issue of return was very controversial. The rapporteur's proposals concentrated on that matter. Ideally, failed asylum seekers should choose voluntary return. Clearly, that was not always possible, so rules were needed. She referred the Assembly to paragraphs 1 to 14 of the draft resolution.

The Group of the European People's Party believed that detention was a solely punitive measure and should never be used for minors, the elderly or the ill. The detention of healthy men and women with no parental responsibilities should be the exception and should occur only where there was a risk that they might abscond. The provision of health care, social assistance and accommodation to failed asylum seekers was another controversial issue. She believed that failed asylum seekers should have access to those services, because that was part of the respect due to every individual. Parliamentarians had a role to play in fostering greater understanding on these issues. The draft resolution would send a clear signal against xenophobia and intolerance.

THE PRESIDENT. – Thank you, Mrs Wohlwend. I call Mr Østergaard, who will speak on behalf of the Alliance of Liberals and Democrats for Europe.

Mr ØSTERGAARD (*Denmark*). – I thank the Dutch Integration and Immigration Minister, Mrs Verdonk, for being here today. Her presence shows that the Dutch Government honours its obligation to our pan-European Organisation. On behalf of the Liberal Group, I emphasise that the discussion should not be confined to the Netherlands. Although it broadly complies with Council of Europe recommendations, the Dutch policy has features of concern. As the report shows, those features can be found in at least two other European countries. The debate should therefore be seen as an opportunity for all countries to scrutinise their policies towards failed asylum seekers. I hope that the recommendation approved here today will lead to more comprehensive, humane and fair treatment of failed asylum seekers in Europe as a whole. We need a solid, fair and effective asylum institution to protect the repressed people of our world. That includes an effective but fair and humane return policy for failed asylum seekers in order to uphold respect for the institution.

Let me dwell briefly on a fact that the report highlights and I recognise from my country of Denmark. The number of asylum seekers appears to decrease. It is striking that a few countries' policies and legislation, including policies towards failed asylum seekers, seem designed to nuture that development. One cannot help but believe that those countries apply harsh policies to make asylum seekers go elsewhere. That might not be against conventions and treaties de facto, but it is definitely against the spirit of several. We should monitor that closely as more countries try to avoid becoming asylum magnets and follow the same path.

The recommendations to the Netherlands and other Council of Europe member states are well chosen and the Alliance of Liberals and Democrats for Europe supports them. If the recommendations are accepted, many countries will have their work cut out. However, the lack of attention exemplified by the short speakers' list and the shortage of amendments implies that perhaps some members of our Assembly take the recommendations for granted.

Let me deal with some of the recommendations and their merits. Paragraph 15.3 addresses the best interests of the child – rightly so. Sometimes we forget that the children of asylum seekers are children. According to the United Nations Convention on the Rights of the Child, it is important to remember that children should not bear responsibility for or be punished for their parents' actions and legal affairs. We need to ensure that all member countries remember, when applying their return policies on failed asylum seekers, that measures to motivate the return of failed asylum seekers should not result in their children being deprived of a safe childhood. We need to ensure that children are allowed to finish a school year before being evicted. The interests of returning failed asylum seekers must not suppress the best interests of the children involved.

Paragraph 15.4 suggests the obvious – postponing the return of failed asylum seekers when the humanitarian situation is volatile. That seems obvious, but reality does not always reflect that. Some countries, including my country and possibly the Netherlands, are considering returning asylum seekers to Iraq. Some countries are actually doing that. Imagine returning asylum seekers to Iraq, where thousands of troops try to ensure peace on a daily basis. To say that the humanitarian situation there is volatile would be an understatement. The recommendation should therefore be given serious attention in all member states.

Paragraph 15.11 makes recommendations on detention. I agree totally with it. It is a sign of crisis for European humanity that we need to reconfirm that children should not be detainees – not even the children of asylum seekers, one might add. A maximum detention length also seems reasonable. In many places in Europe, failed asylum seekers are incarcerated for years.

Paragraph 15.12 deals with the burden of proof. Again, the issue must seem obvious to many people. However, the burden of proof tests that are applied to asylum seekers are no holiday. Some countries demand hard evidence that return is not possible before admitting asylum seekers. Such evidence is not easy to come by, especially when we bear it in mind that those countries are hostile to asylum seekers in the first place.

I want to deal with the recommendation in paragraph 15.2, which covers a very touchy matter. What happens when failed asylum seekers cannot be returned and apply for residence permits? The recommendation to member states is to give special attention to the time spent in the receiving country and the level of integration. Special attention can be warranted and applied without compromising the asylum institution.

Let me give one example. An unaccompanied Vietnamese minor arrived in Denmark after her trafficked mother rescued her from prostitution in Russia. In two years, she graduated from primary school with honours, bringing joy to her foster family and the local community. She began secondary school. There were no grounds for asylum but the girl had no family in Vietnam. However, the eviction was mandated and Linh was summoned to the local police and told to leave the country. Heavy protests ensured that Linh had time to finish her first year in secondary school, but she is an example of a case where due attention to her integration level, community ties and family should have brought her safety, not uncertainty.

I should have liked to give further examples, but let me end by stressing the final recommendation. Public understanding of these matters is vital. If we do not ensure that the citizens of our countries understand why we need to shelter refugees and why the world makes refuge the only answer for thousands of people every year, we have failed miserably in our principal task, namely to ensure human rights for all, including failed asylum seekers.

THE PRESIDENT. – Thank you, Mr Østergaard. I call Mr Greenway, who will speak on behalf of the European Democratic Group.

Mr GREENWAY (*United Kingdom*). – I, too, thank Mrs Verdonk for honouring us with her presence here today. In congratulating Mrs Zapfl-Helbling, my colleague on the Committee on Migration, Refugees and Population, on her report, I want to stress to the Assembly and our guest that the report was unanimously supported. All shades of political opinion in the committee unanimously accepted and supported a report that reaches some very challenging and controversial conclusions.

In the brief time available to me today, I do not want to concentrate on what the report says about the United Kingdom. I want to consider the way in which the draft resolution and the report's conclusions go beyond the problems in our individual countries. They apply to us all. It is not the first time that such conclusions have been agreed by the Assembly. Section 6 of the explanatory memorandum mentions the 20 guidelines that were agreed in May last year. Those guidelines and paragraph 3 of the draft resolution confirm that failed asylum seekers who have exhausted all legal remedies against the refusal of their claim and have no other right to remain in a Council of Europe country can be returned. That is necessary to ensure the integrity of the institution of asylum and to ensure that the asylum system remains credible.

It is vital that people have confidence in the asylum system, whether they are citizens of our countries or refugees seeking protection. The guidance agreed last year suggests that there is an obligation on member states to enforce return. The critical matter therefore is not whether failed asylum seekers can be returned but the way in which their applications are tackled. It is critical that we treat asylum applicants fairly, respecting their human rights, treating them with dignity and helping people to return voluntarily whenever possible. We must also be absolutely sure that people are not sent back to situations of conflict or places where humanitarian conditions are volatile to an unacceptable extent.

The recommendations in paragraph 15 of the draft resolution apply not only to the Government of the Netherlands but to all other member states that have adopted policies of enforced return. They provide an extremely valuable code or charter on the way policies of enforced return should be conducted and a means by which future actions can be judged. That is why I suggest to the Assembly that we should not underestimate the significance of what we achieve here today.

I have been a member of the committee only since September, when I joined the Assembly. However, I have been struck by the serious challenges posed by immigration and asylum issues when compared with popular opinion in our home countries. We cannot ignore that opinion, which rightly wants better management of immigration and asylum than appears to occur. Opinion will never change unless our citizens are given the real facts of the problems. So the recommendation in paragraph 15.15 to promote a better understanding of the situation of refugees in Europe is a positive and welcome step forward.

We cannot progress with the work of our committee to improve the rights of all migrants without a better understanding of the problems with which we are confronted. As I said at the beginning of my remarks, the subject of our debate is challenging and controversial. However, I am convinced that better and firmer management of asylum and immigration, including the swifter return of failed applicants, and protecting the human rights of refugees, asylum seekers and irregular migrants are not incompatible, provided that we do not return people to conflict zones or unsafe countries and provided that we ensure that the use of detention is temporary and has proper judicial oversight. As a general rule, it should not be used inappropriately for vulnerable people and children.

The report shows that we are some way from those ideals. However, our job here is to uphold human rights. We should lose no opportunity to restate and reconfirm the basic principles under which the policy on migration and asylum should be conducted. The report enables us to do precisely that.

THE PRESIDENT. – Thank you, Mr Greenway. I call Mr Platvoet, who will speak on behalf of the Group of the Unified European Left.

Mr PLATVOET (*Netherlands*). – My first remarks are especially for Dutch ears in the Assembly. I am glad that I have the freedom to choose the language I want to speak in the Assembly and that I am not forced to speak the language of the country in which I am now.

The Dutch right-wing government's policy for the return of failed asylum seekers was a headline in the international media two years ago. The image of the Netherlands as a tolerant country was widespread and well-known throughout the world, but it was seriously damaged by that policy. Through the ages Holland was a safe place for refugees of all kinds, colours and nations, yet in a few years that Dutch Government succeeded in closing the curtain.

The number of asylum seekers, as well as the number whose application was accepted, dropped dramatically. The saddest thing about the policy is that it is merely a token one. That government wants to prove that it is tough on integration and immigration. It thinks that it has an answer to the xenophobic section of the Dutch population who think that there are too many foreigners – mostly with dark skins – in the Netherlands. Even sadder is the fact that the targets of the policy are the weakest and most desperate people in the world: asylum seekers.

I compliment Mrs Zapfl-Helbling, who wrote a balanced but critical report about the asylum policy of the Dutch Government. However, when I heard Minister Verdonk speak about the report I almost thought that it must be a different one, because she considered that it supported her policy. My reading of the draft resolution is that the Dutch policy should be modified. As you know, Mr President, I am a modest man so I shall be glad if the Dutch policy is modified. I am also glad that Mr Morten Østergaard, on behalf of the Alliance of Liberals and Democrats for Europe, recognised that in his country, too, there should be a change of policy on asylum seekers. I fully agree with him that it is not only the Dutch policy that should be changed. When that Dutch policy is changed things will be better. No longer will asylum seekers who have lived for years in a country such as the Netherlands be sent away. No longer will asylum seekers who have children born in the country where they are living be sent away. No longer will asylum seekers who are ill be sent away. No longer will asylum seekers be sent back to a country of origin where the situation is dangerous.

The events of the last few weeks in the Netherlands will no longer be necessary. A leader of student protests in Iran was due to be sent back to that country because, in the eyes of the Dutch Government, Iran was a safe place – Iran, where since the new president came to power more than 120 people have been executed. The asylum seeker from Iran went on hunger strike in The Hague for 56

days. His action was supported by many civil groups, and at last, only five days ago, there seems to have been a change from the Dutch authorities and it seems that in his case justice will be done.

Let us hope that in the future, as a result of the report, hunger strikes will no longer be necessary to convince the Dutch Government that a human approach is desirable.

THE PRESIDENT. – Thank you, Mr Platvoet. I call Mr van Thijn to speak on behalf of the Socialist Group. This will enable all political groups to be heard before the minister responds.

Mr VAN THIJN (*Netherlands*) congratulated the rapporteur on her balanced report. He was grateful for the fact that the Dutch minister was present as this emphasised the importance of the debate.

Like his compatriot, Mr Platvoet, he had also made a number of free choices. Firstly, he had chosen to address the Assembly in Dutch; secondly, he had chosen not to get involved in a political debate with the minister. There needed to be an objective judgment on the Dutch situation even though his political group had major problems with the policy. He noted that the minister had taken a positive view of the report. She must therefore have looked positively at the critical aspects as well. Sending families back after they had integrated into Dutch life through years of residency had to be reconsidered.

He endorsed all that had been said about the United Nations Convention on the Rights of the Child. Governments and authorities were responsible for maintaining the best interests of the child. The deportation of children who were born and educated in the Netherlands had to be dealt with in a more sensitive manner. The issue of detention had to be handled more carefully and sympathetically, especially where children were involved. He could hardly believe it possible that any member state of the Council of Europe would allow the detention of children.

If the report had been seen in a positive light by the minister then the Dutch government must also have noted the issues which he had raised.

THE PRESIDENT. – Thank you. I shall now call Mrs Verdonk to respond to the debate. I know that you have to leave at 4 o'clock, Mrs Verdonk. You have the floor.

Mrs VERDONK thanked the Assembly and said she would like to respond to one or two points raised.

On the issue of voluntary return, she said that would always be preferable to enforced return. It would enable children to say goodbye to school friends, and their parents to say goodbye to friends they had made over the years. The Dutch Government was conscious of the fact that that upheld human dignity.

Children in detention had been a long-discussed topic in the Netherlands. The government was looking critically at the policy to see what alternatives were available. She had asked the Ministry of Justice to look into the issue. It was possible for parents to choose alternative accommodation for their children and, in some cases, it would only be the father who was placed in detention. She was not in favour of children being in detention, but that had to be possible in extreme cases.

She responded to the remarks made by Mr Østergaard by saying that there had been a large increase in the numbers of people returning to Iraq voluntarily as they were keen to help rebuild their country. She agreed with her compatriot, Mr van Thijn, that it was not necessary for the two of them to hold a political debate in this Chamber. They had the Dutch Parliament for such arguments.

There was a naive view among some in the Netherlands and elsewhere that the Dutch asylum policy meant that the Dutch were lagging behind other nations. She completely rejected the notion that the policy was xenophobic. She was in favour of a clear policy where people took responsibility for their own actions. People who had arrived in the Netherlands without permits had made their own choice. They had also decided to have children, to bring them up in the Netherlands and extend their stay. Those actions would initiate asylum proceedings. It was very sad for the children in those cases, but their parents had not complied with Dutch laws. It was not possible to give residence permits on that basis.

She thanked the Assembly and apologised because she could not stay longer. Unfortunately, her plane back to the Netherlands would not wait for her.

THE PRESIDENT. – Thank you very much, Mrs Verdonk, for your response and for coming here. I wish you a good trip back, especially given these weather conditions. We knew beforehand that you could stay only until 4 o'clock.

We will now continue our debate. I call Mr Geghamyan.

Mr GEGHAMYAN (*Armenia*). – Dear colleagues, the report awakens in each of us a desire to look objectively into the reasons for the mass immigration of African Arabs, Pakistanis and Turks into western European countries – in particular, to France, the United Kingdom and Germany. The development of pan-European politics is becoming topical. Dissatisfaction is growing among hundreds of thousands of immigrants because of their harsh socio-economic situation and, given the lack of stability, there is a dangerous inter-civilisation conflict.

In November 2005, in France, thousands of cars were burnt, hundreds of shops were broken into and looted and fires were blazing in different cities of the country. How did that happen in the homeland of the idea of human rights, which proclaimed more than 200 years ago that any individual who set foot on its land became a free citizen? What was the response to those acts of vandalism? The events that took place in France echoed throughout many countries and produced a sharp pain in the hearts of all Armenians. Our feeling of deep gratitude towards Christian France, as well as towards the Muslim Arab east, will never fade away, because they provided a home to thousands of Armenian refugees who, by a miracle, escaped the 1915 genocide in Ottoman Turkey.

What are the sources of the conflict? Do they have roots in civilisation? If we do not give exhaustive answers to these questions, sooner or later Europe will have to face the following choice: either obey the world of new Barbarians or come under the auspices of the extreme right or left-wing radicals – namely, fascists – thus arousing the ghost of their own barbarity.

It seems that the recent troubled events in France have deep roots in civilisation. They are conditioned by the principal differences between western civilisation and the Islamic world and the contradictions between those basic social values. For the west the unconditional freedom of the individual is paramount, and for Islam the key value is justice. Sooner or later, justice is killed by freedom. That objective tragedy was formulated in the well-known aphorism of Friedrich Nietzsche that one should be strong: “to be able to live and forget: to what extent living and being unjust are one.”

The realisation of these realities puts a particular responsibility on each Council of Europe member state. In this respect, the acts of vandalism involving the direct participation of the Azerbaijan Government cause serious problems. In December 2005, about 100 Azeri soldiers penetrated into the Armenian necropolis of Old Julfa in the Nakhichevan autonomy, and with sledge-hammers and heavy equipment, they smashed wonderful 9th and 10th-century gravestone crosses, which are part of Armenia's and the world's cultural heritage. Before the Karabakh events, only 2 700 small monuments of Christian architecture were left by Soviet Azerbaijan as a legacy. The destruction of the Armenia historical legacy in Old Julfa in the Nakhichevan autonomy of Azerbaijan is now almost complete.

*(Mr Lloyd, Vice-President of the Assembly, took the Chair in place of Mr van der Linden.)*

Inevitably, one recalls a surprising history. In the 1820s, Lord Byron took a very active part in the struggle of Greek liberation against Turkish rule. He was astounded when people told him about the siege of the Parthenon by the Greeks when it was occupied by the Ottomans. The beleaguered Turks ran out of the lead that they needed for cartridges. They decided to melt down the bells and the metal parts of the Parthenon – that wonderful monument of the 5th century BC – to cast shells and cartridges. When the Greeks learned about the Turks' intention they provided them with lead on condition that the Turks would not touch the Parthenon bells. That lead was turned into shells and bullets which were used to kill the Greeks. What price will the Armenians pay to prevent the Azeris from destroying Armenian shrines in Nakhichevan? Perhaps we should impose a condition on the Turkish Republic which, following the Moscow treaty of 16 March 1921 between Russia and Turkey, is a guarantor of the status of Nakhichevan autonomy.

THE PRESIDENT. – Order. I must ask you, Mr Geghamyan, to bring your speech into order.

Mr GEGHAMYAN (*Armenia*). – Mr President –

*(The speaker continued in Armenian)*

He said that it had not been possible to get to the essence of what he wanted to talk about. He had never before seen an incident where someone was actually interrupted when making his speech.

THE PRESIDENT. – Thank you very much, Mr Geghamyan. I must advise you that it is the role of the presidency to maintain order in the Assembly. That applies to all speakers.



I call Mrs Pehlivan.

Mrs PEHLIVAN (*Belgium*) said she would have liked the minister to be there and had not known that the minister would leave early. She would speak in Dutch which was just one of her mother tongues, and she hoped that the minister would be apprised of what she said. The Netherlands had always been seen as tolerant: Flanders and Belgium had seen it as a model for a multicultural society. She had studied in the Netherlands and was aware of its literacy classes for adults. However a multicultural society must not be taken for granted. People must live together and respect each other's differences, religious beliefs and backgrounds.

As a daughter of immigrants, she had read the recent headlines from the Netherlands and wondered what had happened there. She had heard that it was government policy that Dutch should always be used in preference to other languages, even on the street. She questioned whether the government had gone too far into the private lives of citizens. Would there be a policeman on every street corner to check that people spoke Dutch? People had always thought of the Netherlands as a multicultural country, but now it appeared to have gone the wrong way. That week, the Parliamentary Assembly had adopted the resolution and recommendation on the integration of immigrant women. It was important that men should be involved in the political, social and cultural integration of women. Language lessons were an important part of that integration process. The Council of Europe must give political support to the diversification of languages, and the Netherlands should be aware of the negative signals it had given to the Assembly.

THE PRESIDENT. – Thank you, Mrs Pehlivan. I call Mrs Veenendaal.

Mrs VEENENDAAL (*Netherlands*) said that, as a Dutch member, she hoped to cast some light on the Dutch immigration legislation. The report had been more positive than the draft resolution. It involved the countries Switzerland and the United Kingdom, but also applied to all members of the Council of Europe. She confirmed that there had been a huge backlog in applications being processed. In 2004, there were 26 000 outstanding applications. Of those, 7 500 people had received residency permits, 2 800 had voluntarily returned and 750 had been removed. The grant of amnesty to asylum seekers should depend on the situation in each country, and in the Netherlands each case was dealt with on an individual basis. The Netherlands had already taken on board the issue of the length of time referred to in paragraph 15.2 of the report. Applications were now being processed more quickly.

Any immigration policy must be formulated humanely and people must be aware of the process and understand the reasons for their rejection. In the Netherlands, there was extensive consultation on how best to return an individual, and failed asylum seekers were given advice and help. The system worked quite well. Only if asylum seekers refused to return were they sent to repatriation centres. It was good that the Council of Europe had looked closely at the situation in the Netherlands, but it should now look at the issue in a wider context as it was important.

THE PRESIDENT. – Thank you. That concludes the list of speakers. I call Mrs Zapfl-Helbling to reply.

Mrs ZAPFL-HELBLING (*Switzerland*) said that asylum policy was a vexed issue, as was recognised by both members and ministers. She was grateful that the minister had taken a positive view of the report. However, it would be difficult for individual asylum seekers to take responsibility for their own return. One organisation that dealt with minors had told her that asylum seekers needed prospects, otherwise expulsion would not be successful. It was good that the minister had granted 700 residency permits at her own discretion; that was a positive signal.

In response to Mrs Wohlwend, she said that asylum seekers must be treated with dignity. In Rotterdam she had spoken to young women and their children who had told her that people were nice to them. However, their situation was a tragedy. It was self-evident that voluntary return was preferable, but there were still problems. Genuine asylum seekers needed to maintain their dignity. The humane traditions of the Council of Europe meant that they should help the old, the sick and children, and not abandon them to their lot. There must be humane and dignified treatment for rejected asylum seekers. She thanked all those who had participated in this worthwhile debate. They had shown a great understanding of the issue. She thanked Mark Neville who had assisted in the visits, liaised with contacts and drafted the report.

THE PRESIDENT. – Does the Chairperson of the Committee on Migration, Refugees and Population, Mr Çavuşoğlu, wish to speak?

Mr ÇAVUŞOĞLU (*Turkey*). – Not only the Netherlands, but many countries across Europe face the issue of the return of asylum seekers. The large number of asylum seekers at the end of the 1990s led to many people waiting a long time for a decision on their future. Understandably, many of those people have become well-integrated into the societies in which they live, and many of them have had children, got married and set down strong roots. That issue lies at the heart of the return of 26 000 asylum seekers in the Netherlands.

Countries have three options on asylum seekers, each of which has advantages and disadvantages. The first option is return. As the minister has said, voluntary return is preferable to forced return, because it is not only more humane, but cheaper for states. The second option is to regularise the situation. That option is increasingly popular, and Greece and Spain provide good examples of its use, although it has been used regularly across Europe lately. It is particularly useful for those who have been in a country for a significant period and who have become well-integrated. The third option is to do nothing. That is not our recommended option, because it leaves people in an uncertain situation in which they have difficulty in accessing even basic human rights.

The challenge for states such as the Netherlands is to find a balance between those options, bearing in mind human rights and humanitarian responsibilities. As Mr Østergaard has said, the draft resolution is designed to help the Netherlands and other states find the right balance.

I thank everyone who has participated in today's debate.

THE PRESIDENT. – The Committee on Migration, Refugees and Population has presented a draft resolution, to which no amendments have been tabled. We will therefore proceed directly to a vote on the whole of the draft resolution contained in Document 10741.

The vote is open.

*The draft Resolution in Document 10741 is adopted.*

I thank Mrs Zapfl-Helbling.

*(Mr Schreiner, Vice-President of the Assembly, took the Chair in place of Mr Lloyd.)*

### **3. The concept of "nation"**

THE PRESIDENT (Translation). – The next item of business this afternoon is the debate on the report on the concept of "nation" presented by Mr Frunda on behalf of the Committee on Legal Affairs and Human Rights, Document 10762.

The list of speakers closed at noon today; 18 names are on the list, and one amendment has been tabled.

I call Mr Frunda, rapporteur. He has eight minutes.

Mr FRUNDA (*Romania*). – This afternoon, we debate the concept of "nation". That was much debated in the past in older member countries and has been based on different approaches such as emotional, rational, political or juridical. The idea of drafting this report goes back three years, when one of our colleagues, Mr Jurgens, drafted a report concerning the law and the rights of Hungarians living outside Hungary. In his recommendation, which was adopted, he proposed to draft this report on the concept of "nation", and the Committee on Legal Affairs and Human Rights accepted.

Why is it necessary to speak about "nation"? In the past centuries, the notion of "nation" was often used demagogically to put people against people and nations against nations and to make citizens of the same countries citizens of the first or second degree. To avoid repeating history, which is negative, we have to handle this problem.

We can speak about several definitions of "nation". The French definition traditionally says, "One country, one nation". The German definition says that part of the nation can live abroad. In modern times, we have the so-called civic nation, whereby the state has a contract with each of its citizens and they can belong to one or another nation. Some theoreticians speak about the cosmopolitan nation – the future European nation when all of us will be citizens of Europe but each nation will be a minority. In a future Europe, all 27 member states will be, from one point of view or another, a minority.

I concluded that for the time being it is not necessary to have a new definition of "nation". It is more important to have a new concept of "nation" – a more tolerant, anti-xenophobic "nation" which

guarantees the rights of each person and all national minorities. Even if we accept the French or German definition of "nation", the national minorities may belong to one nation. In the French approach, they belong to the nation on which they territorially reside. In the German approach, they belong to the so-called cultural nation. Mostly, these national minorities were created not because they changed territories by emigrating from one place to another but because borders moved over their heads. I remember seeing on the TV an interview with an old man from Ukraine, who said, "Gentlemen, I was born more than 80 years ago. I never left my village, but now I have my third citizenship. I was a citizen of the Austro-Hungarian empire, then a citizen of the USSR, and now I am a citizen of Ukraine." Why should that man not have the same rights as other people or to be part of one or another nation from a cultural point of view?

That is why I mostly discussed national minorities in the report. National minority communities have the right to be citizens of the same degree as majorities. I am convinced that national minorities will be loyal to their country if they have all the rights that the majority has. If national minorities have the right to keep their identities, to speak their languages to the authorities, to have their own schools and to have their cultural autonomy, they will be loyal to their countries. Thus we avoid conflict between majorities and minorities. Giving rights to minorities does not mean that the majority will have fewer rights or that there will be conflict between minorities and the majority. On the contrary, it will be a source of good relations between majority and minority.

In the past 13 years, the Council of Europe has adopted not only the Framework Convention for the Protection of National Minorities but the European Charter for Regional or Minority Languages and the European charter on local autonomy. There has also been a recommendation on learning in the mother tongue. All those have to be applied. At present, four member states still have not signed the Framework Convention and another 16 members have not ratified it. Many members did not ratify the European Charter for Regional or Minority Languages or the European charter on local autonomy.

I think that they must do so because those charters are the most important international instruments for national minorities. We must also build something in common with the European Union, as the recommendations specify. We have a common goal. The Council of Europe devised all the legal instruments and the European Union has not done any similar work on the subject. The European Union therefore needs our experience. We can thus build a common future for Europe where majorities and minorities can work together.

We need not speak about models. Each member state will claim that it is a model even if it does not recognise a national minority. We must consider standards – minimum standard rights for minorities. I therefore encourage the Assembly to accept an amendment that will be introduced later.

THE PRESIDENT (Translation). – Thank you, Mr Frunda. I call Mr Van den Brande, who will speak on behalf of the Group of the European People's party.

Mr VAN DEN BRANDE (*Belgium*) said that he was speaking in his mother tongue, Dutch, for this important debate. He hoped that some of those present would understand him.

*(The speaker continued in English)*

Language is also a question of identity and belonging to a nation. Flemish, French and German are official languages in Belgium. We have three official languages in my country.

*(The speaker continued in Dutch.)*

He thanked Mr Frunda for his work and for the report. Mr Frunda had told him, perhaps in confidence, that it had been a struggle, not because it was difficult to find a consensus, but because it was hard to be clear on the definition of these issues. One often looked for definitions because definitions gave an advantage and a departure point, but definitions could also be obstacles.

One conclusion of the report, which had been approved by the committee, was that it was not seeking to provide a new definition of the nation state. Instead, the report set out what member states felt about the identity of nation and the relationship between majority and minority. The report did not aim to provide a model, but rather a standard or criterion. All points of view were based on individual situations. The case of Alsace was *sui generis*. The Assembly needed to discuss the basic concepts and principles of 'nation' and 'state' and to find a common position. For example, the Scots were convinced that they were a nation, though not a state. This applied equally to others, for example Switzerland. He was sure that Mr de Puig would cite the example of Catalonia, which demonstrated that there could be many nations within one state.

In his view, the concept of nation should not be restricted. In this period, there was governance at many levels. No one could claim exclusive jurisdiction because there were local and regional authorities. Nations needed to be open and positive to meet the criteria of the report. The concept of nation was meaningful only if other points of view were recognised, for example those of minority groups. He agreed with Mr Frunda's recommendations that the European Union should look for guarantees of nationhood and member states should sign up to international conventions on this subject. Alternatively, the European Constitution could provide the same standards.

In conclusion, the precise linguistic term was not important. The main objective was security for majorities and minorities, and the co-existence of cultural identity and nation over and beyond borders.

THE PRESIDENT (Translation). – Thank you, Mr Van den Brande. I call Mrs Smirnova, who will speak on behalf of the European Democratic Group.

Mrs Smirnova (*Russian Federation*) said that she had made her introductory remarks in her own language which was a small language within the Russian Federation. They translated as thanks to Mr Frunda for his important and topical report.

She spoke today as someone from the Russian Federation. Russians often found themselves in the wrong nation. Some found themselves in countries where their rights were not upheld. Her ethnic group was a nation that had no rights. Promotion of the concept of nation could help human rights in many countries by engendering a national sense of belonging. Hearts would grow warm when people spoke of their own nation. It was a very important issue. When the rights of national minorities were not included in constitutions, tensions could result. It could be that lack of recognition of minorities in France had led to the recent violence there, although she noted that that was an extreme example.

The rights of national minorities in Albania and Macedonia had been protected ensuring that citizens could use their own mother tongues. The right of national minorities had also been protected in Finland. The Russian Federation had done a lot to protect the national minorities there. There were 160 000 different peoples in the Russian Federation. They had the right to speak their own language and enjoy their own cultural events. That was not the case for national minorities in other countries. National minorities in Estonia and Lithuania did not have the same political and socio-economic rights as others, yet those countries were seen in the Council of Europe as normal and democratic. Politicians must define the concept of nation, as people must be at ease to enjoy their culture and language.

THE PRESIDENT (Translation). – Thank you, Mrs Smirnova. I call Mr de Puig, who will speak on behalf of the Socialist Group.

Mr de PUIG (*Spain*) said that he had to speak the language of the state of Spain, and was therefore at a disadvantage compared to Mr Van den Brande who could speak his mother tongue.

He warmly congratulated the rapporteur on the way he addressed this difficult and delicate topic. The United Nations had attempted to define this for over 60 years. The Council of Europe was right to use the considerable efforts of Mr Frunda on this deeply political issue. It could not be denied that nations existed, although in many different forms. History had witnessed the creation of nation states; it was here that the political process took place and there was a very clear separation of powers.

This was not the only reality of the nation. There were nations without states, a topic which had been debated in Spain recently. The Spanish Constitution referred to nationality when defining "nation". This ensured that there would be no dispute between Basque, Catalan, Galician and other regions.

Everyone knew that the states in the United States were autonomous regions, while there was no similar method in countries such as Spain, the United Kingdom and Italy. It was important for there to be compatibility in the terms used, but in reality it was what lay behind these terms that was important. He praised the very extensive, positive report, and called for all to vote in favour.

THE PRESIDENT (Translation). – Thank you, Mr de Puig. I call Mr Tkáč.

Mr TKÁČ (*Slovakia*) said that in 2003 the Assembly had discussed preferential treatment given to national minorities by member states. In Resolution 1335 (2003) the Assembly noted that there was no common definition of the concept of "nation".

The report had lost sight of the mandate given to the Committee on Legal Affairs and Human Rights. The mandate was to clarify the terms "nation" and "people" and nothing more than that. This was a

poor report and would receive a negative opinion from the Venice Commission. That would cause further problems and would not give rise to national values.

THE PRESIDENT (Translation). – Thank you. I call Mr Schneider.

Mr SCHNEIDER (*France*) said that this was a subject usually dealt with by university postgraduates, rather than Parliamentary assemblies. It was usually only debated by parliamentarians in times of crisis. During the times of the French revolution, the concept of the nation was used as a catalyst against the monarchy. It now occupied a central place in the French system.

The nation could be defined by the people. Nations linked up state and society, conferring democratic legitimacy on the state. Power was bestowed on behalf of national citizens. Parliamentarians in the French National Assembly represented the nation, although in effect they would represent their national and local citizens.

Defining the "nation" was a very difficult task. Attempting to define such a term was an ideological rather than practical exercise. As Ernest Renan declared with passion in 1882, a nation was a soul, a spiritual principle. Only two things constituted this soul, this spiritual principle: one the past, the other the present. One the possession in common of a rich legacy of remembrances; the other the actual consent, the desire to live together, the will to continue to value the heritage which all held in common. The French Republic guaranteed that individuals were citizens of the nation irrespective of the area they came from. Regional identities were respected and, from Brittany to Alsace, they were part of the wealth of the country.

He commended Mr Frunda's report and concluded by quoting Renan, who had said that nations were not something eternal. They had their beginnings and they would end. A European confederation would very probably replace them.

THE PRESIDENT (Translation). – Thank you. I call Mr Rafael Huseynov. As he is not here, I call Mr Raguž.

Mr RAGUŽ (*Bosnia and Herzegovina*). – I congratulate our rapporteur on this fascinating and analytical document. Mr Frunda has shown an exceptional sensibility for this complex subject matter.

Inasmuch as our rapporteur's thesis, that it is almost impossible to find a common definition of the term "nation", is founded in fact, this document's analytical approach and suggestions show that a common approach is necessary, for the sake of the future of Europe and despite all different interpretations of the term.

Of particular importance is the statement that various groups of people who are citizens of the same state or civil nation live in the territories of almost all Council of Europe member states, while belonging to different cultural nations. Those people are mostly national minorities. For that very reason in particular, we should support the proposal to strengthen the links of all European citizens to their identity, culture, tradition and history. That is extremely important so that we can define ourselves as members of a certain cultural nation.

As for the political and legal aspects, I support a more tolerant approach to relations between a state and a nation or a national minority. That would result in every individual having the right to belong to the nation that they believe they belong to in terms of citizenship, language, culture and tradition."The positions and rights of national minorities is a serious matter, but we must not neglect another important aspect of the concept of "nation"."Some states consist of several nations but, culturally, those nations exist as independent states. The best example is Bosnia and Herzegovina which, the explanatory memorandum says, is the "only Council of Europe member state which is genuinely, and constitutionally, multiethnic".

Unfortunately, the 1995 constitution of Bosnia and Herzegovina which was agreed in Dayton and signed in Paris does not treat consistently the rights of all three constituent peoples – the nations of Bosnians, of Croats and of Serbs. As the constitution deals in different ways with those issues it allows for territorial and institutional exclusivity, and thus never gained democratic legitimacy among the citizens, and was not verified by the parliament. As a result, the constitution of Bosnia and Herzegovina cannot be considered a European standard in any way, nor can it be considered a standard that the Council of Europe can support. Even the Venice Commission in its report on the constitutional situation in Bosnia and Herzegovina does not fully consider all the contradictions and implications of that problem. Nowhere, not even in Bosnia and Herzegovina, is it acceptable to apply different standards to the issue of nationality within the territory of a single state. The new constitution of Bosnia and Herzegovina will gain democratic

and institutional legitimacy only if it is perceived as the *sine qua non*, and thus will continue to be used in future in Bosnia and Herzegovina.

THE PRESIDENT (Translation). – Thank you, Mr Raguž. I call Mr Mirzazada.

Mr MIRZAZADA (*Azerbaijan*) said that the discussion on nationhood had existed as long as the world had existed. The concept of "nation" would always be topical as there would always be different languages and different cultures. People had to understand the values that were held by different people all over the world. Human rights needed to be protected by the state and the state had a right not to be attacked. The Council of Europe had worked well in defending and protecting human rights in that way. The Council of Europe was, perhaps, the greatest achievement in the history of humanity.

The interpretation of "society" was in constant flux. In a world of change the concepts of "nation" and "nationhood" would be beneficial only if they were used for the enrichment of humanity. People were asking not what a "nation" was but what they could do to enrich the global culture and help others. Member states must recognise their duty to protect their own culture, but they must also recognise other cultures.

That had not happened in Azerbaijan. In Nagorno-Karabakh Azeris had suffered from interference from Armenia who had ignored the Azeri culture. In certain areas, the population had been 65% Azeri, but now, due to ethnic cleansing, no Azeris were left. The issues in Nagorno-Karabakh had been debated many times in the Council of Europe but nothing had been done. It was important that individual human rights and nations' rights were respected. However, justice would prevail, as it always did.

THE PRESIDENT (Translation). – Thank you, Mr Mirzazada. I call Mr Geghamyan. He is not here, so I call Mr Ivanov.

Mr IVANOV (*Estonia*) said that this was a timely and important report for the Council of Europe, which had been approached in a practical way. He praised the pragmatic focus of the rapporteur, who had looked at the concept of "nation" and the phenomenon of minorities. However, members must understand that the concept was more than just an academic one. There would always be politicians who used political ideology in a narrow-minded way. Human rights were not just an internal concern for member states; they must understand each other's principles. There was, however, no off-the-peg solution.

The report was of practical significance. Members needed to look at what was behind the concept of minorities and nations. Every generation would redefine "society" on the basis of their human experience. In the First and Second World Wars member states had shown great selfishness and national egotism. The European Union and the Council of Europe had been established to ensure that that did not happen again. It was necessary to recognise that states developed differently from each other. For example, there were differences between the ways France and Sweden had developed from Sweden, and many differences between the way eastern European states and western European states had developed. In recent years, European boundaries had changed and people had reclaimed their culture, identity, respect for their homeland and nation state. With that came a sense of belonging. Certain minorities had not been protected, but it was a fact of life that they still exerted an impact on the countries in which they lived. Ignoring those minorities was not within the spirit of the current line of thinking of the Council of Europe, and it would not enhance the future stability of Europe. There had been a general trend to move from the ethno-centric state to the multi-ethnic and multicultural state. It was necessary to continue to study the concept of "nation" in order to ensure the harmony and prosperity of Europe. He asked the Assembly to support the amendment.

THE PRESIDENT (Translation). – Thank you. I call Mr Legendre.

Mr LEGENDRE (*France*) said that, as a Frenchman and a Gaullist, he thought the report was excellent. Delegates needed to look at the concept of the "nation" in the renovated context of modern Europe. There were topical situations which were not dealt with in the report, including the multiplicity of identities within Europe and the re-drawn borders. Member states included both European minorities and immigrant minorities from non-European countries. It had been difficult for some members to integrate all their ethnic groups and implement the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages, which formed a social contract between all member nations to respect different cultures as equal. That applied to Luxembourg, which had a foreign population of one third of its total.

Most members of the Council of Europe also belonged to the European Union and had agreed to combine the national prerogative with the standards of the European Convention on Human Rights. It would be dangerous to have ethnically pure "islands" within Europe. He asked how a "national minority",

referred to in paragraph 11 of the draft recommendation, would be distinguished from any other minority. Would there be pressure on the inhabitants of a different minority from one that was officially accepted by a nation? It would not be acceptable to grant rights to one ethnic minority and not another. There must be respect for traditions under the European Convention on Human Rights and guaranteed equality between women and men. Derogation from the Convention on Human Rights must not happen as it would damage the Council of Europe. For the Council of Europe, the definition of nation was as Ernest Renan said: "the nation's existence is a daily plebiscite".

THE PRESIDENT (Translation). – Thank you. I call Mr Chope.

Mr CHOPE (*United Kingdom*). – It is a pleasure to follow Mr Legendre, because I agree with so much of what he had to say, which shows that there are issues on which the French and the Brits can agree.

It concerns me that the rapporteur has not acted on this morning's decision by the Committee on Legal Affairs and Human Rights to reject amendment No. 1. Despite the strong feeling in committee that amendment No. 1 is misguided, it has still been pressed this afternoon, which does not fit with my idea of developing consensus and agreement on this controversial subject.

As a United Kingdom representative, my understanding of the concept of "nation" is different from that of the rapporteur. The United Kingdom of Great Britain and Northern Ireland is more than 200 years old; the union of England and Scotland is almost 300 years old; and the union of England and Wales is more than 450 years old.

That does not mean that we do not actively and frequently discuss in our own country the issue of nation and nationhood.

Indeed, this very week there is a national debate about whether the British Broadcasting Corporation should stop broadcasting what is called the UK theme tune, which has been used on BBC radio for some 30 years. That theme tune comprises melodies from England, Scotland, Wales and Northern Ireland. The BBC's decision to discontinue it is allegedly because of the significant ethnic minority population that now exists in the United Kingdom, whether it be from India, Pakistan, Bangladesh, the West Indies, Africa or elsewhere. The irony is that under the definitions in paragraph 92 of the report, UK citizens with their origins in the Indian subcontinent, the West Indies or Africa are to be treated as new minorities, and not as traditional national minorities.

I find it offensive that we should be treating traditional national minorities differently from new minorities. That is the concern that I share with Mr Legendre. Surely all citizens of a country or nation state should be treated as having equal rights under the law. Having listened to this debate, it is clear to me that there is not, and never will be, an agreed standard or common concept of "nation". Indeed, we will waste much time if we try to impose a single concept by majority in this Assembly. It is for each individual country to reach its own decisions as to what nationhood means for it. Although this is a very interesting academic debate that takes me back to my student days, I believe that this report is misguided and fundamentally flawed.

THE PRESIDENT (Translation). – Thank you. I call Mr Gardetto from Monaco.

Mr GARDETTO (*Monaco*) congratulated Mr Frunda on his excellent work and appreciated that it had not been an easy task. The concept of "nation" was extremely complex. From today's debate, it had emerged that only with difficulty could one define the concept of "nation" in theoretical terms. However, to borrow a phrase from the law, there was enough evidence to conclude that nations existed. "Nation" was a multifactorial concept and the factors were not always the same.

The concept of "nation" should not be thrown out; he gave the example of Monaco to illustrate the argument. *A priori*, Monaco might appear to be a counter-example. It was a small enclave of only 2 square kilometres on French territory. The Monegasque community was only the third largest ethnic community in Monaco. The official language was French, although there was a national language which was taught in schools, but not spoken by many people. Instead, what defined Monaco as a nation was a sense of belonging and community. This was based on the historical and political reality of seven centuries and on the Grimaldi family, lords and princes of Monaco, who had suffered the tragedies of history, but had persevered to build a legal and sovereign state.

A nation was not just an organisation of public powers; it was an identity. The national Monegasque community had an ongoing relationship of interdependence in economic and everyday matters with what were called "*les enfants du pays*". These were people whose families had lived in the

principality for generations, even though they might not themselves have a Monegasque passport. So, the definition of Monegasque national identity had to stray from the beaten path. It was sustained by the nation's historical and geographical features.

The regrettable and tragic consequences of an excess of the concept of "nation" had been demonstrated in history. The Monegasque nation was consensual and could not be transposed elsewhere. Similarly, other concepts of "nation" would not apply in Monaco. In conclusion, he stated his belief that the nation did exist and deserved our consideration and respect.

THE PRESIDENT (Translation). – Thank you. I call Mr Severin from Romania.

Mr SEVERIN (*Romania*). – This is not an academic discussion despite the academic-sounding title of the report. Indeed, the rapporteur had a very difficult task to accomplish, because this apparently academic topic has many profound political connotations. It is at the origin of many conflicts which brought us much suffering during the last century. I hope that it can now be a bridge between an old 19th-century concept and a 21st-century concept which would completely change the paradigm of "nation" and bring us to post-Westphalian times.

I am grateful to the rapporteur for opening the doors to a new century while staying with some concepts of the past centuries. The trend in Europe over at least the past decade, influenced and supported by this Council of Europe, was to move from the ethnic to the civil concept of the state. I remember my own missions under the aegis of the Council of Europe in the western Balkans and in other newborn states after the end of the bipolar system.

We asked countries in the western Balkans to cease describing themselves as, for example, a country of Macedonian citizens that accepted several minorities or a country of Ukrainians that accepted other minorities. We told them, "You are the country of the Macedonian citizens, not the Macedonian ethnic group; you are the country of the Ukrainian citizens, not the Ukrainian ethnic group; you are the country of the Romanian citizens, not the Romanian ethnic group".

Our draft resolution therefore contains an important recommendation to ask all our states to perceive themselves as the states of their citizens, irrespective of their ethnic background. At the same time, it is important to understand that not only individuals or the state are entitled to rights. Some communities that are united by a historical and cultural background also have rights. We therefore have three categories – states, individuals and communities. The future of our states should be multicultural and civic-minded. States should be not just multicultural because, without a civic network, we cannot preserve the unity and the coherence of the state. States should be not just civic-minded because, without multiculturalism, we cannot give our states genuine diversity.

I want to consider the concept of the kin state. Let me give an example. Romania and Hungary are kin states. For historical and cultural reasons, ethnic Romanians live in Hungary and ethnic Hungarians live in Romania. However, I do not believe that Romania is the state of Romanians who live in Hungary because those Romanians are a minority who belong to the Hungarian state. The Hungarian state should take care of minorities who pay taxes there, not Romania. All states of the world, not only the so-called kin states, are obliged to protect the minorities' right to identity. We must change the mentality and approach.

In future, we have to talk more about a third concept of "nation" – the cosmopolitan nation. We represent the emerging European cosmopolitan nation, where there will be no minorities because we will all be in a minority. Such a state would be the incarnation of our slogan, "All different, all equal."

THE PRESIDENT (Translation). – Thank you, Mr Severin. I call Mr Padilla. He is not here, so I call Mr Agramunt.

Mr AGRAMUNT (*Spain*) said that in a week of outstanding debates, we had been listening to a debate of exceptional quality. It was a very important subject. It was vital to consider the question of national communities and minorities. He agreed with the report and intended to vote for it; however, he disagreed with the statement of his fellow delegation member – not a colleague of the same political party – Mr de Puig. Mr de Puig had referred to what the report did not say and he would refer to what the report did say.

Mr Frunda's report referred to nations and national minorities. In the explanatory memorandum, it was made clear that each member state of the Council of Europe had its own position and background. Those who claimed a Catalan, Galician or Basque nation were using erroneous concepts. Those places had never been recognised as nations in history. It was not necessary or acceptable to reinvent history.



He came from Valencia and spoke a language similar to Catalan, but did not claim nationhood. Spain had a proud history of more than 500 years. It was foolish to re-open a dangerous debate. The Spanish Constitution enshrined Spain as the only nation on Spanish territory; there were therefore no other nations there apart from Spain.

It was necessary to refute these assertions because if they were not countered, people might assume that was the prevailing view. It was not. These movements had caused a crisis in Spanish political life. Mr de Puig's statements were not in line with the constitution. In Spain, there was a structure with local autonomies, but that decentralisation should not be confused with a multitude of nations. Other speakers had referred to the presence of Hungarians in Romania and Moldovans in Ukraine. That was all well and good but the rapporteur and the Council of Europe needed to go no further.

THE PRESIDENT. – Thank you, Mr Agramunt.

That concludes the list of speakers.

I call Mr Frunda, rapporteur, to reply. He has four minutes.

MR FRUNDA (*Romania*). – I thank all my colleagues who spoke in the debate. I should like to reply to the criticisms and suggestions that were made.

First, I shall reply to the points that Mr Tkáč made. We try to change some traditional terms because Europe is changing. Fifteen years ago, we had a Cold War. In Romania, as well as in your former country – Czechoslovakia – assimilation was a declared policy. We fought against that. Former enemies – Romania, Czechoslovakia, Hungary, the USSR and others – were in the Warsaw Pact, whereas France, the Netherlands and others were in NATO. Now, we are together. Yet, for 10 or so years after the Second World War, Romanian historians said that Hungarians and Czechs would be our enemies for ever. However, now we find that we did not have real wars and we are together in the same team. We have changed our thinking. Human rights and various policies are changing. That is what I want. I want not a contradiction between nations and national minorities but a tolerant, anti-xenophobic and friendly approach.

Let me answer Mr Schneider's point that nations are not for ever. They are changing. Nations are made up of individuals.

Former friends and neighbours of mine have fathers and grandfathers who were Hungarian; now they say that they are Romanian. Perhaps in Hungary there are former Romanians, Czechs, Slovaks and Serbs who are now more Hungarian. Why? Because it is in their personal interest. Through my small report I want to help people not to be like that, but to have the right to be part of a nation, to share a common culture and national identity. That is why I used Ernest Renan's words, "The nation is a daily plebiscite", as the motto for my explanatory memorandum.

Mr Legendre asked me what a national minority was. Traditional national minorities are persons belonging to a different community which is smaller in numbers and has a different language, culture and tradition and often a different religion. Thus, there are Hungarians in Romania, or in the Slovak Republic and Germans in Poland; there are many such examples.

May I continue for a minute past my allotted time, Mr President? It is very important that I answer Mr Chope from the United Kingdom. I do not want to go back over the history of the Commonwealth and why people from Bangladesh, India or Pakistan are in London. It is clear that that has nothing to do with national minorities and the Scottish, Irish or English identity. The report has nothing to do with that.

There is a difference between traditional minorities and immigrants. People come to our country because they are poor and hope to have a better life and a better standard of living. Of course they should have rights as individuals, but they cannot have the same rights as traditional minorities who have lived in the country for centuries to use their mother tongue. It would be impossible for the local administration in Romania to speak Chinese, but the Roma, Hungarians, Ukrainians and others have the right to speak their own language. That is the tolerant approach that we should take.

Thank you, Mr President, for granting me additional time.

THE PRESIDENT (Translation). – Thank you, Mr Frunda. As we are not pressed for time I did not dare interrupt you.

I call the chairperson of the committee.

Mr MARTY (*Switzerland*) said that the committee had debated this issue at length and discussions were not easy. The very fact that the committee had been able to present a report and recommendations was due to the perseverance of the rapporteur. The report would not end the debate but would constitute an excellent basis for continuing it.

THE PRESIDENT (*Translation*). – The debate is closed. The committee has submitted a draft recommendation and one amendment has been submitted. I remind colleagues that the time for speeches on the amendment is one minute.

We come to Amendment No. 1, tabled by Mr György Frunda, Mr Christos Pourgourides, Mr Andreas Gross, Mr Boriss Cilevičs, Mrs Elene Tevdoradze, Mr Mátýás Eörsi and Mr Luc Van den Brande, which is in the draft recommendation, before paragraph 17, insert the following paragraph:

“The Assembly refers to its Recommendation 1201 (1993), 1255 (1995), 1285 (1996) and 1345 (1997) and once again clearly reiterates its recommendation to the Committee of Ministers that an additional protocol be drawn up to the European Convention on Human Rights, setting minimum standards, binding on all member States, for the rights of national communities or minorities and enabling them to truly develop their identity, and which would become a binding instrument for the European Court on Human Rights.”

I call Mr Van den Brande to support amendment No. 1.

Mr VAN DEN BRANDE (*Belgium*) said that it was difficult to be impartial.

*(The speaker continued in English)*

The essence of the amendment is that we want to add to paragraph 17 the idea of setting minimum standards. As the rapporteur and I have both referred to that, I think that instead of speaking about models we should cherish the idea of standards. That is the scope of the amendment.

THE PRESIDENT (*Translation*). – Does anyone wish to speak against the amendment?

Mr CHOPE (*United Kingdom*). – This morning, the amendment was opposed and voted down by the committee responsible; unfortunately, a number of its members are not in the Chamber at present. The essence of the argument against the amendment was that it would place another intolerable burden on the European Court of Human Rights at a time when the Court is vastly overloaded with work that it cannot carry out effectively. That is the essence of the committee's concern and that is why we rejected it.

THE PRESIDENT (*Translation*). – What is the opinion of the committee?

Mr MARTY (*Switzerland*) (*Translation*). – The committee rejects the amendment.

THE PRESIDENT (*Translation*). – The vote is open.

*Amendment No. 1 is rejected.*

We will now proceed to vote on the whole of the draft recommendation contained in Document 10762, as amended.

The vote is open.

*The draft recommendation in Document 10762 is adopted.*

#### **4. Date, time and orders of the day of the next sitting**

THE PRESIDENT (*Translation*). – I propose that the Assembly hold its next public sitting tomorrow morning at 10 a.m. with the orders of the day which were approved on Monday 23 January.

Are there any objections? That is not the case.

The orders of the day of the next sitting are therefore agreed.

The sitting is closed.

*(The sitting was closed at 5.50 p.m.)*

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*Speakers:*

Mrs Wolhwend (Liechtenstein)  
Mr Østergaard (Denmark)  
Mr Greenway (United Kingdom)  
Mr Platvoet (Netherlands)  
Mr van Thijn (Netherlands)  
Mr Geghamyan (Armenia)  
Mrs Pehlivan (Belgium)  
Mrs Veenendaal (Netherlands)

*Replies:*

Mrs Verdonk (Minister for Integration and Immigration of the Netherlands)  
Mrs Zapfl-Helbling (Switzerland)  
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*Draft resolution, Doc. 10741, adopted*

3. The concept of "nation"

Presentation by Mr Frunda of the report of the Committee on Legal Affairs and Human Rights, Doc. 10762

*Speakers:*

Mr Van den Brande (Belgium)  
Mrs Smirnova (Russian Federation)  
Mr de Puig (Spain)  
Mr Tkáč (Slovakia)  
Mr Schneider (France)  
Mr Raguž (Bosnia and Herzegovina)  
Mr Mirzazada (Azerbaijan)  
Mr Ivanov (Estonia)  
Mr Legendre (France)  
Mr Chope (United Kingdom)  
Mr Gardetto (Monaco)  
Mr Severin (Romania)  
Mr Agramunt (Spain)

*Replies:*

Mr Frunda (Romania)  
Mr Marty (Switzerland)

*Draft recommendation, Doc. 10762, adopted*

4. Date, time and orders of the day of the next sitting

