European Integration and Migration Policy:
The Implications of Vertical Policy-making

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presented in the panel

**Migration, Citizenship, and Race in the European Union**

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## Abstract

Since the beginning of the 1980s, migration and asylum policy in Europe is increasingly elaborated in supranational forums and implemented by transnational actors. I argue that a venue-shopping framework is best suited to account for the timing, form, and content of European cooperation in this area. The venues less amenable to restrictive migration control policy are national high courts, other ministries and migrant-aid organizations. Building upon preexisting policy settings and developing new policy frames, law and order officials circumvented national constraints in largely intergovernmental and secretive forums with EU institutions playing a minor role. In this fashion, they avoided judicial scrutiny, eliminated other national adversaries and enlisted the help of transnational actors such as transit countries and carriers.

# European Integration and Migration Policy:
# Vertical Policy-making as Venue Shopping

For the last two decades, scholars have underlined that the realm of public policy has expanded as part of a regional integration in Europe. These empirical developments have spawned a plethora of new analytical categories such as "multi-level governance" (Marks, Scharpf, Schmitter and Streek 1996) and has generated a renewed interest in "policy networks" (Rhodes 1998, Pappi and Henning 1998) and federalism.

In the 1980s and 1990s, there has indeed been a redeployment of state prerogatives in the area of migration control, as was the case in other policy areas less associated with the "legitimate means of coercion" of the state. Controlling who enters, stays, and leaves national territory has long been emblematic of national sovereignty and considered a founding prerogative of the modern nation-state.[i] Migration as a policy issue was never confined to a single ministry since it had implications for labor, economics, foreign affairs, social affairs, internal affairs (etc.).[ii] To the *horizontal* dimension of immigration policy-making, one must add a *vertical* one given that all levels of governance have acquired prerogatives in the area of migration control. In particular, policy elaboration and implementation has shifted upwards.

The purpose of this article is two-folded. Empirically, it seeks to examine a policy domain, migration control, that has been overlooked in the literature on multi-level governance in the European Union yet provides valuable comparative insights. Theoretically, it seeks to contribute to this body of literature by showing that multi-level governance results from "venue shopping."

I proceed in two steps. First, I map out the extent to which migration control policy-making has gone through a process of internationalization and ask whether it is

congruent with existing EU studies theories. Second, I argue that it constitutes a response, to the constraints that national migration control policy-makers face. Drawing upon the literature on "policy venues" (Baumgartner and Jones 1993), I analyze the internalization of migration control policy as a case of "venue shopping."

The rules guiding decision-making and the character of the participants at different levels of governance (local, national, international) privilege a different set of actors and mobilizing strategies. Political actors seek policy venues where the balance of forces tips in their favor. In the case at hand, there are at least three reasons why law and order officials responsible for migration control gain from operating in international venues. *First*, they are not under the same judicial constraints than at the national level and rules give them greater leeway. *Second*, they have less opposition to contend with than in a national horizontal policy-making framework from other ministries, parliamentarians, or migrant aid groups. *Third*, they have enlisted "sheriff's deputies" (Torpey 1998) in these venues, in particular transit and sending countries.

The time frame for the analysis covers the period from the second half of the 1970s to 1999. The discussion is based on available archives as well as on interviews conducted in Brussels as well as in Germany, France, and the Netherlands. These three EU member-states are founding members of Schengen. They have comparable numbers of foreigners on their soil situated around the European median.[iii] Moreover, they have set similar migration and asylum policy goals since they stopped recruiting foreign labor and, albeit unwillingly, welcomed family members in the 1970s.[iv]

# I. The Internationalization of Control

## 1. Alternative Explanations

Title IV of the Amsterdam Treaty calls for the progressive establishment of an "area of freedom, security and justice." Within five years, the Council should unanimously adopt measures on asylum, refugees, and displaced persons, on the absence of any controls on persons crossing internal borders (both EU citizens and third country nationals), on the crossing of external borders (including rules on visas for intended stays of no more than three months), and on the free travel of third country nationals within the EU for less than three months. This five-year deadline does not apply to refugee "burden-sharing", and the harmonization of the conditions of entry and residence, standards for the issue of long-term visas and residence permits, or the right of residence in other states of the Union for third country nationals.

Although member state responsibilities with regard to the maintaining of law and order and internal security are upheld, the scope of the policy area that will be transferred to the community's "first pillar" after five years is impressive.[v] How can we account for the outcome at Amsterdam? How can we explain the increasing use of the EU framework for the elaboration of migration and asylum policy? Why and how did it start? Why did it continue in the particular largely "intergovernmental" institutional form in which it has?[vi] What are the motors and processes that characterize the European migration policy domain? How can we account for the policy outputs (or lack thereof) in this domain?

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Although this article draws upon analytical tools that do not derive from the historically salient theories of European integration (liberal intergovernmentalism and neofunctionalism), I will first discuss what they would predict in this particular case study and whether the evidence validates their claims. Although they fail to provide a comprehensive account of empirical developments, they highlight the puzzling and salient traits of the internationalization of migration policy-making.

From a liberal inter-governmentalist perspective (Moravscik 1998), the convergence of national preferences independently of previous integration is a precondition for cooperation. National representatives seek to maximize domestically aggregated interests in interstate bargaining whose outcomes reflect the relative weight of the member states. The EU framework, like other international institutions, is used to increase bargaining efficiencies by providing a set of transaction-cost reducing rules. In the case at hand, a number of scholars and policy-makers have in fact attributed international cooperation on migration and asylum to the similar problems that Northern European receiving countries faced, namely a massive influx of asylum-seekers and migrants at a time when political elites "resort[ed] to blame avoidance in the face of rising unemployment" (Ugur 1995, p. 974) and catered to an hostile public opinion for fear of encouraging extremist parties.

There were however only a few "high politics" moments when government leaders showed their political will to move the process forward.[vii] During the rest of the period, civil servants had to fill in the details. Schengen epitomizes this to the extent that the convergence of national interests at the highest level was most ephemeral. Once the first agreement was signed by chiefs of government after truckers' roadblocks, Germany

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became weary of sending the wrong signal to Eastern European states and markets and the political situation in France was no longer conducive to the visibility of the issue. Left on their own, bureaucrats and policemen involved in the negotiations made migration a centerpiece of the second agreement while the first only contained three articles on the subject (articles 7, 17, 20).

The timing of events does not validate the intergovernmentalist hypothesis. In the early-to-mid-1980s, immigration and asylum issues emerged in the discussions of supranational clubs involving civil servants and police officials dedicated to other policing themes such as drugs or terrorism (Trevi and, in 1984, the Club of Bern and the STAR group).[viii] France, Germany and the Benelux countries signed the Schengen agreement in 1985 and the issue-specific "ad hoc immigration group" was set up in 1986.[ix] These events therefore took place a few years *before* the rise in the number of incoming asylum-seekers, refugees, and illegal migrants (1989-1993) at one of the lowest points in the flows of legal migrants (between 1982-1985).[x] In fact, international forums on migration and asylum emerged before national reforms in immigration and asylum criteria led more people to go underground[xi] and before the fall of the Berlin wall and the emergence of East-West pendulum migration (Moravska 1998).

Did the single market project and, more generally the *relance* of Europe with its "citizens' Europe" agenda create the need for cooperation on migration and asylum, as explanations based on functional spillover would predict. After 1985, there was indeed a trend towards institutionalization, a more frequent use of the EC (later EU) as the proper framework for international coordination, and a more explicit connection between the abolition of internal borders within the EC and the need for "compensatory measures" in

the field of immigration, asylum and external border control policies. This became clear. in expert discourses such as Commission documents with the Single European Act in 1986 that set 1992 as the deadline for the completion of the single market.[xii] Schengen was reinterpreted as a "laboratory" for EC-wide cooperation, the Rhodes coordinators' group that produced the Palma document in 1989 for the Madrid Council meeting argued that the "multiplicity of fora in which [immigration and asylum] are discussed" needed to be coordinated (p. 5, see Bunyan 1997) and, contradicting that call yet focusing on Article 8a of the SEA, a Trevi sub-group, Trevi 1992, was set up to address free movement issues.

Neofunctionalist interpretations would argue that international cooperation to fulfill a functional task generates pressure to coordinate adjacent issue areas as integration in one area results in unforeseen problems that can only be solved by integrating others. In the case of migration and asylum, the logic of functional spillover seems compelling at first glance. Allowing for the free movement of persons, as opposed to labor, could serve as a means of reviving the European project through a "people's Europe" rhetoric in times of economic recession. Europeans moving freely within a passport Union (agreed upon in 1981) would realize the benefits of European integration and develop a European identity. Moreover, the removal of internal EC border checks would further facilitate the free movement of goods.

Yet, there are a number of unanswered questions. Cooperation on migration and asylum should derive from earlier integration efforts, yet it did not stem from the past application of the free movement of labor provisions but rather from the concomitant *future* planning of the single market. In this respect, there was no inherent path

dependence since the Treaty of Rome's provisions for free movement. Cooperation on migration is not an unintended consequence of previous developments but presented as an *anticipated* consequence of the yet-to-be completed internal market. In this respect, neither neofunctionalist nor neo-institutionalist perspectives (Pierson 1996) provide adequate analytical tools. It is perhaps telling that the Commission whose competence-maximizing outlook and agenda-setting function (Pollack 1994, 1997) has been considered key in neofunctionalist theories took a back seat in these matters. According to Wenceslas de Lobkowicz who later participated in third pillar negotiations, the Commission thought it wiser to leave the field to the discretion of member states and avoid debates over sovereignty (1993, p. 12).

And then there is the counterfactual question: Would European states have cooperated in the absence of the EU? The answer is yes and in fact they did before and they are still involved in an array of international forums and use a number of international organizations to pursue their national policy goals. Although the incorporation of the Schengen *acquis* at Amsterdam seems to herald the EU as the proper frame for cooperation on immigration and asylum, not all EU members are concerned. Amsterdam consecrates the idea of a *Europe à la carte*. The United Kingdom, Northern Ireland and, consequently, the Republic of Ireland have opted out of the new area of freedom, security and justice.[xiii] Denmark, albeit a member of Schengen, is not bound by the new title or the incorporation of the Schengen acquis and will only cooperate on the common visa policy. Furthermore, Amsterdam developments should not obscure the fact that many other international organizations, forums, and cooperation processes co-exist alongside the EU. They have varying membership and overlapping goals. Justice and

Interior officials and major receiving countries always participate. Sometimes the Council.

Secretariat is represented yet rarely the Commission (see Table 1).

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**TABLE 1**
**List of international organizations involved in migration issues and transnational cooperation forums in Europe**

EU (Council secretariat and later Commission)
EFTA
Schengen Group
Vienna Club (Justice and Interior Ministers of Germany, Austria, Switzerland, France and Italy)
Vienna Group
Budapest Group
Central European initiative
CAHID (Ad Hoc Committee of experts for identity documents and the movement of persons)
Council of Europe (including CAHAR or Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees, and Stateless People)
OECD
United Nations (UNHCR and United Nations Commission on Crime Prevention)
International Labor Organization
OSCE (Organization for Security and Cooperation in Europe)
International Organization for Migration (IOM)
International Civil Aviation Organization (ICAO)
Intergovernmental Consultations on Asylum, Refugees and Migration Policies (IGC)
International Center for Migration Policy Development in Vienna (ICMPD)
Interpol

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In this respect, liberal intergovernmentalism's insistence on the power distribution

between states in international negotiations seems validated in this policy domain.

Migration cooperation forums have been initiated by Northern European receiving states

that happened to be the larger countries with more clout (Germany, France, and initially

the UK). They set the initial rules. When new members joined Schengen or participated

in the third pillar, they had to agree to the foregoing acquis. In this series of concentric-circles, the powerful initiating states remain at the core.

The October 1991 Commission communication on asylum summed up the two narratives that had justified cooperation on migration and asylum: 1) the convergent interests of member-states and 2) internal market dynamics. "In view of the fact that member states are unable individually to respond in an appropriate manner to the challenge posed by the ever-swelling influx of asylum-seekers, and given the deepening of the Community as part of moves to complete the internal market and to lay the groundwork for political union, this issue has become a matter of common interest." (SEC (1991) 1857 final, p. 1). Interestingly enough, the December 1991 report of the Ad Hoc Immigration Group prepared for the Maastricht Council meeting barely mentions free movement and mostly stresses the first part of the equation, the fact that asylum "has become a matter of urgency for virtually all member states." It sets the goal of harmonization as a means of "exerting pressure on first host countries" now known as safe third countries.[xiv]

By 1991, there was indeed an influx of asylum-seekers in Germany and all sorts of highly emotional debates over immigration in other core member states. The single market agenda was making headway. These developments could justify *post facto* the increasing intensity of routinized transgovernmental cooperation on asylum and migration in Europe yet cannot explain it. Spillover and the upgrading of common interests are "causal stories" (Stone 1989) identifying the origins and solutions of policy problems rather than causes *per se*. We therefore need to develop an alternative

framework to account for the timing (early-to-mid 1980s), shape and substance of cooperation on migration and asylum.

## 2. *The Form and Content of Internationalization*

The form of EU cooperation still privileges intergovernmental bargainings over supranational institutional actors although EU institutions are incrementally incorporated in the process. The content is consistently security-oriented and restrictive. Outcomes often take the form of non-legally binding decisions or informal arrangements. The only operative and substantial agreements and conventions, Dublin and Schengen were in fact adopted outside the EU framework and their ratification and implementation greatly delayed: Dublin signed in 1990 came into force in 1997 and Schengen only came into effect in 1995, 10 years after the signing of the first agreement. Simple declarations such as those adopted at the conference of European ministers responsible for immigration in London in December 1992 have had a tangible legal impact at the domestic level.

In 1992, the Treaty on European Union (articles K 1-9) created the third pillar on Justice and Home Affairs with one full group (GD1) of the K4 committee dedicated to asylum, visa and migration yet the framework required unanimous decisions by the Council and remained outside the community legal order. In five years' time, the Justice and Home Affairs council had only agreed on one joint position on the common definition of a refugee and on five legally binding joint actions, regarding school travel for third country national children, airport transit procedures, a common format for resident permits, burden sharing for displaced persons and human trafficking (Baldwin-Edwards 1997). The formal harmonization of policy has therefore been generally

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restrictive, limited yet, in some cases, significant as in the case of the refugee definition that excluded civil war victims.

The lack of formal agreements has been attributed to the complicated decision-making structure of the third pillar. This only adds to the puzzle. It is the same large member states (France, Germany) that are most concerned with immigration and initially became involved in international forums and then stalled the process of Europeanization by insisting on labyrinthine procedures and unanimous voting.

Yet, much has been achieved outside the "third pillar" legal framework. Regarding policy elaboration, there is exchange of information, construction of common terms such as "safe country of transit," the definition of problems in a supranational context, common decisions such as the establishment of a list of countries requiring visas, and the generalization of certain policy instruments such as carrier sanctions. At the implementation level, there is operational cooperation between border police but also liaison officers, intelligence personnel and magistrates, as well as data exchange through the Schengen Information System.[xv] If one adds the Schengen and JHA procedural arrangements, one can already speak of a supranational field, with its procedural rules, cognitive norms, and "Schenglish" jargon.

Furthermore, transnational cooperation in the fields of asylum and immigration has taken on the characteristics of a multi-level governance regime in the sense that the relevant actors in policy-making can be found in Brussels, in certain national ministries and central agencies, and at the subnational level (at the *Land* level in Germany). As early as 1972, Bavaria belonged to *Arbeitsgruppe Südost* with Austria, Canada and Eastern European countries. In 1978 and 1979, other *Ländern* became involved respectively in

the *Arbeitsgruppe Nord* and *Arbeitsgruppe Südwest* (Bigo 1996, p. 94). States with external borders in particular have been active in border control policy. Large states such as Bavaria and Baden-Württemberg are also present in Brussels to defend their interests (see Bank 1998 on the role of German *Ländern* in the last ICG).

Who benefits from this vertical type of policy-making? How were they able to? The answers to these questions will help us understand the motors behind the internationalization of migration control.

## II. Vertical Policy-Making as Venue Shopping

In his seminal work, *The Semi-Sovereign People* (1960), E. E. Schattschneider argued that political "conflicts are frequently won or lost by the success that the participants have in getting the audience involved in the fight or in excluding it as the case may be." Depending on what Frank Baumgartner and Bryan Jones call "policy venues" or the "institutional locations where authoritative decisions made concerning a given issue," different constituencies will be mobilized (1993, p. 32). The rules that guide each political arena advantage different kinds of actors as they require the mobilization of different kinds of resources and call for different strategies (Immergut 1992).

This framework developed by American public policy scholars has the advantage of being agnostic as far as the relevance of international relations versus comparative politics, or political science versus sociology in EU studies and echoes discussions in all of these fields.[xvi] In this respect, I answer calls from EU theorists who urge a synthesis of international, comparative and American politics (Caporaso 1999, p. 161; Moravcsik

1999, p. 271) while drawing on the oft-overlooked public policy analytical toolboxes (Peterson 1999, p. 21). Moreover, our concept of venue shopping is neither purely structural or functional since it emphasizes actors' strategies, yet not solely constructivist or voluntarist to the extent that it takes into account the rule-bound context that actors respond to. Actors seek new venues when they need to adapt to institutional constraints, in a changing environment. To do so, they must resort to framing processes, or policy images -the "constructivist" moment. This approach does not preclude unintended consequences or change over time as excluded actors become aware of international venues and/or seek to change the rules of the game, although, in this policy domain, it is too early to tell.

A framework is a set of analytical tools not an explanation, yet it allows us to ask the relevant research questions to get to it. In this case, venue shopping In this political whodunit, I ask in turn what was the motive behind policy-making in international venues, what was the alibi that justified such internationalization and what were the means whereby the initial goal was achieved. The culprits in this story are migration control officials. By shifting policy-making away from national venues, migration control agencies gain in the power re-distribution. The migration policy domain *includes* experts, consultants, liaison officers, and non-EU governments and *excludes* also a number of actors that had better access in a horizontal negotiating process at the national level (see Table 3). I examine these dynamics in three parts.

*First*, I analyze the rationale behind the initial transnationalization of policy-making. I trace it back to the beginning of the 1980s when migration control agencies faced a number of setbacks at the national level in spite of government commitment to

appeasing public anxieties by restricting migration. In particular, judicial rulings, and calls for the integration of settled foreigners from other ministries and non-governmental actors significantly reduced the margin of maneuver of Interior and Justice personnel in charge of migration control. They set out to find policy venues more amenable to their ends.

*Second*, I briefly examine how the shift in venues was possible by looking at the importance of the framing of migration problem and preexisting blueprints for transgovernmental policy forums.

*Third*, I examine the value added of operating in a transnational context. I discuss three characteristics of vertical policy-making: (1) judicial constraints are skirted, (2) potential adversaries are absent or weak, and (3) non-national actors can be co-opted as they also have incentives to participate in migration control.

### *1. The Rationale behind Venue-Shopping: Solving the "Control Dilemma"*

Domestic constitutional principles (equality before the law, fundamental rights), general legal principles (due process, proportionality), national jurisprudence and laws, and, albeit in a limited fashion, international legal instruments[xvii] have developed since the 1970s in such a way as to constrain the restrictive objectives of migration control policy after the first oil shock in 1973. The juridicization of migration policy through the jurisprudence of higher courts such as administrative and constitutional courts is now well documented (Hollifield 1992; Joppke 1997, 1998; Neuman 1990; Guendelsberger 1988; Legomsky 1987; author 1997, 1998). As a consequence, there has been (a) a reduction of the arbitrariness and discretion power of the bureaucracy, (b) the protection

of certain categories of foreigners against expulsion (family members, long-term residents), (c) precise legal procedures and appeals in cases of expulsion or non-admittance, (d) more cases of automatic residence renewals and other measures that consolidate the status of legal residents. Even less legally protected categories (undocumented aliens, foreign criminals, rejected asylum-seekers) cannot be expelled at will by public authorities.

To these judicial constraints, one must add the logistical difficulty and material costs of a policy that would seek to expel all undocumented foreigners or the problems associated with the monitoring of borders. Finally, the desire to prevent the entry and stay of "unwanted migrants" takes place as contradictory goals are being pursued. European nation-states also want to provide for the tourist industry that has been booming thanks to cheaper air travel and paid holidays. Free trade requires some degree of openness that contradicts calls for tighter border controls (Sassen 1996).

As part of a larger reorientation of policy instruments in liberal democratic receiving countries, one key element has been "remote control" policy (Zolberg 1998). This serves to ensure that the pool of prospective migrants can be sifted and sorted before they arrive on the territory of receiving countries to separate the "unwanted" migrants (Joppke 1998) from the categories that countries want to welcome (skilled workers, tourists, businessmen, contract laborers). The premise of "remote control" is that, once the migrants have arrived, it is more difficult to have them leave because of the legal protection that I have just evoked.

The first policy instruments included visa requirements and an all-around accrued role for consulates abroad. Moreover, should a prospective "unwanted" migrant actually

make it to a point of entry, there are now legal "no-man's lands"[xviii] where she can find herself in, such as international waiting zones in airports and train stations.[xix] Access to lawyers and migrant help groups is notoriously poor, in a way that makes judicial supervision of these zones difficult.

International cooperation on migration and asylum goes one step further by shifting policy *elaboration* away from the national judge's eyes. In turn, measures can be approved to enhance this strategy at the *implementation* level: a common visa policy, carrier sanctions (article 26 of the Schengen agreement), the establishment of "buffer zones" via the accession negotiations with Eastern and Central Europe.

### 2. What made venue shopping possible?

There were *preexisting settings* for transgovernmental cooperation on security-related issues, and the use of *policy frames* that linked migration and security as global threats demanding transnational responses.[xx]

Migration control experts took advantage of new organizational settings not previously available to them. The "wining and dining culture" of the 1970s Trevi group (den Boer 1996) alerted law and order ministries to a European-wide potential scope of policy-making. Once a model had been set for security "clubs" that discussed drugs or terrorism, it was easy to add new types of working groups responsible for other cross-border issues or to widen the subject matter of a preexisting one.

These different groupings involving different countries were flexible, fairly informal and secretive in character. This had a number of advantages. First, it avoided the

scrutiny of parliaments, courts and other bodies of supervision and control, including EU institutions. Second, it allowed the building of trust and relationships between officials from different countries through repeated interactions, before the formal negotiations stage. Third, it enabled law and order officials to set the agenda on transnational cooperation on migration issues and therefore become inevitable interlocutors, the natural relevant actors in later stages. This agenda-setting phase is noteworthy to the extent that a study of the published key texts on justice and home affairs reveals that the issues that are discussed today, their framing, their justifications are already set by the mid-1980s (see Bunyan 1997 for a compilation).

International cooperation was not a *terra incognita* when the migration issue came to the surface nor was it a taboo. The post-1970s paradigm shift[xxi] as to the role of central administrations (Jobert 1994) that expanded the realm and scope of policy-making between the nation-state apparatus affected migration control policy after having been felt in economic and social policy domains. Migration control agencies could therefore inscribe their actions within the "deep core beliefs" that influence the way problems and solutions are defined in a policy system (Sabatier and Smith 1993).[xxii]

Yet, migration control officials meeting their counterparts in the early 1980s did more than follow a trend. They established linkages between migration, asylum and crime-related issues and emphasized technical issues that required their expertise. Interior and Justice personnel, police personnel insured that they were the most apt at providing the solution to the problem that they had themselves defined...illegal migration, human smuggling, bogus asylum claims. As Graham Allison's study of bureaucratic politics pointed out, civil servants have the solutions, they just need to find the problems (1971).

Agenda-setting studies have pointed that actors need to explain why it is appropriate that an issue be considered in a particular venue (Majone 1989). As David Kirp has pointed out, the way a problem is defined will determine what groups will be considered legitimate to make the decision: is it a question of *professional* expertise, *political* judgement, *legal* norms, *bureaucratic* standards, or should the *market* decide (1982). They also employ issue linkages.

When given a chance to occupy a new policy space as was the case during the negotiations leading to the second Schengen agreement, they seized upon these "windows of opportunity" (Kingdon 1984). While the 1985 Schengen agreement only contained 3 articles on immigration, the issue came to dominate the discussion of the four Schengen groups in charge of the implementation agreement. Group 1 on police and security included a subgroup called "border control and border surveillance" later called "immigration" or "illegal immigration" alongside subgroups on drugs, arms and munitions. Group 2 on movement and persons only contained sub-groups dedicated to migration and asylum: "border control," "visa," "foreigners' rights," "asylum," and "airports and seaports." The same amalgam between migration and cross-border criminality such as drugs, terrorism has been institutionalized in the post-Maastricht "third pillar."

By focusing on the *ideas* behind internationalization, we should not overlook an important part of the story, namely the *interests* of the actors that were instrumental in enabling it. Recently, scholars have highlighted the social construction of the notion of a "European security space" to legitimize the accrued presence of police personnel and Interior ministries civil servants at the supranational level (Bigo 1996).[xxiii] The idea of the

EU as an "institutional terrain" (Fligtein and McNichol 1998) or as an emerging "political field" (Favell 1998) conveys the potential that supranational institutions can offer to actors competing for space in their national settings or seeking new roles and functions. European integration has allowed certain professional categories, certain ministries and agencies to justify their transnational activities and to establish a quasi-monopoly on international discussions of migration. They have more autonomy than during national ministerial consultations with other ministries.

Given the unchanged goals of migration policy, Interior and Justice officials argued that the internationalization of policy stemmed from a reassessment of preexisting policy methods and instruments as sub-optimal and an anticipation that better results could be obtained by shifting the level of policy coordination and implementation.[xxiv] Lesson drawing therefore justified the shift of migration control policy upwards.[xxv] Officials repeat that the characteristics of migration have changed and policy instruments must adjust to the evolving reality "on the ground."[xxvi] Proponents of transnational police cooperation in the immigration field refer extensively to the increasing links between international organized crime and human smuggling as a *raison d'être* for their own increased margin of maneuver (Anderson and den Boer 1994, Bigo 1996, Koslowski 1998, Kyle 1998). In fact, the idea that migrants get smarter and harder to catch thereby requiring a wider net to be cast often replaces hard data on the reality of illegal migration and also overstates the actual potential of these new modes of surveillance (Engbersen 1996). In the EU context, technocrats link European integration, migration and security issues by either underlining the criminal activities associated with free movement or the

fact that third country nationals would be able to travel freely within a Europe without borders.

Actors who want to emphasize the security aspect of migration have been aided in their task by the media and even academia. Even a neo-liberal newspaper like *The Economist* uses titles such as "Europe. Millions want to come" when covering migration to the EU, showing the pervasiveness of sensationalism in the media coverage of the issue.[xxvii] Projections on what could happen are more often referred to than actual statistics with possible scenarios on what free movement of people,[xxviii] the single market, or even EMU[xxix] would imply with respect to migration flows. The number of international meetings on migration exploded in the 1990s with about 80-90 such meetings in the first half of 1993 alone (Koslowski 1998). Even if the scholars attending these meetings did not share the "security ideology" of transnational police networks (den Boer and Walker 1993), they reinforced the notion of migration as a potential "European" threat and contributed to the internationalization of the handling of the issue.

Moreover, political leaders did not hamper migration control agencies in their efforts. As I have noted (p. 6), national leaders feel that they must assert their will to stem unwanted migration in order to appease public sentiment regardless of their partisan affiliation (author 1997). Government heads support international cooperation on migration control because it shows activity yet diffuses the responsibility and hence the blame for the efficacy of control,[xxx] and involves regulation rather than spending.[xxxi] Politically, the link between security, migration and European integration allowed for strange bedfellows: liberal pro-EU politicians had a difficult time disapproving of calls for European migration control harmonization coming from anti-EU restrictionist

politicians. These dynamics can be observed within political camps in 1993 when asylum. reform to comply with Schengen was discussed by the French right-wing coalition government and in Germany's CDU/CSU/FDP government. It was difficult in France for liberals such as the UDF Simone Weil an ex-EP president who was Social Affairs minister at the time to critique a project that involved "more Europe" although she wanted to as to the content of the agreement. In Germany, European integration could provide a pretext for SPD and FDP party members who agreed to restrict the right to asylum (Article 16 GG).

In brief, preexisting international security forums allowed law and order officials to set the agenda of migration as a European security issue where they would be sure to be designated as the legitimate policy-makers with the tacit or unwilling assent of political, media, and expert circles.


### 3. What did venue shopping achieve?


When considering the advantages of policy elaboration in international forums, scholars agree that political actors are less encumbered than in national or federal settings where a number of institutions, levels of government, or social groups can act as "veto points" (Immergut 1992) and prevent reforms. There is more "elbow room" for national actors who can go then go back home "blaming it on Brussels" or stating "their hands were tied" by an international agreement even though they wanted the reforms to begin with. The CAP has provided ample examples of this strategy from its origins as a means of de-politicization (Rieger 1996) to the Uruguay Round. Yet it is applicable to other

policy areas. In the case at hand, national actors also seek to avoid the *course d'obstacles*. of national politics, not so much to hide from the public but from judges, colleagues, inquisitive MPs and NGOs.

In fact, the lack of transparency of intergovernmental cooperation forums is well known when it comes to obtaining the minutes of meetings, or documents that have been agreed upon *before* they are implemented sometimes without domestic legislation (Bunyan and Webber 1995). The tradition of secrecy that developed among clubs on security issues that emerged in the 1970s endures (Bigo 1996). Yet, the value added of international venues can be circumscribed more precisely. Their rules and participants foster the goals of national migration control officials in at least three ways: it avoids judicial constraints, eliminates adversaries, and enlists much-needed cooperating parties.

### a) Avoiding Constraints

Among the plurality of state responses to the judicial constraints of the 1970s and 1980s (author and Lahav 2000), law and order officials have sought to elaborate and implement policy away from the judge's eye in venues more favorable to restrictive control policies.

The ECJ did not have a role to play in the Maastricht "third pillar" framework. In the post-Amsterdam era, the application of preliminary rulings in areas covered by Title IV is restricted. Furthermore, the Court of Justice will not have jurisdiction with regard to national measures adopted in relation to the crossing of borders in order to maintain law and order and safeguard internal security. Finally, the ECJ may be asked for a ruling on the interpretation of the new Title IV ("visa, asylum, immigration and other policies

related to free movement of persons") or measures based on it, yet the Court's ruling will. not apply to national judgments that have already become *res judicata*.

The internationalization of control can be interpreted as a response to the increasing scrutiny of national administrations by national courts and the bias that the latter have shown in favor of the rights of aliens (proportionality, equality before the law, due process). The new policy venues are less exposed to judicial scrutiny.

The circumscribed role of the ECJ is a testimony to its influence in other areas of European integration and its expansive jurisprudence of the free movement of workers. The controversial jurisprudence of the court on the direct effect of association agreements with Turkey and Maghreb countries has convinced national governments not only to exclude free movement provisions from the Europe agreements with the ex-Soviet block countries (Guild 1998) but also to prevent the ECJ from applying. its integrationist outlook on migration and asylum issues.

Moreover, the decisions taken in international forums such as Schengen and the third pillar have also diminished the role of national courts at the policy implementation level. Article 26 of the Schengen agreement for instance requires signatory states to establish carrier sanctions. This prevents would-be migrants from ever reaching the territory of liberal democratic states where they would have access to legal aid and recourses. A common visa policy serves the same aim. In the area of asylum-seekers, accelerated procedures have been put in place in Germany, France and the Netherlands and others on the basis of decisions taken among European states on "manifestly unfounded claims" and safe third countries."[xxxii] These fast-track procedures imply in practice that the relevant agencies and courts of appeal will not review asylum-seekers'

claims. In France, since the law of 24 August 1993 and the constitutional revision of 19.

November 1993, asylum-seekers can be denied entry on a number of grounds agreed

upon among core EU states and Schengen signatories and therefore not have access to

OFPRA, the *Commission des recours*, and the *Conseil d'Etat*. Similar reforms were

adopted in Germany and the Netherlands in the same year.

Sandra Lavenex has further argued that the thinking of national courts has by now

"adopted the europeanized asylum frame." She points to the decision of the German

Federal Constitutional Court of 14 May 1996 that declared the 1993 reform of Article 16

conform to the constitution. The Court accepted the "safe third country rule" as part of a

legitimate goal of establishing a common European refugee policy of system of burden-

sharing (Lavenex 1999). More cases are needed before we can generalize about this

ruling. There is already evidence of a lesser access to the judicial system for asylum-

seekers.


*b) Excluding Possible Adversaries*


Partisans of a restrictive control policy strategically push for the extension of

policy jurisdiction to venues where participants are less likely to oppose their views. The

fact that migration rose late on the European agenda was but an advantage as policy-

makers had the hindsight of previous integration history and therefore knew the

functioning and the outlook of EU institutions. If we examine the rules guiding decision-

making in the migration policy domain, we can see that institutions sympathetic until

then to migrant interests have been unable to weigh in the Justice and Home Affairs. discussions on migration control in the pre-Amsterdam inter-governmental setting.

With regard to procedure, Article G of the Amsterdam Treaty provides for joint initiative by the Commission or the Member States during the five-year transitional period and later the Commission will have exclusive right of initiative, while the Council will act unanimously throughout.[xxxiii] The unanimity rule on which the Germans insisted will make the adoption of measures very difficult. Compared to other policy domains (Sandholtz and Stone Sweet 1998), the rules governing immigration and asylum remain more "intergovernmental" than "supranational" the big players remain the member-states with the Commission playing a minor role.

### i) A split Commission and powerless Parliament

The most "pro-migrant" division within the Commission has been D.4 in charge of free movement of labor created in 1958 and situated within DGV (Employment, Industrial Relations and Social Affairs). Over the years, it became involved in matters relating to the integration of migrants and refugees and, since 1986, anti-racism. The head of the unit Annette Bosscher who held her post for many years until 1998 firmly believed that European integration should go hand in hand with the integration of non-Europeans. Yet, the unit has no official competence or informal influence when it comes to the rights of third country nationals residing in other member-states.

One major consequence of the 1992 Maastricht Treaty and the "third pillar" has been the way in which it has divided the Commission. Before 1992, DG V was the only DG with a unit specialized in migration issues. After 1992, some personnel was located

in DG XV (Internal market and financial services) in a unit dedicated to "free movement. of persons and citizens' rights" and focused on EU migrants. Concomitantly, a small task force was set up within the General Secretariat of the Commission to liaise with the Council on JHA migration discussions -from 2 people, it has grown to a staff of 10. Responsibility is split, personnel scattered but, more importantly, divergent points of view have emerged since 1992 within the Commission. According to my interviews, the Secretariat taskforce considers DG V to be an "old-fashioned" and "maximalist." They have been extremely cautious in their proposals.

The taskforce does not interact with pro-migrant NGOs as DGV does. The present head of the unit "External Borders, Immigration and Asylum," Jean-Louis de Brouwer, believes even less in their input than his predecessor Dennis de Jongh did. In his view, one needs to be a "Realist, in the sense of International Relations theory. One needs to talk to the big players, the ministers of Interior of the member-states who usually are political heavyweights in their respective governments."[xxxiv] The taskforce tries to evaluate what proposals could possibly be an acceptable basis for compromise among member-states ("lowest common denominator") rather than push for a particular vision on migration and asylum. The Commission's quest for closer European integration appears as the only driving force behind its positions on Justice and Home Affairs. Andrew Geddes points to the Amsterdam Treaty's Protocol on Asylum that forbids asylum applications between EU member states. The Commission supports the measure although it violates the Geneva Convention: "a 'federalizing' logic outweighs a 'human rights' one (Geddes 1998, p. 705).

The European Parliament had long been a friend of third country nationals, starting with the Vetter report in the 1970s calling for rights of political participation for migrants to its support of the European Migrants' Forum and numerous declarations on anti-racism and related migration issues. They were clearly excluded from the third pillar negotiations. Although Maastricht stipulated that the EP had to be consulted, this proved most frustrating in practice as a number of reports by MEPs Jean-Louis Bourlanges and David Martin illustrate.[xxxv] They have been unhappy with the outcome of Amsterdam yet so far MEPs have mostly expressed their anger by rejecting Commission proposals in related areas, for instance on visa policy (even though the Commission itself is a weak partner in the migration and asylum policy domain). Amsterdam sets a very high hurdle for the EP to play a role in migration and asylum policy. During the 5-year transitional period, the EP will only have a consultative role as it had before. Afterwards, co-decision may be extended to cover all or part of the areas covered by Title IV only after a unanimous vote by Council members.

Migrant aid organizations also have difficulties in trying to supervise transgovernmental policy-making. This is the case of the ECRE (European Council for Refugees and Exiles), an umbrella organization for refugee councils founded in 1990. Its focus is asylum policy and it tries to catch up with European-level negotiations. There is also a small Brussels-based NGO *cum* "think tank" called the Migration Policy Group. While they have managed to exchange funding and access to information for expert advice with DGV, they do not weigh in on "third pillar" issues. In fact, during the 1996 ICG, they lobbied instead on the inclusion of an anti-discrimination article in the EU treaties. Needless to say that these two NGOs do not constitute a "transnational activist

network" (Keck and Sikkink 1998) equivalent to EU lobbies in other fields such as the environment. Similarly, their number and resources pale in comparison with established national migrant aid organizations or the thousands of local migrant associations in the member states.

### ii) The exclusion of national actors with differing views or supervising functions

The internationalization of migration policy-making has also dis-empowered certain national actors. Most of the national ministries concerned with migration do not attend international negotiations and working groups.

The Commission negotiating team headed by Michel Petite won a battle if not the war in Amsterdam with the adoption of the "Protocol integrating the Schengen *acquis* in the framework of the European Union." From the Commission's standpoint, Schengen had to disappear or, more precisely, had to be absorbed by the EU as it fell outside its purview and competed with the EU as the legitimate frame of reference for policy-making. Officials in the ministries of Interior and Justice were taken aback since they themselves were unclear about the content of the vaguely defined Schengen *acquis,* some 3000 pages of documents of various legal standing and levels of detail. In fact, the Treaty has come into force without members-states having come to an agreement as to what the Schengen acquis is. Central and Eastern European states that are supposed to comply with Schengen do not even have access to a number of relevant documents that are considered "classified."[xxxvi]

To understand why this was possible, it is important to remember that ministries of Foreign Affairs negotiate treaty revisions in the EU.[xxxvii] They were not concerned

with the consequences of the Amsterdam Schengen protocol, a task that their colleagues in law and order would have to undertake.[xxxviii] It was a sweet revenge given how many inter-ministerial quarrels there had been between 1985 and 1990 in Schengen countries over the content of the implementation agreement. Michel Portal at the French Ministry of Interior recalls that "the interministerial conflicts were and still are considerable, terrible, especially when the political leaders totally lost interest"[xxxix] and attributes it to traditional rivalries and a different assessment of the issues at stake.[xl]

The ministries of Interior and Justice had been the victims of their own success. Vendelin Hreblay, the *commissaire principal* of the French National Police who participated in the negotiations and implementation of the Schengen agreement and supervised the SIS until 1997 admits that, although Foreign Affairs ministries, and in Germany, the Chancellery had had the exclusivity of the negotiations at first were progressively ousted by Justice and Interior ministries (1998, p. 28).[xli]

While most of the executive has been marginalized in the policy process, the legislative branch has been bypassed as well. The German legislative was not informed of intergovernmental negotiations until 1989 and the first debate took place in April 1992 on the ratification of the Schengen agreement. The French National Assembly and Senate had access to the contents of the Schengen agreement only a few weeks before ratification and little knowledge about their implications. National parliaments were presented with the final versions of the Schengen and, later, of the Dublin Convention. They had to ratify it without amendments. Some national organizations such as the French Senate, the Dutch Council of State and Parliament have criticized this *politique du fait accompli*. After the Schengen debate, the French Senate set up a parliamentary

control commission *post facto* yet, there as elsewhere, the supranational policy process remains difficult to oversee.

### c) Finding New Allies: Co-opting sending and transit countries

While European civil servants met to coordinate policy instruments and operations, cooperation with sending and transit countries of immigration also developed in the 1980s and 1990s. Germany, in particular, pursued this strategy and signed readmission agreements with Eastern European countries (such as Rumania in 1993) and Vietnam trading D-marks for the return of unwanted migrants. Yet, the phenomenon was widespread. In 1993, Morocco agreed with the Netherlands to check the identity of offenders susceptible to be expelled to Morocco and readmit them. In 1994, France and civil-war-torn Algeria signed a confidential agreement stipulating that Algeria would take back expelled illegal aliens whom the French believe to be Algerians even if they have destroyed their papers.[xlii] This is an on-going trend that new immigration or transit countries also resort to. In 1992, Morocco signed an agreement with Spain whereby it would take back aliens that had entered Spain illegally. In August 1998, Italy and Tunisia signed a readmission agreement whereby Tunisia accepted the return of illegal Tunisians apprehended in Italy. In return, Italy promised to invest $50 million a year for three years in Tunisia to create jobs and discourage emigration.

After the fall of the Berlin wall, East-West cooperation on asylum and migration increased considerably. Germany initiated a number of fairly flexible transgovernmental working groups and international forums meant to transplant the Western migration and asylum regime in East and Central Europe known as the Vienna process, the Berlin

Group and the Budapest Process (see Table 2). Prospective EU member-states are

expected to adopt Western laws and practices in a number of areas including human

rights, asylum, refugees, illegal migration, the entry and stay of foreigners, and visas.

They are asked to develop better border controls and internal controls such as employers'

sanctions (Lavenex 1999, Koslowski 1998, Overbeek 1999). The Amsterdam treaty states

that the Schengen agreements and subsequent measures within its scope "shall be

regarded as an acquis, which must be accepted in full by all states candidates for

admission." Conforming to the EU's "third pillar" norms is also a requirement for states

seeking admission within the EU.

Central and Eastern European states have tried to adopt treaties and pass

legislation in the area of migration and asylum to conform to elusive EU norms.[xliii]

Sometimes, EU requirements conflict with their foreign, trade, or economic interests.

This is the case of travel restrictions for New Independent States traders in Poland or for

ethnic Hungarians in Hungary. As Rey Koslowski has argued, "they do so not because

they are compelled by the rulings of a supranational court but because they wish to be

members in good standing of Europe's international migration regime" (1998, p. 741).

The internationalization of migration control has reached yet another stage

although the purpose remains the establishment of a "buffer zone" around Europe's

porous frontiers. The EU and other international organizations are imposing a set of

standards and norms to Central and Eastern European countries *as if* the latter were

written in stone and *in lieu of* nation-states. It is no longer about Germany exchanging

money for the repatriation of illegal migrants but about the EU Commission assessing the

compliance of Central and Eastern European aspiring member states with respect to

Justice and Home Affairs matters in the context of agenda 2000.[xliv]

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**Major forums for East-West cooperation on migration and asylum**

**The Vienna Process (January 1991-1994)**
*Issues*: free movement of people, asylum, and burden-sharing.
*Membership*: Council of Europe members

**The Berlin Group (30-31 October 1991-1993)**
*Issues*: measures for checking illegal migration from and through Central and Eastern
Europe
*Membership*: EU states, Switzerland and 13 East and Central European states

**The Budapest process (first meeting: 2-3 December 1993)**
*Issues*: criminalizing of trafficking, improving border control, readmission agreements,
information exchange (through CIREFI), harmonization of visa policy, financial
assistance to East and Central European states. Main focus now: transplanting EU
standards to Central and Eastern Europe, displaced persons and smuggling.
It includes the "Expert Group" created in 1994 and an informal group called "the friends
of the chair" since 1996.
*Expert group members*: EU presidency, EFTA presidency, Schengen Group presidency,
Hungary, Croatia, Czech Republic, Austria and Switzerland and the International Center
for Migration Policy Development in Vienna (ICMPD), the International Organization
for Migration (IOM) and the Intergovernmental Consultations on Asylum, Refugees and
Migration Policies (IGC).
*Original membership*: Hungary (chair), EU presidency, EFTA presidency, Schengen
Group presidency, Croatia, Czech Republic, Poland and Turkey.
*Current membership*: 36 European states, Australia, Canada and the US, and 11
international organizations from the UNHCR to Interpol, including the EU Council
Secretariat and the Commission.

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How does the venue shopping framework that we have applied to European

cooperation on migration help explain its timing, shape and content? First, cooperation

dates from the early-to-mid 1980s. The landmark court decisions in the main receiving

countries in Europe date from the late 1970s.[xlv] They established in particular the right to

a normal family life and to a secure residence for long-term residents. In effect, this meant that governments could no longer prevent family reunification, diminish the "stock" of legal residents except by financial incentives as the new Kohl government did in 1983, and certain categories of foreigners could no longer be expelled. This period also saw the first major clashes between agencies in charge of the integration of settled foreigners and those in charge of migration control. The incentive to seek new policy venues thus dates from the turn of the 1980s decade.

Regarding the form of international cooperation, I have noted that it has gone from a multitude of flexible arrangements to a system that still remains largely intergovernmental to the extent that EU institutions have only played a minor role, and biased towards non-binding decisions. The intergovernmental character makes sense given that one of the main advantages of international venues is to avoid constraints and "veto points." The flexible, secretive negotiating style and the non-binding character of many decisions also reveals the fact that a venue provides participants with a propitious setting for policy debates and agenda-setting.

The content of the emerging European regime is restrictive emphasizing concerns about external borders, asylum fraud, smuggling rather than the importance of achieving internal free movement. Given the fact that Interior and Justice officials dominate in this policy domain and have justified their transnational activities through security, this should not come as a surprise. Furthermore, the intergovernmental mode of cooperation has favored lowest common denominator measures. They have emphasized remote control instruments such as visas, carrier sanctions, sending country cooperation in ways

congruent to the idea of avoiding migrants' access to the liberal legal apparatus of European receiving states.

This case study should encourage scholars in other policy domains to assessing coalitional distributions and institutional arrangements at different policy levels so as to understand which actors are likely to prevail and therefore predict policy outcomes.

## Conclusion

The internationalization of migration control is not a *deus ex machina* response to the evolution of migration patterns nor a *sine qua non* of the single market project. It constitutes a case of strategic "venue shopping" by migration control agencies as they sought to adapt to institutional and material constraints on migration control policy. A vertical network of experts has developed that can be contrasted with horizontal policymaking in the form of ministerial consultations with Labor, Social Affairs, Health ministries. The power distribution among different actors involved in the management of migration varies in a system that privileges vertical links over national arbitrage.

In this respect, it is perhaps misleading to consider, as liberal intergovernmentalism does, that domestic actors come to the international bargaining table representing aggregated (domestic) interests. Instead, certain domestic actors bypass the process of interest aggregation by mobilizing in international venues. Internationalization has received the support of actors who believed that they could gain from such a shift: autonomy for the civil servants involved, credibility for third countries in the East and bargaining power for those to the South.

What are the consequences of vertical policy-making? A number of normative issues arise. One regards the legitimacy of actors involved in international venues as well as the lack of democratic accountability inherent in a system that makes it difficult to trace who was responsible for decisions. The question of equality before the law in this new policy system is also pressing. The national level might be where the rights of foreigners are more likely to be protected because of judicial review, the balance of points of view within the executive and the fact that migrant aid groups are mostly operational at that level. At the international level, some national actors "disappear" or in any case have less information or access: some national ministries, judicial and legislative institutions, and migrant interest groups. This implies that the games played at different levels have different rules and involve different actors. Certain players, in particular the security policy network, are present in all.

When considering the future prospects of the internationalization of migration control, one cannot readily discount the role of structural factors such as "increasing returns" phenomena (Arthur 1994, Pierson 1997) in perpetuating internationalization. In the post-Amsterdam era, reverting to national policies is highly unlikely. The Europeanization of migration issues has enough partisans to prevent its rolling back. This is even the case of the NGOs that most vehemently denounce the lowest common denominator character of European cooperation (Geddes 1998). They see "Brussels" as an opportunity to push part of their agenda (on anti-discrimination and anti-racism) and may not be able to reintegrate a national scene once they have moved to Brussels (Favell 1998). The sunk costs of such projects as the Schengen Information System (SIS) may also be a deterrent for re-nationalizing policy. The emergent EU migration regime is also

flexible enough to allow for opt outs and temporary walks outs that do not endanger the system as a whole.[xlvi] As long as what is gained from Europeanization is seen as even marginally beneficial to the parties involved, it is likely to be self-sustaining.


## TABLE 3: RELEVANT IMMIGRATION ACTORS AT DIFFERENT LEVELS

### International

**private**
airlines
security agencies
consultants

**public**
Commission task force
IOs
sending/transit countries
*Interior and Justice ministries*
*law and order officials*

### National

courts
parliament
other ministries (foreign affairs, social affairs, health...)
migrant aid groups
*Interior and Justice ministries*

### Subnational

regional governments/municipalities
local associations and social services
*law and order officials*

# References

Allison, Graham. 1971. *The Essence of Decision. Explaining the Cuban Missile Crisis*. Boston: Little Brown.

Anderson, Michael and Monica den Boer, eds. 1994. *Policing Across National Boundaries*. London: Pinter.

Arthur, Brian. 1994. *Increasing returns and Path Dependency in the Economy*. Ann Arbor: university of Michigan Press.

author. 1997. *Policy Change Behind Gilded Doors: Explaining the Evolution of Aliens' Rights in Contemporary Western Europe*. Ph. D. Dissertation. Cambridge: Harvard University.

author. 1998. *International Human Rights Norms and their Incorporation: The Protection of Aliens in Europe*. European Forum working papers series. Florence: EUI.

author and Gallya Lahav. 2000. "The State Sovereignty Debate Revisited: The Case of Migration Control" in *Comparative Political Studies* (March).

Baldwin-Edwards, Martin. 1997. "The Emerging European Immigration Regime: Some Reflections on Implications for Southern Europe" in *Journal of Common Market Studies* 35/4, pp. 497-519.

Bank, Roland. 1998. *The Emergent EU Policy on Asylum and Refugees*. European Forum seminar series. Florence: European University Institute.

Baumgartner, Frank and Bryan Jones. 1993. *Agendas and Instability in American Politics* (Chicago: Chicago University Press.

Berger, Peter and Thomas Luckmann. 1966. *The Social Construction of Reality*. Garden City, NY: Doubleday and Company.

Biersteker, Thomas and Cynthia Weber. 1996. *State Sovereignty as Social Construct*. Cambridge: Cambridge University Press.

Bigo, Didier, ed. 1992. *L'Europe des polices et de la sécurité intérieure*. Bruxelles: Complexe.

Bigo, Didier. 1996. *Polices en réseaux. L'expérience européenne*. Paris: Presses de la Fondation de Sciences Politiques.

den Boer, Monica and Neil Walker. 1993. "European Policing After 1992" in *Journal of Common Market Studies* 31/1 (March).

den Boer, Monica. 1996. "Justice and Home Affairs" in Helen Wallace and William Wallace, eds., *Policy-making in the European Union*. Oxford: Oxford University Press.

Bommes, Michael. 1996. "Migration, Nationalstaat und Wohlfahrtsstaat - kommunale Probleme in föderalen Systemen" in Klaus Bade, ed., *Migration Ethnizität Konflikt*. Osnabrück: IMIS.

Bommes, Michael. 1998. *Migration, National Welfare State and Biography - A Theoretical Case Study*. Paper presented at the Migration and the Welfare State conference at the European University Institute. Florence, Italy. May 21-3.

Bourdieu, Pierre. 1981. "La représentation politique: éléments pour une théorie du champ politique" in *Actes de la recherche en sciences sociales* 36.

Bourdieu, Pierre. 1996. *Sur la télévision*. Paris: Liber.

Bunyan, Tony and Webber, Frances. 1995. *Intergovernmental Cooperation on Immigration and Asylum*. Brussels: Churches Commission for Migrants in Europe.

Bunyan, Tony. 1997. *Key Texts on Justice and Home Affairs in the European Union. Volume 1 From Trevi to Maastricht (1976-1993)*. London: Statewatch.

Caporaso, James. 1998. "Regional Integration Theory: Understanding Our Past and Anticipating Our Future" in *Journal of European Public Policy* 5/1, pp. 12-6.

Castles, Stephen and Miller, Mark. 1993. *The Age of Migration: International Population Movements in the Modern World*. London: Macmillan.

Cornelius, Wayne, Philip Martin, and Jim Hollifield, eds. 1994. *Controlling immigration*. Stanford, CA: Stanford University Press.

Eichengreen, Barry. 1993. *Thinking about Migration: Notes on European Migration Pressures at the Dawn of the Next Millennium*. University of California/Berkeley Economics Department Working Paper C93-019.

Engbersen, Godfried. 1997. "The Unknown City" in *Berkeley Journal of Sociology*, pp. 87-111.

Favell, Adrian. 1998. " The Europeanisation of Immigration Politics" in *European Integration Online Papers* 2, number 10. http://eiop.or.at/eiop/texte/1998-010a.htm.

Fligstein, Neil and Jason McNichol. 1998. "The Institutional Terrain of the European Union" in Wayne Sandholtz and Alec Stone Sweet, eds., *European Integration and Supranational Governance*. Oxford: Oxford University Press.

Geddes, Andrew. 1998. "The Representation of 'Migrants' interests' in the European Union" in *Journal of Ethnic and Migration Studies* 24/4, pp. 695-713.

Guendelsberger, John. 1988. "The Right to Family Unification in French and United States Immigration Law" in *Cornell International Law Journal* 21, pp. 76-81.

Hall, Peter. 1993. "Policy Paradigms, Social Learning, and the State: The Case of Economic Policymaking in Britain" in *Comparative Politics* 25/3, pp. 275-296.

Hix, Simon and Jan Niessen. 1996. *Reconsidering European Migration Policies*. Brussels: CCME.

Hollifield, James. 1992. *Immigrants, Markets, and States: The Political Economy of Postwar Europe*. Cambridge: Harvard University Press.

Hreblay, Vendelin. 1998. *Les accords de Schengen. Origine, fonctionnement, avenir*. Brussels: Bruylant.

Immergut, Ellen. 1992. *Health politics: Interests and Institutions in Western Europe*. New York: Cambridge University Press.

Jacobson, David. 1996. *Rights across Borders: Immigration and the Decline of Citizenship*. Baltimore: Johns Hopkins University Press.

Jobert, Bruno, ed. 1994. *Le tournant néo-libéral en Europe: Idées et recettes dans les pratiques gouvernementales*. Paris: L'Harmattan.

Joppke, Christian. 1997. "Asylum and State Sovereignty: A Comparison of the United States, Germany, and Britain" in *Comparative Political Studies* 30/3, pp. 259-98.

Joppke, Christian. 1998. "Why Liberal States Accept Unwanted Migration" in *World Politics* 50/2, pp. 266-93.

Kingdon, John. 1984. *Agendas, Alternatives and Public Policies*. Boston: Little Brown.

Kirp, David. 1982. "Professionalization as a Policy Choice" in *World Politics* 34, pp. 137-74.

Koslowski, Rey. 1998a. "European Union Migration Regimes, Established and Emergent" in Christian Joppke, ed., *The Challenge to the Nation-State: Immigration and Citizenship in Western Europe and the United States*. New York: Oxford University Press.

Koslowski, Rey. 1988b. "European Migration Regimes: Emerging, Enlarging, and Deteriorating" in *Journal of Ethnic and Migration Studies* 24/4, pp. 735-749.

Koslowski, Rey. 2000. "Personal Security, State Sovereignty and the Deepening and Widening of European Cooperation in Justice and Home Affairs" in author and Christian Joppke, eds., *Dilemmas of Immigration Control in a Globalizing World* (forthcoming).

Krasner, Stephen. 1993. "Wesphalia" in Judith Goldstein and Robert Keohane, eds., *Ideas and Foreign Policy*. Ithaca, NY: Cornell University Press.

Lavenex, Sandra. 1999a. *Safe Third Countries: Extending the EU Asylum and Immigration Policies to East and Central Europe*. Budapest: Central European University Press.

Lavenex, Sandra. 1999b. *The Europeanization of Refugee Policies: Between Human Rights and Internal Security*. Ph. D. dissertation. Florence: European University Institute.

Leca, Jean. 1993. "L'évaluation dans la modernisation de l'Etat" in *Politique et management public* 11/2.

Legomsky, Stephen H. 1987. *Immigration and the Judiciary: Law and Politics in Britain and America*. Oxford : Clarendon Press.

Lu, Chien-Yi. 1999. "Harmonization of Migration Policies in the European Union - A State-Centric or Institutionalist Explanation?" Paper presented at the ECSA Sixth Biennial International conference in Pittsburgh, PA.

Lobkowicz, Wenceslas de. 1993. "La coopération dans le domaine des migrations : de l'Acte unique à Maastricht." Communication for the Collège d'Europe in Bruges.

McAdam, Doug, John McCarthy and Mayer N. Zald. 1996. *Comparative Perspectives on Social Movements*. New York: Cambridge University Press.

Majone, Giandomenico. 1997. "From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance" in *Journal of Public Policy* 17/2, pp. 139-167.

Majone, Giandomenico. 1989. *Evidence, Argument, and Persuasion in the Policy Process*. New Haven: Yale University Press.

McAdam, Doug, John McCarthy and Mayer Zald, eds. 1996. *Comparative Perspectives on Social Movements*. Cambridge: Cambridge University Press.

McNamara, Kate. 1998. "Globalization is what we make of it." Paper presented at the Council of European Studies Biennial Conference in Baltimore, MD.

Monar, J. and R. Morgan, eds. 1994. *The Third Pillar of the European Union. Cooperation in the Fields of Justice and Home Affairs*. Brussels; European Interuniversity Press.

Moravcsik, Andrew. 1998. *The Choice for Europe*. Ithaca: Cornell University Press.

Moravcsik, Andrew. 1999. "A New Statecraft? Supranational Entrepreneurs and International Cooperation" in *International Organization* 53/2, pp. 267-306.

Marks, Gary, Fritz Scharpf, Wolfgang Streek and Philippe Schmitter, eds. 1996. *Governance in the European Union.* London: Sage.

Miles, Robert and Dietrich Thränhardt. 1995. *Immigration and European Integration. The Dynamics of Inclusion and Exclusion.* London: Pinter.

Moravska, Eva. 1998. *Structuring Migration in Historical Perspective: The Case of Travelling East Europeans.* European Forum working paper series. Florence: EUI.

Muller, Pierre. 1995. "Les politiques publiques comme construction d'un rapport au monde" in Alain Faure, Gilles Pollet, and Philippe Warin, eds., *La construction du sens dans les politiques publiques.* Paris: L'Harmattan.

Neuman, Gerald. 1990. "Immigration and Judicial Review in the Federal Republic of Germany" in *New York University Journal of International Law and Politics 23/* 1, pp. 35-85.

Olsen, Johan and Guy Peters. 1996. *"Learning from Experience?"* Oslo: ARENA.

Overbeek, Henk. 1999. "The Budapest Process: Internationalization of Migration Controls." Paper presented at the 40th annual conference of the International Studies Association in Washington, DC.

Pappi, F. U. and H. C. A. Henning. 1998. "Policy Networks: More than a Metaphor?" in *Journal of Theoretical Politics* 10/4, pp. 553-575.

Peterson, John. 1999. "The Choice for EU Theorists: Establishing a Common Framework for Analysis." Paper presented at the ECSA Sixth Biennial International conference in Pittsburgh, PA.

Pierson, Paul. 1996. "The Path to European Integration. A Historical Institutionalist Analysis" in *Comparative Political Studies* 29, pp. 123-63.

Pierson, Paul. 1997. *Path Dependence, Increasing returns and the Study of Politics.* Jean Monnet Visiting Professor Lecture paper series. Florence: EUI.

Pollack, Mark. 1994. "Creeping Competence: The Expanding Agenda of the European Community" in *Journal of Public Policy* 14, pp. 95-145.

Pollack, Mark. 1997. "Delegation, Agency, and Agenda Setting in the European Community" in *International Organization* 51/1, pp. 99-134.

Putnam, Bob. 1988. "Diplomacy and Domestic Politics" in *International Organization* 42, pp. 427-60.

Rhodes, R. A. W. 1998. *Understanding Governance: Policy Networks, Governance, Reflexivity and Accountability.* Buckingham: Open University Press.

Rieger, Elmar. 1996. "Agriculture" in Helen Wallace and William Wallace, eds., *Policy-Making in the European Union.* Oxford: Oxford University Press.

Rose, Richard. 1991. "What is Lesson Drawing?" in *Journal of Public Policy* 2, pp. 3-30.

Sabatier, Paul A and H. Jenkins Smith. 1993. *Policy Change and Learning, an Advocacy Coalition Approach.* Boulder, CO: Westview Press.

Sandholtz, Wayne and Alec Stone Sweet, eds. 1998. *European Integration and Supranational Governance.* Oxford: Oxford University Press.

Sassen, Saskia. 1996. *Losing Control?* New York: Columbia University Press.

Sassen, Saskia. 1998. "The *de facto* Transnationalizing of Immigration Policy" in Christian joppke, ed., *Challenge to the Nation-State: Immigration in Western Europe and the United States*. New York: Oxford University Press.

Schattschneider, E. E. 1960. *The Semisovereign People: A Realist's View of Democracy in America*. New York: Holt, Rhinehart et Winston.

Soysal, Yasemine. 1994. *Limits of Citizenship*. Chicago: Chicago University Press.

Stone, Deborah. 1989. "Causal Stories and the Formation of Policy Agendas" in *Political Science Quarterly* 104, pp. 281-300.

Stone Sweet, Alec and Wayne Sandholtz, eds. 1998. *European Integration and Supranational Governance*. Oxford: Oxford University Press.

Tarrow, Sidney. 1998. *Power in Movement*. Second Edition. Cambridge: Cambridge University Press.

Torpey, John. 1998. "Coming and Going: On the State Monopolization of the 'Legitimate Means of Movement'" in *Sociological Theory* 16/3, pp. 239-259.

Ugur, Ehmet. 1995. "Freedom of Movement versus Exclusion: A Reinterpretation of the 'Insider'-'Outsider' Divide in the European Union" in *International Migration Review* 29/4, pp. 964-999.

Weaver, Kent. 1986. "The Politics of Blame Avoidance" in *The Journal of Public Policy* 6/4, pp. 371-398.

Weber, Frank Paul. 1997a. *The dispositif of expulsion in Germany*. Paper presented at the Berlin GAAC July institute on immigration, incorporation, and citizenship in advanced liberal democracies.

Weber, Frank Paul. 1997b. "Expulsion: Génèse et pratique d'un contrôle en Allemagne" in *Cultures et conflits*, pp. 107-151.

Wendt, Alexander. 1992. "Anarchy is what states make of it: The Social Construction of Power Politics" in *International Organization* 46, pp. 391-425.

Wessels, Wolfgang. 1998. "Cometology in Action: Politico-Administrative Trends in the EU System" in *Journal of European Public Policy* 5/2, pp. 209-234.

Zolberg, Aristide. 1998. "Matters of State: Theorizing Immigration Policy" in *International Migration in the Remaking of America*. New York: Russell Sage.

[i] See Krasner (1993) and Wendt (1992) on the "myth" of the absolute sovereignty of states and the ways in which the content of the term changes over time. On sovereignty as a social construct, see Biersteker and Weber (1996).

[ii] This could be explained by the fact that "migration in modern society is a form of geographical mobility which aims at (re-) inclusion in the functional subsystems of the economy, law, politics, health, or education and their organisations at a different place" (Bommes 1998).

[iii] In 1990, when comparative census data was available, foreigners made up respectively 4.6%, 8.2% and 6.4% of the population in these countries. They situate themselves around the median in the EU 12 (the average was 4.4% in 1990). If one examines the percentage of non-EU foreigners, the cases are even closer with 3.5% in the Netherlands, 4% in France and 6% in Germany. There are fewer foreigners in Great Britain, Scandinavia, and Southern Europe and more in Belgium, and Luxembourg. Sources: SOPEMI, *Trends in International Migration: Continuous Reporting System on Migration* (Paris: OECD, 1992).

[iv] A full-length comparative and longitudinal study of migration and immigrant policy since 1973 is presented in author (1997). The findings presented here also stem from a larger on-going research project on the de-nationalization of migration control. This dynamic includes the involvement of private actors such as employers, carriers, security agencies and individuals through sanctions and contracting out and the localization of control through the granting by law and decree of migration functions to regional/local elected officials (author 1999, author and Lahav 2000). They ought to be mentioned as part of the multi-level migration policy domain that emerged in the 1980s and 1990s.

[v] Moreover, the Council, acting by a qualified majority on a proposal from the Commission, can adopt provisional measures of a duration not exceeding six months for the benefit of a Member State which is confronted with a sudden inflow of third country nationals.

[vi] I use the term in the meaning of Stone and Sandholtz (1998).

[vii] Schengen in 1985, Maastricht, the Austrian presidency proposal on immigration, Amsterdam.

[viii] The Club of Berne included representatives from the EC and Switzerland and focused on anti-terrorism whereas the STAR group (*Standige Arbeitsgruppe Rauschgift*) concentrated on drug trafficking and involved the German BKA, France, the Netherlands, Austria, Denmark, Switzerland

and Luxembourg (Bigo 1996). Trevi was created in the mid-1970s under the auspices of the European Political Cooperation to combat terrorism and extremism.

[ix] The Europeanization of migration control is now well documented (see, *inter alia*, Monar and Morgan 1994; Anderson and den Boer 1994; Bigo 1992, 1996; Miles and Thränhardt 1995; Baldwin-Edwards 1997; Hix and Niessen 1996; Lavenex 1999).

[x] The data can be found in SOPEMI (1994), Commission of the European Communities (1994), Salt (1994). See Lu (1999) for a compelling chart of the major events in European cooperation and the number of foreign labor and asylum applications in the EU (figure 1, p. 4).

[xi] The important reforms date from 1989/1991 and 1993 in France and 1993 in Germany for asylum restrictions.

[xii] See for instance, the Commission's "White Paper on the Completion of the Internal Market" (COM (1985) 310 final) and its subsequent 1988 directive proposal that was rejected by member states (COM (1988) 640). Article 8a of the SEA signed in 1986 defined the internal market as "an area without internal frontiers in which the free movement of goods, persons, services and capital is insured."

[xiii] It is telling that the countries that pushed the single market agenda such as the Uk are not necessarily the ones partaking in EU migration discussions, thereby undermining the link between the two developments.

[xiv] Report for the ministers responsible for immigration to the European Council meeting in Maastricht on immigration and asylum policy" (SN 4038/91 (WGI 930), p. 14 and p. 40.

[xv] Technological cooperation has developed in other areas such as fingerprinting of refugee and document fraud.

[xvi] Comparativists have also studied various political arenas as "political opportunity structures" (Tarrow 1998, McAdam et alia 1996). Sociologists prefer to conceive of the EU as a "field" where political actors compete for power by carving out jurisdictions through the construction of social problems and the legitimate expertise to remedy them (Bourdieu 1981, 1996). International Relations scholars depending on their theoretical affiliation could translate this language as a multi-level game (Putnam 1988) or as a multi-level fusion process (Wessels 1998).

[xvii] Recent works such as Yasemin Soysal's *Limits of Citizenship* (1994) and David Jacobson's *Rights across borders* (1996) point to international normative impediments on the capacity of nation-states to

control migration. Saskia Sassen in *Losing Control?*, argues that external economic and human rights constraints render restrictive control policies mostly symbolic (1996).

[xviii] This is what French NGOs refer to as *zones de non-droit* (no-law areas).

[xix] In February 1998, a new "waiting zone" opened between the Gare du Nord and Gare de l'Est in Paris, the first train station "zone" in the city.

[xx] The construction of globalization as a justification for EU policies has been analyzed by Kate McNamara with respect to Emu and the single market (1998).

[xxi] On paradigm shift, see (Hall 1993).

[xxii] See also Muller (1995).

[xxiii] See Berger and Luckmann (1966).

[xxiv] The stated official objectives for the period and countries examined do not vary: policy reports and official statements reiterate like a mantra that the integration of already resident migrants depends on curtailing further migration except for categories such as family reunification. Curbing the number of illegal entries and stays is a recurrent affirmed goal of migration control policy from the 1980s onwards - a somewhat ironical one since the rise in illegal entries and stays stems from the fact that there have been fewer legal means of migration (Castles and Miller 1994, p. 90).

[xxv] On lesson drawing, see Rose (1991), Leca (1993), Olsen and Peters (1996).

[xxvi] The "cunning" migrant is a figure that comes back in interviews with law and order officials at the ministerial level. They insisted on the importance of Schengen by pointing out the multiple identities assumed by a single foreigner who was seeking asylum in several European countries.

[xxvii] 4 April 1998 issue, p. 29.

[xxviii] See, for example, projections by SOPEMI long-time collaborator, demographer Philip Muus (1998).

[xxix] Economists Barry Eichengreen and Thomas Straubhaar expect that with EMU, the adjustment to recession in one country will cause migration from recession to boom areas within the EU. Thus, monetary union may signal the beginning of a new era in intra-EU mobility. Eichengreen argues that the five to 10 percent of the EU population who are foreigners are already mobile, and can act as shock absorbers willing to move within the EU (see Eichengreen 1993).

[xxx] On blame diffusion as a motive for political change, see Weaver (1986).

[xxxi] On the move from the positive to the regulatory state, see Majone (1997).

[xxxii] The relevant texts include Schengen, Dublin, the 1992 London resolutions, the non-binding yet almost redundant 1995 "Resolution on Minimum guarantees for asylum procedures" in the third pillar.

[xxxiii] As an exception to the general deadline of five years, after consulting the EP, the Commission will be able to make proposals that shall be adopted by qualified majority voting on the following issues: the list of third countries whose nationals must be in possession of visas when crossing the external borders or are exempt from that requirement, a uniform format for visas (in both cases after the entry into force of the Treaty), and the procedures and conditions for issuing visas and the rules on a uniform visa (5 years after the entry into force of the Treaty).

[xxxiv] Interview, General Secretariat of the European Commission, Brussels, March 1999.

[xxxv][xxxv] Jean-Louis Bourlanges and David Martin "Report on the functioning of the Treaty on European Union with a View to the 1996 Intergovernmental Conference" in European Parliament Committee on Institutional Affairs, 4 May 1995. The report includes a "Motion for a Resolution," "Opinions of Other Parliamentary Committees," and Implementation and Development of the Union: Co-Draftsmen's Working Documents." See also, "Note on the European Parliament's Priorities for the ICG and the New Amsterdam treaty: Report and Initial Evaluation of Results" (*European Parliament*, 15 July 1997).

[xxxvi] Interview with Leszek Jesien, responsible for Polish EU accession negotiations, Office of the Polish Prime Minister in warsaw, Poland, June 1999.

[xxxvii] On the EC "grand bargaining rounds" and the dynamics behind European integration, see Moravcsik (1998).

[xxxviii] Interview with Michel Petite, chief negotiator for the 1996 ICG, European Commission, Cambridge, MA, April 1999.

[xxxix] Interview with Michel Portal, chef de bureau, Sous-Direction de la Circulation Transfrontière et des Visas, Ministry of Interior, Paris, December 1994 Also interviews with M. Malwald, German Federal Ministry of Interior, Bonn, April 1995, with Jürgen Haberlandt, German Federal Ministry of Interior, Berlin, June 1995, and with Nicolas Franken, Immigration and Naturalization Department, Ministry of Justice, The Hague, February 1995. See also Hreblay (1998, p. 28).

[xl] Indeed, in Germany, the security agenda of the Interior Ministry still clashes with that of the Federal Chancellery, as was the case in 1997 over admitting Austria within Schengen (Lavenex 1999b).

[xli] Transport ministries had also signed the original 1985 agreement. See Bigo (1996).

[xlii] See Philippe Bernard, "Un accord confidentiel franco-algérien accroît la tension avec les étrangers reconduits à la frontière" in *Le Monde*, 18 October 1994.

[xliii] Martin Baldwin-Edwards has argued that the same happened in Southern Europe as they tried to imitate North European norms to appear as trustworthy EC members (1997).

[xliv] See the 1997 "Commission's opinion on [Estonia, Hungary, Poland, the Czech Republic, Slovenia]'s application for membership in the European Union" in *Agenda 2000* (Brussels: CEC).

[xlv] In Germany, major rulings by the Constitutional Court in the late 1970s on entry and stay include the decisions of 26 September 1978 (*Entscheidungen des Bundesverfassungsgerichts* 1978, pp. 168-185) and of 7 January 1979 (*Entscheidungen des Bundesverfassungsgerichts* 1979, pp. 166 and 175). In 1979, the Constitutional Court ruled on a case involved a married Turk accused of selling hashish that Article 6 on family life and marriage had to be taken into account in entry and stay decisions (Neuman 1990). In four decisions dated 7 July and 24 November 1978, the French Council of State voided a number of measures contained in seven regulations on entry and stay. In a decision of 8 November 1978, the Council of State annulled the contents of a decree curtailing family reunification (Wihtol de Wenden 1988, pp. 235-7).

[xlvi] This was the case of Schengen and France, a country famous since 1965 for its "empty chair" habits.