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The Evolution of EU Asylum Policy

I. Introduction

The Single European Act (SEA) began a process that has evolved into a truly borderless Europe for some years. While it is now much easier for citizens to move freely in this new area, it became necessary to find an effective way to keep third country nationals out. What had begun as a patchwork of intergovernmental agreements has gradually evolved into a Europe-wide asylum *acquis*, recently culminating in a May 2004 breakthrough where ministers forged the basis of a Europe-wide common asylum policy. The development of the asylum *acquis*, however, took place alongside a considerable shift in the perception of asylum seekers in Europe. Those who were once seen in the post-war era as victims and even heroes have now become largely a security problem on the same levels as illegal migrants. Since the 1970s, there has been a drive towards the politicization of all migrants as a challenge to the protection of national identity and welfare provisions. This view is an outgrowth of the efforts of, *inter alia*, police, customs agents, social movements, and radical parties of the right. This paper will trace the development of asylum policy with regard to the European integration process and its transformation from a national concern to a European one. An examination of the forces behind the current shape of EU asylum policy will then be discussed, followed by an examination of asylum policy transfer during enlargement and some recommendations.

The reasons behind the negative characterization of asylum seekers in Europe today is a familiar one: money. The economic miracle that was the

welfare state in Europe has lost much of its steam, and it has and still is facing a multitude of new challenges to its societal integration and political legitimacy. Challenges appear in the form of rising poverty, multiculturalism, economic globalization, and the return of racist and xenophobic movements. Immigration as a whole has become a perceived threat to economic, cultural, and labor market stability. Asylum seekers, as part of this immigration, are naturally linked to these problems in very direct ways. How has the Europeanization of asylum policy affected these views, views that historically have been largely contained in the national sphere? It is actually quite easy to trace the connection between the creation of the internal market and the tightening of external security. This vision of asylum as a security issue was very clear at Maastricht, where asylum policy was placed in the Third Pillar, Justice and Home Affairs. Even outside of basic external security concerns resulting from the abolition of borders, restrictions aimed towards asylum seekers underpins (an often indirect) habit of EU policies supporting what Jeff Huysmans calls “welfare chauvinism” and the idea of immigration as a potentially destabilizing and dangerous force in a relatively homogenous society.¹

Looking at statistical trends in the past decade, it is easy to see why the EU needs a comprehensive and effective common asylum policy. Table 1 (appendix) makes it clear that EU nations as a whole receive the majority of asylum applicants in the world. During the past decade, EU countries have received anywhere from about 60% to 75% of all the world’s asylum seekers. As far the asylum seeker’s country of origin is concerned, the former Republic of Yugoslavia tops a list that includes (in order) Romania, Turkey, Iraq, and Afghanistan (UNHCR, 2003). Furthermore, one can see some emerging trends in the past few years. The UK and Ireland as of late have been experiencing a boom in asylum seeker applications (as well as some of the largest per capita flows, see Table 3) due in large part to the large shadow economy that can relatively easily support migrants, especially in the UK. At any rate, as the largest group of recipient countries in the world, one would imagine that the EU logically would have a

1 Huysmans, Jeff. The European Union and the Securitization of Migration, in: *Journal of Common Market Studies* 38 (2000), pp.753.

cohesive asylum policy. While points of cohesion do exist, the history of the Europeanization of asylum policy has been one of uncoordinated attempts of a mostly restrictive nature.

Two extreme frames can be distinguished when looking at the field of asylum and immigration policy: the humanitarian (or liberal) frame that treats asylum as a human rights issue and what Sandra Lavenex calls the realist frame that tends to focus more on internal security. The realist frame is a more state-centered frame, where border control remains a vital function of state sovereignty and cross-border movements in an increasingly porous EU. Whether they be asylum seekers or illegal immigrants, the migrant is a foreigner entering the country that must be controlled for security's sake, and rightly so. The humanitarian frame is entrenched in the norms of human rights, and focuses more on the rights of the individual crossing the border rather than the crossing itself and its repercussions.² Asylum seekers have a right to seek asylum and receive protection in this frame, whereas in the realist frame they are first a security concern.

Of course, no state fully frames the asylum debate in either extreme; a middle path is usually followed with one frame usually nominally dominating the other. Having an asylum regime that is too liberal would likely undermine internal security, while too great of an emphasis on security would seriously undermine human rights concerns. Having at least some sort of balance is ideal, as there is much to be said for efficiency as well as respect for rights. Unfortunately, the trend in the past 20-odd years in the EU has tended to be one of realism, resulting in a string of restrictive reforms in asylum policy at the European level.

II. Moving Towards A Common Approach

Coordination of asylum policy in the EU has gone through two rather distinct phases since the postwar era. The immediate post-war period and

2 Lavenex, Sandra. Migration and the EU's New Eastern Border: Between Realism And Liberalism, in: *Journal of European Public Policy* 8.1 (2001), pp.26.

the following two decades were marked by very liberal asylum policies and an adoption of the humanitarian frame in Europe. In the face of the looming threat of the Soviet Union and a devastated market badly in need of cheap labor, Western Europe became the preferred destination for many fleeing persecution behind the Iron Curtain. As the 1970s approached however, European economies began to show some signs of weakness. Member states soon entered into a series of intergovernmental agreements aimed at curbing migration (and by extension asylum seekers) and by the mid to late 1980s anti-immigrant parties were gaining popularity.³ At the same time, members from the national interior ministries began to raise asylum and immigration matters on the European agenda together with issues like crime and drug trafficking. Member state governments were not alone; with the looming realization of the internal market and the need to create a secure outer border with the disappearance of inner borders, the Commission and Parliament began to take the issue of asylum policy more seriously. At Maastricht asylum policy was placed in the Third Pillar, formally institutionalizing the security approach the EU had been taking towards asylum policy. Realizing the ineffectiveness of the Treaty structures, the Treaty of Amsterdam laid the groundwork for what came to be a common EU asylum policy.

The basis of the member states' postwar refugee policy was the 1951 Geneva Refugee Convention, to which all member states are party. The Convention defines a refugee and lists what social rights they should receive from states party to the convention. According to the Convention, a refugee is:

A person who is outside his/her country of nationality or habitual residence; who has a well-founded fear of persecution because of his/her race, religion, nationality ... and is unable or unwilling to avail himself/herself of the protection of that country, or to return there, for fear of persecution (UNCHR).

Daniele Joly calls this period, leading up to the 1980's, as one of uncoordinated liberalism with regard to asylum policy. The signing of the 1951 Convention and its 1967 Protocol (which extended protections to the

3 Gallagher, Stephen. Towards a Common European Asylum Policy: Fortress Europe Redesigns the Ramparts, in: *International Journal Summer 2002* 3 (2002): pp. 380.

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Third World), along with the European Human Rights Convention proved Europe was beginning to move towards a more multilateral approach regarding asylum policy. The humanitarian frame dominated during this period as immigration, providing cheap and flexible labor, was a must in the decades following 1945. This relaxed view spilt over into asylum policy, as calls for restriction both from political and social sources were fairly non-existent (at least outside of far-right parties). Attempts to coordinate policies at an exclusively inter-European level first came in 1976 with the signing of the Terrorism, Radicalism, Extremism, and Violence International (TREVI) act. TREVI was aimed mainly at controlling terrorism and never truly developed into a real institution. However, it did serve as something of an “education” for officials that would later be part of the Justice and Home Affairs Council in the Third Pillar, where asylum policy would lie many years later.⁴ TREVI was the beginning of the second stage of post-war asylum policy, what Joly terms “harmonized restriction.” It was also TREVI that helped establish and sustain a transgovernmental group of social circles made up of police offices and civil servants of various European interior ministries. This laid the basis for unbothered action behind closed doors, something that will be discussed in detail in a later section.

National policies across the board became more restrictive in this period. Changes in the labor market, as well as a desire to protect the social and economic rights of the domestic labor force, were the motivating factor for this shift.⁵ Across Europe, foreign labor programs were shut down and asylum, now being one of the few legal means of immigrating to an EU country, was put under increasing scrutiny by the governments and public.⁶ In the interest of closer integration, the Council of Europe made two recommendations, in 1976 and 1981, to harmonize asylum policy. By the mid-1980s the member states began taking steps towards this goal, mostly out of necessity. From the outset, the goal of harmonization was not to

4 See Levy, Carl and Bloch, Alice Eds. Refugees, Citizenship and Social Policy in Europe. New York: Macmillan Press, 1999.

5 Huysmans, 2000: pp. 754

6 Gallagher: pp. 380

better the response to refugees and safeguard their rights; rather the goal was to reduce the number of refugees and asylum seekers.⁷ With policies becoming more restrictive in some nations, asylum-seekers began moving to nations with more relaxed policies. The first lasting harmonization attempt, therefore, was a restrictive one under a realist frame.

The mid-1980s saw a shift of asylum policy for some member states away from the UN and Council of Europe to an intergovernmental forum in the EU context. The two overlapping bodies dealing with immigration at this time were the Ad Hoc Group on Immigration and the Schengen Group (created by the Schengen Agreement).⁸ Both of these groups were manned predominantly by members of each nation's Interior Ministries, as they were the pertinent national group that had jurisdiction over immigration. The 1985 Schengen Agreement was an attempt to remove border controls within state parties. In addition to the original core group (Germany, France, and Benelux), every EU member state except for the UK (but in addition Norway and Iceland) has become party. The implementation was to begin in 1995 but was delayed until 1996, due to state ratifications and amendments to national laws. As far as asylum policy in concerned, Schengen laid out some detailed plans of action. External border controls were harmonized and strengthened, fines would be imposed on carriers who transported asylum seekers into the Schengen area without proper documentation, and the country of first asylum notion was put forward. The country of first asylum concept placed responsibility for an asylum seeker on the country that first granted entry authorization. These responsible states must take back asylum seekers who have entered another state "irregularly." Other states may of course process the claims of an asylum seeker for their own "special reasons." Responsible states needed to expel those not granted asylum, so as to prevent them from entering another

7 Joly, Daniele et al. Refugees in Europe: The Hostile New Agenda. UK: Minority Rights Group, 1997: pp. 22.

8 Lavenx, Sandra. The Europeanisation of Refugee Policies. Burlington: Ashgate Publishing Company, 2001: pp. 83.

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state.⁹ These protections were put into place so as to discourage asylum seekers from “asylum-shopping” to find a visa.

The Schengen Agreement also implemented a common computerized system designed to exchange personal information among states (the Schengen Information System, or SIS), and the EURODAC, a Europe-wide fingerprinting system for asylum seekers. Asylum seekers granted visas were allowed to move freely within the Schengen Area, granted they notify appropriate parties within three days of their arrival. The Agreement was also forward-looking, as it stated that it was compatible with Community Law and that once an agreement on an area without internal frontiers was reached, it would be incorporated into it or replaced by it. The realist approach had to a degree become institutionalized, and the Schengen Agreement was accordingly criticized widely, namely by the UNHCR, for weakening international refugee law. The SIS and EURODAC were also targets of criticism due to lack of a supranational judicial control to provide review. In addition to these problems, the absence of the UK, one of the largest receiving states in the EU, and delays causing the Agreement to be implemented in 1996 (after the largest flows of refugees had occurred) caused Schengen as a stand-alone system to be seen as rather flawed with regard to its asylum provisions. The Dublin Convention was an attempt to remedy some of these problems, and mirrored many of Schengen’s provisions.

The legally binding Dublin Convention was signed on June 15, 1990 by eleven EC member states. This Convention was also plagued with delays, and only came into effect in September 1997 for the pre-1995 members of the EU (it later came into effect in September 1998 for Sweden, Finland, and Austria).¹⁰ The main purpose of this Convention was to identify the member state responsible for examining an asylum claim lodged in the EU. The Convention was needed for several reasons. First, the problem of “refugees in orbit,” asylum seekers passed from state to state with no one accepting responsibility for them, needed a concrete solution. Secondly,

⁹ Joly: pp.23

¹⁰ Levy: pp. 23-25

asylum seekers needed to be prevented from filing multiple applications for asylum in different states, either consecutively or concurrently. The Convention lays out a hierarchy for determining which state is liable for asylum applications. The notable change to the Schengen Agreement is a member state that has a family member (with a refugee status) of the asylum seeker is forced to take responsibility for that asylum seeker's claims. The Convention further defines situations that may arise due to illegal entry or border crossing and how claims should be handled in these cases.

The Convention also outlines procedures for the transfer and return of asylum seekers (including information exchange) and establishes time limits for determining responsibility of a member state with regard to an asylum seeker's claim.¹¹ The Dublin Convention allows for deportation of a failed asylum seeker to a "third safe country," provided the asylum seeker had previously traveled through that state. In practice however, this state can be anything but safe. For instance, in 1992 fifteen Tamils were returned to India by Denmark via Finland and Poland.¹² While the system did finally represent an EU-wide mechanism, the lack of uniform standards in asylum policy creates gaps in the Dublin mechanism. An asylum seeker may find different conditions in his responsible state than the state he currently resides in. Furthermore, since most entry points within the EU are in the south and east, more burden is placed on poorer states that do not have the necessary infrastructure to deal with a large caseload. The incentive for these countries would be to get rid of their caseload as soon as possible, and this attitude can be seen clearly when noting that Italy expelled 185,000 asylum seekers between 1998 and 2000 compared to only 10,000 annually in previous years. The Council attempted to remedy this through the creation of a European Refugee Fund in 2000 to lessen the burden of some member states. However, since its creation, "the lion's

11 Sorenson, Jens Magleby. The Exclusive European Citizenship: The Case for Refugees and Immigrants in the European Union. Brookfield: Avebury, 1996: pp.41-42.

12 Hayter, Teresa. Open Borders: The Case Against Immigration Controls. London: Pluto Press, 2000: pp. 73

share” of the Fund’s resources go to Germany and the UK.¹³ Schengen and Dublin, while slow and laborious in their implementation, did establish a framework for dealing with asylum policy affairs on what was soon to be called the third pillar of the EU. While this was a positive step in the direction of integration, the human rights dimension of asylum again took a backseat to security concerns.

III. Asylum Policy in the Treaties: A Temporary or Lasting Solution?

The debate as to what to do with asylum policy took on a familiar form in the months before Maastricht. On the one side was the UK and Denmark, believing their policies to be adequate and superior to anything Brussels might come up with. Countries like Germany and Benelux however took a more calculated view on a common policy that, while potentially politically unpopular, could serve as a Brussels scapegoat for domestic anger. In the end however, the intergovernmental conference leading to the Treaty of Maastricht (ToM) established what was to be a more pragmatic approach that would re-orientate policies to improve efficiency. The conference also warned that a harmonization that did not define basic principles would proceed at the lowest level. The IGC placed asylum policy in the Third Pillar, Justice and Home Affairs (JHA), of the EU. It was to be regarded as a matter of common interest in achieving the objections of the Union and the Commission was to share the right of initiative with the member states and the European Parliament.¹⁴

Economic worries in the post-Cold War Europe were causing national retrenchment with regard to asylum policy. Furthermore, the heroic image of the asylum seeker fleeing persecution from Communism became obsolete with the fall of the USSR. This new attitude was clear in both a newly united Germany’s constitutional discussion over a guarantee of asylum and the rise of the right in France. The ToM had not done much

13 Gallagher: pp.385

14 Sorenson: pp.59.

more than codify processes that had already been there before. Although the treaty gave the member states the opportunity to use more effective legal instruments, the preferred *modus operandi* was still intergovernmental cooperation when it came to asylum policy. Asylum policy was still intergovernmental and in control of the least asylum-friendly member state. Again however, forward-mindedness was present and there was hope for a common policy. The *passerelle*, or bridge, made it possible for asylum policy to move to the First Pillar granted the Council unanimously invokes such an action. It would be four years until the Council did just that.

This patchwork of asylum policies (especially with Schengen and Dublin not having come into effect yet) in the EU was faced with a huge test in the early 1990s with the Yugoslav Wars. Essentially a wake-up call for the EU, the lack of an effective and coherent mechanism to regulate the influx of refugees made it necessary to for each member state to make *ad hoc* decisions regarding reception procedures. The initial response was anything but coordinated, with Austria, Germany, and Sweden granting visas, while the UK ordered refugees to get visas via consulates in Bosnia (which in fact did not exist at the time).¹⁵ By November 1993 the EC adopted the “Resolution on Certain Guidelines as Regards the Admission of Particularly Vulnerable Groups of Persons From the Former Yugoslavia.” This resolution created “safe havens” organized by the UN in Bosnia to hold asylum seekers and created the concept of “temporary protection,” where an asylum seeker arriving directly into an EU state must not be able to return home due to threat of violence back home. Many of those who received temporary protection were eventually repatriated: from 1996 to 2000 Germany alone returned 250,000 Bosnians.¹⁶

Another response to the influx of refugees was the Resolution on Manifestly Unfounded Application for Asylum of 1992. According to this resolution an asylum application would not be considered if it raised no substantive issue under the Geneva Convention, was based on a deliberate claim of deception, or dealt with a country that was considered “safe”

15 Levy: pp. 29-30.

16 Gallagher: pp. 381.

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(according to a list) by EU member states.¹⁷ As is clear from the Yugoslav crisis, although harmonization was achieved on some level with certain restrictions, asylum policy was essentially in the hands of the member states. Disparities in national asylum policy were still quite present, and one clear example was the differing status of de facto refugees. A de facto refugee is someone granted asylum without being legally recognized by the UN Refugee Convention, a distinction that each state makes itself. While Sweden and Denmark gave de facto refugees equal rights to those with Convention refugee status, Germany, France, and the UK recognized no such legal status. The UK and France, unlike Germany, did not even give the de facto refugees any sort of humanitarian status.¹⁸ Even if the goals of asylum policy in the late 1980s and early 1990s was to coordinate asylum policy via intergovernmental means, the results of the attempts proved the institutional structure in place to be bankrupt. A firmer control over asylum policy was necessary, and a coordinated approach was vital.

The Third Pillar was quickly becoming the object of widespread criticism. Among its major problems were the lack of judicial review and a democratic deficit. A combination of this intransparency as well as the growth of the political weight of asylum issues led to some major reforms for the policy during the Treaty of Amsterdam in 1997.¹⁹ Consensus was clear, as evidenced by the findings of an IGC conducted in March 1995, that the future of immigration policy was to be based on “flexibility, opt-outs, and the gradual accretion of the Schengen Accords and a slower process of communitarization.” While the overwhelming majority of EU states were for a common asylum policy, Denmark, the UK, and Ireland felt that the time was not right to communitarize this piece of their sovereignty. The Treaty of Amsterdam (ToA) made use of the passerelle, and moved asylum, refugee, and migration policy from the Third Pillar to the First Pillar. The Commission and European Parliament, as well as the

17 Joly, pp. 24-25.

18 Levy: pp. 39.

19 Lavenex, Sandra. “EU Enlargement and the Challenge of Policy Transfer: the Case of Refugee Policy.” *Journal of Ethnic and Migration Studies* 28.4 (2002): pp. 727.

Court of Justice, were given more power over traditionally sovereign policy.²⁰ This sudden impetus to tackle the problem of asylum policy stemmed from the urgent need to firmly protect the movement of persons in the face of the upcoming monetary union.

The other two major changes to existing asylum policy were the inclusion of the Schengen acquis into the EU framework and the creation of the new Title IV in the EC Treaty called “Visas, Asylum, Immigration, and other policies related to the Free Movement of Persons.” Title IV of the ToA dealt mostly with asylum policy, and Art. 61 and 63 (via a process detailed in Art. 67) set out a period of five years where the Council would have to adopt measures in the field of asylum and immigration, essentially a common asylum policy. Asylum policy is never mentioned too far away in the treaty from other border issues like crime and illegal immigration, and the treaty constantly stresses minimums. The stress on minimums, given the vastly different situations of the member states, is understandable. However, the treaty seems to treat asylum on an equal footing as other trans-border issues, choosing not to make too much of a distinction.

These institutional reforms were to take place after a transitional five-year period from the date of ratification of the treaty, which occurred on May 1st 1999. However, Title IV does not apply to the UK. This is an especially large concern when noting that the UK in recent years has been the country where the most asylum applications are lodged (Table 1). The ToA recognizes the link between foreign policy and asylum policy. States may take foreign policy issues into concern regarding asylum seekers when the “maintenance of law and order” or the “safeguarding of internal securing looks to be threatened.

Another feature of the ToA is the provision of “emergency measures” for dealing with a large influx of refugees subject to qualified majority voting. However, flexibility clauses that enabled countries like the UK to opt-out of Title IV matters will not be extended to applicant states, further undermining uniformity in policy. Despite a slightly more humanitarian tone in Amsterdam, asylum policy was still treated like a security issue.

²⁰ Levy: pp. 36-37.

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The strengthening of the ties between the EU and its citizens has again confirmed the perception of asylum seekers as outsiders. Although moved to the First Pillar, asylum policy has not yet fully freed itself from the grasp of the Third Pillar. Areas of cooperation with asylum policy still remain within the confines of the Third Pillar, namely trafficking controls (a plight more and more common for asylum seekers). The guarantee for states to consider foreign policy interest when making decisions about asylum seekers and the introduction of “at least the same level of protection and security” of Schengen further underscores the persistence of asylum policy as a security issue.²¹

The late 1990s influx of migrants from Iraq and its neighboring regions provides an excellent example of the JHA Council dealing with asylum issues in the Third Pillar. At a meeting in October of 1997 the JHA Council, in response to vastly heightened numbers of asylum seekers (the vast majority of which were Kurds) coming from the Iraqi region, set up a Multi-Disciplinary Group (MDG) to examine the issue in depth. There was some institutional confusion as to where the MDG would report to, as some of its tasks would have spilled over into the CFSP area of the Second Pillar. It was finally decided that the MDG would report primarily to COREPER and that the K4 Committee (overseeing JHA matters) and the Political Committee (overseeing CFSP matters) would be informed and consulted when necessary. The MDG came up with a EU Action Plan by January of the following year, and its approach seemed quite promising. The plan consisted of, *inter alia*, analysis of the causes and origin of the influx, increased contacts with Turkey and the UNHCR, humanitarian aid, effective application of asylum procedures, prevention of asylum abuse, combating illegal immigration, and tackling the involvement of organized crime.

While the plan looked like a fairly comprehensive approach that took into account humanitarian concerns and root causes, during its implementation it shifted into the direction of the JHA and the illegal immigration

21 See Lavenex, 2001: pp. 127-137 for a more detailed analysis on the ToA and asylum.

dimension of the problem became the main focus. The CFSP aspect of the issue, the dialogue with the countries in the region regarding the Kurdish problem, never became a reality.²² As the Second Pillar essentially ignored the issue, the plan became an exclusive activity under the Third Pillar. Activities then focused on keeping asylum seekers in the region and away from the EU. Attempts by UK Presidency and the K4 Committee to locate asylum seekers in Turkey (which the EU somehow considered a safe country despite Kurdish persecution in the east) fell through and the member states were faced with something they had not really considered: a concentration of asylum seekers within EU borders. The main route of transit was through Greece to Germany or Netherlands, and the EU soon discovered that it would be impossible for Greece as the country of first entry under the Dublin Convention to handle the massive caseload of asylum claims. As asylum applications were handled where they were received, it was clear asylum procedures did need to be at least partially harmonized if the EU was going to have a working concerted approach to influxes that would not put undue stress on a single member state.

Even as there was clearly a humanitarian basis to the Kurdish problem, member states still seemed to perceive this influx as a mix between some genuine migrant and opportunist economic migrants. The effect of the JHA Council's focus on combating illegal immigration in the plan on the plight of genuine asylum seekers was not really taken into account, and it is because of the Council's structure that this was possible. While the Asylum Group of the Council was busy discussing the application of the Dublin Convention, the Migration Group was making much more progress with regard to measures combating illegal immigration. The Migration Group was able to forward their findings to the K4 Committee much faster and even though the K4 Committee was to coordinate the findings of the expert groups, it seemed satisfied to rely mainly on the Migration Group's

22 de Jong, Dennis. Asylum in Europe: Underpinning Parameters, in: *Global Changes in Asylum Regimes*. Hampshire: Palgrave Macmillan, 2002: pp. 106-107.

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findings to show that at least something was being done and that the EU was taking an active stand.²³

The EU also had something of a plan to handle the refugee fallout from the 2003 Iraq war. At a March 28 2003 meeting of ministers in Veria, the EU pledged to aid neighboring countries in sharing the burden of the expected refugee influx from the war. While some countries like France allotted visas and even temporary work permits to Iraqi refugees, the brunt of the EU's contribution was a \$100 million aid package that went to build "hospitality centers" in Iraq and neighboring countries to house refugees. At this same conference, member states gave substantial support to a UK proposal that would establish other asylum processing centers, most likely in Russia and Ukraine, as a medium term solution to asylum issues. It is still clear that the EU is still reluctant to deal with foreigners on their own soil, and that the third safe country concept should be taken with a grain of salt if it applies to the likes of Russia, Ukraine, and Turkey. As is clear from the Iraqi influx, asylum's placement in the Third Pillar over-emphasizes its security component. However, would a move to the First Pillar change anything?

A 1999 summit at Tampere laid out the objective of creating a common European asylum system. The first step called for was an attempt to achieve standards that would ensure simplicity, fairness, transparency, effectiveness, and speed. In the longer term, these practices would lead to an eventual harmonization of asylum procedure. Also noted at the time by the EU and various NGOs was the humanist and generous "spirit of Tampere." In reality though, this spirit would not last much longer than the summit itself. The summit set a period of five years for a common policy to come into existence, during which an "area of Freedom, Security and Justice" would be drawn up to support the policy.

One notable development during the period after Amsterdam was the EU agreeing to the Charter of Fundamental Rights at Nice in December 2000. Key provisions of this non-legally binding document are articles 18 (which

23 de Jong: pp. 110-113. This article provides an excellent assessment of the Iraqi refugee situation in Europe.

guarantees respect for the 1951 Geneva Convention, its Protocol, and the EC Treaty) and 19 (prohibiting collective expulsions and the upholding the concept of non-refoulement). Although EU leaders have now approved the Constitution and the attached Charter, both documents still face their greatest obstacles in approval throughout the member states. Even if/when the Charter does become legally binding, the Spanish Protocol to the Treaty will cause major problems in the international community. At Spanish insistence, a Protocol was drawn up denying the status of refugee for any national of a EU member state.²⁴ This Protocol was obviously aimed at Basque separatists and found its roots in a diplomatic disagreement between Spain and Belgium regarding a Basque seeking asylum. The denial of refugee status is a blatant abrogation of Article 14 of the Universal Declaration of Human Rights and the 1951 Geneva Convention. The Charter's inclusion, as well as asylum policy's move into the First Pillar, also brings up some legal issues as to what role the ECJ will play with regard to asylum in the future. What was once the sole domain of technocrats and police will be checked from now on. The question is to what degree?

Terrorism, until 9/11 and 3/11 only a phantom menace, instantly catapulted to the forefront of policy concerns during this period. Naturally, asylum policy was going to be part of the fallout. The EU Action Plan to Fight Terrorism, drawn up shortly after 9-11, called for, among other things, improvements to the Schengen information systems. A November 2001 Commission paper on illegal immigration called for an eradication of "human smuggling and trafficking regardless of the fact that legitimate refugees use these same channels."²⁵ Several member states have also expanded their powers to enforce security, including the ability to make more frequent use of detention. The fingerprinting of asylum seekers via EURODAC throughout Europe is now a reality after many years of discussions. Overall however, the European reaction to 9-11 has not been

24 Levy: pp. 44.

25 Gallagher: pp. 391

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as unilateral and sharp as was predicted soon after the attacks.²⁶ However, the immigration-related measures of the Action Plan are probably still much more developed than portions of the Action Plan that deal with CFSP matters.

Europe took another, harder look at terrorism after tragic events on its own soil. Nearly a week after the Madrid bombings member state governments and the Commission gave their blessing to a draft proposal entitled “Declaration on the Struggle against Terror.” The proposal includes a host of restrictive measures such as a future requirement that foreigners wanting to stay in the EU must have papers containing biometric data. Also called for was increase of border controls and cooperation between member states and third countries. It is too early however to gauge the real fallout from Madrid and even 9-11. When combining the salience of the attacks with the recent rise of the right however, it may be safe to say that dangers from terrorism may only add fuel to the restrictive fire. This time the need for restriction may be genuine though.

During this time, the Commission had a very important role in the process of harmonizing asylum policy. In addition to issuing “scoreboards” bi-annually to cite the progress being made, the Commission also put forward several proposals for directives in the following years, including a directive harmonizing conditions of reception, the process of refugee determination, and the definition of a convention refugee.²⁷ These proposals helped lay the basis for the work of interior ministers in the Justice and Home Affairs Council. These proposals, however, usually had the lowest common denominator in mind, as the general will in the EU leaned towards a tighter control on migration. After all, no EU member state wanted to seem more accessible to migrants than another. After much deliberation and a final decision just two days before a self-imposed deadline, on April 29th the JHA Council “reached a general approach on the amended proposal for a

26 Favell, Adrian & Hansen, Randall. Markets Against Politics: Migration, EU Enlargement and the Idea of Europe, in: *Journal of Ethnic and Migration Studies* 28.4 (2000): pp.594.

27 Gallagher: pp. 386.

Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status.”

The general approach ensures EU-wide minimum standards, and constitutes the first phase towards an eventual common asylum policy. There will be procedural guarantees for applicants, including access to legal assistance and opportunities to be interviewed. Minimum requirements will be put into place concerning those involved in the application decision-making process. Also, the right to a remedy before a court or tribunal will be guaranteed for those who have received negative decisions. The general approach also reaffirms several of the concepts that the EU has previously adopted with regard to asylum seekers. The safe third country approach shall now be a standard across the EU. Essentially, an asylum seeker may be deported to a third country deemed “safe.” Also put forward is the safe country of origin concept. A EU list of third safe countries will be introduced, and applications of nationals from those countries shall be considered illegitimate. There will also be provision allowing a member state not to examine an application and send an asylum seeker to a previously traveled to “supersafe” third country.²⁸

The Commission also proposed extending the European Refugee Fund program until 2010. The Commission also called for an increased integration of immigration questions into political dialogues with several countries of refugee origin. The dialogue is to focus on illegal migration and includes common readmission agreements. Several agreements are already in the process of being negotiated with countries like China, Russia, Sri Lanka, and Pakistan.²⁹ Finally, asylum seekers who are fleeing non-state persecution (like women facing female genital mutilation who are not covered by the Geneva convention) will be eligible to apply for asylum.³⁰

28 Available: http://europa.eu.int/comm/justice_home/fsj/asylum/standards/wai/fsj_asylum_standards_en.htm.

29 Available: http://europa.eu.int/comm/justice_home/doc_centre/intro/docs/sec_2004_693_en.pdf.

30 Available: http://www.dw-world.de/english/0,3367,1430_A_1156465_1_A,00.html.

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The Commission has more recently, in a paper entitled “A More Efficient Common European Asylum System: The Single Procedure as the Next Step,” proposed a new method to better progress to a fully harmonized asylum policy. The Commission will launch a Preparatory Phase that will monitor and assess the implementation of the first phase and identify areas that are appropriate for legislative action.³¹

Even after a cursory examination of the new general approach, it is easy to see that problematic areas still exist. The approach has already been denounced by several NGOs like Amnesty International, Human Rights Watch, and the European Council on Refugees and Exiles. It is clear that the safe country of origin concept will provide fewer safeguards to asylum seekers based solely on their country of origin. The safe third country concept shifts much of the responsibility that the EU might have had onto third countries, regardless of any links an asylum seeker might have to that country. The right of an asylum seeker to remain in a country until a final decision is reached on their application is also missing from the approach.³²

This latest attempt at harmonization may lead to some improvements that seem outside of security concerns. The eligibility of asylum seekers outside of the convention and the fact that at least minimums are ensured in (nearly) all the EU 25, especially with regard to legal aid. However, these benefits are undercut by the introduction of concepts like “safe countries.” These concepts will legitimize practices that have the effect of circumventing “a hearing on the substance of an application in favour of an expedited process or administrative dismissal.”³³ Asylum-shopping may diminish, but those who are recognized as convention refugees and those who are removed will also surely decrease. Monitoring by the Commission is certainly a plus, but restriction is still the theme, and limiting the influx of third country nationals remains the focus of the now partially harmonized asylum policy.

31 Available: <http://europa.eu.int/rapid/pressReleasesAction.do?reference=MEMO/04/185&format=HTML&aged=0&language=EN&guiLanguage=en>

32 Available: <http://hrw.org/english/docs/2004/03/29/eu8233.htm>.

33 Gallagher: pp. 394

IV. The Forces Behind The Securitization of EU Asylum Policy

The free movement of persons ensured by the SEA caused issues and concerns related to the abolishment of internal borders to spill over into issues of asylum and third country immigration. The most important group dealing with this spillover were the Interior Ministries of each member state. Interior Ministers in not only France and Germany but all across the EU managed to keep a large degree of control over these issues and at the very least delay the Europeanization of their competences. Keeping the issue an intergovernmental one while at the same time espousing the rhetoric of integration was a brilliant way of controlling and gaining support for restrictive asylum policies. The ministers did not exist in a vacuum however, developments in the national politics of the time were also a large influence. An increasingly concerned citizenry of the floundering welfare state began to fear the economic repercussions of the entrance of economic migrants in disguise. How asylum policy was framed the way it was is also of interest. Asylum was linked to border problems, which were historically overseen by technocrats. Also, a drive to create common asylum procedures only came up as an outgrowth to problems brought up by the Single European Act and the abolition of internal borders. The problem has since the beginning been handled by technocrats who have transposed their views onto “European views” and in a sense heightened the security dimension of asylum, whether it was intentional or not.

The core Schengen group, having something of an “expertise” on asylum matters, was able to take control of the EU-wide Ad Hoc Group on Immigration and push their views on countries that had not had problems with immigration or asylum. The fact that the majority of those in charge in these early days were from Interior Ministries is also very important. As their jobs dealt with the border-crossing aspect of asylum, their approach to the problem was primarily concerned with the fact that asylum seekers are coming into their countries. Questions as to why they had come were not of issue; asylum problems remained a technical issue that soon became

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bundled together (and then linked directly) with crime and terrorism. The humanitarian dimension of the problem was not the technocrat's concern.³⁴

Some have even taken a more conspiratorial view, claiming that national policy-makers, in an attempt to bypass the "human rights bias" of their constitutions and constitutional courts have turned to the EU as an ideal forum for free action. As these EU forums are in essence insulated from activists, lawyers, and even national courts, they provide a perfect platform to launch "a European Realpolitik that is designed to enhance the protective territorial powers of nation-states."³⁵ While the situation is not as extreme as is suggested, there is at least truth in the fact that working through EU forums allows one to bypass many standard national checks. As mentioned before though, the majority of the European public tends to be in full agreement with increasing restrictions.

The perception of asylum seekers being not any better than other economic and illegal migrants, while over exaggerated much of time, does have a basis in reality. The restrictive immigration measures the EU has taken in the past decade has put migrants of all kinds into a difficult position. With tougher immigration controls in place across the EU, large numbers of potential migrants are pressured into seeking alternative channels of entry: illegal entry or asylum channels. Genuine asylum seekers themselves, faced with diminishing prospects of being granted asylum, have also been increasingly turning to traffickers and smugglers. Not only does this help fuel transnational criminal networks, but it also pushes asylum seekers into the "margins of social and economic life [in a member state]."³⁶ An incident in the UK in June 2000 where the bodies of 58 illegal immigrants were found in a truck underlines the dangers that a need to rely on criminal elements poses.

34 Lavenex, 2001a: pp. 139.

35 Favell: pp. 587

36 Loescher, Gil & Milner, James. The Missing Link: the Need for Comprehensive Engagement in Regions of Refugee Origin, in: *International Affairs* 79.3 (2003): pp. 595.

Despite these grim realities, public opinion throughout the EU tends to focus on the negative. A 1992 Dutch poll where 61% felt that Netherlands should maintain a flexible admission policy towards asylum seekers. A weakening economy and an influx of Tamil refugees was quick to change that opinion. A 1998 Dutch poll found that 74% felt that the entry of immigrants and asylum seekers is an unfortunate development and a 2000 poll in France showed that 59% of those surveyed agreed that there were too many foreigners in France. Support for asylum seekers can of course rise and fall due to external circumstances, but overall asylum policy has become the subject “of the politics of representation and manipulation.”³⁷ Asylum seekers can be portrayed by some stakeholders as victims and by other as opportunists and frauds. The question that we are then faced with is whether actors in the political process will choose to follow or to lead public opinion. Experience has shown us that some of these actors, political parties, have tended to follow.

2002 election results in countries like Denmark, Italy, France, and the Netherlands indicate in some measure a growing public hostility towards asylum seekers and economic migrants. Increased seats for the anti-immigration Danish populist party ensured that a tough new immigration law was passed that already saw asylum numbers drop from 3,033 in the beginning of 2001 to 1,877 the following year.³⁸ Other anti-immigration parties like the Northern League (Italy), Pim Fortyn's List (Netherlands), the Freedom Party (Austria), and the National Front (France) showed increased numbers (most notably in local elections) and have even participated in national coalitions.³⁹ An examination of daily newspaper coverage and far-right results in state elections in Germany found that between 1986 and 1997 asylum issues could “well account for far-right successes.”⁴⁰ The specter of increased far-right support does not bode well

37 Alink, Fleur, et al. “Institutional Crises and Reforms in Policy Sectors: the Case of Asylum Policy in Europe.” *Journal of European Public Policy* 8.2 (2001): pp. 296.

38 Available: http://www.dw-world.de/english/0,3367,1434_A_567610,00.html.

39 Gallagher: pp. 387.

40 Karapin, Roger. *Far-Right Parties and Construction of Immigration Issues*, in: *Shadows Over Europe: The Development and Impact of the Extreme Right In Western Europe*. New York: Palgrave Macmillan, 2002: pp. 198.

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for those hoping to see a humanitarian shift with regard to asylum policy in the near future.

And it's not just far-right parties who are involved, if comments from several French presidents are of any indication. Jacques Chirac claimed that the "noise and smell" (le bruit et l'odeur) of Africans would annoy their French neighbors, Valéry Giscard d'Estaing's suggested that we might be witnessing a shift from immigration to invasion, and Francois Mitterand claimed that all countries have a certain threshold of tolerance (seuil de tolérance) when it comes to the number of foreigners in their midst.⁴¹ The fact that these comments can be made by mainstream figures begs the question: has Europe reached it's threshold? And if it has, what does it mean for legitimate migrants like asylum seekers? The rise of these parties, who capitalize on economic fears to push xenophobic and sometimes racist agendas, only underscores to need for the EU to take a proactive stance and break down this security image it helped create. These parties tend to frame the asylum and immigration problem as an economic one. However, these migrants are not necessarily the problem, and they may even be a solution.

As Europe's openness to migration had first been spurred by economic concerns, it comes as a great surprise then that Europe continues to shun cheap labor during the current economic stagnation and amid grim forecasts for the state of welfare provisions in the coming decades. The structure of the welfare systems in most European countries have led to a situation where for many it pays more to stay unemployed. Economically then, there is a market demand for cheap labor. After all, migration is first and foremost prompted by labor-market considerations. When an economic or any other migrant knows prospects in the job market are poor, he would be less likely to migrate. And as can be seen, asylum seekers have been able to fill this demand out nicely in countries like Denmark and Sweden, where they have been quickly incorporated in large numbers into the service industries.⁴²

41 Rosello, Mireille. *Fortress Europe and it's Metaphors: Immigration and the Law*: pp. 4-5. Available: <http://uw-madison-ces.org/papers/rosello.pdf> and Gallagher: pp. 375.

42 Favell: pp. 598.

In light of recent economic troubles, welfare provisions are becoming increasingly scarce. Asylum seekers are seen as illegitimate challenges to the limited supply of these rights, and Europeanization has supported these notions. For instance, a JHA Council meeting in 1994 concluded that a foreigner would have access to employment only when “vacancies in a member state cannot be filled by a national and Community manpower or by non-Community manpower lawfully resident on a permanent basis.”⁴³ Shrinking resources necessitate the distribution of welfare benefits to rightful members of society first, as people tend to want to feed their poor before they feed others. Despite the anger over the burden these asylum seekers place on welfare systems, minimal support tends to be the case in most European countries. The trend has been to keep asylum seekers out of the regular social security system through providing benefits in kind (like food stamps) and reduce their overall entitlements.⁴⁴ Furthermore, with Europeans retiring earlier payments into the system are decreasing and increased cheap labor is most likely one of the only answers to this problem. Europe does realize that migration is necessary to some extent, however when placed within the broader context of security the realization of the need will be hindered.

There is another dimension to the perception of asylum seekers as a security threat in Europe. One image that has been quite visible in media during the past decade has been the growing xenophobia and racism in Europe. Acts of violence towards foreigners make no distinction between illegal and legal migrant, and what is at stake here is not just individual security, but group security. As Schengen and Dublin grouped together asylum seekers with the hunt for criminals, drug cartels, and terrorists it is no surprise that the public is not quick to make a distinction.

The concept of societal security is a useful tool for examining the feelings of some segments of the European public. Society in this case refers to

43 Huysmans, 2000: pp. 767-768.

44 Minderhoud, Paul E. Asylum Seekers and Access to Social Security: Recent Developments in the Netherlands, United Kingdom, Germany, and Belgium, in: *Refugees, Citizens, and Social Policy in Europe*. Great Britain: Macmillan Press, 1994: pp. 146.

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cultural identity, something to be distinguished from the sovereign state. Society is separate from state, and the mass influx of foreigners can threaten society without necessarily damaging the state. This dynamic can be explored better with an understanding of a Hobbesian model of security, where everyone is against everyone. A sphere of trust (us) is separated from a sphere of fear (them) because fear is the basis of external relations while trust is the basis of internal relations.⁴⁵

The europeanization of asylum policy has become a political issue, where the criteria of belonging in the EU become contested. Many Europeans cling onto the notion that cultural homogeneity still exists, and at the same time there can be no doubt that most European countries have become countries of immigration. Many conservative groups have framed all immigrants (including asylum seekers) as a threat to that identity. The media aids these groups, frequently painting a picture of immigrants as a threat. This cultural threat is even put up against nationalism, the most notable traditional instrument of societal and political integration and harmony. And it is the migrant, and by extension asylum seeker, who is destroying this harmony.

If the migrant cannot share in the pervading cultural identity, he becomes useless to the majority. And since all migrants cannot be part of this identity, they are essentially the same. Generalizations made about minorities underscore the idea that these foreigners are out of place here and should leave. This kind of kind is clear, even in a physical sense, when looking at the Danish reception centers for Bosnians. Bosnian refugees, kept far away from the rest of the population in housing, were taught in Bosnian at school and were essentially excluded from Danish society. Integration is certainly a distant possibility when physical and language

45 Huysmans, Jeff. Migrants as a Security Problem: Dangers of ‘Securitizing’ Societal Issues, in: Migration and European Integration: The Dynamics of Inclusion and Exclusion. London: Pinter Publishers, 1996: pp. 55-56. Huysmans article paints a very clear and complete picture of the dynamics of inclusion and exclusion and the idea of belonging in Europe. Understanding the basic forces at play is vitally important if one wants to completely understand the problems facing asylum seekers in Europe, and Huysmans provides an excellent account of the situation.

barriers are enforced, giving refugees no recourse but to separate themselves.

Unfortunately, as security measures tend to become self-sustaining, there might not be an end to these problems anytime soon. Security measures taken by the “natives” will most likely be countered by measures taken by the migrants. These measures will then be taken as further proof by the “natives” of the danger migrants pose. This circular process is known as a “security dilemma.”⁴⁶ It is not easy to change attitudes and “tradition” throughout Europe. When the people support something, in a representative democracy it usually is not long before their desires get attention. And so it is understandable that the EU is continuing its restrictive stance towards asylum. However the EU has and will be an important democratic and humanitarian force, a civilian power. It should set examples throughout the world, and building walls around itself is not a step in the right direction. People may eventually become acclimated to rising numbers of migrants, it just takes time and effort from both the national governments and the EU to better integrate these “outsiders.” The solution may not be easy, but not treating asylum seekers as a security threat is a good first step.

V. Enlargement and Asylum Policy Transfer

Many view enlargement as an example of the EU reasserting the liberal values that underpin it. The image of the EU15 helping its long held back Eastern neighbors into prosperity is appealing, and is true to a great degree. However, with enlargement, Europe was given the opportunity to transfer many of their stances on certain policies onto the Accession Countries (AC, will be referred to as such for simplicity’s sake despite their new status). In the case of asylum policy, Europe was able to plug up several “holes” in its borders and keep third country nationals further away from its original borders. Due to the lack of liberal traditions in many of the AC, both the humanitarian frame and realist frame had to be used to some degree with regard to policy transfer. It was however the realist frame that played the

46 Huysmans, 1996: pp. 64.

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leading role in the process of policy transfer to the AC. This was unavoidable mainly due to the dominance of intergovernmental structures dealing with the transfer of this policy in place and the dominance of the JHA in these.⁴⁷

The fall of the Iron Curtain and the beginning of the restrictive trend in migration control in Europe began around the same time, and this is precisely when border cooperation began between Europe and the AC. In order to avoid a massive influx of immigration to the West, the member states adopted a preventative strategy of incorporation of the AC at the (soon) JHA level. This approach later became formalized into the accession agreements and enlargement politics overall. The EU asylum acquis differs (from its application to regular EU countries) in its application to the AC in that it is no longer based on the assumption that compatible legal and social standards of protection exist in the AC and that the acquis was unilaterally imposed.⁴⁸ Three major constellations grew out of cooperation: German together with Poland and the Czech Republic, Austria with Hungary, Slovakia, and Slovenia, and Scandinavia and the Baltic states.⁴⁹

The safe-third country rule was applied to the AC and readmission agreements were signed between the EU15 and the AC. This was followed by several wide-ranging bilateral agreements between the national security agencies responsible for policing Eastern borders and the creation of a more effective infrastructure to better combat illegal immigration. This cooperation, since 1991, came under the heading of the Budapest Group, which consisted of representatives of the Interior Ministries of all the countries involved. Activities mainly included strengthening borders through improved technology, training of border guards and police, creation of information and communication systems, and changes to criminal law pertinent to border-crossing in the AC.⁵⁰

47 Lavenex, Sandra. Migration and the EU's New Eastern Border: Between Realism And Liberalism, in: *Journal of European Public Policy* 8.1 (2001): pp. 25.

48 Lavenex, 2001: pp. 35.

49 Lavenex, Sandra. EU Enlargement and the Challenge of Policy Transfer: the Case Of Refugee Policy, in: *Journal of Ethnic and Migration Studies* 28.4 (2002): pp. 704.

50 Lavenex, 2001: pp. 31.

While many of the AC were designated as safe third countries in the early 1990s, they were in fact anything but safe. As they lacked the social, legal, and administrative traditions that much of the EU15 had, there was doubt that these countries had the capacity and ability to treat asylum seekers in a way in that could be considered safe. As the cooperation was occurring under the supervision of JHA officials however, emphasis on ensuring such capacities was not quite there. For example, of the 120 million DM given to Poland by Germany in the cooperation framework less than 1% was given to the Polish Refugee Office, and even some of that was invested in strengthening expulsion capabilities.⁵¹ The vast majority of aid money then was invested in increasing border security and training personnel.

As cooperation on asylum policy progressed on the European level in the following years, it soon became necessary for it to be involved somehow in the EU's strategy of pre-accession. JHA matters were introduced into the pre-accession strategy only in December 1994, after much deliberation as to how far the scope of the *acquis* would reach and what the AC would have to do in order to be part of the EU. The Commission felt that the cooperation that had been occurring thus far focused too much crime and too little on asylum. There also was the question as to whether the AC should have to take part in agreements under the Third Pillar that some member states were not part of or were not binding, as was the case with several parts of the European asylum *acquis* at that time. Between 1994 and 1997 meetings focused on tightening visa requirements, better reinforcing border controls, and intensifying the use of readmission agreements.⁵²

The Commission finally decided in 1997 to include an "extensive list of all instruments adopted by the EU member states and the Schengen Group before and after the entry into force of the Maastricht Treaty" in negotiations.⁵³ In addition to formal conventions, the AC would also have to adopt informal and non-binding measures, including draft instruments that are still in negotiation. In a sense, the movement of asylum to the First Pillar and the incorporation of Schengen at Amsterdam also gave the EU a

51 Lavenex, 2001: pp. 31.

52 Lavenex, 2001: pp. 32-35.

53 Lavenex, 2002: pp. 703.

legitimate reason to compel the AC to adopt an asylum acquis that current members could opt out of and that had parts which did not even exist. And it was only in 1997 that the JHA meetings actually discussed asylum as part of its cooperation with the AC, and this discussion was only general and was concerned mostly with hopes of applying the Dublin Convention in the AC.

The summer of 1997, the creation of accession partnerships marked a new chapter in EU-AC relations. The main focus of JHA at the time was the implementation of the Schengen acquis, and a 1998 EU Ministers of the Interior saw the AC agree to implement the acquis before their accession. In order to aid the AC in their efforts, the EU and AC signed a “Pre-Accession Pact against Organized Crime” which focused, surprisingly, on security aspects. PHARE funding was also extended to these matters, under the banner of the “Phare Horizontal Programme on Asylum” (PHA). Unfortunately, the funds were primarily used to strengthen border controls and were only to apply to the establishment of asylum systems in the medium term.⁵⁴ The PHA allowed for Twinning projects between asylum agencies in the East and West, and gave the member states another avenue of direct influence on AC asylum policy.⁵⁵ A peculiar characteristic of the screening of the progress of JHA matters throughout this period is that COREPER oversaw the process instead of by the Commission (who is competent to evaluate all other accession preparations). Oversight by COREPER allowed the member states to ensure their control without involvement from the Commission, and better facilitated a realist framework during negotiations.

While asylum has been a concern of Western Europe for some time, it has increasingly become a problem and concern for the AC as well. The AC have in general opposed the wholesale transfer of Western immigration policy in the fear of becoming a buffer zone for migrants.⁵⁶ While countries such as Germany stay protected, these relatively poorer countries needed to bear the brunt of migration and bear responsibility for those within their

54 Lavenex, 2001: pp. 35.

55 Lavenex, 2002: pp. 716-717.

56 Lavenex, 2001: pp. 36.

borders. The Parliament and Forward Studies Unit of the Commission both felt that Schengen risked becoming an imposed system that benefited the existing members in favor of the AC, however their voices were not taken into consideration.

The AC policy towards asylum and immigration soon changed across the board. Considering all of the challenges faced by the AC during this period, it was understandable that asylum policy was given a rather low priority. Despite priorities, the early 1990s saw the implementation of the Geneva Convention and liberal asylum regimes in most of the AC (by 1997 all were party). This was of course followed, due to cooperation with JHA ministers, by a string of increasingly restrictive reforms through the following decade. While domestic situations were important in the beginning of asylum policy creation in the AC, the influence of the EU and the member states increased exponentially over the 1990s. This influence led to a convergence of the core elements of the EU asylum acquis in the AC asylum policies without any regard to differences in asylum flows in the AC.⁵⁷ Changes were not always restrictive though, at least initially. For instance, Bulgaria grudgingly adopted the Geneva Convention in 1992 because of EU pressures.⁵⁸ Overall though, wholesale changes in asylum law were brought about by EU concerns in AC. A new Bulgarian asylum law that took effect in 1999 was created based on criticisms from the EU, many of them asking for restrictive measures.

By forcing the AC to take on their asylum mantle, the EU put the AC into a rather difficult situation. Expecting adequate protection of refugees and Western standards of human rights may not be fair to countries that lack such liberal tradition and still are fairly new to democracy and all that it entails. At the same time the EU has (or rather JHA officials have) tended to emphasize security concerns more, something that the AC tend to be more familiar with in the first place. Furthermore, the transformation of the AC from countries of origin to countries of destination (due to their geographic position) will be a difficult and expensive one, and the EU has

⁵⁷ Lavenex, 2002: pp. 36-37.

⁵⁸ Favell: pp. 196.

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given them little assistance outside of border control and security.⁵⁹ Looking at Table 2, the large increase in recent years of asylum applications lodged in Czech Republic, Hungary, Poland, and Slovakia is particularly striking. A series of Eurocentric concentric circles (from Eastern Europe as far as Turkey and Morocco) could surround the EU, pushing others further and further outside of Western Europe.⁶⁰ The creation and emphasis on the strict security of the new EU's borders has also threatened the extinction of close historical, cultural, and economic ties in the East. Entering countries that the AC previously had simplified border procedures with now will require visas. Despite whatever economic gains will be made for the AC, there will be losses. For example, the previously close economic ties between Poland and Ukraine have slowly become undone. Between 1997 and 1999 there has been a 50% decrease in cross-border traffic and a 10-14% jump in unemployment along Poland's south and east border.⁶¹ The movement of ethnic minorities like the Hungarians present in Romania, Slovakia, Slovenia, Serbia, and Ukraine will most likely also prove a problem in years to come.⁶²

Tracing the development of asylum policy in the AC and the influence of the EU and its member states, one can conclude that the adoption of asylum policy in the AC was induced primarily by the neighboring EU member states. Through financial and technical aid, member states built up the AC border infrastructure with an eye to better protect themselves illegal migrants entering their territory via the AC. The Commission has mostly played a marginal role in the process of asylum policy transfer to the AC. After the decision to include JHA in the pre-accession strategy in 1994, it only began to play a role with regard to annual screening procedures that charted the AC's progress. The Commission probably had its greatest effect via the PHA funds, however the organization taking the lead with the use of the funds was a German federal office. The most influence then came from the neighboring member states. Enlargement means both exclusion

59 Lavenex, 2001: pp. 37.

60 Favell: pp. 586.

61 Favell: pp. 596.

62 Lavenex, 2001: pp. 37.

and inclusion for the AC. AC citizens will soon be able to have complete freedom throughout the EU, but this freedom has come at a price to their Eastern neighbors and historical allies. The price that those outside of the new Europe will have to pay will be enormous: visa costs, and limits on trade and movement.⁶³ How things work out in the end is still anyone's guess as the AC have only just recently become full members and bilateral agreements still constrain free movement throughout the new EU for the next few years. Even though the EU has come up with a harmonized approach, it is difficult to see how it will be completely fair to the AC. There may indeed begin to form concentric circles around the EU, keeping foreigners further away from the West through the new Eastern buffer zone.

VI. Conclusions and Recommendations

The tension between upholding human rights and preserving sovereignty is the vital issue when looking at European asylum policy. Europe has tended to favor the upholding of member state sovereignty in the past decades in light of the fact that immigration is still a very sensitive topic. At the same time, the recent Cap Anamur incident, where a German aid ship containing 37 African refugees had to stay at sea for nearly three weeks before getting permission from Italy to dock in a Sicilian harbor, is giving new salience to the already pressing asylum issue. European responses thus far have been "business as usual" however, with German interior minister Otto Schily supporting plans to establish such a center in Africa where Africans could apply for asylum without entering the EU first.⁶⁴

Now that the first phase of a common asylum policy is finally in place, what challenges lie ahead? For starters, minimums have only been ensured thus far. What needs to be part of phase two? Of paramount importance is establishing a concept of common admission for economic purposes to each member state. The right of a member state to determine the number of

63 Favell: pp. 596.

64 Available:http://www.dw-world.de/english/0,3367,1432_A_1272826_1_A,00.html?mpb=en.

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third country nationals admitted to their territory for the purpose of employment has been confirmed by the Treaty. However, the need of efficiency and fairness dictate some progress being made in this vital area. Instead of focusing on managing these asylum seekers, perhaps a broader strategy that involves getting rid of the problem at its source would be more effective. Europe can continue to react when influxes from Yugoslavia, Iraq, or (more presently) Sudan occur, or they can engage these regions and help stop the flow of asylum seekers in the first place. Ideas like these are not new, as can be seen in the original Action Plan dealing with Iraq. However these ideas need to be translated into reality, with CFSP matters taking an increased role in areas of concern to prevent asylum influxes before they begin. Regional cooperation until now has mostly focused on creating centers away from Europe for asylum seekers to await the results of the application. Of course, issues regarding CFSP and its efficacy merit another paper of its own, but at least attempting to make more of an effort is a start.

A EU-wide single procedure for examining asylum applications would also greatly enhance efficiency and get rid of undue delay in the processing of applications. The Commission is currently in the process of examining ways to create a single procedure where all possible reasons for seeking asylum are examined at one time. This would of course go a long way in combating asylum-shopping in Europe, a practice not beneficial to either the member states or the reputation of legitimate asylum seekers.

Burden-sharing can also be an important tool to help shift responsibility throughout Europe. While countries that do not typically receive the brunt of migration may vehemently oppose such plans, burden-sharing may be the only way to fairly and efficiently spread displaced populations by relieving the already too heavy burden on poorer member states. The reduced burdens would not only increase efficiency, it could also better fill up labor needs in the member states and better ensure the human rights of asylum seekers by making it less likely that a country like Greece would expel them due to overcrowding. The UNHCR has also called for the increased use of resettlement of refugees to other countries. Some member states, like Spain and the UK, have already started resettlement programs,

and a EU-wide program could resettle tens of thousands of refugees a year. Increased repatriation is also another UNHCR solution. With the help of Western nations, refugees could be repatriated after some time safely into their country of origin. This would not only ease concerns in Europe, but also help signal the end of the problems that originally brought the asylum seekers to Europe in the first place.

There is still a great deal of work to be done before asylum policy is fully harmonized. The humanitarian frame needs to make up some of the ground it has lost to the realist frame during the asylum dialogue of the past decades. The EU institutions have the potential to have truly liberalizing effects on the current asylum acquis. The Commission, Parliament, and especially the ECJ through their oversight competences can take the initiative that member states thus far have not taken. The EU has obligations as a civilian power and an example-setter with regard to human rights. Whether increased EU involvement can move the European asylum acquis into the right direction will not be clear for some time, but hopefully Europe can start setting an example in an area that it has mishandled in the past.

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Tables

Table 1: EU Refugee Applications 1992-2003

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	Rank
Austria	16240	4750	5080	5920	6990	6720	13810	20100	18280	30140	37074	32340	6
Belgium	17650	26880	14350	11420	12430	11790	21970	36780	42690	24550	18805	16940	10
Denmark	13880	14350	6650	5100	5890	5090	9370	12330	12200	12400	5947	4560	15
Finland	3630	2020	840	850	710	970	1270	3110	3170	1650	3443	1650	22
France	28870	27560	25960	20420	17410	21420	22380	30910	38750	47290	50798	51360	4
Germany	438190	322610	127210	127940	116370	104350	98540	95110	78760	88290	71172	50450	3
Greece	1850	810	1300	1310	1640	4380	2950	1530	3090	5500	5664	8180	18
Ireland	40	90	360	420	1180	3880	4630	7720	11100	10320	11634	29860	13
Italy	6040	1650	1790	1730	680	1860	11120	33360	15560	9620	7281	...	...
Luxembourg	...	...	...	390	240	430	1710	2910	630	690	1043	1550	29
Netherlands	20350	35400	52570	29260	22170	34440	45220	42730	43900	32580	18667	13400	9
Portugal	690	2090	770	450	270	300	370	270	200	190	245	110	35
Spain	11710	12620	11990	5680	4730	4980	6650	8410	7930	9490	6179	5770	17
Sweden	84020	37580	18640	9050	5750	9660	12840	11230	16300	23520	33016	31360	7
UK	32300	28000	42200	55000	37000	41500	58490	91200	98900	88300	110700	61050	1
Total EU(15)	675460	516410	309710	274940	233460	251770	311420	396700	391460	384530	381623	308480	...
Total World	897330	794180	570050	547600	468930	414050	481750	581130	570090	614140	587371	...	...
Total A.C.'s	...	...	...	...	...	...	...	...	...	43980	32070	37310	...
Total EU (25)	...	...	...	...	...	...	...	...	...	431970	408900	345790	...

(Total World only includes Top 30 Industrialized Countries)

(2003 Figures for Total EU excludes Italy)

*All Figures are New Applications Only

Source: <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=STATISTICS&id=403b1d7e4&page=statistics>

Table 2: Asylum Applications Selected Accession Countries 1992-2002

	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
Bulgaria	...	...	...	520	300	430	830	1330	1760	1331	1755
Czech Rep.	820	2190	1190	1410	2160	2100	4080	7290	8770	18087	8481
Hungary	860	730	440	590	670	1110	7370	11500	7800	9554	6412
Poland	...	820	600	840	3210	3530	3370	2960	4290	4506	5153
Romania	800	...	...	...	590	1430	1240	1670	1380	2431	1151
Slovakia	90	100	140	360	420	650	510	1310	1550	8151	9700
Slovenia	...	...	...	...	40	70	500	870	9240	1511	702

Source: <http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=STATISTICS&id=4039dcd4&page=statistics>
and Lavenex 2002 pg. 707

*All Figures are New Applications Only

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Table 3: Per Capita Asylum Applicants in 2002	
	Per 1,000 inhabitants in 2002
Austria	4.6
Sweden	3.7
Ireland	3.1
Luxembourg	2.4
UK	1.9
Belgium	1.8
Netherlands	1.2
Denmark	1.1
Germany	0.9
France	0.9
Finland	0.7
Greece	0.5
Spain	0.2
Italy	0.1
Portugal	0

(Source: <http://www.ecre.org/statistics/stats%20for%20Thess%20summit.pdf>)

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