THE EVOLUTION OF IMMIGRATION AND ASYLUM POLICIES IN THE EUROPEAN UNION FROM A PUBLIC GOOD-COLLECTIVE ACTION PERSPECTIVE

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Thesis Abstract

Aslı Selin Okyay, "The Evolution of Immigration and Asylum Policies in the European Union from a Public Good - Collective Action Perspective"

As the issues of immigration and asylum began to occupy more space in the 1980s in the lives of a wide range of people in Europe, from immigrants to the citizens of the receiving societies, from refugees to the politicians at local and national levels, these issues have inevitably become concerns also for the European Union (EU). This study aims to assess the evolution of immigration and asylum policies of the EU, and to explain why there has been more communitarization in some areas of this broader policy domain and not in others.

It was found that, there has been closer intergovernmental cooperation and further communitarization in the asylum and visa policies than there has been in the policies related to the rights and integration of third country nationals (TCNs) who are legally resident in the EU, although both of them are "high" political areas. The removal of the internal borders of the EU and the freedom of movement created a collectively shared area whose external borders have to be managed in common due to the need to trust each other's controls. This change made not only external border controls but also the procedure on which TCNs enter the EU, including asylum seekers, concerns for collective action, as a result of which perceived public goods such as security, domestic popularity and economic gain are produced. Therefore, instead of employing the analytical tools of the intergovernmental distinction between high and low politics, a public good-collective action approach provides for a better framework to explain the cooperation-communitarization of immigration and asylum in the context of the EU.

Tez Özeti

Aslı Selin Okyay, "Avrupa Birliği'nde Göç ve Sığınma Politikalarının Evrimine Kamu Yararı-Ortak Eylem Açısından bir Bakış"

Göç ve sığınma konularının 1980'lerden itibaren Avrupa'da göçmenlerden göç alan toplumların vatandaşlarına, sığınmacılardan yerel ve ulusal politikacılara, geniş bir kitlenin hayatlarında daha çok yer kaplamaya başlamasıyla, bu konular Avrupa Birliği'nin (AB) de ilgileri arasına girmiştir. Bu çalışma, AB'nin göç ve sığınma politikalarının evrimini değerlendirmeyi ve AB seviyesindeki devletler üstü ortak politikaların bu geniş siyasi alanın bazı alanlarında neden diğerlerine göre daha fazla meydana geldiğini açıklamaya çalışmaktadır. Her iki konu da "üst düzeyli" siyaset kapsamına dahil edilse de, sığınma ve vize politikalarında, AB'deki legal göçmenlerin hakları ve entegrasyonu hakkındaki politikalardakine oranla hem hükümetlerarası işbirliğinin hem de topluluklaştırmanın (communitarization) daha yoğun olduğu görülmüştür. AB'nin iç sınırlarının kaldırılması ve hareket özgürlüğü, üye devletlerce ortaklaşa paylaşılan bir toprak parçasının ortaya çıkmasına sebep olmuş, bu da her devletin diğerlerinin kontrollerine güvenebilmesinin sağlanabilmesi adına dış sınırlarının topluca idare edilmesini gerektirmiştir. Bu, yalnızca dış sınır kontrollerini değil, sığınma da dahil olmak üzere, üçüncü ülke vatandaşlarının AB'ye giriş prosedürlerini de birer ortak eylem sorunu haline getirmiştir. Ortak eylemın nihai amacı kamu yararı olarak algılanan güvenlik, iç siyasette popüler destek ve ekonomik kazanç gibi çıkarların elde edilmesidir. Bu nedenle, AB bağlamında, sığınma ve göç politikalarındaki işbirliği ve topluluklaştırmayı açıklamak için hükümetlerarası teorilerin "üst düzeyli" ve "alt düzeyli" siyaset ayrımı yerine, konuya bir kamu yararı-ortak eylem bakışıyla yaklaşmak daha faydalı olacaktır.

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ABBREVIATIONS

AHIG Ad Hoc Immigration Group of Senior Officials

CAP Common Agricultural Policy

CBP Common Basic Principle

COREPER Comité de Representantes Permanentes

Permanent Representatives Committee

CSCE Conference on Security and Co-operation in Europe

DG Directorate General

EC European Communities

ECHR European Convention on Human Rights and Fundamental Freedoms

ECJ European Court of Justice

ECSC European Coal and Steel Community

EEA European Economic Area

EEC European Economic Community

EFC External Frontiers Convention

EP European Parliament

EPA European Parliamentary Assembly

EPC European Political Community

ERF European Refugee Fund

EU European Union

GNP Gross National Product

IGC Intergovernmental Conference

INTI Integration of Third Country Nationals

IRO International Refugee Organization

JHA Justice and Home Affairs

NATO North Atlantic Treaty Organization

NCP National Contact Points on Integration

NGO Non-governmental organization

QMV Qualified Majority Vote

SEA Single European Act

SIS Schengen Information System

TCNs Third Country Nationals

TEC Treaty Establishing the European Community

TEU Treaty on European Union

UK United Kingdom

UNHCR United Nations High Commissioner for Refugees

US United States

VIS Visa Identification System

CHAPTER I

INTRODUCTION AND BACKGROUND

The European Union (EU) has been evolving constantly since the establishment of the European Coal and Steel Community (ECSC) with the Treaty of Paris in 1951. Although initiated by European technocrats with the aim of preventing another devastating war between France and Germany by creating an economic interdependence between them based on common management of coal and steel,[1] the EU as it is known today, is far from an entity with merely limited economic integrative aims. While preserving its main interest in economic integration, the EU began to deal also with political issues, which are seen as requirements or externalities of economic integration, and political problems perceived as affecting all member states.

As European integration has been growing and taking new shapes, another international development was taking place on European territories: international migration. The economic reconstruction period following the Second World War attracted immigrant workers especially from less developed Southern or Eastern European countries such as Spain, Italy, Yugoslavia, Greece and Turkey to Western Europe in the 1960s and 1970s.

It was thought both by the sending and receiving countries, as well as by migrant workers themselves, that this was a temporary movement. Receiving states thought that migrant workers, who were mostly constituted by single men without families, would return to their countries of origin when they are not needed any more in Western European economies. The countries of origin were seeing the issue as a

[1] Stephen George and Ian Bache, *Politics in the European Union*, (Oxford [UK]; New York: Oxford University Press, 2001), p. 8.

temporary solution to unemployment; and were expecting their emigrants to come back with new skills and knowledge of new industries. The migrant workers' aim was to return to their homes and families, eventually, after earning and saving a good deal of money.

However, things did not work as expected, few returned and even more have come in other forms throughout the decades since the 1970s. With a recruitment ban in almost all migrant-worker importing European states in 1973, the immigration of the dependants of those immigrant workers has dominated the era following the recruitment ban. This time, instead of active employees in these states' economies, unemployed spouses and minor children have been entering Western European states and the myth of single men as temporary workers has begun to collapse.

In addition, following the two waves of asylum seekers after the Second World War and during the Vietnamese refugee crisis in the late 1970s and early 1980s, the European Community faced rapidly increasing asylum flows from crisis-torn parts of the world. This trend gained momentum, especially in the 1980s; and reached a peak with the dissolution of the Soviet Union and the resulting war in ex-Yugoslavia in the early 1990s.

While immigration and asylum were becoming a constant fact in European territories, the European Community was trying to complete the decades-long project of creating a single market with the four freedoms of movement of goods, capital, services and people. The creation of the Single Marketh required the removal of internal border controls, and checks on persons, moving between the Member States of the EC. Since achieving the removal of internal borders meant opening up the collectively shared EC territory to the reach of all Member States' nationals and to all third country nationals (TCNs) who managed to enter this territory through the

external border of *any* Member State, the partial loss of control on national borders had to be compensated through coordinated and standardized controls on external borders.

As a result, the question of who enters the collectively shared territory, through the external borders of the Community, has become a crucial one, which requires a collective and concerted answer. To put it differently, some aspects of immigration and asylum policies have become a common concern for all Member States, because they have made themselves interdependent in terms of external border-related issues and the entry of TCNs through those external borders by agreeing on the removal of the internal borders.

Until those crucial transformations, both, in the magnitude and pace of international migration and asylum, and in the magnitude and pace of the economic and the resulting political integration in the EC, individual member states have applied different policies in terms of immigration and asylum issues, but since those issues were closely linked to the national sovereignty of states and since there was no need to think beyond individual national sovereignty due to the complete control states have on their borders, there was not much attention given to those issues at the EC level for a long time.

Even though there were similar problems in immigration and asylum issues in almost all member states, the perception of immigration policies covering a wide range of issues from border control to citizenship laws, as lying at the very center of national sovereignty, made member states reluctant in multilateral policy making and implementation. Even if some multilateral action was seen as inevitable due to external pressures, EU member states preferred non-binding decisions taken in

intergovernmental meetings of security, or interior, ministers.[2] Thus, a closer cooperation has been emerging but immigration and asylum issues were still left outside the Community competence. Pure intergovernmentalism has continued during the creation of the Schengen area, and also in trying to come up with some common definitions in terms of asylum, during the Dublin Convention of 1990, both of which were separate cooperation schemes outside the Community framework.

The Maastricht Treaty in 1992 brought immigration and asylum issues under the *Third Pillar of Justice and Home Affairs* together with judicial and police cooperation, while preserving the purely intergovernmental structure of policy making with unanimity as the rule for decision-making and gave almost no powers to supranational institutions: the Commission, the European Parliament (EP) and the European Court of Justice (ECJ).

After five years, the Treaty of Amsterdam in 1997 brought immigration and asylum issues under the *First (Community) Pillar*, while this relative supranationalization was balanced with the maintenance of the old-intergovernmentalist decision making structure in most policy areas. According to that, unanimity is the rule for taking any decision in the Council, and the European Parliament's role in the process was limited to consultation. In addition, the right to initiate policy was shared between the Commission and Member States. The gradual change in the decision-making structure over the years in different immigration and asylum related policy areas is summarized in Table 1.

[2] Simon Hix, *The Political System of the European Union*, (New York: St. Martin's Press, 1999), p. 322.

Table 1. The Evolution of Decision-Making Structures on Immigration and Asylum in the European Union

	After the Maastricht Treaty (a)	*After the Amsterdam Treaty (b)*	*After the Nice Treaty Article 67 (5) (c)*	*After the Council Decision 2004/927/EC (d)*
Pure intergovernmental method	Asylum Visa (except two aspects) Rights and Integration of TCNs Legal migration			
Intergovernmentally balanced Community method (1st pillar but unanimity)	Common negative visa list (until 1996)	Asylum Rights & Integration of TCNs Legal migration		
Community Method (Article 251-QMV & Co-decision)	Uniform format for visas Common negative visa list after 1996	Common Procedures & conditions for issuing visas 62 (b) (ii) (after five years, automatically) Rules on a uniform visa 62 (b) (iv) (after five years, automatically)	Asylum except the clause about promoting balance in receiving refugees 63 (1) & 63 (2) (a)	Measures to ensure the absence of internal border controls for TCNs in addition to EU citizens 62 (1) Common border checks 62 (2) (a) Freedom of movement for TCNs for short stays 62 (3) Asylum clause 63 (2) (b) Illegal immigration & residence 63 (3) (b)

(a) The Treaty of Maastricht (TEU), Title VI, Articles K.1-K.9.

(b) The Treaty of Amsterdam, Title IV: Articles 61-69.

(c) The Treaty of Nice, Article (2) (4) adding the Article 67 (5) to the Title IV.

(d) O. J. of the EU, Council Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty, *Official Journal of the European Union* , no. L 396, 31 December 2004.

However, several policy areas which constitute the broader topic of "immigration and asylum" began to diverge in time, in terms of the importance and urgency attached to them by Member States, and consequently, in terms of the pace and shape of the cooperation in those different policy areas.

The Aim and Main Argument of the Study

The argument of this study is that EU level cooperation in policy areas related to the rights, and integration, of TCNs who are legally resident in Member States, and in policy areas related to external border controls and the entry of TCNs into Union territory has developed differently and this has resulted in closer intergovernmental cooperation at the beginning, and significant communitarization more recently, in one of those policy areas. In other words, issues such as external border controls, conditions of entry of TCNs into the common EU territory, and asylum have been seen as areas where unilateral action may be more harmful than collective action; and accordingly as areas where states have been more willing to cooperate, and to make concessions, over their sovereignty in order to achieve collective action. Whereas, integration and the status of legal migrants has remained an area where cooperation and communitarization has remained weak compared to the first group of issues.

Therefore, the study's main effort is to understand, and explain, why there has been a cleavage between those subgroups of the broader policy area of immigration and asylum in terms of the urgency, importance and willingness attached to closer cooperation in them and to their communitarization by the Member States.

Classical international relations made a distinction between high and low politics which emerged among the classical realists and was employed especially in the context of Cold War. Policy domains which do not touch directly on sensitivities of states about their national sovereignty such as economic, environmental and social issues, were considered as *low politics*. Whereas national security, defense and foreign policy constituted the realm of *high politics*.[3] Issues "pertaining to matters of national prestige, survival and defense" were considered to be in the realm of high politics.[4] This hierarchy in politics was used to differentiate areas in which international cooperation was possible and those that were not. "(…) realists assume a hierarchy of issues in world politics, headed by questions of military security: the 'high politics' of military security dominates the 'low politics' of economic and social affairs."[5] Therefore, international relations theories closer to the Realist school argue that although closer international cooperation and integration is possible in low politics, states prefer to act unilaterally when it comes to high politics.

This high-low politics distinction was used by Hoffmann, the leading figure for the intergovernmentalist perspective in the context of European integration, who argued that in high politics integration is not likely, because "nations prefer the certainty, or the self-controlled uncertainty, of national self-reliance, to the

[3] See for a detailed discussion about classical high-low politics distinctions Edward L. Morse, "Crisis Diplomacy, Interdependence, and the Politics of International Economic Relations," *World Politics* 24 (1972), pp. 123-150; Wolfram F. Hanrieder, "Dissolving International Politics: Reflections on the Nation-State," *The American Political Science Review* 72, 4 (1978), pp. 1276-87.

[4] Karl Kaiser, "The Interaction Regional Subsystems: Some Preliminary Notes on Recurrent Patterns and the Role of Superpowers," *World Politics* 21, 1 (1968), p. 94.

[5] Robert O. Keohane and Joseph S. Nye, *Power and Independence: World Politics in Transition*, (Boston: Little, Brown and Company, 1977), p. 24.

uncontrolled uncertainty of the untested blender."[6] European integration was obviously not a realist text-book case in that sense, because there is a group of states which share some of their decision-making capacities in certain issues with a supranational organization.

It should be noted that in this thesis, the high-low politics distinction is not used in the classical international relations sense which only saw defense and national security as high political issues and would have ignored migration-related issues completely. Instead, migration-related issues such as deciding on what form of immigration to take or allowing citizenship to immigrants, are considered to be crucial in a state's definition of national sovereignty due to their links to national identity. In addition, controlling borders which function to exclude "the other" both symbolically practically is another aspect of this policy area that is also considered to be very central to the exercise of national sovereignty. Hence, border controls and the process of allowing certain persons to enter the national territory are "high" political issues linked strongly to the concept of sovereignty. As Arendt forcefully points out, "sovereignty is nowhere more absolute than in matters of emigration, naturalization, nationality, and expulsion."[7] Furthermore, Keohane defines the classical notion of sovereignty as "a basis for autonomy and a barrier to unwanted movements across borders"[8] which puts border controls and immigration policy in the area of vital interests of a state.

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[6] Stanley Hoffmann, "Obstinate or Obsolete? The Fate of the Nation State and the Case of Western Europe," *Daedalus* 95 (1966), p. 865.

[7] Hannah Arendt, The Origins of Totalitarianism, San Diego: Harcourt Brace Jovanovich, 1973, 278 quoted in Christian Joppke, "Why Liberal States Accept Unwanted Immigration," *World Politics* 50, no. 2 (1998), p. 267.

[8] Robert O. Keohane, "Ironies of Sovereignty: The European Union and the United States," *Journal of Common Market Studies* 40, no.2 (2002), p.744-745.

So, a second question arises from the discussion above: although both immigrant integration and asylum and border issues fall within the range of high politics according to such a categorization, why has closer cooperation and further integration been possible and desirable in one of them and not in the other?

The argument of the thesis is that what actually matters in terms of the degree of cooperation, and communitarization, in the area of immigration and asylum is whether there is a collective action, and public good provision problem or not,[9] and not the distinction between high and low politics. In other words, since removing the internal borders of the Community has created a collectively shared area, once a TCN enters through any external border, he or she automatically has the right to move freely in all Member States, which results in the need for mutual trust in each other's border controls and entry conditions. In order to create trust and such a sense of security in all Member States, policies regulating external border controls, entry of TCNs, and asylum procedures have to meet a certain minimum criterion, which results in greater willingness to harmonize policies in those realms and gives the Community competence for harmonization. In addition, any non-compliance or defection from collective action has the potential to harm all Member States due to the high level of interdependence. Such an act may result in the collapse of the collective action and thus in the underprovision of the public good, which is mainly domestic security stemming out of stricter border controls in the eyes of the Member States. Conversely, since each Member State can deal with the immigrants residing legally on its own territory unilaterally, Member States are more reluctant in closer cooperation and further communitarization of the policies in the related realm. Although, there may be benefits from closer cooperation in that area, Member States

[9] The logic of collective action and the public good problematic based on the writings of Mancur Olson, will be explained in the second chapter in greater detail.

prefer to keep their unilateral control over the issue because they do not deem collective action necessary and urgent.

In short, the argument after analyzing some selected policy areas within the broader policy realm of immigration and asylum would be that a distinction, or categorization, along the lines of high or low politics is neither plausible, nor useful, when one considers European integration in the realm of immigration and asylum. Instead, if the issue would be approached from a public good-collective action perspective and more attention would be given to the specificities of the context and the policy realm, rather than applying overarching theories to this specific realm, it might provide a better explanatory scheme.

The Structure of the Thesis

The work of trying to answer the main question of why there has been closer cooperation and further integration in some aspects of immigration and asylum and not in others, although all of them fall into the category of high politics as explained above, will be explained by one theoretical chapter and two empirical chapters which constitute the main body of the thesis.

After the first introductory chapter, which gives a rough background to the issue and introduces the main questions and arguments of the study, the second chapter will be dedicated to the theoretical framework, which constitutes the basis and helps to understand the main arguments of this thesis.

After a brief introduction of Hoffmann's intergovernmental theory of European integration, his arguments about separation of high and low politics will be presented. However, most attention will be given to Mancur Olson's theory of public

goods and collective action; and its use in different political science literature focusing on collective action and international alliances, other than the immigration and asylum policies of the European Union, such as defense and environment. Then, there will be a discussion of the burden-sharing literature, mainly developed in the realm of refugee protection policy, constructed on the basis of Olson's public good and collective action theory, will follow.

The third chapter makes an empirical analysis of the evolution of asylum and visa policies in the European Community, and later in the European Union. These two areas are selected because there has been considerable development in terms of both intergovernmental cooperation and more recently of significant communitarization in both of those policy realms, although they lie at the very center of national sovereignty and also of high politics. The chapter looks at the policy evolution of both areas in three main eras: the era between the signature of the Single European Act (SEA) and the Treaty of Maastricht (1985-1992), the era between the signature of the Treaty of Maastricht and the Treaty of Amsterdam (1992-1997), and lastly the post-Amsterdam period. The analysis aims to explain the phenomena on the basis of the public good, collective action and burden-sharing approach, explained in the second chapter.

The fourth chapter analyzes the other side of the coin: the development and conduct of policies regarding the integration of immigrants and the status of TCNs at the EC/EU level with similar periods until the Treaty of Maastricht, the period between the Treaty of Maastricht and the Treaty of Amsterdam, and the post-Amsterdam period. The analysis will depend on the lack of a concern for providing a public good through collective action in this specific policy realm.

Finally, the fifth chapter, which is the concluding chapter, summarizes the main findings and arguments based on the empirical case studies in the third and fourth chapters.

Methodology and Strategy

In order to find changes in attitude or persistence, in different EU institutions, and to assess multi-resourced causes of the gradual policy change, the best place to look at would be the official EU documents. The binding Council directives, regulations, and decisions; and non-binding joint positions, joint actions were used as data sources. Presidency conclusions were used as reflections of the more intergovernmental side of the actors, namely, the Member States.

In the supranational part, the Commission's communications, legislation proposals, white papers, annual reports or handbooks about immigration and asylum constituted the main body of data sources. Some of the European Parliaments resolutions, demands for amendment to Commission communications or Council legislations, and its appeals to the European Court of Justice for some actions of the Council constituted the second and the smaller part of data for the supranational camp.[10]

Since they are primary sources, conclusions derived from them would be less affected by personal interpretations of the chain of events. However, objective

[10] For details of policy-making in the European Union, see Hix; Wallace, Helen and William Wallace, eds. *Policy-making in the European Union*. Oxford University Press, 2000; Alexander Stubb, Helen Wallace and John Peterson, "The policy-making process," in *The European Union - How Does It Work?*, eds. Elizabeth Bomberg and Alexander Stubb, (Oxford University Press, 2003); Neill Nugent, *The Government and Politics of the European Union*, (Durham: Duke University Press, 2003). See Appendix B for a mini-legislative guide.

secondary sources would also be helpful in understanding the meanings between the lines of legal documents and the unmentioned realities.

Since this is a case study, mainly aiming to understand the dynamics behind the gradual change in immigration and asylum policies in the EU in depth, a qualitative method trying to extract the underlying dynamics from written documents was thought to serve the aims of the study better than quantitative methods. However, where it was deemed necessary, secondary statistical data was used, because it was thought to be helpful in understanding the context and enriching in explaining the main argument. Due to limitations of time and financial resources, a possible complementary method that could have strengthened the research of employing interviews with people in the EU immigration and asylum policy-making process, could not be employed.

CHAPTER II

THEORETICAL FRAMEWORK:

HIGH - LOW POLITICS DISTINCTION VERSUS PUBLIC GOOD THEORY

European integration has generally been explained by mega-theories such as functionalism[11] or intergovernmentalism.[12] These mega-theories claim to give a general formula that can explain European integration or its limits almost in all policy domains that the European Union deals with. However, the EU deals with an enormously wide range of issues, each of which is based on the interaction of different dynamics, and thus cannot be lumped into one big entity that can be explained with a single theory.

Immigration and asylum were seen as areas in which one cannot expect much integration because of their central place in a state's definition of national sovereignty according to intergovernmentalist approaches. Controlling national borders, deciding on who can or cannot enter a state's territory, granting or not granting citizenship to people born outside the national frontiers or granting some status to people seeking international protection lie at the heart of sovereignty and cannot be open to decisions made at a supranational level according to intergovernmentalism.

However, as it was explained in the first chapter, the European Union's attitude towards immigration and asylum has been moving from a purely

[11] Ernst B. Haas, *Beyond the Nation-State: Functionalism and International Organization*, (Stanford, Calif.: Stanford University Press, 1964), and Haas, *The Uniting of Europe: Political, Social, and Economic Forces, 1950-1957*, (Stanford, Calif.: Stanford University Press, 1968).

[12] Stanley Hoffmann, "The European Process at Atlantic Crosspurposes," *Journal of Common Market Studies* 3 (1964), p.85-101, and Hoffmann, "Obstinate or Obsolete?" pp.862-915.

intergovernmental to a more supranational direction and this movement gained momentum especially after the abolition of internal border controls as a means to achieve the four freedoms of the single market, and has reached a surprising pace after the Treaty of Amsterdam in 1997. Before deciding which theoretical approach is more appropriate to use in an analysis of the evolution of the European Union's immigration and asylum policies, one should ask what the main arguments of these intergovernmentalist theories that do not seem to have a full explanatory power in the realm of immigration and asylum were.

High Politics versus Low Politics in an Intergovernmental Environment

Nationalist reactions in the 1960s within the EEC, especially led by De Gaulle, showed themselves by national vetoes in the name of protecting vital national interests. The French veto of the British application for membership in 1963 and the following "empty chair crisis", when the French delegation to the EEC was withdrawn in 1965 as a reaction to the Commission's proposal for an autonomous Community budget to fund the Common Agricultural Policy (CAP) and to grant the power to approve the budget to the European Parliamentary Assembly (EPA) in order to strengthen democratic control mechanisms. Those backlashes have resulted in the decrease of the popularity of neofunctionalism in the study of European integration.

Intergovernmentalists led by Stanley Hoffmann[13] began to criticize neofunctionalism and especially its concept of automatic "spillover". According to this concept, integration in one sector would inevitably lead to integration in another

[13] Hoffmann, "The European Process" and "Obstinate or Obsolete?"

sector for integration in the first sector to be completed or achieved fully. In addition, political integration seems more or less the inevitable side effect of economic integration.[14]

Hoffmann argued that although there are significant changes in international relations in terms of the classic definition of state sovereignty in Western Europe, nation states still continue to be central in the system. Since nation states have different domestic structures and problems to focus on, other than "community-building", political unification remains and will remain as a dream. Since each nation state has a different national consciousness, different national situations, and different levels and kinds of nationalisms, their interests should be diverse rather than convergent in any international system.[15] In other words: "The self-propelling power of the process is severely constrained by the associates' views and splits on ends and means."[16]

Hoffmann criticizes functionalism and its claims of spill-over of integration from one area to another due to the necessity born out of interdependence between members and because of supranational agents' involvement in the process. What Hoffmann calls "the logic of diversity" limits the impact the spill-over process can have on national governments' decisions and behavior. In Hoffmann's words,

> It restricts the domain in which the logic of functional integration operates to the area of welfare; indeed, to the extent that discrepancies over the other areas begin to prevail over the laborious harmonization in welfare, even issues belonging to the latter sphere may become infected by the disharmony which reigns in those other areas.[17]

[14] Haas, *The Uniting of Europe*, pp.283-317.

[15] Hoffmann, "Obstinate or Obsolete?", pp.867-868.

[16] Ibid., p.881.

[17] Ibid., p.882.

Therefore, the same logic of diversity suggests that "in areas of key importance to the national interest, nations prefer the certainty, or the self-controlled uncertainty, of national self reliance, to the uncontrolled uncertainty of the untested blender."[18]

That is to say, there is a distinction between the "areas of key importance", in which states reject to share their sovereignty with others due to their diverse interests stemming from their different national situations; and those areas which are not of key importance, in which integration and supranationalization is possible, and which can be explained by the process of spill-over. With another expression, Hoffman draws "a distinction between 'high' and 'low' politics to explain why integration was possible in certain technocratic and uncontroversial areas and why it was likely to generate conflict in matters where the autonomy of governments or components of national identity were at stake."[19]

How should one draw the boundaries between high and low politics and guess in which political realms one can expect further integration and in which not? Hoffmann borrowed the realist IR theorists' distinction between economic and political or in security-related and welfare-related domains. In industry, trade, and to some extent agriculture, the monetary policy or cartels, the Member States (the then Six) might be coordinated and have harmonized policies but this is not the case when it comes to the domain of high politics. What Hoffmann has in mind as high politics is dominantly defense and foreign policy because he was using the classical IR theorists' distinction who wrote within the context of the bipolar world during the Cold War. The failure of efforts to create a European Defense Community in 1953-

[18] Hoffmann, "Obstinate or Obsolete?" p.882.

[19] Ben Rosamond, *Theories of European Integration.* (New York: St. Martin's Press, 2000), p.77.

54 and then the crisis over the creation of the European Political Community (EPC) affected the pace of the supranationalization of the EEC. However, he does not equate high politics only with foreign policy and defense, and high politics has been understood as matters related to a state's sovereignty. The more classical notion of sovereignty was defined as "a basis for autonomy and a barrier to unwanted movements across borders"[20] which puts border controls and immigration policy within the area of vital interests of a state according to a basically realist approach, to which Hoffmann was closer although his understanding welcomed the importance of institutions and the possibility of economic cooperation.

Since states have naturally divergent interests in high political issues, there will be more clashes of interest and the process will be damaged as integration develops and begins to transcend into areas other than economics or welfare. Hoffmann argues that "the bigger the functional scope of integration, the more interests members tend to see as vital are likely to be at stake - and the less smooth the process may become."[21]

"Functional integration's gamble could be won only if the method had sufficient potency to promise a permanent excess of gains over losses, and of hopes over frustrations. Theoretically, this may be true of economic integration. It is not true of political integration (in the sense of "high politics")."[22] Thus, states with their diverse interests cannot be fooled by gains in low politics when they have losses in high politics. They cannot be fooled, in the sense that there can be integration in high political realms if and only if the act of integration furthers the state interest. Hence,

[20] Robert O. Keohane, "Ironies of Sovereignty," pp.744-745.

[21] Hoffmann, "The European Process", p.89.

[22] Hoffmann, "Obstinate or Obsolete?", p.882.

he explains the increase in national vetoes against further integration by the expansion of supranationality into controversial policy sectors, which are "the stormy waters of high politics."[23]

The stakes and the methods differ in those two different realms of policy-making as well. In low politics, in other words economics, states have more convergent interests in having common policies because of the nature of the matter which makes solidarity more rational than competition, and they employ technocrats who can facilitate common-policy making for states. "But in the area of high politics, the subject matter is composed of discrete issues, among which there may be discontinuity and which show no or little solidarity among the contenders."[24]

According to Hoffmann, supranationalists base their arguments on the decreasing importance of national sovereignty in Western Europe and on supranational institutions' ability to facilitate cooperation contrary to purely intergovernmental bargaining, where states cannot reach agreements easily by themselves.

> They assume not only that the method invented by Jean Monnet is as suitable for problems of "high politics" as for the problems tackled until now, but also that from Europe-wide elections and from supranational organs dealing with high politics there would somehow spring forth a single European point of view, transcending and short-circuiting the parochial outlook of the states.[25]

Therefore, because of the centrality of high political matters in the national sovereignty of a state, states do not want to lose control of the process by leaving

[23] Hoffmann, "Obstinate or Obsolete?" p.886.

[24] Hoffmann, "The European Process", p.90.

[25] Stanley Hoffmann, "Discord in Community: The North Atlantic Area as a Partial International System," *International Organization* 17, no.3 (1963), p.538.

those issues to a supranational body. Accordingly, decisions based on the majority rather than on unanimity represents this very phenomenon of loosing control of one's own policies, and cannot be acceptable in areas of vital interest. Supranational policy-making may turn out to be to a nation state's disadvantage, which cannot be compensated by gains in other policy areas when high political issues are concerned.

Intergovernmentalists in the 1960s developed the idea of integration as a means to strengthen the state, they argued that it could occur only when it was in the state interest and the integration play was governed by the states' rules. "Thus, Stanley Hoffmann, arguing in 1966 that integration takes place if there is a permanent excess of gains over losses, stated that this cannot be true of political integration or high politics. There, the goals and methods differed crucially from those in the realms of low politics."[26] In addition, intergovernmentalism has also objected to the functionalist idea of autonomous power of supranational institutions and the shift of loyalty towards those institutions by arguing that increasing autonomy of a supranational institution such as the Commission and ambitious proposals from its side in the name of communitarization can make national governments and domestic interest groups hostile and resistant towards it because of the feeling of losing control over the situation.[27]

However, Hoffmann was criticized because of his strict distinction between high and low politics and his rejection of the possibility of integration in high political issues, especially after the emergence of the European Political Cooperation (EPC) and some level of cooperation in foreign policy-related issues in the 1970s. In

[26] Hanna Ojanen, "The EU and NATO: Two Competing Models for a Common Defence Policy," *Journal of Common Market Studies* 44, no.1 (2006), p.59.

[27] Rosamond, p.78.

addition, especially developments in issues such as monetary union and foreign policy showed that Member States may want to take steps towards the communitarization of issues within the borders of the areas of key importance.[28] In other words, "Hoffmann's critique of the automaticity of spillover process might still hold, but the EC/EU system was clearly something rather more complex than a straight intergovernmental system."[29]

So then, which theoretical approach helps one best in the effort to explain the supranationalization of the policy domain of immigration and asylum? My argument after analyzing some selected policy areas within the broader policy realm of immigration and asylum would be that a distinction or categorization along the lines of high or low politics is neither plausible nor useful when one considers European integration in the realm of immigration and asylum. Instead of basing one's analysis on high or low politics, one should approach the issue from a public good/collective action and burden-sharing perspective.

Public Good and Collective Action Theory

Economists studying governments' public expenditure schemes began to emphasize differences between private and public goods. Samuelson came up with the first thorough definition of a pure public good, which he called a "collective consumption good" and defined as "one in which all enjoy in common in the sense that each

[28] Carole Webb in Wallace, Helen , Wallace, William and Carole Webb, eds. *Policy Making in the European Union*, (Chichester: Wiley, 1983), p. 24. See Chapter 13 (p. 373-402) by William Wallace in the same book for a detailed discussion about the evolution of foreign policy cooperation in the EC.

[29] Rosamond, p.79.

individual's consumption of such a good leads to no subtraction from any other individual's consumption of that good."[30] This characteristic of non-reduction of one's consumption of a good by another's consumption of the same good is called *non-rivalry* and is considered to distinguish public goods from private or market goods where there is a limited supply, therefore, if one individual consumes some of this good, he or she causes a decrease in the amount available to other individuals.

In addition to the peculiar feature of a public good, where new consumers do not diminish the amount consumed by old consumers, there is another important peculiarity of a public good, which is *non-excludability*. Once a public good is supplied, excluding potential consumers is impossible and everybody has to consume equal amounts of it jointly. So, "social wants" arise because of this joint consumption and the impossibility of excluding people who do not pay the costs.[31]

Olson's Public Good Theory

Although these public finance approaches initiated the efforts to come up with a working definition of the concept of public good, they were limited with domestic politics and concerned more with governments' provision of public goods within states. Olson elaborated the issue of the provision of a public good within a group or an organization, which he calls a group of people with the aim of achieving their common interests. In his words: "The achievement of any common goal or the

[30] Paul A. Samuelson, "The Pure Theory of Public Expenditure," *The Review of Economics and Statistics* 36, no.4 (1954), p.387.

[31] Richard A. Musgrave, *The Theory of Public Finance: A Study in Public Economy*, (New York: McGraw-Hill, 1959), p.10.

satisfaction of any common interest means that a public or collective good has been provided for that group."[32] He analyzes the dynamics within the groups which influence the outcome of whether the public good can be provided or not, which also determines whether that specific group can achieve its common goal.

Olson differentiates between small and large groups in terms of the costs their respective members have to pay in order to have some benefits, whose level and magnitude determine members' incentives to contribute to the system and to share the burdens necessary for the provision of the public good. He claims that small and large groups operate on different principles in terms of those cost-benefit calculations and incentives to pay for the costs or the potential to free ride on other members of the group.

Since the number of 'others' in a small group is low, each member can get a considerable share from the collective good, thus members have enough incentive to share burdens on a voluntary basis and there is generally no need to impose sanctions in order to guarantee the contribution of each member for the provision of the collective good.

In a group that is not so small that each member's benefit is large enough to guarantee the provision of the collective good, but still has a size that non-contribution of a member will matter a lot in terms of total costs and benefits, whether the collective good will be provided or not is indeterminate. In a large group where benefits and costs do not change much in the case of the non-contribution of a member, and where other members have difficulty in noticing this non-contribution,

[32] Mancur Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups*, 7th ed. (Cambridge, Mass.: Harvard University Press, 1977), p.15.

it is certain that the collective good will not be provided in the case of the non-compliance of some members.

Apart from his differentiation between small and large groups and their workings in terms of their ability to provide a collective good, Olson's concept of "exploitation of the great by the small" and its effects on the provision of a public good for a specific group is more important and relevant for the purposes of the study of an emerging European immigration and asylum policy.

According to Olson, if members of a small group differ in terms of size, ability and interest in the provision of the collective good, in other words, if there is a considerable degree of inequality among them, the public good will probably be provided because a member's degree of interest in the group's provision of the public good and the costs it will be willing to pay depend on the benefit it will get out of this provision. Accordingly, if a member expects to get a large share out of the total benefit, it can pay almost all of the cost in the cause of the provision of the public good. In short, the member who has the biggest interest and will get the largest benefit can pay the biggest part of the total cost.

Therefore, in groups composed of members of different size or interest in the collective good,

> [t]here is a tendency toward an arbitrary sharing of the burden of providing the collective good. The largest member, the member who would on his own provide the largest amount of the collective good, bears a disproportionate share of the burden providing the collective good. The smaller member by definition has less interest and less benefit and therefore has a less incentive to provide additional amounts of the collective good."[33]

In other words, small members, who are the ones that will benefit less and hence want to pay less, are more willing to free ride when they know that bigger members

[33] Olson, p.35.

who are more interested in the group's provision of the public good and ready to bear larger shares of the total burden will supply the good whether they contribute or not. Although Olson accepts at some point that size is not the only determinant of a group's ability to provide a public good that will make them achieve their common goal, his main emphasis is on the size of the group and the members in it.

Olson's approach was developed mainly as a theoretical tool to understand the behavior of groups within states, such as trade unions, lobbying organizations or professional lobbies. However, he also argued that such a small group theory, based on disproportionate and arbitrary burden-sharing and the exploitation of the great by the small, can help to "explain the apparent tendency for large countries to bear disproportionate shares of the burdens of multinational organizations, like the United Nations and NATO, and could help to explain some of the popularity of neutralism among smaller countries."[34]

Within the context of NATO, bigger states are equal to those which are most interested in the provision of the public good and are willing to pay disproportionately more than other smaller members. However, a member's size and its level of interest in the provision of a public good and accordingly the amount of contribution it wants to make may not correlate positively at all times. When it is thought in the context of the creation of a common European immigration and asylum regime for instance, a small Member State, on the outer border of the Union and more open to various kind of cross-border movement more than a greater member without any outer border may have more interest in the creation of a common border management system and may be more willing to pay for the provision of the collective good. Therefore, instead of focusing automatically only on

[34] Olson, p.36.

the size of the members in a group, basing the analysis on the relative benefits, interests and levels of readiness to pay for the costs within the specific context may result in a healthier conclusion.

In the light of these arguments, one can look at the evaluation of the handling of immigration and asylum issues in the EU from an approach that has its origins in Olson's public good and group theory but tries to be context-sensitive especially in terms of locating members in the group within the scale of benefit, interest and willingness to pay costs.

The public good approach has been employed in the realm of international organizations mostly in order to analyze the behavior of states in NATO during the Cold War era. Deterrence and collective defense were considered as public goods and NATO was considered as the small group in which diversity exists in terms of the size and valuation of the public good in consideration. Differences in contribution, or level of burden bearing among members was initially measured based on the hypothesis that there has to be a positive correlation between a state's Gross National Product and the percentage it spends for the common defense purposes.[35] They came up with the result that the US and some other larger countries bear a disproportionately large amount of the costs of NATO and this organization falls short of providing the necessary amount of the collective good. In their words,

> [w]hen -as in any organization representing a limited number of nation-states -the membership of an organization is relatively small, the individual members may have an incentive to make significant sacrifices to obtain the collective good, but they will tend to provide only suboptimal amounts of this good. There will also be a tendency for the 'larger' members -those that place a higher absolute value on the public good -to bear a disproportionate share of the burden.[36]

[35] Mancur Olson and Richard Zeckhauser, "An Economic Theory of Alliances," *The Review of Economics and Statistics* 48, no.3 (1966), p.266-279.

[36] Ibid., p.268.

Members' relative sizes as the main determinant of their valuation of the public good is central in Olson and Zeckhauser's study, although the authors make more references to factors other than size as determinants of the value a state attaches to the provision of the public good and hence the amount of sacrifices it can make. Some parallels can be found between the proposed logic that takes contextual peculiarities of a state into account when trying to explain its behavior in the process of the common provision of a public good in the realm of immigration and asylum, and the authors' perspective within the context of NATO: "A nation on the enemy's border may value defense more than one some distance away. A nation that has a large area and long frontiers in relation to its resources may want a larger army than a compact country."[37]

In addition to their inclusion of factors other than size as determinants of group members' behavior in their model, Olson and Zeckhauser questioned the pureness of a public good. They argued that the provision of a public good can also bring non-collective (private) benefits to specific actors in addition to the common benefits which are non-excludable and non-rival in character. A certain amount of private benefit helps to create a less unequal burden-sharing regime and enhances the likelihood of the provision of the public good by increasing some members' expected benefits and thus by creating more incentives to bear the common burden more proportionally.[38] This separation of private (excludable) benefits and public (non-excludable) benefits and the argument that the existence of private benefits increases the probability of the public good's provision was used by scholars trying to explain

[37] Olson and Zeckhauser, p.272.

[38] Ibid., pp.271-272.

the behavior of states within international alliances with the aim of providing a public good and was called the "joint product model" as it will be explained below.

The Use of Olson's Theory in Different Contexts of International Alliances

Sandler and Forbes came up with the idea of a "joint product model", which objects to the pureness of a public good and includes the provision of private, non-collective benefits (in addition to public benefits) to members of an alliance into his analysis of defense as a public good. Because of the changes in NATO strategies, the collective good they provide is no more non-excludable, non-rival and creates only collective benefits. NATO provides deterrence, damage-limitation and private benefits. Hence, according to Sandler and Forbes, unlike Olson's pure public good theory, members' contributions or their level of burden bearing is not dependent on their industrial size, but on the level of private and public benefits they receive. Consequently, a collective good can be provided more easily and at closer to optimal levels, because free riding is reduced with an increase in private benefits. According to the authors, Olson's theory remains inadequate in explaining the cooperation in defense because "defense efforts should be related to the distribution of excludable benefits *rather than* size."[39] However, although the joint product model (collective as well as private benefits for members) proposed by Sandler and Forbes appeared to be correct for some NATO members, namely Greece, Turkey and Portugal; it was claimed by some other scholars using pooled cross-sectional and time-series regression analyses of the

[39] Todd Sandler and John F. Forbes, "Burden-sharing, Strategy, and the Design of NATO," *Economic Inquiry* 18, no.3 (1980), p.441.

defense burdens of fifteen NATO members that Olson's pure public good and collective action theory is still valid for the NATO context.[40]

Furthermore, the question of which indicators to use in order to measure fair contribution or proportional share in the total costs of the public good was asked in NATO related public good analyses. The percentage of defense spending within a state's gross national product or gross domestic product is one measure but it is not enough to conclude that some states bear considerably larger shares of the total costs and others tend to free ride on them. Within the context of NATO, both military and civil indicators such as economic aid to former Warsaw Pact countries might be taken into consideration in measuring who contributes how much.[41] The enlargement of NATO with the membership of the Czech Republic, Hungary and Poland generated the need to adjust the sharing scheme along the new costs of this enlargement. Parallel to the several enlargement processes of the EU, new members meant new costs in an area with more members, meaning at least longer borders and larger areas to defend with a higher populated staff and homogenized technical-military facilities. Thus, any enlargement process affects total costs and the intra-group dynamics, and therefore, the provision of the public good.

Raab tries to explain EU cooperation in defense that accelerated after the end of the Cold War by approaching the issue from a public good-collective action perspective. Cooperation in defense policy is a collective action problem and the collective European action in security and defense can be explained by the type of

[40] John R. Oneal, "Testing the Theory of Collective Action: Nato Defense Burdens, 1950-1984," *The Journal of Conflict* 34, no.3 (1990), pp.426-449.

[41] Todd Sandler and Keith Hartley, "NATO Burden-Sharing: Past and Future," *Journal of Peace Research* 36, no.6 (1999), p.668.

the specific public good the Union tries to provide. He assesses the success of the concerted European action in the cases of EU intervention in the Bosnian War and the 2003 military mission in Macedonia, basing the provision of the collective good on the existence of four criteria: the existence of a leading nation, a small number of essential participants, a low degree of uncertainty and high nation-specific benefits. According to Raab, the whole integration process is about moving issues from the high political arena to the low political one and collective action problems emerge during this transformation process.[42] However, defending this transformation means taking a clear separation between high and low politics as granted and at the same time believing in their convertibility, which is against the very logic of an intergovernmental approach as the defender of the high-low politics separation.

In addition to approaches considering the handling of common defense as a public good and accordingly the problem to provide support, equitable shares and collective action as a problem stemming from the public characteristics of that good, the problematique of the global management of the environment has been analyzed through a global public good perspective as well.

The tendency to free ride on others' contributions to protect the environment, the infeasibility of excluding additional consumers once the public good has been provided by some actors, and the resulting problem of underprovision of the public good causes the collapse of the market logic of supply according to the students of the environment as a public good as well,[43] who have similar questions with scholars

[42] Christoph Raab. 02 July 2004. *Defence Cooperation in the EU: The Added Value of Public Good Theory.* Paper presented in LSE European Foreign Policy Conference, Available [online]: www.lse.ac.uk/Depts/intrel/EFPC/Papers/Raab.doc [17 March 2007].

[43] See Agnar Sandmo, *The Public Economics of the Environment*, (Oxford; New York: Oxford University Press, 2000) and Inge Kaul, Isabelle Grunberg, and Marc A. Stern, Eds. *Global Public Goods: Cooperation for the 21st Century*, (Oxford University Press, Oxford, UK, 1999), [electronic resource], Available [online]:

trying to explain defense. Without going into detail, having a look at the problems discussed in the environment policy area gives one a good sense of the similarity between the issues of defense and environment as public good and collective action problems:

> In order to overcome this underprovision problem collective action between nations is required which often, as in the case of the Kyoto protocol in climate policy, is regulated by an international convention. In particular it has to be stipulated by such an agreement how the contributions to the global public good are to be distributed among the participating countries.[44]

Burden-sharing in the Realm of Asylum

Apart from defense and environment, various arguments based on Olson's collective action and public good theory and mainly his idea of "the exploitation of the great by the small" have been used in explaining the creation of international refugee regimes not specifically in the European context but as a global burden-sharing regime. Not only have social scientists emphasized the disproportionate sharing of burdens among different states and the difficulty of preventing attempts of free riding and the difficulty of the equal distribution of the costs of the public good -which is protection for asylum seekers and other human beings in need of some kind of international protection- but also practitioners in the United Nations High Commissioner for Refugees (UNHCR) have been calling collaborating member states to share total costs and refugees more equitably through resettlement schemes and to guarantee

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http://www.oxfordscholarship.com/oso/public/content/economicsfinance/0195130529/toc.html for detailed discussion on environment as a public good.

[44] Wolfgang Buchholz and Wolfgang Peters. 19 January 2007. Fair Burden-Sharing in a Public Goods Economy: An Equal- Sacrifice Interpretation of Moulin's Egalitarian Equivalent Concept. Available [online]: http://www.awi.uni-heidelberg.de/with2/seminar/WS%200607/Buchholz_Equal%20Sacrifice%20moulin07_18_01.pdf [24 April 2007], p.1.

protection for especially vulnerable groups by setting fixed quotas of refugees to be protected *per annum*.[45] The establishment of a Working Group on Resettlement in the mid-1990s by the UNHCR can be seen as evidence of this attitude of the UNHCR, who defined "the use of resettlement as a tool of international protection, a durable solution and a responsibility and burden–sharing mechanism."[46]

Suhrke draws attention to the similarities and differences defense and refugee burden-sharing explanations have, and questions why there has not been much success in terms of cooperation, collective action and equitable burden distribution in the realm of refugee protection although most of the problems seem similar in both cases.[47] One of the main problems, free riding on the public good of international protection for refugees, was quite clearly explained by Suhrke as follows:

> If the states concerned are all potential receiving areas, the situation suggests co-operation among states to deal jointly with the problem. Assuming some respect for international norms, the most obvious co-operation would be to admit refugees on an agreed formula for distribution. On the other hand, the 'public good' nature of the anticipated benefit will invite 'free riders'. Since public good benefits are by definition indivisible, if one state admits refugees, others will benefit from the greater international order that ensures regardless of their own admissions. As a result, all will be tempted to cheat by letting 'the other' state do the job.[48]

Suhrke explains the lack of successful co-operation and institutionalized burden-sharing in the realm of refugee protection with the relatively low incentives of states to share costs and responsibility because they can deal with the "threat" posed by

[45] UNHCR, 2006, Measuring Protection by Numbers, Available [online]: http://www.unhcr.org/publ/PUBL/4579701b2.pdf [26 April 2007], p.19.

[46] UNHCR, 2007, *Partnership in Resettlement,* Available [online]: http://www.unhcr.org/protect/3bb2d29b7.html [14 May 2007].

[47] Astri Suhrke, "Burden-Sharing during Refugee Emergencies: The Logic of Collective versus National Action," *Journal of Refugee Studies* 11, no.4 (1998), p.396-415.

[48] Ibid., p.400.

refugees unilaterally and without much difficulty, contrary to collective action in the domain of defense. Therefore, states can accept *ad hoc* burden-sharing schemes in times of crises and mass flows but they are likely to object to institutionalized burden-sharing mechanisms. "Since the frequency and magnitude of these events are unknown, the cost implications of joining such schemes are highly uncertain. The lack of long-term, institutional arrangements, in turn, undermines the prospect for reciprocity and weakens the insurance logic which would make states join in the first place."[49]

According to Suhrke, there have been some successful burden-responsibility sharing schemes in the past. In the case of the handling of the refugee flow after the Second World War, where both a moral obligation towards the victims of war was felt and a practical interest in boosting the post-war economies with European refugees was pursued; and in the case of the resettlement of Vietnamese refugees after the second Vietnam War in 1975, where a hegemonic power, the United States, made other states accept refugees and regulated the resettlement process, burdens were shared on a reasonably fair or proportionate basis. Apart from those instances, most attempts to solve refugee crises on a more equitably shared costs basis have failed and the most important example of this failure was the mishandling of the mass refugee flows after the dissolution of Former Yugoslavia by the EU.

Another approach to the European Union's efforts to share burdens in the realm of asylum takes the issue from the motivation side.[50] The argument is that in

[49] Suhrke, p.402.

[50] Eiko Thielemann, "Between Interests and Norms: Explaining Burden-Sharing in the European Union," *Journal of Refugee Studies* 16, no.3 (2003), p.253-273.

addition to the attainment of common material interests by creating a common regime as the theory of public goods and collective action proposes, part of the burden-sharing efforts in terms of refugee protection and building a common asylum policy may be explained by moral obligations and norm-based feelings of solidarity and equity among the members of the EU.

The theory of public goods, which was presented as "the most influential approach to the analysis of burden-sharing" is defined as a rational cost-benefit calculation approach: "(…) co-operation produces positive-sum benefits which in turn creates the will to share burdens/costs among actors as the benefits of the contribution exceed its costs."[51] Since Olson's public good theory claims that the amount of the provided public good will most likely be less than optimal in the absence of a central enforcement authority, there should be a mechanism to prevent free riding. Therefore, "burden-sharing can be seen as a rational response to the problem of underprovision."[52] As a result, Olson's idea of "the exploitation of the great by the small" and the exploitation of some members by others, independently from the size criterion through disproportionate burden bearing constitutes the basis of motivation for creating burden-sharing schemes.

Within the specific context of the EU and with the parallel impacts of the creation of the Single Market without internal borders and of increasing immigrant and asylum seeker flows to the common European territory, Thielemann explains the evolution of the approach towards Justice and Home Affairs in general, and towards immigration and asylum in particular, as follows:

[51] Thielemann, p. 255.

[52] Ibid., p. 256.

> Member State governments reacted to the termination of immigration controls at internal Community borders with a call for enhanced co-operation aimed at strengthened security at the Community's external border. The question of how the challenge of third country migration into the EU should be met and how its costs should be shared among the Member States has moved to the top of the political agenda. In particular, the massive influx of displaced persons during the first Balkan crisis in the early 1990s brought burden-sharing questions to the fore in this area.[53]

However, like the criticisms directed towards Olson's public good hypothesis and his over-emphasis on the size (GNP) of a state in calculating the disproportionality in paying total costs by scholars working on NATO burden-sharing schemes, Thielemann rejects this hypothesis by comparing EU-15 countries' "number of accepted refugees during the Kosovo crisis/GNP" proportions and argues that smaller states bear the highest burdens in that case. As a result, he tries to show that burden-sharing schemes in the realm of refugee protection do not depend only on material cost-benefit analyses but also on norm-based motivation sources such as solidarity and equity among EU Member States.

The joint product model invented by scholars working on the provision of collective defense and deterrence as public goods NATO provides[54] was also employed in the realm of refugee protection. According to Betts, international refugee protection is in-between a pure public good and a pure private good where there are both non-excludable and non-rival public benefits and also excludable private benefits. The existence of such private benefits such as "state-specific security, the specific altruistic benefit from *being* the provider and the linkage-benefit from increased bargaining power in other areas" that can increase incentives

[53] Thielemann, p. 259.

[54] Richard Cornes, and Todd Sandler, *The Theory of Externalities, Public Goods, and Club Goods*, (Cambridge; New York: Cambridge University Press, 1996); Sandler and Forbes, Sandler and Hartley.

for states to pay the costs of the provision of the good can explain why some smaller states such as the Netherlands and Denmark bear relatively heavier burdens of granting asylum than bigger states such as the UK and France.[55]

Some parallels can be found between Betts' joint product model and Thielemann's argument for including norm-based motivations for sharing the burden in the sense that both claim that a pure public good theory as developed by Olson is inadequate to explain the burden-sharing scheme in the realm of asylum. However, naming Olson's explanation a "pure" public good theory is also misleading, because his approach opens room for some private and non-excludable benefits as well, even though not as much as the joint product model. Olson argued that: "Though there is obviously a point beyond which dissension and divergent purposes will ruin any organization, it is also true that some differences of purpose may improve the working of an alliance, because they increase the private, non-collective benefits from the national contributions to the alliance, and this alleviates the suboptimality and disproportionality."[56]

Betts argues that "the exploitation of the great by the small" does not hold true in the realm of granting asylum and international protection because relatively bigger states such as the UK, France, Germany and Italy provide relatively less protection compared to the Scandinavian countries and the Netherlands. Therefore, he concludes that there are "excludable prestige benefits" which give states a comparative advantage in other policy realms and "excludable altruistic benefits" which satisfy the states by the very act of providing protection as a norm-based

[55] Alexander Betts, "Public Goods Theory and the Provision of Refugee Protection: The Role of the Joint-Product Model in Burden-Sharing Theory," *Journal of Refugee Studies* 16, no.3 (2003), p.279.

[56] Olson and Zeckhauser, p. 279.

motivation in Thielemann's language. There are also state "specific security benefits" such as preventing immigration or asylum flows from the ex-colonies through development aids, which is generally called "preventing the root causes of immigration" which, Betts argues, is used more by bigger states who perceive lesser altruistic or prestige benefits from providing protection to asylum seekers.

Although Betts claims that because of the private benefits states get from providing international humanitarian protection free riding and exploitation are not problems to cause the establishment of an institutionalized burden-sharing regime, it should be taken into consideration that after some point states may free ride on the basis of the level of commitment to international humanitarian norms. States with high levels of commitment to those principles, which provide most part of the public good such as the Scandinavian states and the Netherlands, might be exploited by other states, which are less committed to those norms. Instead of Olson's exploitation of the big by the small, the exploitation of the humanitarian/norm-respecting by the less humanitarian and less committed can emerge in time, when the latter knows that the former would provide most part of the protection and would tend to free-ride.

Noll approaches the issue from a legal perspective and argues that the application of game theory is suitable for the issue of international refugee protection because "it allows us to first focus on a situation between two host states negotiating on the sharing of a specific protection burden, and then to expand the perspective by involving other actors."[57] Refugee burden-sharing is an iterative game that can change over time and the main problem that creates disproportionate burden bearing is that states cannot foresee that migration flows and routes can change over time and

[57] Gregor Noll, "Risky Games? A Theoretical Approach to Burden-Sharing in the Asylum Field," *Journal of Refugee Studies* 16, no.3 (2003), p.238.

that they can become main receivers of immigrants and asylum seekers, in other words, the problem is that the insurance logic does not work properly.[58] Within the iterative game context of refugee protection burden-sharing, institutionalizing the burden-sharing scheme through rigid contracts may cause resistance on the states' side and may result in granting low levels of protection; whereas flexible negotiations are better for generating situation-specific solutions but there is a higher risk of defection in specific times of crises.[59] In addition, Noll's analysis of what is meant by the "burden" in the realm of international refugee protection is helpful to understand the costs for the provision of the public good in consideration. According to Noll, states can share norms through harmonizing refugee and asylum legislation; they can share money through reallocating funds; and they can share people by distributing protection seekers.[60]

In the light of those discussions, my argument is that the high-low politics separation and evaluation of the changing attitude of the European Union based on this separation is not very convenient for understanding and explaining the evolution of the European Union's approach towards the immigration and asylum issues from a purely intergovernmental one to an increasingly -but not completely- supranational one. Instead, one should base his or her analysis on the public good provision problematique and on the following need of achieving collective action. Therefore, the main argument of the thesis is that where there is a higher public good provision problematique, and when the more the provision of this public good is important for some of the actors involved, there is more supranationalization or

[58] Noll, p.241.

[59] Ibid., p.247.

[60] Ibid., p.241.

Europeanization/Communitarization, so that the provision will be eventually realized, and it will be based on a more equitable burden-sharing scheme.

In addition, communitarizing the policy area would provide an enforcement mechanism which helps to prevent defection, non-compliance and free-riding. It seems especially in terms of asylum Member States show a combination of norm driven and cost-benefit driven behavior. Some Member States have more liberal asylum policies motivated by their higher compliance to norms and this result in their exploitation by other members with restrictive asylum laws. When a group of members have to bear the most part of the burden due to their norm-based approaches to the issue, they put pressure for the communitarization of the issue in order to prevent the abuse of their liberal asylum laws by the free-riders of the system.

CHAPTER III

THE EVOLUTION OF EUROPEAN ASYLUM AND VISA POLICIES: A COMMON TERRITORY, A COMMON POLICY?

The Long Path towards a Common European Asylum System

Europe as a continent was not that familiar with the concept of "asylum" and "international refugee protection" in a systematized way until the Second World War and its aftermath. With the establishment of the International Refugee Organization (IRO) in order to resettle victims of the war, and its replacement by the United Nations High Commissioner for Refugees (UNHCR) in 1950, the notion of organizing the distribution of people in need of international protection among nation states through an international organization emerged.

The Geneva Convention Relating to the Status of Refugees of 1951 defined a refugee as a person who,

> (…) as a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.[61]

In the post-Second World War refugee resettlement case, the fact that most of the refugees were Europeans and that post-war European economies were in need of labor helped to the smooth working of the system. In addition, most of the states felt obliged to welcome refugees due to the fact that the war they fought had made those

[61] 1951 Convention Relating to the Status of Refugees, Art. 1 (A) (2).

people refugees. With the help of moral obligations and economic needs, "sharing" the costs and responsibility of granting protection equitably was not a huge problem.[62] Although it was not a problem for European countries, demands to develop better burden-sharing mechanisms to handle the case of granting protection to people fleeing the Soviet Bloc were voiced by the European governments.[63]

Limitations of geography and time were abandoned with the 1967 New York Protocol.[64] Although the geographical and temporal limitations were lifted, the narrow definition of the refugee as a person who has the risk to face fear or to be persecuted on the basis of civil or political status was retained, and rather than changing the formal definition, UNHCR practice broadened the definition to include people facing threats such as war, epidemics, or political tumult, which are generally the main reasons why lots of people from the Third World seek international protection.[65]

With that change in definition and hence in scope, the possibility of people in need of international protection coming from outside Europe has become a reality. As a result, in addition to individual applications for asylum from outside Europe, mass flows of asylum seekers from areas torn by social and political crises and wars have constituted the "asylum reality" of Europe. One such case of influx happened during the resettlement of nearly half a million Vietnamese refugees from 1973 to

[62] Suhrke, pp.403-405.

[63] James C. Hathaway, *The Law of Refugee Status*, (Toronto: Butterworths, 1991), p.9.

[64] 1967 Protocol Relating to the Status of Refugees, Art. 1 (2) and 1 (3).

[65] Hathaway, pp.10-11.

1996, the first decade witnessing the most populated outflows.[66] In that case, it was argued that the leadership of the United States in enforcing other states to accept asylum seekers from this region helped the resettlement and responsibility-sharing systems to work.[67]

As it can be understood from above, Europe or the European Community/Union as a totality did not have a unique asylum policy of its own and each state had the choice of acting differently, although all Member States were signatories to the Geneva Convention and the New York Protocol. During times of mass influx, they responded to the emergencies out of a feeling of obligation to grant protection, or due to the pressure of a hegemonic actor like the US, and a constant flow of asylum seekers that could force the Member States to think about the common management of the issue did not exist until the late 1980s and early 1990s.

However, beginning in the 1980s and accelerating especially with the collapse of the Soviet Union and the emerging civil conflicts in ex-Communist territories as well as in different parts of the Third World in Asia and Africa, the number of people forced to leave their countries of origin and demand protection from the European Communities and later the European Union has increased dramatically. With that development, refugee flows have become constant, supported by sudden influxes at some points, instead of the past sudden flows, which were rare compared to the new situation.

In order to illustrate the increase in the 1980s and 1990s, it is enough to look at the statistics of the Commission in 1991:

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[66] Fernando del Mundo, "Europe: The Debate over Asylum - Viet Nam: End of an Era," *Refugees Magazine* 113 (1999), Available [online]: http://www.unhcr.org/publ/PUBL/3b811f6e4.html [24 April 2007].

[67] Suhrke, p.406.

> Requests for asylum in France rose from 1,800 in 1975 to 28,800 in 1985 and 60,000 in 1989, while in the United Kingdom they went up from 2,159 in 1988 to 11,647 in 1989 and 25,327 in 1990. The influx of asylum seekers is spread unevenly from one Member State to another: in 1988, 1989 and 1990, of all the applications lodged in the Community, some 80% were submitted in two countries, Germany (60%) and France (20%).[68]

Keeping in mind that the problem of responsibility-cost sharing emerged even in the post-Second World War refugee protection discussions -even though not very often- it can be deduced that the intensity of those burden-sharing problems and the urgency of their solution has also increased with the augmentation of both the magnitude and the frequency of asylum seeker flows to Western Europe.

How did the EC and later the EU respond to those refugee flows which have become chronic, and to the burden-sharing problematique that inevitably followed such a fact? While looking at the evolution of the European response to the question, the main objective of the analysis will be to understand and explain why the European response has followed the specific path it has followed. The perspective from which the explanation stems will be mainly the evaluation of cooperation and the gradual supranationalization of the asylum policy within the context of collective action and the visualization of the provision of international protection for asylum seekers as a public good. As I explained in Chapter 2, my understanding of public good in this context is not a pure public good in the Samuelsonian sense. In addition, Olson's idea of "the exploitation of the great by the small" will be employed in a more size-independent sense, where more context-specific attributes can be the source of exploitation and the incentive for free riding.

[68] Discussion Paper on the Right of Asylum, Addendum to the *Communication from the Commission to the Council and the European Parliament on the Right of Asylum*, SEC [91] 1857 final, Brussels, 11 October 1991, p.4.

The approach of the EC and later the EU to asylum can be divided into three periods according to the magnitude and type of cooperation Member States displayed in this policy domain: The post-Single European Act (SEA) period marked by pure intergovernmental cooperation, which lasted until the Maastricht Treaty, the Maastricht period when immigration and asylum issues were brought under the Union framework but not under the first Community pillar, and lastly the post-Amsterdam period where the policy domain in consideration was brought under the Community pillar with some specific decision-making rules preserving a considerable level of state competence.

The post-SEA Period: 1985-1992

In the Presidency Conclusions of the Fontainebleau European Council held in June 1984, under the heading of 'A people's Europe', "the abolition of all police and customs formalities for people crossing intra-Community frontiers"[69] was put as one of the measures to be brought about in the near future. This emphasis on the free movement of persons, which was among the four basic freedoms set out even in the 1957 Treaty of Rome, can be considered as the initiating force behind the process of creating a Europe without borders and as the beginning of the final move towards the conclusion of a thirty year long objective of achieving the four freedoms of capital, goods, services and 'persons' within the Union. At the same time, another more encompassing objective, namely completing the single market, was on the agenda, and it was seen as a compulsory step towards increasing integration.

[69] Fontainebleau European Council, 25 and 26 June 1984, Conclusions of the Presidency.

On the way to the 'Single European Act' (SEA), a White Paper was prepared by the Commission in June 1985, which listed the physical, technical and fiscal barriers to be removed for the completion of the single market and stated the areas in which a common policy had to be adopted. More flexible checks and eased formalities at the internal borders of the Community were proposed by the Commission, recognizing the impossibility of their total abolition until the introduction of adequate safeguards against terrorism and drugs. In addition, the approximation of the arms legislation and drugs legislation, the coordination of rules regarding asylum seekers and refugees, rules about the status of non-Community citizens, and the coordination of visa policies were among the necessary measures to be taken by the Member States.[70]

As a result of the efforts to create a single market, the Single European Act (SEA) was adopted in 1986 and its Article 8A created "…an arena without internal frontiers, in which free movement of goods, persons, services and capital is ensured…" Thus, the removal of internal border controls was among the objectives which served the higher objective of the creation of a single market as it evolved into a more comprehensive project, since the common management of internal borders means the common management of external borders and this affects "not only travelers, immigrants, refugees and asylum seekers, but also drugs, firearms, works of art, smuggling, trade, public safety and public order."[71]

Although an important proposal about some aspects of the policy realm other than asylum was presented by the Commission to the Council and a changed version

[70] European Commission, *White Paper from the Commission to the European Council (Milan, 28-29 June 1985), "Completing the Internal Market",* COM 85 (310) final, Brussels, 14 June 1985.

[71] Guiseppe Callovi, "Regulation of Immigration in 1993: Pieces of the European Jig-Saw Puzzle," *International Migration Review* 26, no.2 (1992), p.354.

of it was adopted as a Resolution in 1985,[72] details of which will be explained in the next chapter, there was no reference to asylum until the establishment of the purely intergovernmental Ad Hoc Immigration Group of Senior Officials (AHIG) in 1986 during the British presidency. AHIG attempted to deal with visa policies regarding the preparation of a common list of countries whose nationals require visas to enter the EC territory, external borders and common rules to determine the state responsible for a specific asylum application.[73] The establishment of this specific group to take the initial steps to harmonize immigration and asylum issues was a clear sign of the Member States' preference for intergovernmental cooperation and complete state control over those sensitive issues, the very discussion of which at the Community platform was enough to intimidate national governments. However, the goal of completing the single market and removing internal borders through the management of external borders pushed the same states to start a dialogue for necessary cooperation. In other words, the abolition of internal borders turned the Community area to a collectively shared value and in turn, the protection of this area to a public good.

> Emphasizing the connections between border controls and immigration, the AHIG insisted that each member state consider measures necessary to compensate for potential security risks to the other members should its own external border policies fail. Thus if member states stopped relying on *national* controls for their security, effective compensatory mechanisms for tightening up controls at the Community's external borders would be required.[74]

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[72] European Commission, *Communication transmitted to the Council on March 1985, Guidelines for a Community policy on migration*, COM (85) 48 final, Brussels, 20 February 1985.

[73] Demetrios G. Papademetriou, *Coming Together or Pulling Apart? The European Union's Struggle with Immigration and Asylum*, (Washington, D.C.: Carnegie Endowment for International Peace; International Migration Policy Program, 1996), p.25.

[74] Ibid., p.29.

The creation of the Rhodes Group of Coordination followed the Rhodes European Council in December 1988, where the need for a coordinating body between the related areas and units for the achievement of the goals set by the Article 8A was voiced.[75] In their Free Movement of Persons Report, also known as the Palma Document, the Coordinators' Group mentioned certain areas in which action was necessary or desirable in the long term for the completion of the single market and for the compensation of the removal of internal borders:

> [a]ctions at external borders, actions on the Community territory action against drug trafficking, action against terrorism and international crime, visa policies, granting of asylum, rules on extradition, judicial cooperation. (…) Common policy on migration or the statute of third-country nationals are considered as long-term and desirable items: the political obstacles would have hindered any quick advancement.[76]

Although the idea of approaching the issue of asylum together began to be developed, the insistence of the Member States on excluding the Commission from the process is worthy of attention. As another sign of this attitude, the Dublin Convention of 15 June 1990, which sets rules and common criteria about determining the state responsible for a specific asylum application, can be shown. The Convention's main aim was to impede multiple asylum applications by the very same person in several Community Member States, which is generally called "asylum shopping." The negotiations leading to the signing of the Convention were purely intergovernmental and had nothing to do with the EC other than all of its signatories being the then Member States of the EC. However, the Commission and all other kinds of supranational actors were left out during the preparation and the signing of the Convention.

[75] Rhodes European Council, 2 And 3 December 1988, Presidency Conclusions.

[76] Callovi, p.361.

According to the Dublin Convention, the state where the applicant has a close family member with a recognized Geneva Convention refugee status, the state which issued a residence permit or entry visa with the latest expiration date, in the case of irregular entry, the first entry state, in the case of legal entry, the state that waived the requirement of a visa, in the case that none of the above criteria apply, the first state where the application was made, will be responsible for the examination of the application.[77]

Setting the criteria to determine the state responsible for examining a specific asylum application has a lot to do with the inequitable distribution of asylum seekers among the Member States and their concentration on some Member States rather than others, even though they might have entered the Community territory from another Member State's borders. With the elimination of internal border controls, the common EC territory became a collectively shared value, which should be protected from illegal border crossings and also the legal entries of people who are not warmly welcomed as permanent settlers due to security-related or domestic popularity concerns and economic reasons. The problem of defection, lack of compliance or inequality in terms of contribution levels, which is reflected as the sharing of costs stemming from the examination of asylum applications and the acceptation of refugees, urge the actors which collectively own this territory, to cooperate and to coordinate the management. If all the asylum seekers prefer one or two countries to apply for asylum after they somehow enter the collective territory, the costs and responsibilities of the protection of those people would be distributed disproportionately and the exploitation of some actors by others would be inevitable.

[77] O. J. of the EC, Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention, *Official Journal of the European Community*, no. C 254, 19/08/1997, Articles 4 - 8.

Therefore, the effort to cooperate on fixed criteria to determine the country responsible for an asylum application can be seen as an outcome of the collectivization of the territory for the sake of the single market and the transformation of external border controls and asylum policies from a unilateral business to a collective business, where "security", "positive reflection in public opinion" or "economically being less disadvantageous" can be seen as the public goods emerging from the collective action in those policy realms. However, criteria like "first country of entrance" shifts the burden to the state from whose borders the asylum seeker has entered the EC territory, which obviously affects those states on the outer borders of the common territory and those with weaker border control systems negatively.

While increased intergovernmental cooperation has dominated the era, the need to develop this cooperation and to bring other Community actors into the picture has increased as well. The achievement of the free movement of persons and the completion of the Single Market soon required a step further than the pure intergovernmental structure in lots of areas. With the aims of a monetary Union and a political Union, the December 1990 Rome European Council's main agenda was those two issues and the necessary actions to be undertaken in order to reach those aims in a reasonable deadline. Within this plan of taking a step forward, immigration and asylum were also considered as areas where improvement and some level of Community involvement was needed: "It should also be considered whether and how activities currently conducted in an intergovernmental framework could be brought into the ambit of the Union, such as certain key areas of home affairs and justice, namely immigration, visas, asylum and the fight against drugs and organized

crime."[78] In addition, the Council set short-term objectives with the aim of the free movement of persons within the EC territory, such as the management of external borders, and called "the General Affairs Council and the Commission to examine the most appropriate measures and actions regarding aid to countries of emigration, entry conditions and aid for social integration, taking particular account of the need for a harmonized policy on the right of asylum."[79]

The future of the policy realms of immigration and asylum was shaped in parallel with the future of the political and economic structure of the EC during discussions and negotiations at intergovernmental conferences before the Luxembourg European Council in June 1991. During those intergovernmental conferences, a split emerged between the supporters of the preservation of the hitherto intergovernmental method outside the Community framework, such as Denmark, the UK, Ireland and Greece, and the supranationalists such as the Netherlands and Belgium and to some extent Italy and Spain. France defended the creation of a separate pillar for immigration and asylum related issues, leaving room for flexibility and closer integration in the future. Germany, on the other hand, was a fierce defender of the Europeanization of the asylum policy, on which other states looked with reservations.[80]

The Luxembourg proposal, prepared before the Luxembourg European Council, represented the more moderate camp and constituted the basis of the three-pillared structure of the Maastricht Treaty, which envisaged the separation of market-

[78] Rome European Council, 14 And 15 December 1990, Presidency Conclusions, p.8.

[79] Rome European Council, pp.11-12.

[80] Andrew Geddes, *Immigration and European Integration: Towards Fortress Europe?* (Manchester, UK; New York : Manchester University Press, 2000), p.90.

related areas under Community competence and the areas of foreign policy and justice and home affairs as intergovernmentally handled areas within the Community framework. During the Luxembourg European Council, while the intergovernmentalist camp and France were supporters of the moderate proposal, the supranational camp and Germany defended more competence for the Community. "At the June 1991 Luxembourg Summit, (…) German Chancellor Helmut Kohl called for the adoption of a common immigration policy that would allow for EC supervision of the movement of persons once internal borders were removed at the end of 1992."[81]

It should be noted that Germany, the biggest receiver of asylum seekers with its liberal asylum law, the legacy of its post-Second World War Constitution[82], was the actor who was "exploited" not only by the "small" but also by the "big" actors of the system because of it faced a disproportionate share of the total burden. In other words, "It is not surprising that Germany, feeling inundated with hundreds of thousands of asylum claims, was instrumental in pushing for the development of Community immigration and asylum policies."[83]

To illustrate the difference, one should look at the report of Eurostat: "In 1992, the number of asylum requests reached its highest level (around 675 thousand). Germany received the great majority of these requests (438 thousand), followed at a considerable distance by Sweden (84 thousand)."[84]

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[81] Papademetriou, p.52.

[82] It was stated in the 1991 Commission Communication on the Right of Asylum that Germany's asylum law has a broader definition than the one in the Geneva Convention.

[83] Papademetriou, p.52, footnote no.46.

[84] European Commission and Eurostat, *Population Statistics*, (Luxembourg: Office for Official Publications of the European Communities, 2004), p. 96.

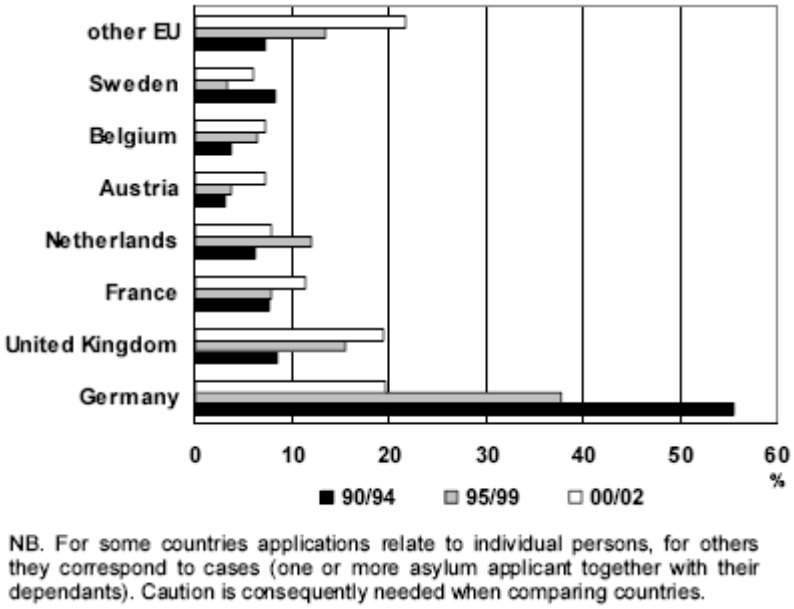

Figure 1. Distribution of asylum applications, 1990-2002.
Source: European Commission and Eurostat, *Population Statistics,* 2004.

However, the German calls for the development of a European immigration and asylum policy remained unheard. The highly integrationist Dutch proposal, which envisaged the incorporation of both foreign and security policy and justice and home affairs to the Community pillar, and was presented after the Luxembourg European Council and before the European Council in December 1991, also faced fierce reaction and rejection by most of the Member States.[85] Therefore, the signs of the development of "two-speed integration"[86] began to be seen just before the Maastricht Treaty. According to this understanding, those Member States willing to take further steps in terms of supranationalization could do so, and the others in favor of the preservation of a dominantly intergovernmental system, where deepening should remain limited to "low" politics, could take part in those integrationist steps

[85] Geddes, p. 91.

[86] Stephen George and Ian Bache, p.132.

whenever they wanted, but could not restrict the other camps' efforts to integrate more.

Towards the December Maastricht Summit, the Commission came up with two separate Communications on immigration and asylum,[87] and made its voice heard even though it was consciously excluded by the Member States from those policy realms. According to the Commission:

> 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 the moves to complete the internal market and to lay the groundwork for political union, this issue has increasingly become a matter of common interest.[88]

The Commission called all Member States to stick to the principles of the Geneva Convention and emphasized that asylum is different from economic migration because it is a humanitarian obligation. However, there was also a need for the harmonization of the rules on *de facto* refugees, who were not covered by the Convention. The main focus of the Communication was on the necessity of combatting the "abuse of asylum" through manifestly unfounded claims. It was argued that in order to combat the abuse effectively, a common definition of a manifestly unfounded application was needed. Member States were also called to ratify the Dublin Convention immediately. The concepts such as "temporary protection", "subsidiary protection", "safe third countries" and "first country of asylum", which constitute the bases of future discussions about a European Asylum Policy, can be found in this initial Communication of the Commission. The

[87] European Commission, *Communication from the Commission to the Council and the European Parliament on the Right of Asylum*, SEC [91] 1857 final, Brussels, 11 October 1991 and *Communication from the Commission to the Council and the European Parliament on Immigration*, SEC [91]1855 final, Brussels, 23 October 1991.

[88] *Communication from the Commission to the Council and the European Parliament on the Right of Asylum*, SEC [91] 1857 final, Brussels, October 11, 1991, p.1.

Commission's emphasis on the abuse of asylum, manifestly unfounded applications and on the Dublin Convention rather than on the human rights aspect of the issue led the European Parliament to criticize the Communication "for being compliant with the restrictionist drift of policy."[89]

Maastricht and the Pillared Structure of the European Union

After the rejection of the integrationist Dutch proposal, the option of a European Union where policy areas were separated under different pillars, hence under different policy-making structures, began to dominate other options. As a result, it was decided that the Draft Treaty on the European Union, which is based on the intergovernmental conferences on political union and economic and monetary union would be signed in February 1992.[90]

The Maastricht Treaty, the Treaty on European Union (TEU), was signed on 7 February 1992, and it introduced the pillared structure of the European Union, which is also known as the "Greek temple" structure. According to this structure, the first pillar, which is the Community pillar, was to deal with economic, social and trade matters and was to be governed by supranational policy-making, where institutions other than the Council have high levels of competence. The decision-making structure was accordingly supranational, with Qualified Majority Voting (QMV), initiative power for the Commission, and co-decision power for the EP. The second pillar, which remained under the intergovernmental cooperation method but was brought under the European Union framework, was the Common Foreign and

[89] Geddes, p. 92.

[90] Maastricht European Council, 9 and 10 December 1991, Presidency Conclusions, p.1.

Security Policy. Finally, the third pillar, which was called "Justice and Home Affairs" (JHA) was again governed intergovernmentally but incorporated to the Union framework.

Title VI of the TEU dealt with immigration and asylum issues along with judicial and police cooperation and Article K.1 stated nine areas of common interest for the attainment of the objectives of the Union, especially for the free movement of persons. The first area of common interest was the asylum policy, followed by external border controls, the immigration and integration policy towards third country nationals (TCNs), policing and fighting against terrorism, drugs and illegal migration, judicial cooperation, customs cooperation and police cooperation. Article K.3 gave the Commission the right of co-initiative in matters except judicial cooperation in criminal matters, customs cooperation and police cooperation, whereas Article K.6 obliged the Council and the Commission to "regularly inform" and to "consult" the EP on formality. The Council could adopt joint positions (non-binding), joint actions (may or may not be binding) and draw up conventions and the European Court of Justice could have jurisdiction over those legal activities, which left the Directives, Regulations and Decisions out of judicial control. Unanimity remained as the decision-making rule according to Article K.4 (3) and the reservation was made in terms of non-compliance to the Title VI with regard to the maintenance of law and order and the safeguarding of internal security in the Article K.2 (2).

Nevertheless, compared to the pre-Maastricht era, where literally almost no powers were given to the Community institutions, the distress reflected in the public opinion, created by the lack of democratic control, accountability and high levels of secrecy urged the Member States to implicate other institutions in the policy making process reluctantly. In addition, according to Article K.9, there could be a

transformation from the third to the first pillar in issues of asylum, visas, external borders, immigration, combatting drugs and international fraud, and civil judicial matters. Although this bridge from intergovernmental method to the Community method was put there on paper, it was argued that Member States were reluctant about crossing that bridge and unanimous decision making practically nullified it in the existence of advocates of intergovernmentalism such as the UK and Denmark.[91]

The K.4 Committee, composed of senior officials from Member States, was established after the TEU for a better managed intergovernmental process in terms of JHA coordination. It replaced the Coordinators' Committee and was designed to coordinate various *ad hoc* bodies created for different tasks and had political authority over them. Among its priority matters were immigration and asylum, police and customs cooperation, and judicial cooperation. Accordingly, this Committee was divided into three "steering groups", for immigration and asylum; for police and customs cooperation, and for civil and criminal judicial cooperation. The Steering Group-I of Immigration and Asylum under the K.4 Committee was divided into five sections of "asylum", "migration (admission/expulsion)", "visa", "external borders", and "false documents".

The Maastricht Treaty was the result of both the need to coordinate the *ad hoc* efforts to cooperate in issues related to the free movement of persons and the completion of the Single Market and the disturbances created by the highly secretive intergovernmental policy-making which lacks democratic control and thus, accountability. Immigration and asylum issues were separated from Community areas together with judicial and police cooperation under the third pillar. What has

[91] Geddes, p. 94.

happened after Maastricht is therefore important to assess whether there was a change in the level and shape of cooperation in terms of asylum.

In order to be able to understand the developments in the approach of the EU towards asylum, one should have the broader context of the early 1990s in mind. The crisis which erupted in the Balkans among the ethnic groups of Yugoslavia began rapidly to turn into a civil war and an internally borderless European Union was not ready for such a crisis in a region so close, and also for the thousands of people who became *de facto* asylum seekers. Therefore, while the total number of asylum applications to the EU peaked in 1992 and reached a maximum of 670,000; the disproportionality between some Member States was striking: "(…) the two extreme cases are Germany and Luxembourg in 1992 with approximately 400,000 and zero asylum applications."[92] Rather than looking at the two most extremes, the disproportionate share of the burden among the "bigger" Member States in 1992 is also remarkable: When Germany received 438,191 applications in 1992, the number for France was 28,872; for the UK it was 32,300, for Italy it was only 6,042. Smaller countries such as the Netherlands and Denmark received also relatively disproportionate amounts of applications, with 20,346 for the former and 13,884 for the latter.[93]

[92] Maarten Fink and Frits Meijerink, "Asylum Applications and Recognition Rates in EU Member States 1982-2001: A Quantitative Analysis," *Journal of Refugee Studies* 16, no.3 (2003), p.299.

[93] UNHCR, *Statistical Yearbook 2001: Refugees, Asylum Seekers and Other Peoples of Concern-Trends in Displacement, Protection and Solutions*, 2002, Available [online]: http://www.unhcr.org/static/home/statistical_yearbook/2001/toc.htm [16 May 2005]

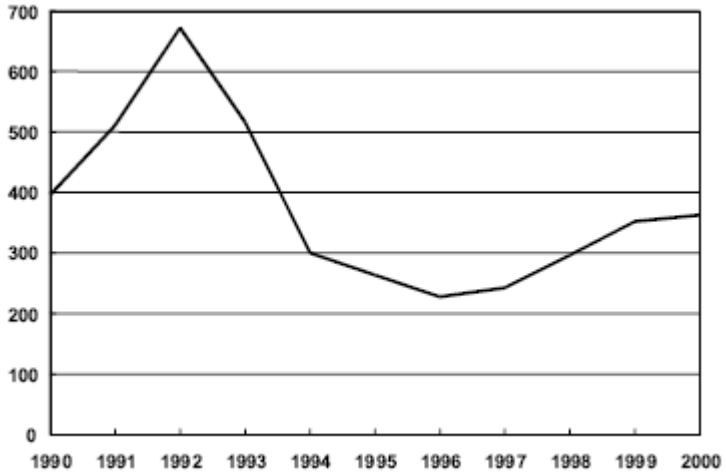

Figure 2. Asylum applications of EU-15, 1990-2000.
Source: European Commission and Eurostat, *European Social Statistics: Migration,* 2002.

The huge discrepancies seen in the amount of asylum applications received by the Member States of the European Union, which tries to harmonize its asylum policies in theory and to encourage cooperation on paper, can be shown as an obvious example for the "exploitation of the more liberal by the more restrictive". In the case of Germany it is the exploitation of the big both by the big and the small, whereas in the case of smaller Member States which have relatively more liberal asylum laws such as the Netherlands and Denmark it is the exploitation of the small both by the big and the small. Therefore, lead by Germany, the Member States which disproportionately beared the burden of asylum began to demand a more equitable sharing scheme such as sharing both people and financial costs, and policies targeting the causes of disproportionality such as harmonizing asylum laws and standardizing protection.

Within the broader topic of asylum, the emphasis continued to be on fighting the abuse of asylum after the TEU. For this end, the Ministers responsible for immigration came up with the idea of the establishment of Eurodac, which would be a common database composed of asylum seekers' fingerprints and could facilitate the

determination of the first country of entry or asylum, with the aim of preventing asylum shopping.[94]

Within the context of very high numbers of asylum seekers especially from the Balkans, asylum related discussions dominated the post-Maastricht period and was concentrated on diminishing the numbers by detecting manifestly unfounded applications and redirecting asylum seekers to third countries from which they originate or from which they transited to the EU. Consequently, "a Resolution on manifestly unfounded applications for asylum, a Resolution on a harmonized approach to questions concerning host third countries-basis of safe third country and a set of Conclusions on countries in which there is generally no serious risk of persecution- basis of safe third country" were approved in the November 1992 London Meeting of the responsible ministers.[95]

Afterwards, in the June 1993 Copenhagen meeting, a non-binding resolution about the victims of the civil war in ex-Yugoslavia was agreed on, which was a clear outcome of the disturbances felt by the disproportionately burdened side of the Union:

> The six largest recipients of displaced persons from Yugoslavia (Germany, Austria, Denmark, Norway, Sweden, and Switzerland) spearheaded efforts to share costs of admitting displaced persons from the region. Having failed to reach any kind of 'burden sharing' agreement (a misguided term in the view of many refugee advocates for its emphasis on 'burdens,' rather than legal and moral responsibilities), Immigration Ministers sought instead to establish a common approach allowing for the temporary protection for victims of civil war. The Resolution noted, however, 'wherever possible,' assistance should

[94]SCADPlus: "Eurodac" system, Activities of the European Union: Summaries of Legislation. Avaliable[online]: http://europa.eu/scadplus/leg/en/lvb/l33081.htm [18 May 2007].

[95] SCADPlus: Criteria for rejecting unfounded applications for asylum, Activities of the European Union: Summaries of Legislation. Avaliable[online]: http://europa.eu/scadplus/leg/en/lvb/l33102.htm [18 May 2007].

> be provided to such individuals 'in the region of origin … in safe areas situated as close as possible to their homes.'[96]

Germany, discontented with the low level of efforts in burden-sharing in terms of asylum, found the solution in unilateral action and amended its liberal asylum law in 1993[97] to narrow down the scope of its definition of an asylum seeker.

Meanwhile, efforts to harmonize at least the definitions of the Member States regarding the refugee status were formalized in the Brussels Council of December 1993, when Member States were encouraged to come up with a common definition of the term "refugee" based on Article 1 of the Geneva Convention.[98]

Although it was not really competent within the pillared post-Maastricht structure in terms of the third pillar, the Commission interfered in the process with some reports and especially with its 1994 Communication on immigration and asylum. The Communication dealt with a broad scope of issues from asylum to the integration of immigrants and the status of TCNs, from illegal migration to admission policies. About the intergovernmental decision-making structure, the possibility of applying Article K.9 and using the Community method in some immigration and asylum related issues was discussed and it was stated that:

> In November 1993 the Commission submitted a report on that issue to the Council. In its report the Commission stated that in its view "despite the advantages offered by Article 100c … the time (was) not yet right to propose the application of Article K.9 so soon after the entry into force of TEU", but also indicated its belief that "those advantages demonstrate that the question

[96] Migration News Sheet, No. 147/95-07 (July): 5 Brussels: EIN, cited in Papademetriou, p.67, footnote no.63.

[97] See Sam Blay and Andreas Zimmermann, "Recent Changes in German Refugee Law: A Critical Assessment," *The American Journal of International Law* 88, no. 2 (1994), p. 361-378 for a detailed discussion of the legal change.

[98] Ibid., p. 82

> of the possible application of Article K.9 to asylum policy should be examined again in the light of experience."[99]

The Communication also focuses on the war in ex-Yugoslavia and on the need to develop a "temporary protection" scheme in order to protect the victims of the war during the crisis. Related to that, "it suggests that a Union committed to cooperative action could examine how best to show solidarity to help Member States caught in a front- line position responding to such situations."[100] Aware of the fact that there is a disproportionate sharing of the burden of asylum especially due to the Balkan crisis, the Commission suggests the development of a system of "matching of national absorption capacities"[101] and adds:

> Such a matching system would not necessarily have to amount to a formal arrangement for burden sharing, but would offer reciprocal assurance among Member States that, when they are confronted with serious problems in implementing their reception policies, they would not stand alone, but could reckon with active support from other Member States and from the Union itself.[102]

In addition, one can see the basis of the European Refugee Fund, one of the future burden-sharing mechanisms, because it was said that the European Parliament has asked the Commission to submit a proposal for the creation of a European Fund for Refugees. Even though it was not embraced by the Commission in its Communication, probably for not generating reaction from the Member States, the

[99] European Commission, *Communication to the Council and the European Parliament on Immigration and Asylum Policies*, COM [94] 23 final, Brussels, 23 February 1994, p.6.

[100] Ibid., pp.2-3.

[101] Ibid., p.42.

[102] Ibid., p.26.

Parliament also suggested the development of a plan to distribute people in need of international protection evenly among Member States.[103]

Lastly, the Commission observed that more progress had been made on asylum than on general admission policies but there was still a need to harmonize the term of "refugee" and to set minimum standards for "fair and efficient asylum procedures."

Meanwhile, calls for a fixed burden-sharing regime were voiced at a different international platform under the leadership of UNHCR, but this effort failed due to the resistance of states to fixed schemes. States which were affected negatively by the refugee crisis and were not EU members, namely Sweden and Austria, brought the issue of developing an equitable burden-sharing scheme to the Conference on Security and Co-operation in Europe (CSCE) and to the Council of Europe, and proposed that "a more equitable distribution of *de facto* refugees from Yugoslavia would make it easier to provide protection, and proposed that states shelter and host refugees on a more equitable basis."[104] "Exploited" states like Germany, Denmark, Norway and Switzerland supported the proposal, but "free riders" like the UK and France rejected it.

During its Presidency in the second half of 1994, Germany was determined to proceed with the matter under the roof of the European Union. The German Presidency prepared a draft resolution in July 1994 about a burden-sharing scheme to deal with the asylum flows. It proposed setting fixed national quotas for refugee admissions based on an index drawn up from indicators such as the size, population and GNP of the Member States, so that states like the UK and France would have to

[103] Suhrke, p.409.

[104] Migration News Sheet, December 1993, cited in Suhrke, p.408.

bear closer amounts of costs to Germany.[105] The Essen Summit in December 1994 only called the Member States for further inspection of the problems of the mass influx of people and possible burden-sharing mechanisms in terms of humanitarian assistance. However, in the final Resolution on Burden-Sharing in September 1995, the wording was very far from the ambitious German draft proposal. It was stated that during a sudden mass influx, people should be given temporary protection "in a spirit of solidarity between the Member States" and that the Member States "express their desire to share responsibility as best as they can." In addition, the need to be flexible was emphasized, to mean that there was no need for fixed quotas as Germany suggested. Besides, it was argued that the emergency rule of the Council "makes it possible to arrive rapidly at a balanced sharing of the burden in a spirit of solidarity."[106]

As a result, calls to develop a fixed burden-sharing scheme based on the distribution of people were averted by the "free riders" of the group which tried to agree on a collective action and in which some members had to bear disproportionate burdens. However, as Boswell argues, there are other ways to share the collective costs other than sharing people, such as sharing the financial costs of the common regime, diminishing the difference between asylum laws and applications of the members lest there be concentration on some specific states, and finally, setting standards to determine the state responsible for an asylum application so that members feel responsible for the protection of the collective good because defection

[105]Suhrke, p.410.

[106] O. J. of the EC, Council Resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis, *Official Journal of the European Communities*, C 262 , 7 October 1995.

may mean an increased number of asylum applications, hence an increased amount of costs for themselves.[107]

As we have seen and will see in the following sections, some kind and level of all of methods of burden-sharing have been and will be used by the EU, which as a result led and will lead to the approximation and to a certain extent to the harmonization of the European asylum policy.

Following the relatively unsuccessful German Presidency, where Germany could not get what it wanted in terms of burden-sharing, the term of French was also negatively affected by the more nationalistic atmosphere. The only development in terms of asylum during this period was the agreement on the "Resolution on minimum guarantees for asylum proceedings"[108], which was also deemed necessary by the 1994 Commission Communication.

All these developments and the failure to turn the efforts of the Commission and Member States to legislation made both the Commission and the Council discontented with the pillared structure of the Maastricht Treaty in the second half of 1995. The existence of two separate policy-making structures (Community method and intergovernmental method), the preservation of the unanimity rule in lots of policy areas made the Union ineffective, and it could not legislate or adopt Conventions. Most of the tools for cooperation were non-binding and out of the reach of democratic control or public observation. The need to reconsider the third pillar and the pillared structure in general was increasing and the split between pro-integrationists and pro-intergovernmentalists was deepening.

[107] Christina Boswell, "Burden-Sharing in the European Union: Lessons from the German and UK Experience," *Journal of Refugee Studies* 16, no.3 (2003), p.328.

[108] Papademetriou, p.95.

From Maastricht to Amsterdam

In the December 1995 Madrid European Council, the need to adapt the structure of the Union according to the requirements of the twenty-first century and contemporary challenges such as the globalization of the economy, competitiveness, terrorism, drug trafficking and migratory pressure was voiced. In addition, it was declared that, parallel to the demands of European citizens, better methods and instruments had to be employed in most of the areas of JHA; including immigration, asylum and visa policies.

In terms of more general EU policy-making matters, it was stated that there is need to increase the role of the EP in the legislative process, for the application of co-decision in more areas, for the broader use of QMV in the Council in the eve of Eastern European enlargement and for the closer involvement of the Commission.[109]

When negotiations formally started in March 1996 in Turin, it was decided that the EP should be informed regularly and be allowed to bring out its voice anytime in the comprehensive IGC, which will formulate the necessary amendments to the TEU.[110]

The Briefing prepared by the EP by observing the IGC and the debates in the realm of immigration and asylum is enlightening in terms of the positions of Member States towards the Communitarization of the third pillar, the use of QMV or the role of other EU institutions other than the Council. Especially Germany, Sweden, Austria and the Benelux countries were strongly in favor of bringing most of the

[109] Madrid European Council, 15 and 16 December 1995, Presidency Conclusions.

[110] Addendum to Madrid European Council Presidency Conclusions, *Association of the European Parliament with the work of the Intergovernmental Conference*, 26 March 1996.

policy areas under the third pillar to the first pillar. The Benelux states and especially the Netherlands defended more transparency and democracy through the reformulation of other EU institutions' roles in the area and declared that they "agree that shortcomings of co-operation come from the institutional structure of third pillar. The IGC offers the possibility of reforming deeply this structure, transferring some areas in the first pillar or strengthening the third pillar."[111] France and Germany made it clear through letters sent by Chirac and Kohl that they favored common provisions, especially in the fields of immigration and asylum. Germany, as it can be guessed, preferred a more ambitious wording and proposed "making the current legislation of the Member States as uniform as possible" in the realms of immigration and asylum. The highly integrationist Lamers report of Germany argued that an intergovernmental convention-based method like Schengen did not work in this area and complete communitarization was necessary. Therefore, it proposed that "all these areas be integrated as far as possible into the Community sphere of competence by amending or supplementing the Treaty or, at the very least, harmonizing the various national legal systems and their fields of competence to a greater extent."[112] Most of the states supporting the communitarization of the policy domain were among the "exploited" members in terms of total asylum burden such as Austria, Sweden, the Netherlands and Germany. In that sense, Finland's position constitutes a striking example, as in addition to giving full support to the supranationalization of the area, it also emphasized the necessity of giving "due attention" to the burden-sharing side of the issue.

[111] European Parliament, *Intergovernmental Conference Briefing*, No. 39: Asylum and Immigration Policy, 22 August 1996, Available [online]: http://www.europarl.europa.eu/igc1996/fiches/fiche39_en.htm [27 April 2007].

[112] Ibid.

Some countries were in a middle position such as Spain, which was in favor of communitarization but not on favor of the idea of applying QMV to immigration and asylum, or Greece, which did not mention communitarization, or the preservation of the pillared system.

The UK stands at the most intergovernmental end of the spectrum and strongly opposed the communitarization of the third pillar by arguing that the pillar method has been working well. The British Conservative government led by John Major openly declared that "U.K. won't admit improvements in co-operation involving changes to the Treaty. Nor would the English Government accept a transfer of subjects from the third pillar into the community sphere."[113]

The urgent change to the policy making structure was emphasized in the December 1996 Dublin European Council, where it was stated that even the EU-15 needs "to improve its ability to take decisions and act"; in an enlarging EU this will be needed more. In addition, the need for increased transparency, democratic control and for strong and publicly legitimate institutions was emphasized. In terms of immigration and asylum, the Presidency Conclusions declared that:

> The European Council notes with approval the particular importance which the Presidency document attaches to the area of Justice and Home Affairs. It asks the Intergovernmental Conference, taking account of the outline draft for Treaty revision presented by the Presidency, to work to reach agreement on a strengthened capacity for action in relation to visas, asylum, immigration, the crossing of external borders, the fight against drugs and international crime including terrorism, offences against children and trafficking in persons.[114]

[113] European Parliament, *Intergovernmental Conference Briefing*.

[114] Dublin European Council, 13 and 14 December 1996, Presidency Conclusions.

The Treaty of Amsterdam[115] and Beyond

While most of the Member States were discontented with the pillarization of the TEU except the UK, the government change in the UK from Conservative to Labor Party served the purposes of other Member States, which wanted to amend the TEU but faced fierce British opposition. The Amsterdam European Council of June 1997 announced that the Member States had agreed on the results of the IGC and would sign the Treaty in October 1997.

What did the signing of the Treaty of Amsterdam, one of whose aims was "creating an area of freedom, security and justice" mean for the ex-third pillar of JHA in general and for asylum in particular?

The "Title III a" of the Amsterdam Treaty (Title IV of the Treaty establishing the European Community- TEC) covers the issues of visas, asylum, immigration and other policies related to the free movement of persons. Articles 61-69 of TEC explain the areas that came under the "intergovernmentally balanced Community method". Among those issues covering the policy domains from asylum to border management, from illegal to legal immigration, from judicial cooperation related to external border crossing to the issuance of visas for third country nationals, only two visa-related issues were governed by a supranational decision-making structure, which is the policy-making method in Article 251. These were drawing up a

[115] The Treaty of Amsterdam, (1997 O.J. (C 340)1), which entered into force in 1999, amended and renumbered the EU and EC Treaties. The consolidated versions of the Treaty on European Union (1997 OJ (C 340) 145) and the Treaty Establishing the European Community (1997 O.J. (C 340)173-308) are attached to it. Thus, the full name of the Amsterdam Treaty is "The Treaty of Amsterdam amending the Treaty of the European Union, the Treaties establishing the European Communities and certain related acts".

common list of third countries whose nationals require visas to enter the EU, and a uniform visa format.[116]

Other than the above-mentioned visa measures of 62 (2) (b) (i) and (iii), all decisions would be made by the unanimous action of the Council, which would be acting on a proposal from the Commission or from a Member State. Within a period of five years, the intergovernmental method, composed of unanimity, the power of co-initiative (shared with Member States) instead of sole-initiative for the Commission, and only a consultative role for the Parliament would continue to be valid. After this transitional period, the Commission would gain the power of being the sole-initiator of policy, and Member States with a unanimous vote and after consulting the EP, could decide on bringing some of those issues under the command of Article 251, where QMV and co-decision were the rules.[117]

Thus, although asylum and immigration related issues were brought under the Community pillar with the Amsterdam Treaty, supranational actors did not have much influence in the process, especially in the initial period. The Commission was not the sole initiator of legislation during the transitional period, which quite empowered it in terms of agenda setting; the European Parliament was almost invisible with its weak role as the body to be consulted; and the European Court of Justice (ECJ) was left almost totally outside with Article 68, which keeps the ECJ at a distance from the process by not accepting its jurisdiction over measures about crossing internal borders of the EU and the application of its rulings about issues covered under Title IV to judgments of courts or tribunals of the Member States.

[116] Details of Article 251 will be explained in the following section with the evolution of visa policies.

[117] Article 67 of TEC.

Article 63 specifically deals with asylum and refugees, which can be seen as a roadmap for the future action of the EU and also as an outcome of the cooperation of previous intergovernmental periods. The areas in which adoption of measures in the area of asylum is expected are "determining Member State responsible for asylum application", "minimum standards on the reception of asylum seekers", "minimum standards with respect to the qualification of nationals of third countries as refugees" and "minimum standards on procedures for granting or withdrawing refugee status." All these areas were remnants from the intergovernmental period, when the need to take collective action about them was emphasized but almost nothing except this emphasis happened due to the lack of compulsoriness of the decisions taken. The second group of action was listed in 63 (2), and was related to the temporary protection of displaced persons and to the burden-sharing concern. This area of potential Union action in Article 63 (2) (b) was worded as: "promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons."

Title X of the Vienna European Council in December 1998[118], was about Justice and Home affairs, and the points from 83 to 86 dealt specifically with immigration and asylum. The European Council declared its support for the Action Plan of the Council and the Commission on creating "an area of freedom, security and justice" and urged the Commission and the JHA Council to take the necessary decisions in terms of immigration and asylum. The emphasis was on the creation of common rules of temporary protection for third country nationals seeking international protection and the establishment of a European solidarity system in terms of the reception and protection of those people.

[118] Vienna European Council 11 and 12 December 1998 Presidency Conclusions.

The European Council held in Tampere in October 1999[119] was reserved for the discussion of the newly communitarized area of justice and home affairs. The so-called Tampere Milestones specified the work to be done in order to ensure the freedom of movement within the Union while the conditions of security and justice were not undermined. The justification of developing a common asylum and immigration policy was based on the principle of extending the right to move freely within the borders of the EU also to third country nationals.

"A Common EU Asylum and Migration Policy" was a separate heading of the Tampere Presidency Conclusions, where the need for greater coherence of internal and external policies in the specific area and a common external representation via the Commission towards third countries, from which most of the immigration and asylum flows occur, was emphasized. The point of origin of the idea of "A Common European System" was Tampere as well, where measures to be taken in the short and long term were declared. Almost all the legislation that were adopted after the Amsterdam Treaty found their roots in the Tampere mandates. The measures emphasized in Article 63 (2) of the TEC were repeated as the short term objectives. "A common asylum procedure" and "a uniform status for those who are granted asylum" were stated as the long term objectives of the EU in the realm of asylum.

[119] Tampere European Council 15 and 16 October 1999 Presidency Conclusions.

European Refugee Fund (ERF)

Among the money related, policy related, and persons related costs[120] of the issue of asylum, establishing a common financial fund for the EU that would be reserved specifically for temporary protection measures in the event of a mass influx has been considered by the Union for a long time and it was the first adopted EU action in the field of asylum. In other words, it was the first step towards the establishment of the so-called Common Asylum System. The Council Decision establishing the European Refugee Fund (ERF) for the period of 2000-2004[121] allocated a total of 216 million Euros for that period. The Council would decide unanimously to use part or all of the ERF in the case of a mass influx of people seeking temporary protection. The fund could be used for temporary protection seekers and holders, asylum seekers and refugees, and subsidiary protection seekers and holders.

A fixed share would be given to each Member State, whose amount would gradually be decreased from 2001 to 2004, and a flexible amount would be distributed on the basis of the number of temporary protection seekers and holders, and persons seeking refugee status and subsidiary protection in each state. Lastly, the remaining resources would be distributed according to the number of persons who were granted refugee status or subsidiary protection.[122] It is generally argued that the amount of 216 million Euros for all Member States, for all kinds of protection seekers and holders, and for five years, is very limited and actually symbolic rather

[120] Distinguished by Thielemann, "Editorial Introduction," *Journal of Refugee Studies* 16, no.3 (2003), p.230-234.

[121] O.J. of the EC, "Council Decision of 28 September 2000 Establishing a European Refugee Fund," *Official Journal of the European Communities*, no. L 252, 6 October 2000.

[122] Noll, p.245.

than functional. What it symbolizes is that the EU is based on solidarity and equality and Member States are willing to share the burden of asylum, but the limited amount of money they can allocate for that specific reason shows the potential to free ride by the states with less reception and recognition rates, in other words, by those who are not so hardly hit by the process, as the public goods theory predicts and their unwillingness to allocate resources for future or potential costs shows.

Even though the amount was limited, the logic behind the effort was that both the states bearing the heavier burden would be assisted by other Member States and the states whose asylum systems and reception conditions were not so developed would be assisted financially so that they could increase their standards to a certain level, which in turn would help to decrease the gap between the quality of protection offered by different Member States. Therefore, this was a clear act of burden-sharing in the financial sense, which is considered to be the easiest way of burden-sharing.[123] In 2004, the ERF was renewed for the period 2005-2010 and this time 114 million Euros was allocated only for the first year as a reference amount.[124]

Eurodac Regulation

Eurodac is a part of the system to find the country responsible for the examination of an asylum application and serves the higher aim of preventing asylum shopping. It is a database for the comparison of the fingerprints of asylum applicants and illegal immigrants and aims to keep record of who is entering the borders of the EU with demands of international protection and/or via illegal ways. What is important about

[123] Suhrke, p.407.

[124] O.J. of the EC, "Council Decision of 2 December 2004 establishing the European Refugee Fund for the period 2005 to 2010" *Official Journal of the European Communities*, no. L 381, 28 December 2004.

Eurodac is its effect on the supranationalization of some parts of an intergovernmental agreement. Eurodac Regulation was the first step towards replacing the Dublin Convention with European legislation, which was completed by another Council Regulation which established the criteria for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national in 2003, also known as Dublin II. In addition, the relative speed of supranational legislation and ratification can be seen in the implementation of Eurodac within two years[125], whereas the full ratification and realization of the Dublin Convention had taken seven years from 1990 to 1997.[126]

Temporary Protection Directive

In addition to the EU legislation to share the costs directly by distributing money (ERF Decision), some steps were taken between the Tampere European Council and Laeken European Council in terms of the aspect of sharing costs through sharing people. Article 64 (2) of the Amsterdam Treaty opens the way to EU legislation in the aspect of temporary protection in the event of a mass influx of third country nationals to one or more Member States.[127] The events of Kosovo in 1999 put the

[125] O.J. of the EC, "Council Regulation 2725/2000/EC concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention,", *Official Journal of the European Communities*, no. L 316, 15 December 2000. Another Regulation was adopted after two years for the implementation of Eurodac Regulation: O.J. of the EC, "Council Regulation 407/2002/EC of 28 February 2002 laying down certain rules to implement *Official Journal of the European Communities*," no. L62, 5 March 2002.

[126] Geddes, p. 80.

[127] Article 64 (2) of the Treaty of Amsterdam: In the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of third countries and without prejudice to paragraph 1, the Council may, acting by qualified majority on a proposal from the Commission, adopt provisional measures of a duration not exceeding six months for the benefit of the Member States concerned.

necessity of taking a collective measure regarding temporary protection during a crisis which may result in the massive inflow of displaced persons to the territories of EU, on the agenda. In addition, the lack of balance between Member States' reception and recognition rates and the unequal level of rights and assistance given to persons granted temporary protection among different Member States, resulted in pressures for adopting equal, minimum standards in terms of reception and temporary protection so that all Member States would be the same for protection seekers when they decided on which state to apply. Based on Tampere Conclusions' sixteenth point, which "urges the Council to step up its efforts to reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States"; the Council adopted the Temporary Protection Directive.[128]

Determining whether there is an emergency of mass influx or not is the Council's task and it can do that by a Decision adopted by qualified majority on a proposal from the Commission. So, adopting such a decision means redistributing some resources from the ERF for the Member State in difficulty and sharing the displaced persons on the basis of solidarity and the respective capacities of each Member State to receive them. However, the application of the vague term of solidarity and the lack of any fixed rule or formula for the distribution of people makes the system vulnerable to potential inequalities in terms of burden-sharing and to potential acts of free-riding by some Member States. In addition, there is also no rule for the transfer of persons from the Member States which received more persons than they could to the ones that still had not reached their reception capacities.

[128] O.J. of the EC, "Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof", *Official Journal of the European Communities*, no. L 212, 7 August 2001.

Instead, it was decided that such transfers should take place on a voluntary basis, which opens the door to continued inequality between states with respect to granting temporary protection. Thus, the language and the extent of this Directive could not meet the demands and expectations of Member States which suffered from inequalities in sharing the burden.

Since the choices of asylum seekers or of any kind of international protection seekers are affected by the rights and assistance given by the possible states of destination, this Directive aims also to set a lowest common denominator on which all Member States can agree and offer to the displaced persons in need of temporary protection. According to the Directive, each Member State is obliged to allow access to employment, accommodation, social welfare assistance such as means of subsistence and medical care, and to education for minors who are under 18 years of age.[129]

Minimum Reception Standards Directive

The harmonization of the asylum laws of Member States, which have various applications both in terms of first reception conditions, the rights they give to asylum seekers, and for the opportunities they offer for refugees in terms of integration[130], was seen as a means to impede the concentration of asylum applications on some specific states. With that aim, the Commission presented a proposal to harmonize

[129] O.J. of the EC, "Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof", *Official Journal of the European Communities*, no. L 212, 7 August 2001: Articles 12, 13, 14.

[130] See Liza Schuster, "A Comparative Analysis of the Asylum Policy of Seven European Governments," *Journal of Refugee Studies* 13, no.1 (2000), p.118-132.

asylum seeker reception conditions, and to bring offered living conditions to a comparable degree in all Member States, so that asylum seekers would not choose from a wide range of opportunities and a certain level of humane living standards would be provided in all Member States.[131]

What came out of the Council was a milder version of the initial proposal, where room for state discretion was left.[132] It was decided that all Member States would have to guarantee certain material conditions such as accommodation, food, clothing, medical and psychological care, the right to family unity and education for minor children. Apart from these minimum guarantees, each Member State would be free to decide what kind of economic activity an asylum seeker could undertake, even though they could not limit access to the labor market six months after an asylum application was made. Due to demanded changes to the initial Commission proposal, the adoption of the Directive took two years. It was argued that "the Spanish Presidency redrafted this proposal and moved further away from harmonization and closer to 'basic principles'."[133]

Dublin II Regulation

As a part of the precautions taken against multiple asylum applications by the same person, or asylum shopping, the intergovernmental Dublin Convention of 1990

[131] European Commission, *Proposal for a Directive on minimum standards for the reception of applicants for asylum in Member States*, COM (2001) 181 final, Brussels, 3 April 2001, p.3.

[132] O.J. of the EU, "Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers," *Official Journal of the European Union*, no. L31, 6 February 2003.

[133] Matthew James Fouse, The Politics of European Union Immigration and Asylum Policy Cooperation (Ph.d diss., Princeton University, 2005), p. 172.

constitutes the basis of this Regulation.[134] Actually, the same criteria agreed on in 1990 continued to be valid for determining the Member State responsible, but the Convention was replaced with a binding EU legislation to guarantee better compliance and to increase the efficiency of the system with the use of Eurodac.

Although the Dublin Convention and this Regulation only deal with the determination of the responsible state and do not explicitly aim to achieve a better burden-sharing scheme among the members, it was argued that they implicitly helped to change to the amounts of costs the members pay:

> Although the idea of establishing a system of burden-sharing at the EU level continues to encounter strong opposition from several Member States, domestic reforms in the main refugee-receiving countries and the coming into force of the Schengen and the Dublin conventions have led to a redistribution of asylum-seekers 'by default'. (…) Coupled with the formerly liberal asylum provisions in the main receiving countries, these measures have changed the relative shares of asylum-seekers in Europe.[135]

While states which have been bearing the majority of the burden supported the development of the Dublin II Regulation, Member States on the outer borders of the EU with relatively less developed border controls and asylum schemes argued that with such an application of first country of entry and asylum, the changed balance would put them in a disadvantageous position.[136]

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[134] O.J. of the EU, "Council Regulation 343/2003/EC of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national," *Official Journal of the European Union*, no. L50, 25 February 2003.

[135] Sandra Lavenex, "The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies," *Journal of Common Market Studies* 39, no.5 (2001), p.863.

[136] Fouse, p. 168.

The Directive Defining a TCN as a Refugee

Although adopted later than the previous legislation which tried to achieve some harmonization in the realm of asylum, this Directive constitutes the very basis of a Common Asylum System because it deals with a standard decision-making mechanism on who is a Convention refugee and who is not.[137] Since all the Member States signed the Geneva Convention and the New York Protocol, there was more or less an agreement on the criteria for the determination of the status of a "Convention refugee." However, Member States had different applications in terms of the concept of subsidiary protection and its target audience. Some of the Member States such as Belgium, Ireland and France did not even have any application as subsidiary protection until this Directive was adopted.

The Directive therefore introduced certain criteria to define a person as a refugee in the Conventional sense and to define a person as eligible for subsidiary protection and defined some basic rights such a person can have in a Member State. However, since there were different applications and traditions in different Member States, reaching an agreement took a little more time than other legislative acts. The Commission came up with a proposal in November 2001[138] but the Directive was adopted as late as 29 April 2004. If there would not have been a last-minute rush for adopting it before the 2004 enlargement which meant the increased difficulty of

[137] O.J. of the EU, Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, *Official Journal of the European Union*, no. L304, 30 August 2004.

[138] European Commission, *Proposal for a Council Directive laying down minimum standards for the qualification and status of third country nationals and stateless persons as refugees, in accordance with the 1951 Convention relating to the status of refugees and the 1967 protocol, or as persons who otherwise need international protection*, COM(2001) 510 Provisional, Brussels, 12 November 2001.

taking a decision with ten new countries, the adoption process of the Directive could have lasted longer probably.

The Directive on Procedures for Granting and Withdrawing Refugee Status

Standardizing asylum procedures was among the long term objectives of the EU and this Directive may be considered as a first step towards this objective. The Commission presented its first proposal in 2000[139] and amended[140] it in 2002 on the demand of amendment by the European Parliament in its opinion of September 2001.[141] The first proposal was argued to have aims higher than minimum standards on which Member States could agree more easily. It stated that in order to achieve a Common European Asylum System, procedures for fast and effective examination of cases in all Member States were required. Therefore, setting certain criteria both in terms of the type of the application and in terms of the maximum duration for deciding on an application was necessary.

After the amended proposal was presented to the Council, a set of discussions composed of seven meetings between 15 October 2002 and 29 April 2004 took place but the agreement could not be reached before the deadline of 1 May 2004, in other words before the enlargement. The final Directive was adopted in December 2005

[139] European Commission, *Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status*, COM (2000) 578 final, Brussels, 27 February 2001.

[140] European Commission, *Amended Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status*, COM (2002) 326 final, Brussels, 26 November 2002.

[141] European Parliament Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, Report on the proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (COM(2000) 578 - C5-0705/2000-2000/0238, A5-0029/2001, 31 August 2001.

and it made considerable amendments to the former proposal. According to the amended proposal, some guarantees were modified and room for exceptions and specific national circumstances were introduced. For instance, some safeguards against "asylum abuse" which were not in the initial proposal were added. New conditions under which an application would be recognized as "inadmissible" were inserted to the final version of the Directive. In addition, obligations for time limits until which the Member States have to examine the application and take their final decision were removed in the final document. Asylum seekers normally have the right to lodge an appeal in the case of the rejection of their application. The initial proposal gave the same right to an asylum seeker when a Member State cannot comply with the time limit. However, this right of lodging an appeal was removed from the final text which left institutional arrangements for appeal to Member State's discretion.[142] It was argued that the final version had been watered down due to concessions demanded by Member States and too many exceptions and limitations were introduced so that some Members could even lower their standards.[143]

The final Directive[144] separated inadmissible applications and manifestly unfounded applications. Inadmissible applications are the ones from a Member State, or a safe third country. Applicants whose situation is not covered by the Geneva Convention or by the Directive 2004/83/EC are under the manifestly unfounded category and those who have bogus documents, mislead the authorities or who pose

[142] European Commission, Amended Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, COM (2002) 326 final, Brussels, 26 November 2002.

[143] Jorg Monar, "Justice and Home Affairs," *Journal of Common Market Studies* 44 (2006), p.103.

[144] O. J. of the EU, Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, *Official Journal of the European Union*, no. L 326, 13 December 2005.

threats to national security are under the category of applicants with manifestly unfounded reasons to seek asylum. In addition, the Directive also dealt with the issue of the right of appeal for asylum seekers.

This Directive constituted the last act of a set of binding legislation setting common rules and basic principles, which were mandated in the Tampere European Council and should be completed until the deadline of 1 May 2004. This Directive was an exception because it was the only one which was not adopted before the deadline and was adopted in December 2005.

Article 67 (5) of the Nice Treaty and Asylum

With the adoption of the Directive of minimum standards on procedures for granting and withdrawing refugee status, one important change has been introduced in the method of decision-making in the realm of asylum. Article 67(5) of the EC treaty, which has been introduced by the Treaty of Nice, introduced the automatic application of the Article 251 procedure to asylum matters with the condition that the Council adopt Community legislation that defines the common rules and basic principles governing those issues. Article 67 (5) referred to the Articles 63(1) and (2) (a) of the TEC, which are all the asylum related provisions except 63 (2) (b) which contains measures on refugees and displaced persons, and promotes a balance of effort between member states when receiving and bearing the consequences of receiving refugees and displaced persons.

With that change, the adoption of all measures regarding minimum standards for qualification as a refugee, and for subsidiary protection; minimum reception

standards; rules determining the member state responsible for examining asylum applications; the Eurodac; the ERF and temporary protection was completed.

According to Article 251 of TEC, measures in articles where reference to Article 251 is made about the decision-making procedure (Figure 3) will be adopted as follows: Following the European Commission's submission of a proposal for a legislative measure, the Council of Ministers can adopt the proposal by a qualified majority after obtaining the Opinion of the Parliament. According to this procedure, if the Parliament demands an amendment, the Council can accept or reject it. If it is accepted, it turns into a law, if not, the Council should come with a Common Position, which can be accepted by both and turn into law, or be rejected by the Parliament, and taken in front of a Conciliation Committee composed of an equal number of members from both institutions. If this Committee fails to come up with a solution that is accepted by both sides, the proposed act cannot be adopted.

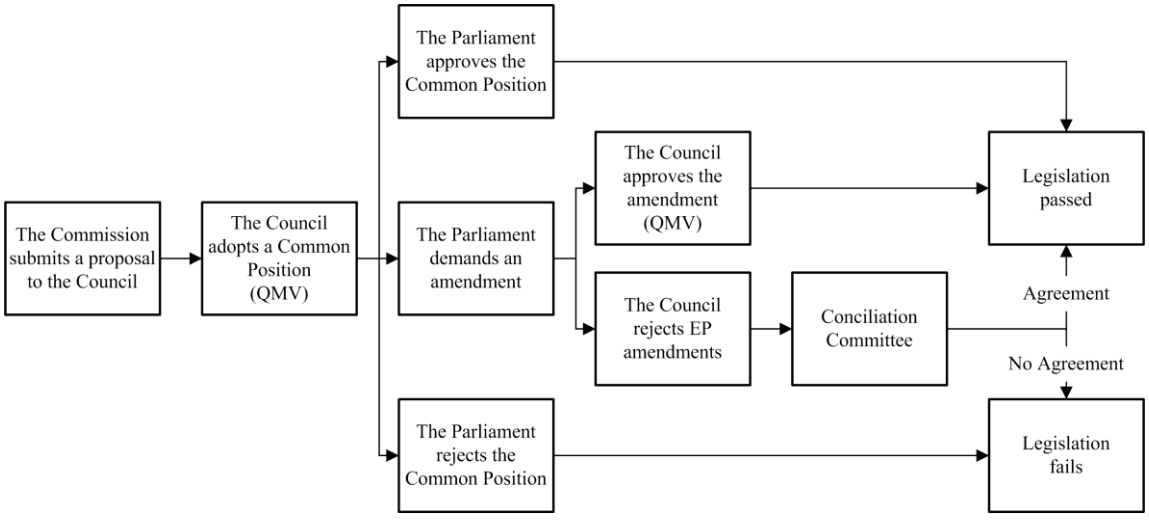

Figure 3. The Decision-making structure defined in Article 251.

Although most of the legislation under those headings has already been adopted under unanimity, it is still a big step forward, because from now on, future asylum

initiatives will be subject to adoption by QMV and co-decision, which strengthens the hand of the Parliament and more importantly takes the power of veto from the hands of Member States in such an important issue like asylum.

It is worth emphasizing that Article 67(5) covered all asylum provisions except the one related to "the balance of effort" regarding receiving refugees and other displaced persons. However, this section of asylum provisions was also brought under the rule of Article 251 with a Council Decision in December 2004.[145] Along with a bunch of provisions in other policy areas such as illegal immigration, internal and external borders, and illegal residence and repatriation governed by Articles 62 (1), 62 (2) (a), 62 (3) and 63 (3) (b) of the TEC, the provision about achieving a balance of efforts in receiving refugees, in other words burden-sharing, in Article 63 (2) (b) was brought under the decision-making mechanism stated in Article 251. With that change, the application of QMV and co-decision was extended to most of the provisions of Title IV dealing with immigration and asylum, except regular-economic migration, the integration of already existing immigrants and the rights of TCNs who are already residing in Member States.[146]

[145]O. J. of the EU, Council Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty, *Official Journal of the European Union*, no. L 396, 31 December 2004.

[146] Valsamis Mitsilegas, "Is there an EU Policy on Economic Migration?," *EUSA Review*19, no.3 (Summer 2006), p.4.

What has not been done in terms of asylum yet?

Although the Hague Programme in 2004[147] set the objective of the completion of all the necessary legal provisions for a common asylum system no later than 2010, there are some proposals of the Commission that cannot be turned into adopted legislation. One important Communication is worth mentioning here: Communication on the common asylum policy, introducing an open coordination method.[148] The open coordination method[149] suggested more change than setting minimum standards and bringing all Member States to a certain level. It aimed to establish a permanent network between Member States to share best practices and envisaged greater integration in terms of a Common European Asylum System with a single European

[147] Annex-I: "The Hague Programme: Ten priorities for the next five years – A partnership for the European Renewal" of the Brussels European Council, 4-5 November 2004, Presidency Conclusions.

[148] European Commission, *Communication from the Commission to the Council and to the European Parliament on the common asylum policy, introducing an open coordination method*, COM (2001) 710, final, Brussels, 28 November 2001.

[149] The Open Method of Coordination is a tool for achieving harmonization different national policies if it was seen necessary and agreed by the Member States. It was first used in the EU employment policy after the Treaty of Amsterdam. It aims the common handling of a specific policy area where Community legislation is thought to serve the aims of the Union better, and in policy areas where a transformation from intergovernmental to supranational policy-making occurred. The Method is composed of different stages and processes, first of which is the setting of certain common European policy guidelines by the Council. Those guidelines serve as ideal yardsticks and the Member States' main aim is to reach to those common ideal points in their national policies. After the common European guidelines and the deadlines for their achievement are set, each Member State has to come up with a national action plan, which reports the current situation in the specific policy realm and sets the necessary actions to attain the guidelines. These national action plans can be prepared in conjunction with the Commission and are adjusted annually in line with the achieved progress. The Commission also plays an active role in the monitoring and evaluation processes where it checks the progress made and the actions to be taken. In addition, reports about best practices applied in some Member States are prepared and distributed by the Commission for assisting the Member States in their efforts to attain the level set in the common guidelines. In the light of these reports, Member States decide on areas where Community legislation serves the common objectives better and assist the harmonization if necessary. Although this method does not have a binding effect on the Member States, it urges them to keep up with the other members by employing the monitoring mechanism as a tool for creating peer pressure.

procedure for examining asylum application. However, it has not been warmly welcomed by the Member States, which at this stage are not enthusiastic for that much integration. Therefore, except for the opinions presented by the Committee of the Regions and Economic and Social Committee in 2002, no action was taken regarding this Communication. It is argued that not much progress will take place on the open coordination method because "[p]lans for implementing this method would require substantive changes to domestic legislation that domestic constraints on state preferences have prevented in other areas of asylum policy cooperation."[150]
This approach implies drawing up strategic guidelines, benchmarking, targetsetting and the introduction of monitoring to evaluate progress.

To sum up, the removal of internal borders affected the management of asylum radically by creating a common area where a TCN can apply for asylum in any EU Member State once he or she enters the EU territory. When there is a certain amount of people applying for asylum, and there are a certain number of countries, which can grant asylum to those people that differ in size, capacity and rules regulating asylum, it is inevitable that some countries would receive more asylum seekers than others. However, if this disproportionality in the sharing of the total costs reaches an unacceptable level for some countries, such as Germany, the Netherlands, Sweden and Austria, they would push for the establishment of schemes that can distribute people and costs more equitably.

Although not based on the relative "sizes" of the members of a group like Olson argued, a disproportionate burden-sharing scheme emerged especially in the beginning of the 1990s. This affected the members with more liberal asylum laws negatively because they received most part of the asylum applications. This

[150] Fouse, p. 191.

disproportionate distribution of the costs can be explained by "the exploitation of the states with more liberal asylum laws by the ones with more restrictive asylum laws" within a group trying to act collectively. Therefore, constant pressure of those exploited countries, especially of Germany for perceiving and treating asylum as a common European issue and transforming the competence of the Union and the decision-making mechanisms accordingly, was the main impulsive force behind the communitarization of asylum policies.

From Schengen to Amsterdam: Developing a European Visa Policy

Two Parallel Developments: Schengen and the EC Visa Policy in the post-SEA Period: 1985-1992

As explained in the section about asylum, the decision to create the Single Market and the removal of internal borders made the control of external borders a common concern for the Member States. The aim of free movement of persons can be considered as a "liberalizing" act within the Community, but the achievement of such an act required an increase in controls and the establishment of a more restrictive regime at the external borders. This need for "compensatory measures" in external border controls and the coordination of visa policies was emphasized strongly in the White Paper prepared by the Commission for the completion of the Single Market.[151]

Border controls and the decision of allowing some persons to enter the national territory are "high" political issues linked strongly to the concept of

[151] European Commission, *White Paper from the Commission to the Milan European Council, 28-29 June 1985, "Completing the Internal Market,"* COM 85 (310) final, Brussels, 14 June 1985.

sovereignty, because it is argued that "sovereignty is nowhere more absolute than in matters of emigration, naturalization, nationality, and expulsion."[152] However, beginning with the initiation of the SEA, the issue of external border control and the issuing of visas for TCNs have begun to become areas of collective action because the freedom brought within has to be compensated with security and the provision of security at external borders is a public good, where defectors harm the security of all members. In other words, "(…) anxieties have been *heightened* by fears that harmonization of external border controls would link the success or failure of each country's national controls to those of fourteen others, some of which are thought to lack both the capacity and the political will to control their own borders."[153]

Even before the official signing of the SEA in December 1985, the Commission presented a Communication on the guidelines for a Community policy on migration[154] and touched upon the link between the removal of internal borders, freedom of movement within the Community and the need to cooperate in external border controls. The issue of the harmonization of visas was later brought up in a Commission Decision in July 1985. It was said that "the European Parliament urged the Council and the Commission to make further proposals particularly with a view to harmonization of visa policies and legislation concerning foreigners."[155]

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[152] Arendt, quoted in Joppke, p.267.

[153] Papademetriou, p. 107.

[154] European Commission, *Communication from the Commission on "Guidelines for a Community Policy on Migration*, COM (85) 48 final, Brussels, 20 February 1985.

[155] O. J. of the EC, Commission Decision of 8 July 1985 setting up a prior communication and consultation procedure on migration policies in relation to non-member countries, *Official Journal of the European Communities*, no. L 217, 19 August 1985.

A parallel development to the creation of the single market without internal frontier checks was the Schengen process. Although the European Community was aware of the need for the abolition of internal border controls for the sake of the single market, due to its implications on lots of policy areas which are central to national sovereignty, Member States had difficulty in acting rapidly as a whole. Thus, an alternative subset of the Community, willing to create an area without internal borders in a nearer future among themselves, initiated the process leading to the signing of the 'Schengen Open Frontier Accords'. The process of the development of a Schengen area, which began with negotiations between Germany and France about bilateral border opening, extended to the Benelux countries, and the development of the SEA took place almost simultaneously.

The Schengen Agreement of 14 June 1985 among the five signatories can be considered as the first comprehensive cooperation attempt with respect to the collective handling of external borders, with its basic aims of providing freedom within the Community by removing controls at internal borders and bringing common application in the fields of external border controls, asylum policy, visa policy, police cooperation and judicial cooperation in criminal matters. The Schengen regime has been transformed from its non-Community, intergovernmental character to a supranational one with its incorporation into the European legal framework as the Schengen acquis following the Treaty of Amsterdam.

The high sensitivity of border control issues resulted in an intergovernmentally negotiated process and even in a relatively small group of five. The slowness of the development of the Schengen regime was highly visible and can best be attached to the "intense tensions between sovereignty and integration in this

field."[156] In addition, since the attempt to increase freedom within the Schengen area inevitably requires emphasis on security at the external borders of this area; compensatory measures for the removal of frontier controls, including asylum regulations, developing a common visa regime towards third country nationals, regulating measures towards illegal immigration, coordinating trans-border police competences and developing the "Schengen Information System (SIS)", which is basically a computerized data bank, were among the broad range of highly sensitive issues which needed to be negotiated.

Purely intergovernmental negotiations took place between the pioneering five, and evolved into the more extended "Convention Implementing the Schengen Agreement" after five years, in June 1990. The style of negotiation among those countries was not only intergovernmental; it was also dominated by justice and security ministers or civil servants and the foreign affairs ministers were largely excluded from the process.[157] Since free movement is directly tied to immigration and security issues by those technocrats, the emphasis was on increasing security through restrictive border regimes. In that sense, Schengen negotiators were highly influenced by the negotiation style of their security related anti-drugs or anti-terrorism predecessors such as the "Pompidou Group on drugs" of 1972 or the "Trevi Group" of 1975.[158] Those groups were composed of civil servants; officials from the ministries of interior and justice and police forces, and negotiations were completely closed to public and democratic organs, and were security and national interest

[156] Den Boer, Monica. "Justice and Home Affairs." in *Policy-making in the European Union*, edited by H. Wallace and W. Wallace, (Oxford; New York: Oxford University Press, 2000), p. 498.

[157] Virginie Guiraudon, "European Integration and Migration Policy: Vertical Policy-making as Venue Shopping," *Journal of Common Market Studies* 38, no.2 (2000), p.260-261.

[158] Den Boer, "Justice and Home Affairs," p.494.

oriented. Working groups about police and security (including issues such as drugs, firearms and illegal immigration) and the movement of persons (including issues of migration and asylum, visas and border controls) were set during the five-year long period spent for the formulation of the Schengen Implementation Agreement.[159]

During the mid-1980s in spite of the movement created by the SEA and its goals for the free movement of persons throughout the whole Community, compared to the Schengen group's activities and efforts in that area, policies related to free movement and all its side effects at the Community level were not satisfactory. Schengen was developing as an intergovernmental agreement outside the Community framework. After the signing of the Schengen Agreement, in 1986 an "ad hoc Immigration Group" was created within the Council's Secretariat and this development took place under the Presidency of the UK, which wanted to remain out of the Schengen area. The objective of this intergovernmental group was "easing and ultimately abolishing the internal frontier controls."[160] The workings of the Schengen group were laboratory work in the eyes of the Community-wide policy makers[161] and instead of developing separate policies, they expected its results and felt comfortable because it was clearly stated in the Agreement that its provisions could never be in conflict with the Community law. The AHIG tried to deal with visa policy at the Community level and they initiated the negotiations over the common list of third countries whose nationals require visas to enter the EC. The Ministers responsible for Immigration agreed on fifty such countries at their Copenhagen meeting in 1987 and

[159] Guiraudon, p.260.

[160] Callovi, p.360.

[161] Papademetriou, p.24.

one year later, they added eleven countries more to this list at their Munich meeting.[162]

Although the harmonization of the visa policies of the contracting parties was among the provisions of the Schengen Convention, Article 9.2 made possible for a contracting party to derogate from the common visa arrangements relating to a third state in exceptional cases where overriding reasons of national policy require an urgent decision. Common conditions and criteria for issuing a uniform visa for the nationals of third countries, subject to visa arrangements common to all parties and valid for the entire region for stays less than three months in a six month period, means the mutual recognition of the parties' national visas in accordance with those criteria.

However, in addition to travel documents, documents showing the necessary level of subsistence and a document justifying the intended stay are among the required documents, which complicate the process of visa issuance. Although they could not agree upon a common list of countries outside the EU framework whose nationals require visas to enter Schengen soil, the agreement at least guarantees people having a uniform visa to move freely within those eleven states for three months. In terms of people who are legally residing in one of the contracting parties, the permit for traveling among those countries for a period not exceeding three months is valid, but those people cannot reside or have paid work in other countries as EU citizens. The agreement also opens the way for "limited territorial validity visas", which are issued to persons who do not fulfill the common entry conditions

[162] European Commission, *Communication from the Commission to the Council and the European Parliament: (I)Proposal for based on Article K.3 of the Treaty on European Union establishing the Convention on the crossing of the external frontiers of the Member States, (II) Proposal for a regulation, based on Article 100c of the Treaty establishing the European Community, determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States*, COM (93) 684 final, Brussels, 10 December 1993, p.40.

and are only valid for the territory of the contracting party which issued the visa. With that application, the contracting party's autonomy in deciding on the entry conditions and granting visas remained. Long term visas (longer than three months) are not subject to uniform rules and are of national visa regimes' concern.

As the Community began to be interested in developing a harmonized visa and external border policy, the Coordinators' Group was given the duty of preparing a report on what was to be done in terms of immigration and asylum policy in order for the removal of internal borders to be smooth and secure. They created the Palma Document in 1989 and presented it to the June 1989 Madrid European Council.[163] Coming up with a common list of third countries whose nationals require visas and the harmonization of criteria and procedures for granting visas were among the "essential" visa-related policies that have to be accomplished. Harmonized visa application procedures, a common European visa, and creating computerized networks on visa procedures were "desirable" steps to be taken according to the Palma Document.[164]

As a continuation of a series of planned collective actions which had to be taken for the completion of the removal of internal borders, the "Convention on crossings at the external frontiers of the member states" or the External Frontiers Convention (EFC) which had to be signed in June 1991 but could not because of the dispute between the UK and Spain over Gibraltar's being an external or internal frontier of the EC, also had provisions about issuing visas. The EFC governed "the conditions for granting visas and their territorial validity in the whole EC territory by

[163] Madrid European Council, 26-27 June 1989, Presidency Conclusions.

[164] Papademetriou, p. 37, footnote no.30.

sketching out a system which permits a common policy."[165] This statement constitutes the basis of the future discussions of a common visa for TCNs crossing external borders for visits less than three months.

As a result, the beginning of the 1990s was marked by the inefficiency and the inability to take and adopt decisions in terms of external borders, and consequently in terms of a common visa policy. The inefficiency of the pure intergovernmental method can also be seen in the developments that took place in the Schengen regime.

Italy joined the Schengen group in 1990, Spain and Portugal in 1991 and Greece in 1992. However, even after the terms of the Convention were settled and agreed on by all members, it took another five years for the Convention to take effect. Not only the difficulties in the negotiation process, but also the technical inadequacies, the mutual distrust of the participating states on others' ability to control borders, the circulation of drugs and illegal immigration were stones on the way to the Convention's entry into force and its implementation.

Mainly France's lack of trust towards the Benelux countries' border control and especially towards the liberal drug regime of the Netherlands prolonged the process. In addition, France was also the country most concerned about the concession of sovereignty in that area. Although most of the Schengen Member States at least eased their border controls before 1995, France was still checking travelers coming from the Southern countries for fear of the illegal immigration of North Africans.[166] Germany, which was suffering from the post-Berlin Wall

[165] European Commission, *Communication from the Commission to the Council and the European Parliament on Immigration*, SEC [91] 1855 final, Brussels, 23 October 1991, p.17.

[166] *The New York Times*, "Europeans Delay Plan to Abolish Passport Checks," 23 November 1992.

demolition syndrome, and was dominated by immigrants from the dissolved Socialist Bloc claiming German citizenship due to their blood-ties granting them citizenship under the German nationality law based on *jus sanguinis*, was also not too enthusiastic about the implementation of the Convention without adequate measures at the external borders. In both of these countries, negative public opinion towards the idea of open borders was also influential in on the politicians concerned with domestic elections.

France's problem with the Netherlands about drug control was another major factor causing the delay of the full implementation. Due to the concern about drug trafficking and the different policies about drugs, not only France but also some other signatories resisted full implementation. As the Benelux countries had an open border agreement among themselves since 1960, France declined to open its borders not only to the Netherlands but also to Belgium and Luxembourg, which had different and more restrictive drug policies. As a result, the Schengen area became meaningless for the Benelux countries and due to the continuation of negotiations on this issue; the implementation was postponed several times. Thus, it can be said that the purely intergovernmental structure of the process caused considerable delays even in a smaller group, which were relatively more enthusiastic about opening their borders.

All these problems and mainly national concerns over security and sovereignty delayed the Convention's entry into force for seven contracting parties (excluding Italy and Greece) until March 16, 1995. However, France again disturbed the full implementation of the Convention on June 12, by announcing that it would seek to extend the trial phase for the Schengen accord and to maintain its border controls for its Schengen neighbors to control illegal immigration and the circulation

of drugs. Besides, the terrorist bombings by the GIA Islamist militant group targeting public transportation in France enhanced the French concerns on opening borders. However, the remaining six contracting parties decided to continue with the process, which Austria joined in 1995 after becoming a member of the Union, Finland, Sweden and Denmark signed up in 1996.

The Treaty of Maastricht and its Article 100c

Even though overall Justice and Home Affairs were under the intergovernmental third pillar, activity especially within the realms of asylum and visa policies increased visibly after the Treaty on European Union. It is argued that the Steering Group of Immigration and Asylum founded under Article K.4 and replacing the ad hoc Immigration group and working under the third pillar, was discussing issues of immigration, asylum and the development of a common visa regime "as actively within the Schengen network."[167]

One of the reasons why there has been more progress in terms of visa policy is the assertion of a specific Article 100c apart from the third pillar in the Maastricht Treaty (TEU). This Article required the Council to determine the third countries whose nationals must be in possession of a visa when crossing the external borders of the European Union. The decision-making method of determining a common visa list was based on unanimity following a proposal of the Commission and after consulting the EP until 1996 except for emergency conditions. According to Article 100c (2), Member States can introduce a visa requirement based on QMV in cases of emergency, where a third state poses the threat of a sudden inflow of its nationals.

[167] Den Boer, "Justice and Home Affairs," p.503.

After 1 January 1996, QMV would automatically be applied in decisions about the common visa list. Another visa related area, a uniform format for visas, was going to be governed from the beginning by QMV according to Article 100c (3). However, provisions related to the visa policy also found their place in the JHA pillar. Article K.1 (2) and (3) under Title VI dealt with the rules and conditions governing the entry of TCNs and their crossing of the external borders of the EU. Thus, although two areas of visa policy were "communitarized" with Article 100c, they were also intergovernmentally governed.

The Commission Communication in December 1993 is an important document in terms of the efforts for a common visa policy because it dealt with both the External Frontiers Convention, which could not be signed until that date, and the issue of coming up with a common "negative list" of third countries whose nationals need to have visas to enter EU territory. Since Article 100c urged Member States to come up with a list and to develop a uniform visa valid for all Member States, the Commission emphasized the lack of action in those realms and incorporated them into the External Frontiers Convention in accordance with the change in the TEC which brought those two aspects of visa policy under Community competence. According to the Commission, "[t]he harmonisation of Member States' policies concerning visas constitutes an important part of the envisaged convention."[168]

The Communication emphasized that both the AHIG and the Schengen group had been trying to create common negative lists and the EU was now under the obligation of Article 100c to adopt such a list of its own as soon as possible. In order to complete this action, a uniform format for visas should also be agreed upon in the

[168]European Commission, *Proposal for a Regulation, Based on Article 100c of The Treaty Establishing the European Community, Determining the Third Countries Whose Nationals must be in Possession of a Visa when Crossing the External Borders of the Member States*, COM 93 (684) final, Brussels, 10 December 1993, p.40.

shortest time possible. In addition, it was emphasized that Member States had to recognize the visas issued by each other in order for there to be a freedom of movement within the EU borders. However, for a Member State to be able to recognize others' visas there had to be some level of harmonization so that they could trust each other: "Member States could not be expected to recognise visas granted by each other without a minimum of harmonisation. Otherwise the Member States would lay themselves open to the abusive practice of "visa shopping."[169]

Just like the problem they have in "asylum shopping" due to the very different applications, rights and standards Member States have vis-à-vis asylum seekers; there is the possibility that some Member States might have a disproportionately greater number of visa applications than others. Since the territory is a collective belonging and a person who has entered one Member State can move freely to others, each member of the group owning this area collectively has to rely on others' issuing of visas. In short, to trust each other in the management of a collectively shared territory, there has to be a certain level of harmonization. To say it differently, "[u]nilateral visa policies would allow third country nationals that some member states find undesirable for political or security reasons to legally enter one part of the EU and take advantage of de facto free movement, or overstay their visa and become illegal immigrants."[170]

The Essen European Council in December 1994 called the Member States to complete the common negative list and the uniform format for visas before the next

[169] European Commission, *Proposal for a Regulation, Based on Article 100c of The Treaty Establishing the European Community, Determining the Third Countries Whose Nationals must be in Possession of a Visa when Crossing the External Borders of the Member States*, COM 93 (684) final, Brussels, 10 December 1993, p.43.

[170] Fouse, p. 230.

Summit of June 1995.[171] The French Presidency in the following period put the completion of the common negative list and uniform visa format on the agenda, but Member States could not reach an agreement on either of them. The common negative list was blocked because the British government wanted to waive the visa requirement for the Commonwealth countries which were on the 126-country list. The agreement on a uniform visa format was also delayed by the UK, where Tories saw this as a further step towards integration and did not want to make a concession on that issue.[172]

The issue of drawing up a common negative list was also discussed within the Schengen framework and in 1995, two different black lists were accepted both by the Schengen group and by the EU, the former including 129 countries, the latter reduced the number to 101 countries[173] instead of the Commission proposal of 129 which included the same states with the Schengen list.[174] Such an implementation created controversy among the countries and difficulties for the nationals of those countries who wanted to travel both in countries member to the Schengen group and in other non-Schengen countries. At the same time, states member to both bodies, adopted two different lists about the visa requiring countries. This event was a clear reason for not having two separate systems which tried to govern the same issues, such as the Schengen group and the EU.

[171] Essen European Council, 9 and 10 December 1994, Presidency Conclusions.

[172] Papademetriou, p.94.

[173] O. J. of the EC, Council Regulation (EC) No 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States, *Official Journal of the European Communities*, no. L 234, 3 October 1995.

[174] See Appendix A, List-1 for detailed negative list and the distribution of countries.

The Madrid European Council in December 1995 stated that visa policy was one of the areas of priority to be discussed in the 1996 IGC before the Amsterdam European Council which would be held in June 1997. One of the issues discussed in the IGC was the future of the Schengen Convention. It was stated that the provisions of the Schengen Convention were compatible with the Community law and since there were parallel developments and parallel objectives in both platforms, the best possibility was that the Schengen Convention be accepted by all Member states and become a part of the EU legal framework. Both the Commission and the Parliament were in favor of the incorporation of the Schengen Convention into the EU legal framework and bringing it under democratic control and under the EU legal framework. Member States were split on this issue: Germany, the Benelux countries, Austria, Spain and Portugal declared that they are in favor of its communitarization, while France, Denmark, the UK and Greece opposed this position.[175] In the specific issue of visa policy, Austria, Belgium, Germany and the Netherlands[176] specifically emphasized the need for a complete communitarization of visa policy, which was the only partially communitarized aspect of the general JHA pillar.

The Treaty of Amsterdam: A Communitarized Visa Policy

With the Treaty of Amsterdam in 1997, the Schengen *acquis*, composed of the Schengen Agreement, the Convention Implementing Schengen Agreement, and rules

[175] European Parliament, *Intergovernmental Conference Briefing, No. 27: The IGC and the Schengen Convention*, 2 April 1996, Available [online]: http://www.europarl.europa.eu/igc1996/fiches/fiche27_en.htm [4 May 2007].

[176] European Parliament, *Intergovernmental Conference Briefing*, No. 39: Asylum and Immigration Policy, 22 August 1996, Available [online]: http://www.europarl.europa.eu/igc1996/fiches/fiche39_en.htm [27 April 2007].

adopted on that basis and related agreements, was incorporated into the EU framework with an additional Protocol.[177] With that move, the years-long intergovernmental effort for freedom of movement within the Union and all the compensatory measures required by such an act became Community law. Article 40 under Title VI registers the incorporation of the *acquis*. Although the Member States signed and ratified this Treaty, the Protocol integrating the Schengen *acquis* into the framework of the European Union was added after all these processes. The incorporation of the Schengen *acquis* to the Community law was revolutionary and sudden compared to the background of the process, which took quite a long time. Some scholars commented that since all the executive parties other than officials from the justice and interior departments were denied access to or ousted from the Schengen process, foreign affairs officials or ministers of Member States accepted an *acquis* of whose content they were not really aware.[178] The active involvement of the Dutch Presidency in 1997 was very crucial, especially for the incorporation of the Schengen *acquis*.

Measures referred under Article 62 (2) (b) (i) and (iii), namely a common EU list of third countries whose nationals must fulfill the visa requirement when entering the territories of the EU and a uniform format for visas, would continue to have QMV as the decision making rule in the Council, beginning with the Amsterdam Treaty's entry into force. Those areas were the only areas where new legislation was going to be adopted directly with the decision-making mechanism explained in

[177] O. J. of the EC, Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Declarations of which the Conference took note - Declaration by France concerning the situation of the overseas departments in the light of the Protocol integrating the Schengen acquis into the framework of the European Union, *Official Journal of the European Communities*, no. C 340, 10 November 1997.

[178] Den Boer, "Justice and Home Affairs," p.514, and Guiraudon, p.265.

Article 251. The adoption process of other visa-related measures about common procedures and conditions for issuing visas by Member States of 62 (2) (b) (ii), and about common rules on a uniform visa of 62 (2) (b) (iv) would be governed by the same procedure as in Article 251 of TEC after a five-year transitional period after the Amsterdam Treaty's entry into force.

The provision about common procedures and conditions for issuing visas is related to the conditions which have to be met by TCNs that want to enter the EU territory; and the common procedures to which all Member States have to be subject when issuing visas. Article 62 (2) (b) (iv) governs the criteria and procedure the issuing of a uniform visa which will be valid for the whole EU territory, will be based on. The incorporation of the Schengen Convention closed the gap in EU law in those two areas.[179]

Article 62 (3) deals with the free movement of TCNs during stays shorter than three months, once they have entered the EU territory legally. This Article would automatically not be governed by Article 251 after five years, but the Council has to decide on applying Article 251 in that provision. It did this with the Council Decision 2004/927/EC, which also brought a group of asylum-related provisions, illegal migration and border checks and surveillance under the Article 251 procedure.[180]

[179] Analisa Meloni, "The Development of a Common Visa Policy under the Treaty of Amsterdam," *Common Market Law Review* 42, no.5 (2005), p. 1359-1360.

[180] O. J. of the EU, Council Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty, *Official Journal of the European Union*, no. L 396, 31 December 2004.

The issuing of long term visas, which are for stays longer than three months, was covered by Article 63 (3) and it remained under the intergovernmental decision making procedure with unanimity even after the 2004 Council Decision.

Integration without Some Actors: The opt-outs of the UK, Ireland and Denmark

Besides the difficulties within the Schengen area and among the members of the Schengen group, there is a more serious difficulty concerning the general European Union after the incorporation of the Schengen acquis, which basically failed to get some members of the Union into the Schengen area and into the area of the EU without internal borders. One serious handicap of the Schengen regime is the refusal of the United Kingdom to join it, justified on the grounds of having a special island position enabling the efficient control of its external borders and its lack of the identity card implementation, making internal police controls difficult. However, as one considers its ties with the Commonwealth countries, some of which are in the negative visa list[181] according to the integrated Schengen acquis, one can understand its reluctance to join the regime. British authorities generally wanted to opt only in the security related cooperation of the general process of free movement of persons, such as the SIS or police cooperation. Such an attitude was visible for instance in the report of the House of Lords about the Community Immigration Policy and the British position within it: "We doubt whether this will be feasible in the long term. The EC Treaty, especially after Amsterdam, does not always make neat divisions between 'immigration' measures (which the United Kingdom can choose not to opt

[181] See Appendix A, List-3.

into) and 'Single Market' measures (by which the United Kingdom is bound)." [182] For all those reasons, the UK preferred to stay outside of the whole Schengen process from the beginning. Ireland, because was within the same traveling area with the UK, also preferred to stay out of the Schengen regime.

These two countries are signatories neither to the Schengen Agreement of 1985 nor to the Convention Implementing the Schengen Agreement of 1990 and therefore wanted to have a special position after the incorporation of the Schengen acquis into the Community law in the Treaty of Amsterdam. Hence, an additional "Protocol on the position of the United Kingdom and Ireland"[183] was attached to the Treaty.

According to Article 1 of that Protocol, these two countries are not automatically bound by Title IV of the Treaty, which includes all the measures about free movement, immigration, asylum and visas and any new provision, decision or measure adopted on its basis. However, they can participate in the adoption and application of a new measure proposed under Title IV, if they inform the Council within three months after the proposal or initiative has been presented to the Council according to Article 3. On the other hand, although not being parties to the Schengen Agreement and Convention, the UK and Ireland have at any time the chance to take part in some or all provisions of the acquis in general. However, this time those states will not be automatically adhered as it was the case with the new provisions made

[182] United Kingdom House of Lords. 3 April 2001. *A Community Immigration Policy-11529/00: Thirteenth Report by the Select Committee appointed to consider European Union documents and other matters relating to the European Union.* Available [online]: http://www.publications.parliament.uk/pa/ld200001/ldselect/ldeucom/64/6402.htm [07 May 2007].

[183] O. J. of the EU, Protocol on the Position of the United Kingdom and Ireland on Policies in Respect of Border Controls, Asylum and Immigration, Judicial Cooperation in Civil Matters and on Police Cooperation, *Official Journal of the European Union*, no. C 310/353, 16 December 2004.

under Title IV, but the Council Members, who are also parties to the Schengen acquis, will decide on the request with unanimity.

Denmark on the other hand, is a signatory of the Schengen Convention and thus bound by the Schengen acquis, whereas it opted out from Title IV of the Amsterdam Treaty incorporating the acquis into the Union framework. Article 1 and 2 of the "Protocol on the position of Denmark"[184], attached to the Treaty of Amsterdam, made this opt-out from Title IV possible. However, because Denmark accepted Community competence on the issues of determining the third countries whose nationals must be in possession of a visa and measures about the uniform format of visas under the ex-Article 100c of the TEC, it cannot opt out from measures which are proposed based on Title IV. Being a contracting party to the Schengen Agreement and Convention, Denmark maintained the same rights and obligations in relation to the other signatories of the Schengen agreements and with the two exceptional parts of the acquis, which have a legal basis in Title IV, mentioned above. Article 5 of the Protocol on the position of Denmark gives the option of implementing the Council decisions which build upon the Schengen acquis and are under the provisions of Title IV, if Denmark decides to do so within a period of six months after the Council's decision. "This protocol secures Denmark's national sovereignty regarding the free movement of persons, which according to chief negotiator Patijn is, a 'special' position, with a sort of 'legal opt-out' and a 'political opt-in'."[185]

[184] O. J. of the EU, Protocol on the position of Denmark, *Official Journal of the European Union*, no. C 310/356, 16 December 2004.

[185] Monica Den Boer, "Step by Step Progress: An Update on the Free Movement of Persons and Internal Security," *Maastricht Journal of European and Comparative Law* 4, no.3, 1997 p. 3. Available [online]: www.eipa.nl/cms/repository/eipascope/Scop97_2_3.pdf [21 April 2007].

Thus, the right to opt-out makes the area of freedom, security and justice perforated, because the UK and Ireland continue their border controls and only participate in policies related to security and restriction for the security of national borders, whereas although it signed the Schengen agreements, Denmark wants no more integration without control under the communitarized Title IV.

EU Legislation after Amsterdam

The supranationalization of the decision-making mechanism and the efforts of the Commission resulted in a bunch of legal activity in the realm of visa policy. It was also argued that "[a]greements in the period since the Treaty of Amsterdam came into force in 1999 have actually harmonized regional standards upwards in key areas."[186]

A Common European "Negative" List of Third Countries

As explained before, drawing up a common visa list is an outcome of the free movement within EU territory and the need to have a harmonized approach towards third countries in order to be able to trust each other's visas. To put it differently, "[g]iven that a visa used to gain entry to one state can be used to enter any member state party to the Schengen agreement; the relevant sovereignty was yielded in the decision to remove internal borders."[187]

[186] Fouse, p.230.

[187] Ibid., p.235.

In 1999, after the integration of the Schengen acquis into the EU framework, the Council adopted a common negative list,[188] which it had not agreed on since 1993, with the Council Regulation 574/1999.[189] This list was amended three times, first in March 2001 with the Council Regulation 539/2001[190], in which Colombia, Palestinian Authority and East Timor were added to the 1999 list, and secondly in December 2001, with the Regulation 2414/2001,[191] where Romania was dropped from the negative list and added to the exempt list. Lastly, after the calls from the Seville European Council of June 2002 to give top priority to reviewing the negative and positive lists, on March 2003, Ecuador was moved from the exempt list to the negative list, and Switzerland, which made an agreement for free movement with the EU, was completely removed from the common "negative" visa list with the Council Regulation 453/2003.[192]

Even though those lists were prepared with the aim of harmonization, since no state wanted to give up from its own national list, the result was the cumulative gathering of all states' negative lists. Consequently, the number of third states within

[188] See Appendix A, List-2.

[189] O. J. of the EC, Council Regulation 574/1999/EC of 12 March 1999 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States, *Official Journal of the European Communities*, no. L72, 18 March 1999.

[190] O.J. of the EC, Council Regulation 539/2001/EC of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, *Official Journal of the European Communities*, no. L 81, 21 March 2001.

[191] O.J. of the EC, Council Regulation 2414/2001/EC of 7 December 2001 amending Regulation 539/2001/EC listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement, *Official Journal of the European Communities*, no. L 327, 12 December 2001.

[192] O.J. of the EU, Council Regulation 453/2003/EC of 6 March 2003 amending Regulation 539/2001/EC listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement, *Official Journal of the European Union*, no. L 69, 13 March 2003.

the common negative list appeared to be very high.[193] In addition, the EU began to use the weapon of inclusion in/ exclusion from the black list of third countries, or of facilitating the issuing of visas for the nationals of some countries within the context of negotiating readmission agreements. A visa facilitation agreement was signed between the EU and China in 2004 and an EU-Russia Summit for a visa facilitation agreement was made in 2005.[194] After a long process of negotiation, a similar visa facilitation agreement with Ukraine is expected to be completed in June 2007 and to enter into force in 2008.[195]

Uniform Format for Visas

A uniform format for European visas is an issue that has been dealt with since the initial phases of cooperation in terms of visa policy. Especially after September 11, both the security and symbolic value of such an application is said to have increased.[196] As a result, the Council Regulation 334/2002[197] amended the Regulation 1683/95[198] laying down the rules for a uniform format for visas. According to this Regulation, the future visas have to include photographs and a

[193] Meloni, p. 1365.

[194] Meloni, p.1364, 1367.

[195] Embassy of Ukraine in the Kingdom of Sweden. 12 March 2007. *Press Bulletin*, Issue 3. Available [online]: http://ukrainaemb.se/eng/infjour/PB/3/ [7 June 2007].

[196] Ibid., p. 1372.

[197] O. J. of the EU, Council Regulation 334/2002 of 18 February 2002 amending Regulation (EC) No 1683/95 laying down a uniform format for visas, *Official Journal of the European Union*, no. L 053, 23 February 2002.

[198] O.J. of the EC, Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas, *Official Journal of the European Communities*, no. L 164, 14 July 1995.

common sticker to prevent forgery. With the same objective, it was decided that the residence permits given to TCNs legally resident in Member States will be standardized as well.[199]

In 2003, another amendment to the Regulation 1683/95 was demanded by the Commission[200] to integrate biometric data such as fingerprints to the uniform European visas in addition to a digital photograph. However, because of the technical difficulty in the application of the system of inclusion of biometric data, there has not been any final agreement and adopted legislation as a result of this proposal.

In addition to the uniform format for visas, the Commission proposed the establishment of a "Visa Identification System (VIS)."[201] According to this system, which aimed to fight against illegal immigration and to systematically gather information on visa applicants (whether they are granted, or refused visas, or their application is still under consideration) their full data, composed of their photograph, biometric data and the image of their travel documents will be gathered centrally and can be exchanged between the Member States. Although the EP adopted a resolution rejecting the establishment of the VIS based on the argument that the system and its detailed budget use and share has to be explained and specified in the Commission

[199] O.J. of the EC, Council Regulation 1030/2002/EC of 13 June 2002 laying down a uniform format for residence permits of third-country nationals, *Official Journal of the European Communities*, no. L157, 15 June 2002.

[200] European Commission, *Proposal for a Council Regulation amending Regulation 1683/95/EC laying down a uniform format for visas*, (COM) 2003/558 Final, Brussels, 24 September 2003.

[201] European Commission, *Proposal for a Regulation of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas*, COM (2004) 835 final, Brussels, 28 December 2004.

proposal,[202] the Council adopted it with its June 2004 Decision.[203] In line with the partial harmonization of visa types and the third countries, the Council adopted "Common Consular Instructions"[204] for the authorities issuing visas for TCNs with the aim of taking a step further for uniform rules and procedures for issuing visas.

Local Traffic Regulation

Both the TCNs who live in border areas and have to cross the borders frequently due to economic or social reasons and the Member States at the external borders of the EU which applied visa requirements towards those people had difficulty because of this application. Some EU countries, such as the Central and Eastern European new Member States have to demand visas from the nationals of their neighbors after they became EU members. Since such an application made local movement between the neighboring third countries and the Member States at the external borders difficult, the Commission proposed a Regulation for a specific permit (local border traffic permit) for those TCNs who are nationals of the neighboring third countries.[205] The

[202] European Parliament, Report on the Commission proposal for a Council decision establishing the Visa Information System (VIS), Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, A5-0262/2004 Final, 7 April 2004.

[203] O.J. of the EU, Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS), *Official Journal of the European Union*, no. L213, 15 June 2004.

[204] O. J. of the EU, Common consular instructions on visas for the diplomatic missions and consular posts, *Official Journal of the European Union*, no. C 326, 22 December 2005.

[205] European Commission, *Proposal for a Regulation of the European Parliament and of the Council laying down rules on local border traffic at the external land borders of the Member States and amending the Schengen Convention and the Common Consular Instructions*, COM (2005) 56, final, Brussels, 23 February 2005.

Council Regulation[206] authorized the Member States to conclude bilateral agreements with neighboring third countries for granting local traffic permits for their nationals residing in the border area. The Member States would continue checks on people with local border traffic permits.

To sum up, compared to the other areas of immigration and asylum this study looked at, cooperation and communitarization took place mostly in issues related to a common visa policy.

> Within the areas of the regulation of people's flow, cooperation over visa policies and illegal immigration policies is most advanced in terms of the agenda for cooperation, the agreements reached, and the effectiveness of the adopted agreements in responding to negative externalities and regulatory challenges. Visa policy cooperation provides a yardstick for comparing observed cooperation across people flow issues.[207]

The removal of internal borders marked a radical change in the development of a common visa policy because security has become a public good and the common management-protection of the collectively shared territory has become a must collective action in order to get this public good. Since removing internal border checks meant that each member has to trust each other's external border controls and procedures on the crossing of those borders by non-EU nationals, only harmonized action in those realms could build this trust. Becoming more interdependent in terms of border control and the movement of TCNs as a result of abolishing internal border checks urged the Member States to take concerted action in visa policy and external border controls, which could be achieved by standardizing and harmonizing those areas.

[206] O.J. of the EU, Council Regulation EC 1931/2006 of 20 December 2006 laying down rules on local border traffic at the external land borders of the Member States and amending the provisions of the Schengen Convention, *Official Journal of the European Union,* no. L 405, 30 December 2006.

[207] Fouse, p.246.

In addition to harmonizing procedures for visas and external border controls in order to achieve a certain minimum standard so that each Member State can trust each other's controls, the need for monitoring and policing the implementation of the Member States is another reason behind Member States' willingness to communitarize the issue. Since there was no overarching enforcement mechanism over members, Member States had to give the Commission monitoring powers in order to guarantee the compliance by all. The creation of a body like the SIS through which each Member State can check on the others, also aimed to serve the same objective of policing so that collective action could be reached and the public good could be provided. In short, in order to guarantee the provision of the public good, there has to be an enforcement mechanism because all states are inclined to pursue their own policies and free ride on others in the absence of such an enforcement mechanism.

CHAPTER IV

INTEGRATION OF LEGAL IMMIGRANTS AND THE STATUS OF LEGALLY RESIDING THIRD COUNTRY NATIONALS

Almost all Member States have received immigration since the early 1960s, and have had immigrant groups of considerable size who have settled permanently and have been facing some difficulties in incorporation in the social and economic lives of the host societies.

Table 2. Immigrants' Share in EU-15 Populations as Percentage, 2000.

	Population (in thousands)	Immigrants (in thousands)	Immigrants as % of total population
Austria	8,08	756	9,4
Belgium	10,249	879	8,6
Denmark	5,32	374	5,7
Finland	5,171	134	2,6
France	59,328	6,277	10,6
Germany	82,017	7,349	9
Greece	10,61	534	5
Ireland	3,803	310	8,1
Italy	57,53	1,634	2,8
Luxembourg	437	162	37,2
The Netherlands	15,864	1,576	9,9
Portugal	10,016	233	2,3
Spain	39,91	1,259	3,2
Sweden	8,842	993	11,2
United Kingdom	59,415	4,029	6,8

Source: United Nations Population Division, Department of Economic and Social Affairs. International Migration 2002. http://www.un.org/esa/population/publications/ittmig2002/Migration2002.pdf

All the immigrant-receiving states in the EU have been developing various integration policies, especially since they recognized the permanent character of immigrants within their borders. Some member states can be regarded as more successful than others, because their integration policies gave better results in terms of the incorporation of immigrants into the labor market, education system and

political realm, in short, to the host society in general. However, regardless of the type of policy implemented, almost all member states have been facing difficulties in integrating their immigrants. These difficulties have become a shared concern for the EU as a whole, since the Member States began to encounter serious problems in their economies (increasing unemployment or high amounts of social spending), in their social lives (polarizing societies, negative attitude on immigrants, marginalizing segments of societies), and in their domestic politics (the rise of the extreme right, increasingly restrictive policies in the admission of immigrants and asylum seekers) to varying degrees.

Therefore, the visibility of the failure to integrate existing immigrants can be considered as the first reason behind initiatives to develop at least a common EU approach for immigrant integration. In addition to their acceptance of the fact that those migrant populations are not composed of temporary workers or refugees that will eventually return to their countries of origin, Member States that have been countries of immigration also understood the fact that one segment of their societies has become marginalized due to conditions such as unemployment, increasing dependence on welfare benefits, poor performance in education, poor housing conditions, less contacts with the remaining society or social exclusion to name a few.

As a result of their disadvantaged position, a considerable amount of European citizens have begun to perceive them as beneficiaries of the welfare systems or simply as "different" people, who cannot keep up with European lifestyles. Recent studies show that 60 percent of Europeans think that the limits of multicultural society have been reached; and 39 percent of them oppose the granting

of civil rights to immigrants.[208] Increasing discrimination on ethnic or religious grounds, xenophobia and racism, which have generally been expressed as support for extreme right groups or political parties[209] all over Europe, led to the reconsideration by the EU of the severity of the issue of immigrant integration. Those parties use anti-immigrant discourses as a means for propaganda, in the words of Mentjox, "Immigration is the root of current problems according to the subtle and sometimes overtly xenophobic and racist discourse of the extreme right. In this application, non-European or white immigrants cannot and will not be integrated, let alone assimilated, into European civilization."[210] Furthermore, the tendency to lump all groups of TCNs including asylum seekers, refugees and illegal immigrants into one big "immigrant" category results in the creation of a very negative image of all TCNs as the beneficiaries of welfare systems, who do not contribute positively in return.

Integration of already residing immigrants and restricting new flows of immigration have also been generally linked with each other, by policy makers. It has been generally thought that if new tides of immigrants enter the Member States, the integration of already residing immigrants will be affected negatively because of

[208] Coenders, Marcel, Marcel Lubbers and Peer Scheepers, 2003, *Report for the European Monitoring Centre on Racism and Xenophobia: Majorities' attitudes towards minorities in European Union Member States: Results from the Standard Eurobarometers 1997-2000-2003.* Available [online]: http://eumc.europa.eu/eumc/material/pub/eurobarometer/EB2005/Report-2.pdf#search=%22.%20Report%202%20for%20the%20European%20Monitoring%20Centre%20on%20Racism%20and%20Xenophobia%3A%20Majorities%E2%80%99%20attitudes%20towards%20minorities%20%22 [17 February 2006], p. 9.

[209] Parties such as National Front in France, The Freedom Party in Austria and The People's Party in Denmark can be regarded as the most popularly supported, far-right, anti-immigrant parties.

[210] Mentjox, Lauren. 2003. *The Reorganisation of Europe: Transformations in political, cultural and social systems: European Integration and the Revival of the Right Wing*,. Available [online]: http://www.zens.uni-goettingen.de/euroculture/englisch/ip/Groningen/mentjox_paper.pdf [4 February 2006), p. 13.

the shortage of employment opportunities and public resources to support all of them.[211]

So, in the existence of such a reality, what has the EC/EU done to deal with this fact? When did this issue begin to attract the attention of the Community and how much attention did it get in reality from the Member States? Again, one has to look at the evolution of immigrant integration policy and the rights of TCNs that are recognized by the EU in three periods: the period until Maastricht, the period between Maastricht and Amsterdam and the post-Amsterdam era.

Until Maastricht: No Policies, No Rights

Although the Member States of the EC had considerable amounts of legally residing TCNs, already in the 1970s when difficulties about those groups' socio-economic status began to increase, no interest was showed towards those people at the EC level. It was seen as an internal issue, having nothing to do with the EC. There was an inequality between the nationals of Member States and the legally residing TCNs, especially in the realm of free movement to other Member States. Member State nationals were given equal treatment in terms of their economic rights, free movement rights and the right of family reunification in 1968 but there was no effort to bring the rights of TCNs who have become permanent settlers to a closer level.[212]

The 1991 Commission Communication on Immigration mentions a 1974 "Action Programme", which aimed to deal with "equal treatment in living and working conditions between legal migrants, whatever their origin, and citizens of the

[211] Papademetriou, p. 19.

[212] Ibid., p. 16

host country."[213] This document was the first mention of the integrating legal migrants' which was turned into a Council Resolution in 1976 "advocating a Community approach to the nationals of third countries, particularly through consultation among member states on migration policies."[214] Although the Resolution did not have any binding force, the Commission's effort to push for the involvement of the Community in this issue was important. In addition, dominantly with the aim of preparing the migrant workers' children for an expected return to their countries of origin, the Council adopted a Directive in 1977 which encourages the Member State to take necessary actions regarding teaching migrant workers' children their mother tongues as well as the language and culture of the host state.[215]

Since governments saw the rights they give to their citizens, or legal residents, as their own business and since there is no interdependence about this issue between the Member States unlike the common control of borders or sharing the costs of granting international protection to a certain amount of TCNs, the Member States remained silent in the common handling of the issue.

The main development following those attempts in 1970s was a decade later, in 1985, again initiated by the Commission. The Commission Communication on Guidelines for a Community Policy on Migration was attempting to initiate a brand new process that can keep pace with the developments in economy and in the character of migration. It was said that structural changes have taken place in the

[213] European Commission, *Communication from the Commission to the Council and the European Parliament on Immigration*, SEC [91]1855 final, Brussels, October 23, 1991, p. 18.

[214] Callovi, p.356.

[215] O. J. of the EC. Council Directive 77/486/EEC of 25 July 1977 on the education of the children of migrant workers, *Official Journal of the European Communities*, no. L 199, 6 August 1977.

decade between the 1970s and 1980s and the skills needed for new jobs have increased with the parallel increase in the levels of unemployment. In addition, the magnitude of immigration has grown as well both from outside the Community and from new members such as Spain and Greece. So, in order to meet these new challenges, action at the Community level is necessary and such an action should aim to deal with "the problems of the migrant as a worker and as a citizen."[216]

The Commission reported that all difficulties in terms of low labor market integration, low socio-economic attainments, educational problems, linguistic weaknesses, and low level of contacts with the broader society are present in all Member States and hence, the issue needs Community-level attention. Especially the extension of free movement rights, which were given to Community nationals in 1968, to legally resident TCNs and initiatives for the granting of equal treatment and an equal life standard, were seen as necessary.[217] It can be argued that the Communication was quite comprehensive and can be considered as constituting the basis of future attempts of integration policies in terms of the multitude of the areas it covered such as employment, social security, education, vocational training, political and civic rights and freedom of movement.

Following that Communication, the Commission took a Decision which aimed to establish a procedure which obliges the Member States to consult the Commission before each action they want to take regarding migration policies about non-member countries.[218]

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[216] Euroepan Commission, *Communication transmitted to the Council on March 1985, Guidelines for a Community policy on migration*, COM (85) 48 final, Brussels, 20 February 1985, p.4.

[217] Ibid., p. 7.

[218] Commission Decision of 8 July 1985 setting up a prior communication and consultation procedure on migration procedure in relation to non-member countries, cited in Geddes, p. 75.

However, Member States found such an intervention by the Commission unacceptable and Germany, France, the Netherlands, Denmark and the UK brought the Decision to the ECJ "arguing that migration policy towards non-member states exceeded the scope of the Commission's power envisaged by Article 118."[219] The ECJ partly rejected the Commission's Decision and partly rejected the Member States' complaint in 1987.[220] It was argued that "the Commission's attempts to gain implied competency over immigration and asylum ultimately failed when the European Court of Justice ruled against it in 1987.[221]

Meanwhile, the SEA was signed in 1985 and the free movement of all people within the single market has become one of the priority areas. Although the intergovernmental Palma Document about the free movement of persons mentioned, in 1989, that the need to grant the right to TCNs resident in a Member state to move without a visa to another Member State was part of essential legislation to achieve the complete freedom of movement, nothing tangible was done about the extension of this right. The External Frontiers Convention of 1991 addressed this right of visa-free movement of TCNs from other Member States for visits shorter than three months, but they were also not given any rights for taking employment in another Member State. However, since this Convention could not be signed for a long time due to the Gibraltar crisis between the UK and Spain, no legislative act followed the 1985 Communication and the issue continued to be ignored by the Member States.

[219] Papademetriou, p. 21.

[220] Jan Niessen, "European Community Legislation and Intergovernmental Cooperation on Migration," *International Migration Review* 26, no.2 (1992), p. 681.

[221] Mehmet Ugur, "Freedom of Movement vs. Exclusion: A Reinterpretation of the 'Insider'-'Outsider' Divide in the European Union," *International Migration Review* 29, no.4 (1995), p. 984.

However, the Commission did not give up and came up with a new Communication in 1991 on immigration.[222] Along with the necessary measures to control new migration flows and manage them, the need to have a joint approach towards the issue of integration of already residing legal immigrants was emphasized by the Commission. In addition to the indispensable right of family reunification, in which there is great diversity among Member States, new social and economic rights have to be given to immigrants, who have become obviously permanent settlers as can be seen from the emergence of the second generations. Instead of encouraging return migration, Member States have to develop policies to assist the lives of those permanent settlers through measures in terms of education, employment, accommodation or social rights. The Commission stated that both intergovernmental and Community's efforts have not been satisfactory in this realm and laid the foundations of the "sharing the best practices" approach by saying that "it would be appropriate to draw up a code of good conduct" based on common principles, taking account of the various aspects of integrating migrants (training, housing, employment, etc.), with a view to countering the various discriminatory practices which act as an obstacle to integration."[223]

As a result, it can be argued that during this period until Maastricht, although the Commission challenged the Council by trying to keep the issue on agenda and as one of the priorities of a joint immigration policy instead of constant refusals by the Council, the Member States were not interested in cooperation in immigrant integration issue as they were in asylum and border controls. Especially with the

[222] European Commission, *Communication from the Commission to the Council and the European Parliament on Immigration*, SEC [91]1855 final, Brussels, 23 October 1991.

[223] Ibid., p. 26.

growing concern about asylum in an internally borderless Europe with crisis-torn neighbors in the 1990s, the Member States made the issue of integration take a back seat. In addition to Member States' being less interdependent on such an issue than managing the flow of people entering a collectively shared territory, it is a fact that Member States could more easily cooperate and agree on restrictive policies than liberalizing ones. Since integration of immigrants and bringing them on an equal footing with Member States' nationals in terms of rights required more concessions in domestic politics in the eyes of constituents even intergovernmental cooperation in this realm seems limited.

Maastricht: Did it Change Anything?

With the bringing of JHA and thus immigration and asylum matters under the Third Pillar with the Maastricht Treaty, the earlier references and efforts to equalize resident TCNs' rights in terms of free movement and to enhance their social, cultural and labor market integration were shelved. Instead, what is meant by immigration and asylum began to be composed only of admission criteria, border controls, visa regimes, and ill-founded asylum claims. The structure of the K.4 Committee and its subgroups can be shown as evidence to ignoring integration and equality of TCNs completely. The Steering Group-I of Immigration and Asylum under the K.4 Committee was divided into five sections of 'asylum', 'migration (admission/expulsion)', 'visa', 'external borders', and 'false documents', there was complete ignorance of the issue of legal migrants and their statuses by the EC.

The first action in this realm was again a Commission Communication in 1994 on immigration and asylum policies.[224] The Communication dealt with controlling migration flows, fighting against illegal migration, addressing the root causes of migration in countries of origin, refugees and also a significant part of it mentioned integration of legal immigrants and the improvement of the situation of TCNs residing legally in Member States. In terms of integration,

> The Communication stresses that action in this area remains an essential element of the wider need to promote solidarity and Integration in the Union. What this requires will be to ensure that integration policies are directed in a meaningful way towards improving the situation of third country nationals legally resident within the Community by taking steps which will go further towards assimilating their rights with those of citizens of the Member States. Strengthening integration policies will also involve action to create the right economic and socio-cultural conditions for successful Integration by way, for example, of actions in the field of employment and education. Equally it requires promoting information and dialogue and combating racial discrimination and all forms of racism and xenophobia.[225]

The linkage between successful integration and controlling, restricting new migration flows was also made in this Communication. The right of family reunification was seen as a part of the integration process by the Commission, and the need to standardize aspects of it such as waiting periods, maximum age of children to have the right to reunify or rules about family formation was emphasized.

The origins of the approach seeing integration as a two-way process between the host society and the immigrant can be found in this document. Integration was defined as: "offering migrants and their descendants the opportunity to live 'normally' in the host country. (…) From the immigrants themselves it requires the willingness to adapt to the lifestyle of the host society without losing their cultural

[224] European Commission, *Communication to the Council and the European Parliament on Immigration and Asylum Policies*, COM [94] 23 final, Brussels, 23 February 1994.

[225] Ibid., Foreword, p.2.

identity and acceptance of the fact that equality of rights entails equality of obligations."[226]

In fact, the 1994 Communication was repeating lots of points of the aforementioned 1991 Communication such as the granting of a secure permanent resident status by all Member States, and the freedom of movement to and employment of legal migrants in other Member States, because no solid progress took place in those areas since 1991. In addition, the need for measures to improve the situation of legal immigrants in the realms of employment, education, housing, health and the need for vocational training for different age groups was voiced. Lastly, the Commission called for the Council to take action in terms of fighting racism and xenophobia when Europe was hit by racist events in several EU countries.

As the Commission did not present this Communication at all, the Member States adopted a Resolution in the June JHA Council in 1994 in line with their own agenda of restriction, which limits the accessibility of job vacancies to TCNs if there are other candidates for the same job who are EU nationals.[227]

In terms of combating racism and xenophobia, a Union-level Consultative Commission was established with the initiation of France and Germany at the June 1994 Corfu Summit. This Commission recommended to the COREPER that Community competence should be given in this realm in its 1995 report. However, a Consultative Commission proposal for a Joint Action on Racism and Xenophobia

[226] European Commission, *Communication to the Council and the European Parliament on Immigration and Asylum Policies*, COM [94] 23 final, Brussels, 23 February 1994, p. 32.

[227] Papademetriou, p. 87.

was rejected by the Council because of British objections based on the limits of Community competence in this realm.[228]

In the way to the Amsterdam Treaty, none of the Presidency Conclusions mentioned specifically the integration of immigrants and the improvement of the rights and situation of resident TCNs. The only reference to immigration was to more cooperation in asylum, immigration and visa policies between the Member States. Furthermore, those issues were put side by side with fight against drugs, international crime and terrorism both in the June 1996 Presidency Conclusions of the Florence European Council and the December 1996 Dublin European Council. Restriction of new immigrant flows, management of asylum wives and criminalization of the broader issue of immigration was the accepted jargon and there was no mentioning of the rights of legal migrants and policies for their integration. Therefore, no interest was shown by the Member States to this issue also in the 1996 IGC, which was formulating the new structure of the EU. Although all the Member States have said a few words about further cooperation, or communitarization of the immigration and asylum issues in general and most of them mentioned specific policies about asylum and visas, no specific reference was made in terms of the integration of legal immigrants except the EP, whose Committee on Civil Liberties and Internal Affairs "considers it necessary to lay down rules governing relations with third countries, define the rights and obligations of citizens of third countries resident in the Union and encourage their integration."[229]

[228] Papademetriou, p. 89-90.

[229] Opinion of the Committee on Civil Liberties and Internal Affairs (04/05/95) cited in European Parliament, *Intergovernmental Conference Briefing, No. 39: Asylum and Immigration Policy*, 22 August 1996, Available [online]: http://www.europarl.europa.eu/igc1996/fiches/fiche39_en.htm [27 April 2007].

As a result, integration of legal migrants and improving the situation and rights of TCNs were remained as forgotten issues, which could not find places at the top of JHA agenda, where asylum and border controls dominate. Despite constant efforts by the Commission to keep the issue on the top of the agenda, the Council has continued to ignore the issue. Both in the following Essen European Council and the French Presidency and Cannes European Council, the issues of freedom of movement of a legally residing TCN to another Member State and the right to take employment showed up as items on the agenda but again nothing tangible followed the Summits.

Immigrant integration issues were not considered as areas that need urgent action by Member States, because those legal residents were bracketed within the national boundaries of each member and the removal of internal borders as did not have the same effect on them as it did on TCNs crossing external borders, or on asylum seekers, because legal migrants' movement could be limited by each government through unilateral action. The collectively shared area of the EU was not shared with those legally resident TCNs, which resulted in the lack of pressure to act collectively, at the Union level, because collective action was not more profitable than unilateral action in this realm.

According to Papademetriou, immigration and asylum matters were perceived and handled in two separate tracks, control and restriction on admissions of immigrants and asylum seekers on the one hand, and the freedom of movement of all persons including the resident TCNs.

> The first track's issues are unquestionably matters of identifiable common interest. On these issues there has been considerable forward motion, with member states seemingly vetting ideas at the European level to refine their control policies at home. (…) efforts to promote integration of third country nationals (TCNs) have stumbled repeatedly. The European Commission's consistently enlightened, if decreasingly expansive, recommendations have

> found little resonance among member-state policy makers, who have continued to drag their feet, both within the narrower context of free movement and the much broader context of equal social economic rights for TCNs.[230]

The Treaty of Amsterdam: Change in Practice?

Although the issue of immigrant integration and the improvement of legal migrants' situation and rights were given less attention than asylum, border control or visa-related issues, the Commission's new powers of initiation helped the issue to become a more important topic in the agenda. The increasing visibility of failed integration policies, the threat posed by far right, anti-immigrant groups and their supporters of liberal, tolerant and egalitarian values in the EU based on universal human rights, and the economic goals of the EU, which require low unemployment rates and an active, young population in the context of the ageing demographic structures of member states also helped to the reconsideration of the common handling of the issue at the EU level.

As it was explained above, the Treat of Amsterdam brought some visa-related measures under the decision-making procedure of Article 251 and some others in asylum were brought under this procedure after 2004. However, the provisions related to legal migration and resident TCNs have been governed by unanimity from the beginning and none of them were subjected to the five-year deadline as were the asylum provisions. Article 63 3 (a) and 63 (4) were about the entry and residence of TCNs to Member States including family reunification, and about the rights and conditions under which legal residents may reside in another Member State. Those provisions remained to be governed by the intergovernmental decision-making

[230] Papademetriou, pp. 106-107.

procedure even after 2004, when all asylum related provisions, illegal immigration and border controls were brought under the Community decision-making method.

After the ratification and implementation of the Amsterdam Treaty in 1999, the Commission gained the right to be involved in the policy areas of immigration and asylum with the establishment of the DG for Justice and Home Affairs as a separate entity. The Commission has been very active in and enthusiastic for creating a common framework, establishing links among member states for sharing good practices, relationships with NGOs or local governments and prepared proposals for new legislation in terms of immigration. Its power to initiate legislation increased its role in terms of agenda setting drastically. However, in terms of immigrant integration, the Amsterdam Treaty did not grant any specific competence to the Commission. Therefore, the Commission presented no legal instruments on integration as such. In spite of the legal constraints put in front of the Commission and the supranational bodies in general, it has been the most active institution in the field of immigrant integration through its Communications, reports, informal relationships with NGOs, and its activities in terms of funding, monitoring and agenda setting.

The Tampere Milestones

The first and crucial step that started serious discussions about the integration of TCNs, in the EU was taken in the Tampere European Council in 1999. Although it was dealing more with security, asylum and migration policies, the decisions under the heading of ‘fair treatment of third country nationals’ were encouraging the

development of common principles of the integration and improvement of the legal status of TCNs. It was stated within the 'Tampere Milestones' that:

The legal status of third country nationals should be approximated to that of Member States' nationals. A person, who has resided legally in a Member State for a period of time to be determined and who holds a long-term residence permit, should be granted in that Member State a set of uniform rights which are as near as possible to those enjoyed by EU citizens (...).[231]

The need for a more vigorous integration policy was also mentioned in the conclusions. This impetus by the Council gave the Commission a chance to work on the creation of a common framework on immigrant integration and it used this chance by presenting proposals for Directives to the Council, which are legally within the field of admission of TCNs or asylum issues but also have important consequences for integration.

Equal Treatment Directives

Based legally on Article 13 of the TEC[232] on anti-discrimination, the Commission presented two proposals for a Council Directive on equal treatment dealing with combating discrimination in 1999.[233] The proposal on employment and occupation

[231] Tampere European Council, 15-16 October 1999, Presidency Conclusions.

[232] Article 13 of the TEC says that "without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation."

[233] European Commission, Proposal for a Council directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, COM (1999) 566 final, Brussels, 25 November 1999, *Official Journal of the European Union*, no. C116 E. and European Commission, "Proposal for a Council Directive establishing a general framework for equal treatment in

was aimed to reduce discrimination on issues such as "access to employment and occupation, promotion, vocational training, employment and working conditions and membership of certain bodies."[234] Although also covering anti-discrimination measures on the basis of ethnic or racial origin, these proposals, and the resulting Directives[235] aimed to fight discrimination in general, in other words, discrimination on the bases of sex, religion, disability, age or sexual orientation in addition to ethnic and racial origin. Thus, these Directives can be considered as a re-acknowledgement of anti-discrimination in general and in the labor market. Accordingly, their adoption has not been difficult compared to other measures the Commission proposed to the Council for turning them into adopted legislation such as the family reunification Directive.

Family Reunification Directive

Since the rights to marry or to live together with one's family are indispensable parts of the integration process, the Commission took the issue of family reunification seriously. Beginning with its first proposal after the Treaty of Amsterdam in 1999, continuing with the amended one in 2000, and the last one in 2002, the Commission presented three proposals for a Council Directive on the right to family

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employment and occupation," COM (1999) 565 final, Brussels, 25 November 1999 *Official Journal of the European Union*, C 177 E.

[234] Ibid., p.2.

[235] O. J. of the EU, Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, *Official Journal of the European Union,* no. L 180, 19 July 2000 and O. J. of the EU, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, *Official Journal of the European Union,* no. L 303, 2 December 2000.

reunification.[236] In the final proposal, after long negotiations with the Member States, the Commission had to make amendments that allow more flexibility for member states, which was explained as "leaving some room for maneuver in national legislation" and opened the way for different applications. Amendments in issues such as the maximum age of children that benefit from reunification, the duration of stay by family members to be long-term residents and the duration for the reunification process to be completed were made and room for unilateral national legislation was left. According to the final Directive, TCNs, holding a residence permit of at least two years with reasonable prospects of obtaining permanent residence can have the right to family reunification, although other details can vary according to national laws. For instance, under the Article 4-1 of the Family Reunification Directive[237], the Member States reserved the right to check whether or not a newcomer above the age of 12 meets conditions for integration predetermined according to national law before accepting this newcomer. Article 4-4 of the Directive gives the right to "limit reunification of minor children of a further spouse and sponsor" to member states. In addition, Article 4-6 states that it is the right of a member state to subject children older than the age of 15 and applied for reunification, to entry conditions other than family reunification for entry and residence. Lastly, Article 8 of the Directive gives the right to provide for a waiting

[236] European Commission, *Communication from the Commission, to the Council and the European Parliament: Proposal for the Council Directive on the Right to Family Reunification*, COM (1999) 638 final, Brussels, 1 December 1999; *Communication from the Commission, to the Council and the European Parliament: Amended Proposal for the Council Directive on the Right to Family Reunification*, COM (2000) 624 final, Brussels, 10 October 2000; *Communication from the Commission, to the Council and the European Parliament: Amended EU Commission Proposal for a Council Directive on the Right to Family Reunification*, COM (2002) 225 final, Brussels, 2 May 2002.

[237] O.J. of the EU, Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, *Official Journal of the European Union*, no. L 251, 3 October 2003.

period of no more than three years between the application date and issuance of a residence permit according to national family reunification laws.

All of this process can be shown as an example of the lack of real competence of the Commission in those issues, where the Member States do not see Community action as necessary and do not need the Commission to overcome the inability to take collective action which can prevent the underprovision of the needed public good because immigrant rights and integration are considered as issues that can be dealt through unilateral action.

In addition to the Council's objections to the original proposals of the Commission, there has been a conflict between the EP and the Council on the Directive on family reunification as well. The final Directive on the right of family reunification was reached in spite of the fact that the Parliament had not yet issued its Opinion in 2003. The European Parliament subsequently lodged a complaint with the European Court of Justice, calling for the annulment of several provisions in the text in 2004.[238] According to Niessen, "[t]he European Parliament showed its teeth when it challenged the text of the final and adopted version of the Directive on family reunion and took the Council of Ministers to the European Court of Justice. It felt that fundamental rights of citizens and immigrants were on the line."[239]

One point of objection to the Directive by the Parliament was about how it was totally ignored in the decision making process, because the Directive concerning family reunification was adopted with absolutely no regard for the role of the

[238] Niessen, Jan. May 2004. *Five Years of EU Migration and Asylum Policy-Making Under Amsterdam and Tampere Mandates*. Paper prepared for the German Council of Experts for Immigration and Integration (Immigration Council), Migration Policy Group. Available [online]: http://www.migpolgroup.com/multiattachments/2485/DocumentName/fiveyears.pdf [18 March 2006].

[239] Ibid., p. 46.

European Parliament, despite the statement of Amsterdam Treaty that the Council has to consult the Parliament before legislation. Even without its non-binding character, consultation of the EP is important in terms of democratic control over opaque Council decisions.[240]

In addition, the Parliament objected to the narrow and vague definition of "family and family members", who can enjoy the right to reunification by the Council. The EP objected to Article 4-1, Article 4-6 and Article 8 of Family Reunification Directive because it found them in conflict with the Article 8 of the right to family life (4-1) of the European Convention on Human Rights and Fundamental Freedoms[241] and with the non-discrimination principles (4-6). Furthermore, the EP called for the annulment of the Directive, because of the incompatibility of the two-three years waiting period provision of Article 8 with Article 8 of ECHR.[242]

However, the ECJ did not annul the Directive and found the EP's complaints unfounded in its above mentioned judgment. It ruled that those three articles are not in conflict with the ECHR's provisions on the right to family life and non-discrimination on grounds of age. The Court ruled against the EP on human rights-

[240] Apap, Joanna and Sergio Carrera. 17 November 2004. *Family Reunification: A case for annulment before the ECJ?* Available [online]: http://www.euractiv.com/en/justice/family-reunification-ndash-case-annulment-ecj/article-110014 [27 March 2006], p. 1.

[241] Article 8 of the European Convention on Human Rights and Fundamental Freedoms dictates that "Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

[242] Judgment of the Court (Grand Chamber). 27 June 2006. *Immigration policy – Right to family reunification of minor children of third country nationals – Directive 2003/86/EC – Protection of fundamental rights – Right to respect for family life – Obligation to have regard to the interests of minor children*. Case C-540/03. Available [online]: http://www.statewatch.org/news/2006/jul/ecj-family-reunification-judgment.pdf, [18 March 2006].

related complaints but the problem with the malfunctioning of the decision making procedure was not addressed by the ECJ. It was argued that "although technically a defeat for the EP in some respects the judgment constitutes a victory due to the important principles established (many of them relevant to other EC immigration and asylum legislation)".[243]

Status of TCNs who are Long Term Residents

The second Commission proposal after Tampere mandate was about the status of TCNs who are long-term residents in 2001,[244] which was adopted in 2003 by the Council after long discussions by the Member States. The tradition in most of the Member States that the length of stay of a person influence the degree of rights entitled to this person is the basis of this Directive.[245] According to the Directive, a TCN, who has been legally residing in a Member State for at least five years (the same duration for EU citizens to get permanent residence rights), can acquire long-term resident status, which means equal treatment with nationals of the EU with respect to employment, social security, tax benefits, access to public goods including housing, freedom of association and education. However, this equal treatment may be limited by the Member States for certain reasons. For instance, Article 11 (3) (a) dictates that "Member States may retain restrictions to access to employment or self-

[243] Statewatch News Online, 6 July 2006, *European Court of Justice judgment, 28 June 2006: Right to family reunification of minor children of third country nationals*. Available [online]: http://www.williambowles.info/spysrus/statewatch_060706.html, [18 March 2006].

[244] European Commission, *Communication from the Commission to the Council and the European Parliament: Proposal for the Council Directive concerning the status of third-country nationals who are long-term residents*, COM (2001) 127 final, Brussels, 13 March 2001.

[245] Helene Urth, "Building a Momentum for the Integration of Third-country Nationals in the European Union," *European Journal of Migration and Law* 7, (2005), p. 166.

employed activities in cases where, in accordance with existing national or Community legislation, these activities are reserved to nationals, EU or EEA citizens."[246]

In addition, the dragged out issue of freedom of movement and residence of legal migrants in another Member State was mentioned in the proposal and it was said that "the Commission considers that full integration also entails the right to long-term residents to reside in other Member States and that the time has come to implement Article 63(4) of the EC Treaty."[247] Article 14 of the Directive grants the right to move and reside in another Member State for a period longer than three months, depending on the conditions that the person who has granted the long-term resident status is there for employment, or self-employment, or for pursuing studies or vocational training or for other purposes.[248]

Although this may seem to be a success for the supranational camp in granting equal rights, the insistence of member states on excluding refugees, and persons with temporary protection and subsidiary protection, from this opportunity led to the persistence of a degree of discrimination contrary to the Commission's initial proposal. In addition to the general Directive on the rights of TCNS, a

[246] O.J. of the EU, "Council Directive 2003/109/EC of November 25 2003 concerning the status of third country nationals who are long-term residents," *Official Journal of the European Union*, no. L16, 1 January 2004, p. 49.

[247] European Commission, *Communication from the Commission to the Council and the European Parliament: Proposal for the Council Directive concerning the status of third-country nationals who are long-term residents*, COM (2001) 127 final, Brussels, 13 March 2001, p. 8.

[248] O.J. of the EU, Council Directive 2003/109/EC of November 25 2003 concerning the status of third country nationals who are long-term residents, *Official Journal of the European Union*, no. L16, 1 January 2004, p. 50.

Regulation on a uniform format for residence permits for third country nationals was also adopted in 2002.[249]

Furthermore, it was also claimed that "Article 11 of the Directive is more than any other provision of the Directive at the core of the Tampere objectives but it unfortunately accords long term residents an absolute right of equal treatment with nationals in very few areas of life."[250] There are limitations in efforts for equalizing immigrants' rights especially in employment and social benefit spheres. It was also claimed that the wording of the Directive was open to opt-outs by Member States; and the measures did not put pressure on the Member States in terms of making radical changes: "The guidelines included in the directive concerning the status of third country nationals who are long term residents do not require any new legislative changes in member state laws, although they do make it more difficult for member states in the future to roll back social, civil, and economic rights for third-country nationals."[251]

In short, it can be argued that legal, and binding, measures taken at EU level have been inadequate in the realm of integration of legal migrants and their rights and all more pro-migrant proposals of the Commission could not resist pressures by the Member States and had to be amended to increase nation states' competences.

[249] O.J. of the EC, Council Regulation 1030/2002/EC of 13 June 2002 laying down a uniform format for residence permits for third-country nationals, *Official Journal of the European Communities*, no. L157, 15 June 2002.

[250] Louise Halleskov, "The Long-Term Residents Directive: A Fulfillment of Tampere Objective of Near Equality?," *European Journal of Migration and Law* 7, (2005), p. 200.

[251] Fouse, p. 131.

Attempts of the Commission Continue

Other than proposals for legislation, the Commission initiated series of other processes, which can be considered as important steps in the way to have a common approach to integration policy. After the emphasis on integration in Tampere, the Commission sought ways to be more involved in this sphere and also to keep the issue on the EU agenda. In November 2000, the Commission presented its Communication on a Community Immigration Policy, in which the employment and labor market side of immigrant integration was emphasized and ways to translate guidelines into concrete action were proposed within the context of reaching Lisbon objectives about economic growth and competitiveness.[252]

In 2001, the Commission proposed an "Open Method of Cooperation for the Community Immigration Policy", which suggested that member states collaborate on six basic issues including integration as was also accepted in Tampere. It proposed basic frameworks for an open, transparent coordination method through guidelines, national action plans, information exchange and reports that can help member states to develop their own policies in a coordinated way.[253] However, this proposal was rejected by the Council mainly to prevent a supranational surge into those 'sensitive' areas of policy. Although the Open Method of Cooperation is used in employment

[252] European Commission, *Communication from the Commission, to the Council and the European Parliament: On a Community Immigration Policy*, COM (2000) 757 final, Brussels, 22 November 2000.

[253] European Commission, *Communication from the Commission, to the Council and the European Parliament: An Open Method of Coordination for the Community Immigration Policy*, COM (2001) 387 final, Brussels, 11 July 2001.

and social inclusion fields and gives good results in terms of Lisbon objectives, sovereignty concerns showed themselves when integration policies are at stake.[254]

On the other hand, when the Commission is supported by the intergovernmental camp in terms of speeding up the efforts in the sphere of integration, more elaborate and fruitful results were achieved. For instance, with the active role of Danish Presidency in 2002 and Greek Presidency in 2003, not only the admission processes or economic effects of immigration, but also the problem of general integration of residing immigrants began to be addressed through conferences discussing issues such as labor market integration of immigrants (Copenhagen Conference in July 2002) and the role of civil society (ECOSOC and Commission's September 2002 Conference). As a result, the most important document about a common approach to integration of immigrants at the EU level, the Communication of Commission for Immigration, Integration and Employment was adopted in 2003.[255] This document is crucial in terms of its detailed explanations about the nature of the concept of integration and its broad extent. It reviewed current practices and experiences in the EU, emphasized the vitality of integration for Lisbon objectives, and suggested policy orientations and priorities to promote integration.

First of all, the Communication stated openly the fact that all member states suffer from similar difficulties in integrating their immigrants. It attracted attention to issues such as low language competence, unemployment and poor educational and

[254] For a detailed discussion on the Open Method of Co-ordination see Philippe Pochet's "The Open Method of Coordination and the Construction of Social Europe. A Historical Perspective" in Zeitlin, J. and P. Pochet eds., *The Open Method of Co-ordination in Action. The European Employment and Social Inclusion Strategies*, (PIE- Peter Lang, Brussels, 2005), Available [online]: http://www.ose.be/files/pie/PIEZeitlinCh1P.pdf [6 June 2007].

[255] European Commission, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on Immigration, Integration and Employment*, COM (2003) 336 final, Brussels, 3 June 2003.

formal skills, and to the resulting need to act collectively at EU level in this issue. This document also laid down the approach of the EU (at least on paper) towards the concept of integration and its proper handling. Integration was defined as "a two-way process based on mutual rights and corresponding obligations of legally resident third country nationals and the host society which provides for full participation of the immigrant" in this document.[256] However, this "two-way" approach to integration was also criticized because of its negligence of the possible contributions of a third actor, namely, the countries of origin in the integration process.[257]

The importance of the duration of stay and the need to employ integration measures to all kinds of TCNs as early as possible were emphasized in the section about the 'incremental approach' to integration process. Another important point laying down the position of the Commission here is the inclusion of refugees and persons with temporary protection among the TCN category, who should benefit from integration measures as legal residents of member states.

In addition, the Commission emphasized the need to a 'holistic approach' to integration, which requires attention not only to social and economic areas of integration, but also to areas about cultural and religious diversity, citizenship, participation and political rights.[258] Within that context, important areas of life, crucial for successful integration, were laid down such as: integration into the labor market, education and language skills, housing and urban issues, health and social

[256] European Commission, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on Immigration, Integration and Employment*, COM (2003) 336 final, Brussels, 3 June 2003, p.17.

[257] Refik Erzan and Kemal Kirisci, "Conclusion," *Turkish Studies* 7, no.1 (2006), p.170.

[258] European Commission, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on Immigration, Integration and Employment*, COM (2003) 336 final, Brussels, 3 June 2003, p. 18.

services, the social and cultural environment and nationality, civic citizenship and respect for diversity.

In order to monitor member states' applications, to share good practices, to exchange information and data and hence to coordinate integration policies, National Contact Points (NCPs) were established with the contribution of all member states following the Thessaloniki Council right after the Communication on Immigration, Integration and Employment. Representatives and experts both from governmental and non-governmental organizations working in these NCPs gather in seminars in order to share information, policies or projects about immigrant integration, which were coded in the 'Handbook on Integration' as a guide for policy makers and a database for the member states.

The first Handbook on Integration was published in November 2004. NCPs also cooperate with the Commission in monitoring national practices and implementation processes. The importance given by the Commission to NGOs (especially of immigrant groups at local levels) was reflected to the establishment of NCPs, which are designed to benefit from NGOs' specific knowledge and contacts with immigrants. NGOs are used as a bridge between the immigrants and the governments, which constitute the 'two sides' of integration.

Another important point in the 2003 Communication was the decision to publish "Annual Reports on Migration and Integration" in order to monitor national implementations about immigrants and to highlight good practices for developing a more coordinated EU policy by the Commission.[259] Although it is a good idea to

[259] Commission announced its intent to publish Annual Reports in its 2003 Communication on Immıigration, Integration and Employment and the Council invited the Commission to present its first Annual Report on Integration in the Thessaloniki European Council in 2003.

monitor national practices, some doubts about the sincerity of member states in reporting their immigrants' integration were voiced.[260]

As a result of the initiatives taken by the Dutch Presidency in 2004, The Hague Programme, whose aim was to set priorities in the area of freedom, security and justice, including integration of immigrants in the EU was adopted. Under the sixth priority, the Programme emphasized the importance of maximizing the positive impact of migration to society and economy. The Establishment of a European Fund for the Integration of third-country nationals in 2007, a proposal on long term resident status for refugees in 2005, and the establishment of a Coherent European Framework for Integration in 2005 and the development of a website were stated as integration related priorities for the Union.[261]

In addition, it is obvious that people, who prepared the Hague Programme (dominantly Dutch) assumed that The Treaty for the Constitution of Europe will not have any difficulties during the ratification process, since most of the proposed policies or set priorities were said to be improved with the Constitution's entry into force. For instance, under the title of "implementation, evaluation and flexibility", it was said that: "The Commission will present a Communication in early 2006 outlining the main objectives of the future mechanism and it intends to present proposals just after the entry into force of the Constitution".[262] In addition, the expected changes in the decision making procedures in immigration and asylum issues to qualified majority voting and co-decision, were seen as taken for granted

[260] Urth, p.174.

[261] European Commission, *Communication from the Commission to the Council and the European Parliament: The Hague Programme: Ten Priorities for the Next Five Years-A Partnership for European Renewal*, COM (2005) 184 final, Brussels, 10 May 2005.

[262] Ibid., p. 11.

because of the confidence in the ratification of the Constitution. It can be said that in particular, the Dutch policy makers, who were the main actors behind the Hague Programme could not foresee the future rejection of the EU Constitution by their public and expected improvements to take place with the application of the Constitution.

After the call in the European Council of 4-5 November 2004 in the Hague for further cooperation and agreement on some basic common principles on immigrant integration, the JHA Council of 19 November 2004 adopted eleven Common Basic Principles (CBPs). Following this adoption, the Commission presented a Communication on a common agenda for integration in order to operationalize CBPs.[263] Integration was defined again as a two-way approach requiring the participation and efforts of all related parties in civil society and state. In addition, the holistic approach to the issue of integration was repeated with the emphasis given on a broad range of areas of life such as employment, education, language attainment, knowledge about the history and values of the host society, equal access to public goods, urban and social environment, cultural and religious diversity and citizenship and political participation.[264] Besides, the interconnectedness of integration and other policy areas which was stated in the tenth CBP and the resulting need of coordination between different policy areas and policy makers in different areas was emphasized in the Commission proposal. Lastly, the

[263] European Commission, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social committee and the Committee of the Regions - A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union*, COM (2005) 389 final, Brussels, 1 September 2005.

[264] European Policy Centre, 15 April 2005, *Beyond the Common Basic Principles on integration: The next steps*, Issue Paper presented to the EPC/KBF Dialogue on 6 April 2005, Available [online]: http://www.epc.eu/TEWN/pdf/668099262_EPC%20Issue%20Paper%2027%20Basic%20Principles%20on%20Integration.pdf [22 April 2007], p. 7.

Commission suggested that in order policies to achieve the intended objectives, there has to be an efficient evaluation and monitoring mechanism.[265]

Apart from those, a funding mechanism called the INTI Programme for supporting pilot projects aiming at the integration of immigrants was established in 2003. It was stated that "its aim is also to promote dialogue with civil society, develop integration models, seek out and evaluate best practices in the integration field and set up networks at European level."[266] This initial effort to support integration-related projects was enhanced with the agreement of the EP and Council on the Commission proposal for the establishment of the European Fund for the Integration of third-country nationals for the period 2007 – 2013 in 2006.[267] 825 million Euro, was allocated for this period and 768 million will be distributed on the basis of the number of legally staying third country nationals in each state. With this attribute, the fund resembles the ERF, which also distributes some of the total budget based on the number of refugees in each Member State. Therefore, the European Fund for Integration can be shown as a unique example to approaching the issue of integration as a common problem with a sense of sharing the costs of this common problem.

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[265] European Commission, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social committee and the Committee of the Regions - A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union*, COM (2005) 389 final, Brussels, 1 September 2005, point 3.1.

[266] European Commission Directorate General for Justice, Freedom and Security official webpage, INTI - Integration of third country nationals, http://ec.europa.eu/justice_home/funding/2004_2007/inti/wai/funding_inti_en.htm [23 May 2007].

[267] European Commission, *Proposal for a Council Decision establishing the European Fund for the Integration of Third-country nationals for the period 2007-2013 as part of the General programme 'Solidarity and Management of Migration Flows*, COM (2005) 123 final, Brussels, 6 April 2005.

The last development in the area of immigrant integration was the second edition of the Handbook on Integration which came out in May 2007, deals with more specific aspects of integration such as employment and housing instead of laying down a general approach towards integration and the integration policy the EU should have. In addition, the emphasis on "mainstreaming" immigrant integration, which means this specific policy area's becoming "an integral part of policy making and implementation" in a wide range of policy fields was repeated here again just like the need for an efficient evaluation process, lest efforts in that area be wasted.[268]

As it can be seen clearly from the evaluation above, despite the constraints and limitations put by the decision making structure and the huge inequality between the relative competences of the Commission and the Council, the Commission has been trying to play a very active role since the Tampere Conclusions of 1999. By keeping the issue of integration always as a hot topic on agenda, by preparing reports and communications, by collaborating with local-municipal authorities and also immigrant NGOs and lobbying groups, and in general by drawing the main lines of a common framework for integration, the Commission has been the most active and enthusiastic actor in carrying the issue of immigrant integration to the EU level.

However, the efforts of the Commission are not enough if they are not supported and deemed necessary by the Member States because such a lack results in the absence of adopted binding legislation. Without adopted and binding legislation, one cannot talk about harmonization or communitarization, when Member States are inclined to non-compliance even in the existence of binding measures.

[268] European Commission Directorate General, Justice, Freedom and Security, *Handbook on Integration for Policy-Makers and Practitioners*, Second Edition, May 2007, Available [online]: http://www.migpolgroup.com/multiattachments/3694/DocumentName/Handbook2_en.pdf [12 May 2007].

One important reason behind this reluctance in handling this issue at the Union level, on the side of the Member States, is that they do not see this area as urgent as restrictive measures on asylum or border controls. All those TCNs are under the control of national policies, and unilateral policies on legal immigrants do not have explicit externalities for all Member States, because they are not as interconnected as they are in external border controls and asylum issues, as a result of the removal of internal borders. Therefore, Member States do not feel as eager to act collectively in this area, as they do in asylum and visa policies, because they think they are no worse off when they act unilaterally in this area.

The resistance by Member States to granting legal resident TCNs freedom of movement, and residence, in other Member States can be seen within the very same perspective because once they allow those people to move freely in the collectively shared EU territory, the issue will become less unilaterally controllable and the need to act at the EU level will increase to compensate for the negative externalities the free movement of those people will have on each Member State. Thus, it can be argued that in order to avoid the potential increase in the level of interdependence and the decrease in unilateral control in terms of legal migrants, the Member States preferred to act more conservatively in the issue of the free movement of TCNs who are legal residents in EU Member States.

Although the Commission put constant pressure on the Member States for achieving the equalization of TCNs' rights regarding free movement and residence in various Communications and proposals, the Member States tend to ignore the issue.[269] For instance, the AHIG which was established after the 1985

[269] European Commission, *Communication Transmitted to the Council on March 1985, Guidelines for a Community Policy on Migration*, COM (85) 48 final, Brussels, 20 February 1985; European Commission, *Communication from the Commission to the Council and the European Parliament on Immigration*, SEC [91]1855 final, Brussels, October 23, 1991; European Commission,

Communication of the Commission never mentioned free movement of legal migrants as one of the issues on its agenda where action is necessary. There was emphasis on asylum, common visa policies, and external borders but the issue of free movement of legal migrants was ignored.[270] Similarly, in spite of the calls for granting the right of free movement to legal migrants of the Commission in its October 1991 Communication, the Maastricht Presidency Conclusions said nothing about the issue, although the need for strengthening cooperation in external borders and asylum was emphasized.[271] The Corfu Summit of June 1994 which came after the February 1994 Commission Communication mentioned the importance of fighting against racism, xenophobia and discrimination and also the need for a common approach towards asylum, but again ignored the issue of free movement of legal migrants.[272]

As a result, it can be argued that the Commission pushed constantly for the inclusion of the issue of legal migrants' right to move and reside freely in other Member States along with other immigration and asylum related issues, but the Council resisted to notice this specific issue although it generally gave some kind of response to the other issues mentioned by the Commission. This reluctance to touch upon this issue is also linked with the desire to keep the issue of TCNs' rights as a national one which can be handled through unilateral policy. Granting the rights of freedom of movement and residence to legal migrants would mean losing complete

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Communication to the Council and the European Parliament on Immigration and Asylum Policies, COM [94] 23 final, Brussels, 23 February 1994.

[270] Papademetriou, p. 25.

[271] Maastricht European Council, 9-10 December 1991, Presidency Conclusions.

[272] Corfu European Council, 24-25 June 1994, Presidency Conclusions.

unilateral control over the issue and becoming more interdependent as they became in the realms of border controls and asylum. Therefore, it is important to follow the area and the attitude of the Member States after the 2003 Directive on the rights and status of TCNs who are long term residents which finally granted the rights of freedom of movement and residence.

Although those policies seem to be more social-economic related issues (low politics according to Hoffmann's categorization) at first sight, there is no concern of managing a public good, and there is also not much Europeanization, harmonization of laws or supranationalization. Delicate domestic balances are on stake here and Member States see those issues as their national concerns. They do not perceive a need to collective action as much as they do in controlling common borders and flows of asylum seekers.

To conclude, Member States think that they can be better off by acting unilaterally in those realms because although they share common problems, they do not feel as interdependent as they do in asylum and visa issues. Since individual policies on those people do not have too much visible negative externality on other Member States, there is no urgent need to cooperate or harmonize their national policies in that realm according to the Member States.

CHAPTER V

CONCLUSION

As international migration and asylum has become a reality for all Member States of the EC and as the creation of the single market has become the top priority of the EC, an obvious need to approach the issue of immigration and asylum collectively emerged. However, as it can be seen from the third and fourth chapters, closer cooperation and higher levels of communitarization has been observed in the policy areas of asylum and visas compared to the policy areas of the integration and rights of legal migrants.

This study aimed at answering the question of why there has been more cooperation and communitarization in some policy areas and not in others although all of them fall into the encompassing policy area of immigration and asylum, in which cooperation and communitarization is less likely due to its "high political" character. The main argument was that approaching this specific policy area from a high politics-low politics perspective does not help to understand cooperation, and integration, and the difference of cooperation and integration in different subgroups of the main policy area of immigration and asylum. Instead, one should look at the issue from the public good-collective action perspective as defined in the second chapter.

In terms of asylum, Member States have been more willing to cooperate from the beginning and especially after the removal of internal border controls with the signature of the SEA. Although not under the framework of the Community, the Dublin Convention determining the state responsible for asylum applications was signed by all the then Member States in 1990. However, intergovernmental

cooperation, where the enforcement mechanism was weak, could not meet the requirements of the day especially in a time when the amount of asylum applications was increasing dramatically. The inequitable distribution of asylum seekers, especially during the Balkan crisis at the beginning of the 1990s, was among the main reasons behind the insistent pressure of a number of countries which were negatively affected by the disproportionality, for the communitarization of asylum. Although this could not be achieved in the Treaty of Maastricht due to counter-pressures by the "free riders" of the system such as the UK, the inability to decide and to take action in the period between Maastricht and Amsterdam made the Member states to change their minds and communitarize the issue of asylum although unanimity was kept as the decision-making procedure for the transitional periods of five years. After the Treaty of Amsterdam, asylum was one of the priority issues of the EU, and a considerable number of binding legislation was made before the 2004 deadline. In addition to the comprehensive handing of the issue of asylum by the EU through Directives and Regulations covering a wide range of areas, the change in the decision-making procedure to QMV and co-decision in 2004 was another big step forward for the supranationalization of the policy area.

The importance of the common control of the external borders of the Community and the entry of TCNs from those borders has drastically increased with the removal of internal border checks. Therefore, the visa policy was one of the first policy areas, in which cooperation and harmonization was deemed necessary by the Member States. Again, the cooperation started with an initiative outside the Community framework in the Schengen "laboratory" and extended to other Member States later on. Simultaneously, the intergovernmental body of AHIG was dealing

with the preparation of the common list of third countries whose nationals require visas to enter the EC.

However, like most of the intergovernmental cooperation attempts, both the Schengen and the efforts within the Community framework failed in giving a quick response to the developments and both the decision-making and action-taking parts of the process were inefficient and too slow. Therefore, although visa policy was under the Third Pillar in the Maastricht Treaty, the use of QMV was initiated in the preparation of the common negative list and a uniform format for visas with the command of Article 100c of the TEC. Again, after the Treaty of Amsterdam, those two policy areas were the first areas under Title VI, which would be governed by the decision-making procedure of Article 251. Other visa-related areas were also going to be brought under the mandate of Article 251 automatically after the five year transitional period.

The issue of the integration of legally residing TCNs has been a shared concern for almost all Member States as well. However, the commonness of the concern has not reflected on the commonness of policies and the issue has been seen as a national concern for a long time. Although the Commission attempted to bring the issue on the agenda several times, beginning in the mid-1980s, all of its efforts in this area remained unanswered by the Member States. Even seeing the word of integration in the Council documents including the Presidency conclusions was impossible mainly before the Amsterdam Treaty.

The Commission, discouraged by the refusal of the Council, also gave up on emphasizing the issue of immigrant integration for a while and chose to behave more practical by focusing on policy areas such as asylum and border control, to which the Member States show interest. However, after the Treaty of Amsterdam, the

Commission took the advantage of being the sole initiator and has been very active in this issue since then. Nevertheless, although lots of things have been done by the Commission in the form of proposals, communications, handbooks or reports, the progress in terms of the adoption of binding legislation by the Council remained weaker compared to the areas of asylum and visa policy.

As a result, one can talk about two separate tracks of cooperation and integration with two separate paces and shapes. There are interconnected reasons behind the different evolution of the behavior of the EU in those realms.

First of all, the removal of internal borders with the creation of the single market has affected those policy areas differently. Since internal borders were removed and consequently, the Member States lost full control of their own borders and on the entry of TCNs to their own territories, approaching the issue of "common" external borders has collectively has become a necessity. Member States, which have become much more interdependent than they were before the removal of internal borders, have to rely on each other's external border controls and procedures for the entry of TCNs to the EC/EU territory, because once a TCN enters the soil of one of the Member States, he or she can have access to all other Member States.

All those meant that there has to be a certain level of standardized control at the external borders of the EU, a certain common criteria for harmonizing procedures for the entry of non-EU nationals to the internally borderless area of the EU, and compliance by all members to those common standards in order the system not to collapse. As a result, although each state's utility function may differ, security within the national borders of each Member State, support by the domestic constituencies, and economic gains by letting less people in as immigrants have become public

goods and common management-protection of the collectively shared territory has become a necessary collective action in order to get these public goods.

In order to guarantee the provision of those public goods, there has to be an enforcement mechanism because all states are inclined to pursue their own policies and free ride on others in the absence of such an enforcement mechanism. Therefore, since the intergovernmental cooperation of the late 1980s and the early 1990s without any binding character could not secure enforcement and compliance by all, the Member States could not resist the communitarization of the cooperation after mid-1990s. If they could introduce an enforcement mechanism by intergovernmental cooperation outside the framework of the Union, they would probably prefer not to bring those issues under Community competence.

However, as we have seen from the Schengen and Dublin examples, pure intergovernmental cooperation is full of problems of compliance and takes too long, which is not excusable in a context like international migration and asylum that can change in terms of magnitude and pace very easily and rapidly. As a result, the Member States tried to cooperate on a pure intergovernmental basis and saw that it is not satisfactory in terms of the provision of those public goods they have to secure, and consequently they were urged to include Community instruments within the process. However, one should also note that, within such a must transformation, the Commission has used its comparative advantage of knowledge, expertise and links with all governmental and non-governmental bodies of all Member States, and has stood out with its level of involvement among the other supranational institutions such as the Parliament and the Court of Justice.

The level of contribution and the extent to which the total costs are shared are other important concerns for the provision of the public good, in addition to simply

guaranteeing the compliance of all with shared rules and procedures. This equitable burden-sharing aspect of the issue comes into the picture especially in the effort to grant some kind of international protection to persons coming from non-EU areas and applying for it, and especially regarding asylum. When there is a certain amount of people applying for asylum, and there are a certain number of countries, which can grant asylum to those people and differ in their size, capacity and rules regulating asylum, it is inevitable that some countries would receive more asylum seekers than others. However, if this disproportionality in the sharing of the total costs reaches an unacceptable level for some countries, they would push for the establishment of schemes that can distribute people and costs more equitably.

This was the case when a number of countries such as Germany, the Netherlands, Denmark, Austria and Sweden were receiving disproportionate numbers of asylum seekers especially in the beginning of the 1990s, whereas other Member States such as France, the UK and Italy were free riding on their more liberal asylum laws. Therefore, in a similar way to Olson's concept of the "exploitation of the big by the small", but independent of size, "the exploitation of the states with more liberal asylum laws by the ones with more restrictive asylum laws" was the main reason behind the strong pressures of those exploited countries lead by Germany, for perceiving and treating asylum, as a common European issue, and transforming the competence of the Union and the decision-making mechanisms accordingly.

As was mentioned in the third chapter, there are different mechanisms for burden-sharing. Harmonizing asylum laws and standardizing a minimum level of protection, and rights, among Member States is one of them, because it helps to close the gap between the rights and opportunities offered to the asylum seekers, which in

the end is expected to affect the preferences of asylum seekers about where to make their applications. Although it is not the only factor affecting the decisions of the asylum seekers, harmonized or standard offers can prevent the concentration of applications in a few countries.

In addition to Directives and Regulations about setting minimum standards on asylum, the intergovernmental Dublin Convention of 1990 to determine the state responsible for an asylum application and the communitarized Dublin II regulation with the use of the Eurodac system, can also be thought of as parts of the burden-sharing systems, because they implicitly prevent the concentration of asylum applications in a few countries by obliging all Member States to examine applications according to certain criteria.

Apart from law harmonization, the sharing of the financial costs by the Member States through pooling some of their resources to this specific issue is another type of burden-sharing, whose example one can see in the establishment of the European Refugee Fund. Such an application aims both to assist those countries who have to bear the majority of the total costs by direct financial contribution; and to assist those countries whose asylum regimes have not been so developed and have to be brought on an equal footing with other members by allocating the money to such projects. However, one should also note that although the European Refugee Fund has been established, its limited budget allocated for the use of all Member States, makes it rather more symbolic than functional.

As a result, it can be argued that applying Olson's theory of public goods and collective action in a context-specific sense, to the evolution of border controls, visa policies and of asylum policies is a powerful tool in explaining the path of cooperation followed and the shape it took in those specific policy realms.

On the other hand, when it comes to the integration of legal immigrants and the status and rights of those people, the extent of both intergovernmental cooperation and later communitarization remained lower. The main reason behind this difference is that the Member States think that they can be better off acting unilaterally in those realms because although they share common problems, they do not feel as interdependent as they do in asylum and visa issues. Since individual policies on those people do not have much visible negative externality on other Member States, there is no urgent need to cooperate or harmonize their national policies in that realm according to Member States. The failure of integration of legal migrants and the low, or diverse, level of rights granted to those people throughout the Union has not been seen as crucial as failure in the form of loose external border controls, and the resulting flow of new immigrants, or asylum seekers to the EU territory.

The removal of internal borders did not affect this policy realm as radically as it did the realm of asylum and visas, because legally resident TCNs did not have even the right to move and reside freely in other Member States for a long time. One of the reasons that this right was resisted by the Member States, for such a long time, may be their reluctance to be interdependent with each other in this issue as well. Freedom of movement and residence for legally residing TCNs would mean the emergence of the need to harmonize procedures on the entry and residence of those people and the rights given to them, which is not an outcome desired by Member States as long as they are not obliged to do so.

In addition, there is the obvious reason that the Member states can much more easily agree on restrictive or controlling common policies, rather than liberalizing policies that can increase the level of rights granted to people. Agreeing

on minimum standards, or policies banning something, has been much easier than granting new rights and liberties to non-citizens, which was also the case with the aforementioned two separate tracks.

As a result, instead of approaching the issue of immigration and asylum as a block in which close cooperation and integration cannot be achieved due to their "high" political character, one should look at the policy realms in hand separately and in a more context-specific way. In those two groups of policy realms, the issue has not been their being in high or low political domains, but the existence or non-existence of a sense of urgency to cooperate and integrate because of the provision of the public goods Member states deem necessary. Therefore, it was argued that instead of looking at those policy realms from the intergovernmental lenses of high or low politics, a context-specific public good and collective action theory will have more explanatory power.

This thesis could look only at a certain part of the story from a certain perspective for the sake of brevity. The application of the aforementioned public good-collective action approach to other sub-areas of the encompassing issue of immigration and asylum, such as illegal immigration and border controls may have fruitful results. In addition, looking at the issue of the regular economic migration of TCNs which is the only area that has not been communitarized in terms of the decision-making procedure may answer some questions and initiate new ones.

Furthermore, an approach that would look at the evolution of the communitarization of the policy area by also taking the importance and influence of the domestic constituencies into account would be highly enlightening and would bring another perspective to the issue. Member States differ also in terms of their settled immigrant populations as they do in their sizes, capacities, immigration, and

asylum laws. The relative influence those settled immigrant groups have which is enhanced with their supporters like some political parties and NGOs would also be different for different Member States.

Contrary to potential immigrants or asylum seekers who do not have any political power or voice, those immigrant groups are constituencies which can play significant roles in domestic politics. Just like the number of this constituency differs from one state to another, its power also changes from one member to another depending on their population and specific characteristics. Therefore, a common decision regarding those people whose social, political and economic influence would vary has a cost for governments. Similarly, this cost also shows variance from one Member State to another, because the results of taking an EU-level action about this specific part of the domestic constituency would be of crucial importance for some Member States and not so much for others. Therefore, factors like the "costs" of taking collective decisions and actions in terms of the domestic constituencies' reactions also could be integrated into an analysis of the communitarization of especially integration of legal migrants. An analysis that would include host societies, immigrant groups and other actors that support these groups, in addition to the Member States and policy makers into the picture would be of crucial importance.

A qualitative study that goes beyond the legal documents of the EU and can measure the actual perceptions and changes in the perceptions of policy makers and other actors involved in the process, both at domestic and Community levels, would certainly contribute to the literature. Lastly, a more critical account of the immigration and asylum policies of the EU, which looks at the ingredients of the

common policies more closely and questions them in a critical fashion more than an explanatory one would be of great importance.

All in all, the issues of immigration and asylum have been and will be hot topics in the agenda of the EU not only in terms of justice and home affairs, but also in terms of the economic objectives of the EU, in terms of development, in terms of its respect to diversity and human rights, in terms of its attitude towards extreme right movements, and in terms of its relations with third countries.

Therefore, the steps taken by the European states taken individually, or collectively, will be important for all those topics and will affect all parties to the broad issue from legal migrants to asylum seekers. That is why studying the dynamics behind the relatively nascent immigration and asylum policy of the EU has been significant and will remain so in the future.

APPENDIX A

List-1: Negative and Positive Visa Lists of the EU and Schengen Countries in 1995

The Negative List of the EU(1995)		Schengen Negative List [Additional to the list of the EU] (1995)	EU/Schengen Positive List (1995)	Countries in neither one of the lists and which require visas from some EU countries
Afghanistan	Liberia	Antigua and Barbuda	Andorra	Argentina
Albania	Libya	Bahamas	Canada	Australia
Algeria	Madagascar	Barbados	Czech Republic	Bolivia
Angola	Maldives	Belize	Hungary	Bosnia
Armenia	Mali	Botswana	Iceland	Brazil
Azerbaijan	Mauritania	Dominica	Japan	Brunei
Bahrain	Mauritius	Grenada	Liechtenstein	Cyprus
Bangladesh	Moldavia	Kiribati	Malta	Colombia
Belarus	Mongolia	Lesotho	Monaco	Costa Rica
Benin	Morocco	Marshall Islands	New Zealand	Croatia
Bhutan	Mozambique	Micronesia	Norway	Ecuador
Bulgaria	Myanmar	Namibia	San Marino	El Salavador
Burkina Faso	Nepal	Nauru	Slovakia	Guatemala
Burundi	Niger	Northern Mariana Islands	South Korea	Honduras
Cambodia	Nigeria	St Christopher and Nevis	Switzerland	Israel
Cameroon	North Korea	St Vincent and Grenadines	USA	Jamaica
Cape Verde	Oman	Santa Lucia	Vatican	Kenya
Central African Republic	Pakistan	Samoa (Western)		Malayasia
Chad	Papua New Guinea	Seychelles		Malawi
China	Peru	Solomon Islands		Mexico
Comoros	Philippines	South Africa		Nicaragua
Congo	Qatar	Swaziland		Panama
Cote d'Ivoire	Romania	Tonga		Poland
Cuba	Russia	Trinidad and Tobago		Singapore
Djibouti	Rwanda	Palau		Slovenia
Dominican Republic	Sao Tom, and Principe	Tuvalu		Uruguay
Egypt	Saudi Arabia	Vanuatu		Venezuela
Equatorial Guinea	Senegal	Zimbabwe		
Eritrea	Sierra Leone			
Ethiopia	Somalia			
Fiji	Sri Lanka			
Gabon	Sudan			
The Gambia	Suriname			
Georgia	Syria			
Ghana	Tajikistan			
Guinea	Tanzania			
Guinea Bissau	Thailand			
Guyana	Togo			
Haiti	Tunisia			
lndia	Turkey			
Indonesia	Turkmenistan			
lran	Uganda			
Iraq	Ukraine			
Jordan	United Arab Emriates			
Kazakhstan	Uzbekistan			
Kyrgyzstan	Vietnam			
Kuwait	Yemen			
Laos	Zaire			
Lebanon	Zambia			

List 2: EU Common Black List (1999)

EU Common Negative List (1999)			
Afghanistan	Djibouti	Lebanon	Saudi Arabia
Albania	Dominican Republic	Liberia	Senegal
Algeria	Egypt	Libya	Sierra Leone
Angola	Equatorial Guinea	Madagascar	Somalia
Armenia	Eritrea	Maldives	Sri Lanka
Azerbaijan	Ethiopia	Mali	Sudan
Bahrain	Serbia and Montenegro	Mauritania	Suriname
Bangladesh	Fiji	Mauritius	Syria
Belarus	Former Yugoslav Republic of Macedonia	Moldavia	Tajikistan
Benin	Gabon	Mongolia	Tanzania
Bhutan	The Gambia	Morocco	Thailand
Bulgaria	Georgia	Mozambique	Togo
Burkina Faso	Ghana	Nepal	Tunisia
Burma/Myanmar	Guinea	Niger	Turkey
Burundi	Guinea-Bissau	Nigeria	Turkmenistan
Cambodia	Guyana	North Korea	Uganda
Cameroon	Haiti	Oman	Ukraine
Cape Verde	India	Pakistan	United Arab Emirates
Central African Republic	Indonesia	Papua New Guinea	Uzbekistan
Chad	Iran	Peru	Vietnam
China (*)	Iraq	Philippines	Yemen
Comoros	Jordan	Qatar	Zambia
Congo	Kazakhstan	Romania	
Côte d'Ivoire	Kyrgyzstan	Russia	
Cuba	Kuwait	Rwanda	
Dem. Republic of the Congo	Laos	Sao Tomé and Principe	

List 3: UK Commonwealth Countries on the EU black list

UK Commonwealth Countries on the EU negative list
Bangladesh
Cameroon
Ghana
Guyana
India
Maldives
Mauritius
Mozambique
Nigeria
Pakistan
Papua New Guinea
Sierra Leone
Sri Lanka
Tanzania
The Gambia
Uganda
Zambia

APPENDIX B

EU Legislation

Primary Legislation

Primary legislation is the main body of EU law which established basic objectives and institutions of the EU. This body of law is composed of the Treaty of Paris, the Treaty of Rome, the Merger Treaty, the Single European Act, the Treaty on European Union (the Maastricht Treaty), the Treaty reforming the European Union Treaty (the Amsterdam Treaty), the Treaty of Nice, Accession Treaties, Budgetary Treaties and other Conventions signed under the EU framework.

Secondary Legislation

Regulations

Regulations are the legislative acts of the EU which are directly binding on all Member States. Member States do not have to pass national laws in order to implement EU Regulations, because Regulations have direct effect on domestic legal systems of every Member State. In addition, domestic laws which contradict with a Regulation have to be revoked because EU law has supremacy over national law. Thus, a Regulation is the most powerful secondary legal tool of the EU.

Directives

Directives set objectives to be achieved, but leave the method for the achievement of that objective to the Member States' discretion. Since Directives do not have direct effect on the local law of Member States, there is need for domestic legislation in order the act to be implemented. In addition, Directives are not binding on all Member States but are binding on the Member States to whom they are addressed.

Decisions

Decisions are also among the binding secondary legislative tools of the EU but they are binding only on their specific addressee, be it an institution, Member State, firm or individual.

Article 249 of the TEC

In order to carry out their task and in accordance with the provisions of this Treaty, the European Parliament acting jointly with the Council, the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations or deliver opinions. A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States. A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods. A decision shall be binding in its entirety upon those to whom it is addressed. Recommendations and opinions shall have no binding force.

Pre-Amsterdam Commission Acts

European Commission. *White Paper from the Commission to the European Council (Milan, 28-29 June 1985), "Completing the Internal Market".* COM 85 (310) final, Brussels, 14 June 1985.
http://aei.pitt.edu/1113/01/internal_market_wp_COM_85_310.pdf

European Commission. *Communication Transmitted to the Council on March 1985, Guidelines for a Community Policy on Migration.* COM (85) 48 final, Brussels, 20 February 1985.
http://aei.pitt.edu/1256/01/migration_policy_COM_85_48.pdf

European Commission. *Communication from the Commission to the Council and the European Parliament on the Right of Asylum.* SEC [91] 1857 final, Brussels, 11 October 1991.
http://aei.pitt.edu/1260/01/immigration_policy_SEC_91_1855.pdf

European Commission. *Communication from the Commission to the Council and the European Parliament on Immigration,* SEC [91]1855 final, Brussels, 23 October 1991.
http://aei.pitt.edu/1260/01/immigration_policy_SEC_91_1855.pdf

European Commission. *Communication from the Commission to the Council and the European Parliament: (I)Proposal for based on Article K.3 of the Treaty on European Union establishing the Convention on the crossing of the external frontiers of the Member States, (II) Proposal for a regulation, based on Article 100c of the Treaty establishing the European Community, determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States*, COM (93) 684 final, Brussels, 10 December 1993.
http://aei.pitt.edu/1266/01/external_frontiers_COM_93_684.pdf

European Commission. *Communication to the Council and the European Parliament on Immigration and Asylum Policies*. COM [94] 23 final, Brussels, 23 February 1994.
http://aei.pitt.edu/1262/01/immigration_asylum_COM_94_23.pdf

Pre-Amsterdam Legislation

Regulations

"Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas," *Official Journal of the European Communities*, no. L 164, 14 July 1995.
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995R1683:EN:HTML

"Council Regulation (EC) No 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States," *Official Journal of the European Communities*, no. L 234, 3 October 1995.
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995R2317:EN:HTML

Resolutions

"Council Resolution of 6 April 1995 on the Schengen Agreement and political asylum, *Official Journal of the European Communities*, no C 109, 1 May 1995.
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:51995IP0648:EN:HTML

"Council Resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis," *Official Journal of the European Communities,* no. C 262, 7 October 1995.
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31995Y1007(01):EN:HTML

Post-Amsterdam Commission Acts

European Commission. "Proposal for a Council directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin," COM (1999) 566 final, Brussels, *Official Journal of the European Union*, no. C116 E, 25 November 1999.
http://eur-lex.europa.eu/LexUriServ/site/en/com/1999/com1999_0566en01.pdf

European Commission. "Proposal for a Council Directive establishing a general framework for equal treatment in employment and occupation," COM (1999) 565 final, Brussels, *Official Journal of the European Union*, C 177 E, 25 November 1999.
http://eur-lex.europa.eu/LexUriServ/site/en/com/1999/com1999_0565en01.pdf

European Commission. *Communication from the Commission, to the Council and the European Parliament: Proposal for the Council Directive on the Right to Family Reunification*, COM (1999) 638 final, Brussels, 1 December 1999.

http://eur-lex.europa.eu/LexUriServ/site/en/com/1999/com1999_0638en01.pdf

European Commission. *Communication from the Commission, to the Council and the European Parliament: Amended Proposal for the Council Directive on the*

Right to Family Reunification, COM (2000) 624 final, Brussels, 10 October 2000.
http://eur-lex.europa.eu/LexUriServ/site/en/com/2000/com2000_0624en01.pdf

European Commission. *Communication from the Commission, to the Council and the European Parliament: On a Community Immigration Policy*, COM (2000) 757 final, Brussels, 22 November 2000.
http://eur-lex.europa.eu/LexUriServ/site/en/com/2000/com2000_0757en01.pdf

European Commission. *Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status*. COM (2000) 578 final, Brussels, 27 February 2001.
http://eur-lex.europa.eu/LexUriServ/site/en/com/2000/com2000_0578en01.pdf

European Commission. *Communication from the Commission to the Council and the European Parliament: Proposal for the Council Directive concerning the status of third-country nationals who are long-term residents*. COM (2001) 127 final, Brussels, 13 March 2001.
http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0181en01.pdf

European Commission. *Proposal for a Directive on minimum standards for the reception of applicants for asylum in Member States*. COM (2001)181 final, Brussels, 3 April 2001.
http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0181en01.pdf

European Commission. *Communication from the Commission, to the Council and the European Parliament: An Open Method of Coordination for the Community Immigration Policy*. COM (2001) 387 final, Brussels, 11 July 2001.
http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0387en01.pdf

European Commission. *Proposal for a Council Directive laying down minimum standards for the qualification and status of third country nationals and stateless persons as refugees, in accordance with the 1951 Convention relating to the status of refugees and the 1967 protocol, or as persons who otherwise need international protection*. COM (2001) 510 Provisional, Brussels, 12 November 2001.
http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0510en01.pdf

European Commission. *Communication from the Commission to the Council and to the European Parliament on the common asylum policy, introducing an open coordination method*. COM (2001) 710, final, Brussels, 28 November 2001.
http://eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0710en01.pdf

European Commission. *Communication from the Commission, to the Council and the European Parliament: Amended EU Commission Proposal for a Council Directive on the Right to Family Reunification*. COM (2002) 225 final, Brussels, 2 May 2002.
http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002_0225en01.pdf

European Commission. *Amended Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status.* COM (2002) 326 final, Brussels, 26 November 2002.
http://eur-lex.europa.eu/LexUriServ/site/en/com/2002/com2002_0326en02.pdf

European Commission. *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on Immigration, Integration and Employment*. COM (2003) 336 final, Brussels, 3 June 2003.
http://eur-lex.europa.eu/LexUriServ/site/en/com/2003/com2003_0336en01.pdf

European Commission. *Proposal for a Council Regulation amending Regulation 1683/95/EC laying down a uniform format for visas.* COM (2003) 558 Final, Brussels, 24 September 2003.
http://eur-lex.europa.eu/LexUriServ/site/en/com/2004/com2004_0835en01.pdf

European Commission. *Proposal for a Regulation of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas*. COM (2004) 835 final, Brussels, 28 December 2004.
http://eur-lex.europa.eu/LexUriServ/site/en/com/2004/com2004_0835en01.pdf

European Commission. *Proposal for a Council Decision establishing the European Fund for the Integration of Third-country nationals for the period 2007-2013 as part of the General programme Solidarity and Management of Migration Flows.* COM (2005) 123 final, Brussels, 6 April 2005.
http://eur-lex.europa.eu/LexUriServ/site/en/com/2005/com2005_0123en01.pdf

European Commission. *Communication from the Commission to the Council and the European Parliament: The Hague Programme: Ten Priorities for the Next Five Years-A Partnership for European Renewal*. COM (2005) 184 final, Brussels, 10 May 2005.
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0184:FIN:EN:PDF

European Commission. *Communication from the Commission to the Council, the European Parliament, the European Economic and Social committee and the Committee of the Regions - A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union*. COM (2005) 389 final, Brussels, 1 September 2005.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_252/l_25220001006en00120018.pdf

Post-Amsterdam Legislation

Decisions

"Council Decision of 28 September 2000 Establishing a European Refugee Fund," *Official Journal of the European Communities*, no. L 252, 6 October 2000.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_252/l_25220001006en00120018.pdf

"Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS)," *Official Journal of the European Union*, no. L 213, 15 June 2004.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_213/l_21320040615en00050007.pdf

"Council Decision 2004/904/EC of 2 December 2004 establishing the European Refugee Fund for the period 2005 to 2010," *Official Journal of the European Communities*, no. L 381, 28 December 2004.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_381/l_38120041228en00520062.pdf

"Council Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty," *Official Journal of the European Union*, no. L 396, 31 December 2004.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_396/l_39620041231en00450046.pdf
.

Directives

"Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin," *Official Journal of the European Union*, no. L 180, 19 July 2000.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_180/l_18020000719en00220026.pdf

"Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation," *Official Journal of the European Union*, no. L 303, 2 December 2000.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_303/l_30320001202en00160022.pdf

"Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof," *Official Journal of the European Communities*, no. L 212, 7 August 2001.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_212/l_21220010807en00120023.pdf

"Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers," *Official Journal of the European Union*, no. L31, 6 February 2003.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_031/l_03120030206en00180025.pdf

"Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification," *Official Journal of the European Union*, no. L 251, 3 October 2003.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_251/l_25120031003en00120018.pdf

"Council Directive 2003/109/EC of November 25 2003 concerning the status of third country nationals who are long-term residents," *Official Journal of the European Union*, no. L16, 1 January 2004.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_016/l_01620040123en00440053.pdf

"Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the

content of the protection granted," *Official Journal of the European Union*, no. L304, 30 August 2004.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2004/l_304/l_30420040930en00120023.pdf

"Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status," *Official Journal of the European Union*, no. L 326, 13 December 2005.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_326/l_32620051213en00130034.pdf

Regulations

"Council Regulation 574/1999/EC of 12 March 1999 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States," *Official Journal of the European Communities*, no. L 72, 18 March 1999.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/1999/l_072/l_07219990318en00020005.pdf

"Council Regulation 2725/2000/EC concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention," *Official Journal of the European Communities*, no. L 316, 15 December 2000.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2000/l_316/l_31620001215en00010010.pdf

"Council Regulation 539/2001/EC of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement," *Official Journal of the European Communities*, no. L 81, 21 March 2001.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_081/l_08120010321en00010007.pdf

"Council Regulation 2414/2001/EC of 7 December 2001 amending Regulation 539/2001/EC listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement," *Official Journal of the European Communities*, no. L 327, 12 December 2001.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2001/l_327/l_32720011212en00010002.pdf

Council Regulation 334/2002 of 18 February 2002 amending Regulation (EC) No 1683/95 laying down a uniform format for visas, *Official Journal of the European Union*, no. L 053, 23 February 2002.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2002/l_053/l_05320020223en00070008.pdf

"Council Regulation 407/2002/EC of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention," *Official Journal of the European Communities*," no. L62, 5 March 2002.
http://eur-lex.europa.eu/LexUriServ/site/en/oj/2002/l_062/l_06220020305en00010005.pdf

"Council Regulation 1030/2002/EC of 13 June 2002 laying down a uniform format for residence permits of third-country nationals," *Official Journal of the European Communities*, no. L157, 15 June 2002. http://eur-lex.europa.eu/LexUriServ/site/en/oj/2002/l_157/l_15720020615en00010007.pdf

"Council Regulation 343/2003/EC of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national," *Official Journal of the European Union*, no. L50, 25 February 2003. http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_050/l_05020030225en00010010.pdf

"Council Regulation 453/2003/EC of 6 March 2003 amending Regulation 539/2001/EC listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement," *Official Journal of the European Union*, no. L 69, 13 March 2003. http://eur-lex.europa.eu/LexUriServ/site/en/oj/2003/l_069/l_06920030313en00100011.pdf

BIBLIOGRAPHY

Primary Sources

Brussels European Council, 4-5 November 2004, Presidency Conclusions.

Convention Relating to the Status of Refugees, Geneva, 1951.

European Commission. *White Paper from the Commission to the European Council (Milan, 28-29 June 1985), "Completing the Internal Market".* COM 85 (310) final, Brussels, 14 June 1985.

European Commission. *Communication Transmitted to the Council on March 1985, Guidelines for a Community Policy on Migration*. COM (85) 48 final, Brussels, 20 February 1985.

European Commission. *Communication from the Commission to the Council and the European Parliament on the Right of Asylum*. SEC [91] 1857 final, Brussels, 11 October 1991.

European Commission. *Communication from the Commission to the Council and the European Parliament on Immigration,* SEC [91]1855 final, Brussels, 23 October 1991.

European Commission. *Communication from the Commission to the Council and the European Parliament: (I)Proposal for based on Article K.3 of the Treaty on European Union establishing the Convention on the crossing of the external frontiers of the Member States, (II) Proposal for a regulation, based on Article 100c of the Treaty establishing the European Community, determining the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States*, COM (93) 684 final, Brussels, 10 December 1993.

European Commission. *Communication to the Council and the European Parliament on Immigration and Asylum Policies*. COM [94] 23 final, Brussels, 23 February 1994.

European Commission. *Communication from the Commission, to the Council and the European Parliament: Proposal for the Council Directive on the Right to Family Reunification,* COM (1999) 638 final, Brussels, 1 December 1999.

European Commission. *Communication from the Commission, to the Council and the European Parliament: Amended Proposal for the Council Directive on the Right to Family Reunification*, COM (2000) 624 final, Brussels, 10 October 2000.

European Commission. *Communication from the Commission, to the Council and the European Parliament: On a Community Immigration Policy*, COM (2000) 757 final, Brussels, 22 November 2000.

European Commission. *Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status.* COM (2000) 578 final, Brussels, 27 February 2001.

European Commission. *Communication from the Commission to the Council and the European Parliament: Proposal for the Council Directive concerning the status of third-country nationals who are long-term residents*. COM (2001) 127 final, Brussels, 13 March 2001.

European Commission. *Proposal for a Directive on minimum standards for the reception of applicants for asylum in Member States*. COM (2001)181 final, Brussels, 3 April 2001.

European Commission. *Communication from the Commission, to the Council and the European Parliament: An Open Method of Coordination for the Community Immigration Policy,* COM (2001) 387 final, Brussels, 11 July 2001.

European Commission. *Proposal for a Council Directive laying down minimum standards for the qualification and status of third country nationals and stateless persons as refugees, in accordance with the 1951 Convention relating to the status of refugees and the 1967 protocol, or as persons who otherwise need international protection*. COM (2001) 510 Provisional, Brussels, 12 November 2001.

European Commission. *Communication from the Commission to the Council and to the European Parliament on the common asylum policy, introducing an open coordination method*, COM (2001) 710, final, Brussels, 28 November 2001.

European Commission. *Communication from the Commission, to the Council and the European Parliament: Amended EU Commission Proposal for a Council Directive on the Right to Family Reunification*, COM (2002) 225 final, Brussels, 2 May 2002.

European Commission. *Amended Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status*, COM (2002) 326 final, Brussels, 26 November 2002.

European Commission. *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on Immigration, Integration and Employment*, COM (2003) 336 final, Brussels, 3 June 2003.

European Commission. *Proposal for a Council Regulation amending Regulation 1683/95/EC laying down a uniform format for visas,* COM (2003) 558 Final, Brussels, 24 September 2003.

European Commission and Eurostat. *Population Statistics.* Luxembourg: Office for Official Publications of the European Communities, 2004.

European Commission. *Proposal for a Regulation of the European Parliament and of the Council concerning the Visa Information System (VIS) and the exchange of data between Member States on short stay-visas,* COM (2004) 835 final, Brussels, 28 December 2004.

European Commission. *Proposal for a Council Decision establishing the European Fund for the Integration of Third-country nationals for the period 2007-2013 as part of the General programme Solidarity and Management of Migration Flows,* COM (2005) 123 final, Brussels, 6 April 2005.

European Commission. *Communication from the Commission to the Council and the European Parliament: The Hague Programme: Ten Priorities for the Next Five Years-A Partnership for European Renewal,* COM (2005) 184 final, Brussels, 10 May 2005.

European Commission. *Communication from the Commission to the Council, the European Parliament, the European Economic and Social committee and the Committee of the Regions - A Common Agenda for Integration - Framework for the Integration of Third-Country Nationals in the European Union,* COM (2005) 389 final, Brussels, 1 September 2005.

Dublin European Council, 13 and 14 December 1996, Presidency Conclusions.

Essen European Council, 9 and 10 December 1994, Presidency Conclusions.

European Parliament (2 April 1996). *Intergovernmental Conference Briefing, No. 27: The IGC and the Schengen Convention,* Retrieved 4 May 2007, from http://www.europarl.europa.eu/igc1996/fiches/fiche27_en.htm.

European Parliament (22 August 1996). *Intergovernmental Conference Briefing, No. 39: Asylum and Immigration Policy*. Retrieved 27 April 2007, from http://www.europarl.europa.eu/igc1996/fiches/fiche39_en.htm.

European Parliament Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, *Report on the proposal for a Council directive on minimum standards on procedures in Member States for granting and withdrawing refugee status,* A5-0029/2001, 31 August 2001.

European Parliament Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, *Report on the Commission proposal for a Council decision establishing the Visa Information System (VIS), Committee on Citizens' Freedoms and Rights,* A5-0262/2004 Final, 7 April 2004.

Fontainebleau European Council, 25 and 26 June 1984, Presidency Conclusions.

Laeken European Council, 14 and 15 December 2001, Presidency Conclusions.

Maastricht European Council, 9 and 10 December 1991, Presidency Conclusions.

Madrid European Council, 26-27 June 1989, Presidency Conclusions

Protocol Relating to the Status of Refugees, New York, 1967.

Rhodes European Council, 2 And 3 December 1988, Presidency Conclusions

Rome European Council, 14 And 15 December 1990, Presidency Conclusions.

Tampere European Council, 15 and 16 October 1999, Presidency Conclusions.

Thessaloniki European Council, 19 and 20 June 2003, Presidency Conclusions.

The Single European Act.

Vienna European Council, 11 and 12 December 1998, Presidency Conclusions.

Secondary Sources

Apap, Joanna and Sergio Carrera, (17 November 2004). *Family Reunification: A case for annulment before the ECJ?* Retrieved 27 March 2006, from http://www.euractiv.com/en/justice/family-reunification-ndash-case-annulment-ecj/article-110014.

Barutciski, M. and A. Suhrke. "Lessons from the Kosovo Refugee Crisis: Innovations in Protections and Burden Sharing." *Journal of Refugee Studies*, 14 (2) (2001): 95-134.

Betts, A. "Public Goods Theory and the Provision of Refugee Protection: The Role of the Joint-Product Model in Burden-Sharing Theory." *Journal of Refugee Studies,* 16 (3) (2003): 274-296.

Blay, S. and A. Zimmermann. "Recent Changes in German Refugee Law: A Critical Assessment." *The American Journal of International Law,* 88 (2) (1994): 361-378.

Boswell, C. "Burden-Sharing in the European Union: Lessons from the German and UK Experience." *Journal of Refugee Studies,* 16 (3) (2003): 316-335.

Buchholz W. and W. Peters. (2007, 19 January). *Fair Burden-Sharing in a Public Goods Economy: An Equal- Sacrifice Interpretation of Moulin's Egalitarian Equivalent Concept*. Retrieved 24 April 2007, from http://www.awi.uni-heidelberg.de/with2/seminar/WS%200607/Buchholz_Equal%20Sacrifice%20moulin07_18_01.pdf [].

Byrne, R. "Harmonization and Burden Redistribution in the Two Europes." *Journal of Refugee Studies,* 16 (3) (2003): 336-358.

Callovi, G. "Regulation of Immigration in 1993: Pieces of the European Jig-Saw Puzzle." *International Migration Review*, 26 (2) (1992): 353-372.

Coenders, Marcel, Marcel Lubbers and Peer Scheepers (2003). *Report for the European Monitoring Centre on Racism and Xenophobia: Majorities' attitudes towards minorities in European Union Member States: Results from the Standard Eurobarometers 1997-2000-2003*. Retrieved 17 February 2006, from http://eumc.europa.eu/eumc/material/pub/eurobarometer/EB2005/Report-2.pdf#search=%22.%20Report%202%20for%20the%20European%20Monitoring%20Centre%20on%20Racism%20and%20Xenophobia%3A%20Majorities%E2%80%99%20attitudes%20towards%20minorities%20%22.

Convey, A. and M. Kupiszewski. "Keeping up with Schengen: Migration and Policy in the European Union." *International Migration Review,* 29 (4) (1995): 939-964.

Cornes, R. and T. Sandler. *The Theory of Externalities, Public Goods, and Club Goods*. Cambridge: Cambridge University Press, 1996.

De Zwaan, Jaap W. and Flora A. N. J. Goudappel, eds. *Freedom, Security and Justice in the European Union: Implementation of the Hague Programme 2004*. The Hague: Asser Press, 2006.

Del Mundo, F. "Europe: The Debate over Asylum - Viet Nam: End of an Era." *Refugees Magazine,* 113 (1999). Retrieved 24 April 2007, from http://www.unhcr.org/publ/PUBL/3b811f6e4.html.

Den Boer, M. "Justice and Home Affairs." In *Policy-making in the European Union*, ed. H. Wallace and W. Wallace. Oxford: Oxford University Press, 2000.

Den Boer, M. "Step by Step Progress: An Update on the Free Movement of Persons and Internal Security." *Maastricht Journal of European and Comparative Law* 4 (3) (1997). Retrieved 21 April 2007, from www.eipa.nl/cms/repository/eipascope/Scop97_2_3.pdf.

Diez, Thomas and Antje Wiener, eds. *European Integration Theory*. Oxford: Oxford University Press, 2004.

Erzan, R. and K. Kirisci. "Conclusion." *Turkish Studies,* 7 (1) (2006): 163-172.

European Commission Directorate General for Justice, Freedom and Security official webpage. INTI - Integration of third country nationals. Retrieved 23 May 2007, from http://ec.europa.eu/justice_home/funding/2004_2007/inti/wai/funding_inti_en.htm.

European Commission Directorate General, Justice, Freedom and Security (May 2007). *Handbook on Integration for Policy-Makers and Practitioners*, Second Edition. Retrieved 12 May 2007, from http://www.migpolgroup.com/multiattachments/3694/DocumentName/Handbook2_en.pdf.

European Policy Centre (15 April 2005). *Beyond the Common Basic Principles on integration: The next steps*, Issue Paper presented to the EPC/KBF Dialogue on 6 April 2005. Retrieved 22 April 2007, from http://www.epc.eu/TEWN/pdf/668099262_EPC%20Issue%20Paper%2027%20Basic%20Principles%20on%20Integration.pdf.

Fink, M. and F. Meijerink. "Asylum Applications and Recognition Rates in EU Member States 1982-2001: A Quantitative Analysis." *Journal of Refugee Studies,* 16 (3) (2003): 297-315.

Fouse, Matthew James. "The Politics of European Union Immigration and Asylum Policy Cooperation." Ph.d dissertation, Princeton University, 2005.

Freeman, G. P. "Migration Policy and Politics in the Receiving States." *International MigrationReview,* 26 (4) (1992): 1144-1167.

Andrew Geddes. *Immigration and European Integration: Towards Fortress Europe?* Manchester: Manchester University Press, 2000.

Stephen George and Ian Bache. *Politics in the European Union.* Oxford: Oxford University Press, 2001.

Elspeth Guild. *Immigration Law in the European Community*. The Hague: Kluwer Law International, 2001.

Guiraudon, V. "European Integration and Migration Policy: Vertical Policy-making as Venue Shopping." *Journal of Common Market Studies,* 38 (2) (2000): 251-271.

Ernst B. Haas. *Beyond the Nation-State: Functionalism and International Organization.* Stanford, Calif.: Stanford University Press, 1964.

Ernst B. Haas. *The Uniting of Europe: Political, Social, and Economic Forces. 1950 1957,* Stanford, Calif.: Stanford University Press, 1968.

Halleskov, L. "The Long-Term Residents Directive: A Fulfillment of Tampere Objective of Near Equality?" *European Journal of Migration and Law,* 7 (2005): 181-201.

Hanrieder, W. F. “Dissolving International Politics: Reflections on the Nation-State.” *The American Political Science Review,* 72, 4 (1978): 1276-87.

James. C. Hathaway. *The Law of Refugee Status.* Toronto: Butterworths, 1991.

Simon Hix. *The Political System of the European Union*. New York: St. Martin's Press, 1999.

Hoffmann, S. “Discord in Community: The North Atlantic Area as a Partial International System.” *International Organization,* 17 (3) (1963): 521-549.

Hoffmann, S. “The European Process at Atlantic Crosspurposes.” *Journal of Common Market Studies,* 3 (1964): 85-101.

Hoffmann, S. “Obstinate or Obsolete? The Fate of the Nation State and the Case of Western Europe.” *Daedalus,* 95 (1966): 862-915.

Hollifield, J. “Migration and International Relations: Cooperation and Control in the European Community.” *International Migration Review,* 26 (2) (1992): 568-595.

Joppke, C. “Why Liberal States Accept Unwanted Immigration.” *World Politics,* 50 (2) (1998): 266-293.

Judgment of the Court (Grand Chamber), (27 June 2006). *Immigration policy – Right to family reunification of minor children of third country nationals – Directive 2003/86/EC – Protection of fundamental rights – Right to respect for family life – Obligation to have regard to the interests of minor children. Case C-540/03.* Retrieved 18 March 2006, from http://www.statewatch.org/news/2006/jul/ecj-family-reunification-judgment.pdf.

Kaiser, K. “The Interaction Regional Subsystems: Some Preliminary Notes on Recurrent Patterns and the Role of Superpowers.” *World Politics,* 21, 1 (1968): 84-107.

Kaul, Inge, Grunberg, Isabelle and Marc A. Stern, eds. *Global Public Goods: Cooperation for the 21st Century*. Oxford: Oxford University Press, 1999. Retrieved 14 April 2007, from http://www.oxfordscholarship.com/oso/public/content/economicsfinance/0195130529/toc.html.

Keohane, R. O. “Ironies of Sovereignty: The European Union and the United States.” *Journal of Common Market Studies,* 40 (2) (2002): 743–65.

Robert O. Keohane and Joseph S. Nye. *Power and Independence: World Politics in Transition*. Boston: Little, Brown and Company, 1977.

Sandra Lavenex. *Safe Third Countries: Extending the EU Asylum and Immigration Policies to Central and Eastern Europe*. Budapest: CEU Press, 1999.

Lavenex, S. "The Europeanization of Refugee Policies: Normative Challenges and Institutional Legacies." *Journal of Common Market Studies,* 39 (5) (2001): 851-874.

Meloni, A. "The Development of a Common Visa Policy under the Treaty of Amsterdam." *Common Market Law Review,* 42 (5) (2005): 1357-1382.

Mentjox, L. (2003). *The Reorganisation of Europe: Transformations in political, cultural and social systems: European Integration and the Revival of the Right Wing***.** Retrieved 4 February 2006, from http://www.zens.unigoettingen.de/euroculture/englisch/ip/Groningen/mentjox_paper.pdf

Mitsilegas, V. "Is there an EU Policy on Economic Migration?" *EUSA Review,* 19 (3) (2006): 4-5.

Monar, J. "Justice and Home Affairs." *Journal of Common Market Studies,* 44 (1) (2006): 101-117.

Morse, E. L. "Crisis Diplomacy, Interdependence, and the Politics of International Economic Relations." *World Politics,* 24 (1972): 123-150.

Richard A. Musgrave. *The Theory of Public Finance: A Study in Public Economy.* New York: McGraw-Hill, 1959.

Niessen, J. "European Community Legislation and Intergovernmental Cooperation on Migration." *International Migration Review,* 26 (2) (1992): 676-684.

Niessen, Jan (May 2004). *Five Years of EU Migration and Asylum Policy-Making Under Amsterdam and Tampere Mandates*. Paper prepared for the German Council of Experts for Immigration and Integration (Immigration Council), Migration Policy Group. Retrieved 18 March 2006, from http://www.migpolgroup.com/multiattachments/2485/DocumentName/fiveyears.pdf.

Noll, G. "Risky Games? A Theoretical Approach to Burden-Sharing in the Asylum Field." *Journal of Refugee Studies,* 16 (3) (2003): 236-252.

Neill Nugent. *The Government and Politics of the European Union*. Durham: Duke University Press, 2003.

O. J. of the EC. "Commission Decision of 8 July 1985 setting up a prior communication and consultation procedure on migration policies in relation to non-member countries," *Official Journal of the European Communities,* no. L 217, 19 August 1985.

O. J. of the EC. "Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities - Dublin Convention," *Official Journal of the European Communities*, C 254, 19 August 1997.

O.J. of the EC. "Council Decision of 28 September 2000 Establishing a European Refugee Fund," *Official Journal of the European Communities*, no. L 252, 6 October 2000.

O.J. of the EC. "Council Decision of 2 December 2004 establishing the European Refugee Fund for the period 2005 to 2010," *Official Journal of the European Communities*, no. 381, 28 December 2004.

O.J. of the EC. "Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof," *Official Journal of the European Communities*, no. L 212, 7 August 2001.

O.J. of the EC. "Council Regulation (EC) No 1683/95 of 29 May 1995 laying down a uniform format for visas," *Official Journal of the European Communities*, no. L 164, 14 July 1995.

O. J. of the EC. "Council Regulation (EC) No 2317/95 of 25 September 1995 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States," *Official Journal of the European Communities*, no. L 234, 3 October 1995.

O. J. of the EC. "Council Regulation 574/1999/EC of 12 March 1999 determining the third countries whose nationals must be in possession of visas when crossing the external borders of the Member States," *Official Journal of the European Communities*, no. L72, 18 March 1999.

O.J. of the EC. "Council Regulation 2725/2000/EC concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention," *Official Journal of the European Communities*, no. L 316, 15 December 2000.

O.J. of the EC, "Council Regulation 539/2001/EC of 15 March 2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement," *Official Journal of the European Communities*, no. L 81, 21 March 2001.

O.J. of the EC. "Council Regulation 2414/2001/EC of 7 December 2001 amending Regulation 539/2001/EC listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement," *Official Journal of the European Communities*, no. L 327, 12 December 2001.

O.J. of the EC. "Council Regulation 407/2002/EC of 28 February 2002 laying down certain rules to implement Regulation (EC) No 2725/2000 concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of the Dublin Convention," *Official Journal of the European Communities*," no. L62, 5 March 2002.

O.J. of the EC. "Council Regulation 1030/2002/EC of 13 June 2002 laying down a uniform format for residence permits of third-country nationals," *Official Journal of the European Communities*, no. L157, 15 June 2002.

O. J. of the EC. "Council Resolution of 6 April 1995 on the Schengen Agreement and political asylum," *Official Journal of the European Communities*, no C 109, 1 May 1995.

O. J. of the EC. "Council Resolution of 25 September 1995 on burden-sharing with regard to the admission and residence of displaced persons on a temporary basis," *Official Journal of the European Communities*, no. C 262, 7 October 1995.

O. J. of the EC. "Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Declarations of which the Conference took note - Declaration by France concerning the situation of the overseas departments in the light of the Protocol integrating the Schengen acquis into the framework of the European Union," *Official Journal of the European Communities*, no. C 340, 10 November 1997.

O. J. of the EC. "Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts - Consolidated version of the Treaty establishing the European Community," *Official Journal of the European Communities*, no. C 340, 10 November 1997.

O. J. of the EC. "European Commission Proposal for a Council directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin," COM (1999) 566 final, Brussels, *Official Journal of the European Union*, no. C116 E, 25 November 1999.

O. J. of the EC. "European Commission Proposal for a Council Directive establishing a general framework for equal treatment in employment and occupation," COM (1999) 565 final, Brussels, *Official Journal of the European Union*, C 177 E, 25 November 1999.

O. J. of the EU. "Common consular instructions on visas for the diplomatic missions and consular posts," *Official Journal of the European Union*, no. C 326, 22 December 2005.

O.J. of the EU. "Council Decision 2004/512/EC of 8 June 2004 establishing the Visa Information System (VIS)," *Official Journal of the European Union*, no. L213, 15 June 2004.

O. J. of the EU. "Council Decision 2004/927/EC of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure laid down in Article 251 of that Treaty," *Official Journal of the European Union,* no. L 396, 31 December 2004.

O. J. of the EU. "Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin," *Official Journal of the European Union,* no. L 180, 19 July 2000.

O. J. of the EU. "Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation," *Official Journal of the European Union,* no. L 303, 2 December 2000.

O.J. of the EU. "Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification," *Official Journal of the European Union,* no. L 251, 3 October 2003.

O.J. of the EU. "Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers," *Official Journal of the European Union,* no. L31, 6 February 2003.

O. J. of the EU. "Council Directive 2003/109/EC of November 25 2003 concerning the status of third country nationals who are long-term residents," *Official Journal of the European Union,* no. L16, 1 January 2004.

O.J. of the EU. "Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted," *Official Journal of the European Union,* no. L304, 30 August 2004.

O.J. of the EU. "Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status," *Official Journal of the European Union,* no. L 326, 13 December 2005.

O. J. of the EU. "Council Regulation 334/2002 of 18 February 2002 amending Regulation (EC) No 1683/95 laying down a uniform format for visas," *Official Journal of the European Union,* no. L 053, 23 February 2002.

O.J. of the EU. "Council Regulation 343/2003/EC of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national," *Official Journal of the European Union,* no. L50, 25 February 2003.

O.J. of the EU. "Council Regulation 453/2003/EC of 6 March 2003 amending Regulation 539/2001/EC listing the third countries whose nationals must be in possession of visas when crossing the external borders of Member States and those whose nationals are exempt from that requirement," *Official Journal of the European Union*, no. L 69, 13 March 2003.

O. J. of the EU. Protocol on the position of Denmark, *Official Journal of the European Union*, no. C 310/356, 16 December 2004.

O. J. of the EU. Protocol on the Position of the United Kingdom and Ireland on Policies in Respect of Border Controls, Asylum and Immigration, Judicial Cooperation in Civil Matters and on Police Cooperation, *Official Journal of the European Union*, no. C 310/353, 16 December 2004.

Ojanen, H. "The EU and NATO: Two Competing Models for a Common Defence Policy." *Journal of Common Market Studies*, 44 (1) (2006): 57-76.

Mancur Olson. *The Logic of Collective Action: Public Goods and the Theory of Groups.* 7th ed. Cambridge, Mass.: Harvard University Press, 1977.

Olson, M. and R. Zeckhauser. "An Economic Theory of Alliances." *The Review of Economics and Statistics,* 48 (3) (1966): 266-279.

Olson, M. and R. Zeckhauser. "The Efficient Production of External Economies." *The American Economic Review,* 60 (3) (1970): 512-517.

Oneal, J. R. "Testing the Theory of Collective Action: Nato Defense Burdens, 1950-1984." *The Journal of Conflict,* 34 (3) (1990): 426-449.

Demetrios G. Papademetriou. *Coming Together or Pulling Apart? The European Union's Struggle with Immigration and Asylum.* Washington, D.C.: Carnegie Endowment for International Peace; International Migration Policy Program, 1996.

Pochet, Philippe. "The Open Method of Coordination and the Construction of Social Europe: A Historical Perspective." In *The Open Method of Co-ordination in Action. The European Employment and Social Inclusion Strategies.* Zeitlin, J. and P. Pochet eds. PIE- Peter Lang, Brussels, 2005, Retrieved 6 June 2007, from http://www.ose.be/files/pie/PIEZeitlinCh1P.pdf.

Raab, C. 02 July 2004. *Defence Cooperation in the EU: The Added Value of Public Good Theory.* Paper presented in LSE European Foreign Policy Conference. Retrieved 17 March 2007, from www.lse.ac.uk/Depts/intrel/EFPC/Papers/Raab.doc.

Riding, Alan. "Europeans Delay Plan to Abolish Passport Checks." *New York Times* (1992, November 23).

Ben Rosamond. *Theories of European Integration.* New York: St. Martin's Press, 2000.

Samuelson, P. A. "The Pure Theory of Public Expenditure." *The Review of Economics and Statistics,* 36 (4) (1954): 387-389.

Agnar Sandmo. *The Public Economics of the Environment,* Oxford: Oxford University Press, 2000.

Sandler, T. and J. F. Forbes. "Burden Sharing, Strategy, and the Design of NATO." *Economic Inquiry,* 18 (3) (1980): 425-444.

Sandler, T. and K. Hartley. "NATO Burden-Sharing: Past and Future." *Journal of Peace Research,* 36 (6) (1999): 665-680.

SCADPlus. Activities of the European Union: Summaries of Legislation. *Criteria for rejecting unfounded applications for asylum*. Retrieved 18 May 2007, from http://europa.eu/scadplus/leg/en/lvb/l33102.htm.

SCADPlus. Activities of the European Union: Summaries of Legislation. *"Eurodac" system*. Retrieved 18 May 2007, from http://europa.eu/scadplus/leg/en/lvb/l33081.htm.

Schuster, L. "A Comparative Analysis of the Asylum Policy of Seven European Governments," *Journal of Refugee Studies,* 13 (1) (2000): 118-132.

Statewatch News Online (6 July 2006). *European Court of Justice judgment, 28 June 2006: Right to family reunification of minor children of third country nationals*. Retrieved 18 March 2006 from http://www.williambowles.info/spysrus/statewatch_060706.html.

Stubb, A., H. Wallace and J. Peterson. "The policy-making process." In *The European Union - How Does It Work?*, ed. E. Bomberg and A. Stubb. Oxford: Oxford University Press, 2003.

Suhrke, A. "Burdern-Sharing During Refugee Emergencies: The Logic of Collective versus National Action." *Journal of Refugee Studies,* 11 (4) (1998): 396-415.

Thielemann, E. "Editorial Introduction." *Journal of Refugee Studies,* 16 (3) (2003): 225-235.

Thielemann, E. "Between Interests and Norms: Explaining Burden-Sharing in the European Union." *Journal of Refugee Studies,* 16 (3) (2003): 253-273.

Thielemann, E. "Symbolic Politics or Effective Burden-Sharing? Redistribution, Side-payments and the European Refugee Fund." *Journal of Common Market Studies,* 43 (4) (2005): 807-824.

Ugur, M. “Freedom of Movement vs. Exclusion: A Reinterpretation of the ‘Insider’-‘Outsider’ Divide in the European Union.” *International Migration Review,* 29 (4) (1995): 964-999.

UNHCR (1995). The *State of the World Refugees: In Search of Solutions.* Retrieved 26 April 2007, from http://www.unhcr.org/publ/3ef99a814.html.

UNHCR (2006). *Measuring Protection by Numbers.* Retrieved 26 April 2007, from http://www.unhcr.org/publ/PUBL/4579701b2.pdf.

UNHCR (April, 2006). The *State of the World Refugees: Human Displacement in the New Millennium.* Retrieved 26 April 2007, from http://www.unhcr.org/static/publ/sowr2006/toceng.htm.

UNHCR (2007). *Partnership in Resettlement,* Retrieved 26 April 2007, from http://www.unhcr.org/protect/3bb2d29b7.html.

UNHCR (2002). *Statistical Yearbook 2001: Refugees, Asylum Seekers and Other Peoples of Concern-Trends in Displacement, Protection and Solutions*. Retrieved 16 May 2007, from http://www.unhcr.org/static/home/statistical_yearbook/2001/toc.htm.

United Kingdom House of Lords (3 April 2001). *A Community Immigration Policy-11529/00: Thirteenth Report by the Select Committee appointed to consider European Union documents and other matters relating to the European Union*. Retrieved 7 May 2007, from http://www.publications.parliament.uk/pa/ld200001/ldselect/ldeucom/64/6402.htm.

Urth, H. “Building a Momentum for the Integration of Third-Country Nationals in the European Union,” *European Journal of Migration and Law,* 7 (2005): 163-180.

Van Krieken, Peter J., ed. *The Asylum Acquis Handbook: The Foundation for a Common. European Asylum Policy*. The Hague: Asser Press, 2000.

Wallace, Helen, Wallace, William and Carole Webb, eds. *Policy Making in the European Union.* Chichester: Wiley, 1983.

Wallace, Helen and William Wallace, eds. *Policy-making in the European Union.* Oxford: Oxford University Press, 2000.