Managing Asylum:
A Critical Examination of Emerging Trends
in European Refugee and Migration Policy

by

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A thesis submitted to McGill University in partial fulfillment of the requirements
of the degree of Master of Arts

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August, 2004

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TABLE OF CONTENTS

ACKNOWLEDGEMENTS

ABSTRACT

This thesis takes a critical approach to examine recent developments in European asylum and migration policy. Specifically, this research is interested in addressing the emerging paradigm of "migration management" and its impact on the nature of refugee protection and asylum in an integrated Europe. Two approaches are used in this analysis. First, from a functionalist perspective, this work considers how migration management has responded to contemporary realities of international migration. Secondly, from a critical theory perspective, the thesis analyzes how refugee protection becomes subsumed within the broader goals of migration management. This thesis will argue that the paradigm of migration management has effectively shifted the contours of the asylum debate by linking refugee and asylum policy with broader issues of labor migration, illegality and foreign relations. This has resulted in the separation of asylum from territoriality and more broadly, the submersion of the humanitarian considerations to the overarching goals of migration management.

RESUMÉ

L'objet de cette thèse est d'analyser les politiques actuelles de droit d'asile et de politiques de migration dans l'Union Européenne. Plus particulièrement, cette thèse propose d'évaluer la définition du concept de "migration management" et sa pertinence à traiter le droit d'asile et son impact sur la protection et l'asile des réfugiés dans une Europe intégrée. Deux approches sont utilisées dans cette analyse. Premièrement, a travers une perspective fonctionnaliste, ce travail se penche sur les réponses que la théorie du « migration management » apporte aux réalités contemporaines de la migration internationale. Deuxièmement, par une approche utilisant les notions de la théorie critique, cette thèse analyse comment l'importance de la protection des réfugiés a été diminuée face aux buts plus larges du « migration management ». Cette thèse soutiendra la notion que le paradigme du « migration management » a en effet modifie les contours du débat sur les droits d'asile en le liant avec les thèmes plus élargis de la migration pour fins de travail, de l' illégalité, et des relations étrangères. Ceci a eu comme résultat de séparer le droit d'asile de la notion de territorialité, et, de manière plus générale, a eu comme conséquence l'engloutissement des considérations humanitaires dans les buts plus larges du concept de « migration management ».

1. INTRODUCTION

States have long since struggled to find ways to facilitate migration in line with national objectives while at the same time controlling forced or irregular population movements. This challenge has intensified in the current context of increasing global movement and large-scale refugee flows, prompting the emergence of a new discourse among states and other actors, of "migration management". Illustrating not only the desire to find a balance between liberal and restrictive tendencies, this discourse also reflects states' interests in achieving more organized and predictable inflows of both forced and voluntary migrants.

While a handful of states have recognized the need for a new approach to migration policy, the European Union (EU) is currently the most developed regional body to devise a migration management strategy. At the Tampere Summit in 1999, the European Council agreed on a comprehensive strategy to deal with asylum and migration issues that would "maximize opportunities and benefits to individual migrants and to host societies and minimize trafficking and irregular movement" (Council of Europe, 1999, 17). Through the creation of a common asylum system, enhanced cooperation with source and transit countries as well as more standardized immigration and integration policies, this new discourse posits that orderly and controllable inflows can be achieved.

Despite the reassuring, technocratic appeal of migration management, it is clear that the handling of complex and often unpredictable refugee and asylum flows is considerably more problematic than this concept suggests. This thesis

will argue that the paradigm of migration management has effectively shifted the contours of the asylum debate by linking refugee and asylum policy with broader issues of labor migration, illegality and foreign relations. This has resulted in the separation of asylum from territoriality and more broadly, the submersion of the humanitarian considerations to the overarching goals of migration management.

The analysis will provide a critical examination of this paradigm, both conceptually and in its application in EU migration and refugee policy. It will assess the impact of the EU's migration management strategy, while taking into consideration harmonization efforts, tensions between sovereign and community goals and emerging policy directions, on the nature of refugee protection and the institution of asylum in Europe and beyond.

Rationale

There has been growing academic attention focused on the development of European migration and asylum policy over the past two decades. As a result, an extensive body of research exists analyzing the process of Europeanization and factors responsible for the move towards EU integration of migration policy (Collinson, 1993; Hailbronner, 1999; Joly 1997; Lavenex, 1998) has been produced. The inherent tension between state interests and refugee protection has also been a consistent theme within the literature of migration and refugee studies, as authors grapple with this issue from normative, ethnical and policy perspectives (Hathaway, 1992; De Jong 1998; Weiner, 1995; Chimni, 1999). Similarly, a number of important collections pertaining to changing international

and domestic asylum regimes are relevant to this analysis[1] (Lambert 1995; Guild 1996; Joly 1996; Schuster 2000; Castles, 2004).

Yet, despite the expansion of analyses relating to European asylum and migration regimes, the emerging strategy of migration management in its relation to changing parameters of the asylum regime has not yet been the focus of systematic inquiry. There has also been little work done to critically assess the changing language of policy discourse and its implications for the nature of refugee protection and the institution of asylum. The thesis aims to fill this research gap.

Research Questions

The principal research questions guiding this work can be stated as follows: How effective is the migration management paradigm in dealing with refugees and asylum seekers? What are the implications of this approach for asylum in an integrated Europe?

Two approaches will be employed to examine these questions. First, from a functionalist perspective, we will discuss how migration management has responded to many of the contemporary realities of international migration. Secondly, borrowing from Critical Theory, we will examine how refugee protection has become subsumed within the broader goals of migration management through the ideological deployment of language. From this standpoint, it will be argued that the discourse of migration management produces

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[1] According to Krasner (1982), regimes can be defined as "sets of implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations" (168).

a social reality in which policy choices are legitimized and relations and identities are created.

Definition of Terms

In order to answer the aforementioned questions, it is essential to first define what is meant by migration management. While the use of this term by various actors is continually increasing and, as a result, has created a whole subset of associated terminology, such as "strategies of migration management"; "management styles"; "managed migration systems", the term itself remains inadequately defined. Part of the problem in conceptualizing migration management clearly stems from the synonymous nature of "management" with words such as "deal with"; "handle" or "address".

Putting these common usage problems aside, it is nevertheless possible to identify the emergence of migration management as a distinguishable concept with competing claims about its meaning. The term is broadly used to signify new approaches or methods of addressing various types of international migration trends and challenges. It is not restricted to one type of migrant group, but instead has come to represent the larger, general issues of international migration.

One of the earliest (and perhaps most-publicized) uses of the term can be found in the 1995 United Nations High Commissioner for Refugees (UNHCR) publication, *State of the World's Refugees*, which dedicates a subsection to the issue of migration management. The authors state: "one of the most interesting concepts to emerge from the effort to adopt more constructive approaches to the

asylum issue is that of 'migration management', a notion which has quickly found its way into the vocabulary of analysts and practitioners in this field" (206).

Yet, despite a decade of usage, the term remains theoretically underdeveloped. One of the principle objectives of this thesis is to contribute to the analytical understanding of migration management, particularly in its relevance for asylum. By examining the range of existing conceptualizations, a working definition of the concept will be formulated. This will also underscore the divergent and sometimes contradictory usages of the language of migration management.

A useful point of departure is the definition of migration management used by the International Organization for Migration's (IOM), 2003 Global Migration Report:

> Migration management relates to the shaping of clear and comprehensive policies, laws and administrative arrangements to ensure that population movements occur to *the mutual benefit of migrants, society and government*. Mutual benefits can be achieved through policies, laws and administrations that *balance the rights and obligations of migrants with social interests and government responsibilities*...this has national, regional and global ramifications, and thus requires *close cooperation* among all players. Since migration is also inextricably linked to other major policy issues such as *trade, development, security, environment, health and economics*, these issues should be taken into account in management efforts. Unregulated migration can often have immeasurable social, financial and political costs for the individual, society and government, at any point on the migration spectrum, i.e. for the country of origin, transit of destination. *Comprehensive, transparent and coherent approaches to migration* will help minimize those *"costs"* and preserve the integrity of migration as *a natural social process* (53) (italics added).

Many of these ideas are echoed by the UN Secretary General:

> As an international community, we need to manage the movement
> of people across borders far better than we do – not just for the
> sake of those who move, but for the sake of the countries they
> leave behind, those they travel through, and those they migrate
> to…only through cooperation – bilateral, regional and global – can
> we build the partnerships between receiver and sender countries
> that are in the interests of both; explore innovations to make
> migration a driver of development; fight smugglers and traffickers
> effectively; and agree on common standards for the treatment of
> immigrants and the management of migration (Press Release,
> 29/1/2004).

These descriptions of migration management contain several key elements, which have come to be associated with the emerging paradigm. In general terms, the concept of migration management can be defined as involving five aspects: comprehensiveness; cooperation; transparency; mutual benefit for migrants and governments; and a forward-looking perspective.

Comprehensiveness denotes the inclusive focus on all types of migrant groups and an awareness of the interconnectedness of various types of policies used to address international migration[2]. Cooperation can occur between the local, regional or global levels and transparency should ensure that all relevant actors from all respective levels are included in the decision-making process. Mutual benefit can refer to state interests rooted in economic, political or social considerations, access to territories for migrants or improvements to the well being in their territory of origin. Finally, a forward-looking perspective implies a progressive advancement or improvement in the regulation of migration.

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[2] It should be noted that migration management does not necessarily exclude reference to internal population movements within countries or regions.

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It is possible to deepen our conceptualization by comparing migration management with previous regimes or paradigms. For example, there is often a contrast between management and control. Joanne Van Selm states:

> "Currently the centrality of "control ideology" means that states look to each other for policy ideas that will help them be more restrictive. A management ideology would imply that states learn from each other what could be creatively adapted tools to better organize their refugee protection process, and to better understand each other so as not to mismanage by imposing unrealistic demands, or demands that are not based in reality, on each other" (90).

She adds, "Management implies rather that the state acknowledges that there is situation with which it must deal to the general mutual satisfaction of the various actors that depends on it to do so" (2002, 90). This conceptualization thus diverges from the indiscriminate restrictivism observed in migration policies of western European states in the 1970s and 1980s. There is also a marked emphasis, reinforcing the previous definitions, of transparency and collective decision-making.

However, Jeff Crisp (2003) takes a different view. By emphasizing "migration" as a phenomenon to be managed, he argues that refugee protection is sidestepped. Because it encompasses broader migratory issues and trends, migration management puts refugee protection at risk of becoming subordinate or even forgotten within its discourse. In a study of managed migration policies in practice, Lydia Morris (2002) also takes a critical view by arguing that migration management involves a complex set of regulations and practices and a highly stratified hierarchy of immigration statuses. The rights that exist for any category of migrant, such as settlement or citizenship, are dependent on various

regulations. Consequently, the system as a whole becomes a way of controlling labor demands, while avoiding some of the requirements more generally associated with humanitarian resettlement.

It is therefore evident that part of the problem in defining migration management is the normative nature of the term. While the concept appears to be straightforward in the sense that it is generally acknowledged that new approaches are needed to address current realities, questions remain as to which specific aspects of migration must be managed and the ways in which migration management should take place.

Organization of this Thesis

The thesis is divided into seven chapters. The first chapter will provide an overview of theoretical approaches that can be used to study changes in the asylum regime and influencing variables in the formulation of migration and asylum policies. Three approaches, drawing from the literature of public policy, European integration and constructivism, will be discussed and incorporated into an overarching analytical framework, which will provide a broader scope through which to carry out the subsequent analysis. The paper will then turn to trace the historical development of asylum in Europe, both in the post-war period and through the lens of European integration. This will provide a historical benchmark to be used to evaluate the continuities and departures in European asylum policies. The fourth chapter will explore the EU's current migration and asylum policy paying particular attention to the ways in which migration management has transformed the asylum debate. The fifth section will then consider whether this

approach truly constitutes a serious shift and will also identify challenges faced by the EU in achieving its strategic goals. In the following chapter, the paper will explore the implications of recent policy directions both in discourse and implementation, on the institution of asylum in Europe and elsewhere. To conclude, final remarks will be made and directions for future research will be offered.

2. THEORETICAL APPROACHES

At the theoretical level, the emergence of the migration management paradigm can be explored through a number of analytical perspectives. This section draws from various bodies of literature, namely public policy, European integration and critical theory. These approaches will highlight not only the complexity of interrelated political, social and economic variables influencing policy formation and implementation, but will also shed light on how the discourse of migration management produces a social reality, creates identities and constructs policy choices.

Public Policy Theories

Migration policy[3] is determined by a complex interaction of variables at both the international and national levels. While most public policy perspectives concentrate on the range of factors shaping national policy responses to migration, any attempt to make sense of current trends at the EU level needs to be informed by some understanding of what variables impact member states' policy preferences.

At the broadest level, it can be said that migration policy is caught between two competing agendas. On the one hand, realists argue that states maintain fundamental interests in keeping and increasing their power in relation to other states (Miller, 1986). In order to protection state security, border control

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[3] Although the discussion here focuses on asylum, I have used the broad reference of migration policies in light of the fact that many of the factors influencing immigration and asylum policies are mutually applicable. In the broadest terms, asylum policy is distinctive in the degree to which it is governed by human rights obligations and humanitarian norms.

is necessary to prevent potentially destabilizing influxes of people from entering a country.

Conversely, the liberal doctrine supports the idea of an open world society based on free exchange of goods, services, and capital as well as the free movement of people (Ghosh, 2000, 23). Free movement, according to this view, is not only considered to be a basic freedom upholding liberal democracy, but can also lead to major economic gains for both sending and receiving countries (ibid).

While the conflict between liberal and restrictive tendencies applies to migration control more generally, asylum policy is influenced by additional factors, most notably human rights norms and humanitarian considerations. Principles of human rights have become powerful factors in motivating countries to accept "unwanted" migrants such as refugees and asylum seekers[4].

A significant debate has arisen as to whether global norms and/or actors exert such pressures, or whether they are intrinsically linked to the liberal democratic principles of states. For example, "Globalizationists" posit that international laws and human rights norms constrain national immigration and asylum policies (Martin, 1989, Jacobsen, 1996, Sassen, 1998, Soysal, 1994). International norms impact positively on liberal domestic courts and states are increasingly influenced by international organizations, networks and the desire to project a humanitarian self-image and reputation (Sikkink, 1998).

Hollifield, in his 'liberal state thesis', draws attention to the importance of rights as a factor limiting the state's ability to implement more restrictive

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[4] According to Joppke (1998), migration can be divided into a "wanted" category, most notably immigrants needed to fill labor shortages, and an "unwanted" category of asylum seekers and refugees.

immigration and asylum policies (2000). Moreover, labor markets have become increasingly liberalized, and basic citizenship rights in the postindustrial societies have been extended to and exercised by post-national members including migrant workers, refugees and other non-citizens (Hollified 1998).

Conversely, Joppke (1998) argues that "embedded liberalism" or an attachment to liberal values and norms, such as human rights "is a constitutive principle of, not an external imposition on, liberal nation-states" (110). Domestic courts have developed and apply international human rights law, thereby limiting the ability of states to reject the influx of undesirable populations.

In addition to the strong influence of liberal values and domestic courts, Freeman (1998) highlights the role of organized interests in shaping a more open migration policies. He points out that well-mobilized groups with concentrated interests lobby policy-making elites influence decision-makers through elections, campaigning and lobbying.

While it may be controversial to argue that states take their political and economic interests into account when setting asylum policies, such interests are nevertheless essential elements in explaining state responses. Andrew Shackenove (1988) divides state interests shaping asylum into the following categories: political stability; economic stability; and foreign policy concerns. Foreign policy considerations such as relations between states, international alliances, military pacts and trade agreements can affect either general asylum policy objectives or decisions concerning highly politicized cases (Joly 1997, 18). With respect to political stability, cultural heterogeneity produced by the presence of immigration

or the resettlement of refugees risks decreasing the level of stability by diluting culture and identity (Steiner, 2004, 180).

In terms of economic stability, there are conflicting opinions about the role of unemployment or economic stagnation play in determining asylum policies. Joly (1989) and Layton-Henry (1992) stress the significance of economic hardships in the asylum debate in Europe. However, Weiner (1993) points out that countries with weaker economies often accept more refugees than states with higher degrees of economic stability and concludes that an economic cost/benefit analysis is an insufficient determinant for the formulation of asylum policy. While the significance of such considerations is contested, they are, nevertheless, influencing variables.

In fact, most commentators agree that refugee and asylum policy is a "tug of war" between dynamic national interests, humanitarian considerations and international norms or, as Gil Loescher (1989) suggests, migration policy is "the conflict between international and humanitarian norms and the sometimes narrow self-interested calculations of sovereign nation states" (quoted in Steiner, 2003, 181). Sara Collinson (1993) expresses a similar view by stating: "A moral, legal or humanitarian obligation to offer protection to refugees will, in practice, always be balanced against the political and economic interests and concerns of potential asylum states" (ibid). These factors, while sometimes represented by different actors, are very much interdependent.

An emerging area of academic interest focuses on how states pursue their national (or regional) interests while circumventing humanitarian constraints

through alternative strategies, such as policies of 'remote control' (Zolberg, 1989). These policies prevent aspiring migrants or asylum-seekers from reaching the territory of receiving countries and take various forms, including visa regimes, carrier sanctions and cooperation with transit and sending countries. Such policies facilitate greater immigration control since they allow for the sorting of "wanted" and "unwanted" migrants before they arrive in the receiving country.

While political, social and economic factors are fundamental in understanding what influences a state's approach to asylum policy, institutional reasons for changes in policy direction cannot be overlooked. European integration has a distinctive function in this regard.

Integration Theories

Much of the recent work on EU migration and asylum policy focuses on reasons for the move toward EU co-operation and integration. Starting with integration theories, a broad range of factors has been proposed for the incorporation of migration policies into the supranational domain. For example, neo-functionalism advanced the idea that the integration of one sector of the economy leads to the 'spill over' of activities into other sectors. As a result, "surpranationalism" increases as cooperative, cross-national networks become denser (Haas, 1964)[5]. Conversely, Moravcsik's (1993) 'liberal intergovernmentalist' model rests on the assumption that the behavior of states reflects the rational actions of governments constrained at home by domestic societal pressures and abroad by their strategic environment. By increasing

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[5] The expansion of European migration regime into Eastern Europe is a frequently used example supporting this argument.

transaction-cost reduction rules, countries facing similar problems at the same time can achieve greater progress (ibid). A third stream, 'new institutionalism', stresses the importance of political institutions as mediating structures in the policy-making processes. Proponents of this approach (March and Olsen 1984; Pollack, 1996) emphasize the importance of institutions in the policy making process, both with regard to their power to constrain and to enable policy formulation. This can occur both in a formal rule-led sense and in more subtle ways by defining the range of options that actors perceive are available to them in a particular institutional context[6].

Concerning the influence of EU integration on changing policy directions, substantial disagreement exists among scholars regarding the nature of such pressure (whether it can be classified as more liberal or restrictive), as well as the degree to which it is applied. Supranationalists identify the internationalization of economic, social and political relations and argue that such factors limit the capacity of nation states to control immigration and regulate membership (Soysal 1994, Jacobson 1996, Sassen 1999). Sassen for example, argues that as much as states have resisted supranational involvement and found it incompatible with their sovereign power, they have had to relinquish some forms of border control and have had to accept court rulings which support the human rights of migrants (Sassen 1999).

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[6] To this we can add, the paradigm of political pluralism (Money, 1997) which argues that increasing international cooperation on immigration issues can be seen as a partial function of political pressures by largely illiberal domestic electorates, anti-immigration interest groups and political parties (quoted in Messina and Thouez, 105). The greater the political pressure for restricting new immigration in a member state is, the stronger its motivation to cooperate with other, similarly pressured states in the international arena.

Such perspectives imply that the EU has substantial power to influence policy direction and that there can be some scope for supranational leadership or entrepreneurialism (Moravcsik, 1999)[7]. Adopting this view, the EU can be regarded as a new political field with its own forms of culture, norms and processes distinct from national policy fields (Favell, 2000). This can lead to a change in preferences and identities of actors resulting from their interactions at the EU level (Geddes, 2003).

In contrast, state-centered theories stress the ability of member states to maintain sovereign authority over border control, albeit greater integration. From this perspective, "europeanization" does not result in greater constraints being placed on member states, but rather in the exploitation of EU institutions as devices for achieving national immigration policy objectives (Freeman, 1998, Joppke, 1998, Hollifield 2000). Ugur (1995) argues that even when most immigration policy initiatives are, in practice, made at the intergovernmental level, EU states are willing to cooperate in this area because they actually cede little sovereign power in decision-making. Similarly, Guiraudon (1999) argues that governments have circumvented national constraints on migration control by creating transnational cooperation mechanisms dominated by law and order officials. This has allowed states to avoid judicial scrutiny, eliminate national adversaries, and has permitted them to enlist the help of transnational actors such as transit countries and private transportation companies.

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[7] Moravcsik defines supranational entrepreneurialism as 'exploitation by international officials of asymmetrical control over scarce information or ideas to influence the outcome of multilateral negotiations through initiation, mediation and mobilization' (272, quoted in Geddes, 2003)

The aforementioned state-centered approaches heavily discount the supranationalist emphasis on legal and political processes that empower supranational institutions, weaken EU member states and extend rights to non-national immigrants (Geddes, 2003, 3). However, the duality of liberal and restrictive tendencies exists at both the state and supranational level. The EU constitutes a "complex strategic field, in which several distinct sites of power exist, and a multitude of relatively independent and yet interdependent agencies have special and variable relations with each other and to each other" (Kostakopoulou, 2000, 500).

Multilevel perspectives prove to be more useful in the sense that they account for negotiations between the national and supranational level (Stone Sweet and Sandholtz 1997, quoted in Geddes, 2003, 5). In this way, such perspectives challenge zero-sum understandings of sovereignty. While these theories can be criticized for their vague representations of policy formation (ibid), they do reflect the fact that policy-making can be found in Brussels, in certain national ministries and central agencies, as well as at the subnational level and are thus, often in a state of flux.

To briefly summarize, migration policy is influenced by a range of political, social and economic factors within member states, the process of European integration and broader global economic and political changes. These factors will be discussed from a historical and contemporary perspective in the proceeding chapters. However, before continuing, a number of critical theories will be discussed in order to underscore how changing patterns of discourse

determine the contours of the migration policy debate, thereby shaping what policy choices are eventually made.

Critical Theories

Departing from a functionalist perspective which views migration control as a logical response to a pre-existing social problem, it is possible to analyze changes in the refugee regime, whether in terms of governance or in policy choices, using critical theory. In this vein, a constructivist position allows us to understand how, through discourse, migration is represented as a threat and in turn, what types of so-called solutions are applied[8].

The constructivist literature presents the view that interests are not exogenous to the political process and that norms should not be viewed simply as intervening variables between interests and behavior. Instead, interests, norms and behavior "are all part of a dynamic environment in which each component affects the others, and each is constantly being interpreted and reintegrated by actors who are themselves part of this environment" (Steiner, 2000, 314).

Arguably, the most important contributions reflecting this position have concentrated on the nexus between migration and security. Developed largely in reaction to a dominant strategic security position found within the earlier literature of forced migration (Loescher 1992; Widgrem, 1993), several scholars have examined the construction of a security agenda and the role of identity formation in determining how migration and asylum flows are addressed. (Buzan, 1993; Waever et al., 1993). Jeff Huysmans (1995) has noted that

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[8] Discourse can be defined as: "...language use relative to social, political and cultural formations – it is language reflecting social order but also language shaping social order, and shaping individuals' interaction with society" (Jaworski and Coupland, 1999, p. 3).

migration has recently become "located in a security logic" (54). Migration, he argues, is discursively constructed as a threefold danger, posing 'existential threats' to the welfare system, to public order, and to the cultural identity of the community/nation (Huysmans, 2000)[9]. Bigo (1998) has examined the discourse of illegal immigration and how it has been shaped by the struggles for power between different members of the *community of security professionals* (120).

The securitization of migration can also be viewed as inextricably linked with the European integration project (Huysmans, 2000, 751). For example, in the Maastricht Treaty, immigration and asylum appear hand in hand with threats emanating from transnational criminality such as drug trafficking, terrorism and 'other serious forms of international crime'. Through the association of transnational criminality concerns with immigration, the discourse of asylum and migration policy has thus become "securitized" (ibid). Koslowski (1999) also draws a link between the integration process and the securitization of migration by arguing that as security issues gain a greater prominence at the regional level, fears over migration among domestic constituencies may also increase. Consequently, states may opt for further European integration in order to appease public fears by fighting transnational crime linked to migration (99).

Turning to the aspect of migration management, it is also possible to analyze developments through a critical theory perspective. Borrowing from the literature of "critical management studies", this next section will consider how the emergence of migration management is linked to the growing predominance

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[9] This 'security drama' as labeled by Huysmans (1995) is intrinsically tied to identity maintenance as the perceived presence of the hostile 'Other', threatens to undermine an already established and composed existence.

of management techniques and their relation to governance, corporatism and the economic interests.

Management discourses have become predominant in most developed societies and have spread from commercial enterprises into a wider spectrum of organizations, including government institutions (Thomas, 2004, 775). Diffusion occurs through the activities of social groups that establish links with other social entities in order to circulate ideas, standards and practices (ibid). Fairclough sees the results of this diffusion in the "colonization" of other domains of human activity (for example, healthcare, education) by the discourse of management (2002).

As an example, Massey (1993), comments on the infiltration of management discourse in the sphere of public policy. He notes that the discourse has largely been borrowed from the private sector and has assumed that the application of private sector management techniques to the requirements of public service delivery would produce a net increase in "efficiency, effectiveness and economy" (quoted in Salter and Tapper, 2002, 248). By adopting this discourse, Massey argues that the goal was:

> To discredit the established model of centralized bureaucratic welfare delivery and to promote what became known as the "New Public Management" characterized by a system of "devolved management", responsive to consumer pressures, and capable of utilizing market mechanisms within an overall structure of contractual accountability (ibid).

In this regard, Fairclough (2000) would argue, the discourses of business and management are closely linked to neoliberalism and global capitalism. The

notions of "the free market" and "efficiency" are important tools to advance the (neo) conservative project (Bourdieu, 1992).

Similarly, Fairclough and Wodak (1997) write of the calculated design of political discourse, highlighting the formulation of discourse by politicians who draw on language in a way that is designed to be persuasive or, which obscures the issues that they would prefer were left unexplored. The discourse of management is viewed as a technology or a form of social engineering that can be applied to any activity or organization (277).

Thus far, a number of divergent bodies of literature have been discussed. An overview of public policy theories identified a number of determining variables for states' immigration and asylum policies. Integration theories concentrated on causes for international cooperation in the area of migration control. Approaches stemming from constructivist and critical theories were examined in order to underscore the construction of the "problem of asylum" and the discourse of management. By examining these various streams, it is clear that the formation of migration and asylum policies is influenced by a complex configuration of international and domestic factors. Consideration of these theoretical approaches will facilitate the analysis of the conceptualization and development of European Union asylum policy within the new framework of migration management.

3. HISTORICAL OVERVIEW

In order to demonstrate that a fundamental shift in the practice of asylum has occurred, it is first necessary to understand the historical development of refugee policy in Europe. This will not only provide a benchmark with which to compare recent developments, but will also describe how the determinants of policy responses have contributed to changing policy directions. This section delineates three important periods of refugee policy: the formation of the asylum regime, the post-war period and European harmonization.

The Formation of the Refugee Regime

The practice of granting refuge to those fleeing persecution has a long history in Europe. However, it was not until the events of the Russian Revolution and the displacement of more than a million people that the international community began to focus its attention on refugee flows and the need to create a legal framework to govern the refugees[10]. The first High Commissioner for Refugees, Fridjof Nansen, was appointed by the League of Nations in 1921 to deal with this large-scale displacement "problem".

While the creation of the High Commission for Refugees marked a clear resolution to establishing an international response to refugee movements, the High Commissioner was largely ineffective in guaranteeing protection to those fleeing Germany in the lead-up to WWII. For example, Jews coming from Germany in 1933 were prevented from doing so because resettlement countries

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[10]However, prior to the First World War, international migration was largely unregulated and refugees were dealt with on an ad hoc basis. For an extensive history of asylum, see Liza Schuster (2002).

22

refused to accept any financial burden (Joly, 1997, 7). With massive displacement during World War II, it was clear that the refugee problem was a long-term issue. Nearly 30 million people were forced to flee during this period, of which an estimated 800,000 refugees remained primarily in camps in Germany and Austria by the end of the 1940s, underscoring the fact that the refugee problem was a long-term issue[11].

The 1951 Geneva Convention was a critical event in the institutionalization of the post-World War II regime, as it created an international framework which defined an individual in need of international protection. According to the Convention definition, a refugee is a person who:

> ...owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group of 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 [12].

In addition to the Geneva Convention definition, the international refugee regime rests on two additional pillars: the right to non-refoulement (Art 33), which stipulates that a refugee must not be sent back to a country where his life or freedom would be threatened, and the principle of international solidarity or "burden-sharing"[13].

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[11] The International Refugee Organization (ILO) was created to respond to this massive displacement (Loescher, 1992, 9). It was dissolved by June 30, 1950 yet was quickly replaced by the 1951 Geneva Convention and the United Nations High Commissioner for Refugees (UNHCR).
[12] The practice of asylum occurs through national determination systems. Once found to be a genuine refugee through determination, the refugee should receive benefit of equal measure to other 'aliens' residing in the country, including employment, elementary education, public relief and assistance and social security.
[13] The concept of "asylum-burden" refers to costs incurred by states that may be incurred in the process following an application for asylum (Vink and Meijerink, 2003, 297).

Since the Geneva Convention was designed as a response to the mass refugee movements in Europe in the aftermath of World War II, this definition imposed territorial limitations by referring to "events which occurred in Europe" and to a dateline referring to events occurring before January 1, 1951 (Goodwin-Gill, 1983, 13). While states were able to extend protection to refugees from other parts of the world, "the definition adopted was intended to distribute the European refugee burden without any binding obligation to reciprocate by way of the establishment of rights for or the provision of assistance to non-European refugees" (Hathaway, 1991, 9). [14]

These temporal and spatial limitations were formally lifted with the 1967 Protocol, allowing people from any country to claim asylum. However, the original categories of persecution found in the Geneva Convention were maintained. In this way, the early history of the regime guaranteeing protection to refugees worldwide can be said to be a one "created by European states, governing the protection of European refugees, and embodying European political norms and values" (Sheuster, 2003, 87).

The Post-War Regime

The post-war regime from the 1950s until the late 1960s generally occupied a position of low-politics. With relatively few applications and little

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[14] Regional human rights instruments are also applicable to the protection of individuals fleeing persecution. In the European context, the European Convention on Human Rights and Fundamental Freedoms (ECHR) was signed in 1950. Other regional bodies have also created instruments governing asylum and refugee protection. For example, the Organization for African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, adopted in 1969 and the Cartegna Declaration on Refugees adopted in 1984 by ten Latin American states both recognize persecution based on generalized violence and oppression. It should also be noted that the right to seek and enjoy asylum from persecution became human right number 14 of the Universal Declaration of Human Rights (UDHR).

financial burden for hosting countries, the definition was interpreted liberally and general attitudes towards those seeking asylum were positive[15]. For example, refugee movements originating from the Hungarian Revolt in 1956, in which roughly 194,000 people left their country as well as 170,000 Czechoslovak refugees sought refuge in Germany from 1968-1969, were welcomed with respect for their political heroism (Bade, 2003, 131).

Numerous scholars have highlighted the importance of Cold War considerations in accounting for the reception of refugees during this period. In other words, refugees could be used as political pawns to advance the Western ideological position[16]. By providing those who defected from the Soviet Union with asylum, western states could claim greater ideological legitimacy and "hopefully destabilizing nascent communist governments" (Keely, 2001, 309). The idea was to admit and resettle individuals who "escaped communist oppression" (Goodwin-Gill, 1983; Zolberg et al., 1989) . It was in this context that the norm of resettlement began to replace that of repatriation as the preferred solution to refugee movements (Chimni, 1999, 4)[17].

However, the onset of economic decline following the oil crisis in 1973 promoted a major shift in attitude towards immigrants and, soon to follow, those

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[15] Joly (2001) also points out that guilt from the atrocities of WWII and Nazism played a role this regard. This period was also characterized by unprecedented economic expansion and the heavy influx of refugees served to supply labor markets with a cheap labor supply (Chimni, 1999).

[16] Hathaway argues that "…the strategic dimension of the definition comes from successful efforts of Western states to give priority in protection matters to persons whose flight was motivated by pro-Western political values." (1991, 6). This was aided by the fact that the primary international legal instruments for the protection of refugees and their rights was drawn up without contributions from the Soviet Union (Schuster, 2003, 100)

[17] According to the UNHCR's original mandate, there are three durable solutions to deal with refugee movements: resettlement, repatriation or first refuge or resettlement in a third country (Article 1 Statute of the Office of the UNHCR).

seeking asylum. In countries such as France, Germany and the Netherlands, governments began to express the view that immigration had grown out of control and that it was becoming politically untenable to sustain labor recruitment in the face of rising unemployment (Brochmann, 1996, 27). High levels of unemployment and deep recession prompted a period of "zero-immigration" across Europe, lasting from 1973 to the early part of this decade. While the asylum door was in theory unaffected by concerns over labor and economic stability, the closing of the immigration door meant that the only legal means to enter Western Europe was through family reunification or the asylum system. This would cause significant problems in the years to come.

The Growing Politicization of Asylum

The number of refugees entering Western European states began to increase dramatically in the 1980s and early 1990s. Violent conflict in much of the Third World, improved transportation and international communications and the collapse of communist regimes in Eastern and Central Europe in the early 1990s, (Loescher, 1993, 111) accounted for much of the rise in asylum applications[18].

Anxiety over the sharp increase in asylum seekers was amplified by ethnic and racial considerations as the direction of asylum seekers began to shift from East-West to South-North beginning in the early 1980s. Refugees from Vietnam, Afghanistan, Somalia and Ethiopia began to arrive in large numbers during this time, fueling the rising popularity of anti-immigration and right wing political parties.

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[18] In the span of seven years, rose from 159,180 in 1985 to 672,380 in 1992 (Salts, 2001: 54).

With the asylum door as the only legal means of entry into Western Europe and the growing phenomenon of mixed flows of people, the traditional division between legitimate asylum seekers and those seeking better economic opportunities became increasing blurred. This created a general sentiment amongst European societies that the majority of asylum seekers were not genuinely in need of protection but were rather "bogus refugees" (Troeller, 2003, 52).[19] In Germany, for example, the destination country with the highest number of asylum seekers, people applying for asylum were no longer called refugees (Flüchtling) or asylum seekers/applicants (Asylbewerber) in public debate, but asylee (Asylant), which in German sounds conspicuously like malingerer (Simulant) and trouble-maker (Querulant) (Steiner, 2000, 9). Such concerns were aggravated by harsh media representations of refugees as "economic refugees" and "bogus refugees".

In this politicized context, European governments began to erect barriers to prevent or deter asylum seekers from arriving to their territories. Such control measures, often carried out with the cooperation with other member states, took the form of visa requirements on nationals of refugee-producing states, fining airlines for transporting refugees without proper documentation, and limiting social benefits for those in the process of determination.

Towards Harmonization

The process of European integration also had an effect on increased control measures towards arriving foreigners. Although cooperation between

states had been common, it was not until the mid-1980s that the European Community began to pay closer attention to migration and asylum issues and explore possibilities for the development of common rules and policies[20] (Brochmann, 1996, 78). The process of harmonization can be separated into three periods. The first emphasized the creation of an intra-migration regime, the second represents a period of securitization while the most recent stage has seen a marked shift towards comprehensiveness.

Creating an Intra-EU Migration Regime

The first phase (1985-1991) of harmonization is often described as a functionalist paradigm. In this stage it is possible to observe how the harmonization process in the field of immigration and asylum was closely linked to the completion of the internal market and the development of the inter-EU migration regime[21]. It can also be characterized as a regime based largely on informal cooperation in immigration and asylum matters, which left the sovereign prerogatives of member states intact.

There were at least two reasons for the decision to eliminate internal borders. The first, more practical one, was the shared conviction that free circulation of workers would guarantee an optimal allocation of labor in the Single Market. A more contingent reason was that, during the late 1970s and

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[20] Some collective action on the issue of international migration had been taken in the 1970s, such as the action programme in favor of migrant workers and their families in 1973, the formation of CAHAR (Committee of Experts on the Legal Aspects of Refugees (Joly, 1989, 15) and the formation of the Trevi group in 1976.

[21] Koslowski (1998) refers to migration policy within the EU as belonging to two principle migration regimes: one governing inter-EU migration and the other regulating migration into the European Union from non-member states. Gedddes points out the overarching "paradox of liberalism" of this period whereby freer movement of Member States' nationals within the single market is accompanied by tighter control of external frontiers (2000, 1).

throughout the 1980s, border controls (which were often hampered and slowed down by frequent strikes) proved to be costly[22].

In June 1985, a White Paper produced by the European Commission and adopted by the European Council attempted to provide measures to facilitate free movement and improve the allocation of labor in the Single Market. The paper also outlined a number of Community Directive proposals such as the coordination of visa policies and new rules for the determination of refugees. However, it quickly became apparent that member states were not ready to coordinate policies, particularly when it concerned the issues of entry and asylum (Brochmann, 1996, 78). In this environment, various intergovernmental bodies and agreements that allowed states to guard such power began to build up, most notably the Schengen Agreement.

First signed in June 1985 between the Benelux countries, Germany and France, the Schengen Agreement allowed people to travel unobstructed by border controls among the signatory states[23]. A principal condition for greater freedom of movement for goods, services and people within the single-market was greater "compensatory measures" at external borders, in order to avoid the negative affects of the completion of the internal market on the overall internal security of the new borderless space. The Schengen Convention called for the

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[22] EU legislation is made up of directives and regulations, which must be implemented by member states. Directives stipulate the result that must be achieved, but countries can choose how to transform the directives into national law. Countries do not have to change their policy and practice unless it conflicts with a directive. Regulations are different due to the fact that they apply directly and are legally binding on all member states as soon as they come into force.

[23] Italy joined the agreement in 1990, Spain and Portugal in 1991, Austria in 1995. Norway and Iceland were allowed to join after reluctance on the part of Demark, Sweden and Finland who did not want to dissolve the 40-year old Nordic Passport Union. The Schengen Convention went into full effect in March 1995 and finally integrated into the European Union framework by the Amsterdam Treaty in 1997.

creation of a common visa policy, the harmonization of policies to deter illegal migration, greater security measures exercised through the Schengen Information System (SIS), close checks on all crossing points at the external borders of the Schengen area and increased police cooperation.

Along very similar rationale, the Dublin Convention, adopted in 1990, was aimed formulating of guarantees that asylum seekers would have their application addressed (but only by one member state). Reacting to the fact that many refugees do not apply for asylum in the country that is their first entry point into the EU, a phenomenon also known as "refugees in orbit", the Dublin Convention guaranteed that asylum applications could only be processed by the member state into which the asylum-seeker first arrived[24].

Although the Dublin and Schengen Conventions remained outside of Community jurisdiction and did not anticipate the complete harmonization of asylum policy, they did set the demarcation lines for future European and domestic reforms. As Lavenex states, "these 'first generation' agreements triggered a far reaching dynamic, which, on the one hand, reflected the increased importance of these policy fields, and on the other, called for a more substantive harmonization for these agreements to function" (Lavenex, 2001, 128).

From Functionalism to Securization

The "functionalism" of the 1980s was largely replaced in the 1990s by a more "securitarian" perspective (Bigo, 1996). Due to the rising numbers of asylum-seekers and persons displaced following the conflict in the former

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[24] Like Schengen, long delays in the implementation of the policy were experienced, and the Dublin Convention did not come into effect until 1997.

Yugoslavia, "asylum shopping" and "immigration risks" were now common "problems" that could best be dealt with through coordination (Koslowski, 1998).

Under the Treaty of the European Union (TEU), signed in Maastricht in 1992, migration and asylum issues became incorporated into the domain of "Justice and Home Affairs" and were officially deemed 'matters of common interest' and included into the framework of the Community (Art K.1 TEU). Although this incorporation marked the advanced cooperation of the member states the main issues concerning immigration and asylum policy remain outside first pillar jurisdiction (the EC-pillar working on the principle of supranationalism)[25].

The logic of Schengen in which "compensatory measures" at external borders were needed to allow for greater internal movement, was clearly carried over in Maastricht. A list of common issues of concerns was indicative of the linking of migration and security issues. Alongside issues relating to asylum and immigration policy were concerns over combating unauthorized immigration; combating drug addiction; combating fraud on an international scale; and police cooperation for the purposes of preventing and combating terrorism and unlawful drug trafficking.

Due to increasing disappointment with the slow development of Third Pillar cooperation, EU member states agreed on a legal basis for the creation of a

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[25] Under the so-called third pillar, decision-making remained contingent upon unanimity, the Commission had no right of initiative and there was no role for the European Parliament or the European Court of Justice. The Council of Europe, the European Parliament and their various committees have reflected a more liberal and humanitarian attitude in their debates and have tried to promote a more open policy towards refugees and asylum seekers (Kaye, 1992, 57).

European migration policy. In the Amsterdam Treaty signed in 1997, member states agreed on a number of reforms, most importantly on the transfer of issues of immigration and asylum from the Third Pillar to the First Pillar after a transitional period of five years. Following the transitional period, the Commission would be able to exercise the exclusive right to initiate new competences for the European Parliament, and the Council would have decision-making powers. The Treaty also introduced the idea of qualified majority voting.

The mandate given by the Amsterdam Treaty did not call for a common EU asylum system requiring the harmonization of national asylum systems, but mandated instead the adoption of minimum EU standards. This ensured not only that a high degree of sovereignty would be retained by member states, but also resulted, as many commentators have argued, in the adoption of measures reflecting the lowest common denominator among member states[26].

The Amsterdam Treaty created an area of Freedom, Security and Justice. The name itself led some to question for whom "freedom, security and justice" were being promised, with many arguing that none were apparently aimed at new immigrants or refugees (Van Selm, 2003, 242). Under this umbrella, issues relating asylum and immigration[27] were again placed side by side with issues of cross border criminality, such as counter-drug trafficking, terrorism and judicial

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[26] Moreover, throughout the Amsterdam negotiations, Denmark, Ireland and the UK were not prepared to accept further communitarization in the area of asylum, external borders and immigration, thus creating as Noll point out, a "variable geometry" of integration (2000, 145).

[27] This includes: standards and procedures for granting and withdrawing asylum and refugee status, including minimum standards for the reception of asylum seekers and refugees; minimum standards for the temporary protection of displaced persons (de facto refugees rather than asylum-seekers); measure on immigration policy, including common conditions of entry and residence and common rules on illegal immigration and repatriation (Art. 63)

and police cooperation. Not only was security specifically mentioned in the Treaty, but it now occupied a dominant place in the EU's First Pillar framework.

Towards "Comprehensiveness"

While the Amsterdam Treaty, aimed at building a European "area of freedom, security and justice", created the framework for a common immigration and asylum policy, the Tampere Summit set in motion a period characterized by an emphasis on "comprehensiveness". Tampere marked a turning point for three reasons. The creation of a common framework for both immigration and asylum policies reflected a significant shift from functionalism to comprehensiveness. Secondly, the language of harmonization was replaced with that of a common policy, thus representing a move towards greater integration. Governments indicated an awareness of the need for leadership on asylum and immigration issues, and for the Union to play a key role in relations with other states. Finally, the growing use of migration management to describe efforts in the sphere of asylum and immigration was witnessed.

The Conclusions made at Tampere identified four strands for the EU migration policy: partnership with countries of origin; a common European asylum regime; fair treatment of third country nationals; management of migration flows. The political objectives affirmed that a common policy had to be based on "the absolute respect for the right to claim asylum" and the "full and inclusive application" of the 1951 Geneva Convention. The European Commission was asked to keep track of the proposals and achievements in migration and asylum on a "scoreboard" updated every six months.

Progress since 1999 has been uneven, both in terms of the level of integration and the degree to which the strategy can be considered to have been comprehensive. In terms of the move towards integration, developments have been hampered by the highly sensitive nature of many of the issues under discussion and the requirement for unanimity in decision-making (Van Selm, 2004; Geddes, 2003)[28].

Having traced the development of asylum in both the post-war period and the three phases of European integration, it is possible to arrive at a number of observations concerning the changing nature of refugee protection in Europe[29]. Firstly, the establishment of the refugee regime and its position in the post-war period reflected a human rights paradigm. This is not to suggest that asylum in the post-war period was immune from state interests. It has clearly been demonstrated that such considerations have influenced asylum policy since the inception of the international refugee regime. Yet, in the context of growing securitization of migration policy and concerns over mixed flows of voluntary and involuntary migrants with growing numbers of asylum seekers and the mixed flows of migrants, European refugee policies have shifted from being primarily rooted in humanitarian considerations to ones reflecting more global migration concerns.

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[28] Intergovernmentalism was confirmed as the mechanism of cooperation for at least five years following Treaty ratification (until May 2004 at least). Nevertheless, the acknowledgement that integration has been hampered by disagreement between member states was witnessed at the European Council of Laeken in 2001, where it was specified that the EU had to intensify its efforts towards an integrated European migration policy. Similarly, there was significant consensus at the European Council meetings in Seville in 2002, that there had been a failure to make signification progress in adopting EU immigration and asylum proposals.

[29] It is useful to delineate between the post-war period and the period beginning in the 1980s, which we have referred here to the beginning of harmonization.

This has resulted in what Andrew Geddes terms, a "conceptual widening"[30] over the past decade in the field of migration. In terms of the asylum debate, this has been evident in the linkages created between asylum and other policy fields such as illegal migration, return policy and cooperation with source and transit countries (Van Selm, 2004). This is largely a departure from the previous separation of immigration (or migration) concerns from refugee and asylum policy.

Secondly, the construction of the European regime changed the traditional structure of refugee policy, which was previously characterized by a "clearly separated dual structure of policy-making at the international and the national levels...". This has led to the creation of "a regional system of redistribution for asylum-seekers that redefines the relationship between the national and the international in new terms." (Lavenex, 1998, 127).

While this chapter has provided some historical context in which to situate institutional, economic and political shifts in the asylum regime, the next section will focus on the contemporary context and the rationale for a new migration strategy in the EU. This will be followed by an analysis of the actual policies being pursued within the framework of the EU's migration management strategy and their impact on asylum.

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[30] To borrow the term from Andrew Geddes (2003), "conceptual widening" of migration in Europe refers to "new forms of migration such as the growth of the illegal branch of the migration industry such as people trafficking and human smuggling (are) coupled with new forms of state response with increased emphasis on attempts to externalize controls through the co-option of surrounding states and regions" (2).

4. THE PARADIGM OF MIGRATION MANAGEMENT

In order to understand why the migration management strategy emerged, it is fundamental to consider the rationale behind the new approach and the political and economic context in which the debate on asylum was occurring in the 1990s. Much of this debate centered on what was perceived as a "crisis of asylum", characterized by unmanageable flows, poor distribution of asylum seekers, and the malfunctioning of many traditional methods of refugee protection.

The Asylum Crisis

One indicator used to suggest that asylum system is in crisis is the rapid growth of asylum applications in EU member states since the 1980s. Governments point out that in 1983 Western Europe had about 70,000 applications for asylum; in 1992, the peak year, there were 702,000, falling to 245,000 in 1996 and rising to 335,619 in 1998 (Salts, 2001). Compared to global figures, the number of applicants seeking asylum in developed countries increased from about 50,000 per annum in the early 1970s to half a million in 2001. The EU has taken on the brunt of these increases, as nearly 68 percent of all applications over the 20-year period have been made in European member states, with North America accounting for most of the remainder[31].

With a significant rise in applications, most national asylum systems have experienced difficulty keeping pace. This has resulted in significant backlogs of

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[31] These data are collected by the UNHCR, mainly from national governments (quoted in Hatten and Williamson, 2004, 1)

applications. These backlogs seriously delay the resolution of individual claims and have the effect of further decreasing public confidence in the asylum system. Public dissatisfaction has been further compounded by the high costs associated with refugee determination and the reception of asylum-seekers[32].

There is also a widespread view that many people who are not refugees are seeking to gain access to new countries through the asylum channel. With nearly 80 percent of persons applying for asylum in the EU in 2000 being denied refugee status (UNHCR, 2001), this view is not necessarily surprising. With no alternatives for legal migration, individuals may migrate because of family ties or to gain employment. However, this phenomenon is not easily remedied. The "migration-asylum nexus" speaks to the difficulty in distinguishing between forced and voluntary migration. It also captures the reality that the causes of forced migration are bound in the complex relationship between push, pull, and intermediate factors (Richmond, 1994; Koser, 1997; Castles, 2004)[33]. Very much related to the anxieties over the legitimacy of asylum claims, illegality and security-related concerns have become a major aspect of the asylum debate. Concerns about internal security have gained particular urgency since September 11, 2001, and many countries sought to tighten migration and asylum rules due to the threat of international terrorism. Through the securitization of migration,

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[32] For example, in the Netherlands in 1998, such costs were estimated at approximately one and a half billion Euros a year (De Jong, 1998, 690).

[33] Castles (2004) point out the difficulty in making clear distinctions between asylum seekers and economic migrants from countries undergoing rapid change and crisis. Political upheavals, economic difficulties and violent conflicts tend to occur simultaneously, so that many migrants have numerous motivations for moving (3). Forced migrants are as likely as economic migrants to take advantage of inexpensive transportation and communications, be members of transnational communities and have access to or even be recruited by smugglers and traffickers" (Martin, 1999, 22).

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migrants including refugees and asylum seekers are viewed as potential vectors of international crime and illegality. Joanne Van Selm notes, "Since 9/11, documents released by European Union institutions, the UN and states have all indicated that the moment is politically ripe for more serious, consequential and rigorous use of these exclusion clauses- as well as for appropriate and rigorous use of those clauses relating to inclusion." (2003, 240)

Moreover, the exponential increase in migrant trafficking and smuggling networks has gained escalating attention in Europe over the last decade. The International Centre for Migration Policy Development (ICMPD) estimated that in 1993 illegal inflows in Western Europe totaled around 350,000 (Widgren, 1994 quoted in Salts, 2001, 25). Considering that often the only viable alternative for asylum seekers to leave the country of origin is through the use of trafficking networks, it is not surprising that they are often considered criminals after having reached their destination countries.

The Failure of Previous Control Measures

Despite nearly three decades of restrictive measures to prevent or deter the arrival of asylum seekers, there is now a considerable consensus that traditional restrictive policies have often been ineffective in reducing asylum pressures and furthermore, have created a number of unforeseen consequences. As was previously mentioned, EU member states still experience unpredictable and large numbers of refugee applications despite the implementation of controls such as visa requirements, carrier sanctions, and interdiction. There is also a growing admission that restrictive measures may lead to a growth in human

trafficking and smuggling as well as illegal migration (Morrison and Crosland, 2001; Salts, 2001).

The distribution of asylum seekers has also been highly uneven across member states despite past harmonization efforts intended to achieve greater burden-sharing. For example, in 2003 five countries (Austria, France, Germany, Sweden and the United Kingdom) received 79 percent of all claims submitted (UNHCR, 2004). Black and Koser (1999) similarly demonstrate that during the conflict in Bosnia, where temporary protection was implemented with the intention of increasing burden-sharing, more than half a million refuges came to the EU, of which 60 percent settled in Germany, with a further 30 percent in Austria, the Netherlands and Sweden (526)[34].

The return of rejected asylum seekers has also caused significant concern within the asylum debate. Although EU countries today deny asylum to most applicants, member states often do not deport those they reject[35]. Mathew Gilbney (2003) demonstrates that deportation of rejected asylum-seekers is relatively rare and that rejected asylum-seekers are often allowed to remain, but only with limited status and rights. Gregor Noll (1999) highlights a variety of obstacles in returning failed applicants, such as non-compliance of the

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[34]Lavenex (1998) has shown that Eastern and Central European countries often face the brunt of ineffective safe-third country regulations as they lack funds to properly deal with asylum-seekers who have passed through their countries and who are returned.

[35] For example, Germany received 95,100 applications for asylum in 1999, yet only 10,940, or 8.6%, were recognized as refugees in that year; in France, the figures were 30,910 applications, 4,460 or a 14% recognition rate; in the UK a total of 71,100 applicants for refugee status were received in 1999, with some 6,200 or 8.7% receiving refugee status (Gilbney, 2001).

individual; an uncooperative attitude on the part of the country of origin; and difficulties stemming from the host country's norms and legal systems. [36]

Finally, the issue of integration and the failure of policies to effectively incorporate foreigners into host societies has risen on the political agenda in light of social tensions, exclusion, and increasing public hostility to the presence of immigrants and refugees, reflected in the upsurge of nationalistic, racist and xenophobic political forces (CDMG, 2000, 15). Although the debate on integration extends beyond the asylum debate, it nevertheless has implications for the resettlement of refugees as well as general views towards migrants.

Demographic and Economic Realities

In addition to the problems connected to asylum outlined above, a shift in political opinion concerning migration is beginning to emerge within the EU. This relates largely to problems of a shrinking workforce and an ageing population. According to recent demographic forecasts, the age structure of the population of the 15 member states will change dramatically and the share of people 60 years and over will pass from 22 percent in 2003 to 27 percent in 2020 on average. This will mean an overall reduction in the working age population (OECD, 1998). As a result, the admission of immigrants has resurfaced on the political agenda of many member states after nearly 30 years.

Thus, the increasing need for a new European policy on migration stems from a combination of inadequate policies and the changing nature of migration trends and attitudes toward migrants. In terms of asylum, these factors clearly

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[36] Noll argues, "such an attitude may be fostered by political, economic or demographic considerations. Uncooperative countries of origin will drag their feet when issuing the travel documents necessary for return, or they might object to the proposed modalities of return." (3-11)

suggest that the post-war refugee regime is outdated, unworkable, and irrelevant to contemporary realities and that a new approach is needed, not only to solve such inadequacies, but also to reconcile refugee protection and state interests.

Devising a New European Strategy

A complex picture of migration and asylum policy begins to emerge in light of the aforementioned concerns. On the one hand, pressure to address the demographic and labor needs of Europe are encouraging policymakers to move away from the control paradigm of the 1990s towards a more sustainable approach. On the other hand, restrictive measures aimed at discouraging "unwanted migrants" such as asylum seekers and refugees continue to be implemented.

The various intergovernmental and supranational discussions that occurred during the late 1990s reflected such conflicting pressures. For example, one possible way forward was outlined by a Reflection Group of the Council of Europe in 1998, which suggested that a new strategy of migration management needed to be developed and implemented. The proposed strategy accepted the stance that Europe is a region of immigration, and that the management of inflows needed to be organized comprehensively.

In the same year, the Austrian Presidency presented a controversial "Strategy Paper on Asylum and Immigration Policy". The paper put forth numerous recommendations, including a proposal that the EU show "political muscle" in preventing refugee and migrant influxes and another proposal suggesting that "voluntary repatriation" of refugees should be safeguarded, "if

necessary using the same means of force employed by the international community for maintaining peace and bringing conflicts to an end" (point 131). The proposals were not pursued, largely because of the harsh dismissal of the paper. Nevertheless, it did reflect the opinion that serious change was needed.

Change was the subject of the 1999 Tampere Summit, where a more humanitarian vision for asylum was discussed. It was at this juncture that the need for leadership within the European Union on asylum and immigration also became evident. The Tampere European Council became instrumental in advancing a new strategy aimed at 'an open *and* secure European Union' that is aware of the need for migration management to harness the benefits of migration while limiting the risks.

The Conclusions sought to provide a political impetus from the highest level and identified the following components of a common European migration management policy:

- The management of migration flows which acknowledges the necessity of developing measures to deal – simultaneously - with all the different aspects of migration and which tries to find a balance between humanitarian and economic admission;
- the fair treatment for third country nationals, aimed at giving them comparable rights and obligations to those of nationals of the member state in which they live;
- the development of partnerships with countries of origin and of transit, including policies of co-development, as an important element in migration management strategies; and
- a separate common policy for asylum which fully respects the terms of the Geneva Convention and member states' obligations under international treaties.

The remainder of the section looks at some of the recent developments in each area, paying particular attention to how asylum policy has been placed

within an overarching framework of "comprehensiveness". This should not be taken as a definitive overview of negotiations in the areas of both immigration and asylum policy over the last five years. Rather, the aim is to first, provide some indication of what progress has taken place, how distinct policy areas such as foreign relations and security affect the practice of asylum and secondly, to highlight the growing use of the discourse of management.

A Common Asylum Policy

The harmonization of asylum policies across member states is seen as an important part of a comprehensive migration management strategy. However, progress in this area has generally been slow. The Tampere Declaration identified four building blocks of the EU asylum system: determination of the state responsible for the examination of an application; conditions for the reception of asylum seekers; minimum standards on asylum procedures; and qualification and content of refugee and subsidiary protection status (Council of Europe, 1999).

According to the conclusions, a common policy would be carried out in two phases. During the first phase, common minimum standards should be adopted within five years in order to reduce the differences in European countries' asylum policies. This has an effect on whether asylum seekers are able to get into the EU, how their claims are processed if they do succeed, whether or not they are recognized as refugees, and how they are supported through the process. States hoped that this would create a more level playing field across

Europe, reducing the 'pull factors' that they believe attract asylum seekers to particular countries. In the second phase, after 2004, a common asylum procedure and a uniform status for the people who are granted asylum should be established.

Due to the imposition of unanimous decision-making in the first phase, agreeing on every aspect of the four building blocks of the Common European Asylum System (CEAS) proved to be challenging. To date all Directives have been agreed upon, albeit the last two being signed two days before the deadline of May 1, 2004. Disagreements among member states on the precise shape of this common policy have been frequent. For example, on the issue of the refugee directive, Germany had reservations about the recognition of oppression by non-state actors, which it does not recognize (Geddes, 2003, 9).

Moreover, during negotiations on the four building blocks of CEAS, member states have substantially watered down the standards contained in the initial Commission proposals. For example, the United Kingdom pushed for lower EU minimum standards so that its new national reception policies could continue once the EU reception directive came into force. Specifically, the UK wanted to ensure that it would not be prevented from removing support for asylum seekers who did not apply in good time or without good reason, a policy the government had introduced in recent domestic legislation. The UK was successful in persuading other countries that the provision should be incorporated into the reception directive, thus giving other EU states the

possibility to introduce a similarly punitive and inhumane policy into their national law.

While adherence to the 1951 Convention has been held as a key aspect of the CEAS, developments in other migration-related areas have led some to question the strength of this commitment within the overarching EU strategy. For example, the issue of safe third countries, to which asylum seekers could be readmitted if they sought protection there rather than continuing to an EU member state. Moreover, as we shall see in subsequent sections, negotiations in other areas of the EU's management strategy, such return and readmission agreements, also influence approaches to asylum and refugee issues. Tools such as safe third country provisions and readmission agreements have all been measures aimed at limiting access to admission procedures and protection in the EU and have consequently impacted both those who are abusing the system and those people who genuinely need protection (Vedsted-Hansen, 1999, 30).

Fair Treatment of Foreign Nationals

The second component of a common EU migration management policy, fair treatment for third country nationals, aims to secure residence and related rights, promote equal socio-economic, civil and political rights, easy and fair naturalization, and the adoption of legal and other measures to combat racial and ethnic discrimination (European Council, 1999). Two anti-discrimination directives were agreed upon in June 2000 under the Portuguese Presidency. However, in general, progress in the area of integration has been slow and policy convergence in the area of immigration has not been accompanied by a parallel

development in relation to citizenship and nationality policies. This is not surprising given the fact that integration is a controversial issue across the EU, as national responses to immigrant integration are extremely diverse and are linked to questions of nationality and citizenship.

Although there is little mention of asylum seekers and refugees in the discussions concerning integration, there are important linkages. According to the Tampere Conclusions, a person holding a long-term residence permit in an EU member state should be granted a set of uniform rights as similar as possible to those enjoyed by EU citizens. For example, the right to receive education and the right to employment. Yet, as long-term immigrants acquire rights in liberal states, it becomes harder to see them as temporary outsiders in society. This generates strong pressures for social incorporation and eventually for access to citizenship (Castles, 2004, 216). Therefore by leaving asylum seekers and refugees out of the debate, there is greater flexibility to disassociate the presence of forced migrants with any kind of permanent residency or acquisition of citizenship rights.

While there may not have been a great deal of "comprehensiveness" in terms of including asylum or refugee resettlement and integration, there has been greater pressure to link integration with economic conditions. In fact, much of the debate about 'immigrant integration' has not tackled issues of citizenship or nationality, but rather has centered on welfare and labor market concerns that relate to more general pressures of economic transformation. Indicative of this was the European Commission's attempt in 2003 to develop the Immigrant Integration Agenda in a June 2003 communication on Immigration, Integration

and Employment (COM (2003) 336). This tied immigrant integration more closely to the Lisbon Economic Agenda and a discussion focused almost entirely on the economic implications of demographic and labor market changes (Geddes, 2003, 14).

The Management of Migration Flows

In the Tampere Conclusions, the European Council also stressed the need for a more efficient management of migration flows at all their stages. It called for the development, in close co-operation with countries of origin and transit, of information campaigns on the actual possibilities for legal immigration and for the prevention of all forms of trafficking in human beings (Council of Europe, 1999, point 22). While the call for management of all migration flows suggests a broader outlook, the main focus of EU activity has been the fight against illegal migration (Castles, 2004, 214). More recently, attention has also shifted to include the development of a common immigration policy as a priority.

In regards to the issue of illegal migration, the Commission published a communication two months after 9/11, setting out an overall action plan to reinforce the EU's efforts to combat illegal migration flows. It proposed action in the areas of: visa policy; information exchange, co-operation between and co-ordination of the activities of member states' enforcement authorities; border management; police co-operation; aliens' law and criminal law and return and admission policy.

This was reinforced during the conclusions of the European Council of Laeken of 14 and 15 December 2001, which stated that:

Better management of the Union's external border controls will help in the fight against terrorism, illegal immigration networks and the traffic in human beings. The European Council asks the Council and the Commission to work out arrangements for cooperation between services responsible for external border control and to examine the conditions in which a mechanism or common services to control external borders could be created (Conclusion 42, 2001).

External border management is envisioned in large part through programs of mutual technical assistance between border control services, technology and information transfer, such as through Interpol and the Schengen Information System. Similarly, EURODAC, which was launched in 2003, is a EU-wide database that compares the fingerprints of asylum seekers and illegal entrants to help establish which member state is responsible for examining an asylum application. According to a communication from the European Commission in 2004, *"It is clear that in its first year EURODAC has been established as a front line asylum management tool for the EU"*.

Return policy is also considered an essential component of the EU fight against illegal migration, as highlighted in the Commission's Green Paper on a Community Return Policy on Illegal Migrants in 2002. It raised a number of issues, eleven of which concerned improvements in cooperation on return policy among member states. Readmission agreements have been considered essential in this regard, as they provide the legal groundwork for the return of nationals to their country of origin. While hundreds of such agreements have been signed by member states, the EU's political strength could have an impact on how successful they are at returning both failed asylum claimants and illegal migrants. A readmission agreement with Hong Kong was signed in November

2002 and agreements with Sri Lanka and Macao were endorsed in May and October 2002. As the Commission reported, "negotiations with most of the other countries, in particular with Russia, Ukraine and Morocco are well underway" (2003, 13-14)[37].

At the European Council in Seville in 2002, the comprehensive combat of irregular migration and the use of readmission agreements as a management tool remained 'top priority'. The Council urged that any *"future cooperation, association or equivalent agreement which the EU or the EC reaches with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration"* (italics added, European Council, 2002: 10).

While return policies focus on both illegal migration and failed asylum seekers, the European Council at Tampere acknowledged that asylum and immigration are distinct, but at the same time closely related issues, and therefore, measures combating illegal immigration should comply with principles and obligations derived from refugee and other human rights law. This combined approach towards asylum and immigration issues was endorsed during the Summit in Thessaloniki in 2003:

> Whilst respecting international humanitarian obligations, illegal immigration should continue to be combated, as called for in Seville. This aspect will gain significance when the new asylum policies will become effective, since people remaining committed to enter the EU, in spite of these policies, to enter the EU, will more frequently resort to using illegal tracks.

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[37] At Seville, the Council also approved new briefs for negotiating readmission agreements with the countries determined by the Council of Justice and Home Affairs (JHA) ministers (Albania, Algeria, Turkey and China).

However, given the existence of the "migration-asylum nexus", those genuinely in need of protection are often taken as economic migrants or illegal entrants due to the fact that they have used false documents to enter the territory or the fact that they have used, or have been recruited by, smugglers and traffickers.

Although the most significant work in this area has been on the issue of illegal migration, there have been recent attempts to develop more 'positive' labor migration policies that can be related to the effects of labor market shortages and concerns about Europe's ageing populations. In July 2001, the Commission adopted a Communication on the establishment of an open co-ordination method for the Community Immigration Policy, which suggested ways in which greater convergence in the implementation of migration policy in the EU could be obtained as a complement to the legal framework.

The European Commission has explicitly recognized the link between asylum and immigration, and that in the absence of viable, legal migration options, persons who are not refugees seek to enter countries of choice through the asylum channel. For example, in its Communication on a Community Immigration Policy of 22 November 2000 (COM (2000) 757 final), the Commission suggested that the EU could *"best achieve its objective of more efficient management of migration flows through a comprehensive approach"*. The Commission argued that, as part of a comprehensive immigration policy, the adoption of common procedures for labor migrants could to a certain extent also *"reduce pressure on channels for humanitarian admission and that illegal*

migrants would be further deterred by more effective joint action against smuggling and trafficking" (ibid).

At the same time as the EU works towards combating illegal migration, it is beginning to recognize that given the existence of unskilled jobs, especially in the 'informal' sector and the willingness of immigrants to take them at wage levels unacceptable to indigenous workers, it is difficult for governments to control entry to migrants (European Committee on Migration, 2002, 18). In the face of the prevailing economic ethos for flexibility and deregulation in labor markets, which are adversely affecting wage rates and conditions of work, the tightening immigration control appears to be a contradictory strategy.

Cooperation with Third Countries

In order to build a comprehensive approach to migration, the Tampere Conclusions stressed the need to address political, human rights and development issues in countries and regions of origin and transit (COM (2000) point 1.1). The conclusions called for a greater coherence of internal and external policies of the Union and stronger partnership with third countries concerned.

As can be determine from the discussion above, there is significant overlap between the previous component and the aspect of cooperation with third countries. The management of migration occurs both at the borders of the EU and within transit and source countries. While the previous section looked in greater detail at illegal and labor migration, this "pillar" of the management strategy has been much more encompassing, including significant strategies that

have a direct consequence on the nature of refugee protection and asylum in the EU.

"Preventing migration at the source" as outlined in the Tampere Conclusions (COM (2000) section 2.1) has become widely used in EU policy documents and covers the management of all types of migration flows. It carries a preventative logic and aims to influence the factors forcing or encouraging migrants and refugees to travel to the EU. It involves efforts aimed at addressing the 'root causes' of migration and refugee flows in countries of origin through a more targeted use of development assistance, trade, and foreign direct investment or foreign policy instruments.

Fundamental to increasing cooperation with external countries, the Dutch-inspired cross-pillar High-Level Working Group (HLWG) established in December 1998 drew up action plans for the six main countries of origin of asylum-seekers and (illegal) migrants in Europe: Afghanistan, Iraq, Morocco, Somalia, Sri Lanka and Albania. The HLWG promoted the notion of a "cross-pillar" approach and comprehensive approach whose "essential elements" were to be "dialogue, cooperation and co-development" (HLWG, 1999). The Action Plans contain proposals for cooperation measures with the countries concerned in the following categories: foreign policy, development and assistance as well as migration and asylum (Council of the European Union 2000, paragraph 10).

The work of this group has been extensively criticized by academics and NGOs for the division between its proposed mandate and its actual proposals. For example, the Action Plans deal only briefly with preventive measures such

as conflict resolution, development and poverty reduction in countries of origin. Instead, their main focus is on exporting migration control measures, such as airline liaison officers, anti-immigration information campaigns, and readmission arrangements with source countries. There are also no proposals to facilitate the entry into the EU of people in genuine need of protection (Castles, 2004, 219).

The December 2002 Commission Communication, *'Integrating migration issues into the EU's external relations'*, focused on the root causes of migration, partnerships with third countries and specific measures to regulate migration. The programme is specifically aimed at those countries that have signed readmission agreements with the EU and involves economic and development assistance and Justice and Home Affairs measures. In 2002 it was agreed that activities within regions other than those already covered by Council action plans would be explored, including Afghanistan and neighboring countries as well as projects targeted at irregular migration. Turkey, Morocco, Albania and Ukraine are four of the countries with which the EU is currently negotiating greater cooperation. It is worth pointing out that all have strong political ties to the EU, albeit in very different forms of associations, which no doubt strengthens the EU's negotiation position.

A similar mixing of foreign policy, trade, and development assistance was seen during the Fourth Lomé Convention between the EU and African, Caribbean and Pacific (APC) countries signed in 2000. The forum, designed to discuss trade, foreign relations and development aid between the EU and the three regions, became a venue for the EU to "mix" migration issues with more

general foreign policy relations. The strength of the EU's political influence was clearly demonstrated during the revision of the Convention, whereby ministers agreed that all aspects of migration would be central to the meetings. During the last negotiations between the EU and the 71 ACP countries in February 2000, Interior ministers insisted that a clause of readmission of illegal migrants be included in the final text of the Convention. The ACP member states unsuccessfully argued that there was no basis in international law for such a demand and Lomé IV was signed in February 2000 (Hayes and Bunyan, 2003, 75).

Recent discussions at the EU level have gone beyond the original agenda of the Amsterdam Treaty and the Tampere Summit, which stressed readmission agreements and development assistance, by introducing alternative methods of protection and sparked a broader debate concerning the meaning of "effective protection" for refugees and asylum seekers.

The notion of "protection in the region" was tabled by British Prime Minister, Tony Blair, at the European Council meeting in Thessaloniki in 2003. The proposal introduced the notion of creating so-called *"Transit Processing Centers"* (TPCs) on transit routes to Europe. Asylum seekers on their way to the European Union would be transferred to a TPC where they would be detained for the duration of their claims assessment period. The plan envisaged camps in Turkey, Iran, and Iraqi Kurdistan for Iraqis as well as camps in northern Somalia for southern Somalis and in Morocco for Algerians. From the TPCs, recognized

refugees would be resettled inside the EU and rejected asylum-seekers returned to their country of origin.

The backbone of the proposal was that most refugees around the world are unable to access the "international protection regime" without relying on the "human traffickers" undermining that regime. At the same time, the continual decline of approved asylum applications indicates that the system is being abused by the "economic migrants". The proposal called for efforts "*to reform the international protection regime to make it more accessible, better managed and first and foremost more equitable*" (UK Prime Minister, 10 March 2003). The Prime Minister described the aim of the proposals as: "to achieve better management of the asylum process globally through improved regional management and transit processing centers" (ibid).

Shortly after the launch of the paper, the UNHCR also presented a proposal, based on a new 'three-pronged' approach to processing asylum claims[38]. Building on the UNHCR's new "Convention Plus", the proposal aspires to improve the operation of the Geneva Convention, boost solidarity, and extend the management of asylum-related migratory flows by means of supplementary instruments or policies. The proposal acknowledged that the asylum and international protection system can come under serious threat if it is used for other purposes or repeatedly misused, notably by networks of smugglers in human beings. It suggested that external processing centers could be set up,

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[38] The UNHCR approach identified three pillars which could complement the strategic use of resettlement as a tool of protection, a tangible form of burden sharing: more effective targeting of development assistance; and clarification of the responsibilities of States in the event of secondary movements (UNHCR, 2001b).

but that they should exist within, rather than outside, European boundaries. While neither proposal was accepted, due to considerable disagreement between member states, it did introduce the notion of external protection and processing into the European asylum debate. In its June 2003 communication, *'Towards more accessible, equitable and managed asylum systems'*, the Council did invite the European Commission "to explore all parameters in order to ensure more orderly and managed entry in the EU of persons in need of international protection, and to examine ways and means to enhance the protection capacity of regions of origin with a view of presenting to the Council, before June 2004, a comprehensive report suggesting measures to be taken, including legal implications" (COM(2003)315).

The issue of external process and protection in the region has not disappeared from the EU's agenda. A Communication released on 4 June 2004 by the European Commission, titled "Improving access to durable solutions", is based on New Labour's "new vision for refugees". However, where the British government proposed "external processing centers" and "safe havens", the Commission uses even more abstract terms, referring to "determination procedures in a third country" and "regional protection programmes" (Statewatch, 2004). The Communication identifies a need to reform the international protection regime to make it "more accessible, better managed and first and foremost more equitable" (ibid).

There are two additional ways in which this idea of orderly arrivals is being conceptualized and discussed within the EU. One is the idea of Protected

Entry Procedures (PEP); the other is a very traditional method of refugee protection, know as Resettlement. Protected Entry Procedures could mean a range of measures, including the granting of humanitarian entry visas to EU states either from an embassy in a country of origin or from an embassy in a third state. Such a visa could be granted only after the asylum case has been processed and the need for protection determined, or after admissibility has been determined, but before the asylum procedure itself has taken place. A few member states have employed such procedures in the past; however, the Commission has ruled out proposals to improve access to the asylum procedure recommended by the Danish Human Rights Centre, produced in 2002, advising the use of *Protected Entry Procedures*. It cites a lack of "perspective and confidence among the member states" as its reason for not suggesting "an EU [PEP] mechanism as a self-standing policy proposal" (COM (2004) quoted in Statewatch, 2004, 3).

In sum, it is clear that the asylum debate is now inextricably linked to a much wider debate on illegal migration, economic migration, and foreign policy. Through the creation of an overarching "migration management strategy" it is difficult, if not impossible to avoid referring to other aspects of migration policy. Moreover, in attempts to achieve more manageable inflows of asylum seekers and refugees, new forms of protection have been conceptualized, which by extension calls into question previous notions of asylum in Europe.

5. RHETORIC OR REALITY?

In the preceding section a number of important changes in direction for European migration and asylum policy were noted. The EU has sought to establish a comprehensive approach to immigration and asylum. This strategy emphasizes strong cooperation with third countries, the interconnected nature of migration and asylum flows and the building of a common asylum policy among member states. While the overarching framework of the EU's current strategy may mark a new direction in European handling of both forced and voluntary migration, many of the strategy's individual components are not new at all.

For example, the notion of "comprehensiveness" in dealing with refugees and forcibly displaced individuals cannot be considered a new concept. Testament to this can be seen in a well-cited case concerning the Comprehensive Plan of Action for Indo-Chinese Refugees (CPA). The CPA was established in 1989 with the primary objective of finding a solution to the mixed migration of refugees and economically motivated migrants from Vietnam. The EC played a role in development programs aimed at anchoring would-be exiles in their own community and promoting the reintegration of Vietnamese who opted to return from the first asylum countries of Southeast Asia (UNHCR, 1995, 208).

Similarly, approaches focusing on the root causes of refugee movements began to gain international attention as early as the 1980s (Zolberg et al., 1989, 258). A call to address the underlying social and international forces that generate refugees was made during discussion in the General Assembly's

Special Political Committee in 1980[39]. The EU first began to show interest in this approach in 1992 during the Edinburgh European Council, when the Council called for measures to address the causes of migration, including the preservation of peace and the ending of armed conflicts, respect for human rights, the creation of democratic societies and adequate social conditions, and liberal trade policies to improve economic conditions (Castles, 2004, 218).[40]

Resettlement programs have also long been used as a mechanism to achieve more manageable inflows. Such programs involve the selection and transfer of refugees from one country to another. Although resettlement does not apply to asylum seekers but rather determined refugees, it involves an "extra-territorial" assessment of claims in the embassy of the state where resettlement is sought (House of Lords, 2004, 33). A number of EU countries, such as the Scandinavian countries and the Netherlands, have been traditional resettlement countries.

There has been much scholarly work over the past two decades focused on the ongoing attempts of governments to "contain" asylum seekers and refugees within their region of origin[41]. The creation of safe havens in Northern Iraq and Bosnia in the early 1990s, for example, demonstrates the desire of states

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[39] This was followed by a study prepared in 1981 by the former High Commission for Refugees, Sadruddim Aga Khan. A second report was published five years later entitled "International Cooperation to Avert New Flows of Refugees."

[40] Sweden for example, also introduced a comprehensive strategy in the mid-1990s, which emphasized that refugee and immigration policy should be developed in close coordination with the country's foreign policy, security, trade and development policy (Brochmann and Hammar, 1999, 193)

[41] Shakenove (1993) defines containment policies as "any effort to localize or internalize forced migration in countries or regions of origin. Visa requirements, carrier sanctions, return of asylum seekers to countries of first asylum', the creation of 'safe havens' and 'humanitarian intervention' are among the methods of containment." (316).

to find less intrusive ways to protect persons still inside home or neighboring countries (Fredlick, 1993, 5).

Given these previous efforts to find inventive and more effective approaches to refugee protection, while decreasing the burden on asylum systems, it may be argued that the current strategy of migration management is only a repackaging of old policies. European states still adhere to the objective of reducing pressures on European asylum systems while still fulfilling international obligations. This clearly has not changed. Nevertheless, there are a number of particularities concerning the current direction in policy making that should be acknowledged.

Firstly, the predominance of "cooperation with source and transit countries" signifies an important departure from asylum as an internal policy field. Whilst migration control and asylum were always linked to foreign policy, as Shakenove (1988) and others have pointed out (Joly, 1989; Weiner, 1993; Steiner, 2000), the external dimension of asylum policy is now not merely a supplementary consideration, but rather a key element, which continues to gain currency in the asylum debate.

Secondly, the emphasis on "comprehensiveness" implies not only effectively controlling common borders, but managing in an equally efficient way legal immigration, the promotion of the social integration of migrants, the struggle against the causes of forced migration, and prevention of illegal economic immigration. This signifies a spillover of migration concerns into previously independent policy spheres. This explicit link between asylum and

economic migration has resulted in weak policy differentiation between persons in need of protection and other categories of migrants. For example, the notion of a comprehensive strategy to deal with migration was suggested by the European Union as early as 1991, when the European Council called for the integration of migration issues into the EU's foreign policy. In December 1992, the Edinburgh European Council had agreed that asylum policy should contribute substantially to addressing the question of migratory movements (Boswell, 2003, 621).

A third argument relates particularly to the mounting interest in external processing, as set out originally in the UK proposal for safe havens. Discussion pertaining to external processing camps and greater cooperation with source and transit countries has resulted in a shift away from the discourse of asylum to refugee "protection in the region". Through this externalizing discourse, the notion of protection assumes new meanings. The dichotomy between legal protection, for example, state protection and refugee status versus physical protection has weakened, with "no noticeable discrepancy separate(ing) the two" (Roberts, 1998, 391). While previous attempts at temporary protection sought to uncouple asylum with permanent settlement, asylum was still a "durable solution" through which protection was granted. This appears to be changing as asylum becomes deterritorialized. Sandra Lavenex underscores this by stating:

> This externalization strategy has resulted in a new conception of the notion of asylum which is no longer based on territorial principles - and the individual country's responsibility vis-à-vis human rights considerations to admit refugees on its territory - but is managed collectively, with various notions not only of 'remote control' but also, and increasingly, what one could call 'remote protection (2003, 6).

Finally, it is difficult to ignore the changes that have occurred in the language of policy discourse. This reasoning departs from the classic functionalist view of "migration management," in which new strategies of migration regulation are needed to address contemporary realities and instead questions its significance for the framing of policy objectives and implementation. On the one hand, the shift to management signifies a growing recognition that full control is untenable and that efficiency and cooperation are crucial to dealing effectively with asylum and forced migration. From a more critical perspective, it can be argued that the notion is imposing unrealistic demands and that the discourse of management and efficiency, based on the maximization of benefits and the reduction of risks, is inappropriate for policies grounded in humanitarian considerations or human rights norms and laws.

Explaining the Shift

A number of diverse factors responsible for the emergence of the current strategy have thus far been highlighted. The most visible factors relate to the rise in asylum seekers in Europe over the past decade, the failure of restrictive policies, the abuse of the asylum system and the difficulty in returning failed applicants. It has also been shown how the process of European integration has affected the development of migration and asylum policies. Added to these explanations are the contemporary political, economic, social and demographic conditions facing Europe and their influence on the shape of contemporary asylum and migration policy.

Yet, two important explanations have been left out. The first deals with the link between changes in policy and the process of integration. The second relates to the "securitization of asylum". In terms of the former, a number of commentators have noted that greater consensus and cooperation have occurred in areas of common border policing, safe-third country policies, the fight against trafficking and illegal migration and the tightening of external borders (Lavenex, 2003). These policies are seen as relatively less threatening to the sovereign decision-making power of the member states, as they do not touch on the more sensitive aspects of refugee law, such as definitions and determination procedures.

Addressing the later concept, the discourse concerning the "securitization" of migration and asylum also focuses attention away from asylum towards the fight against illegal migration, trafficking and smuggling through cooperative policing and information sharing. By focusing illegal migrants as opposed to asylum seekers and refugees, states clearly avoid any contravention of international law regulating the right of individuals to seek asylum. Moreover, with attention focused on the migration-asylum nexus, states can reduce the number of accepted refugees passing through their determination systems.

Christina Boswell notes that the externalizing strategies being pursued by the EU have received considerable attention in part because "these approaches had potential popular appeal with electorates. They could be portrayed as having an immediate and tangible impact on migration management- whatever their

effects for refugees, migrants and transit or sending countries" (624). The language of migration management itself appears to have been a means for the EU to calm member states and their electorates about the asylum crisis, illegal migration, and perceived security threats. The notion of "management" connotes that effective action is being taken and that clear and visible results are being achieved, regardless of whether the same conditions prevail.

Challenges of Managing Migration

While the above arguments support the claim that the current strategy constitutes a departure in thinking, uncertainties remain as to the viability of the EU migration project in achieving its objective of creating managed inflows. Four key challenges to the success of EU migration project are identified: internal coordination and implementation; agreeing on the meaning of refugee protection; external cooperation; and the feasibility of the EU's strategic objectives.

Internal Cooperation

Challenges to internal cooperation refer to the complex and often difficult interactions not only among member states, but also between different decision-making and regulatory bodies within the EU[42]. While a key obstacle may be a lack of political will to act in uniformity resulting from divergences in domestic goals and pressures, issues such as implementation and lack of leadership should also be acknowledged.

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[42] Kostakopoulou (2000) writes, "…the EU constitutes a complex strategic field. Within this field there exists several and distinct sites of power, a multitude of relatively independent and yet interdependent agencies having special and variable relations to each other and to other external sites of power" (500).

There has been much attention in the literature to the diversity of migration policies among states and the central tension between sovereign and communitarian policy objectives (Cornelius et al., 1994; Zetter et al., 2003; Brochmann and Hammar 1999; Boswell, 2003). While European member states have been concerned by many of the same aspects of asylum, a close examination of the particular goals and interests of member states indicate some considerable divergences.

For example, Angenedt (1999) points out that northern countries generally adopted a comprehensive range of measures over the last decade, yet the outer core of southern member states (Spain, Greece and Italy) lacked "coherent asylum regimes and possessed physically permeable borders particularly vulnerable to the growing scale of migration and determination of migrants to gain entry" (125). This may be explained in large part by the fact that southern countries have become the channel for inward migration mainly because of the restrictive practices in the northern core.

Similar divergences are seen in the level of support for harmonization and collective action. Italy, the Netherlands, France, Spain and Belgium are countries with generally high support for integration in the area of immigration, whereas Denmark, Sweden, and the UK prefer a national approach (Mitchell and Russell, 2003, 144). Delegating the authority to decide who is to be granted asylum has been subject to serious reservations from the 'EU-skeptic' countries such as Denmark and the UK throughout the 1990s.

Divergent interests are clearly influenced in part by disparities between asylum applications among the countries. In the period 1982-2001, from 6.2 million applications across the EU, almost half (2.9 million) were made in Germany. Austria, Belgium, France, the Netherlands, Sweden and the United Kingdom made up the other 2.7 million. Therefore, the other eight members only dealt with 600,000 asylum applications (Vink and Meijerink, 2003, 299)[43].

As was discussed in the overview of theoretical approaches, it is clear that political forces also have a strong impact on determining state goals and levels of support for harmonization. In Britain, Germany, the Netherlands and Sweden, electoral support for anti-immigration in national elections is and has been low (i.e. less than 2 percent) whereas in Austria, Denmark, France, Italy and Norway, support for such parties is relatively high (Mitchell and Russell, 2003, 144). Electorates may also put pressure on domestic politicians to increase or reduce the level of EU involvement.

In addition to differing interests, member states often have divergent methods of implementation. The timing, staging and chronology of the asylum policy regime in specific countries have been key variables in the differences in policy outcomes and impacts (Zetter et al., 2000). Basic communication and coordination matters also pose challenges to inter-state migration control

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[43] We can suggest a number of explanations for why some states attract more asylum applications than others. Koser (1997) has done considerable work in the area of social networks and has found that that asylum seeking may be strongly tied to migration patterns and histories of individual states. Historical legacy, judicial system and foreign policy considerations have a bearing on the level of applications.

(Thouez, 2000, 5)[44]. States may agree to general principles set out by the EU, however, there are questions as to how far member states actually apply common instruments (Lavenex, 2003). Without the existence of compliance mechanisms within the field of migration policy and the reluctance on the part of states to abide by collective rules, overall strategies are significantly undermined (Thouez, 2000).

Agreeing on the Meaning of Refugee Protection

There are also significant differences of opinion concerning the practical agenda of an EU asylum policy as well as the broader philosophical discussion concerning meaning of effective refugee protection (Van Selm, 2004). This was clearly observed in the reaction of member states to the UK's controversial proposal on TPCs in 2003. The Netherlands and Denmark were quick to engage, while Sweden, Finland, Greece, Germany and France rejected the plan as an inappropriate form of discussion for a humanitarian group of states (ibid, 11). Moreover, questions concerning which aspects of migration must be managed and how migration management should take place remain unanswered. As a result, member states not only have divergent views about the meaning of refugee protection, but are also still unsure of the broader definition of migration management.

Challenges of External Cooperation

A further set of challenges that may hinder potential long-term success of the EU strategy centers on effective cooperation with third countries. External

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[44] Thouez (2000) highlights this fact by drawing attention to the difficulty of authorities on the ground in France "feeling a great disconnect between their practices and those of their fellow European colleagues across the Channel".

states may feel resentment that the burden is being shifted to poorer countries that are not adequately able to deal with greater migratory pressures. Given that many of the countries with which the EU wishes to cooperate already give refuge to thousands, sometimes millions, of refugees, such reactions cannot to be taken lightly.

Illustrative of this, the HLWG's Action Plans rely heavily on cooperation to implement policies aimed at conflict resolution, development and poverty reduction in countries of origin. Despite the principle of cooperation with countries of origin, the Action Plans were not based on extensive consultation with the governments involved. The HLWG found that several countries of origin were reluctant to cooperate because they felt that they were 'the target of unilateral policy by the European Union focusing on repressive action'[45]. For example, the Moroccan Government was critical of the emphasis on the 'security dimension' as well as the tone and language used to describe the causes of migration (Castles, 2004, 216).

The signing of readmission agreements may also cause resentment since many of these countries do not have sufficient resources for the reception of asylum seekers and administration of asylum claims. The EU's open acknowledgement that it should "exercise its political and economic muscle" to enforce return and readmission agreements with countries of origin and transit raises questions about cooperation versus coercion in relation to third countries and implications for "successful partnerships". These concerns are multiplied in

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[45] See Council of the European Union 2000, paragraphs 19–22.

the potential creation of *Transit Processing Centers,* as suggested by the United Kingdom.

These challenges concern not only readmission agreements and development assistance, but are applicable to many of the areas in which the EU is working to "enhance cooperation with third countries". Initiatives such as the posting of liaison officers in airports to prevent undocumented migrants from boarding aircrafts, and the transfer of knowledge and technology to migration officials and law enforcement agents in source and transit countries are wrought with implementation and political challenges. Because many of these countries do not have sufficient infrastructure or capacity to deal with their own migration concerns, their ability to meet the requirements of the EU's migration management objectives is doubtful.

Orderly Asylum Flows?

A final challenge to consider relates to the actual strategic objective of the EU's migration management strategy. We will recall the European Council's call to the European Commission "to explore all parameters in order to ensure more orderly and managed entry in the EU of persons in need of international protection" (COM(2003)315). Key to any successful migration policy is a government's ability to respond to migration issues in a coherent and consistent manner. This is clearly made easier by more managed and organized migratory patterns. It would indeed be counterproductive to argue that this should not be a goal of governments and international organizations. Yet, can the movement of

refugees and asylum seekers assume a more predictable, orderly and organized form?

As was demonstrated in the previous sections, the EU has embarked on a number of initiatives to achieve this goal. However, as many commentators have pointed out, these efforts may not result in more orderly or managed flows. Even if external processing camps were created, such programmes may not necessarily lead to greater inflows but, in fact, could increase the number of illegal migrants entering the EU. As Loescher and Milner (2003) point out, "While comprehensive responses to protracted situations could potentially result in a dramatic reduction in the number of people who will seek to enter Europe, it would be unrealistic to expect that migrants will not continue to seek to come to Europe for a variety of reasons. In a world in which information, goods, money and cultures are increasingly mobile; Europe will continue to attract many migrants and asylum seekers" (598).

The reason why migration management sits uneasily with refugee protection and asylum is made all the more clearer when we recall the determinants of forced migration. According to the UNHCR's *Statistical Yearbook for 2001*, the highest numbers of asylum seekers come from countries facing human rights abuses and conflict, such as Afghanistan and Iran[46]. Quantitative research finds that the level of political terror in the country of origin was a key factor in generating asylum seekers but that improvements in

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[46] The number of Afghans seeking asylum was estimated at 51,705 in 2001 an increase of 18,910 or 58 percent. Other key countries of origin were Iraq (47,928) and Turkey (30,383). Strong increases in the number of asylum applications filed were for citizens of Vietnam (up by 67 percent), Ukraine (64 percent), Angola (61 percent), and the Georgian Republic (59 percent).

political rights and civil liberties also tended to increase the numbers[47]. Ensuring that such population movements take place in an orderly, predictable and organized manner may be more difficult than the concept of migration management implies.

In sum, there are significant challenges for the European Union in pursuing the current approach to migration and asylum. This in part derives from the conceptual applicability of management in relation to asylum flows. But more concretely, carrying out a comprehensive strategy built on a common approach faces significant challenges, which follow from the process of European integration. The "incomplete harmonization" that has occurred over the past two decades is evidence that implementing a European strategy may prove to be more rhetoric than reality as member states face divergent and sometimes contradictory pressures which shape their capacities to control immigration.

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[47] This is based on a study conducted by Rotte, Vogler and Zimmermann (1997) who analyzed applications to Germany from 17 countries in Asia and Africa over the years 1987 to 1995.

6. RECONCILING STATE INTERESTS AND REFUGEE PROTECTION

Has this European strategy managed to reconcile state interests and refugee protection? While reference is to state interests, it is clear that within an integrated Europe there is a complex interplay between the desires and goals of states and that of the Union as a whole. While sometimes represented by different actors, these interests are significantly interwoven. Broadly speaking, state interests combine the desire of hosting states or regions to adhere to international human rights laws and obligations, protecting borders from "unwanted" migration and facilitating freedom of movement for citizens, goods and labor. The EU's migration management strategy strives to reach this balance. As reflected in the Tampere Conclusions, the EU aims to build a "comprehensive approach which acknowledges the necessity of developing measures to deal – simultaneously - with different aspects of migration and which tries to find a balance between humanitarian and economic admission" (Council of Europe, 1999).

The question becomes, how do refugees and those in search of protection fare in the emerging paradigm of migration management? It is difficult to find a benchmark with which to compare the current state of asylum policy. There is often an assumption that the post-war period was a golden age of refugee protection. However, as Jeff Crisp aptly states, "we should not imagine that there was ever a golden age of asylum. States and other actors have always been prepared to violate the laws and norms of refugee protection when it suited them to do so" (2003, 1). Clearly there has always been a trade-off. In this regard, the

question of whether refugee protection and state interests have been reconciled is best answered in terms of positive and negative impacts.

Positive Directions

On the one hand, many of the elements contained in the EU's strategy for more effective migration have met the demands made by refugee advocates and academics. Recommendations to address the root causes of forced migration, to improve coordination and cooperation between states, and to increase avenues for legal migration in order to prevent abuses to the asylum system, have long been on the advocacy agenda. In general, those interested in the protection of refugees and asylum seekers have long called on states to "better organize their refugee protection process, and to better understand each other so as not to mismanage by imposing unrealistic demands, or demands that are not based in reality, on each other" (Van Selm, 2003).

In this regard, the strategy of migration management appears to be relevant to these interests. Greater harmonization brings a reduction in the differences in European countries' asylum policies. By instituting minimum standards, there is the potential to bring positive results if standards are set high enough and states are required to meet them. The establishment of a common asylum system can be taken as a case in point. The agreement that non-state actors should be included in the definition of who qualifies as a refugee is one illustration of this. Moreover, harmonization of refugee reception means that the situation of asylum seekers should improve substantially in countries where reception facilities are currently under-resourced (Refugee Council, 2004, 7). The

directive should also limit the 'race to the bottom' among member countries that, believing their reception conditions are a pull factor, attempt to make their national conditions more restrictive (ibid).

Similarly, those concerned with refugee protection have praised a growing effort to tackle the root causes of forced migration. Through development assistance and programmes aimed at conflict prevention, there is the potential to decrease forced displacement worldwide. The EU has the capacity to play an important role in this regard as its member states together provide over half of all overseas development aid (Boswell, 2002, 16). Meanwhile, the EU's competence in trade policy gives it a significant role in shaping trade terms with developing countries.

Greater cooperation can provide third countries with an incentive to cooperate on migration issues and could go some way in addressing the negative impact of emigration and migration control policies on development. As Boswell (2003) states, "...it offers a more constructive basis for relations with third countries, building on mutually beneficial forms of cooperation" (636). Monetary and technical assistance provided to third countries may also encourage or permit the institutionalization of appropriate asylum procedures in transit countries (Lavenex and Ucarer, 2002, 8).

Beyond greater cooperation with third countries, a comprehensive policy that takes into account the interdependence of policies and outcomes and recognizes the complex relationship between migration and asylum flows can be seen as encouraging. This is not to justify a view commonly held by host

countries that a substantial proportion of those who apply for asylum are not bona fide refugees but economic migrants; rather, it is an acknowledgement that "closing the door to legal migration may be a significant cause of abuse to the asylum system" (Van Selm, 2003, 81).

In the context of a greater reliance on immigration given current demographic and economic trends, there is a possibility that abuses to the asylum system might decrease[48]. In tandem with measures to reduce discrimination and racism, this can be seen as a positive step. Through the new discourse of "comprehensiveness", the EU is paying increased attention to improving the rights of foreigners, including refugees who are resettled in member states, through the promotion of equal socio-economic and civil and political rights, increased opportunity for naturalization and the adoption of legal and other measures to combat racial and ethnic discrimination (European Council, 2002, 26). In general, the emphasis on comprehensiveness and cooperation should, in theory, be regarded as an advancement in the organization of migration and asylum policy.

Negative Implications

Needless to say, the European strategy of migration management has not been regarded by all as a step in the right direction. There are indeed numerous aspects of the strategy, which have received sharp criticism from refugee advocates, NGOs, government officials and academics. While it is difficult to question the advantages of predictable and orderly population movements, many

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commentators have drawn attention to the fact that the rhetoric of official policy has not been put into practice.

For example, although the HLWG is involved in researching the cause of refugee movements the bulk of the recommendations focused on readmission agreements with countries of origin and transit countries and securing protection in regions of origin (Boswell, 2003, 629). Similarly, none of the action plans aimed at the six targeted countries contained any proposals allowing refugees from the listed countries to seek asylum in Europe (Hayes and Bunyan, 2003, 83).

Critics have for some time argued that the greatest result of policy convergence and limited harmonization has been the shifting of the asylum burden onto third countries and the countries of origin (Roberts, 1998). Recent proposals to move protection to the source region or to transit countries, as was suggested in the UK proposal, may exacerbate such shifts or lead to ineffective protection, as countries on route, or those in which alternative protection centers are established often do not have the institutional or financial capacity to deal with increased migratory pressures. In addition, they are often already dealing with large refugee populations.

In general, the fact that the EU is increasingly ready to use its political muscle to influence third country migration policy does not augur well with international principles of solidarity and burden sharing. "Cooperating" states may feel that they are being coerced rather than consulted, which could result in growing resentment of third countries.

There is also a fear that policies focusing on "root causes" of forced migration may undermine development assistance and refugee protection by introducing general requirements for migration control. Since the establishment of a single body for General Affairs and External Relations in 2002, development policy is highly connected to foreign policy issues such as security, defense and external trade. This suggests a report commissioned by the European Parliament, "creates a risk of development considerations being seen as less important, even ignored" (Hayes and Bunyan, 2003, 79). In addition, Boswell points out that the provision of development assistance to reduce migratory pressures assumes that target countries will be "good performers", which is not always the case (2003, 636).

By focusing on "comprehensiveness", the EU and member states may not be looking at the real issue. Cooperation with source and transit countries and efforts to combat the trafficking and smuggling of individuals are necessary and important areas that need to be addressed. However such activities should not deflect attention away from reforming asylum determination systems by concentrating on alternative measures of protection. Thus, divergences between rhetoric of policy documents and what is actually implemented not only carry the risk of devaluing the notion of comprehensiveness, but can also end up being ineffective and counter-productive.

It seems increasingly clear that a policy frame, which is very different than that of international or national refugee regimes of post-WWII period, is developing. The responses of western countries, including the EU and its

member states to the growing asylum-migration nexus and the externalization of protection has led some to argue that human rights and humanitarian considerations have become merely secondary considerations. Sandra Lavenex comments on recent developments in the EU by saying, "No longer is the human rights aspect in the foreground (even if in reality it was often Cold War ideology) but security aspects and the objective of immigration control coupled with tensions over the distributive effects of asylum seekers inside the Union" (2003,7).

The emphasis on illegal migration in EU policy creates concerns over the continued securitization of migration and asylum seekers. By placing asylum within the same framework as measures to prevent international crime, terrorism and illegality, a process develops whereby immigrants are viewed not only as criminals for unlawfully entering the EU, but also as presumptively deviant individuals (Bigo, 1996, 257).

Finally, the implications of imposing the language of management on policies dealing with asylum and forced migration should be raised. Recalling that one of the priorities of the EU strategy is to "maximize opportunities and benefits to individual migrants and to host societies and to minimize trafficking and irregular movement" (European Committee on Migration, 2002, 17), there is an assumption that the entrance of asylum seekers is a risk. By framing the asylum debate in an overall structure that emphasizes "costs and benefits", refugees and asylum seekers may become simply "risks" to be avoided or minimized.

"Effectiveness", which has become so integral to the management strategy, may have an effect on how refugee protection is carried out. While the notion of "effective refugee protection" is constantly referred to in policy documents, it is still uncertain who judges protection to be effective. One author remarks on the increased use of this term and its potential outcome, in saying:

> For some EU member states, however, there seems to be an inclination to adopt this term 'effective protection' to mean something like protection which is good enough somewhere other than in the EU – so that we don't have to accept refugees for protection in the EU...it is important to ask who has to judge protection to be effective – or to be good enough (Van Selm, 2004, 13-14).

A further implication connected to the use of language relates to the divergent meaning of the term migration management among concerned actors. For some, it refers to a move away from the restrictive policies of the 1990s towards a recognition of the need for flexibility and adaptation. It has also been used as a term to connote the desire to develop comprehensive policies towards all migrants groups. For others, the growing emphasis on migration management has meant that refugee protection becomes marginalized within the discourse. In this vein, the meaning of migration management carries a much more negative connotation. With such divergences in the usage of the term, what is being managed, by whom, and for what overall objective, becomes ambiguous.

These implications underscore the complex nature of migration and asylum policy and the multitude of effects such policies may have. An important point to remember is that the implications stretch far beyond the borders of the EU. Europe is a leader in the global refugee regime, and it is clear that the

manner in which the EU and its member states operate affects practices in the rest of the world. Approaches seeking to limit access to admission procedures and protection in the EU have been copied around the world. "Countries from South Africa to Indonesia, Kazakhstan to Egypt have been able to introduce measures which violate human and refugee rights using the justification that if Europe can do it, so can they" (Van Selm, 2004, 6).

7. CONCLUSION

This thesis has sought to explore some of the major issues and debates concerning asylum and refugee policy in the EU. Specifically, we have taken a critical perspective to examine the changing nature of refugee protection within the framework of a migration management paradigm. The principal questions addressed were: How effective is the migration management paradigm in dealing with refugees and asylum seekers? What are the implications of this approach in an integrated Europe?

This thesis has demonstrated that the notion of migration management remains an underdeveloped concept, with significant divergences as to its meaning and the objectives it encompasses. In spite of widespread usage among academics and policy makers, ambiguities exist as to its relation to different migrants groups and how it relates to previous methods of migration control.

In examining the workings of the "management strategy" within the EU, it was argued that the current strategy signifies an important departure from previous approaches evidenced by a number of changes in policy direction. Most notably these changes can be observed in the growing collective political will on behalf of member-states to find new ways of dealing with the asylum, through greater cooperation with source and transit countries, a growing emphasis on protection in the region, and the transformation of policy discourse from control to management.

This thesis has argued that the paradigm of migration management has effectively shifted the contours of the asylum debate by linking refugee and

asylum policy with broader issues of labor migration, illegality and foreign relations. This has resulted in the separation of asylum from territoriality and more broadly, in the subordination of humanitarian considerations to the overarching goals of migration management.

While the management strategy can indeed be taken as a new departure in asylum policy, a number of challenges must be pointed out. These relate to the political strength of the European strategy in the context of divergent interests and conditions faced in member states; problems faced in achieving cooperation with countries outside the EU's boundaries; and finally, with the feasibility of achieving the strategic objective of "orderly asylum flows".

Finally, implications both positive and negative of the current strategy have been explored. Although the current direction of policy can be said to have brought positive developments such as the harmonization of minimum standards for refugee reception and determination, a greater emphasis on the root cause of forced migration and efforts to constructively address the asylum-migration nexus, the strategy of migration management and its impact on refugee and asylum policy has not been regarded by all as a positive advancement. Refugee advocates have expressed their apprehension that recent policies will only serve to shift the burden of protection onto less developed states and that the policy rhetoric of protecting human rights has not been matched in policy practices.

We are faced with the question implicit in the title of this thesis: "Can asylum be managed?" Can migratory movements involving refugees and asylum seekers which are "inherently chaotic and unpredictable" (Crisp, 2003, 14)

become orderly and predictable? And can the inherent tension between state and increasingly, regional interests, be reconciled with effective refugee protection? If so, how should this take place?

As this thesis has demonstrated, there is no simple solution. What is clear is that Europe, which prides itself on its protection of human rights and humanitarianism, needs to ensure that the values and standards it is promoting in Conclusions such as those made at Tampere are upheld, and that the fundamental right to seek asylum does not become subordinated to the objectives of migration management.

As the notion of migration management continues to grow in importance around the globe, future research is fundamental to answering, or at least exploring, the questions outlined above. It would be particularly interesting to focus on the political underpinnings of 'global migration management' and the policy's impact on refugee protection internationally. This could include research into the role of international organizations such as the UNHCR, IOM, as well as other regional and international bodies in their attempt to address the issues surrounding both forced and voluntary population movements. Such research would facilitate comparative research, which would allow for greater understanding of the notion of migration management and further evaluation of its effectiveness in addressing the problem of forced migration.

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