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**Briefing Paper: The Politics of Immigration and Asylum Policy in
Western Europe¹**

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Abstract: This briefing paper on asylum and immigration begins with an overview of the immigration experiences of the northern, southern, and central and eastern European regions. First we focus on politics, public debates and policy outcomes within national settings. We point out why immigration and asylum issues are particularly prone to becoming politicized conflicts within the national politics of European states, and examine how anti-asylum sentiments have become an important aspect of political party competition and a means for the radical right to mobilise popular support. We then consider the dynamics of states' responses to illegal immigration, a key issue for immigration politics in southern Europe for more than two decades. The remainder of the paper addresses how migration processes are shaped politically by supra- and transnational institutions within Europe, and we assess the extent to which supranational institutions, norms and discourses have acted as defenders of migrants' rights. We review the development of an expanded role for the EU institutions in migration policymaking, pointing out that the EU's policies in this area have been driven by its member states. Here we argue that harmonization of states' asylum policies within the EU, at anything other than the lowest and most restrictionist denominator, remains unlikely while power imperatives remain largely the prerogative of national states.

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Introduction

Immigration and asylum are political issues currently high on the agendas of the European Union [EU] and most European countries, and Western Europe's nation states are frequently described as being in a state of 'crisis' over immigration and asylum. This briefing paper assesses the nature and extent of Europe's immigration and asylum 'crisis'. The first section shows how the issues have become politicized within different nation states in the European region and examines the resulting policy outcomes.

Following on from this, the second section questions the extent to which the increasing similarities in approaches to immigration and asylum in Europe can be attributed to the forces of globalization, and the influence of supranational institutions such as the United Nations High Commissioner for Refugees (UNHCR), and the EU.

National Politics: Domestic Conflicts over Immigration and Asylum

Since the 1990s Western European countries have witnessed a renewed politicization of immigration. Among the EU countries, there is a divide between the experiences of north, south, and central and eastern European countries. The immigration experience of northern countries, such as Germany, France, the United Kingdom, Sweden and the Netherlands, is characterized by mass asylum-seeking and new inflows of refugees. These countries had effectively closed all paths of entry (other than for humanitarian reasons, such as family reunion, or for people fleeing persecution) by the time of the oil crisis in the 1970s. After closing down 'guest-worker' and post-colonial immigration, these core European countries effectively advocated 'zero immigration' policies towards flows of migrants from less developed countries. However, the dramatic geopolitical changes that swept Europe after the collapse of communism in Eastern Europe, the emergence of 'poorer' young democracies, and the Balkan ethnic wars, led northern European countries, especially Germany, to fear large population movements from East to West in the early 1990s. In these countries, political conflicts over immigration have tended to focus on the issue of asylum, leading to more restrictive policies in most cases.

In contrast, the southern European countries of Italy, Spain, Greece and Portugal were former countries of emigration that had traditionally supplied labour to northern Europe. More recently they became net immigration countries, and have increasingly come to face the dilemmas of establishing policies for dealing with large numbers of resident migrants who are culturally and ethnically different from the native population. Previously, illegal immigration had been tacitly tolerated by southern European states, since their economies relied in part on importing informal and seasonal labour. From the early 1990s onwards, however, illegal immigration became an important political issue in countries such as Italy and Spain. These countries have responded to the politicization of immigration with a series of 'regularisation' drives for illegal migrants, combined with public order and security measures, and efforts to put more restrictive controls on new migration into place. Spain, for example, announced a three-month amnesty to starting in February, 2005, which was designed to bring to light the country's underground economy. Under these provisions 700,000 illegal migrants were given work and residency permits, but this 'regularisation' was coupled with new government pledges to

crack down on illegal labour and to deport unregistered migrants. Despite such efforts by national governments, large flows of illegal migrants continue to shuttle across the sea from Albania to Italy and from North Africa to Spain.

A third group of countries that share common migration experiences are the newer democracies of Central and Eastern Europe, which became members of the enlarged EU in May 2004. No migration of the workforce was permitted from these countries prior to the collapse of communism in 1989. Post-1989, the anticipated mass westward exodus from these countries did not significantly materialize. Instead, after achieving stabilization, countries such as Poland, Hungary, Slovenia and the Czech Republic flexed their own immigration control muscles, even before joining the EU in 2004. The new democracies had to develop laws to regulate immigration, and also had to align their laws with those of the EU before they could achieve membership, with the effect that their immigration policies are typically based on EU legislation and requirements in this area. While these countries remain net sending countries, the numbers of people applying for asylum within their territories has risen, especially from the Russian Federation (in particular, war-torn Chechnya), and many of the states have found themselves confronting new issues such as illegal immigration, already familiar political problems for the older EU members. In Poland, for example, the country's first regularisation drive for illegal immigrants (in the main, Vietnamese and Armenian) took place following the 2003 Aliens Act, although due to inadequate communication with illegal migrants and a lack of availability of formal information, just 3,500 applications were submitted. This indicates that the amnesty did not have its intended effect and shows that the transference of policies to Europe's newer democracies has not been without teething problems.

Labour migration from these countries to existing EU states was a thorny question for many EU governments prior to enlargement, in the face of public opinion, domestic political opposition and heightened media debate. After 2004, most existing EU states therefore introduced transition periods on immigration ranging from two to seven years, in order to stem inflows of workers from the ten new EU countries. The exceptions were Ireland, Sweden and the United Kingdom, which viewed the migration of labour from the new countries as likely to prove beneficial to their economies. The numbers of workers migrating from the new EU states to those countries which did not impose transition arrangements were significant, but far from the 'flood' that was anticipated by some sections of the mass media. In the United Kingdom, for example, 133,000 nationals from the new EU member states registered for work in the eight-month period following enlargement (although nearly 40% of these were already in the UK before May 2004), of which the vast majority were Polish (73,500), with significant numbers of Lithuanian (20,000) and Slovak (13,500) migrants also entering the UK to work. Of these 133,000 migrants, just 21 successfully claimed welfare benefits, which strongly contradicts the popular image often portrayed in the UK press of migrants as 'benefit scroungers'. It also exposes as a myth the idea that welfare benefits serve as a material incentive for immigrants to come.

With enlargement, the EU's external borders shifted eastwards, dividing the new EU countries from their south-eastern neighbours, namely Bulgaria, Romania and the Balkan countries. These countries remain migrant 'sending countries', and find themselves, at least formally, compelled to comply with the northern European 'zero immigration' norms in order to receive development aid. The majority of these countries aim at achieving EU membership, with Bulgaria and Romania on course to join in 2007 or at the latest 2008, while for other countries such as Croatia and Albania this goal is more distant. Would-be EU member countries must introduce border controls as a condition of EU entry, risking visa restrictions being put in place by the EU if they do not comply. For its new eastern and southern neighbours which are not currently candidate countries for EU membership, the European Union has introduced 'Neighbourhood Programmes', which among a raft of measures, encourage migration management and institution-building on justice and home affairs matters in countries such as Ukraine, Moldova, Russia and the Southern Caucasus countries of Armenia, Azerbaijan and Georgia to the east, as well as countries to the south, namely Algeria, Egypt, Lebanon, Israel, Jordan, Morocco, Syria, Tunisia and the Palestinian Authority. These southern countries are also involved in the EU's Euro-Mediterranean Partnership programme, under which the non-EU southern Mediterranean countries receive financial support from the EU in return for agreeing to implement certain provisions, among them co-operation on migration, in particular promoting the readmission of migrants and aiding in the fight against illegal immigration, people smuggling and human trafficking. Particular concerns for the EU in relation to its new neighbours have been the tightening of its new external borders, with a number of programmes being implemented to police those borders, and the creation of migration partnerships with sending countries. The aim of these initiatives is to reduce the 'push factors' that encourage would-be migrants to leave their country of origin, thus tackling international migration at source.

We now address how the related issues of political asylum and illegal immigration have emerged as contentious political issues across Europe. Since the early 1990s, the wealthy northern countries of Europe have witnessed the development of en masse asylum-seeking. According to figures published by the UNHCR, in the three-year period from 2002 to 2004, a total of around 1,190,000 asylum applications were registered in 44 countries in the European region. Of these, 945,000 were made in the 15 'old' EU member states, and a further 108,000 in the 10 'new' accession countries. By comparison, Australia, Canada, New Zealand and the USA received 340,000 claims in total over the same period. In absolute terms, the top five net receivers of asylum claims in Europe were the United Kingdom (203,000), France (180,000), Germany (157,000), Austria (96,000) and Sweden (88,000). In relation to the size of the native population the top five European recipients from 2000 to 2004 were Cyprus (22.2 per 1,000 population), Austria (17.9/1,000), Norway (14.8/1,000), Sweden (14.4/1,000) and Switzerland (13.9/1,000). The majority of Europe's asylum seekers in 2003 and 2004 came from the Russian Federation (63,000), Serbia and Montenegro (48,000), Turkey (40,000), Iraq (34,000) and China (27,000). These broad figures disguise that the main countries of origin for asylum applications vary for individual European countries, according to historical and ex-colonial ties and geographical proximity. While the top three countries of origin of asylum applicants to the United Kingdom in 2004 were Iran, Somalia and

Pakistan, for example, in France these were Turkey, the Democratic Republic of Congo and Algeria, and for Germany they were Turkey, Serbia and Montenegro and the Russian Federation.

Although these influxes of asylum seekers to Europe are significant, it should also be pointed out that the size of the current inflows (for example, an estimated 40,000 in 2004 to the United Kingdom, which has a population of around 60m) does not justify the images of ‘alien swamping’ that have often been portrayed in the mass media of the receiving countries. Indeed, official figures show that net asylum applications have fallen year-on-year across Europe since 2002, with 393,000 applications made in 2002, 309,000 in 2003, and in a further drop, 243,000 in 2004. While asylum applications in Europe peaked at 675,500 applicants in 1992, flows subsequently appear to have levelled off, with applications running at just over a third of the 1992 figure by 2004. It should also be noted that many of these applications for asylum are unsuccessful; in 2003, the United Kingdom recognized 38% of first instance applications, France 13%, and Germany only 8% of new applications. A substantial number of refused applicants are not deported, however, and become clandestine. Overall, it is clear that the context of political asylum has changed dramatically since the 1970s to become the major form of primary migration from the world’s periphery to the European core.

Traditionally, Western European states had small-scale systems for granting asylum on an individual basis to people fleeing persecution. Embodied in the Geneva Convention of 1951, the rationale behind such a system was a moral response to the collective failure of countries to provide refuge for Jews fleeing Nazi persecution during the Second World War, whilst at the same time it was a convenient way of keeping the door open to political refugees fleeing the new Cold War communist states. The collapse of communism in 1989, and the unleashing of a large number of potential new applicants, simply served to underline that the approaches of Western European countries to granting asylum were a historical anachronism. First, immigration controls in the form of asylum provisions were not designed to cope with large-scale groups of refugees, produced by war and famine, but to provide refuge to individuals fleeing persecution. Second, since the Western European countries had implemented ‘zero immigration’ policies since the 1970s, asylum-seeking had become de facto a path for economic migration from the former communist and developing countries. Such a situation was not sustainable. On the one hand, there was a policy and procedural problem, namely that the administrations of receiving countries were not capable of processing large numbers of applications for political asylum, and over-burdened systems soon experienced a bureaucratic meltdown. On the other hand, the suspicion of political elites that asylum had become a form of economic immigration led to a politicization of the status of asylum-seekers, with the result that all refugees to a large extent became categorized as ‘unwanted economic migrants’. In the mass media discourses of Western Europe, this has led to the stigmatization of people claiming refugee status as ‘bogus’ (for example, in the United Kingdom, or *Scheinasylanten* in Germany), unjustly making demands on the scarce resources of domestic populations.

In recent years, and following the terrorist attacks by the militant Islamist al-Qa'ida organization against the USA on 11 September 2001 and subsequently in Madrid, Spain, in March 2004, the contentious aspects of immigration and asylum issues have been demonstrated further. Western European governments have placed an increasing emphasis on 'security', sometimes publicly questioning the loyalty of ethnic minorities, in particular Muslim communities. At the same time there has been a spate of electoral successes by radical right-wing parties that prey on such issues, including Jörg Haider's Freedom Party in Austria (re-founded in 2005 as the 'Alliance for Austria's Future'), Jean-Marie Le Pen's National Front in France, Umberto Bossi's Northern League in Italy, the People's Party in Denmark, the Pim Fortuyn List in the Netherlands, and the Vlaams Blok in Belgium, which was dissolved following its ban from the Belgian Supreme Court in November 2004 for violating anti-racism legislation, but subsequently re-formed as the Vlaams Belang party.

It is worth outlining some of the dynamics within national politics through which asylum has become a contentious political issue. The issue is highly prone to becoming a politicized conflict within national politics, in particular because it is the field where the criteria of entry and membership rights, duties and obligations (citizenship) to a national community are disputed. The issue of asylum opens up a contradiction within liberal nation states. It places the universal principle that they should respect and protect human rights, by offering asylum to aliens fleeing persecution, in direct competition with the principle that they should primarily serve the interests of the national community of people from whom state sovereignty derives, a group with a self-image of a common descent and ethnicity enshrined in shared nationhood. Politicians and groups from the native domestic population often raise concerns about the legitimacy of asylum-seekers, and what level of rights to entry and scarce social resources can be extended to these 'outsiders' by the receiving nation. Such arguments quickly develop into emotive and highly sensitive debates about the ethnic and racial identity of the national community, which in many cases leads to national identity being seen as under a 'cultural' threat from immigration. National publics and politicians who already see national identity and sovereignty as under challenge from the combined forces of European integration and globalization have found a convenient outlet for expressing these grievances in a reassertion of the national community as united against these newcomers. As a consequence, immigration and asylum conflicts have increasingly come to focus on the perceived and real ethnic differences between the native population and migrants.

In many European countries, anti-asylum sentiments have become a topic for party competition between mainstream political parties, as well as an important source for the radical right to gain popular support. In the May 2005 election in the United Kingdom, for instance, the Conservative Party focused heavily on immigration as an issue it perceived resonated strongly with public opinion, proposing restrictive measures such as fixed annual quotas on immigration, 24-hour surveillance at ports and the offshore processing of asylum-seekers' claims, although this strategy ultimately appeared to gain the party relatively few additional votes. At times this situation of publicly expressed anti-asylum sentiment in European countries has led to the emergence of a situation of hostility that manifests itself in increasing levels of xenophobic violence directed against

asylum-seekers. Following 11 September 2002, the US-led invasion of Iraq in early 2003, and the Madrid bombings in March 2004, the cultural threat of immigration has become especially focused on Muslim migrants and their perceived inability to assimilate to Western societies. Migrants and asylum-seekers, many of whom are Muslims, have become defined as a specific threat to security and the capacity of nation states to integrate their minorities. The electoral successes of Jean-Marie le Pen in the first round of the French presidential elections in 2002, of the then Vlaams Blok in Belgium (which won the second largest number of votes in regional elections in Flanders in 2004, becoming the second largest party in the Flemish Parliament), and of the People's Party in Denmark, has in part been due to these politicians and parties making political gains from the anti-Islamic sentiments of the native population. This assault of the radical right on what it sees as the failures of multiculturalism has effectively carried the anti-immigration debate into questioning the positions of groups of migrants who are actually already legal citizens, but of Muslim faith. Conflict between the native population and Muslim minorities has been particularly prominent in the Netherlands, previously famed for its 'tolerance' and known for its liberal multicultural policies towards immigrant integration. The successes of the anti-immigrant Pim Fortuyn List in the Dutch general election in May 2002 bore testimony to a rising lack of tolerance and in some cases hostility against migrants among native Dutch citizens. Subsequently, the brutal murder of outspoken film director Theo van Gogh, who had publicly criticised Islam, by a Muslim in November 2004, further exacerbated tension between the native population and Muslim minorities. In the political fallout following van Gogh's murder, several attacks took place on mosques and on an Islamic primary school, and more Dutch politicians and artists received death threats from Dutch Islamist radicals. For many among the native population in the Netherlands, these events bore witness to the failure of multiculturalist state policies, and intensified the societal perception that Dutch liberalism was under threat from Muslim minorities who are fundamentally opposed to its core values.

Against this apparent general hardening in attitudes towards asylum-seekers and cultural difference, there are a number of features of Western liberal societies that uphold and defend the rights of migrant constituencies. The pro-asylum/migrant case has found support from national judiciaries, who are keen to uphold human rights principles, as well as solidarity movements backed by churches, naturalized ethnic minorities (themselves in some cases targets of racism and discrimination), and the families of would-be entrants. In addition, violence against asylum-seekers has mobilized large gatherings of anti-racist protestors, for example in Germany, where issues of racial intolerance are always highly sensitive. In general, however, it is clear that domestic political systems where parties compete for the votes of national citizens are going to have difficulty defending and attributing rights to a constituency of non-national non-citizens. This is especially the case when debates become framed in the language of national, cultural and ethnic difference. Another striking example of the power of populism in immigration politics was evident in the referendum held in Ireland in June 2004, at which around 80% of those who voted (around 60% of the electorate) elected to remove the rights to Irish citizenship of parents with Irish-born children. This vote overturned an earlier ruling of the European Court of Justice (ECJ) that parents of children born anywhere in Ireland

could become Irish citizens. Prior to the referendum the Irish Minister for Justice, Equality and Law Reform published figures, since challenged, apparently showing that there were more foreign women giving birth in Dublin's maternity hospitals than Irish women.

In the majority of leading European countries, national politics has promoted and implemented a series of restrictive policy responses, erecting stronger external borders and more resistant internal rights regimes against potential asylum applicants. Since the 1990s, restrictive policy instruments that have increasingly come to be used in European states include detention centres where asylum-seekers are held while their asylum applications are being processed, the actual or mooted use of 'offshore processing' where asylum-seekers are detained in island camps where their applications can be processed without admission to the national territory, and the deportation of asylum-seekers whose applications have failed. The use of specialist detention centres for migrants has been particularly widespread in Germany and the United Kingdom, but centres have also been established in some of the new EU member states since the mid-1990s, with Poland having set up 25 detention centres by 2000, and the Czech Republic having set up one centre and planning to open several more. Offshore processing, inspired by the Australian model of processing centres on islands in the Pacific, has been implemented by the Italian government and put forward as a policy proposal by certain other governments and political parties; in Britain, for instance, the Labour Home Secretary proposed the use of international transit camps for asylum seekers in March 2003, and the Conservative Party later made the offshore processing of asylum claims a manifesto commitment in the May 2005 general election. The Italian government has set up an immigration reception centre on the tiny island of Lampedusa off the shore of Sicily, the first point of arrival into Europe for many North African would-be migrants. Lampedusa was the site of controversy over the Italian government's handling of immigration and asylum in October 2004, when Italy deported hundreds of immigrants from Africa and the Middle East to Libya, drawing heavy criticism from the United Nations and humanitarian organisations such as Amnesty International. For European governments, such visible deportations of migrants have become increasingly common, in part because they demonstrate publicly that governments are acting swiftly and forcibly to control asylum and immigration, with the aim of reassuring national publics that the issues are being firmly handled. In sum, these increasingly used policy instruments represent a means of externalising asylum and immigration from European nation states, by keeping migrants separate from native populations within the national territory, dealing with their claims outside it, or expelling them from it altogether.

The cases of Germany and the United Kingdom illustrate some common features of national policy responses to immigration and asylum. Germany, a country that owing to its self-defined historical obligations maintained one of the most liberal asylum regimes, was the immediate target of post-1989 mass asylum-seeking, receiving some 440,000 applications in 1992, accounting for 80% of all refugees in Western Europe. Following a highly politicized debate, conducted against the backdrop of xenophobic attacks against hostels housing asylum-seekers, a constitutional change was effected, paving the way for a tightening of German laws on political asylum in 1993. First, the new law

automatically excluded and required the deportation of refugees who arrived in transit through designated 'safe countries'. By including the neighbouring Poland and the Czech Republic in this list of countries, Germany effectively deported the consideration of asylum applications to nearby Eastern European countries, considered to be less attractive destinations. Second, asylum applicants from designated 'safe countries of origin' faced a fast-track procedure that resulted, in most cases, in rapid deportation. Third, those claiming asylum at airports, without valid passports, or from 'safe countries of origin', faced a fast-track procedure that was undertaken legally outside Germany's borders, and was therefore not subject to the same conditions. This pattern of severely tightening the criteria for acceptance of asylum-seekers, and exporting the consideration of many cases beyond the official national sovereign borders, is a pattern that was implemented by most European countries in the 1990s, and is a trend that continues today.

In 2002, the United Kingdom experienced a peak of asylum-seeking relative to its normal level among European countries (receiving 29% of total applicants for asylum in the EU in that year – though this figure has since decreased considerably, falling from 100,000 in 2002 to 60,000 in 2003, and in a further drop, to 40,000 in 2004). In an attempt to deal with this situation, the government introduced a new policy strategy for border control which was inspired in part by the tough stance adopted in Australia. The British Prime Minister, Tony Blair, stated that the country might have to re-examine its commitment to the European Convention on Human Rights, and at the same time the government expressed its intention to establish transit centres in countries outside British and European legal jurisdiction, such as Albania, Croatia or Romania, where asylum-seekers would be sent to have their claims processed, although this specific plan was legally questionable and was later abandoned following criticism in the House of Lords in 2004.

Subsequent changes in British asylum policy have also focused on restricting the admission of migrants to the national territory. In February 2005, Home Secretary Charles Clarke introduced a new five-year strategy for asylum, 'Controlling Our Borders: Making Migration Work for Britain', the stated aims of which were to ensure that only migrants who benefited Britain could enter the country to work or study, to strengthen the UK's external borders, to crack down on illegal immigration and abuse of the asylum system, and to increase removals of failed asylum applicants. This package of restrictive, control-focused measures was soon followed by the still more restrictive proposals of the Conservative Party in its 2005 election manifesto, which advocated measures such as withdrawal from the 1951 Geneva Convention, an annual limit on new immigration, the processing of asylum applications outside Britain, 24-hour security at ports and a single British Border Control Police. In response, the Prime Minister made a detailed speech in April 2005 committing Labour to making immigration controls part of its first legislation if re-elected at the general election on 5 May, putting in place, for example, an Australian-style points system for immigrants. Immigration was a major electoral issue in the 2005 British election campaigns, focused on by the Conservative campaign in particular in an attempt to gain voter support by raising issues that resonated with public opinion. Polling and focus group research has repeatedly shown that the British public is concerned about immigration (for instance, in a poll conducted by MORI in April 2005,

58% of British respondents believed that immigration laws should be 'much tougher'). These developments illustrate the concern of both Britain's main parties to 'talk tough' on immigration for the potential electoral gains such measures afford.

Other changes in British asylum and immigration legislation over the last decade demonstrate that the attack on asylum provisions is not confined to the imposition of more stringent border controls, but is increasingly directed against the rights attributed to refugees and asylum applicants in the receiving country. Working on the assumption that welfare attracts asylum-seekers, British political elites of both right and left have increasingly tried to remove the social welfare benefits of asylum applicants. For example, the Conservative government's attempt to remove benefits to in-country applicants was challenged and overturned by the courts in the mid-1990s, and likewise, the Labour second-term government's attempt to do the same almost a decade later faltered again under legal rulings by the courts. After attaining power in 1997 the Labour government transformed the already meagre cash-benefit payments for asylum-seekers into vouchers that could be redeemed only at designated food retail outlets, although this voucher system was subsequently scrapped in 2002 following a concerted campaign by trade unions and pro-migrant organisations. Asylum seekers currently receive 70% of the regular income support that a British citizen would receive and do not claim within the mainstream system of welfare benefits. In addition, legislation introduced in 2003 requires that asylum-seekers carry identity cards in order to be able to claim benefits; this in a country where carrying identity cards is considered un-British and is not a requirement made of national citizens. Removing asylum-seekers from the legitimate community of social welfare receivers is another means of detaching them as a group from the national community, the expressed fear being that the extension of incremental rights may allow them entry into the national community through the 'back door'. The tendency for strongly distinguishing between those 'in' and 'outside' the national community was further underlined by innovations such as the introduction of the citizenship ritual for migrants in 2004. This represented the establishment of yet another potential barrier to 'outsiders' for gaining membership to the rights, duties and obligations of British citizenship. Similar loyalty requirements for migrants have been drawn up by other European governments, not least in Austria, where the governing coalition of the conservative People's Party and Jörg Haider's right-wing Freedom Party unveiled proposals in 2001 for compulsory German language lessons and citizenship classes for both new migrants and minorities already resident in the country.

Although the present era of restrictive changes has reduced the number of official asylum applications to more manageable proportions, the enforcement of a harsh immigration regime across the European region has been achieved at a cost. One direct consequence is that this has led to a significant increase in illegal immigration, and in this sense policies have failed to achieve their objective of preventing primary migration. Another is that genuine asylum provision has been seriously diminished. European countries continue formally to uphold the principle of *non-refoulement* (i.e. 'non-return', whereby individuals cannot be returned to countries where they may face persecution), but in practice the raising of external and internal barriers means that it is difficult for refugees actually to reach a country that might grant them asylum. Even if they do manage to

avoid fast-track deportation and have their application heard, they often face a couple of years' wait, without sufficient social support to build an adequate temporary life. Once they arrive in a country, this relative absence of support and shelter pressurizes refugees into illegal labour activities to earn enough for subsistence. Hence refugees are actually becoming merged with the category of illegal and clandestine immigrants, which has led in part to a criminalization of asylum-seekers in some receiving countries.

Illegal immigration has been a central conflict point of immigration politics in southern Europe for more than 20 years. In the former emigrant countries, such as Italy and Spain, illegal immigration was tacitly tolerated up to the point where significant ethnic minority populations were becoming a prominent and visible part of metropolitan life. After several waves of amnesties and regulations, often against a background of heated public debates and xenophobic reactions, some migrants achieved legal status in these countries. However, the governments of these southern European countries have moved quickly to catch up with the anti-migrant policies of their northern European counterparts. In 2002 Silvio Berlusconi's government in Italy introduced major changes to the previous 1998 framework law on migration, with draft legislation that surpassed even the restrictiveness of the northern countries, by proposing to fingerprint legal as well as illegal immigrants from non-EU countries. The precarious position of minority populations in the southern countries has thus been exacerbated by a move towards a public-order, security-minded and closed-border approach to migration, which has been undertaken largely without prior measures to protect legally and to provide socially for minorities, and to educate the ethnic majority in tolerance and anti-racist norms.

In the south, the same dynamics of contentious domestic politics that exist for asylum politics in the north are present, but have been subsumed within a general discourse about illegality. This framing of the issue around illegality in the political and mass media discourses has led to a criminalization of migrants in the southern countries. It should also be made clear that the clandestine nature of migrants' lives in these countries is largely not a matter of choice, but a consequence of the long-standing inability of state administrations and bureaucracies to implement the social provisions and rights that are formally guaranteed by their own laws. This has led to a situation where even genuine refugees are unlikely to appeal for asylum in southern countries, as states there cannot be relied upon to provide welfare (for example, Italy fails to fulfil its legal obligations on refugee housing), and are more likely to take their chances along with the large networks of long-standing illegal migrants, or alternatively, to head northwards to join fellow migrants elsewhere. The southern countries have in many instances developed their new immigration policies from those of northern European countries, in part aided through security and border co-operation within the framework of the EU (see below). This trans-European influence in shaping the new public understanding of migration in the south is illustrated by the symbolic markers that are used in the political discourse for denoting the 'otherness' of migrants. In Italy, for example, *extracomunitari* (non-EU citizens) is the common pejorative blanket term for migrants. This term illustrates the way in which European belonging and citizenship are shaping the southern European public consciousness, but it also shows that this new identification constructs the image of a 'fortress Europe' linking the south to northern Europe and placing it in opposition to

the less developed world.

The topic of illegal immigration is also increasingly coming to the fore in political and social debates in northern European countries, and whilst the restrictive stranglehold on new migration persists, this is likely to become a more and more prominent issue over the coming years. The European Commission estimated in 2004 that annual inflows of illegal migrants into the EU reaches over six figures, adding that more precise figures could not be considered reliable, given the difficulty of identifying numbers of illegal migrants who by definition do not identify themselves to state authorities. Illegal immigration is an issue that is naturally transnational in scope, as the flows of migrants are mainly through Italy and Spain northwards. This linking of interests between north and south has assumed a security dimension as illegal immigration is becoming an increasingly well-organised criminal activity. The renewed efforts by European countries to exert and enforce control over their borders are being strongly challenged by the emerging networks of organized gangs of smugglers, who now have sophisticated techniques for shifting transit routes and counterfeiting documents. Common routes include shipping people from North Africa to Spain, Albania to Italy, Turkey to Greece, and from Serbia and Montenegro (formerly part of Yugoslavia) and Romania via the Czech Republic to Germany. Moreover, organized illegal immigration is starting to make its mark on the major metropolitan cities of Western Europe, in the form of Russian and Eastern European prostitutes (who are often tricked into 'white slavery'), as well as drugs- and tobacco-trafficking. The consequences of illegal immigration do not remain an issue of border control, but begin to influence the receiving countries, and in some cases are starting to have a negative impact on ethnic relations by damaging the image of migrants and minorities. This publicly visible linking of migrants and criminality in major Western European cities has been exploited by radical right-wing populist parties, such as the People's Party in Denmark, the Vlaams Blok in Belgium and the Austrian Freedom Party, leading in some cases to racist and anti-migrant sentiments becoming resonant in the public domain. The increasing power of criminal gangs over migration routes has also had an effect on bona fide refugees. In the 1990s, Kurds fleeing persecution in Turkey and Iraq and Kosovar Albanians fleeing Yugoslavia found clandestine entry the more likely escape route, because of hesitant and poorly organized humanitarian responses from European countries. Europe-wide restrictive approaches to asylum play into the hands of smugglers, and the more organized smugglers become, the more it is they who decide who is allowed to move, and where their likely destination will be. This is hardly a fair or rational basis for immigration, from the perspectives both of the individual migrant and the receiving country. A more open but controlled approach to immigration for economic and humanitarian purposes would most likely lead to a decrease in the numbers of those willing to take the treacherous and illegal route.

Supranational and Transnational Politics: The European Union and a 'Europeanization' of Immigration and Asylum Policy?

The previous section outlined the recent trends and developments in immigration politics as phenomena that have had an impact on nation states, causing them to adjust their policies. Nonetheless, the discussion also made clear that immigration control and the treatment of migrants are transnational issues, and the approaches of different countries within Europe to migration cannot be seen in isolation from one another. Following on in this vein, the current section addresses how migration processes, themselves in part a product of globalization, are shaped politically by institutions operating at supranational and transnational levels. More specifically, we assess the potential role played by supranational institutions, norms and discourses as defenders of rights for migrants. Next we enquire into the convergence in the development of immigration politics across Europe, and question to what extent the emergent role of the EU has played a part in this process. Lastly, consideration is given to the impact of the EU's immigration politics on the 10 member states that joined the Union in May 2004.

The discussion of national conflicts over immigration showed that the pro-migrant case is dependent on the mobilization of humanitarian principles, and that this is a struggle that has increasingly been lost in the national politics of European countries, largely owing to the assertion of a reactionary politics that defends the idea of popular national sovereignty against the potential changes brought by migration and the ethnic diversity of immigrants. In recent times, the topic of globalization has been popularized in academic and wider circles, and this raises the question of the extent to which supranational politics may act as a counterbalance to the authority of nation states, in a world where politics is increasingly characterized by complex new patterns of multi-level governance. In relation to migration politics, the argument has been forcibly made in some quarters that the growing importance of supranational actors, institutions and legal norms and discourses is a source of humanitarian 'rights across borders' which serves to protect the precarious position of migrants. According to this view, transnational treaties, institutions and laws, including the Geneva Convention, the International Covenant on Civil and Political Rights, the European Convention on Human Rights, and the UNHCR, now constitute an enforceable supranational human rights regime, which extends individual rights to foreign migrants, and thereby prevents nation states from exerting unlimited sovereign powers over non-nationals.

Undoubtedly, the development of supranational laws has had an important and growing influence over nation states in the post-war period. However, one should be cautious about overstating their enforceability in policy fields where nation states still assert sovereignty. The supranationalist 'rights across borders' argument is a somewhat utopian and naïve portrayal of the current state of affairs and, especially in the European context, contradicts most evidence on the shrinking rights of asylum-seekers (as already shown in the discussion above). In the context of European migration politics, the supranationalist argument is based on several misconceptions. First, human rights are not externally imposed on nation states supranationally from above, but are a constitutive principle of liberal democracies which have always exercised a degree of self-limiting sovereignty.

Second, it is true that international laws have, over time, become binding to national signatories. However, taking the example of the principle of the *non-refoulement* of refugees, laid out in the Geneva Convention of 1951, asylum is guaranteed by ‘the right of a state to grant asylum’ and not by ‘the right of an individual to be granted asylum’, thus placing authority very firmly on the side of the nation state, which has the power to grant rights, and not on that of the individual attempting to invoke a set of supranational rights. In any case, as the brief outline of changes in asylum policies in Germany and the United Kingdom has shown, nation states are free to define the conditions under which asylum may be granted, and have significantly shifted the context of granting political asylum in a way that in all probability means that cases of *refoulement* of genuine refugees are now common. Such policies may have received criticism from national and international humanitarian bodies, but no amount of supranational institutions advocating human rights norms and discourses have been able to prevent them. In the field of migration politics, sovereign power derives from nation states and their inter-state co-operations. By contrast, the role of supranational institutions supporting humanitarian discourses and norms is perhaps most accurately viewed similarly to a non-governmental organization, as one of several competing players which can at times exert influence on and shape policy decisions taken by nation states.

Another manifestation of political globalization is the process of European union, with the gradually developing EU-level capacity in migration politics holding far-reaching implications for the region as a whole. Historically, interventions into migration policy at the European level derive from the Union’s earlier self-understanding as a European Community: a functional treaty-based regime between a number of European states which was designed to build a common economic market ensuring internal free movement of ‘goods, persons, services and capital’. Previously, these origins limited the scope of European-level policy-making on migration largely to enhancing labour mobility between member states for citizens, although gradual developments since the 1980s have brought about a greater role for the EU in immigration and asylum policy-making (see below). In contrast, influence over immigration of non-nationals from outside the European Community has been fiercely guarded by nation-states, with EU-wide cooperation on immigration and asylum typically agreed upon by member states only when it is perceived as in the national interest to do so. Intergovernmental cooperation on immigration and asylum within the EU framework has tended to follow a logic based on security, public order and restrictive policies. European migration policy is thus built on a paradox. On the one hand, the European Community and its successor, the EU, have fully adopted the ethos of market globalization that primary migration improves prosperity, when referring to labour mobility between member states for EC, or later, EU, citizens. In direct opposition to this, however, the EU has also maintained a resilient stance against primary migration from outside its borders, embodied in the image of a ‘fortress Europe’. The EU’s ideology of market globalization in respect to migration appears to stop at its own external borders, and in relation to immigration from outside those borders, the EU behaves politically in the same way as a restrictive nation state, which reflects the fact that its policies on immigration and asylum are driven by its member nation states.

The 'Europeanization' of immigration and the development of an extended role for the EU institutions in migration policy-making commenced slowly in the 1980s, when national governments in Europe embarked on a phase of ad hoc and informal co-operation on immigration and asylum issues, and greater transnational liaison took place between the police and security forces of member states. The outcomes of these intergovernmental fora (for example, the Trevi, Dublin and Schengen Agreements) facilitated more co-operation between some states on security and common border control, but were not binding on all states and remained formally detached from the process of European integration. Over time, the increasing levels of inter-state co-operation among some members, particularly participants in the Schengen Agreement on cross-border travel, led to migration being designated part of the 'Third Pillar' of Justice and Home Affairs and subject to intergovernmental regulation within the Treaty on European Union (TEU, also known as the Maastricht Treaty) in 1992. After an Intergovernmental Conference (IGC) reviewing the TEU, immigration, asylum and refugee policies were 'communitarized' by being transferred to the 'First Pillar' of the EU in the Treaty of Amsterdam in 1999. Under Amsterdam, the Schengen agreement was incorporated into law, and a limited role was provided for the supranational institutions (European Commission, European Parliament and European Court of Justice) in immigration and asylum policymaking.

More recent EU-level developments also go further in the direction of the 'communitarization' of immigration and asylum policies. A significant juncture in the 'Europeanization' of migration policies was the Tampere summit in 1999, at which heads of EU governments committed themselves to a five-year plan to establish a common EU migration policy by May 2004. While many non-governmental organisations (NGOs) initially expected the agenda set at Tampere to usher in a more humanitarian asylum policy across Europe, in the event EU member states were unwilling to change their existing national systems during subsequent negotiations in the European Council, with the effect that legislation set at or near the lowest common denominator of existing rules was agreed on by member states. While Tampere did produce the first set of legally binding EU-level agreements on asylum, little substantive harmonisation of national asylum laws was reached by 2004, and minimum standards for refugee protection were set extremely low. For many observers, therefore, further commitments to common European migration policies have been met with scepticism, such as the European Council's adoption of the Hague programme in November, 2004, which outlined the priorities for action in the area of justice and home affairs for the coming five-year period 2005-2010, including the continuing development of a common asylum policy. While the Hague programme sets out ambitious proposals for European refugee protection, the regulation of migration flows and control of the new external borders of the Union, at present these constitute an agenda drawn up by the European Council rather than actual policies, and it is unlikely that member states will co-operate on all its measures. It needs to be noted that in contrast to the issues of asylum, illegal migration and border controls, economic migration and immigrant integration remain issues dealt with by individual member states, although in 2005 the European Commission was due to develop a policy plan and launch a debate on legal migration. In sum, progress on European policies on immigration and asylum has largely been slow and hampered by the lack of political will

among the member states for thoroughgoing co-operation in these areas. Given the refusal of the French and Dutch publics to ratify the Constitutional Treaty by referendum in May and June 2005, which had proposed to introduce qualified majority voting as the norm for the majority of asylum and immigration issues, it seems unlikely that progress will speed up significantly in the near future.

In theory this limited but nonetheless increasing ‘Europeanization’ of migration politics, backed up by the emergence of European human rights codes and the incorporation of the Charter on Fundamental Rights into the new Constitutional Treaty, an enhanced ECJ, and the embryonic European citizenship introduced with the Maastricht Treaty in 1992, might seem to fit the image of an emergent supranational authority that is capable of protecting asylum-seekers and migrants against the shrinking rights they receive at the national level. On the contrary, however, inter-state co-operation has actually used the common European project to strengthen border controls, promote internal security co-ordination and devalue the status of migrant rights to the lowest common denominator. In addition, the new era of European citizenship has not improved the rights of migrants from non-EU countries (so-called ‘Third Country Nationals’, TCNs), for the simple reason that it is derived from the possession of the citizenship of a member state. Even the ECJ has abstained from defining freedom of movement on the basis of residence, which would include resident TCNs. As asylum-seekers stand at the back of the queue of migrants hoping to be granted rights from member states, even behind resident non-EU nationals, it is clear that the current path of European integration is unlikely to provide any substantial opportunities for improving their position. On the contrary, if the renewed anti-migrant sentiments across Europe are viewed as a reaction to the loss of sovereignty and decline of nation states, one could argue that the process of political globalization in Europe has been detrimental for asylum-seekers. Indeed, the thrust for European integration was actually one of the arguments used in favour of closing down the relatively open asylum regime in Germany in the early 1990s.

This trend continues, with EU summits in Seville in 2002 and Thessaloniki in 2003 once again demonstrating that Europeanization is most likely to lead to more restrictive measures. At the 2002 summit in Seville, Spain, an Anglo-Spanish proposal was put forward to make trade agreements dependent on a country’s willingness to take back its failed asylum-seekers. In the end, ‘positive conditionality’ was adopted rather than sanctions, with sending countries being given incentives to stop outflows of migrants rather than being punished with reductions to their aid budgets if they were deemed unhelpful to Europe’s immigration objectives. In addition, further measures were agreed for co-operation between European border officials and attempts to control ‘people-trafficking’, which again underlines the security emphasis of European immigration policy. The Conclusions of the European Council Summit held in Thessaloniki, Greece, in October 2003, also focused heavily on security measures, including the formal announcement of the setting up of a European Border Management Agency to enhance the control of migration at the EU’s external borders.

Over the period 1999-2004, the EU implemented the first phase of harmonization of member states' asylum policies, with the adoption of a set of directives on minimum asylum standards. However, this first phase of the harmonization process was characterized by the watering-down of draft proposals from the European Commission in inter-state negotiations. Although EU states managed to agree on a formal definition of who qualifies as a refugee in the Qualification Directive, other directives were heavily diluted by member states, to the extent that the Asylum Procedures Directive, for example, does not even contain a binding commitment to adequate procedural standards, drawing criticism from bodies such as UNHCR for providing the scope for member states to adopt or continue with their existing inadequate and in many cases poor practices for determining asylum claims. In sum, European asylum policy appears to be driven by member states' unilateral decisions that are primarily designed to protect national immigration goals and not to meet European ones. For example, in the weeks before the Seville summit, Denmark reduced benefits to asylum-seekers and made it more difficult to bring in spouses and elderly relatives, Austria raised the requirements for immigrants to speak German, Italy was proposing to fingerprint all resident non-EU migrants, and the United Kingdom was considering educating asylum-seekers' children outside the national school system. Such measures are taken competitively between nation states to reduce their respective asylum burdens, and whilst such unilateralist thinking persists, real harmonization at the European level remains unlikely.

Far from being the defender of human rights, European law has at times actually given impetus to the erosion of asylum protection standards, by facilitating accelerated procedures for processing applications, adopting a wide range of elements for defining 'manifestly unfounded' or 'clearly abusive' claims, and the invention of various devices to screen out applications at the admissibility stage. When European states and their neighbours do actually manage to agree on something with regard to the issue of asylum and refugees, it is usually something to do solely with security and control measures, such as the agreement made in January 2003 by members of the EU with Norway and Iceland to launch Eurodac, a system to finger-print all asylum-claimants and share the information throughout the region. This is further illustrated by the fact that when those states which have negotiated opt-outs from EU-level asylum and immigration policies, such as the UK and Ireland, have decided to opt into certain policy measures, these have usually been restrictive EU-wide measures focusing on security and illegal immigration, rather than those providing for enhanced refugee protection. The proposals on immigration and asylum in the draft European Constitution agreed in mid-2004, which included the introduction of qualified majority voting in these areas, were expected in some quarters to provide the capability to speed up European co-operation on asylum and immigration. This now appears highly unlikely since the process of EU integration itself seems set to enter a period of stasis, difficult negotiations and conflict. While political elites have pressed ahead with European integration, most recently in the drafting of the Constitution for Europe, the No votes to the Constitutional Treaty in referenda in France and the Netherlands in May and June 2005 (55% and 62% voting No respectively) has raised very serious doubts over public support for the European project and the future of the Constitution. In this political climate, it is highly unlikely that European co-operation on immigration and asylum will advance substantially. Instead, Western Europe's nation

states are likely to continue with the current status quo of weak collaboration on immigration and asylum issues, driven by nation state agendas. To sum up, European-level asylum policy has so far been that of the most restrictive member state, and European integration has been used as a rationale by EU countries to co-ordinate their restrictive practices in building a 'fortress Europe'.

The restrictive migration regime sponsored by the leading countries in Europe, and now extended and institutionalized as a co-operative policy across the EU, stands as the defining feature of migration politics in the region as a whole. At a time when everything possible is being done to keep non-EU migrants outside the territory, the EU's promotion of internal labour migration between member states appears to have had few tangible effects. Prior to EU enlargement in May 2004, there was little intra-EU labour migration, as evidenced by the fact that in 1997 less than 2% of the working-age population in the EU consisted of people from one member state working in another, and by 2004 there had been no significant change to this pattern. Immediately before enlargement to 25 member states in 2004, there was public and political unease among many of the EU's existing members, in particular Germany and Austria, about possible labour migration en masse from the economically poorer new member states. This resulted in the emergence of a two-tier system with one set of rules for the 'old' member states, whose nationals have the right to move freely between and work within other EU countries, and another set for the 'new' member states, whose nationals face transitional restrictions imposed by the majority of the old member states, with the exception of Ireland, Sweden and the UK, which opted to open up their labour markets immediately. At the same time as many EU countries impose limits on labour migration from the new member states, however, they also face the problem of ageing populations and declining birth rates, a demographic shortfall that indicates a shrinking labour force that cannot be compensated for by internal EU migration. According to the UN's Population Division, at current birth and death rates, Germany would need to import 490,000 migrants a year, France 110,000 and the EU as a whole 1.6m., to keep its working-age population stable. To maintain the current ratio of workers to pensioners, Germany would require 3.6m. migrants per year, France 1.8m. and the EU as a whole 13.5m.

Facing these structural demographic changes, the EU nations, both individually and collectively, are going to have to take more proactive steps with regard to immigration at some time over the coming years. Political elites will have to find some way of redefining their restrictive policies, which have been based on populist politics, in order to allow some limited and necessary forms of immigration. At the same time they will have to discover a mode of legitimising such a policy reversal in a convincing manner to their national populations and in a way that does not provoke xenophobic reactions and opportunities for the extreme right. This will not be easy to achieve politically, and some European states have already made attempts to move towards more expansionist policies on economic migration only to limit or abandon those attempts in the face of public and political opposition. In Germany, for example, the Immigration Act (*Zuwanderungsgesetz*), which came into force on 1 January 2005, provides a legislative framework for controlling and restricting immigration overall, under which the ban on recruiting foreign labour other than highly-skilled workers remains in effect, although it

also provides for improved rights to asylum and greater efforts to integrate immigrants resident in Germany. These restrictive measures stand in sharp contrast to the original suggestions of an official commission which reported in 2001 and proposed that Germany should actively expand inward immigration. While some of the commission's suggestions were proposed in the 2002 immigration bill, such as admitting highly skilled workers for unlimited periods of stay, regardless of whether they had a position waiting for them in Germany, and even admitting less-qualified people for restricted periods (with an upper limit proposed of 20,000 people per year), the bill faced a difficult legislative process as it became entangled in pre-election party competition. The difficulty of introducing more expansionist policies on labour migration in Germany is illustrated further by a previous scheme in 2000, when the German state of North Rhine-Westphalia attempted to establish a special 'green card' immigration programme for 20,000 computer engineers from India. This proposal caused a political furore, as opponents used the reactionary slogan *Kinder statt Inder* (Children instead of Indians) to argue that the state should be providing for its own first. In the United Kingdom in recent years, despite its self-avowedly 'tough' and 'firm' stance on asylum, the Labour Government has begun to encourage economic migration on the grounds that it benefits the national economy. The number of new work permits issued by the UK Home Office grew from 167,000 in 2003 to 181,400 in 2004, a rise of 8.6%. Work permits are allocated not just for highly skilled migrants such as doctors and IT specialists, but also for unskilled workers, with the possibility of new quota systems for industries with employment shortages. In its package of immigration and asylum measures for the coming five years, introduced in February 2005, the Labour Government has pledged to introduce a points system for people applying to work in the UK, which would be adjusted to respond to changes in the labour market, with the aim of giving the system flexibility and control.

One possibility for enhancing immigration within the European region as a whole derives from European enlargement, as a handful of member states (Ireland, Sweden and the UK) have already recognised by opening their labour markets to migrant workers from the accession states. Traditionally, northern European countries have favoured and prioritised 'white' immigrants, in the belief that they are easier to assimilate, and less likely to provoke xenophobic reactions from native populations. Fitting this profile, it might be expected that immigrants from the accession countries (the Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia) would be the type of migrant workers that northern and southern EU states would wish to encourage, in view of those states' ageing populations, low birth rates and the economic benefits provided by low-cost labour. Nonetheless, prior to European enlargement most governments made attempts to assure their publics that enlargement would not lead to immigration, often in response to media claims that there would be mass immigration waves from acceding countries. For example, sections of the British press carried stories about large numbers of Roma who were set to enter the United Kingdom from Slovakia. The majority of EU member states, led by Germany and Austria, took steps to prevent the possibility of increased immigration from new member states by closing their labour markets for a transitional period of the first seven years of those countries' EU membership (to be reviewed after two and then five years). Together with measures to

ensure that accession country nationals remain outside the Schengen zone of passport-free travel for at least another two years, this decision reinforces the impression that the accession countries have been granted only 'second-class' EU membership. It also illustrates how deeply anti-immigration norms are entrenched in the political psyche of Western Europe. Unless national and EU-level democratic politics find a way of promoting controlled non-EU immigration as beneficial to the commonwealth of its own peoples, the Union continues to run the risk of allowing smugglers to decide which migrants enter its borders.

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