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**Faculty of Economics and Administrative Sciences
Department of International Relations**

Master Thesis

**International Migration and European
Immigration and Asylum Question**

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The Jury has decided to accept the student's thesis. The Decision has been taken unanimously.
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ABBREVIATIONS

AHIG:	Ad Hoc Immigration Group
CAHAR:	Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons
CDMG:	Council of Europe's European Committee On Migration
CIREA:	Center for Information Reflection Exchange on Asylum
EC:	European Community
ECJ:	European Court of Justice
EEC:	European Economic Community
EFTA:	European Free Trade Area
EP:	European Parliament
EVW:	European Voluntary Worker Scheme
EU:	European Union
EURODAC:	European Determination of Asylum Claims
FLO:	Federal Labour Office
FRG:	Federal Republic of Germany
FPÖ:	Freedom Party of Österreich (Austria)
ILO:	International Labour Organization
JHA:	Justice and Home Affairs Pillar
ONI:	Office National d'Immigration
QMV:	Qualified Majority Voting
SEA:	Single European Act
SGI:	Societe Generale d'Immigration
SIS:	Schengen Information System
TES:	Turkish Employment Services
TREVI:	Terrorism, Radicalism, Extremism and Violence International
UK:	United Kingdom
UN:	United Nations
UNHCR:	United Nations High Commissioner for Refugees
USA:	United States of America
VIS:	Visa Information System

Introduction

Migration subject has long been disputed throughout the world, however, it has become an even more interesting subject covering sociological, economical and also psychological aspects that the countries had been forced to tackle with recently.

More and more states -both the migrant sending and the receiving countries- become involved in the population movements both outward and inward from various aspects as the world becomes more and more globalised and as the disadvantageous impacts start to diffuse into these countries because of the migration process. As migration issue has remarkably been gaining much more importance over the years by the pertinent states than as it was in the past, I thought it would be useful to take this particular subject as the content of my thesis and address the past and current status of the migration subject in the developed regions of the world namely the European Union.

Before going on to the history of the migration in the European Union, we must first look to the terminology of the migration to give a good definition and explanation and to provide the basic information and terms used in tackling this issue. Therefore, I will deal with the terminology in the first chapter. I will explain what migration is, what immigration and emigration is, the sending countries and the receiving countries, the international refugee regime in the first chapter.

The migration issue has long been on the agenda of many states in especially African countries but it has recently taken into the agenda of the European States especially after the establishment of the Common Market and the European Union. Because of the issue being widespread and the fact that it has a huge impact on countries involved I will deal with the Migration and Refugee issue in Europe in the second chapter. In addition to these, I will deal

mainly with the process and development of migration issue in Europe in the second chapter.

And finally in the third chapter I will deal with the cooperation and conventions made with regard to immigration and asylum to achieve some kind of progress in streamlining the policies on this particular issue to curb growing masses of newcomers. I will deal mainly with the first establishments of cooperation as in the Schengen and the Free market and Dublin Convention and the Amsterdam Treaty and the Maastricht Treaty where the immigration and asylum subjects are included to the Community structure. Then to provide the reader a better knowledge and information on how these subjects are carried out within the Union system I will explain the implementation of these subjects. Having completed these chapters I will present my conclusions at the end in the Conclusion chapter. The goal of this thesis is to explore the migration and asylum policies carried out in Europe throughout history along with the analysis of contemporary migration and asylum policies in European Union.

Chapter 1

1. Terminology of Migration

Throughout history migration has been the issue of most of the states because it provides new opportunities and facilities to the migrants in the receiving country. There are various aspects of migration which sometimes overlap making the perception of migration issue difficult. Since migration is an interdisciplinary subject various sciences have dealt with it by very nature. It would be very difficult to understand and analyze the issue of migration without referring to basic ideas and terminology. Therefore I will give here the basic terminology in order to clarify some concepts for future chapters' study and analysis.

1.1. What is Migration

The long-term permanent movement of human population from one dwelling site to another whether into or out of or within the countries of residence is regarded as migration. The concept of migration, in the simplest form, is the movement of people or groups with economic, sociological and/or political reasons from one country to another, from one dwelling site to another. And an "international migrant" is, in the simplest form, a person who crosses international borders.¹ Migration may direct from rural areas to urban developed cities, or from third world countries to the nearest third world countries or from third world countries to the developed countries.

There are unpredictable and considerable number of motives that instigate the migration of people across borders. Prospects for better life

¹ Barbara Marshall, Beaufragte, Migration und Integration in Zahlen, Ein Handbuch, Bamberg, 1997, in Marshall's book Europe in Change, The new Germany and Migration in Europe, Manchester University Press, 2000, p. 26

standards, jobs and will of the families to provide their children to study and live in better conditions or even have a job at least, made families go from their home country to unknown countries with high hopes. Migration has always existed and it seems that it is going to exist in the following years to especially the European Union countries where the welfare, wealth and high standards of living prevail.

There is not a universally accepted convention for migration as migration often occurs in various distinct forms. It is often the case that people live in their countries of birth. Political pressure, insecurity of the region they are living in, unemployment, bad economic conditions and in some cases even the collapse of the state has explicitly created mass immigration flows as we have seen in the case of the collapse of the Soviet Union or the disintegration of Yugoslavia into warring fragments. In addition to economic conditions, security plays also a crucial determining factor in immigration of the people all over the world. But we know that in all these cases, whether the initial intention is temporary or permanent, migration tendency is towards permanent new settlement.²

Although cross-boundary, intercontinental and transatlantic movements of immigrants have persistently occurred, it is only in recent years that the subject of migration imposes a threat or concern on matters of security, order, stability and national unity. The European Union, which is mostly acting as a receiving region, is trying to take measures and control the influx of migrants to the EU. Germany, for example, although it does not regard itself as an immigration country, it has been the target of most of the immigrants from the Southern Europe and the Eastern Europe. And the EU while being in need of immigrant workers with respect to demographic conditions fears about the mass

² Sarah Collinson, *Europe and International Migration*, Pinter Publishers, 1994, p. 10

movement of workers from the undeveloped parts of the world which would provoke cultural degeneration and security problems. And yet, although the EU states have not reached a common policy for migration, every country in the EU regulates immigration policy on its own terms and its internal policies accordingly.

International Migration is taken into account more and more seriously as the problems of the receiving countries -unemployment, high-house rents, overcrowdedness, high numbers of criminal incidents, problems regarding nation-states' unity become more and more entrenched. Here to understand the migration issue, it is important to analyze the nature of the migration by classifying the migration patterns through outlining forms of migration.

1.1.1. Forms of Migration

Migration, apart from being a geographical change of location, is interrelated with sociology and economics since the reasons causing migration are usually overlapping. Many factors are effective in creating the medium for the people to migrate. Because the migration falls under the subject of many disciplines, it has not been possible to reach a commonly accepted classification of forms of migration by the scholars. It should not be regarded as only a geographical change of location. Many subjects fall into the content and concept of the issue of migration. Both the receiving countries and the sending countries become involved in certain phases of migration. Of course receiving countries' conditions play an important role in the motivation and final decision of the migrant. Despite the interdisciplinary character of migration, some scholars have tried to focus migration by classifying the three important elements of migration as;³

³ Esin Y. Başçeri, Almanya'da Sığınmacı Sorunu ve Türkiye- Almanya İlişkileri, Doctoral

- The space that has to be covered to reach the final destination
- The length of time stayed at the destination country
- The motivation of the migrant bringing about the migration movement.

The space element in migration, namely the geographical change of location can take various forms. It can be in the form of internal migration where the migrant moves within the borders of its country of origin or international or external migration where the migrant moves across the international borders. Internal migration or international migration may be aimed at permanent stay or just a visit or study purposes.

The migration being permanent or temporary reveals the second category of migration classification. In this respect we can give the examples of short-term seasonal workers which still contribute to the economy of most of the states in Europe (as seasonal workers working in the East European agricultural sector). Migration can also be in the form of guestworker system as perceived by the German Authorities in the late 1950s.⁴ The causes which forces migrants to move from one place to another determines the third category of this classification -migration's being forced or unforced.

Another form of classification which can be made, have four categories the first category of which is the migration movement being for short-term namely, aimed at temporary stay or for long-term permanent stay. This can be named as labour migration which would comprise of short, medium or long-term immigrant workers and seasonal workers. But it is mostly accepted by most of the scholars that however difficult the migration would be, the reasons that are put forward by a family or a person for such an uproot from one region should be strong and in most cases aimed at permanent stay.

Thesis, İstanbul Üniversitesi Sosyal Bilimler Enstitüsü, 2001, p. 20

⁴ Stephen Castles and Mark Miller, *The Age of Migration*, Second Edition, Macmillan Press, 1998, p. 71

The second category can be named as immigrants resulting from family reunification. Third category consists of the undocumented or clandestine immigrants or illegal immigrants in short. And the last category can be termed as asylum-seekers and refugees who form the largest share of immigrant population.⁵ There are other ways of classification too. As we have mentioned earlier there is not an accepted single classification for forms of migration. Another classification that can be made is that of Sarah Collinson. According to Sarah Collinson a migration can be;⁶

- Economic and voluntary in cause and motivation (worker migration; migration in the 1960s till 1970s before oil crisis)
- Political and voluntary (Migration of the Jews to Israel)
- Economic and involuntary (refugees from famine and ecological disaster)
- Political and involuntary (classic refugee flows).

If migration is economically motivated, then it is unforced and voluntary. Yet if the migration is politically motivated then the persons seeking asylum in another country are refugees⁷ or asylum seekers and these are regulated in the 1951 Convention and 1967 Protocol. For the better understanding of the migration, its consequences and causes should be dealt with thoroughly.

1.1.2.Causes of Migration

There are many different factors leading to migration of the people concerned. Yet most people migrate because of economical reasons.

The insistent movement of such huge masses of population to the European countries attracts still attention especially due to its underlying

⁵ Peter Stalker, Migration Trends and Migration Policy in Europe, International Migration, Vol.40(5) 2/2002 Blackwell Publishers, Oxford, p. 152

⁶ Collinson, p. 2-3,

⁷ *Refugee*; someone who is forced to move from his or her country of origin or of residence. Refugees are an anomaly in state-centered, international law since they are technically stateless until asylum is granted (*The Penguin dictionary of International Relations*, by Graham Evans and Jeffrey Newnham)

reasons. The people may be moving just because of security reasons or trying to escape from bad economic conditions. On the other hand, political instability or political pressure in the home country may also push the migrants out of the society in the country of origin. Cultural-sociological factors which instigate the families' potential to enable their children to pursue their education in a multi-cultural, bilingual or multilingual society where there are diverse educational opportunities and facilities may be reasons instigating migration decision. Another reason for the outward movement of migrants and refugees is the low-incomes.⁸ Good economic conditions especially in the Western countries such as EU countries, better paid jobs and better working conditions may be major factors.

As had been stated by L.A.Kosinski and R.M.Prothero, it is preferable to move rather than to stay. Sometimes the difficulties of moving may seem to be more than offset by the expected rewards. In such a case the pull conditions play an important role in bringing someone to decide to move.⁹ This is the case in the migration processes in the Third World countries. This view also includes that in the decision-making period before moving, disadvantages and advantages of moving are carefully weighed and the decision to move is taken only if the advantages outweigh the disadvantages.

Migration factors are not homogenous. Consequently they are not occurring in an isolation. The reasons which direct people to migrate are diverse both in origin and scope. Environmental changes may be a root cause for migration when it influences the income level of people, especially when reducing the average income. However, at the international level, the proportion

⁸ Stalker, p. 163

⁹ L. A.Kosinski , R. M. Prothero(eds) *People on the Move, Studies on Internal Migration*, London, Methuen, 1975 in Mike Parnwell's book, *Population Movements and Third World*, Routledge, 1993, p. 71

of the migrants leaving their country of origin for environmental reasons is small. As a matter of fact, environmental changes constitute a root cause for migration for the ones earning their living from agriculture.

Poverty in the simplest form, is cited as a root cause for international migration. The migrants leave their country of origin not by reasons pertaining to professional status but by reasons of earning their lives and securing themselves.¹⁰ The macro-level perspective of factors regarding migration movement patterns of populations shows us the economic disparities, uneven distribution of natural resources and irregular development patterns of some peripheral areas of cities and rural areas relative to developed cities.¹¹

The period of colonial domination led to the selective and incomplete opening-up of the territories in the Third World regions and supported development in a restricted range of economic sectors. As a result of the uneven distribution of wealth in the Third World countries, the authorities there often encouraged migration to facilitate the construction of infrastructure and also to provide workers for colonial enterprises. Colonialism also facilitated the movement of workers from third world countries to these countries. Another reason for migration may be capitalism getting entrenched in the developed countries which is a sign of being industrialised and developed. As capitalism spread into peripheral regions, the imperatives of migration to satisfy growing cash needs have also expanded, resulting in the migration of people from both rural areas to urban cities and from undeveloped or developing countries to developed industrialised countries. A shortcoming of the macro-level perspective is that it tends to view the migrant as an amorphous homogenous entity who appear to have little effective choice but to migrate.

¹⁰ United Nations, United Nations Secretariat, Population Division, International Migration and Development, The Concise Report, New York, 1997, p. 51-52

¹¹ Mike Parnwell, Population movements and the Third World. Routledge, 1993, p. 72-75

Inefficient farming practices has also constrained the capacity of agriculture to satisfy the rising need for cash. Underdeveloped state of rural areas provide the impetus behind out-migration from economically depressed Third World regions and attempts to improve economy of the regions will surely have a positive effect on reducing out-migration from these areas. However the modernisation of agriculture did not have the positive effect, instead it replaced labour-intensive plantation. Without raising agricultural productivity and generating employment opportunities, out-migration will still be a concern for these areas. Migration may be seen as a pressure valve through which may escape those who might otherwise try to survive in a static, fruitless agricultural sector.¹²

In most of the Third World countries agricultural sector is in the first line of the economy since the industry sector in those countries usually has not been developed to the same extent as the same sector in the developed countries. Climatic changes in these third world countries causing drought are extensively causing the migration of people as seasonal workers. People on the other hand may respond by adapting themselves to changing circumstances simply by shifting their work to other sectors. But the absorptive capacity of the economy of these people is limited by the employment opportunities in the country. As a result, the undeveloped, simple lifestyle based on mainly agriculture may force most of the people to seek better lifestandards elsewhere and to confront its problems. In cities, there are wide range of employment opportunities in manufacturing, construction, commerce and the service industry together with a diverse range of social amenities attracting immigrants. Consequently, these are

¹² Parnwell, p. 75-83

the motivating factors for migration. During 1960s and 1970s the principal cause of rural-urban migration was argued to be higher wages available in the city.

As micro-level factors cause migration movements, the establishment of networks of contact with urban areas may be of central importance in both initiating and facilitating migration from rural areas. The city contrasts markedly with the countryside in terms of size, environment, pace of life, economic and social activity. And the same is true with the emigrants from developing countries to developed countries. Push factors are the ones driving the people out of the country and the pull factors the ones attracting people to a certain country. In order to better understand this issue, it will be dealt with more comprehensively in the following heading.

Hence, a household's level of disposable income may influence factors such as education and this will have a role in translating push and pull influences into actual movement. Moreover, family ties and commitments may also influence the migratory decision. A married couple may face more constraints on migration than an unmarried person. Older people on the other hand are less inclined to migrate because of limited mobility.

Migration decisions may be seen as investment decisions which are based on the calculation of costs and returns for migration over time. Non-monetary costs and benefits such as the psychological ones are more subjectively interpreted and thus cause different patterns of migration in both character and direction.

Whatever may be the migration causes, there happens to be a push out from the country of origin and a pull into the receiving country whenever migration takes place. As a result it is necessary for us to explain what are pull and push factors and why they are important in shaping a migration decision.

1.1.3. Pull and Push Factors

Pull and push factors deal with the question of causes of migration on a large scale. The push factors push the people or prospective migrants out of the country sending these migrants and the pull factors attract the prospective migrants to the country receiving these migrants. Both are important in the shaping and formation of a migration decision. The push factors can be both economic and non-economic. Economic push factors are low income, unemployment, lack of employment opportunities, the breakdown of old security systems especially in the East, lack of cheap capital, and poverty in general.¹³ Deficiencies of security in one country resulting from political or economic instability and conflicts may be the push factors causing emigration from that country.

Non-economic push factors are the overpopulation in a country leading to unemployment¹⁴ which causes a substantial rise in labour force, infringements on human rights, corruption, discrimination of ethnic and religious minorities and lack of good housing.¹⁵ On migration, push and pull factors are competing and state interests do not play such an effective part in the decision making process. Since migration results in immigration to a country or area, the conditions in that particular country are important for a prospective migrant in reaching a decision whether to go or stay. If we take into account that there are a lot of people confronting with the same problems and stimuli but preferring to stay put, here we can conclude that it is the pull factors in one country that makes difference for different people with their own circumstances.

One of the pull factors in the destination country may be the proximity of that country or the relation with that country because of previous migrants

¹³ Nicholas Hopkinson, *Migration into Western Europe*. Wilton Park, 1992, p. 13

¹⁴ Dan Corry, *Economics and European Union Migration Policy*, Institute for public Policy Research, 1996, p. 56

¹⁵ Corry, p. 56-57

immigrating to that country by country of origin or even the case of being a previous colony of that country.¹⁶ Colonial ties may play a role in the phase of formation of a migration decision. Because Algeria was colony of France, there was mass influxes of Algerian migrants to the France. Simply and likewise the same applies to Cyprus where most of the migrants prefer to migrate to England as being a former colony because of cultural, linguistic and administrative recognition and familiarity. Welfare benefits and amenities, good income levels in the destination country on the other hand, may be pull factors causing the migrants' movement.

1.2. Immigration and Emigration

Immigration is the type of moving whenever there is an inward moving to a migrant receiving country. There are countries of immigration accepting immigration for a long period of time while there are also countries of emigration. These can best be described by receiving countries and sending countries. On the other hand, emigration is the moving outward from a country that is from a sending country. The people's out-migration with the intention of long-term permanent stay in the host country is called emigration.

The emigration is perceived by most of the states as a right which accomodates the right to go out from a country of origin and settle somewhere else. It should be perceived as an acquired right since from the human rights perspective nobody can or shall bring obstacles to people's right of free movement and settlement.¹⁷ And moreover the emigration may result from compulsory factors as discriminatory attitude towards the people or prospective migrants therefore no state shall impose obstacles and hinder the free movement right in today's globalized world where certain issues such as basic human rights

¹⁶ Stalker, p. 158

¹⁷ Article 12 of International Covenant of Civil and Political Rights 1976 (Article 2 of Protocol No.4 of ECHR 1968.)

gained importance over others. However it should not be disregarded that the countries receiving these migrants are free to accept or decline a migrant by their immigration policies since the immigration issue is seen as inherent to the sovereignty of the states. To provide a sufficient information regarding the emigration we should first look at the sending countries and analyze their role in emigration.

1.2.1. Sending Countries

To provide a sufficient basement for what is immigration and emigration, it should be clarified what is a sending country. To define a sending country is difficult since the countries sending migrants may be receiving migrants on the other hand. Simply a sending country is the country sending migrants to the countries receiving them. From the sending countries migrants emigrate as a result of the unemployment problems, low-incomes or political pressures or for reasons of insecurity or natural disasters.¹⁸ Postwar economic boom in northwestern Europe was accompanied by an expansion of labour markets in the industrialised states to incorporate workers from less developed countries as well as non-European countries including former colonies. And the building of the Berlin Wall in 1961, formation of Iron Curtain, and subsequent separation of the East and West European Labour market resulted in a decrease in the number of migrants coming to the European Countries from the Eastern Europe to work and this forced receiving countries of Europe to find other means for their growing need for labourers. This example shows the influence of sending countries over international labour flows.¹⁹

Although Eastern Bloc countries didn't pursue no-exit policies generally, a number of postwar sending countries did develop emigration policies which

¹⁸ Corry, p. 50-57

¹⁹ Collinson, p. 64

reflected their domestic labour market or national development interest and these created migration pressures. National boundaries then disappeared for labour. Sending countries were then able to integrate and penetrate into the world economy to as far as the beginning of 1970s when there was an oil crisis. There has been interdependency between sending and receiving countries until the oil crisis. In the post war period, the European countries needed labour force for their expanding economy and industrialization. And this need was met by the labour forces in the labour- surplus developing countries of the Mediterranean basin especially North African States, Turkey and Asia.²⁰

As explained by Demetrios Papademetriou, emigration is seen as a remedy for internal underdevelopment and underemployment of the people in the sending country. And this policy is carried out by the labour-surplus countries wishing to get rid of this surplus and having remittances in return. But the economic benefits of emigration is not that much observable because of the failure of the governments of the sending countries to utilise these earnings in the form of sustainable and durable investment.²¹

Sending countries expect from emigration the solution to their unemployment problems, gains in the form of remittances by the previous emigrants settled in the receiving countries and trained workforce returning to the country of origin. In fact according to ILO, the negative impact of emigration seems to overwhelmingly dominate the positive gains for the sending countries in particular.²² In the period before the closing down of the borders at the oil crisis, most sending countries promoted emigration to the West-European

²⁰ Collinson, p. 65

²¹ Demetrios Papademetriou, *International Migration in a changing World*, in R. Appleyard, ed. *International Migration today Vol:1 Trends and prospects* UNESCO. Paris, 1988, in Sarah Collinson's book *Europe and International Migration*, Pinter Publishers, 1994, p. 64

²² International Labour Organization, *Some growing Employment Problems in Europe*, Report II, Second European Regional Conference, Geneva, 1974, pp. 98-99

developed countries so as to hamper problems associated with the overpopulation and un and underemployment in these countries.

Most of the sending countries characteristics are low-development associated with unemployment problems, low economic growth with political instability. We can give the examples of Morocco, Tunisia, Algeria and Turkey as sending countries. Turkey was the leading sending country for immigrants going to Germany because of bilateral recruitment agreements. Similarly, Morocco, Tunisia and Algeria have been the main source countries for immigrants going to France whose colonial ties with these countries have been effective in the direction of destination of immigrants from these Maghreb countries.²³ Morocco, Tunisia and Algeria established Emigration Services like that of Turkey, for effective coordination of emigration and selection of unemployed workers from more depressed areas and underdeveloped parts of those countries. Therefore emigration was seen as a solution to the unemployment problems.²⁴

Generally the sending countries were disadvantaged in the bilateral recruitment negotiations of the 1960s because the volume, composition and the timing of the migration flows were determined more by labour demand than supply putting the sending states in a vulnerable position towards the recruiting country. As there was an infinitely elastic labour supply the sending states were more vulnerable in these recruitment programmes. And when there has been a halt on recruitment uninterestingly return migration had been encouraged by the receiving states in the mid to late 1970s. Consequently the policies introduced were motivated by the domestic political interests of the receiving states rather than the sending states. The sending states' major policy was temporary but

²³ Stalker, p. 168-170

²⁴ Collinson, p. 66-67

long-term migration unlike that of receiving states which focused mainly on temporary and short-term migration. The sending states expected the return of immigrants with more skills and motivation.

However, there was also a concern about skill-drain effect of emigration within the sending countries like Tunisia. Tunisia was first discouraging emigration to protect against skill-drain but the supporters of the emigration argued that emigration was the cheapest way of training workers and gaining remittances in return.²⁵ There was however, growing concern in the sending countries to increase skill levels within the domestic labour market. And this was openly reflected in policies of some countries like Tunisia and Turkey.²⁶

However, due to the failure of the emigration policies to encourage return migration, the emigration did not result in significant return of skilled workers to sending regions but on the contrary had provoked skill losses. For example of the 800,000 emigrants who left Turkey through TES(Turkish Employment Services), about one third of them were skilled or qualified.²⁷

One of the disadvantages that nearly all sending countries seemed to suffer is the skill-drain effect but Turkey nevertheless seemed to suffer less because of its modern technology in its factories. But Turkish government also was keen to promote return migration particularly regarding the emigrants returning with savings to open small and medium sized shops and enterprises with the hope that this might stimulate job creation and development in the returned areas.²⁸ The remittances being the main advantage of emigration seems to create dependency on labour-importers and it is unreliable and susceptible to

²⁵ Collinson, p. 64-74

²⁶ Ibid. p. 70

²⁷ Ibid. p. 66

²⁸ Ibid. p. 72-73

large swings and thirdly remittances distort and create reinforced inflation because it is usually channeled into direct consumption.²⁹

1.2.2.Receiving Countries

Since most of the European countries are sending countries as well as receiving countries, it is important to present a description of what are the receiving countries, how they benefit from international migration and what are the overall costs incurred upon these countries in accomodating those migrants.

Limiting the definition of the countries to either receiving or sending, may be a reductionist and incomplete exercise since most of the countries are both receiving and sending countries simultaneously. However, providing a basic description might be useful. Receiving countries are mainly the countries which receive and recruit migrants accordingly. The main characteristics of receiving countries are that they are mostly capitalist economies having high life standards and economic and cultural vitality.³⁰

Since many receiving countries are industrialized and developed countries they benefit from the migrants in terms of growth in the investment and the consumption resulting from an overall increase in demand, or by increase in the demand for housing market or in doing the heavy duties in the industry or by bringing a multicultural prosperity with regard to academic and scientific life. In England for example over one fourth of the people engaged in health services and the 9% of the people in educational services are foreigners³¹. Moreover a recent study carried out by Germany, reveals that the inflow of 3.8 million people migrating to West Germany between 1988 and 1991 increased

²⁹ Beth J.Asch, Courtland Reichmann, Emigration and its Effects on the Sending Countries, The Ford Foundation, Rand, p. 13

³⁰ Esin Y. Başçeri, Uluslararası Politikada Yeni Alanlar Yeni Bakışlar Uluslararası Göç,der. Prof. Dr. Faruk Sönmezoğlu, Der Yayınları, 1998, p. 506-507

³¹ IOM 88th Council Meeting, p. 2

the gross national product of Germany by 3.5 % and created one million additional jobs.³²

Besides having a lot of advantages to be gained from the migrants utilised as cheap labour force, these countries confront with the problem of integrating migrants to the society especially in a period when most of the migrants are coming from low socio-economic level. As the receiving countries receive these migrant workers or refugees, the burden of accomodating them and/ or training and integrating them to the newly environment are incurred upon them. This creates certain problems within the receiving country as the development of a malicious attitude towards these migrants and refugees within the host country in the form of xenophobic activities. Since the migrants usually come as a result of economic hardships, they are usually inclined not to go back and thus they are available for every type of work just to stay there and earn their living. Therefore, they usually work in the cheap unqualified jobs and lower the wage rates among the nationals of the receiving country. Their belonging to a low socio-economic level usually bring about their involvement in crimes including thefts and even drugs and human smuggling.³³ Bearing these costs the nationals of the receiving country develop hatred and dislike towards them. This also instigates concomitant policies to be adopted by receiving countries like Germany's not regarding itself as a classical immigration country. Because the government in Germany takes the immigration issue as arbitrary by admitting migrants whenever there is need for them, a guestworker system is established where these migrants are conceived as temporary settlers.

Receiving countries take advantage of the migrants in the form of cheap labour force. The need for higher technology and manpower is met by the

³² Collinson p. 157

³³ Barbara Marshall, *The new Germany and Migration in Europe, The Europe in Change*, Manchester University Press, 2000, p. 160

migrants in such countries. On the other hand, the migrants provide the market conditions for the products produced in the receiving countries. As the migrants increase the population of a country they generally imply a growing demand in market terms and decreasing costs. Consequently, the receiving countries' gain from migrants is two-fold. However profitable that migration may be for these countries, some countries do not regard themselves as receiving country or immigration country. And there are some countries which assess themselves as immigration countries and take in certain numbers of immigrants annually. Therefore, it is important to understand and make a distinction between the countries regarding themselves as immigration countries and those that are not. In this respect there are two groups: classical immigration countries and other receiving countries.

The countries which regard themselves as Classical Immigration Countries are the ones that carry out programmes regarding the reception and integration of the migrants into the society and thereby country. These countries are sometimes referred to as Traditional Receiving Countries. These countries put certain numbers of quotas and admit certain numbers of immigrants every year and make courses and programmes to integrate the newcomers into the society without causing them to feel being in a foreign country. These countries are for instance, the USA, Canada, New Zealand, Sweden and the countries in Latin America.³⁴ These countries are relatively rich in terms of foreigners and they share a multicultural society. From the earliest times for example the population in Australia is formed by migrants being taken to the continent by force or by prisoners and convicted people. Immigration has been the major source for economic development since the British Colonisation which started in

³⁴ William Petersen, *International Migration*. *Annual Review Sociology*, No. 4:533-75, p. 534-535

1788. America on the other hand is also formed by migration of British people and the slaves taken to USA from Africa.

On the other hand, North America, Western Europe and the Middle East are the three areas which receive the greatest numbers of immigrants. For example United States received in 1980 570,000 foreign people excluding asylum seekers whereas in 1990 that number was 1,536,500. The same year Canada received 213,600 immigrants. United States net migration from 1980 to 1984 was 2,816,000 immigrants.³⁵ Canada being a Classical Immigration Country took immigration from Britain, France, Germany, and other Northern European countries in the late eighteenth century. Between 1871 and 1931 Canada's population increased from 3.6 million to 10.3 million.³⁶ These countries generally, took immigration annually by admitting certain amount of immigrants into the country and later assimilating them, or more mildly, integrating them into the society by carrying out integration programs and attracting them into the network of the society by giving citizenship easily without marginalizing them. However there are other receiving countries which do not regard themselves as immigration countries but do accommodate masses of immigrants.

So-called Other Receiving Countries are the countries that accommodate migrants but that do not regard themselves as receiving countries. These countries or group of countries as in the case of the European Union do not make laws regulating the immigration issue for the integration of the newcomers into the society. These countries take in migrants whenever they need and try to send them back when the conditions necessitate. As a matter of fact, the Gastarbeiter (guestworker) concept being used first in Europe is a sign showing the view of

³⁵ Asch, and Reichman, p. 3-4

³⁶ Castles and Miller, p. 56

the European countries towards migrants. These countries are Germany, France, England and the Netherlands.³⁷

Not regarding themselves as classical immigration countries, these states avail themselves of the privileges of refraining from being put under pressure to take in certain amounts of migrants or refugees annually. They have developed a more or less selfish immigration policy inclined to exploit the newcomers until there is no need for them. Not admitting themselves as classical immigration countries also gives the state an arbitrary nature. This takes the responsibility from the shoulders of the State and puts it onto the shoulders of the individual employers. Moreover, being a non-classical immigration country, they are not obliged to develop policies to accept and integrate migrants and refugees into the society. From the economical side, they avoid the burden of accomodating the refugees and finding work for the migrants. After the closing of the borders of the European Countries in the post 1973 period (oil crisis), the population displacements took the form of seeking asylum or refuge in another country or trying to enter the proposed country through illegal ways.

It will therefore be useful to describe what is a refugee, how it is granted and the criteria envisaged by the International Regime regarding the refugee status.

1.3. Refugee and Asylum Seeker

The changing circumstances and conjuncture and above all the unequal distribution of wealth among all countries in the world associated with closing down of the borders resulted in persistent movements of new form of migrants namely, refugees in the contemporary world. However, countries are reluctant to accommodate these new forms of migrants since most of the migrants belonging

³⁷ Castles and Miller. p. 70

to low socio-economic and low educational class choose the refugee status as a way of escaping from economic hardships. And due to each countries' individual regulations, their ad hoc remedies and the immigration and asylum issue being inherent to a nation's or state's sovereignty area, no cooperation or consensus has been reached with respect to transferring the authority over these matters to a supra-national sovereign body which is to deal with these matters.

The Refugees are the sub-group of the broader category of displaced persons that are forced to migrate. They are distinguished from the economic migrants who leave their country of origin voluntarily for economic reasons or from the internally displaced persons who do not cross a border where it doesn't result in a change of country of origin. More generally the refugee is known as a politically motivated migrant unlike other types of migrants as economically motivated labour migrants.³⁸ Refugees in the sense of the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees are the people considered to be refugees under international agreements and these include any person who qualifies as a refugee under UNHCR Statute. Originally this definition limited the application of the Convention to the refugee who acquired such status as a result of events occurring before 1 January 1951. Convention Refugees should prove the four elemental characteristics the most important of which is the fear of persecution which should be based on reasons of race, religion, nationality, membership of a particular social group or political opinion.³⁹

The asylum may take the form of collective asylum realizing from the reasons as political pressure and tension or war or internal conflicts as in the case of the Turkish refugees escaping from Bulgaria and the Iraqi Kurds escaping from Saddam Hussein during the Gulf War or may be in the form of

³⁸ Collinson, p. 2

³⁹ Guy S. Goodwin-Gill, *The Refugee in International Law*. Clarendon Press, Oxford, 1985, p. 12-13

individual asylum based on a case by case personal investigation or political discrimination arising from oppression by state authorities.⁴⁰

The people who seek refugee status are asylum seekers and the practice of accepting such refugees is that of offering political asylum. The most common types of asylum claims are made by political or by religious reasons. This is sometimes referred to as forced migration since the people moving are doing so because of fear of persecution in the home country or because of environmental disasters or famine or due to the diseases as in the case of Africa (As masses affected by the HIV virus), again which makes them strongly involuntary. Thus as noted by a migration scholar, Sarah Collinson⁴¹, we cannot classify the refugees as only politically motivated migrants, though this is often the case in the migration to European Countries from politically instable parts of the world, asylum seeking may indeed result from economic, involuntary factors.

On the other hand, the Human Rights Declaration article 14 dated 10.12.1948 states that every person has the right to seek asylum in other countries in the cases of cruelty and bad behaviour but adds that this provision is not applicable for ordinary criminals implying the political side of the right of asylum.⁴² Again the aim of acknowledging the right of asylum is to prevent arbitrary justice, that is not to avoid the application of justice but to maintain the right of equal and fair trial that is compatible with basic human rights principles.⁴³

The international refugee regime is not the sole but best regime hitherto for the protection of refugee rights but still it lacks cooperation and consensus

⁴⁰ Hüseyin Pazarcı, Uluslararası Hukuk Dersleri, II. Kitap, 6. baskı Turhan Kitabevi, 1999, p. 202-212

⁴¹ Collinson, p. 1-3

⁴² Pazarcı, p. 208

⁴³ Pazarcı, p. 207

with regard to the definition of a refugee among the signatory states of this Convention and Protocol. There are other regional Conventions as in Europe, Africa and America. Due to being European-oriented and undertaking the refugee concept in a narrow context, the 1951 Convention have failed to provide protection and meet the needs of the refugee movements in the Latin America and Africa. This situation resulted in an increase of problems associated with refugee movements and conflicts between states. As a result, this situation forced UN to adopt 1967 Protocol to solve this issue. Some of the regional Agreements made previously are 1928 Havana Asylum Convention, 1933 Montevideo Convention on Political Asylum.⁴⁴ The 1967 United Nations Declaration on Territorial Asylum on the other hand, is ratified unanimously in 14 December 1967 by the General Assembly. Its main aim is to regulate refugee issue by maintaining respect for right of asylum provided for the persons warring against colonisation. On the other hand, it mainly leaves the determination of the conditions at the mercy of the state applied for the refugee status.⁴⁵

There are other conventions broader in scope such as that of the Organization of African Unity. The wars resulting from the colonisation, racism, discrimination, ethnic conflicts, civil wars resulting from political conflicts, conflicts between countries, scarcity and famines caused by natural drought caused refugee movements within the countries in the continent of Africa as a whole. As a result of these movements African Unity Convention was introduced which has the authority to regulate refugee movements regionally. This organization introduced the Convention governing the specific aspects of

⁴⁴ Atle Grahl-Madsen, *Territorial Asylum*, Almqvist and Wiksell International, Stockholm, Sweden, 1980, p. 115-118

⁴⁵ Tevfik Odman, *Mülteci Hukuku*, Ankara Üniversitesi Siyasal Bilgiler Fakültesi, İnsan Hakları Merkezi, İmaj Yayıncılık, Ankara, 1995, p. 54-55

Refugee problems to broaden the definition of Refugee in Africa in 1969. It has regulated the refugee issue in such a way that it provides protection to those fleeing from natural disasters, external attacks, occupation, a foreign country's domination, civil wars without any regard to geographic or temporal limit or persecution.⁴⁶

1.3.1. 1951 Geneva Convention Regarding the Status of Refugees

Bearing in mind the need for taking under protection those refugees formed as a result of the Second World War and to determine a common definition for refugee concept, 1951 Geneva Convention Regarding the Status of Refugees was introduced in 1951. Besides this Convention, international Human Rights Regime has also contributed to the protection of refugees in broader scope. The basic definition of a refugee is according to 1951 Convention;

“As a result of the events occurring before 1 January 1951 owing to well founded fear of being persecuted for reasons of race, religion nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country or who not having a nationality and being outside the country of his former habitual residence as a result of such events is unable or owing to such fear is unwilling to return to it”

We can conclude from Article 1A(2) above of the 1951 Convention that it, besides having elements of inclusion to be comprehensive for refugees, has a time and geographical limit.⁴⁷ This time limit is for the events occurring before 1951. On the other hand, the aim of this Convention is to have the migrants whose arrival has been motivated by pro-western political values. Here we should note that this stance was particularly aimed to include forced migrants

⁴⁶ Odman, p. 49-50

⁴⁷ Seda Mumcu, The Refugee Crisis, Masters Thesis, Bilkent University, Institute of Economics and Social Sciences, August, 1999, p. 27

(political émigrés) who due to his/her political belief had been under pressure and had a fear of persecution because of this. At the first sight this seems to be a neutral formulation, but it is not; bearing in mind that the term refugee was based on a divided Cold War world and although it related to the political system established in any country, the fear of persecution would only be accounted to the Soviet countries when looking at the world system at that time.

There are five elements of Article 1(a) of the Convention regarding the refugee status. The first one is Alienage which states that the claimant must be outside her/his country of origin. This is a firm element and it implies that the internally displaced persons are excluded from the protection of the Convention. Again here we see the politically oriented rationale of the Convention rather than providing protection for all refugees. Here we should consider the costs that could be incurred upon the international community if there was a shift in the scope of the legal protection so as to cover internally displaced persons.⁴⁸

The second element depicts the political character of the Convention. Only those refugees who face a genuine risk of life and persecution will be able to benefit from the protection of this Convention. The well founded fear entails two requirements. The claimant must perceive herself/himself to stand in "terror of persecution". Second one is that the subjective perception must be consistent with the prevailing conditions in the country of origin since only those asylum seekers who have reasonable arguments regarding persecution will be granted refugee status.⁴⁹

The third element of this Article in the Convention is the failure of the state protection. This element implies the failure of the country of origin to provide the security and protection to the persons in question. This standard

⁴⁸ James Hathaway, *The Law of the Refugee Status*, Butterworths, 1991, p. 64

⁴⁹ Hathaway, p. 65

focuses on the existence of persistent harassment, constant mental or physical infliction by or with the knowledge of the authorities of the state of origin. The harassment involves so persistent activity of irritation that the victims feel themselves deprived of all hope of recourse to government under such oppression.⁵⁰

The fourth element of the Article states that the well founded fear of persecution must have somewhat relevance to the political opinion of the claimant. The refugee must be marginalized because of his religion, ethnicity, economic aspirations, political beliefs or political alliances in some way that he must be opposing to his government's stance in political affairs.⁵¹

And finally the fifth element of the Refugee status in the Convention is the discretion of the individual member states granting this status. This states that claims with regard to acquiring refugee status must be consistent and substantive rather than formal. It should be noted that refugee status may not be invoked by an individual solely on the grounds that she/ he is at risk of legitimate prosecution or punishment for the violation of ordinary criminal law.⁵²

Countries should evaluate the term refugee also according to the historical facts and based on the idea that refugee definition is focused on a divided world, should it not be impractical to consider that a single text should not cover both refugees from Western Europe beyond Iron Curtain and refugees from the rest of the world seeking asylum in Western Europe. As a result, the concept of fear of persecution enabled the West widely to admit the political dissidents in Soviet Bloc to international protection.

⁵⁰ Ibid. p. 101-102

⁵¹ Hathaway p. 135

⁵² Hathaway p. 169-170

The element of fear of persecution because of a political opinion or belonging to a particular political group in the Convention gives the 1951 Convention a politically oriented character and rationale. Basically, the Convention includes political refugees but does not provide protection for the ones who flee from natural or ecological disasters, civil conflicts, foreign aggression and occupation, poverty or famines.

1.3.2. 1967 Protocol

The 1967 Protocol resulted in an aim to universalize the definition of refugee in the Convention. During 1950s and 1960s various political instabilities and tensions had happened in various parts of the World increasing the refugee numbers. In Africa for example after the end of the colonisation, the struggles to form a nation state resulted in wars. That various civil or international wars happened created mass movements of people from African countries.⁵³ The disintegration of the colonised areas created masses of refugees seeking asylum in European Countries. As the Convention definition lacked the necessary content for a wider inclusion of refugees because of its temporal limit as the “pre-1951 element” and its geographic limit comprising only events taking place in Europe, those limits were abolished in the 1967 Protocol. However, the criteria of fear of persecution on the ground of civil or political status remained. This created a situation where all the Third World refugees escaping from natural disasters or wars remained as de facto refugees.⁵⁴ With these amendments, the 1951 Convention’s discriminatory provisions were abolished. The limitations and not granting the persons coming from parts of the world

⁵³ Özlen Künçek, Uluslararası İlişkilerde Mülteciler Sorunu ve Batı Avrupa Devletlerinin Uygulamaları. Doctoral Thesis. Ankara Üniversitesi, Uluslararası İlişkiler Anabilim Dalı, Ankara 1997, p. 98

⁵⁴ Hathaway, p. 10-11

other than Europe the refugee status as existed in the 1951 Convention were also contrary to the non-refoulement principle in the Convention.⁵⁵

The Council of Europe has in fact expanded the standards of refugee protection that go beyond the Convention definition. In the Parliamentary Assembly Recommendation 773 in 1976, the Council of Europe expressed its interest with regard to Refugees. According to Council of Europe, the de facto refugees are the ones who are not recognized as Refugees although they fall within the scope of Convention or who are unable or unwilling to return to the countries of origin. Member governments hence according to this definition were invited to apply liberally the definition of refugee in the Convention and not expel de facto refugees unless they are accepted by countries where they would not confront risk of persecution.⁵⁶

1.3.3.Non-refoulement Principle

The refugees facing considerable discrimination in their home country because of war or political instability or simply because the asylum seeker belongs to a particular political group, have the fear of persecution in their home country. And as a matter of fact, the principle of non-refoulement exists in the international regime of refugees to provide security for those people being oppressed politically. Referred to as non-refoulement, this principle states that, even before the granting of formal refugee status by a receiving country, "No contracting State shall expel or return a refugee in a manner whatsoever to the frontiers of territories where his or her life would be threatened on account of his race, religion, nationality, membership of a particular group or political opinion"(Article 33).⁵⁷ Because it is binding on states, it is important that the

⁵⁵ Künçek, p. 101-102

⁵⁶ Ibid. p. 21

⁵⁷ Article 33 of 1951 Geneva Convention Relating to the Status of Refugees

European States are obliged to comply with the duties arising from this principle.

The principle of non-refoulement mainly is the duty of the states to avoid the return of a refugee to a country where he faces a genuine risk of serious harm or death penalty. This principle introduced amendments to the rules of deportation as well. A condition of not deporting or handing in the person who is to be deported has been envisaged with regard to his/her race, religion, nationality and political opinion⁵⁸ where he is going to be persecuted on these grounds. The principle of non-refoulement is the contemporary form of principle of non-extradition of the nationals to another state where there might be a serious risk to his/her life.⁵⁹

⁵⁸ Künçek, p. 89-90

⁵⁹ Pazarıcı, p. 207-211

Chapter II

2. Historical Evolution of Migration in Europe

2.1. *From the early days-till 1960s*

In Western Europe migration has been an important instrument of social life and political economy from the 1650s. The impetus and dynamism needed to run the economy of the newly formed capitalist states of Europe was sustained and met by the migration process bringing new labour force alongside.

European conquest of Africa, Asia, America and Oceania led to the domination and exploitation of native peoples both culturally and physically. European colonisation resulted in various types of migration. Large numbers of movements from Europe to Africa and Asia, then to America and Oceania caused migrations.

Europeans migrated as sailors, soldiers, farmers, traders. There was high mortality among the migrant workers through shipwreck, warfare and tropic illnesses but they escape poverty only as participating in service of the colonial powers. Many European countries used slavery system to develop their economy. By 1770 there were 2.5 million slaves in America producing a third of the total values of European Commerce. The slave system was originated in triangular trade. The ships full of manufactured goods such as guns, household implements sailed from European ports to the Coasts of West Africa. The Africans were forcibly abducted or purchased from local chiefs in return for the goods. Then ships sailed to the Caribbean or coasts of the North or South America where the slaves were sold for cash. This method was used to purchase the products of the factories of America which were then brought back for sale to Europe.⁶⁰

⁶⁰ Castles and Miller, p. 53

15 million slaves were taken to Americas before 1850. These were used in the mines and plantations in agriculture. Coming to the end of nineteenth century slaves were replaced by indentured workers as the main source of plantation labour. British colonial authorities recruited workers from the Indian subcontinent for sugar plantations of Trinidad, Guyana and other Caribbean countries.⁶¹ Between 1800 and 1860 the British migration to America reached a peak by the industrial revolution. From 1800 to 1930 40 million Europeans migrated permanently overseas, mainly to North or South America and Australia. From 1850 to 1914 most migrants came from Ireland, Italy, Spain and Eastern Europe.⁶²

Migration has also taken place between European countries in between 1876 and 1920. Nearly 6.8 million migrants from Italy went to other European Countries, such as France, Switzerland and Germany. The West Europeans went overseas in an attempt to escape proletarianisation but workers from peripheral areas namely from Poland, Ireland and Italy replaced labour force there for large scale agriculture and industry.⁶³

Estimated populations in Western European countries between 1800 and 1910 is given in the table below in millions.

	1800	1850	1900	1910
Norway	0.9	1.5	2.2	2.4
Sweden	2.3	3.5	5.1	5.5
Finland	1.0	1.6	2.7	3.1
Denmark	0.9	1.6	2.6	2.9
Germany	24.5	31.71	50.6	58.5

⁶¹ Castles and Miller, p. 48-53

⁶² Ibid.

⁶³ Castles and Miller, p. 57-58

Netherlands	2.2	3.1	5.1	5.9
Belgium	3.0	4.3	6.7	7.4
Switzerland	1.8	2.4	3.3	3.8
France	26.9	36.5	40.7	41.5
Great Britain	10.9	20.9	36.9	40.8
Ireland	5.0	6.6	4.5	4.4
Spain	11.5	15.5	18.6	19.9
Portugal	3.1	4.2	5.4	6.0
Italy	18.1	23.9	33.9	36.2

Source: André Armengaud, "Population in Europe, 1700-1914" in the Fontana Economic History of Europe, vol.3⁶⁴

The end of slavery in Prussia (1807), Austria (1848) and Russia (1861) mobilized the central European Labour force and eventually brought Europeans into Germany and France. Many left Europe to work in the New World. International conflicts, state restrictions and laissez faire policies all affected migration to a certain extent in the 1815-1914 period.⁶⁵

The Revolution in France lasted for 25 years in conflict and political change. The revolutionary France where there were civil wars and political divisions sent "émigrés" from France and raised armies of young man throughout Europe.

The states of the Western Europe colonized many countries in Asia and Africa. Between 1876 and 1915 a quarter of globe was distributed among a handful of nations mainly British, French, German, Belgian and Italian.

⁶⁴ Leslie Page Moch, *Moving Europeans, Migration in Western Europe since 1650*, Indiana University Press, p. 109

⁶⁵ *Ibid.* p. 105

However this colonization further gave impetus to immigration from this colonized countries into the home countries.⁶⁶

The period between 1850 and World War 1 promoted mobility. During the 1914 to 1945 period repatriates, refugees and forced labourers were numerically more evident than the voluntary migrants across the borders because of the First World War. After the Second World War masses of men again found their way in European cities to work temporarily performing menial and difficult tasks. This second phase of migration was directly related to Second World War and its consequences for Europe. Roughly some 15.4 million people had to leave their former countries. During the period of 1945-1947, Czechoslovakia ordered the expulsion of 3.2 million ethnic Germans from the region. Between 1945 and 1950 almost 65 percent of German refugees and expatriates were settled in western part of Germany.⁶⁷

At the interwar period between 1918 to 1945 the international migration reduced because of economic recession and crisis as well as because increased hostility towards immigrants in many countries.⁶⁸ All the warring countries made use of refugees and forced labourers of prisoners of war. France was the only country to experience substantial immigration in the interwar years and the need for labour force forced France to make recruitment agreements with Poland, Italy and Czechoslovakia. Société générale d'immigration was organizing this recruitment. Under 2 million foreign workers entered France from 1920 to 1930 and about 567,000 of them were recruited by SGI. 75% of

⁶⁶ Moch, p. 107

⁶⁷ Heinz Fassmann and Munz Reiner, European East- West Migration, The International Migration Review, New York, Fall 1994, Vol:28, Issue: 3, p. 2-3

⁶⁸ Castles and Miller, p. 62

French population growth between 1921 and 1931 was estimated to have been the result of immigration.⁶⁹

As a result immigration has been used as an instrument for solving the labour shortages problem of Europe in the interwar period, because labourers' of the combatant countries had participated in the military service or munitions production. These labour shortages were met by the foreign labourers or immigrants brought in as a result of the bilateral agreements between the sending and receiving countries.

After the two wars, with the Marshall Plan being implemented, rapid economic recovery and over two decades of sustained economic growth in all the industrialized countries of the Western Europe has been reached.⁷⁰ And as a result there were again substantial need for labourers to compensate for the war losses. After the two wars there were massive displacements in Europe within 1945 to 1950s. And many of those migrations were ill-recorded or clandestine. The low birth rates of the Depression, the human losses in the Second World War created demand conditions for labourers in the Europe afterwards. As a result millions of refugees and displaced persons sought new homes in the post war period. Those displaced persons, refugees and immigrants substituted for labour shortages arising from low birth rates. The countries of Northwestern Europe initially received workers from the nations of Southern Europe or former colonies.

In the post-war period changing borders created involuntary and forced migrants or refugees. The collapse of the Ottoman Empire and the Austrian-Hungary Empire created migrants and refugees. As there was conflict between capitalist and communist countries, the European Capitalist countries used the

⁶⁹ Castles and Miller, p. 63

⁷⁰ Collinson, p. 43

right to grant refugee status as an instrument to scorn and gain political advantage over Soviet Countries. Resulting from the need to control and define what refugee is, a Convention on the Refugees namely the 1951 Geneva Convention on Refugees had been signed under the Mandate of UNHCR. As of May 2001 137 states were parties to the Geneva Convention of 1951. This Convention was mainly attempted to be used as an instrument for looking down on Soviet Union refugees. From 1921 until the establishment of UNHCR these forced migrants were all seen as groups. It should be noted that the German retreat from the east between 1943 and 1945 produced again a refugee crisis for Europe. Nearly all of the highly industrialized states of Western Europe used temporary recruitment at some stage between 1945 and 1973. In the period after the world wars Europe, has undergone into a rapid industrialization process. After the second world war Europe was largely in a mess and the countries were in a wrecked position and the economy of the countries was bad as a result of the world depression and World Wars. So the countries by having the Marshall Aid, began rapidly industrializing, using labour recruitment.

The rapidly expanding economies needed labour force to compensate for the population losses of the world wars and to industrialize. The need to compensate losses resulted in the labour recruitment programs and the guestworker systems of Europe as in the case of Germany. These expanding economies made use of the labour reserves of the mediterranean periphery. As an example France made use of labour supply from Algeria and Morocco.

In some cases it was the result of the former colonisation. After the Second World War, the British government brought in 90,000 mainly male workers from refugee camps and from Italy through the European Voluntary Worker Scheme (EVW). The EVWs had no right to family reunion and could not

be deported for indiscipline.⁷¹ The Scheme only operated until 1951 because it was easier to make use of colonial workers. Between 1946 and 1951 a further of 100,000 Europeans entered Britain on work permits and some European migration continued subsequently.⁷²

Belgium also recruited workers after the war, in coal mines and iron and steel industry. Most European countries became involved with the migration process. France established an Office National d'Immigration(ONI) in 1945 to organise recruitment of workers from Southern Europe. They expected migration to be temporary but in the view of continuing low-birthrates some family settlement was envisaged. And up to 150,000 seasonal agricultural workers from Spain were employed by ONI.⁷³

Switzerland also followed the same pattern of large scale labour import from 1945 to 1974. Foreign workers were recruited by the employers while admission and residence were controlled by the government. And the family reunion was forbidden.⁷⁴

Germany again recruited workers from Greece, Italy, Turkey, Morocco, Portugal, Tunisia and Yugoslavia in accordance with the bilateral agreements between these countries. The Federal Labour Office set up recruitment offices in the Mediterranean Countries. The number of foreign workers in FRG(Federal Republic of Germany) was 95,000 in 1956. The German policies conceives migrants as temporary labour units which would be recruited, utilised and sent away. As a result, the migrants were often identified as guestworkers. But the authorities were not able to prevent family reunion and settlement.⁷⁵

⁷¹ Castles and Miller, p. 68-70

⁷² Castles and Miller, p. 68

⁷³ Castles and Miller, p. 70

⁷⁴ Castles and Miller, p. 70

⁷⁵ Castles and Miller, p. 71

In Germany for example there were 548,000 immigrants during 1950s whereas in France the number was 2,128,000 and in Great Britain 1,573,000 in 1950s.⁷⁶

Population movements have always existed and always will. From the end of the Middle ages, the development of the European states and their colonisation have caused various forms of international migrations. After the two wars, Europe has undergone an industrialization period which has instigated a rapid economic growth in the European states that needed high numbers of immigrants for the sustenance of this economic growth. As a result, the influx of migrants and temporary workers have rendered the adoption of new policies and actions indispensable. Under the following heading I will deal mainly with the policies carried out during the period from 1960 and till the oil crisis.

2.2.From 1960s to 1973

After the two world wars Europe was in a mess. However coming to the 1960s it had recovered and the growth rate of the European Economies reached their highest level. Europe has undergone into a rapid process of expanding and industrializing in the postwar period. These conditions generated a growing need for labourers in this period. This brought about the grounds pulling labourers from non-EU countries. The EU countries have recovered rapidly after having survived through World Wars and this brought about rapid growth and expansion in most EU countries' economies. As a result by the early 1960s all the highly industrialized countries of Northwestern Europe lacked labour force needed to run the system thus they started to import labour. The underlying reason for the import of the workers from abroad was the death of the many

⁷⁶ Castles and Miller, p. 72-73

European men in the wars, the increase in the education and of the increase in the number of people preferring to study further and going to High School. There were certain common trends as identified over the four and half decades following the war, although the forms, rationale and causes differ from one receiving country to another.

In this period European countries in order to meet their growing demands for labour started to take in migrant workers from the countries nearby. However, the need for labour was so immense that this transfer had not met the labour need of the European Countries. Consequently, those labour importing countries were forced spontaneously to make bilateral agreements with the third world countries. As a matter of fact, France made bilateral agreements with Algeria, Germany with Turkey and Greece. Again migration of colonial workers to the colonial powers and the out-migration to North America and Australia from Europe, Asia and Latin America were the things to be familiar with in this period.⁷⁷ UK turned to its former colonies and Caribbean and Indian Subcontinent. And Germany having no colonial reservoir has recruited short-term contract workers from countries adjacent to Western Europe namely the former Yugoslavia and Turkey.⁷⁸

We should also note that after the Second World War there were mass movements of European refugees. One more thing that should be taken into consideration when dealing with population movements is the return migration during this period when the colonies gained their independence. After the Second World War for example British government brought in 90,000 workers

⁷⁷ Castles and Miller, p. 70

⁷⁸ Stalker, p. 153

from the refugee camps and from Italy through European Voluntary Worker Scheme. Again we see this as new forms of colonisation in that period.⁷⁹

As a matter of fact all the industrialized countries of Western Europe used temporary labour recruitment as an instrument to attract labour and cover labour shortages coming out in the Post War period. The rapidly expanding economies of Europe used labour market of the Mediterranean countries, Ireland and Finland.

Belgium on the other hand recruited workers from the end of the war till 1963. France recruited workers from 1945 till 1970s through an Office of National immigration intended to organize recruitment of workers from Southern Europe. France aware of the demographic needs and low birth rates envisaged family settlement during this period. There were many who came as tourists, got a job and regularized their position. By 1968 ONI statistics showed that nearly 82 percent of the aliens admitted by ONI were illegal.⁸⁰

Switzerland recruited workers from 1945 till 1974. Job changing and family reunion were forbidden there. In the agricultural and tourism sector, seasonal workers were used. The dependence on foreign workers in Swiss industry which made up nearly a third of labour force by the early 1970s was considerable.⁸¹

In the 1960s due to the industrialization in Europe there were masses of people on the borders of the European countries seeking better life and working conditions. These were largely economic migrants coming to Europe for better living standards. These migrants, unlike the refugees, are voluntarily leaving their countries of origin for better economic prospects. They move in search of improved employment opportunities and better paid jobs. However it is not

⁷⁹ Ibid.

⁸⁰ Castles p. 70

⁸¹ Castles p. 70

possible to make a clear distinction between economic migrants and the guestworkers since most of the guestworkers were settling in the host countries after some time.

In the process of immigration various countries used different methods to recruit foreign workers. Some countries carried out programs for the integration of foreign workers coming into the society while others not admitting themselves to be traditional immigration countries tried to regulate immigration on a temporary, ad hoc basis. Among such countries were the Netherlands and Federal Republic of Germany.

The Netherlands hence, brought in guestworkers in the 1960 and early 1970s. The guestworker system was most evident in Federal Republic of Germany. These countries were the countries perceiving immigration as temporary, from which workers were to be used in the industry and sent back whenever their service is in no demand.⁸²

After the construction of the Berlin Wall in 1961 and consequently the halt on the available workers coming from the Eastern bloc, the Federal Republic of Germany needed considerable number of workers for its growing economy. As a result it began recruiting workers from the Southern Europe namely from Italy, Turkey, Yugoslavia, Greece, Portugal, Tunisia and Morocco in the late 1950s.⁸³ An Office namely Federal Labour Office set up recruitment Offices in the Mediterranean Countries. Employers found workers via paying a fee to the FLO. These workers were brought in groups to Germany where employers had to find accommodation. The number of foreign workers in Federal Republic of Germany rose from 95,000 in 1956 to 1.3 million in 1966 and 2.6

⁸² Castles and Miller, p. 70

⁸³ Castles and Miller, p. 71

million in 1973.⁸⁴ This brought about rapid industrialization and expansion. German authorities were perceiving migrant workers as temporary labour units which would be recruited, utilised and sent away again as employers wished. To enter and remain in the Federal Republic of Germany, a migrant needed a residence permit and labour permit. These were for limited periods. Family reunion were discouraged.⁸⁵

First Germany used the term Gastarbeiter (guestworker). This proves their approach as to recruit the migrant for a short period until their demographic conditions improve and the need for them ceases. Motivated by the oil crisis as well as the awareness that the temporary migration was transforming itself into permanent migration, the German government stopped labour recruitment in 1973.⁸⁶ Until 1970s, there has been no serious attempt by the European Countries to cooperate and reach a consensus over the control of immigration.

2.3.From 1973 to 1990s

2.3.1.The Role of the Oil Crisis over Immigration Policies of the European Countries:

In 1973 after the October War between Israel and Arabian Countries, the Arabian Countries started to put an embargo on the petrol to USA and European Countries thus increasing the petrol prices. This affected most European Economies negatively by forcing them to retard growth by reducing the costs. As a result the European States put under pressure by the realities and results of the oil-crisis started not to take new workers into the factories instead they started to close their borders for further immigration. Affected by the subsequent

⁸⁴ Castles and Miller, p. 71

⁸⁵ Castles and Miller, p. 71

⁸⁶ Castles and Miller, p. 71

increase in overall prices they no longer needed migrant workers to take up jobs increasing the costs.⁸⁷

Besides most European Countries were in an anticipation that these migrant workers or the guestworkers might return. However, these guestworkers because of the closing of borders for further immigration and the imposition of visas aware of the fact that they would no longer enter the European Countries once returned to the countries of origin preferred to stay in these host countries. Disappointed by the failure of their policies to provoke short term temporary settlement as a result of the longterm settlers, started to take actions against influx of migrants by implementing visa requirements. Although the policies pursued differ from one country to another, generally they manifested more or less the same characteristics in this regard. Limiting the policies adopted to a few countries may be a reductionist exercise, but to outline the proposed policies with regard to the countries that receive the highest immigration influx may be practical and useful in submitting realist examples on a country basis. I shall therefore take France and the Federal Republic of Germany as a point of departure.⁸⁸

As the economic recession due to the oil crisis set in, the labour importing countries introduced measures to the influxes of workers from outside their regional groupings (namely the EEC and EFTA) namely the third world countries and the developing countries.

Due to the period before the oil crisis that stimulated masses of migration to European Countries, huge numbers of foreign migrant workers accumulated there which seemed to cause economic burdens during the oil crisis. Foreigners constituted at least 16% of the total population in Switzerland, 5% of the Federal

⁸⁷ Künçek, p. 104-105

⁸⁸ Collinson, p. 50

Republic of Germany, 6.5% of France, 7.5 % in Britain, 7% of Belgium and 2% of Netherlands in 1970s.⁸⁹

However, we can not attribute economic recession as the sole reason for closing down of borders. Over the years, awareness of social, political and socio-economic costs associated with these immigrant population have developed. As revealed by the report of the Organization for Economic Cooperation and Development, there were xenophobic stance and tensions embedded in countries where there were a surplus of migrants. The take-over of many jobs by most of the migrants and the fall in the wages accordingly has both social and political implications since this would instigate growing xenophobia and tension socially and nationally. As a result these receiving countries started to promote return migration.⁹⁰

French authorities were also anxious about the social impacts of immigration. There was substantial concern for immigrant's housing and working conditions and xenophobic reactions among host communities. France in 1972 issued two circulars to limit regularization of illegal immigrants by invoking that regularization would be limited to those who had entered France before a specific date. Alongside the restrictions on immigration to France was also the sending countries' halt on emigration because of racial tension in France against Algerian immigrants. There were also halts in emigration and immigration by both sending and receiving countries, receiving states tried to prevent further immigration by introducing a stop on family immigration and reunion.⁹¹

Germany, aware of the social aspects of immigration, began to reorder the priorities in favour of integration of foreigners and away from recruitment at

⁸⁹ Collinson, p. 51

⁹⁰ Ibid. p. 51-52

⁹¹ Ibid. p. 52-53

the begining of the 1970s. German government undertook domestic measures to discourage employers from seeking to take any more foreign workers, including stricter supervision of housing supplied by employers, higher fees to be paid for each recruited worker, and penalties for employment of illegal immigrants.

European governments started to ensure successful integration of all foreigners who did not wish to return voluntarily in the 1970s. Then these governments stopped recruitment of workers from non-EU states. However integration of the remaining migrants to the German society for example had not been successful and easy due to the racist activities provoked by the nationals and society. Germany while undertaking policies of integration for the migrant workers, did not regard itself as an immigrant country those days.

2.4. From 1990s to 2000s

Especially after the collapse of communism, Eastern Europeans with more freedom to travel sought asylum in Western Europe. From 1989-1998 more than 4 million people applied for asylum in Europe, 43 percent of whom came from elsewhere in Europe, 35 per cent from Asia and 19 per cent from Africa.⁹² Also in this regard it is seen that immigration controls did not prove effective in reducing the numbers of refugees or immigrants entering the Western Countries of Europe.

There were some politicians who were noteworthy to mention in this period. One of them was Jean Marie Le Pen, the French right-wing politician, who has long supported the assimilationist tradition in French immigration policy.⁹³ Le Pen and National Front were supported prevalently in France in 1990s. Additionally his victory of entering the second round of French Presidential elections in June 2002 was an apparent sign demonstrating this

⁹² Stalker, p. 153

⁹³ Malcolm Cross, *Migrants and New Minorities in Europe*, International Review of Comparative Public Policy, Vol. 1, , London, 1989, p. 174

trend. Jean Marie Le Pen, the far right French politician, who was a candidate also in presidential elections in of April 1994 along with his adversary Jacques Chirac, has been a fierce opponent of immigration of North Africans into France.⁹⁴ Le Pen has always been critical of European integration in general and of the Maastricht treaty on the grounds that it is likely to denote some degree of EU interference in the affairs of French government to restrict immigration to France.⁹⁵

On the other hand, the EU stopped short of limiting the inflows of immigrants and asylum seekers despite the long-standing trend dominant in the EU member states' policies during this period. There are some statistical figures that support this position. The net migration which is calculated on the basis of the difference between population change and natural increase between two dates, for the EU-25 countries in 1993 was 780,300 , while in 2004 this number was 1,849,500.⁹⁶ For Germany the net migration for 1993 was 462,400 whereas this number fell to 81,800 in 2004.⁹⁷ On the other hand, United Kingdom had an estimated 35,000 net migration in 1993 while this figure rose to 201,800 in 2004. Another country which has experienced high increase in the net migration figures is Spain. Spain's net migration figure was 68,800 in 1993 whereas it increased by 543,300 making a total of 610,100 in 2004.⁹⁸

⁹⁴ David M. Wood and Birol Yeşilada, *Agendas and Agenda Setting in the European Union*, Emerging EU, Longman, 1996, p. 120

⁹⁵ Wood and Yeşilada, p. 120

⁹⁶ Eurostat web page

http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1996,39140985&_dad=portal&_schema=PORTAL&screen=detailref&language=en&product=Yearlies_new_population&root=Yearlies_new_population/C/C1/C11/caa14608 visited in 1st October 2006 01.08 am

⁹⁷ Eurostat web-page,

http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1996,39140985&_dad=portal&_schema=PORTAL&screen=detailref&language=en&product=Yearlies_new_population&root=Yearlies_new_population/C/C1/C11/caa14608 visited in 1st October 2006 01.08 am

⁹⁸ Ibid.

On the other hand, population of the EU-25 countries in January 2005 was 459,488 million whereas this number was 461,507 million in January 2006 making an increase by over 2 million in total. While this is the case for the population, the natural growth which is the natural increase being calculated by the number of births minus the number of deaths in a year is +0.7 per 1,000 inhabitants between 2005 and 2006.⁹⁹ Therefore, 2 million increase in Europe's population growth was mainly driven by immigration. It seems by the negative figure of its natural growth(-1.7) that Germany is going to face a shortage of working young population if it restricts the immigration of workers from third world countries or Turkey in the following years. These figures show strikingly that immigration can not be stopped nor is it desirable for the EU-25 countries to do so.

All the countries of Europe and those that are particularly in the European Union have seen their fertility rates fall in the past 40 years. In France for example the fertility rate has fallen from 2.9 children to 1.8 children per woman; in Denmark from 2.6 to 1.5, in Germany from 2.1 to 1.4, in Belgium from 2.4 to 1.5, in the Netherlands from 2.5 to 1.3 and in Spain from 2.5 to 1.3.¹⁰⁰

2.4.1. The Policies pursued by European Countries:

Although the European countries came to a halt on further recruitment by closing borders, this hadn't prevented the family migration and dependants from moving in. Family migration continued after the closing of borders.

⁹⁹ Rainer Muenz, 1 June 2006 <http://www.migrationinformation.org/Feature/display.cfm?id=402> visited in 1st October 2006 at 01.15 am

¹⁰⁰ Ray Hall and Paul White, *Europe's Population Towards the Next Century*, University College London, London Press Ltd, 1995, p. 22

However, in order to prevent the family reunion in the receiving countries, the receiving countries started to promote reunion in the sending countries by promoting return migration. But, beyond achieving reunion in the home countries, the receiving countries had started to confront with more and more immigrants moving in as the families of the immigrants have already settled in the host countries. It is evident that most countries put conditions to the entry of family members, as proof of adequate funds and accomodation on the part of the sponsor.¹⁰¹

During the 1970s till 1980s migration influx did not lead to substantial increase of population in the European Receiving countries by the fact that immigration was balanced by return migration. A decade after 1973, changes in the immigration pattern were structural not numerical. European Countries began to receive more immigrants from non-European countries than southern European countries.

There has been convergence on the immigration policies of the West European states in 1980s on the other hand. They started to make strict controls on immigration from outside the EC and regulated family immigration in order to integrate these people.

During the 1980s even the sending states of southern Europe received immigration and due to these facts the southern countries introduced immigration legislation to control immigration. The Europe had witnessed convergence in the policies regarding immigration of all the European Countries and there had been attempts accordingly to achieve cooperation on this issue. By the late 1970s receiving states began to be preoccupied with solving immigration problem by promoting return migration rather than just simple control.¹⁰²

¹⁰¹ Collinson, p. 55

¹⁰² Collinson, p. 56-57

European Countries had brought the obligation of having a work permit and residence permit to take the undocumented migration and migration as a whole under control. Moreover, these countries tried to put a halt on family immigration during this time by maintaining return migration and reunion in the sending countries.¹⁰³

France on the other hand, has promoted return migration by introducing financial incentives to encourage migrants to leave. European Countries then aware of their unsuccessful prospect for return migration started to encourage it by giving financial aid. For example France has given financial assistance to help for housing and employment by setting up organizations in Algeria. This reflected a shift of French policy towards cooperating with source countries. But these policies did not serve to the interests of the West European receiving countries and they continued to focus on immigration control instead.¹⁰⁴

In December 1981 Germany tried to maintain control over immigration by lowering the maximum age of children who immigrate subsequently to 16 years and limiting the subsequent immigration of spouses joining aliens of second generation.

Some European countries like Germany, not being successful on the control of immigration introduced visas in December 1981, for aliens coming from non-EC member states who intended to stay longer than 3 months on German territory. France on the other hand, strengthened its control over immigration for all non-european immigrants. Britain in 1981 passed the British Nationality Act, which defined different categories of British Citizenship. In especially 1980s as a result of the restrictive policies carried out by the European States over the immigration control which closed the way for legal immigration,

¹⁰³ Eric Jean Thomas, *Migration in Europe, Towards a just immigration policy*, Cobden Trust, London, 1986, p. 43

¹⁰⁴ Collinson, p. 57

illegal immigration and the growth in the numbers of asylum seekers to these countries were witnessed by the European authorities.

France, after the presidency and parliamentary elections in 1981, adopted a more liberal approach as to restrict any new immigration and fought against illegal immigration and attempted to integrate the already settled immigrants to the society by improving their living and working conditions.

In August 1981 a circular was issued which envisaged that all the foreigners in France in an irregular position would be regularized provided that they proved that they met the time limit (being in France before 1 January 1981). At that time it was also stated that thereafter no regularization would take place and the control of borders and sanctions for employers of illegal immigrants would be implemented.¹⁰⁵

Britain on the other hand has never been a significant target for illegal immigration as other countries of Europe because of the strengthened controls at the borders. In 1978 the British Home Secretary stressed the government's will and determination to achieve immigration control by preventing the abuse at clearance stage, at the port of entry or by controlling illegal immigrants or illegals who have been so by overstaying in UK. However, Britain was vulnerable in monitoring illegal immigration because it depended on checks on entry rather than on internal controls.¹⁰⁶

Germany however, tried to prevent illegal immigration by controlling illegal employment with the adoption of new laws as the Act to control Illegal Employment passing in January 1982. Germany attempted to regulate the issue via fining or expulsion of illegal immigrants by employer sanctions or by sanctions imposed on transport companies that were caught transporting

¹⁰⁵ Collinson, p. 58

¹⁰⁶ Collinson, p. 59

foreigners who didn't have required documents. By the late 1980s the rising levels of unwanted or illegal immigration started to irritate and draw attention of most of the new immigration states of Southern Europe, whereas Italy, passed immigration legislation in December 1986. This was followed in 1989/1990 by the Martelli-law that envisaged annual quotas for the number of immigrants to be admitted and the introduction of severe sanctions for employers and traffickers encouraging illegal immigrations.¹⁰⁷

However, such measures have not been successful in preventing illegal immigration. In the aftermath of 1989, Western Europe's main concern was to control immigration and refugee crisis which was the result of the collapse of the Soviet bloc. Subsequent transformation of the entire geopolitic and economic map of Europe was evident. This change of geopolitical map gave rise to the disintegration of most of the southern states forming massive refugees –resulting in uncontrolled population movements from east to west. As a result the European Countries reconsidered their immigration policies to address root causes since the usual forms of immigration control such as visas and border controls fall short of maintaining efficient control of immigration.¹⁰⁸

With regard to the resolutions of the 4th Council of Europe Conference on European Ministers Responsible for Migration Affairs adopted in September 1991 which aimed to develop bilateral and multilateral cooperation between countries of origin and host countries, it is stated that the resolution envisaged not only cooperation beyond the limits of EC but also the other receiving states of the former Eastern Bloc.¹⁰⁹

Towards the end of the 1980s, the millions of massive refugee flows from the former Soviet Bloc (Eastern Bloc) rendered other stricter forms of

¹⁰⁷ Collinson, p. 59-60

¹⁰⁸ Collinson, p. 59-60

¹⁰⁹ Collinson, p. 60

immigration control necessary for the West European Countries that had previously been separated from Eastern bloc by Iron Curtain. The concern created by this anxiety brought about a reevaluation of the migration and refugee policies in Western Europe.

Economic, social and demographic disparities also gave rise to the continuing and even increasing numbers of migration or refugee flows. However there has not been mass emigration of economic migrants from Eastern Bloc to the west as feared by some during the early stages of transition.

As a matter of fact, the fears of masses of refugees escaping from political instability and civil war of Eastern bloc countries replaced the fears of masses of economic migrants. First these movements did not generate and instigate serious concern over this issue because of the euphoria prevailing at that time, but subsequent movements of refugees brought about the awareness of the gravity of the situation. The problems were rather interethnic and intercommunal as in the case of Yugoslavia.

Immigration issue, resulting from the movements of masses from the southern Europe in greater numbers and from the fact that it has been causing various tensions including xenophobia arising from the concern of the nationals over their integration as well as from the mistrust by the incurring of social problems and costs, have drawn the attention of the other authorities such as heads of states, cabinets and ministries.

However this anxiety had not brought about any change in policy areas. Today West European's principal areas of interest focuses on three issues namely external migration pressure, immigration control and immigrant integration. However nothing tangible in terms of efficient cooperation has been achieved. The main propensity is towards seeking a shift of traditional national

control measures to the supranational level to maintain a strengthened supranational grouping.¹¹⁰

As a result of the restrictive policies carried out by the European Countries on immigration as in the form of visas or strict border controls or bringing carriers liability and the passport controls on both at the entry or internal controls,¹¹¹ the ones that were less inclined to stay and thinking of return migration stayed in these receiving countries or even brought their families to these countries rendering the immigration control even more difficult for the authorities. As a result of the visas required by the European countries, the question of illegality and refugee inflows increased substantially.

These countries receiving and recruiting workers in the pre-oil crisis period started to issue recommendations on restricting even the family migration and migration of dependants by lowering the maximum age of children who immigrate subsequently and limitations has been applied to subsequent immigration of spouses joining aliens of the second generation as in the case of Germany. As mentioned before, illegality increased and the application of the asylum seekers to the European countries from the non-European countries have increased considerably during this period.

The European Countries in an anticipation to hinder the guestworkers from settling there and the transformation of temporary migration into long-term permanent migration started to go into bilateral agreements with the countries of origin to support the return migrants financially in the sending countries. On the other hand these receiving countries adopted temporary solutions to address the control of illegal immigrants as the internal border controls. Some of the

¹¹⁰ Collinson, p. 60-63

¹¹¹ Prof. Roger Zetter, Dr. David Griffiths, Ms. Silve Ferrekti and Mr. Martyn Peaul, An assessment of the impact of asylum policies in Europe, 1990-2000, Home Office Research, Development and Statistics Directorate, June 2003, p. 17

European countries prevented this by detecting the false documents or even lack of required documents at the sending countries borders and as a result the migrants could not be admitted to the planes. In some countries they even imposed carrier sanctions for the carriers transporting the immigrants thus brought about a limitation and control to a certain extent.¹¹²

2.4.2. The Development of Cooperation in Europe during 1980s

The increasingly integrating European Economic Community gave impetus for the cooperative efforts on Immigration in 1980s. The States began to think of their future in terms of refugee and migrant problem. The integration and enlargement of the European Economic Community and the free movement of the workers or factors of production has rendered new policies to be adopted necessary. As a result the European States took on initiatives to cooperate for this immigration problem. The France and Germany initiated first a cooperation on the abolition of border controls for the nationals of the European Community carrying a green label that shows the car in question is from the European Community.¹¹³ The signing of the Schengen Agreement for the gradual abolition of the controls at their Common frontiers by Germany, France and the Benelux countries was undertaken to create a border free area for the movement of goods, services and persons and thus to harmonize policies on control of immigration from third countries. This is because the abolition of the border controls would mean that the accession to these countries shall be easier for illegal immigrants and the immigrants as well thereby making these states vulnerable. The migrant entering into one of these states may not be qualified for entry to one of the other European States. Although there was inharmony between the policies of each

¹¹² Collinson, p. 59

¹¹³ Künçek, p. 154

member state, the abolition of controls at the borders among these states facilitated the admission of these migrants to these countries thus caused the abolition of border controls to be exploited by the immigrants. Thus this rendered harmonization in the policies of member states necessary.

The 1985 Schengen Agreement consisting of 33 Articles was envisaging the gradual relaxation of border controls in a short period of time.¹¹⁴ The Schengen Agreement was perceived to be a preliminary step for the establishment of single market and free movement of persons within the European Community thereby.

Then in 1987 Single European Act was signed by all the Community member states which, when ratified in 1987, introduced an article to the EEC Treaty of Rome which envisaged the establishment of the internal market by the end of December 1992.¹¹⁵ The suppression of internal borders within the European Community meant the external borders of each state to become the external borders of the Community which render the cooperative efforts indispensable for the effective coordination of immigration issue within the European Community towards the third country nationals. The maintaining of the free movement of persons as of 31st of December 1992 with EC and thereby the suppression of internal borders resulted in the failure of the control of immigration. This seemed to be the weak part of the Single European Act and the Schengen Accord. Taking this as point of departure, the member countries became aware of the interdependence between them created by the inauguration of the Single Market for persons and goods reflecting a need for cooperation. However cooperation could not be achieved simply and automatically. Due to the immigration control being perceived by the states as inherent to the national

¹¹⁴ Künçek, p. 155

¹¹⁵ Collinson, p. 124

sovereignty, most states were unwilling to relinquish their sovereignty on this matter. The interests of the member states did not coincide with each other on immigration control.¹¹⁶ As a result much of the pressure from the Commission for the acknowledgement of competence were opposed by the member states. And no pooling of the sovereignty on this issue was maintained and the cooperation on this area remained largely intergovernmental and ad hoc.¹¹⁷

Before the Schengen Grouping, the Trevi Group was established which was in intergovernmental form outside the organization. Trevi group (Terrorism, Radicalism, Extremism and Violence International) was established by the Fontainebleau European Council as a substructure of the European Political Cooperation. Its main duty was the coordination of the internal security and public order. This was followed by the so called Ad Hoc Group on Immigration which was formed primarily by a group of ministers and senior civil servants responsible for immigration in 1986.¹¹⁸

Ad Hoc Group's main interest was dealing with stronger checks at the external frontiers, internal checks, coordination of visa policies, cooperation to avoid the abuse of passports and common policies to eliminate the abuse of the right of asylum. After 1988, Ad Hoc Group worked together with a third body that was set up by a Group of Coordinators consisting of officials of the member states and representatives of the EC.¹¹⁹

Then the Council of Ministers issued the so-called "Palma Document" which was the success of the recommendations of the Group of Coordinators in 1989. The document dealt with a list of problems coming out as a consequence

¹¹⁶ Collinson, p. 124

¹¹⁷ Künçek, p. 158

¹¹⁸ Collinson, p. 125

¹¹⁹ Collinson, p. 125

of the free movement of persons in the Community. The list's main focus was on the border controls.¹²⁰

The result of this list was the so-called Dublin Convention (Convention determining the State Responsibility for examining Application for Asylum) signed in 1990 and the draft Convention on the Crossing of External Borders both of which were made as a compensation for the loss of control on the internal borders.¹²¹

Parallel to these efforts the Schengen Implementing Convention signed in 1990 put emphasis on measures that deal directly with the suppression of internal border controls and the instruments formulated at EC level included state responsibility over asylum applications, and the crossing of external frontiers. However, all three bodies namely Ad Hoc, Schengen and the Trevi Groups were severely criticised for the failure to carry out a dialogue with national Parliaments, European Parliament and the non-governmental bodies.¹²²

2.5. From 2000s to 2006

The Nice Inter-governmental Conference in December 2000 seemingly underscored the prominence of treating long-term third country nationals more fairly and equally. Moreover the Commission's proposed Council Directive on the Status of Third Country Nationals who are Long-term Residents of March 2001 set out measures to ensure equality of treatment with Union citizens in terms of normative and practical grounds.¹²³ Furthermore, the articles 2 and 3(1)(k) of the Treaty Establishing the European Community which ensures the needs of the employment market, the effective attainment of the internal market

¹²⁰ Collinson, p. 125

¹²¹ Collinson, p. 125-126

¹²² Collinson, p. 123-126

¹²³ Carl Levy, The European Union after 9/11, The Demise of a Liberal Democratic Asylum Regime? Government and Opposition, Volume 40, Issue 1, Blackwell Publishing, 2005, p. 34-35

and the enhancement of economic and social cohesion through the integration of third country nationals reinforce this liberalization trend in the formation of European immigration and asylum policy.¹²⁴ However, this liberalization trend in the European Union's immigration and asylum policy terminated or seemed to be stopped dead by the September 11th attacks in 2001. Since then, Europe witnessed the rise of the Far or Populist Right parties in the Western European Union Member States and a non-member Scandinavian state, Norway.

It can be said that the 11 September 2001 attacks to the World Trade Center twin towers seemed to be a turning point for Europe which led to a shift in the European Immigration and Asylum policies. On 5 December 2001 the European Commission issued a working paper to encourage the member states to apply the exclusion clauses contained in article 1(f) of the Geneva Convention in order to prevent persons suspected of terrorist crimes from seeking asylum in Europe.¹²⁵

Moreover a common position adopted by the EU on 27 December 2001 demanded that the member states investigate refugees and asylum seekers in order to ensure that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts.¹²⁶ Thus, a trend of securitization of migration and asylum policy in Europe has materialized through these reforms. The signs heralding this trend has showed itself in the party politics of some member states. Some of these member states had far and/or populist right parties embedded which reinvigorated after the 9/11 events.

In the Netherlands, the flash victory of the Dutch populist the assassinated Pim Fortuyn can be given as an example showing the electoral

¹²⁴ Levy, p. 34-35

¹²⁵ Levy, p. 35

¹²⁶ Levy, p. 35

trend in the Dutch society especially after 9/11 events.¹²⁷ In France on the other hand, Jean Marie Le Pen has been around for decades and his ability to enter the second round of the French presidential elections in June 2002 owed a great deal to the chaos of the French left but his xenophobic or more to the point islamophobic and anti-migrant discourse found new support after 9/11.¹²⁸ Jörg Haider in Austria, Carl Hagen in Norway, the deceased Pim Fortuyn in the Netherlands could be given as the charismatic populist politicians who were against further immigration to Europe and rampant multi-culturalism.¹²⁹ In Austria Haider's party, Freedom Party of Austria began to make credit particularly in October 1999 after scoring 27 percent of the vote in the national elections. The Christian Democratic and Social Democratic parties that had ruled the country throughout the postwar period have failed to form a coalition government. After that the Christian Democratic leader Wolfgang Schüssel turned to Haider's party forming a government with four FPÖ members. This has been a luck for Haider who found opportunity to express his ideas fraught with protest for the swamping of foreigners of Austria and stealing native citizens jobs.¹³⁰ And it can be argued openly that he has been a cornerstone for the shift in the European liberalization trend and change in the European citizens' sentiments towards immigrants or foreigners. And the 9/11 events also triggered this anti-immigrant impulse dominant in the European societies of member states.

Pim Fortuyn, the Dutch far right populist, on the other hand, has been particularly against further immigration to Netherlands and admission of asylum seekers. In Germany, however, Otto Schily, the German interior minister in the

¹²⁷ Levy, p. 38

¹²⁸ Levy, p. 38

¹²⁹ Levy, p. 39

¹³⁰ John Van Oudenaren, *Citizen's Europe, Uniting Europe, European Integration and the Post-Cold War World*, Rowman& Littlefield Publishers, 2000, p. 224

recently re-elected Social Democrat- Green coalition took measures against the extreme right and guided legislation that granted mainly Turkish guestworkers the right to German citizenship although he also introduced stringent measures to combat crime and saw the Immigration Act passed by the Bundestag to control and limit the number of immigrants allowed to take up legal residence in Germany.¹³¹ Therefore it can be argued that the restrictive agenda in the brace of the center left governments that came to power in the late 1990s seems to have been followed by the re-elected governments or their successors.¹³² It follows that since the 9/11 events this anti-immigrant and xenophobic attitude of Europe towards foreigners has taken up the souls of the European societies as well as the ruling leaders and European Union officials.

In the spring of 2003, the British government's release of a vision paper which rapidly became the basis for a discussion between the EU and UNCHR, advanced the development of transit-processing camps outside the EU and regional processing centers closer to the countries of origin in the developing world. Ruud Lubbers, high commissioner, replied urgently with a three-pronged approach that envisaged a role for UNHCR in the global management of the system especially in partnership with the EU in aiding countries of origin to build capacity to manage migration flows to the EU.¹³³ This shows the negative and restrictive approach prevailing in the EU in the aftermath of the 9/11 attacks. However the European Council presidency conclusions at Thessaloniki on 19-20 June 2003 emphasized the sanctity of the Geneva Convention.¹³⁴

In UK, on the other hand, there is a general trend to support some degree of managed migration while at the same time pressurizing the asylum-seekers

¹³¹ Levy, p. 42

¹³² Levy, p. 42

¹³³ Levy, p. 47

¹³⁴ Levy, p. 48

and refugees. Concurrently, the Anti-Terrorism Crime and Security Act was passed in 2001 which should be considered simultaneously with the Nationality, Immigration and Asylum Act of 2002.¹³⁵ The purpose of 2002 Act was to differentiate asylum seekers and refugees from what is known as legal labour migration. This is certainly to limit the social assistance to the asylum seekers arriving UK who do not make their claim within a short period of time of arrival.¹³⁶ Therefore some measure of restrictive policy particularly towards refugees and asylum-seekers was observable in the UK.

While the debates and subsequent policies are becoming more and more towards the restriction of asylum-seekers and refugees, the illegal immigrants and even unskilled immigrants, the Europe and the political grouping covering the continent, the EU's reactions for this trend are inconclusive. The EU, it seems is aware of its need for skilled immigrants and therefore is in a policy of admitting skilled qualified migrants from the most depressed origin countries. Spain for instance, has seen a massive influx of Latin Americans who already speak the national language and share the country's basic Catholic culture. The figures estimated by the Madrid government calculates that of 2.8 million immigrants now known to be in Spain, a third- some 900,000- are from Latin America.¹³⁷

On the other hand, Britain, notorious for being one of only three countries in the European Union to open its job market to the ten mostly East European member states that joined the EU in 2004, has mostly been carrying out anti-Muslim policies and particularly excluding Muslim men from the UK

¹³⁵ Levy, p. 50-51

¹³⁶ Levy, p. 50

¹³⁷ Christopher Dickey, Special Report, Living Underground, the Newsweek International Periodical, September 11, 2006, p. 18-19

labour market.¹³⁸ This may be attributed to a certain extent to the London bombings last year and the foiled airline plot in Britain in August and obviously the previous 9/11 attacks which were suspected to be commissioned by radical Muslims. Therefore, the immigrant muslim men are particularly vulnerable in finding jobs in UK. This is demonstrated by the 2004 figures which indicates that unemployment among Britain's 1.6 million Muslims was three times the national average.¹³⁹

Eastern Europeans which have been the frustration of Spain, were admitted to the UK to work. Some 600,000, most of them Poles, have come to work in Britain over the past two years. Government figures show that 97 percent of them have found work there.¹⁴⁰ Ultimately, Spain decided to lift its restrictions against East European migrants in April 2006. In France, a gradual termination of restrictions on East European migrants was declared in the spring 2006.¹⁴¹

Recently in 2005, some of the member states of European Union have started to accept the presence of ethnic minorities which were formed through immigration over the thirty years. Therefore there started to prevail at least an atmosphere of more moderate and accomodating stance towards immigrants in Europe. French president Chirac, for instance, has spelled out after the recent riots, for the first time that, that he wanted France's institutions to reflect its population while at the same time remaining officially colour-blind. The present Minister of Interior, Nicholas Sarkozy has preferred rather an idea of affirmative action for minorities.¹⁴² Although as Mr Villepin put on CNN counters with the idea of Sarkozy, there are apparent signs that the France is trying to reach a

¹³⁸ Dickey, p. 18-19

¹³⁹ Dickey, p. 18

¹⁴⁰ Dickey, p. 18

¹⁴¹ Dickey, p. 19

¹⁴² The Economist, December 17th 2005,

compromise on the multiculturalism and the immigration problem as seen by the French authorities.¹⁴³ Thus, it remains to be seen in the upcoming years what the French policy towards immigrants will be. However, there are certain signs that France is aware of its need for skilled immigrant labourers and the already settled immigrant population in France. Although it is said that North European countries are tightening up on immigration, France nevertheless is trying to come to terms with the immigrant minorities by adopting a more representative policy for these migrants.¹⁴⁴

Spain has marked the end of the Socialist government's three-month amnesty under which 700,000 illegal immigrants will be given work and residency permits which will pave the way for more illegal immigrants entering Spain.¹⁴⁵

On the other hand, regardless of the stringency of the measures taken on EU level or even on member states' level, it seems that immigration is going to be a matter of concern and is likely to persist from the developing countries of the Africa and Asia. One of the signs supporting this view is the persistent movement of illegal immigrants from sub-Saharan to Spain which occurred only recently. In early May 2006 more than 460 sub-Saharan illegal immigrants reached the Canary Islands in large, fragile fishing boats that set out from west Africa. And in the first four months of 2006 the number reaching the islands has already passed the total for all of 2005.¹⁴⁶ Officials reported that as many as 1000 would-be immigrants may have drowned on this route in the past six months alone.¹⁴⁷ It should be borne in mind that irrespective of the rigidity of the efforts and policies shown by the member states, given the risks the would-be

¹⁴³ Ibid.

¹⁴⁴ The Economist, Let Them Stay, 14th May 2005, p. 30

¹⁴⁵ Ibid. p. 30

¹⁴⁶ The Economist, Still they come, May 13th 2006, p. 31

¹⁴⁷ Ibid. p. 31

immigrants take and their determination to succeed, it is more probable that immigration is going to persist to EU states. Madrid's Elcano Royal Institute official Rickard Sandell also comments on this issue by saying 'they are willing to take enormous risks'.¹⁴⁸ It is also known that given the proximity of Spain to Africa where the gap between mainland and Africa is only 9 miles at the Strait of Gibraltar, the previous immigrants tried to use that path in the 1990s until Spain installed an early-warning radar system.¹⁴⁹ Spain on the other hand worked to cooperate with African countries on limiting immigration as well.¹⁵⁰ For instance Morocco patrols its side of the frontier more efficiently. However, all the signs are heralding that, given the population boom happening in sub-Saharan Africa and Asia which neutralize economic growth, it will be unlikely to prevent the inflows of immigrants to EU. Therefore immigration should be seen as a global problem stemming from the underdevelopment and economic disparities in the welfare of the countries all over world.

On the other hand, the migration of central or east Europeans from the newly joined member states of the EU to the west European Union member states should not be overlooked. For instance, Poland since its accession to EU, has been facing large numbers of outflows to west European countries like Britain, Ireland and Sweden.¹⁵¹ As argued by a World Bank Economist Ali Mansoor, the type of migration happening today differs largely from the post-communist migration for it is driven predominantly by economics not politics, thus it is mainly legal not illegal.¹⁵² Therefore it should be considered that politics in a country can alter over time with the change of the regimes or succession of the ruling parties with the periodic elections, however, the economics of a

¹⁴⁸ Ibid. p. 31

¹⁴⁹ Ibid. p. 32

¹⁵⁰ Ibid. p. 32

¹⁵¹ The Economist, The Brain-drain cycle, December 10th 2005, p. 33

¹⁵² The Economist, The Brain-drain Cycle, December 10th 2005, p. 33

country particularly the origin countries where the system is poorly founded, can not be improved so quickly. It follows that, this form of migration is going to persist in the following years showing the prominence of economics on migration flows. The figures in Britain of Polish immigrants are about 300,000. Lithuanian estimates of the emigrants to Britain were more than 100,000 or 3% of Lithuanian population which demonstrates the continuous movement of immigrants even from the European countries to western European states.¹⁵³

An official of European Citizen Action Service, a Brussels think-tank, Tony Venables argues that the complex barriers that some countries like France and Italy impose on migrants stimulates abuse and bad practice.¹⁵⁴ This demonstrates the continuous and determined feature of migration which seems likely that it is going to persist no matter how rigid or tough measures will be taken by the European states.

Additionally, the last year's unrest in France which arguably asserted to be caused by Muslim minorities should be borne in mind when considering the recent French immigration policy. To a considerable extent this unrest or riot has led to a noticeable differentiation of the French immigration policy. There has happened an xenophobia towards mainly Muslim minority living there because of the riots. Also the deliberate hardline policing policy carried out in France had worsened the long-standing disputes over how to accomodate Islam in France.¹⁵⁵ France's overall unemployment rate is nearly 10% which is quite worrying.¹⁵⁶ Besides, as suggested by a report by Institut Montaigne, a think-tank, last year the unemployment rate of 'visible minorities' is nearly three times the national

¹⁵³ Ibid. p. 34

¹⁵⁴ Ibid. p. 34

¹⁵⁵ The Economist, An Underclass Rebellion, November 12th 2005, p. 31

¹⁵⁶ Ibid. p. 31

average.¹⁵⁷ Equally, the proposed or long-standing integrationist model of France which relies on colour-blind equality is also aggravating the situation for both sides - the French citizens and those of visible minority.¹⁵⁸ This policy provokes the unfair disregard or neglect of minorities with a pretext of being equal to everyone on a fake colour-blind equality. This view is apparent by the expressions of young muslim men who said 'The police harass anybody with the wrong skin colour' and another of whom added 'The police don't leave us alone'.¹⁵⁹ These expressions clearly shows the recent approach of the French government towards immigrants which obviously implies a close negative adjustment in immigration policy.

On the other hand, Europe or the senior 15 member states are also anxious about the swamping of immigrants from new East-European member states. They also have fears for losing their jobs or having snatched their jobs or social benefits to East-European newcomers.¹⁶⁰ 12 of the 15 previous or founder EU members imposed transitional arrangements which were nothing more than a mere restriction on labour from east.¹⁶¹ Britain, Ireland and Sweden kept their markets open to new immigrant labour from east. It is unsurprisingly apparent in the European Commission's report dated 8th February 2006 that all the evidence in the conclusions of the Commission turns out to be in favour of the 3 member states that opted out transitional arrangements.¹⁶² They had faster economic growth and more employment while the 12 saw no effects or negative ones. Nevertheless, those of the 12 countries having most stringent restrictions, seemingly faced no remarkably lower numbers of migrant worker. Therefore, it

¹⁵⁷ Ibid. p. 31

¹⁵⁸ Ibid. p. 31

¹⁵⁹ Ibid. p. 32

¹⁶⁰ The Economist, When East meets West, February 11th 2006, p. 27

¹⁶¹ Ibid. p. 27

¹⁶² Ibid. p. 27

is clear that however rigid the restrictions on immigration are in certain member states of the EU, immigration is going to persist in the future. It is unfortunate that the keenest advocate of restrictions in EU, Austria confronted with the biggest inflow after 2004.¹⁶³ Another sign showing the perpetuation and determination of immigrants is that the restricters got the highest numbers of illegal workers or the ones declaring themselves as self-employed.¹⁶⁴ A striking finding is that across the EU-15 migrant labour from the EU-10 has tended to be associated with rising employment rates even for local workers. Therefore it is evident that Europe needs immigrant workers and they are far from stealing jobs from locals. Most incomers have taken jobs that the locals avoid which has led to rise in profits and employment.¹⁶⁵

In December 2005 the European Trade Union Confederation changing its policy on labour mobility with only Germany and Austria dissenting voted to support the ending of all intra-EU restrictions. There is now a trend tilting in favour of liberalisation in the domestic fora which portends that Finland, Portugal, Spain and probably Greece will remove their transitional arrangements for labour from East-Europe in near future.¹⁶⁶

However, Germany, it seems is still negatively-positioned towards a more liberal immigration policy. Continuously, the German government makes new proposals to address the cultural and social problem of integrating migrants. It is even stranger that the left and right seem to be in agreement for such a policy line towards integration and denial of Germany's being a country of immigration.¹⁶⁷ Germans had faced the reality of big problems in the integration of migrants recently. The teachers of the Rutli school in Berlin have made a call

¹⁶³ Ibid. p. 27

¹⁶⁴ Ibid. p. 27

¹⁶⁵ Ibid. p. 27

¹⁶⁶ Ibid. p. 28

¹⁶⁷ The Economist, Multicultural Hysterics, April 22nd 2006, p. 31

to the government that their pupils of mostly Turkish and Arab descent, were so violent that teaching has become impossible.¹⁶⁸ It follows that according to a study by Bielefeld University Germans seem to be increasingly xenophobic, 61% agree that there are too many foreigners living in Germany, while this number was 55% in 2002.¹⁶⁹ Racial violence is on the uprise as well which is heralded by the beating of an Ethiopian scientist carrying a German passport to death.¹⁷⁰

Given the demographic profile globalisation and competition for talent, it seems obvious that Europe needs and will need immigrants in future. Trying to obstruct the inflow of immigrants will be nothing more than a futile struggle, as vain as attempts to fend off globalisation waves.

¹⁶⁸ Ibid. p. 30

¹⁶⁹ Ibid. p. 31

¹⁷⁰ Ibid. p. 31

Chapter 3

3.EU's Notion on Immigration

Immigration issue started to draw attention of the European Receiving states mainly in the 1970s and 1980s. Becoming more and more aware of the consequences of immigration in terms of social drawbacks as well as economic gains and losses, Europe became more involved in the process of immigration. The rising levels of asylum applications together with integration problems caused serious concern among the EU.

3.1. Immigration Issue in European Integration

After the closing of borders at the oil crisis, the European labour-importing states introduced measures for the impediment of further immigration on a country basis. Their main aim was to hinder the influx of workers from outside their regional economic groupings (namely EEC and EFTA).¹⁷¹

After witnessing the failure and insufficiency of the arbitrary and separate policies as controls at the entry, work permits, residence permits and the visa requirements, the European countries became aware of the necessity of streamlining the individual policies under a single policy line.

During this period the European Union was not formed, yet, and the Community's name was the European Economic Community. The mid 1970s and 1980s had witnessed convergence in the immigration policies of the West European States but no cooperative efforts have been made with regard to this, apart from individual regulations.¹⁷²

In the 1970s, the receiving states of Europe became preoccupied with both maintaining control over immigration and promoting return migration. First the Northwestern states of Europe tried to regulate the immigration from the

¹⁷¹ Collinson, p. 50

¹⁷² Collinson, p. 55

non-EC member states. Then coming to the 1980s the new immigration states of Southern Europe also started to become seriously concerned about increase in the numbers of immigration.

Although the governments were concerned about illegal immigration and asylum inflows during the 1980s, it was until the end of the decade with the signing of the Single European Act, which envisaged the free movement of goods, labour, capital within the European Economic Community and the free movement of persons, that the European States became deeply involved with the immigration issue as set out in the Schengen Agreement in 1986.¹⁷³

With the disintegration of the Eastern European States, the asylum issue started to gain more and more importance. The different individual or common approaches and implementations by these states have forced people to resort to other methods of entry into these states, such as making asylum applications. The requirement of visas by most of European States caused massive increase in numbers of illegal immigration as well as asylum seekers. These increased numbers of asylum applications prevented indirectly the full implementation of the non-refoulement principle for these asylum seekers as the European Union introduced the safe third country principle. The application of this principle caused a chain of deportations from the states concerned which may create a condition in which the asylum seeker may be send back to his country of origin wherein he may confront a risk of persecution.¹⁷⁴

With the signing of the Single European Act which envisaged the free movement of goods, services, capital and persons, maintaining control over the internal borders became difficult for the Member states. In accordance with the

¹⁷³ Andrew Geddes, *Immigration and European Integration, Towards a Fortress Europe*, Manchester University Press, 2000, p. 67-68

¹⁷⁴ Münevver Güzoğlu, *Refugee and Asylum Policies of the European Union*, MA Thesis Eastern Mediterranean University, 2001, p. 48

abolishment of controls for the persons coming from member states, the member countries became aware of a need to adopt a harmonized common policy in regard to putting a control on the immigration and asylum to the European Community member states. As a result, the member states were by then trying to harmonize their immigration and asylum policies for the establishment of the Single Market. Resulting in the suppression of internal border controls and the growing anxiety over increased numbers of illegal immigrants and refugees, the European member states felt obliged to cooperate on the issue.

First the initiatives were largely intergovernmental during the early 1980s such as Council of Europe's European Committee on Migration (CDMG) and its Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) and the UNHCR Executive Committee. Then more cooperative efforts came with the establishment of intergovernmental consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia in November 1985.¹⁷⁵

The intensification of intergovernmental dialogue at that time encouraged informal policy harmonization in certain areas such as the adoption of carrier sanctions legislation by some states during the late 1980s. Then a turning point came with the signing of the Schengen in mid 1980s among certain states of the European Community which would have certain implications for the EC as well. The Schengen Agreement will be dealt in the following parts.¹⁷⁶

3.2. The Need for a Common Migration Policy

Due to the Single European Act introduced in 1986 by the EEC, it has become more difficult to control immigration to the Member States. Suppression of borders facilitated the movement of illegal or undocumented immigrants.

¹⁷⁵ Collinson, p. 123

¹⁷⁶ Collinson, p. 123-124

On the other hand, the criminal incidents and social tensions arouse because of the influxes of immigrants and asylum seekers not being integrated to the society. The immigration by then was seen as a social problem causing wages to go down, an increase in housing rents because of the increased demand, increase in criminal cases such as thefts because of the low incomes of the immigrants. However, although there are some social implications and tension instigated by the influx of immigrants, they do contribute to the European Economic Community member countries' economy. Because of their low wages the employers benefit from low costs. This has other implications as well. Due to masses of newcomers, the market enlarges in terms of demand. This creates an enlarged market for the products produced in terms of increased demand.

However, due to the declining economies after oil crisis and the costs incurred upon by the influx of migrants, there was a need for a common migration policy within the European Community as a whole. The suppression of borders with the single European Act created a situation in which the European Community became vulnerable.

As a result there was a rising concern in the EC States for the illegal immigrants coming from the third world countries. Some countries started to implement safe third country principle in accordance with this. This principle envisaged and enabled the states to send asylum seekers to the third country which were deemed safe in compliance with the Geneva Convention.

All these problems, together with xenophobia of the nationals in member states towards the immigrants in those countries, began to be irritating for immigrants as well as nationals with respect to increased social tension.

On the other hand, the different interpretation of the Geneva Convention caused different implementations in member states. The immigrants and asylum seekers seeking asylum in one state may acquire the right of asylum in one state, whereas in others they do not even be granted this status. All these different interpretations of the Geneva Convention by the member states and the lack of a common policy within European Union member states, rendered the harmonization of policy on immigration issue necessary.

Due to the increased numbers of asylum seekers on the borders of European Community member states in the recent years especially after the Soviet disintegration and concerns on immigration through asylum in EC have increased. In the following parts I will deal with the asylum together with immigration issue in the European context.

3.3. How they tried to achieve Common Policy

With the signing of the SEA in February 1986, Article 8a of the SEA stated that, "*the community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992*".¹⁷⁷ The internal market was by the definition an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured.¹⁷⁸

The adoption of the SEA showed over years that the goal of eliminating internal borders required the development of common measures for external border control and short term admissions to EC territory. As a matter of fact the SEA is important to show that EC needed for strengthened competence in immigration matters.¹⁷⁹

¹⁷⁷ Collinson, p. 124

¹⁷⁸ Andrew Convey and Marek Kupiszewski, *Migration and Policy in the European Union, Population Migration in the EU*, eds. Philip Rees, John Stillwell, Andrew Convey, Marek Kupiszewski. John Wiley & Sons, 1996, p. 313

¹⁷⁹ Demetrios G. Papademetriou, *Coming together of pulling apart, the European Union's Struggle with immigration and asylum.*, Carnegie Endowment for International

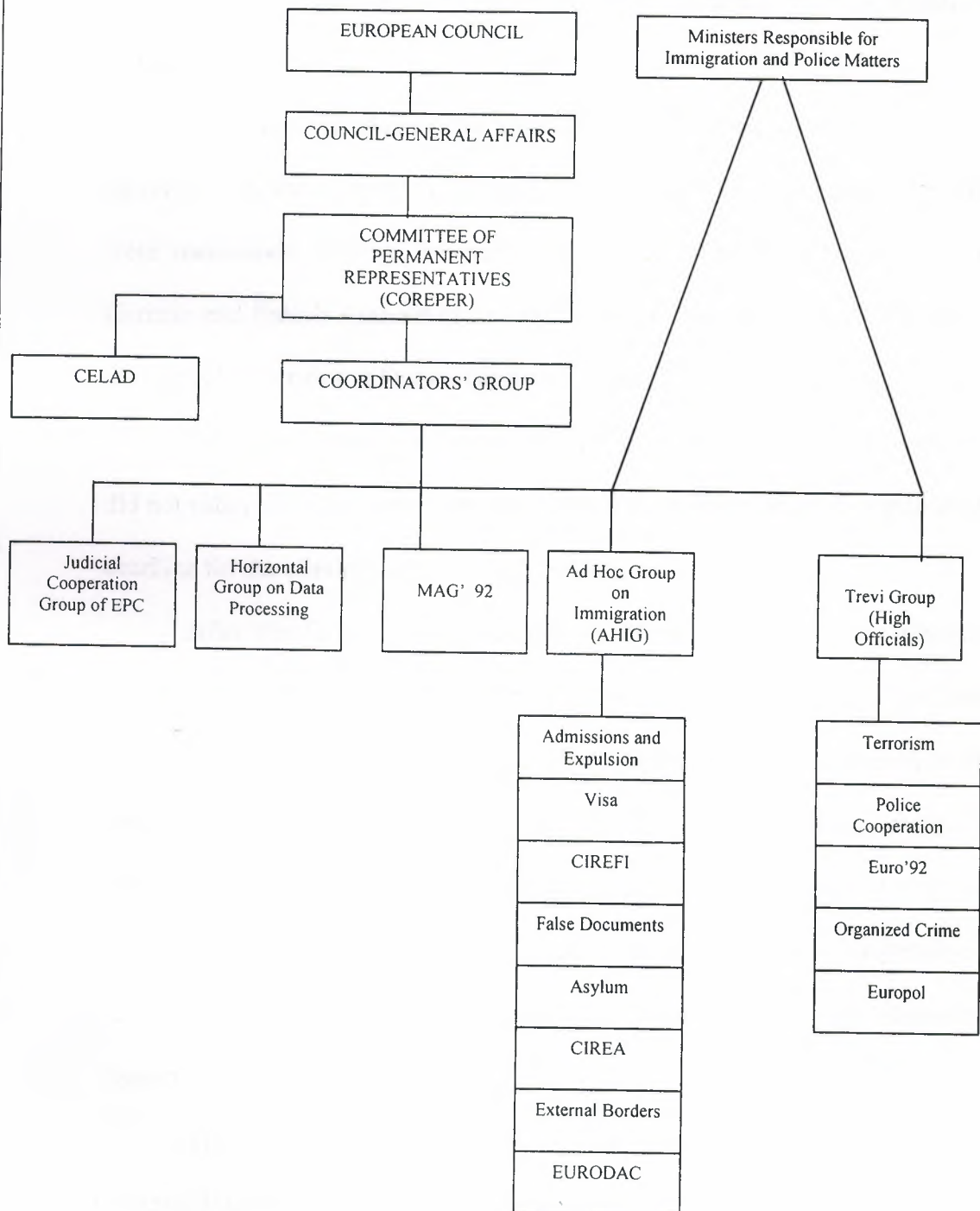
We can say that the Schengen and Dublin Conventions have been the milestones for cooperation in immigration matters, but the cooperation first developed outside the Union by two intergovernmental structures. These were Ad hoc Immigration Group and the Schengen Agreement. AHIG was formed to assist in the development of migration policies. AHIG was created by the ministers responsible for immigration as an institution for maintaining cooperation on immigration policies. AHIG then tried to implement measures on visa policies, external borders. Under the broad immigration matters, there were 6 specialist groups working under the AHIG structure with only one pertaining to asylum. AHIG 's mandate covered a broad set of subjects. To maintain more stricter control on immigration, the AHIG 's mandate had envisaged an inclusion of improving checks at the external borders, evaluating the value of internal controls in fighting with terrorism, drugs trafficking, crime, evaluating the possibility of harmonizing member state visa policies and the elimination of asylum abuse.¹⁸⁰

To provide an in-depth explanation and maintain a proficient understanding of the strides made by the EEC member states in regard to achieving a harmonized common policy on immigration, a study of Schengen Agreement is necessary. The following section will deal with Schengen Agreement and the other steps covered in regard to having a Common Policy.

Peace, 1996, p. 23-24

¹⁸⁰ Ibid. p. 23-24

Pre-November 1993 Organization of the Migration-Related Bodies of the European Community



Compiled by Demetrios G. Papademetriou, *Coming Together Or Pulling Apart*, International Migration Policy Program. 1996. p. 78

3.3.1.Schengen Convention

The Schengen Agreement was signed at Schengen city of Luxembourg between five states namely Germany, France, Belgium, the Netherlands and Luxembourg in 1985, and it aimed at removing internal barriers among its signatories.

The main objective of this agreement was to reach a common European agreement on the removal of borders. The grounds for Schengen Agreement were maintained first by the protest of the truck drivers which forced the German and French Authorities to sign Sarrebruck Accord in July 1984 ending the control of persons at Franco-German borders.¹⁸¹

Since the parties of Schengen did not take the Agreement seriously they did not submit it to the parliaments for ratification and as a result they missed the deadline for the elimination of internal borders.

After this failure the five original signatories and Italy signed a Second Schengen Agreement or Schengen Implementation Agreement on 19 June 1990. The supplementary Convention's main aim was the removal of internal border controls on the movement of goods and persons between signatory states, the establishment of common external borders, adoption of a common visa policy for the nationals of third countries, stricter internal controls for cooperation in criminal matters and finally the creation of a common Schengen Information System(SIS) by January 1993.¹⁸²

The suppression of borders and stricter external border controls caused increased asylum applications. In this regard, the European Countries tried to harmonize their Asylum policies to authorize only one relevant state to hinder the accumulation of asylum applications in only one specific state.

¹⁸¹ Papademetriou. p. 26.

¹⁸² Papademetriou. p. 26-27

Despite the difference in scope and content of the Schengen and Dublin Conventions, both tried to regulate asylum issue on the basis of determination of only one country for the examination of asylum applications with the safe third country principle. The Convention's main aim was to determine which state will be responsible for asylum applications to prevent multiple asylum applications in more than one state or the accumulation of these in only a certain state. As set out in the Convention, the criteria determining the share of responsibility originate from family relations, residence permit, visa, illegal entry or residence.¹⁸³ The Convention does not set out provisions for the harmonization of the Asylum laws of the EU member states. After defining which state shall be responsible, the matter was left to the state's national laws. In this respect provisions of Geneva and the 1967 Protocol gained importance.

Convention put much emphasis on the cooperation and sharing of information on new rules and decisions in the field of asylum laws and on personal data of the asylum seekers. In this respect the CIREA (Center for Information Reflection Exchange on Asylum) was important in collecting information on the asylum seekers.

The Schengen Convention was modelled on security paradigm with its SIS which envisages the exchange of information¹⁸⁴ and protection of data for the information recorded in the SIS and with issuance of visas and residence permits.¹⁸⁵

Schengen Convention was important in instituting a body for exchange of information, namely the SIS, dealing with personal data of the Asylum-seekers but due to the security concerns, the abolition of internal border controls was shifted to external border controls and thus prevented the access of asylum

¹⁸³ Güzoğlu, p. 43

¹⁸⁴ Article 37 of the Schengen Implementation Agreement

¹⁸⁵ Article 38 of the SIA

seekers to the Member states. As there was internal security deficit concern, the control at external borders was strengthened for instituting internal security in the member states. Therefore, in the Schengen Convention human rights are not prioritised as the national security.¹⁸⁶

Dublin Convention made similar restrictions on asylum and access to the Member States. The study of the Dublin Convention will reveal the Convention's structure that tried to bring standards in determining a responsible state for examining asylum applications. As during that time asylum applications had increased due to the stricter controls at the borders, the Dublin Convention dealt mostly with the Refugee problem in the European Community.

3.3.2.Dublin Convention

The Dublin Convention or the Convention for Determining the State Responsibility for Examining Applications for Asylum lodged in one of the member states of the Europe, was signed in Dublin on June 15 1990 by 11 European Community member states and by Denmark the following year.¹⁸⁷ It came into force on 1 September 1997 and replaced the Chapter VII of the Convention Applying the Schengen Agreement in accordance with the Protocol signed on 26 April 1994.¹⁸⁸

The Convention aims to prevent multiple applications for asylum and also guarantees that the asylum request would be examined by one of the member states. Dublin Convention is the outcome of the Ad hoc Immigration Group and the Trevi group. The Dublin Convention deals only with asylum seekers unlike the Schengen Convention which deals with the crossing of

¹⁸⁶ Stephen Kabera Karanja, *The Schengen Cooperation Consequences for the Rights of EU Citizens*, 2000

<http://www.afin.vio.no/english/research> visited on 26.08.2005 at 09.30 pm

¹⁸⁷ Papademetriou, p. 41

¹⁸⁸ Agnes Hurwitz, *The 1990 Dublin Convention, A Comprehensive Assessment*, *International Journal of Refugee Law* Vol. 11, No.4, 1999, p. 646-647

external borders and harmonization of visa policies. The basic principle of the Dublin System is that State parties mutually recognise each other as safe third countries. In this sense the Dublin System is based on a conventional mechanism while the safe third country notion relies on the unilateral decision of one state determining the refugee status.¹⁸⁹

The Convention deals with the determination of the responsible state for asylum examinations. The order of responsibility is determined by the following criteria as set out in the Convention. Under the Dublin Convention only one state would be responsible for dealing with asylum applications and with the Convention the right of asylum within EU member state is secured. There are basically 6 criteria which define the responsible state.

As indicated in the Article 4 of the Convention the criterion of family bond;

"Where the applicant for asylum has a member of his family who has been recognized as having refugee status within the meaning of the Geneva Convention, as amended by the New York Protocol, in a member state and is legally resident there, that State shall be responsible for examining the application, provided that the persons concerned so desire.

The family member in question may not be other than the spouse of the applicant for asylum or his or her unmarried child who is a minor of under eighteen years, or his or her father or mother where the applicant for asylum is himself or herself an unmarried child who is a minor of under eighteen years."¹⁹⁰

The second criterion is about the valid residence permit. As indicated in Article 5(1) of the Convention;

¹⁸⁹ Hurwitz p. 647

¹⁹⁰ Article 4 of the Dublin Convention

*“Where the applicant for asylum is in possession of a valid residence permit, the Member State which issued the permit shall be responsible for examining the application for asylum.”*¹⁹¹

The Third criterion is indicated in Article 5(2) to (4) of the Convention as;

*“Where the applicant for asylum is in possession of a valid visa, The Member state which issued the visa shall be responsible for examining the application for asylum.”*¹⁹²

The fourth criterion is the illegal border crossing bond as indicated in the Article 6 of the Convention;

*“When it can be proved that an applicant for asylum has irregularly crossed the border into a Member state by land, sea or air, having come from a non-member state of the European Communities, the Member state this entered shall be responsible for examining the application for asylum.”*¹⁹³

The Fifth criterion is the legal entry control responsibility bond . It is reflected in the Convention Article 7 as;

*“The responsibility for examining an application for asylum shall be incumbent upon the Member state responsible for controlling the entry of the alien into the territory of the Member states...”*¹⁹⁴

And finally the sixth criterion is the first application as indicated in the Article 8 of the Convention;

“Where no member state responsible for examining the application for asylum can be designated on the basis of the other criteria listed in this Convention, the

¹⁹¹ Article 5(1) of the Dublin Convention

¹⁹² Article 5(2) of the Dublin Convention

¹⁹³ Article 6 of the Dublin Convention

¹⁹⁴ Article 7 of the Dublin Convention

*first Member state with which the application for asylum is lodged shall be responsible for examining it.”*¹⁹⁵

In addition the Convention establishes obligations and procedures regarding the transfer or taking back of the applicant between member states and requires information exchanges on national legislation, regulatory measures or practices in the field of asylum, statistical data, general information on trends and individual cases.¹⁹⁶

In compliance with the provisions, the council of ministers has set up CIREA. In addition to these, the right of signatory member states to send applicants back to a third country that is not a member of the EU is protected.

The Dublin Convention did not intend to harmonize national asylum laws and procedures. Instead this is left to each member states own jurisdiction and national laws as indicated in article 3(3) of the Convention.¹⁹⁷ This is the main criticism to Dublin Convention since this creates different implementations in the determination of refugee status. Thus an asylum seeker may be granted this status in one of the member states whereas he/she may be denied this status in the other. The more a member state has consented to the penetration of an asylum-seeker into its territory, the more it is responsible.¹⁹⁸ The authorisation principle lays down the criteria to determine which state is responsible and the characteristic of these criteria are the irrelevance of the intention of the asylum-seeker. However, looking from the angle of the asylum-seeker first applying to a State and having been admitted to a state, his intention shall be taken into consideration, in that his intention to be admitted as a refugee to a certain state will have succeeded in bringing refugee status. Thus, the state penetrated has

¹⁹⁵ Article 8 of the Dublin Convention

¹⁹⁶ Papademetriou, p. 41

¹⁹⁷ Article 3(3) of the Dublin Convention

¹⁹⁸ Hurwitz, p. 648

the most important role for the determination of the refugee status. If the state desired to have acquired refugee status from, has been penetrated, then the intention of the asylum-seeker is said to have succeeded.¹⁹⁹ There are no common standards set out in the Convention for the definition of refugee status. As understood from the essence of this, this Convention was made to prevent asylum shopping which is provoked by the multiple applications to more than one member state and to prevent the refugees in orbit which is caused by the denial by any country of the responsibility of processing applications. On the other hand, the fact that there is no restriction on member states' right to send back an asylum seeker to a third country reveals the Dublin Convention's main purpose of eliminating asylum applications for the convenience and security of the Member States.

On the other hand, according to the Article 11 of the Convention, if within six months a state does not request another state to take responsibility of an asylum application for which it is responsible, the responsibility will rest with the state in which the application was lodged. If a state that has been requested to take responsibility for an application does not reject the request within 3 months of the receipt of the claim, it means it has accepted the claim.

This shows the time limit for the determining which state is responsible for applications. Moreover Article 3(5) envisages that member states can send an application to a third country in accordance with the national laws. In this way, if the host country has stricter national laws this can lead to a chain of transfers from each country. With the provisions of the 3(5), the EU effectively avoids refugee problem.²⁰⁰

¹⁹⁹ Hurwitz, p. 648

²⁰⁰ Güzoğlu, p. 48

As of December 1995 ten of the 15 EU countries not including Ireland and Netherlands had ratified the Convention. The 3 new countries at the time Austria, Finland and Sweden were in stages of ratification. Only the Netherlands proved to be an obstacle for implementation.²⁰¹ The Schengen and Dublin Conventions were both not successful in addressing the refugee problem, thus needed further coordination and cooperation. Then Maastricht Treaty came in 1991 to harmonize the policies adopted under the European Community structure.

3.3.3.The Maastricht Treaty

Maastricht Treaty was signed in Maastricht in December 1991. Under the Maastricht Treaty the asylum and immigration matters fall under the Treaty's third, Justice and Home Affairs pillar (Title IV). The Treaty came into force in November 1993.²⁰²

Under the third pillar the EU expects common strategy on immigration policy. Within the third pillar, the Treaty of the EU Article K.1 put forward 9 areas to be regarded as areas of common interest of the member states; Asylum policy, rules governing the control of the Community's external borders, immigration policy and policy regarding third country nationals and issues related with criminal matters. The Treaty of European Union was intergovernmental on immigration matters but it strengthened the authority of the Community's central institutions, enabled the European Union to work with co-initiative with the Member states in immigration and asylum areas.²⁰³

The objectives of Maastricht Treaty is to achieve harmonization in asylum and immigration matters to have a more efficient European Union wide immigration policy. To achieve this, ministers responsible for immigration

²⁰¹ Papademetriou, p. 42-43

²⁰² Güzoğlu, p. 49-50

²⁰³ Papademetriou, p. 60-61

matters presented a report to the Maastricht European Council that set out an immigration and asylum work programme. This dealt with the harmonization of admission policies for family reunion and for work, study or humanitarian reasons together with working on the development of a common approach to illegal immigration, labour migration policies and third country nationals and worked for the implementation of the Dublin Convention. Moreover the report tried to harmonize the application of third host country principle as well as of a common approach for the definition of a refugee.²⁰⁴

The JHA structure is worth noting for the harmonization of these policies. The JHA structure was five-leveled including the Council of Justice and Home Affairs Ministers at the top, the Coreper, K4 Committee and Steering groups and working groups which are at the bottom as shown in the table. K4 Committee was designed to address duplication and organizational competition among the various ad hoc bodies. Thus it was designed to coordinate ad hoc bodies and unlike the Coordinators group it has political authority over them.²⁰⁵

But the states were unwilling to relinquish their sovereign powers to the organization. Another weakness of the Justice and Home Affairs pillar was its intergovernmental structure in this context. Article K3 of the Maastricht Treaty envisaged unanimity in the Council of Ministers as the basis for decision mechanisms. There were mainly no provisions for the Qualified Majority Voting.²⁰⁶ The European Commission's powers were also diluted because it would have to share its right of initiative with the member states. The European Court of Justice was deprived of jurisdiction unless it was especially set under the terms of international convention.²⁰⁷ Thus the main power is on the Council

²⁰⁴ Geddes, p. 91

²⁰⁵ Papademetriou, p. 61

²⁰⁶ Geddes, p. 96

²⁰⁷ Geddes, p. 96-97

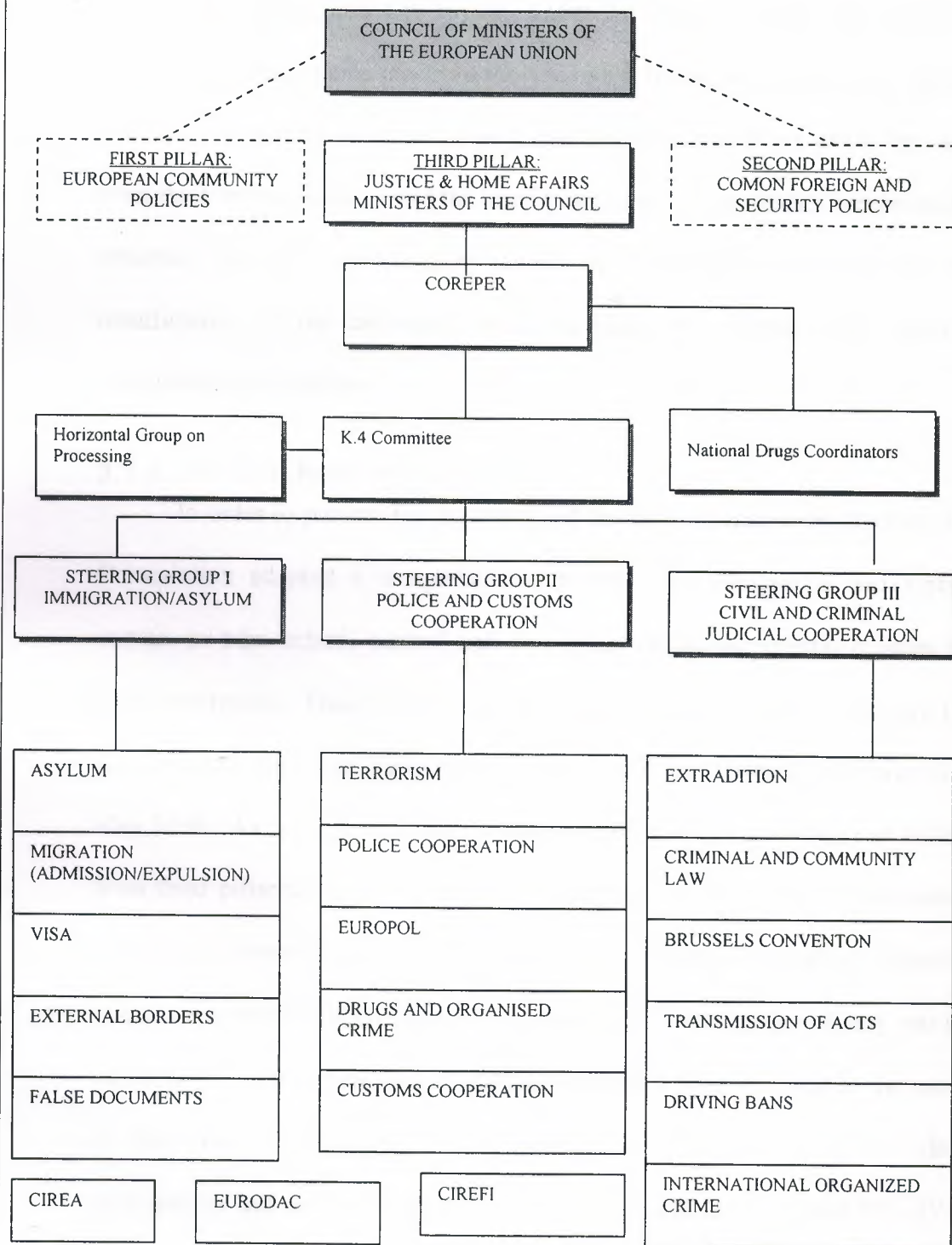
of Ministers which are the ministers from national governments and the member states.

Thus, the member states on the Council structure adopt joint positions, joint actions and conventions with unanimity vote. As the conventions are binding for the member states, the member states preferred those instruments which are softer in enforcement such as joint actions and joint positions.²⁰⁸ As a result the aim to achieve harmonization over immigration and asylum policies to prevent accumulation of immigrants and refugees on the borders of European Countries, could not be achieved. One of the factors leading to this was the intergovernmentalist structure of the third pillar. The following page will deal with the structure of the migration bodies under the third pillar.

²⁰⁸ Geddes, p. 97

Post-November 1993 Organization of the "Third-Pillar"

Migration related Bodies of the European Union



Compiled by Papademetriou, p. 79

The Justice and Home Affairs pillar in which immigration and asylum matters take place remained intergovernmental which shows the structural weakness of the EU.²⁰⁹ On the other hand Amsterdam Treaty indeed drew free movement, immigration and asylum under the main body of The Treaty.²¹⁰ Amsterdam Treaty came out from the need of drawing immigration and asylum into the Community structure to be more efficient or in other words the need from the communitarisation of the immigration and asylum issues because of the necessity for EU's cooperation under the Community structure and the insufficiency of the individual measures taken by member states towards immigration and asylum.

3.3.4. The Amsterdam Treaty

In order to prevent the drawbacks of the intergovernmental structure, the Commission adopted a comprehensive strategy on immigration and asylum matters to take action, control and strengthen intergovernmental policies for legal immigrants. These were taken as a basis in the Amsterdam Treaty. The Amsterdam Treaty was signed on 2 October 1997 and entered into force on 1 May 1999. As a result, the Treaty of Amsterdam enabled the transfer of asylum from third pillar to the first pillar. At Amsterdam free movement, immigration and asylum were brought to the first pillar but decision-making remained intergovernmental with an emphasis on unanimity.²¹¹ Amsterdam Treaty was the outcome of compromises, but it failed to establish a clear structure to the issues of free movement, asylum and immigration. However it indeed drew immigration and asylum issues from third pillar to the newly created Title IV of the Community pillar. This should have meant a degree of supranationalisation

²⁰⁹ Geddes, p. 86

²¹⁰ Geddes, p. 109

²¹¹ Philip Muus, *International Migration and the EU Trends and Consequences*, European Journal on Criminal Policy and Research 9, Kluwer Academic Publishers, Netherlands, 2001, p. 43-44

but the Council retained the upperhand decision-making. The Commission had to share the right of initiative with member states for at least 5 years after ratification and the EP and ECJ's roles were thus remained limited on the basis of intergovernmentalism. Unanimity's presence on the other hand in the voting system might be an obstacle for the attainment of the targets as controlling immigration. Amsterdam had also specified a timescale of five years for the adoption of immigration and asylum measures.²¹²

According to this Treaty the provisions of Amsterdam Treaty Title IV would be binding after 5 years in 2004. During this five year period the Council would take decisions with unanimity and the Commission would continue to share its right of initiative with member states.²¹³ In this respect Article 61 of Title IV specified that the Council would adopt within 5 years of the entry into force of the Treaty, measures to ensure the free movement of persons and directly related subsidiary measures with regards to external frontier controls, immigration and asylum.²¹⁴

According to the Treaty, the Council, would continue to take decisions with unanimity for 5 years until 2004. Member states on the other hand were confronted with the intergovernmental structure of the Title IV which constrain the scope for supranational institutionalisation. Even after the end of the 5 year period the states opted not to move towards QMV. With regard to third country nationals, the Amsterdam Treaty Article 62, gave the Council 5 years to adopt measures in compliance with Article 14 of the Treaty to guarantee the abolition of controls on both EU citizens and the Third country nationals when crossing internal borders. On external borders the Council was again limited with 5 year period to adopt measures and standards to be followed by member states when

²¹² Geddes, p. 113

²¹³ Geddes, p. 123

²¹⁴ Geddes, p. 120-121

carrying out checks on persons.²¹⁵ This five year transition period after the entry into force of the Treaty of Amsterdam was regulated to end in 2004 which would set out the conditions under which nationals of third countries shall have freedom to travel within the territory of the Member states during a period of no more than 3 months and the process would be initiated by a Commission proposal and by Council's unanimity vote (Article 62/3).²¹⁶ Therefore there was no propensity towards qualified majority voting.

Article 63 of the Title IV states that EU policy must be in accord with the Geneva Convention and the New York Protocol. There were also articles involved in determining which state is responsible for the asylum applications. Article 64 states that Title IV measures shall not affect the ability of member states to maintain law and order and safeguard internal security.²¹⁷ However in the event of an emergency such as a sudden inflow of third country nationals, the Council could act by QMV on a proposal from the Commission to adopt measures lasting no longer than six months for the interest of the member states.²¹⁸ Therefore it is seen here that the member states are in an attempt to avoid the entry of third country nationals either in the form of asylum-seekers or immigrants. And it should be said that this is actually against their interest simply to their disadvantage in view of the low fertility rates and an ageing population structure of Europe.

Amsterdam generally changed the decision-making procedures. Free movement, immigration and asylum were made standard EU legislative devices. After the Amsterdam the scope for joint actions was removed and 2 new decision-making instruments were introduced such as the framework decisions

²¹⁵ Geddes. p. 120-121

²¹⁶ Amsterdam Treaty: a Comprehensive Guide, <http://europa.eu/scadplus/leg/en/lvb/a29000.htm> visited on 28.10. 2006 at 10.10 pm

²¹⁷ Geddes. p. 121-122

²¹⁸ Geddes. p. 122

which are binding on the member states with regard to the purposes to be achieved leaving the method of implementation to the member states and the binding decisions which are used for other purposes.²¹⁹ A key achievement of Amsterdam Treaty is its incorporation of the Schengen acquis into the EU. It included the Schengen Agreement and Implementing Accord of 1985 and the 1990 and the various accession protocols undertaken with member states.²²⁰

The opt-out protocols that were added to the Amsterdam Treaty covered the positions of Ireland and Britain which were not members of the Schengen and also Denmark which was a member that did not want to participate in the supranational free movement, immigration and asylum policy provisions of the Title IV.²²¹ As stated in the Article 2 of the Amsterdam Treaty's Protocol, it had incorporated the Schengen acquis into the community law by envisaging the application of Schengen acquis to 13 signatory states immediately after its enactment.²²² Amsterdam Treaty worked to introduce common regulations for questions of free movement of all persons within the Union's territory for the abatement of irregular migration and the repatriation of migrants as well as for minimum standards of external border control, temporary protection and for the admission of asylum applicants.²²³

However, so far, the questions of burden sharing, long-dated visa and right of residence of third country nationals are excluded from the list. Then in 1999 European Council meeting in Tampere (Finland) was convened where the member states agreed to work towards establishing a Common European Asylum System on the basis of Geneva Refugee Convention, a European wide

²¹⁹ Geddes. p. 124-125

²²⁰ Geddes. p. 125

²²¹ Geddes. p. 125

²²² Geddes. p. 126

²²³ Steffen Angenendt and Henry Edward Orren, Asian Migration to Europe and European Migration and Refugee Policies, German Council on Foreign Relations, p. 21

fair treatment of third country nationals, common measures to control migration flows and a European Charter of Basic Civil Rights. This system worked to incorporate common standards for an efficient asylum procedure, common minimum conditions of reception of asylum seekers and the approximation of rules on the recognition and content of the refugee status.²²⁴

The European Council in Tampere, 1999, had agreed on quite an ambitious programme in order to create an 'area of freedom, security and justice'. The Council underlined a strong EU commitment to the common values of freedom based on human rights, democratic institutions and the rule of law, while the Presidency of the European Council stressed that the European Union's common rights should be guaranteed to its own citizens but at the same time the Union, must 'offer guarantees to those who seek protection in or access to the European Union'.²²⁵ The Tampere Conclusions of the Presidency wanted to guarantee also the integration into the EU societies of those third country nationals who are lawfully resident in the Union. According to the Tampere Conclusions, policies regarding the formation of partnership with the countries of origin, the creation of a common European Asylum system measures to ensure a fair treatment of third country nationals and management of migration flows. These measures were to be taken within a five years period.²²⁶

In November 2004, the European Council in Brussels adopted a new programme for Justice and Home Affairs, called the Hague Programme which is for the next five years.²²⁷ Another point to be mentioned is that with the end of the 5 year transitional period of Amsterdam Treaty in May 2004, the previous methods of voting can be changed by the Council. According to article 67(2) of

²²⁴ Ibid. p. 21-22

²²⁵ Petra Bendel, Immigration Policy in the European Union, Still bringing up the walls for fortress Europe?, Migration Letters, Volume.2, No.1, April 2005, p. 20

²²⁶ Bendel. p. 21

²²⁷ Bendel. p. 21

the EC Treaty the Council shall now vote to change the decision-making rules.²²⁸ It could then vote by qualified majority and the European Parliament would gain co-decision competences excluding the matters relating to legal migration. The Hague Programme called for an adoption of these decision-making rules established in the Treaty of Nizza by 1st April 2005 at the latest.²²⁹ However it is the issue of legal migration that most of the member states resisted on keeping their domestic competences.

The Hague Programme it follows, keeps unanimous voting, national veto opportunities as well as limited parliamentary rights for legal long-term migration on third-country nationals, the freedom to travel for third country nationals for up-to three months, and abolition of internal border controls between member states.²³⁰ The Hague Programme also wants the SIS-II, VIS and EURODA-systems to be associated. Also measures against illegal immigration and human trafficking have been adopted. It seems open that this emphasis on security and control is the outcome of the 9/11 2001 attacks in New York, after 9/3 2004 in Madrid and the bombing in London in July 2005 which reinforced the stringency in migration policy.²³¹ The Hague Programme adopted in 5 November 2004 strengthens the objectives related with the formation of a common asylum system through the setting up of the second phase instruments of the Common European Asylum System with a view to adoption by 2010.²³²

3.4.Implementation

There are various legislations regarding the asylum-seekers and immigrants in the EU however there is not any single codified law incorporating

²²⁸ Bendel, p. 22

²²⁹ Bendel, p. 22

²³⁰ Bendel, p. 22

²³¹ Bendel, p. 24

²³² European Union official web-site, The European Union Policy Towards a Common European Asylum System visited on 20 November 2006, at 16:54 pm
http://ec.europa.eu/justice_home/fsj/asylum/fsj_asylum_intro_en.htm

the asylum seekers and immigrants into the supranational structure of the EU. Communitarization of the asylum policy did help to provide protection for the refugees to a certain extent but did not achieve complete harmonization over asylum policies of the member states and failed to serve to the interests of the immigrants and asylum-seekers thereby infringing immigration and asylum rights of the third country nationals. Tampere Council agreed on a number of policy areas to make the EU an area of free movement, security and justice for both EU citizens and third country nationals.

But whatever vigorous efforts has been put forward by the government authorities of the European Union member states, complete harmonization over immigration and asylum could not be achieved due to the States reservations with regard to national policy preferences. The member states' right wing parties are still making credit and gaining advantage and votes by exploiting the xenophobic feelings of the citizens on the issue of making stricter controls on immigration and being more selective in granting refugee status as a measure for the entry of refugees or for maintaining control on immigration. As a result the immigration and asylum issues were made subject to home politics and used as an instrument by the right wing parties for being reelected in successive terms.

Moreover, return migration policies had not been successful. The migrants were generally seen as guestworkers by most member states like Germany and Belgium.²³³ However, the failure of the policies pursued by host states to promote the return of these guestworkers or migrants had brought the problems of integration. And low educational levels, the fact that most of the migrants live in ghettos in a closed community not able to interact and get into contact with other members of the society and that they come from a low socio-

²³³ Castles and Miller. p. 70-71

economic level and also the reluctance of the host country citizens to accept these people as permanent members of society had aggravated this situation and brought about xenophobic stance among citizens of the host states.

As the immigrants took form as refugees or asylum seekers after the closing of borders in especially 1970s and 1980s, the refugees started to be a problem for the receiving countries because they were mainly problematic people usually coming from low education levels. This incurred integration problems. On the other hand, the immigrants face similar problems as to integration to the society by other reasons. The total flexibility and cheapness of immigrants and reflections of these on the labour markets of most European States are being confronted with dislike by the societies. The fact that those migrant workers are being preferred by the employers and they are causing housing problems and high rents together with increased criminal activities provoked by the low-incomes were considered as problems and drew attention of most of the citizens and authorities and aggravated the extant xenophobia.²³⁴

Looking from a different perspective to asylum seekers, the Schengen Agreement had not served to the interests of the member states by controlling the proportion of asylum seekers waiting to be granted refugee status. However, as for 1986 Germany had received 99,649 asylum applications whereas in 1988 it received 103,076 asylum applications.²³⁵ United Kingdom on the other hand received after the entry into force of the Schengen Implementing Accord 44,840 whereas the number was 26,205 in 1990.²³⁶ Therefore the efforts to restrict the numbers of asylum-seekers and thereby immigrants had not been fruitful on

²³⁴ Collinson. p. 117

²³⁵ Migration Information Source
<http://www.migrationinformation.org/DataTools/asylumresults.cfm> visited on 18.04.2005 at 10.45 pm

²³⁶ Ibid.

account of Schengen Accord. On the other hand, The Dublin Convention on the other hand which focused on the determination of state responsibility for asylum applications however failed to serve to the interests of the States. When it came into force in 1 September 1997 for the 12 original signatories, there has not been a decline in the asylum application numbers. Only in Germany the numbers declined, as in 1997 the number was 151,700 whereas in 1999 it had become 95,113.²³⁷ On the other hand, Amsterdam Treaty which was signed on 2 October 1997 and entered into force on 1st of May 1999 being successful in implementation in some of the states as Italy, Germany, Luxembourg, Portugal, Spain had not proved to be comprehensively successful in meeting the demand of the member states as to control immigration and asylum. However, it can easily be emphasized that in view of the low fertility rates and the gradual decline of young population in Europe, rising immigration pattern can be said to be profitable and desirable for most European Union member states.

According to these statistics it is seen that the EU member states had not been successful in implementing the so called Treaties and Conventions. Due to the failure of the States to promote return migration many people started to go to these countries by family reunion. Closing of borders had not resulted in subsequent decline in the asylum numbers and had provoked illegal immigration even more. By the 1980s, the Southern States had become overly aware of the problem of illegal immigration.²³⁸ For example, in France policies were adopted to combat with illegal immigration in the 1980s and in Italy inspite of the Martelli law which was enacted to combat with illegal immigration, an estimated 25 percent of Italy's over one million immigrants entered illegally.²³⁹ As a result of the closing of borders, many people chose to go to these industrialized

²³⁷ Ibid.

²³⁸ Collinson. p. 58-59

²³⁹ Collinson. p. 59-60

developed countries by way of asylum or through illegal ways. There are however temporary protection procedures provided for the displaced persons.

On the other hand Europe, while combatting with either legal or illegal immigration problem and the refugees, in fact needs these people. If the European countries wish to continue development and industrialization with a high economic growth, the lack of young dynamic workers and the deficiency of young population in European Countries can only be met by permitting the admission of immigrants or granting asylum seekers the refugee status since the European Population is ageing. The life expectancy at birth has risen from 67.0 years in 1950-1955 to 76.5 years in 1990-1995 due to the improved life standards, welfare and health services and better treatments and care. The proportion of the population aged 65 or older rose from 9.5 percent in 1950 to 15.5 percent in 1995 and the potential support ratio which is the number of person aged 15-64 for each person aged 65 or older fell in the same period from 7.0 to 4.3.²⁴⁰ The number of migrants necessary annually to keep the potential support ratio constant at its 1995 level would be 15 times greater than the net migration level in the 1990s. In the absence of immigration, the calculations show that the upper limit at the working age would be raised to about 76 years in the European Union in order to obtain in 2050 the same potential support ratio observed in 1995.²⁴¹ Therefore it is evident that the European Union, despite its attempt to harmonize and take the asylum and immigration issues under control, is in a way obliged to adopt more flexible immigration and asylum policies in 2006 because of its declining young population and increasing aged population

²⁴⁰ United Nations Population Division, Replacement Migration, European Union <http://www.un.org/esa/population/publications/migration/eu.pdf> visited on 28.10.2006 at 8.45 pm

²⁴¹ United Nations Population Division, Replacement Migration, European Union <http://www.un.org/esa/population/publications/migration/eu.pdf> visited on 28.10.2006 at 8.45

who will need more health and welfare services imposing a financial burden on member states.

On the other hand, the EU-25 has received 1,663,400 immigrants in 2005. The UK, has generally faced a rising immigration pattern which gives the figures as 143,200 in 2000 and 151,000 in 2001 while the figure for 2003 was 177,800 and for 2004 was 227,200 despite the recent slight fall in this figure to 192,600 in 2005.²⁴² Another country facing a high increase in net migration is Italy. It received 25,700 immigrants in 1994 while this figure rose to 47,600 in 2001.²⁴³ In 2005 it received a total of 324,200 immigrants. It follows that other member states also confronted high increases in migration. One of them is Austria which faced 3,100 immigrants in 1994, while it had to deal with 56,400 immigrants in 2005. Another is Spain which faced 64,400 immigrants in 1994 and 441,200 in 2001 whereas within 11 years its net migration rose to 641,600 by 2005.²⁴⁴ The only member state experiencing a downward slope in the net migration figures is Germany which has received 315,600 immigrants in 1994 and coming to 2005 this figure declined to 81,600.

There are other issues that have to be discussed in reaching a healthy and consistent conclusion about the effectiveness of immigration policies. Asylum which is considered to be a category of migration is one of them. According to statistics estimated by UNHCR, there has been a total of 47,290 asylum applications made to French authorities in 2001.²⁴⁵ This sum seems to have increased to 51,360 in 2003 which demonstrates the failure of the restrictions in immigration and asylum policies as well as the perpetuation and determination

²⁴² Eurostat Web-page, visited on 21 November 2006, at 21.37 pm
http://epp.eurostat.ec.europa.eu/portal/page?_pageid=1996_39140985&_dad=portal&_schema=PORTAL&screen=detailref&language=en&product=Yearlies_new_population&root=Yearlies_new_population/C/C1/C11/caa14608

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ Geoff Gilbert, *Is Europe Living up to its Obligations to Refugees?*, in *European Journal of International Law*, Vol. 15, No. 5, 2004, p. 697

of mobility.²⁴⁶ Also Sweden is another state having faced a considerable grow in asylum applications which shows an increase from 23,520 in 2001 to 31,360 in 2003.²⁴⁷ Fundamentally, a general rising net migration pattern is observable throughout the EU.

²⁴⁶ Gilbert, p. 967

²⁴⁷ Gilbert, p. 967

Conclusion

Migration and asylum issues have been on the agenda of the European Union member states since 1970s and of Europe as a whole from the beginning of the 19th century either in the form of promotional entries as in the form of guestworkers or in the form selective, permissive or prohibited entries as in the case of illegals. But whatever the forms of migration may be, the receiving countries tend to benefit most from the admission of immigrants to the society because of the dynamic young quality of the newcomers supplying the market with productive cheap labour force. However, fed up with the integration problems and the employment problems at the initial stages European Countries started to be inclined to control the immigration and asylum issue in such a way that they take in immigrants whenever they want and close borders whenever they are in no demand of workforce. However, those countries due to their reservations on immigration with regard to the sovereignty of their states, have never been able to regulate this issue comprehensively to incorporate all of the member states' individual legislations in a single codified EU acquis. Certain proposals have been put forward by the member states either on a cooperative basis as in the case of Schengen or as an intergovernmental basis trying to achieve harmonization by bringing certain common rules to the EU structure but, complete and full harmonization was never achieved in the EU. This remained an unrealized utopia for the member states.

Furthermore, we should not underestimate the role of the sending countries in the immigration. Sending countries are playing an important part in preparing the conditions for the migrants to leave their countries. As long as the unequal distribution of wealth in the world persists among different countries of

the world, we should be ready for the mass movements taking place in the world from poorer regions of the world to the prosperous, developed industrialized countries where employment opportunities are better. The people in the underdeveloped sending countries are mostly drawn to the European Union because it is a group of countries where the migrants or refugees getting access and citizenship from one of these countries in one way, have the chance to move freely within the Union structure from one member country to another which provides them diverse and rich opportunities because of mobility. Therefore as long as there happens to be poverty, natural disasters and political instability in underdeveloped poor sending countries, this will create refugees and persistent immigrants forcing their conditions either legally by trying to take visas in the Consulates or through illegal ways trying to pass the borders in the depressed, dangerous cars or trucks with the hope of finding a better secure place to live in or finding even jobs elsewhere for survival.

The European Union member countries authorities must be aware of the unwanted consequences of closing of the borders with the hope of controlling immigration. The useless struggle to control immigration has always resulted in the persistent accumulation of desperate refugees on the borders either in the form of real refugees or in the form of pretending refugees. Consequently, the European states must cure this problem of immigration and asylum not by trying to control it by closing borders, imposing visas and carrier sanctions but by trying to solve it by bringing healthy solutions to the problems of underdevelopment and high population growth and birth rate in these countries. By trying to establish powerful economies and governments accordingly in the underdeveloped sending countries as well as allowing the entry of immigrants and asylum-seekers to the European Union member states, the European Union

states would adopt more favourable policies to both their and sending countries' advantage.

All in all, the European states must cooperate for bringing sustainable solutions to underdeveloped sending countries' unemployment and economic problems rather than for harmonizing their legislations under the EU structure to control immigration and asylum, for only in this way they can prevent the unequal distribution of wealth all over the world, and thus provide cures for the masses' needs. Otherwise, the persistent refugee and illegal immigrant movements will continue to take place towards European Countries and other developed industrialized states which should be in fact desirable for most European states in the face of rising ageing population pattern prevailing in the EU.

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