

NETZWERK **MIGRATION** IN EUROPA

EUROPEAN FORUM READER

**Advanced Training on (Forced) Migration and Human Rights:
Challenges and Approaches for European Citizenship Education**

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1. POLICY GLOSSARY ON IMMIGRATION

Introduction

There is a lack of universally accepted definitions in the field of international migration. Terms and concepts are political, social, historical and cognitive constructions serving the fulfilment of certain needs of different countries and are subject to ongoing conceptual development and redefinition.

Definitions in the area of international migration are often vague, controversial or contradictory. This stems to some extent from the fact that migration is a phenomenon which has traditionally been addressed at the national level. Therefore, the usage of terms referring to migration differs from country to country. Furthermore, within a country, terms can vary in meaning or implication. Definitions may also vary according to a given perspective or approach. The following glossary represents a selection of key concepts, policies and trends in the current debate on (im)migration and human rights in Europe.

Borders

The development and strengthening of the EU border management strategy has been officially framed as a key policy priority in the European agenda. Today, most EU countries are part of the Schengen area, where passport checks and border controls have been abolished. Signed in 1990 and coming into effect in 1995, the Schengen agreement abolished the internal borders of the signatory States and created a single external frontier. The Community Code on the rules governing the movement of persons across EU borders, known as Schengen Borders Code, took effect in 2006. In December 2007, the Schengen area underwent a historic eastward expansion, including the new EU members Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovenia, Slovakia and the Czech Republic. The area also includes two non-EU Members, Iceland and Norway; a third, Switzerland, joined in late 2008. Britain and Ireland have chosen to maintain their border controls indefinitely, while Bulgaria, Cyprus and Romania are not yet ready to join.

In addition, the Dublin Agreement between EU States (adopted in 1990, taken effect in 1997) determines which European Union Member State is responsible for examining an application for asylum lodged in one of the contracting States. The Agreement prevents the same applicants from being examined by several EU Member States at the same time, as well as ensuring that an asylum seeker is not redirected from state to state simply because no one will take the responsibility of handling their case.

In the field of »borders«, the EU has so far managed to construct the first generation of IBM (Integrated Border Management). This includes a common codification of the *acquis* on internal and external borders (the Schengen Borders Code), the creation of FRONTEX and an agreed definition of what IBM means at the European level. The EU-border policy institutionalised a close interrelationship between an integrated management of the common European external borders and a global approach to migration. The EU's Southern Maritime Borders and the sort of irregular mobility of third country nationals emanating from this constructed area represent the main item targeted by the »EU integrated and global approach«. It has

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been largely criticised by researchers and by NGO representatives that the discursive nexus between the IBM and the global approach to migration legitimises and reinforces the practice of security as coercion on the EU external territorial border. The EU model of border management presents FRONTEX as the main institutional actor in charge of putting the integrated and global paradigm into practice.

FRONTEX is an overly-politicised body whose compliance with the principle of legality and human rights is contested in the European civil society's discussion. The operations HERA I and II deal with the situation on the Canary Islands and the joint actions there which at present constitute the longest-running operations coordinated by FRONTEX. HERA is rooted in a very strong »external dimension« consisting of an extra-territorialisation of control and a prevention of mobility of third country nationals from outside the common European territory. The pre-border surveillance activities arouse a number of human rights considerations concerning, in particular, the respect of the guarantees included in the 1951 Geneva Convention related to the Status of Refugees. The external dimension prevents the distinction between those persons in need of international protection from all »the Others« who may fall within irregularity.

The EU needs a strong community legal framework to protect those third country nationals subject to this new form of border management. Before moving onwards in the European integration process in the field of »borders« (towards a second generation of IBM), there is an urgent need to address the vulnerabilities and relevant contradictions concerning human rights with regard to the substantial and institutional mechanisms of the EU model of border management.

Environment, climate change and migration

In migration research a new type of forced migration has emerged in recent discussions. It is caused by climate change and will supposedly go along with violent conflicts and wars. In 1990, the Intergovernmental Panel on Climate Change (IPCC) has already noted that the greatest impact of climate change could be on human migration – with millions of people displaced by shoreline erosion, coastal flooding and agricultural disruption. Since then various analysts have tried to estimate the numbers of future flows of climate migrants (sometimes called »climate refugees«) – the most widely repeated prediction being 200 million climate migrants by 2050.

But repetition does not make the figure any more accurate. While the scientific argument for climate change is increasingly confident, the consequences of climate change for human population distribution are unclear and unpredictable. With so many other social, economic and environmental issues to be taken into account, establishing a linear, causative relationship between anthropogenic climate change and forced migration has, to date, been difficult.

The meteorological impact of climate change can be divided into two distinct driving forces for migration; climate processes such as sea-level rise, salinisation of agricultural land, desertification and growing water scarcity, and climate events such as flooding, storms and glacial lake outburst floods. But non-climate driving forces, such as government policy, population growth and exposure to natural disaster are also important. All these factors contribute to a rising vulnerability of people living in more marginal areas. It is a matter of time (the speed of change) and scale (the number of people it will affect).

Temporary migration as an adaptive response to climate stress is already taking

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place in many areas. The ability to migrate is a function of mobility and resources (both financial and social). In other words, the people most threatened by climate change are not necessarily the ones who are most likely to migrate. Predicting future flows of forced climate migrants is complex, constrained by a lack of baseline data, distorted by population growth and reliant on the evolution of climate change as well as the quantity of future emissions.

Forced climate migrants fall through the cracks of international refugee and immigration policy – and there is considerable resistance to the idea of expanding the definition of political refugees to incorporate »climate refugees«.

Gender and migration

Since 1990, female immigrants in Europe have outnumbered their male counterparts. The States of the European Union are the main destinations for immigrant women from countries of the former Soviet Union and from various Latin American and African States.

Due to the so-called feminization of migration in the European Union, political attention has been drawn in recent years to migrant women, with emphasis on two negative aspects: the low labour market participation and the growing phenomenon of irregular migration and traffick-ing. However, highly skilled migrant women are rather neglected in the public debate. The concept of »migrant women« refers to a wide range of different circumstances. It may apply to women of various generations of immi-gration and different forms of legal status (legal residents or undocumented migrants or refugees). Despite the gender mainstreaming aspects, issues related to gender and ethnic minorities tend to be covered by separate policies instead of being addressed by an integrated approach.

Family reunification used to be the main possibility for women to be legally admitted to the EU. Although women's migration has been associated with dependence and the male breadwinner model, in more recent years there has been an increase in women migrating alone and practising long-distance parenting. A growing number of women, in some countries more than 50% of all admitted immigrants, are now migrating in their own right as labour migrants, students and researchers.

Many obstacles to the empowerment of migrant women in the host country derive from the legal status they hold when arriving in the EU. The main obstacle relates to the dependency created by their status, for example with migrant women being dependent on their husband in case of family reunification. As undocumented migrants do not have any legal status, there are no official statistics on the number of undocumented migrants living in the EU. Undocumented migrants are criminalized and marginalized on the one hand, while used as cheap labour force and often exploited on the other. Though undocumented migrants have rights recognized in various international human rights treaties, these rights are systematically abused. Undocumented migrant women predominantly work in sectors of the shadow economy which are hardly regulated and characterized by exploitative wages and difficult working conditions.

There are two most important areas to be addressed in order to empower migrant women. First, these include measures promoting the access to the labour market and education as well as the improvement of working conditions. A second area is the strengthening of migrant women's participation in democratic life and the protection of basic human rights. Therefore, knowledge and awareness about social

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rights is one important precondition of social inclusion.

The demand of cheap labour in the service sector and the demand for domestic workers, in particular, is growing in the EU as a result of increasing women's employment and the aging population. Therefore, it is indispensable that pan-European NGOs, such as PICUM and Respect, lobby for minimum standards and their enforcement and that they fight for the social rights of undocumented migrants.

Irregular migrants, irregular immigration

The term irregular immigration is preferred by some to undocumented or unauthorised migration and is also used by the Council of Europe, the International Labour Organization (ILO), the International Organization for Migration (IOM), the Organization for Security and Co-operation in Europe (OSCE), and the United Nations High Commissioner for Refugees (UNHCR). The UK-based Institute for Public Policy Research defines irregular migrants as people who are liable to be deported for matters related to their immigration status, including those who enter by avoiding immigration inspection (often using smugglers); enter using false documents; overstay visas or violate visa conditions (including students working more hours than permitted); have a rejected asylum claim but remain in the country; have no papers (i.e. their passport has been destroyed or taken by an employer); have applied for asylum elsewhere described as »irregular secondary movements«.

In this regard, the status is temporary and the degree to which it is irregular or regular can change in different contexts and over time. The use of the term »can«, in the context of undocumented work, serves the specific dominant political or public discourse, distinguishing between regular – or good – and irregular – meaning bad – immigrants. The term »illegal«, on the other hand, is widely used in many European countries (e.g. Spain), without necessarily having a negative connotation.

The label »illegal immigrants« is commonly used to describe foreign nationals who are not able to legitimise their residence or work or both in accordance with the legal rules of the specific country. For many reasons, however, the terms undocumented, unauthorised, irregular, non-compliant or semi-compliant migrants are preferred to »illegal immigrants«.

The term »illegal« in connection with migrants has political and/or societal consequences, which can lead to denying humanity or basic human rights of a person or a group of people from outside a specific country. The term »illegal migrant« also suggests a close linkage to, and maintains a connotation of, criminality. Moreover, labelling asylum seekers who find themselves in an irregular situation as »illegal« may further jeopardize their asylum claims as it encourages a political climate of intolerance towards those seeking asylum.

Since 2005, the governments of EU Member States have argued over a law to ban illegal immigrants arrested in any Member State from re-entering the EU. The Commission argues that this »returns directive« is central to EU efforts to establish a common approach to illegal immigration. But Member States' attitudes show that they believe that EU institutions should have little say in how they expel non-EU-citizens.

EU governments focus on developing other tools for tackling illegal immigration such as negotiating so-called readmission agreements. These outline the procedure for returning illegal immigrants to where they came from, which could be a transit country, rather than their home country. Over the years, countries with high numbers of illegal migrants – notably France, Germany, Greece, Italy, Spain and the UK – have negotiated several such bilateral deals. The Member States welcome the EU's

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collective weight to negotiate better readmission pacts on EU-level. When the EU as a whole negotiates a readmission agreement, previous bilateral arrangements are superseded. In particular, France and the UK are experimenting with a different approach: encouraging illegal immigrants to return to their home countries voluntarily by offering them lump sums of money and benefits to establish a new livelihood there.

Integration

The EU will only be able to cope with a growing number of immigrants if Member States improve their efforts towards integration at the national and local level. Nonetheless, Member States do have some stake in each others' integration strategies. The mistreatment of minorities in one European country could quite easily fuel unrest and instability in another or push migrants to move to an-other EU country where they are better treated.

Arguably, the best way to integrate immigrants is to provide a clear route to citizenship – and the sense of being a stakeholder – in the country of settlement. But some EU countries effectively block access to citizenship for mi-grants. In others, migrants have to wait up to ten years before they are eligible to apply for citizenship. Even then, they can be required to prove that they pose no financial burden to the State. Moreover, the legal status of their spouses and children can remain insecure for many years.

The »migrant integration policy index« (MIPEX), a survey of European integration policies funded by the European Commission, ranks EU countries depending on the effectiveness of their integration laws. These include laws on family reunification, residence rights, labour market access, political participation, access to nationality and anti-discrimination practices. Finland, Sweden, the Western Mediterranean, the Benelux and the UK head the index. The policies of the Baltic republics, Denmark, and the countries of the Eastern Mediterranean and Central Europe come last.

The arrival of millions of foreigners in the EU over two decades has coincided with a rise in racism and xenophobia that has at times spilled over into the political arena. Since the attacks on September 11th 2001, most attention was given to a »clash of cultures« resulting from political Islam. But other racist trends predated these tendencies. Since the 2007 accession of Bulgaria and Romania, for example, the number of Roma among the EU citizens has risen to around 8–10 million, a number that exceeds the population of many small Member States. For centuries, this group has been subject to ongoing discrimination all across Europe.

The EU's Fundamental Rights Agency is responsible for monitoring levels of racism, xenophobia and anti-Semitism in Europe.

Article 7 of the current EU Treaty allows the Member States to suspend the voting rights of governments which fail to respect EU principles of democracy, the rule of law and human rights, including the rights of minorities, refugees and immigrants. Also, European legislation requires each Member State to have its own commission for racial equality. But EU efforts are merely supplementary to national ones.

The Racial Equality Directive and the Employment Equality Directive, adopted by the European Union in 2000, provide a common minimum level of protection against discrimination on the basis of racial or ethnic origin, religion or belief, disability, age and sexual orientation for all people in the EU. It is an important part of Europe's response to combat the threat that discrimination poses to the economic and social cohesion of the Union. The Directives had to be implemented by the Member States

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by 2006.

In a globalized world with increasing numbers of migrants, the concept of transnationalism is of growing importance in the integration debate. Transnational communities represent a powerful challenge to the traditional ideas of belonging to a certain nation-state. The idea of the person who belongs to just one nation-state or at most migrates from one State to just one other (whether temporarily or permanently) is undermined by the increase in mobility, growth of temporary, cyclical and recurring migrations, cheap and easy travel, etc. In the context of globalisation, transnationalism can extend previous face-to-face communities based on kinship, neighbourhoods or workplaces into remote virtual communities, which communicate at a distance. The development of transnational communities challenges dual or multiple citizenship concepts in European countries.

Labour migration

Labour migration is generally defined as a cross-border movement for purposes of employment in a foreign country. The term »economic migrant« is sometimes used as an equivalent to the term labour migrant or migrant worker. However, the two concepts may cover different categories. The term »labour migrant« can be used restrictively in order to only cover movement for the purpose of employment. »Economic migrant«, on the other hand, can be used either in a narrow sense, which includes only movement for the purpose of employment, or in a broader sense that includes persons entering a State to perform other types of economic activities. Here it applies, for example, to investors or business travellers. Classification of labour migration is usually based on the duration of activities, as well as on the distinctions made by the receiving countries in their regulatory framework where conditions of admission and stay are established.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) (short: Migrant Workers Convention), the most important international treaty on the rights of migrants, has not yet been ratified by any European country. According to this convention, a migrant worker is a person who is to be engaged, is engaged, or has been engaged in a remunerated activity in a State of which he or she is not a citizen. A »migrant worker« is defined in the ILO instruments as a person who migrates from one country to another (or who has migrated from one country to another) to be employed by someone else, and includes any person regularly admitted as a migrant for employment. While in the Migrant Workers Convention self-employed workers are included, they are not covered by the ILO instruments related to migrant workers' protection.

The concept and definition of labour migration often reflects current national policy perspectives and varies between countries and over time. One reason for confusion about who falls under the category of »migrant worker« results from ambiguous definitions of »employment« or »remunerated activity« in the receiving country.

While the liberalization of international flows of goods, capital, and information is well underway, progress towards a freer movement of persons is harder to achieve. Indeed, the impact of migration on the countries of origin and destination is more controversial, and States are more concerned about losing their sovereignty in this matter. Labour migration into EU countries will continue to increase due to: 1) differences in employment opportunities and living standards between countries; 2) increased education and broader access to information on living conditions and employment opportunities abroad; 3) established inter-country networks based on

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family, culture, and history. On the demand side, changing demographics and labour market needs in all EU Member States will put pressure on many governments to consider more open approaches to labour migration.

Many European countries have no proper system for attracting legal migrants. Of those that do, most operate quota systems to issue work visas based on the country's need for migrant labour, according to information provided by local bodies, employment and social affairs ministries and employers' associations; for example, from 2004 to 2006, Italy expected to admit 79,500 foreign workers. Since 2000 Germany, Czech Republic and the Netherlands have used »green card« or work permit systems, in cooperation with employers, to attract and select highly skilled workers. In 2008, the UK became the first European country to introduce a »points-based' system, modelled after those in Australia and Canada. Under the new system the UK will allocate work visas depending on the skills and qualifications that are lacking in its labour market. Those accumulating the highest points will not even require a job offer to be granted a visa. Some economists have criticised points systems as ineffective and bureaucratic. But advocates argue that such schemes are a much more sophisticated method than quotas for identifying, attracting, and retaining workers.

The European economy needs more highly skilled workers, such as information technology specialists, business managers, doctors and nurses. But the EU is currently losing the global competition with Australia, Canada and the US to attract such workers. An overwhelming majority of EU immigrants from Africa and Asia are unskilled. In contrast, 50 percent of migrants from these regions going to the U.S. are highly skilled. The Commission estimates that the EU will need to attract 20 million skilled migrants over the next 20 years to address skill shortages in Europe's engineering and computer technology sectors. The EU Commission's solution is the »blue card« – a common working visa – to attract young, highly qualified workers to Europe.

Refugees and forced migration

According to the *International Association for the Study of Forced Migration* (IASFM) the concept of forced migration refers to »the movements of refugees and internally displaced people (those displaced by conflicts) as well as people displaced by natural or environmental disasters, chemical or nuclear disasters, famine, or development projects.« IASFM views forced migration as a complex, wide-ranging and pervasive set of phenomena. The study of forced migration is multidisciplinary, international, and multisectoral, incorporating academic, practitioner, agency and local perspectives.

Millions of people each year flee or are expelled through war, disaster or persecution at home in search of protection elsewhere. International law defines the rules for treating newly arrived refugees and assessing their claims under the 1951 Geneva Convention on the Status of Refugees. According to the definition of the Geneva Convention, a refugee is a person who »owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country ...«. A person is not entitled to seek refugee status – also called asylum – for being poor. However, migrants often try to claim asylum after having been denied a work visa, or because there is no way of migrating legally to their intended

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destination.

Governments face a conflict between being as open as possible to those fleeing persecution and fearing the misuse of the asylum system as a channel for economic migration. They also worry about »asylum shopping« – the practice of lodging applications in several European countries at once, in the hope of being accepted somewhere. Consequently, only around half of the European asylum applications are approved. EU Member States are basing their asylum policies on a single set of rules, in line with their shared interpretation of the Geneva Convention.

The main EU law underpinning this policy is the so-called Dublin regulation. Entered into force in 1997, the regulation requires potential refugees to be looked after by the EU country in which they first arrive. As a result, an economic migrant cannot use permissive asylum laws in one country to enter the EU with the aim of getting to another which may offer better working conditions or social security. In order to enforce this rule, immigration officials have access to an EU-wide database called EURODAC in which applicants' fingerprints are stored.

This allows them to detect and return so-called asylum shoppers and denied applicants who re-apply to the EU country in which they first arrived. Some countries also want EURODAC to be adapted to detect illegal immigrants who, having been returned to their home country, may attempt to re-enter the EU via other Member States.

A common asylum system should require all EU Member States to provide refugees with the same essential services on arrival, assess their claims the same way, and use the same rules to grant and withdraw refugee status. Yet the treatment of refugees still varies greatly between the Member States. Part of the problem is poor implementation of existing EU asylum legislation. Only six EU-States – Austria, Britain, Bulgaria, Germany, Luxembourg and Romania – have implemented EU standards for processing refugee applications. The UNHCR as a powerful UN agency is an important player in making sure that EU aid reaches the worst refugee crises. However, the agency has also been a fierce critic of the establishment of a single European asylum system. It holds the belief that EU procedures for returning failed asylum-seekers set the bar too low for determining whether the receiving country is safe for the rejected claimants.

Glossary on Immigration Policy by Andrea Schmelz, Karin Leiter, Network Migration in Europe e.V. Adapted from the following sources: Hugo Brady, EU migration policy: An A-Z, London: Centre for European Reform 2008; Undocumented Migration. Glossary, prepared by Roskilde University and Working Lives Research Institute 2008; www.migrationeducation.org (migration and development; gender and migration by Andrea Schmelz).

2. Forced Migration in the 20th century Europe

From Lausanne to Yugoslavia – Forced Migration and Ethnic Cleansings in 20th Century Europe

Gerrit Schäfer

A radical answer to the “nationality question” is the expulsion of minorities by the majority in order for them to create a state intended to be a “nation-state”. Such forced migrations took place in south east Europe and, in particular, the Balkans, at the beginning and at the end of the last century. During and after World War II; these expulsions were concentrated in Central and Eastern Europe. At the end of the century, however, forced migrations happened in the Balkans and the Caucasus.

The period until 1925

As early as the 19th century, the Muslim minorities who lived in the Balkans’ new nation-states were affected by discrimination and persecution, so that many of them left their homes. Finally, during the Balkan Wars (1912–13), ten thousands of people had to flee their homelands because they were members of ethnic or religious minorities. This policy was officially sanctioned afterwards by a treaty between Bulgaria and Turkey, which provided for an exchange of population in the border zone. Ethnic harmonization of the state was also the goal stated by the new Turkish nationalists who ruled the Ottoman Empire from 1908 onwards and who proceeded with the deportation of the Armenian minority from 1909. Hundreds of thousands of Armenians fell victim to violence, pogroms, and hunger.

After the Greco-Turkish war of 1921–22, which was accompanied by expulsions and escape, forced relocations were politics’ answer to the “nationality question”. Nearly two million people were affected by the population exchange laid down in the Treaty of Lausanne (1923). According to estimates, in many countries in the east and south east of Europe, up to six million members of ethnic minorities had to leave their homes under duress or due to pressure in the years after World War I. During that time, shifting populations was often seen as a legitimate, even sometimes the only, means politics had to solve “nationality problems” and to safeguard peace. The great European powers also agreed to the Treaty of Lausanne. These ideas were also espoused by scientists. The Swiss ethnologist Georges Montandon, for instance, developed a concept which provided for the “massive” resettlement of people in order to create nation-states with “natural” borders and without any minorities.

From 1933 to 1948

The next phase during which massive forced relocations of the population took place were the years of and around World War II. This period is covered in greater detail in other articles, therefore only a brief overview will be given here. This period began with the Jewish population’s emigration from Germany after the National Socialists’ takeover of power and the beginning of discrimination and persecution in 1933. After the Munich Agreement of 1938, several hundreds of thousands of people left their

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hereditary place of residence in what was, until then, Czechoslovakia, due to actual or feared violence. At the same time, National Socialist Germany signed treaties with a number of states, amongst them Italy and the Soviet Union, according to which the members of the German minority were to be relocated “home into the Reich”, not least in occupied territories such as the Bohemian countries or Poland. Thus, this policy was part of the aggressive, expansionist overall strategy displayed by the National Socialists.

The time of World War II was marked by the deportation and mass murder of Jews in particular, but also of other groups such as the Sinti and Roma, living under German rule. Especially from the east of Europe, millions of forced laborers were transported to Germany.

In the Soviet Union, members of a number of ethnic minorities (Germans, Caucasians, Balts, Poles, Crimean Tatars, and others) accused of harboring sympathies for the enemy were deported to the Central Asian Republics. In these cases, the dissolution of social structures and the safeguarding of Stalinist rule was the most important rationale behind the relocations, which on the whole probably affected more than three million people.

Finally, there were huge migratory movements in Europe after the end of the war. Millions of former prisoners of war, forced laborers and concentration camp inmates (displaced persons) were sent back to their countries of origin. Many surviving Jews left Europe altogether and resettled in the newly founded state of Israel or in the United States. With the consent of the Allies, a number of probably far more than ten million ethnic Germans had to leave their settlement areas in the east of Europe and relocate to Germany or Austria. In East and South East Europe, numerous resettlement activities also took place, which affected, amongst others, Magyars, Ukrainians, Byelorussians, Finns, and Italians. The largest group were the more than two million Poles taken from the former eastern part of Poland, which now was annexed to the Soviet Union, to the western part of the country, which formerly had been part of Germany. Most of the forced migrations executed or tolerated by the state were explicitly justified by stating that territorial claims on settlement areas made by ethnic minorities were to be ruled out in the future.

Migrations during and after the Cold War

During the Cold War, the trend to ethnic homogenization continued, but mostly was the result of individual decisions to emigrate and only in exceptional cases was an official state policy goal, as in Bulgaria. German “late emigrants”, Jews, Turks, other Muslims, Hungarians, Armenians, Greeks, and other ethnicities emigrated from many countries of East and South East Europe.

After the collapse of the “Iron Curtain”, which was accompanied by improved possibilities to travel, this trend continued and even increased. The former Soviet Union also saw the beginning of new migratory movements, mostly driven by members of the Russian diaspora relocating to Russia from the newly independent states.

The new expulsions – Yugoslavia and the Caucasus

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New wars and armed conflicts also brought the phenomenon of expulsions back to Europe and its fringes. The expulsions took place against the backdrop of the most recent wave of nation-state creation, which dissolved the last of the large European multinational empires, the Soviet Union, which until then had held together by means of the authoritarian system of rule. Smaller multi-ethnic states such as Czechoslovakia and Yugoslavia split up into smaller states. Unlike most previous nation-state foundations, however, it is quite remarkable that a relatively large number of them was created without any war – historically speaking, this had been the very rare exception until that point.

The conflicts in Georgia, Armenia, Azerbaijan, and Chechnya resulted in the flight of hundreds of thousands of people. During the civil wars which raged in the former Yugoslavia (Croatia, Bosnia-Herzegovina, and Kosovo) between 1992 and 1999, mass flight, expulsions, and massacres took place right on the European Union's "doorstep". The cynical term "ethnic cleansing", which, however, precisely conveys the concept behind the phenomenon, was widely used in media coverage. Once more, the historic context was the formation of new nation-states, motivated by an ethnically defined nationalism. Depending on the military situation, Croats, Serbs, Albanians, Roma, and Muslims were affected – with the latter, their religion was used as a means to determine their "ethnic identity", the only characteristic which distinguished them from the Catholic Croats and the Orthodox Serbs. According to estimates, more than two million people were affected.

The civil wars, expulsions and particularly the prospect of having to accommodate more refugees led to military NATO intervention in Bosnia and Kosovo. In this context, it should be noted that, on the one hand, such interventions are problematic and controversial under international law, but on the other hand that, as opposed to earlier decades, forced migrations are not considered a means to conflict solving which are promoted or even tolerated any longer, but meet with repudiation and resistance – at least in Europe.

Gerrit Schäfer, 2007

Sourced from FES-Net-Source

<http://library.fes.de/library/netzquelle/zwangsmigration/en-22zwangsmig.html>

On the Terminology „Forced Migration“

The many events of forced migration in Europe happened at different times, in different places and under quite different general historic conditions. One thing all types of forced migration do have in common, however, is that the members of an ethnically defined section of the population had to leave their homes because they belonged to that very group. This is why all these phenomena can be subsumed under the term forced migrations.

There is a number of terms used for forced migrations and related phenomena, terms which on the one hand describe different events but on the other hand can be used because they are linked to a specific interpretation of historic events. The terms "Aussiedlung" ("relocation") or "Umsiedlung" ("resettlement") suggest an orderly procedure. A similar connotation adheres to the Czech expression odsun

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("expulsion") or the Polish term "repatriation", which was used during the communist era for the forced resettlement of the Polish population from those areas that had been annexed to the Soviet Union after World War II.

Forced migration always originates with governments (or de facto governments, as in former Yugoslavia), which use the national power structure in order to enforce these activities. Almost all forced migrations take place in connection with wars or civil wars.

- Forced migrations can be effected by governments who transfer members of their "own" ethnicity living in other countries to their own state (similar to the model of the "population exchange" conducted between Greece and Turkey). The basis for such procedures are international treaties between governments.

- During World War II, Germany, as an occupying power, had large areas of land cleared for German settlers, for instance in Poland and Czechoslovakia ("Generalplan Ost", or "General Plan for the East"). Deportations of people into forced labour camps, concentration camps and ghettos were a major part of German occupation policy.

- The forced resettlement of national minorities is the third important type of forced migrations. It happened, for instance, after World War II in the liberated countries of Eastern Europe or in former Yugoslavia in the 1990s.

Some connected phenomena, which often take place at the same time are- so-called "wild expulsions", which are not organised centrally, but come about locally and spontaneously (in many cases, however, they are tolerated or even secretly steered by the state).- Escape, e.g. from an approaching army. The term 'evacuation' implies that it is organized by governmental or military authorities.- Genocide, which does not aim at expulsion, but at the deliberate and systematic death of the members of an ethnic group and the extermination of the group as a whole. The interrelation between these types of events, the dividing line between which can become quite fluid is currently discussed very vividly by historians. In the Federal Republic of Germany, the term expulsion (Vertreibung) and the word expellee (Vertriebener) have become general usage after World War II. The Federal Expellee Act of 1953 was a major influence in this respect, while in the years prior to this act, other terms had been used, especially the expressions "escape" and "refugees" (c.f. the sources stemming from that time).

Sourced from: <http://www.nationalismproject.org/what.htm>

3. ASYLUM-SEEKING IN EUROPE IN THE 1930S AND 2010S COMPARED

The arrival of communism in Russia in 1917 led to a sequence of events that caused over one million Russians to stream into Europe in the 1920s. Approximately seventy years later, the collapse of communism in Eastern Europe again led to large numbers seeking asylum in West Europe. Both groups, while not generally welcomed, eventually managed to settle in their countries of asylum. Despite a noticeable decrease in refugees, those seeking protection in the crisis-hit 1930s received considerably more hostile treatment from European governments than their 1920s counterparts, as states strengthened their enforcement mechanisms to restrict and expel refugees because of the financial strain and security threat they allegedly posed. Due to the increasing difficulties stemming from the economic crisis of 2008-09, governments are likely to build on restrictive advances made during the late 2000s, utilising similar rhetoric, to further restrict asylum in Europe in the 2010s.

In the 1920s voluntary organisations and the League of Nations High Commissioner for Refugees successfully prompted European governments to treat Russian and Armenian refugees with sympathy and understanding. The upsurge in the number of non-governmental organisations (NGOs) dealing with issues related to immigration and asylum towards the end of the twentieth century, combined with the growing strength of the UNHCR and the development of inherently liberal principles in many democratic states, also resulted in relatively generous asylum policies in Europe in the 1990s and early 2000s. To counter pro-asylum actors' growing influence, European governments employed various methods during the 1930s and late 2000s to implement more restrictive measures against asylum seekers; a trend that is likely to continue into the 2010s. Nonetheless, this paper contends that vital distinctions and differences exist between pro-asylum actors' effectiveness in the 1930s compared to the present day. Currently, pro-asylum actors ensure that asylum seekers who manage to enter European territory receive a much more hospitable and humane welcome than their unfortunate 1930s' predecessors because of pro-asylum actors' power and the growth of human rights norms in European societies. Because of European governments' externalisation of the asylum process during recent years, however, asylum seekers who fail to enter the EU in future years may encounter similar experiences to those attempting to flee the Nazi regime of the 1930s as they wander destitute from closed border to closed border.

To expound and justify this claim, the paper will be split into three parts. First, a short explanatory note describing the various pro- and anti-asylum actors involved in asylum debates in the decades under scrutiny will be provided. A history of pro-asylum actors' efforts to influence governments' asylum policies in the Inter-War period will then follow. The third section will focus on the role pro-asylum actors, and especially NGOs, have played since 1989 and are likely to play in the 2010s.

Competing actors

In the mid 1990s, Gary Freeman advanced a theory hypothesising that certain actors shaped liberal democratic states' economic immigration policies. This paper shares Freeman's approach by emphasising the influence of specific, albeit noticeably different, groups in determining asylum policy. Since democratic states consist of a

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number of competing actors a bargaining process often ensues when discussions take place on the formation of new policies, as outlined by Fritzt Scharpf:

[P]ublic policy [...] is likely to result from the strategic interaction among several or many policy actors, each with its own understanding of the nature of the problem and the feasibility of particular solutions, each with its own individual and institutional self-interest and its own normative preferences, and each with its own capabilities or action resources that may be employed to affect the outcome.

A simple model set out here situates actors involved in contesting asylum policy into two broad groups, or, to borrow once more from Scharpf, into two “hypothetical coalitions.” One group consisted of pro-asylum actors or what Hannah Arendt called “well-meaning idealists,” who strove to ensure that asylum seekers received access to a full range of rights and entitlements. These well-meaning idealists empathised with the plight facing asylum seekers and consistently advocated for generous asylum policies and hospitable treatment for asylum seekers and refugees.

The pro-migrant actors Freeman mentions in his 1995 article on economic migration diverged significantly from those advocating for asylum seekers. Pro-migrant actors, such as employers in labour-intensive industries and employers dependent on an unskilled workforce, businesses that profited from population growth, and the family and ethnic relations of those making up migrant flows promoted expansive migration policies mainly because of the benefits they stood to gain. By contrast, employers remained mostly indifferent towards asylum seekers because of their disorganised arrival and because governments frequently barred their employment. Similarly, the reaction of ethnic lobbies Freeman refers to as pro-migrant had mixed views on asylum because they sometimes feared an increase in asylum numbers might jeopardise the entry of friends and families under organised government schemes. Pro-asylum actors, contrastingly, often promoted generous policies not for any benefit they acquired but because helping asylum seekers fitted into the humanitarian, moral and communitarian principles inherent in their beliefs and values. Secular and religious NGOs focusing on refugee and human rights issues, intergovernmental refugee organisations and certain outspoken left-wing political parties tended to support asylum seekers most vociferously.

Opposing actors maintained that asylum seekers represented potential cultural, physical or economic threats to host societies. They repeatedly doubted the veracity of asylum claims and emphasised the potential problems increased numbers would bring to domestic societies. They often worried more about how asylum seekers bypassed their national immigration systems than whether those same people required protection from potential or actual harm. Anti-asylum actors often included most mainstream political parties, popular newspapers and the majority of public opinion.

“Well-meaning idealists” in the Inter-War years

John Torpey chronicled that ‘the booming of the guns of August 1914 brought to a sudden close the era during which foreigners were relatively free to traverse borders’ as states reintroduced passport controls with vigour. Instead of lifting these bellicose measures after the end of the First World War, states reinforced them. Crucially, this included many of the traditional settler-states, which had until then presided over a generous and open immigration policy for European migrants. The United States (U.S.), which accepted approximately one million immigrants annually in the years immediately preceding 1914, led the way in introducing changes. The 1921 and 1924

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U.S. Immigration Acts limited arrivals by introducing quotas for countries. Ethnic composition also became crucial, with the U.S. preferring northern Europeans to eastern and southern Europeans. Almost simultaneously, analogous developments took place across Europe, with the possible exception of France, whose historic fear of population decline delayed the move to restrict immigration immediately.

These developments transpired just as a new wave of refugees began to arise. No longer free to migrate to North America, refugees after the First World War often consisted of large groups forced to flee to neighbouring countries. In a period Hobsbawm later termed the 'apogee of nationalism', the Inter-War period represented a precarious time to seek sanctuary. Fortunately, most of these people transferred to newly formed nation-states that welcomed them. Approximately one to two million ethnic Poles migrated to Poland; one million ethnic Germans to Germany; 300,000 ethnic Hungarians to Hungary; and the newly formed Balkan states welcomed tens of thousands of its ethnic countrymen and women. Following the end of the Greco-Turkish Wars (1919-22), vast numbers of Turkish, Greek and Bulgarian migrants moved en masse; often in opposite directions.

Unlike the refugee that wandered Europe in the nineteenth century, the refugee in twentieth century Europe no longer solely represented people that had 'dared to defy the established powers with the pen, the revolver, or in armed campaigns'. Instead they often comprised people escaping persecution, wars and humanitarian disasters, as the over one million Russian refugees entering Europe after the 1917 Russian Revolution, the ensuing civil war and the 1921 famine clearly demonstrated. Crucially, private voluntary organisations set up to help those in need came to the rescue. The critical situation in Europe during and immediately after the First World War led to, in the words of Jorgen Lissner, 'the end to "ad hoc" amongst private organisations promoting ethical commitments to strangers and the move towards a more organised response to assisting vulnerable groups. This unification of resources became particularly evident in private organisations' response to the crisis caused by the huge migration of Russian refugees into Europe in the 1920s.

Following a meeting of private voluntary organisations (PVOs) concerned with Russian refugees in February 1921, the International Committee of the Red Cross (ICRC) demanded, on behalf of all PVOs, improved conditions for refugees from the recently established League of Nations. Gustave Ador, the then President of the ICRC, noted the plight of Russian refugees:

These people are without legal protection and without any well-defined legal status. The majority of them are without any legal means of subsistence, and one must particularly draw attention to the position of the young and the youths amongst them who are growing up in an ever increasing misery.

To tackle these afflictions, Ador suggested the 'possible appointment of a League of Nations Commissioner for the Russian refugees'. Defending the suggestion, Ador maintained that 'it is not so much a humanitarian duty which calls for the generous activities of the League of Nations as an obligation of international justice.

In response, the League of Nations appointed Fridtjof Nansen as the first High Commissioner for Russian Refugees later in the same year. Nansen's background as an accomplished explorer, scientist and aid worker, not to mention his successful repatriation of over 400,000 soldiers after the First World War, ensured the High Commission immediate international recognition. When governments unanimously approved Nansen's September 1921 resolution to 'obtain the collaboration of private

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relief organisations which hitherto have contributed to the relief work in connection with Russian refugees' and 'to associate them directly with his work', it symbolised the vital role PVOs would play in the High Commission throughout the 1920s. To coordinate the work of PVOs and prevent overlapping, Nansen oversaw the formation of an Advisory Committee of Private Organisations that enabled PVOs to consult regularly with the High Commissioner.

The High Commission for Russian refugees, with consistent prompting from PVOS, began to tackle the legal limbo that Russian refugees found themselves in (as one League official commented, refugees could not 'travel, marry, be born, or die without creating legal problems'). Nansen set about introducing documentary material that entitled the Russian refugees to a certain legal status. What became known as the Nansen Passport bestowed the right to travel to certain destinations for a twelve-month period and established the holder's Russian nationality. Governments quickly adopted the Nansen passport system and by 1929 over 50 governments recognised it. The League later extended the system to include Armenian, Assyrian, Assyro-Chaldean and Turkish refugees scattered throughout Europe and the Middle East from 1924 onwards. Establishing a description that defined a refugee and identifying what legal rights refugees could attain also became a challenging goal pursued by the High Commission; again with considerable encouragement from PVOs, who wanted definitive rights for refugees through an international convention. Russian and Armenian refugees, particularly the legal experts representing the *Commission centrale pour l'étude de la condition des réfugiés russes et arméniens*, pushed for a draft convention on the rights of Russian and Armenian refugees from the late 1920s onwards. Although Nansen managed to gather states to discuss the proposed convention, their reluctance to sign it resulted in the production of the *1928 Arrangement on Russian and Armenian Refugees*, which provided non-binding recommendations relating to refugees' right to work, their right to access the courts and their protection from expulsion. Not satisfied with this outcome, PVOs pressed the Intergovernmental Committee on Refugees for the League of Nations, which combined state delegates sympathetic to the plight of refugees and PVO representatives, to summon states together in 1933 once more to discuss the formation of a more definitive document. This led the way to the establishment of the *1933 Convention relating to the International Status of Refugees*, which codified many of the recommendations set out in the 1928 arrangement and contained a number of significant recommendations relating to labour conditions, industrial accidents, and welfare and education.

The convention required states to treat refugees in a similar manner to their most favoured migrants. Nevertheless, the unfavourable economic climate of the 1930s jettisoned many of the aims of the convention as long established migrants began to encounter markedly more hostile treatment in their adopted homes. Indeed, many of the outlined stipulations, including *non-refoulement*, remained largely ineffectual as refugees in the 1930s faced a more perilous existence than their 1920s predecessors. Most fundamentally of all, the 1933 convention only applied to those already termed refugees, thereby excluding those fleeing Nazi persecution.

A New Refugee Crisis

The League of Nations failed to foresee the continuation of Europe's refugee problem. Indeed, Fridjhof Nansen himself repeated the widely held view in 1926 that refugee problems remained finite and solvable. The aftermath of Hitler's accession to

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power in Germany quickly contradicted this view, as people began to leave Nazi Germany in increasing numbers. Despite refugees in the 1930s numbering far less than in the 1920s – roughly 150,000 refugees fled Germany from 1933 to the start of 1938 compared to over one million Russians in the 1920s, governments' asylum policies became strikingly more restrictive as the economic crisis continued. To aid new refugees, the League of Nations appointed an autonomous High Commissioner responsible for German refugees, the American James MacDonald, in October 1933. In contrast to the High Commissioner for Russian Refugees, the new office had to appropriate all funds privately to appease Germany objections to the League of Nations.

Following just over two years as High Commissioner, MacDonald resigned from his post. In a widely publicised letter, MacDonald blamed the growing crisis facing Jewish and non-Jewish refugees from Germany on the intransigence of the international community:

The efforts of the private organisations and the League organisations for refugees can only mitigate a problem of growing gravity and complexity. In the present economic conditions ... European states have only a limited power of absorption of refugees. The problem must be tackled at its source if disaster is to be avoided.

He also stipulated that the decision to separate his office from the League of Nations fundamentally weakened his position. MacDonald's replacement as High Commissioner, Sir Neill Malcolm, inherited an even less powerful role than his predecessor as the League Council 'carefully circumscribed the new High Commissioner's sphere of activity' to circumvent the unwelcome attention McDonald's outspoken statements acquired. Nonetheless, Malcolm still managed to bring together representatives from fifteen countries in late 1936 for a conference focused on the German refugee question.

States, although supportive of potential measures to alleviate the suffering of German refugees within their territories, remained particularly hesitant to commit to helping potential future arrivals from Germany. Romania noted that it had already reached its capacity for receiving refugees apart from those travelling through the country. The Netherlands wanted to retain its power to allow or disallow refugees from entering its territory. Switzerland repeatedly drew attention to the problem of clandestine refugees and underlined the problems caused by their continued entry at a time of economic depression, stating its preference to 'aid the refugee coming from Germany to settle elsewhere' rather than allow them settle in its territory. Resembling recent asylum debates, Belgium thought countries should be allowed to ask refugees to return to the country in which they found first asylum. Nevertheless, all of these countries, with the exception of Romania, adopted the provisional non-binding arrangement set out in the conference with various amendments, in addition to the UK, France, Norway and Denmark. Further efforts by the High Commissioner for German Refugees to attain states' acquiescence to more authoritative rules defining their treatment of German refugees proved mostly futile, however. Only two countries, the UK and Belgium ratified the later *Convention concerning the Status of Refugees coming from Germany*, completed in February 1938 as restrictive measures against rising numbers of refugees from Germany and Austria became more widespread.

Contrasting sharply with PVOs' role in representing Russian and Armenian refugees in discussions throughout the 1920s and early 1930s, PVOs played a negligible role

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in the session debates for the 1936 and 1938 conferences. The absence of an advisory committee of private organisations until after the 1936 conference partly explained this distinction. Previously, the Advisory Committee of Private Organisations and the PVOs' involvement in Inter-Governmental discussions had allowed PVOs to come together to extract the best outcomes for refugees but PVOs failed to receive these opportunities in international debates surrounding refugees escaping from Nazism. Despite their lack of international representation, pro-asylum actors did succeed in mitigating the severity of restrictive asylum policies in some countries, most notably in France where the Popular Front government slackened immigration restrictions in 1936 and the UK government repealed its asylum regime after the 1938 *Anschluss*. In the United States, pro-asylum actors focused enough pressure on the government for President Franklin D. Roosevelt to convene a conference in Evian in July 1938. Indeed, in the months leading up to Evian, several prominent Jewish voluntary groups – and Christian voluntary groups, to a lesser extent – came together for a conference to discuss the refugee issue. Almost simultaneously, two prominent Jewish politicians, Emanuel Celler and Samuel Dickstein, publicly raised the subject in Congress. Dorothy Thompson's article in the April 1938 edition of *Foreign Affairs* gave further vent to the consternation amongst certain organisations surrounding America's failure to intervene.

In July 1938, twenty-nine governments came together in a small French town to discuss the problem of refugees fleeing Nazism. Thirty-nine voluntary organisations, including twenty-one Jewish groups, attended the conference. Again, they did so in an unofficial capacity, even though the conference maintained that all refugees' welfare would remain the responsibility of voluntary organisations rather than states. Individual consultations between PVOs and government representatives at Evian demonstrated the disjointed position of many PVOs. Four different opinions resonated amongst PVOs according to the committee made up of various government representatives: (i) to encourage Jews to emigrate to Palestine by lifting the contemporary quotas; (ii) to integrate refugees in their present environment; (iii) to settle Jewish refugees in an as yet uninhabited location; and (iv) to guarantee Jews minority rights in their new countries of asylum.

Roosevelt's defined terms for discussion at the Evian conference, which ensured that existing immigration laws remained in place, meant that the conference produced little in the way of feasible results to help refugees. Instead, most of the focus concentrated on how the Jewish exodus had 'become so great that it renders racial and religious problems more acute, increases international unrets [sic], and may hinder seriously the process of appeasement in international relations'. The resolution adapted at Evian also recorded that:

[T]he involuntary emigration of large numbers of people, of different creeds, economic conditions, professions and trades ... is disturbing to the general economy, since these persons are obliged to seek refuge, either temporarily or permanently, in other countries at a time when there is serious unemployment.

The resolution's negligible recommendations – the highlight involved setting up the ineffective Intergovernmental Committee on Refugees – clearly demonstrated states' reservations in helping refugees escape Nazi persecution. In Michael Marrus's words, 'Evian simply underscored the unwillingness of the Western countries to receive Jewish refugees' with 'one delegate after another read[ing] statements into the record, justifying existing restrictive policies and congratulating themselves on how much had already been accomplished for refugees'. Soon after the Evian

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conference, Hungary and Yugoslavia closed their frontiers, Italy announced its 1938 anti-Jewish decrees, and Holland, Belgium and Switzerland reinforced their borders to restrict the entry of refugees.

The annexation of Austria in March 1938 and *Kristallnacht* in Germany in November of the same year turned, in the words of Claudena Skran, 'a manageable refugee flow into an uncontrollable flood'. To make matters worse, the 1938 Nazi laws forbidding Jews fleeing from taking their belongings and savings caused many European countries to step up their restrictions against the entry and stay of Jews. Previously, Jews brought certain economic advantages to host states because they arrived with significant financial resources but from 1938 onwards Jews frequently arrived penniless at a time of serious economic recession. Between early 1936 and mid 1938 private organisations and individuals drew the High Commissioner's attention to approximately 5,000 cases where German refugees received expulsion orders from countries of asylum, leading to the High Commissioner's intervention to halt 'unauthorised measures of expulsion taken by the police or minor officials'. But the cessation of the High Commissioner's office on 1 January 1939 closed this avenue off despite the marked augmentation of refugees from Nazism and Fascist Spain. By the outbreak of war in September 1939, the number of people that escaped Nazism since 1933 increased to 400,000. More would have left except for the increasingly restrictive immigration policies of European countries caused by anti-Semitism, labour shortages and refugees' destitution.

The Rise of pro-asylum NGOs

The end of the Second World War instigated several crucial developments. Countries vowed to make sure the newly formed United Nations would serve the world better than the League of Nations. The *Charter of the United Nations*, signed in 1945, insured, cemented and enhanced the role of what then became known as Non-Governmental Organisations (NGOs); in order to distinguish them from the various UN bodies. By stipulating that the UN could 'make suitable arrangements for consultation with non-governmental organisations which are concerned with matters within its competence' they ensured their presence in significant political discussions. During the 1930s, Jewish organisations had dominated pro-asylum organisations. But the marked decrease in European Jews because of Nazi extermination and post-war emigration meant these groups diminished somewhat in the post-war period. Various Christian NGOs gradually stepped in to the vacuum this created. Although NGOs partook in deliberations on the 1951 UN Convention on the Status of Refugees, they played a largely insignificant role. The intra-governmental International Refugee Organization (IRO), established in 1947, played a much more decisive part in proceeding by writing a draft convention which provided the framework for the 1951 UN Convention on the Status of Refugees. Even so, states, especially the United States and France, retained the real power; hence the insertion of geographical and time restrictions confining refugeehood to events in Europe before 1951.

The United Nations High Commissioner for Refugees (UNHCR), set up to replace the IRO in 1950, went on to establish an important role for itself in refugee politics over the ensuing decades, often with the help of several prominent NGOs. As Gil Loescher remarked, the UNHCR 'grew from a strictly non-operational agency with no authority to appeal for funds, to an institution with a long-range programme emphasizing not only protection but, increasingly, material assistance'. The small

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number of politically convenient communists seeking asylum in Europe during the 1960s and 1970s meant western states granted consistent appeals from the UNHCR to improve asylum seekers and refugees' rights. Unable to foresee the future globalisation of asylum seeking, western states also signed up to a UNHCR initiative that resulted in the establishment of the 1967 Protocol Relating to the Status of Refugees, which extended the Refugee Convention to all those seeking asylum, regardless of time or geography. Around this time, the number of NGOs and intergovernmental organisation (IGOs) involved in advocating for better human rights began to expand, particularly in Europe. In 1961, the British lawyer, Peter Benenson, founded Amnesty International to combat human rights abuses. Ten years later, a group of French doctors founded *Médecins Sans Frontières* after experiencing at first-hand the horrendous suffering caused by the Nigerian civil war in the Biafra area. Organisations such as Amnesty, *Médecins Sans Frontières* and Human Rights Watch would play a noteworthy role in the politics of asylum after 1989 through their insightful annual reports, which often demonstrated human rights abuses that governments sometimes denied.

Most significantly in the 1970s, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR) became full international covenants. Crucially, this meant that the Universal Declaration of Human Rights' aspirations, which until then had remained non-binding, finally became inserted into international law. This led to the birth of the UN Human Rights Committee and coincided with the Ford Foundation's decision to dedicate millions of dollars in funding to human rights groups.⁵⁴ Almost concurrently, a huge jump in the amount of NGOs involved in human rights and refugee issues took place. Figures from the Union of International Associations' (UIA) online database, for example, show that the number of NGOs registered with the UIA that worked on refugee matters almost doubled from 1966 to 1981.

Debating asylum

The upsurge of asylum seekers arriving from the mid- to late-1980s caught western states largely unprepared. In effect, the swelling of asylum applications challenged states' dormant declarations on asylum. Whereas those claiming asylum in the decades following the Second World War provided receiving countries with valuable ideological and economic benefits, refugee claimants after 1989 offered neither. For many European countries without established recognisable refugee or asylum systems, economic factors such as unemployment rates and economic growth played considerable roles in asylum debates, largely due to the fusion of asylum and immigration issues in Europe, thereby resembling what had transpired in the 1930s. With asylum seekers entitled, in some countries, to relatively generous welfare provisions and housing, political, media and public hostility towards asylum seekers began to rise. References highlighting the large use of taxpayer money and welfare funds spent on asylum seekers by sceptical political figures and media groups often met with receptive public audiences who called for further restrictions. Other – more prejudiced – attitudes towards asylum seekers also developed relating to their perceived cultural and racial differences from the host population, a development that also highlighted asylum seekers' more diverse background after the end of the Cold War.

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The growth of anti-immigration parties in Europe throughout the 1990s instigated an explosion of political discussion on asylum and immigration. The success of anti-immigrant parties caused many mainstream political parties to adopt more hard-line attitudes to asylum and immigration to offset the loss of traditional supporters and to attract potentially new voters. Mainstream politicians and large sections of the media saw asylum seekers as more legitimate targets for criticism than economic migrants because they often required state aid, offered little by way of visible economic benefits to the host state, and arrived uninvited. Accordingly, anti-asylum actors increasingly dominated asylum debates throughout the 1990s and 2000s.

Correspondingly, governing political parties also inclined towards the formation of more restrictive asylum policies. But there remained a sizeable gap between the rhetoric utilised by governing politicians and the policies they tried to execute. This occurred because actors sympathetic to people in search of protection, such as NGOs, the UNHCR, religious organisations, renegade left-wing groups and small but organised sections of the public and the media successfully adapted several measures to hamper governments' execution of more restrictive asylum policies. Their methods included utilising international and domestic law, referencing countries' migration histories and memories, humanitarian and religious traditions, and moral consciousnesses to attract empathy from actors often opposed to asylum seekers, such as large sections of voters and the media. Employing these tools allowed pro-asylum actors to cause often hostile publics to empathise with asylum seekers, especially when it came to deportations; as Gibney and Hansen point out, public opinion could be 'fickle and unstable' on issues relating to human rights and deportation.

State systems encountered enormous difficulties differentiating between which asylum seekers deserved their protection and which did not. Unfounded asylum seekers' efforts to pass themselves off as refugees hindered this further; Hannah Arendt's comment on what occurred in the 1930s continued to ring true: 'Once the government tried to use its right and repatriate a resident alien against his will, he would do his utmost to find refuge in statelessness.' When western governments managed to distinguish between asylum claims, they still encountered enormous difficulties trying to deport those people deemed undeserving of protection because of problems ascertaining the identity of asylum seekers with no documentation. Furthermore, no international obligations existed that required origin countries to receive their returning nationals. The Refugee Convention's *non-refoulement* principle meant that even if a state managed to positively identify rejected asylum seekers and their host states agreed to their return, deporting them remained a controversial issue. In Ireland pro-asylum actors frequently associated asylum seekers with Irish emigrants in the public sphere, thereby tying natives' harsh past to asylum seekers' difficult present. In France, the *sans papiers* movement in 1996 emphasised the virtues of the country's tradition of espousing human rights. In the Netherlands, the long Dutch tradition of toleration and providing asylum to those in trouble prevented speedy deportations and repatriations in the 1990s. Religious groups and leaders in Italy and other countries also cited countries' moral duties when attempting to stifle governments' turn towards more restrictive policies. Notwithstanding large sections of the public and the media's tendency to support the formation of harsher asylum policies to halt the large faceless numbers of asylum seekers, these same actors sometimes opposed deportation policies because they involved real human people that they related to.

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In the face of continued government obduracy, national courts provided a practical avenue for pro-asylum actors to hinder what they considered harsh asylum policies. During the latter half of the twentieth century, various West European countries adopted expansive constitutions that placed an enormous emphasis on rights, including Germany, Italy, Spain, Portugal and Greece. To oversee the enforcement of these new constitutions, states also established constitutional courts. Similarly, France introduced a preamble to its 1958 constitution that indirectly referenced a number of texts on human rights and modified its constitutional practice to allow any sixty members of its senate or assembly to begin constitutional challenges if they saw fit in 1974. By then, the growing expanse of NGOs had identified constitutional courts as potential avenues to affect government policies, especially for rights issues, which began to dominate constitutional courts, reflecting a practice already well advanced in North America and Australasia. Significantly, constitutions frequently extended rights to nationals and non-nationals alike, opening the way for pro-asylum actors to utilise constitutional courts in defence of asylum seekers. The European Court of Human Rights played an expanded role in advancing this from the early 1980s onwards. Furthermore, the European Convention's legal parity with domestic legislation in some countries meant that it served as a kind of bill of rights for certain countries without liberal constitutions, such as Belgium and Holland and more recently the United Kingdom and Ireland.

The inherent human rights principles enshrined in states' laws and constitutions after the Second World War had the potential to scupper many governments' asylum policies; unlike what transpired in the 1930s. When it came to new asylum legislation in the 1990s, NGOs and human rights lawyers repeatedly called upon judiciaries to decide the legality of changes. Deportation provided a perfect example of well-meaning idealists' effectiveness. Despite governments' vows to deport those whose applications for refugee status the state had refused, most rejected asylum seekers continued to reside in Western European countries in large numbers during the 1990s and 2000s. Unfortunately, it is difficult to quote exact numbers of those deported from the EU because, as Liza Schuster acknowledges, '[s]tatistics on deportation are not compiled systematically, are frequently incomplete and often it is difficult to work out exactly what or who is being counted'. Statistics that are available show that between 1993 and 2000, Germany only managed to return 25 percent of its rejected asylum seekers, while the UK deported only 11 percent between 1996 and 2000. Of course, European governments' inability to sometimes enforce policy changes because of uncompromising sender states, large costs and inefficient bureaucracy further complicated efforts to impose restrictive asylum policies. European governments' inability to sometimes enforce policy changes because of uncompromising sender states, large costs and inefficient bureaucracy greatly complicated efforts to impose restrictive asylum policies. But this paper seeks to underline the underappreciated role of pro-asylum actors, such as NGOs, the UNHCR, human rights lawyers, pro-asylum political parties and media outlets who also contributed to low deportation numbers by successfully challenging governments' attempts to implement more restrictive asylum policies through a variety of avenues.

During the 1990s, European governments funded NGOs to help refugees and asylum seekers adjust. Policy-makers consulted NGOs and the UNHCR (witness the *1996 Irish Refugee Act* and the 1990 Martelli and 1997 Turco-Napolitano laws in Italy). The media quoted NGOs and those seeking asylum relied on NGOs for assistance and advocacy. Accordingly, most asylum seekers successfully remained

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in the countries in which they sought asylum. Though they faced constant problems in their new countries relating to employment, accommodation and integration, they ultimately received an asylum of sorts. Acknowledging the difficulty that governments faced when attempting to deport asylum seekers in the 1990s, the latter years of the 2000s sparked strident moves to block sympathetic actors' avenues to affect asylum policies. The Europeanization of asylum policy in the 2000s also served to further restrict asylum policy. Although intra-national discussions on migration in Europe began in the 1980s, the 2000s marked the reintegration of asylum policies into the domain of Brussels. The 1999 Amsterdam Treaty signalled the beginning of the supra-nationalisation of asylum and the end of the differences between the Commission and the member states concerning asylum and migration policy. Up until then member states came together via European trans-governmental working groups to consider these policy issues. Significantly, these groups excluded the European Commission. When the member states agreed to bring the issue back under the competence of the Commission, it did so only after it became firmly established under the responsibility of the EU's third pillar, which represented security and justice affairs.

Governments also improved their deportation arrangements by instigating agreements with sender states and began to process asylum claims more rapidly, thereby diminishing asylum seekers' chances to integrate into host societies during the processing of their applications. Nonetheless, pro-asylum actors' increased use of the expansion of national courts' powers – a development Charles Epp termed the rights revolution – to dispute the imposition of more parsimonious asylum policies meant that governments failed to exert the same control over their asylum policies as occurred in the 1930s. Despite the recent economic downturn, this trend is likely to continue into the 2010s.

References to countries' histories of humanitarian, emigration and offering asylum by pro-asylum actors will become less effective as compassion fatigue will become more widespread. As Niklas Steiner has noted in his study of asylum debates in three European countries, references to the past repeatedly fade over time as if 'some kind of statute of limitations on moral guilt had run out'. The current economic stagnation and recession is likely to accelerate this trend further. Indeed if one were to agree with a 1997 European Commission survey on racism and xenophobia that concluded that people dissatisfied with their life circumstances, who fear unemployment, remain insecure about their futures and hold little confidence in public authorities are most likely to support xenophobic views, future asylum seekers are in for a difficult time in the 2010s. Nonetheless, asylum seekers that manage to apply for asylum in European states are still likely to receive access to a host of rights that their 1930s' forerunners had to do without because of pro-asylum actors' continued support and advocacy.

Conclusion

The real challenge facing pro-asylum actors in the 2010s will be to safeguard asylum seekers unable to reach Europe to apply for protection. Governments are making it increasingly difficult for potential asylum seekers to ever seek refuge in their countries in the first place by externalising the asylum process. As reaching western countries to apply for asylum becomes more difficult to achieve, many potential asylum seekers will rely more and more on human traffickers in order to enter western states. This will lead to perilous journeys across seas in rarely seaworthy

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boats or concealed travel in truck and ship cargoes. United against Racism estimated in July 2009 that over 13250 people died trying to enter Europe since 1993; the majority of these deaths have come in the 2000s. Though many governments will defend these policy changes by saying they merely want to stem the number of “bogus asylum seekers” and “economic refugees” arriving, continued efforts to externalise asylum will affect all asylum seekers in equal measure.

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4. IMMIGRATION, ASYLUM AND INTEGRATION IN EUROPE

EUROPEAN IMMIGRATION AND ASYLUM POLICY: CHALLENGES AND TRENDS

Migration is not a new phenomenon in Europe. Europeans have been migrants themselves for a long time. Migrants from both inside and outside Europe – workers who were often joined only years later by their family members – have been arriving in a number of European countries since the mid 1950s. For over two decades refugees from different regions of the world have been coming to Europe in search of a place where they can live in dignity, without fear of persecution and discrimination.

A common immigration and asylum policy has developed during the last one and a half decades among EU Member States, as a result of dramatically changing migration movements and patterns in Europe. This policy area of the EU can be divided into three phases, which characterize the development since the founding of the European Community:

PHASE 1: 1957–1990: The European Community has no competences in the field of migration and asylum; policy coordination only occurs in some fields of migration and asylum such as transnational crime and terrorism.

PHASE 2: 1990–1999: Intergovernmental cooperation: Given the high numbers of asylum seekers, some European States agree on three important regulations (see below)

PHASE 3: since 1999: Asylum and migration policy is a common task in the EU. In order to control the high numbers of asylum seekers with the Treaty of Maastricht (drawn up in 1991, signed in 1992 and implemented in 1993), asylum policy is regarded as a policy task of common interest, to be regulated by the European Union.

The Schengen Agreement (agreed upon in 1995) with its border control mechanisms and the Dublin Convention (1997) with the save-third-country-regulation makes it easy to control and send back undesired migrants entering one of the Schengen Member States. This established mechanisms resulted in decreasing numbers of asylum seekers and increasing numbers of undocumented (so-called illegal) migrants.

EU policies on immigration, asylum, border controls and crime are subsumed under the term »Justice and Home Affairs (JHA)«. In 1997, the EU incorporated the Schengen Agreement on borderless travel (initially concluded among a smaller group of Member States) into the Amsterdam Treaty. As a result, border and immigration cooperation became legally binding, though there was still a requirement of unanimity. Shortly after the Amsterdam Treaty had entered into force, EU leaders agreed on a detailed list of goals for EU asylum and immigration policies, called the Tampere Programme. In 2004, the governments took stock and added some new goals, renaming it the Hague Programme. Shortly thereafter, the Member States used a special passerelle clause in the Treaty of Nice to move decisions

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on asylum and immigration (except for questions on legal migration) to qualified majority voting. Further changes will be made in the field of JHA under the Treaty of Lisbon.

In October 2008, the European Pact on Immigration and Asylum was enacted by the European Council. The Pact is intended to provide a roadmap for future European immigration policies and sets out five priorities for action: legal immigration and integration, control of illegal immigration, effective border controls, a European asylum system, and migration and development.

None of these are new areas of EU action: both the Tampere (1999–2004) and Hague Programmes (2005–2009) were conceived and articulated with the aim of addressing all aspects of migration to Europe. While ambitions to create a single EU immigration policy have been scaled down in recent years, the dynamics of policy development in each field differ greatly.

Although the Member States differ over details, they all have a common interest in a strong external border. But this consensus has been lacking in almost all other areas, including cooperation on the integration of migrants in various countries. While political rhetoric about demographic change and the role of migration in Europe's future competitiveness has increased exponentially, only the bare minimum has concretely been achieved. Initially, the Hague Programme committed Member States to creating a common asylum system by 2010, but at this point the European Council is more modest about what can be achieved. For example, the joint processing of asylum applications envisaged by The Hague Programme is no longer discussed. Instead, they are now just considering the possibility of a proposal for a single procedure by 2012.

Generally, the European Pact on Immigration and Asylum moves the EU away from specific and ambitious harmonisation projects and towards committing Member States to political objectives. This raises questions about how much impact it will actually have on European policies. Not only does the Pact contain very few specific initiatives, and none on a grand scale, it also defines more of what cannot be done as opposed to what can. The objectives set out in Tampere and The Hague have not exactly been left unfulfilled, but the final content of the legislation that has been agreed upon is largely unfulfilling.

Equally, integration concerns – fuelled by violence and social problems – have prompted significant policy changes at the national level, including greater focus on language testing and limits on cultural and religious practice. This was not translated into EU legislation, and work in this area remains restricted to articulating general principles and exchanging information. The external dimension of migration – now re-branded as the »Global Approach« – has been given new impetus. In June 2008, the EU agreed on mobility partnerships between several Member States and Cape Verde and Moldova, partly in reaction to the difficulties encountered in harmonising diverse immigration needs and policies.

The panic caused by high numbers of asylum applications in the 1990s, which led to much of the initial work on a Common European Asylum System, has given way to a focus on so-called »illegal« residence and working. This is driving a number of EU initiatives, such as the current proposal on sanctioning employers of third-country nationals working irregularly and the recent agreement on the Returns Directive. Other apparent points of growing convergence are an increased focus on attracting high-skilled workers, along with continued ambivalence towards medium and low-skilled migrants. Regardless of its ultimate role, the Pact clearly heralds a more conservative approach to immigration, in line with changing public and political attitudes.

The future immigration policy in Europe faces multiple challenges, outlined in a recent policy study by Steffen Angenendt. In his recommendations, he emphasizes the need for a coherent immigration policy in Europe. The policy recommendations of churches develop the vision of a »balanced approach« in EU migration and asylum policy based on migrants'

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human rights.

In order to enforce migrants' human rights, Network Migration in Europe furthermore recommends that all EU Member States ratify the 1990 UN Migrants' Worker Convention. The 1989 UN Convention on the Rights of the Child should also be duly respected. All individuals present on EU territory, be they EU nationals and regular or irregular migrants, should have access to basic social services such as health care and education for their children. However, currently some EU Member States bar access to services such as health care and education to undocumented migrants.

Adapted from articles by Elizabeth Collet: The EU Immigration Pact – from The Hague to Stockholm, via Paris, London: European Policy Center, October 2008; Andrea Schmelz, European Immigration and Asylum Policies, 2007 (www.migrationeducation.org)