Asian migration to Europe and the development of a Common European Migration and Refugee Policy

Angenendt, Steffen; Orren, Henry Edward

Sammelwerksbeitrag / collection article

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German Council on Foreign Relations

Asian Migration to Europe and European Migration and Refugee Policies

by Steffen Angenendt and Henry Edward Orren

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Introduction

For many, the discovery in the summer of 2000 of the corpses of 58 Chinese inside a sealed cargo container in Dover has come to symbolize the desperate lengths that Asian migrants have been willing to go to in order to reach European shores. But the story of Asian migration to Europe is much too long and complex to be summed up by any one event, no matter how tragic it may be. Not only with regard to Asia, but in general, shocking events and popular images of impoverished, desperate migrants are widely distributed by Europe's media outlets. On the other hand, certain immigration programs such as those targeted at technology specialists from abroad are widely viewed as beneficial. Thus, European migration and asylum policies are characterized by a paradox: It has become abundantly clear that Europe must open additional legal channels for migration in order to cope with the immense challenges posed by demographic and economic changes and growing international migration 'pressure,' be it forced or voluntary migration. Political leaders in almost every EU state have openly conceded that Europe's future prosperity and stability will depend to a certain extent on developing a comprehensive immigration policy capable of attracting and integrating immigrants. They have failed, however, to sell the idea to their electorates. This failure is due in large part to a widespread fear of rising populist and far-right movements in most European states. These groups owe much of their popularity to the popular perception that immigration is already out of control. They offer simple solutions to complex problems, and often promise to cut off immigration entirely—an option that is impossible in Europe's democratic states.

For the time being, the response of the EU Member States and the European institutions is focused on limiting legal immigration and reducing irregular immigration—a policy known as 'fortress Europe.' In light of the aging and shrinking of Europe's population and the demands of globalisation for mobility and multiculturalism, this policy is seriously short-sighted and counterproductive. This paper first describes the current trends in Asian migration to Europe and then analyses the European response to international forced and voluntary migration with special attention paid to the policy shifts that have occurred in the last decade. The paper concludes with some proposals for future Asian-European co-operation in this policy field, which was identified by EU Council President Josep Piqué at the June 2002 Asian European Foreign Ministers Meeting as 'probably the most important item of political and social debate we will have to deal with over the next few decades.'

Current Trends of Asian Migration to Europe

According to the latest UN Population Division statistics the fifteen Member States of the European Union are now home to some 26 million migrants, making the foreign-born population slightly more than 7 percent of the total.[1] The majority of these are not Asian. Instead they are primarily from the former Communist states of Central and Eastern Europe and from the Balkans or from other EU member states. Still, one only needs to look around in any of Europe's increasingly multicultural urban centres to know that people from Asia are having an impact. In order to know precisely how much of a factor they really are, it is first necessary to get a rough idea of their numbers, but this kind of data is very difficult to obtain. A main reason for this is the fact that due to restrictive European immigration policies many migrants from Asia and other regions are irregular, entering Europe clandestinely and working in the shadow economy without ever registering or showing up in official statistics.

<u>Asian Immigrants in Europe</u>

All European countries have been under a labour recruitment stop since the mid 1970s. This means that there are hardly any channels for legal migration. In addition to asylum for refugees, the only ones that are still available are short term labour contracts, family reunification, special recruitment schemes for highly skilled workers, programmes for foreign students, and special citizenship programs for ethnic communities abroad. The data recorded on legal migrants includes all of these. For obvious reasons they do not include irregular immigrants. As such they should not be used as final accounting of the migrant population, but rather as a guide to observing migration trends, for example in terms of origin and destination.

Turning to the data, some important new trends of Asian immigration to Europe appear to be under way. Firstly, Asian migration appears to be diversifying both in terms of the source of flows and their destination. Traditionally the United Kingdom and France owing to their colonial histories in the Indian sub-continent and Southeast Asia have had Europe's largest Asian populations, and in recent years the Asian inflows to these countries have intensified. In the UK, for example, Asians now make up 17.5 percent of the total foreign population, the

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[1] International Migration 2002, United Nations Population Division, Department of Economic and Social Affairs, http://www.un.org/esa/population/publications/ittmig2002/ittmig2002.htm

largest proportion in Europe. In recent years other European states too have become important destinations for Asian migrants. Germany, for instance, which has long had an established Turkish population is now home to 85,000 Vietnamese, 55,000 Sri Lankans, 43,000 Chinese, 38,000 Pakistanis, 34,000 Indians, and 34,000 Thais, as well as significant Filipino, Korean, Malaysian, Indonesian, and Bangladeshi populations.[2] Italy too now has a sizeable Asian population: 61,000 Filipinos, 47,000 Chinese, 30,000 Sri Lankans, 25,000 Indians, 15,000 Bangladeshis, 14,000 Pakistanis, and small numbers of other Asian nationalities. Data published by the Organization for Economic Co-operation and Development (OECD) show that the numbers of nationals from 11 leading sending countries in Asia[3] have become noticeable in other European states as well. (See Table 1)

Table 1: Stocks of Foreign Nationals, 1999

Country	Stock of Foreign Nationals (1999)	Largest Asian Groups
Denmark	259,400	Pakistan (7,100), Sri Lanka (4,900), Vietnam (5,000)
France (1990)	3,596,600	Vietnam (33,700), China (14,100), Sri Lanka (10,300)
Germany	7,343,600	Vietnam (85,400), Sri Lanka (55,100), China (42,900)
Italy	1,252,000	Philippines (61,000), China (47,100), Sri Lanka (29,900)
Netherlands	651,500	Indonesia (8,700), China (8,200), India (3,200)
Spain	801,300	China (24,700), Philippines (13,800), India (8,500)
Sweden	487,200	Thailand (5,500), China (4,200), Vietnam (2,600)
United Kingdom	234,200	India (153,000), Pakistan (94,000), Bangladesh (55,000)

Source: Trends in International Migration: 2001, OECD, 2001

As Asian immigrant populations grow in numbers and diversify in terms of destination and source, their impact is felt more and more. However, there are a number of reasons why the magnitude of the Asian migration to Europe should not be overstated. For one, Asian migrants tend to be concentrated primarily in large urban centres, a fact which holds true for Europe's other immigrant groups as well. In Germany, for example, the foreign populations in the metropolises of Berlin and Hamburg are about 13.5 and 15 percent, well above the national average; the highly urban federal state of Hessen, which includes Frankfurt a.M. and Germany's largest international airport has the country's largest immigrant total at

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[2] *Trends in International Migration: 2001*, OECD, 2001, p. 65

[3] Bangladesh, China, India, Indonesia, Malaysia, Korea, Pakistan, The Philippines, Sri Lanka, Thailand, and Vietnam.

approximately 27 percent.[4]   Thus, while Asian immigrants are very visible members of society, they do not directly impact on life in all parts of the host countries.

From the point of view of the Asian states where migration is a seeming fact of life, migration to Europe is hardly the dominant feature. Indeed, the true story of Asian migration is still one of migration within home countries and within the region and only to a minor degree movements to other regions of the world. Even in the context of emigration out of the region, Asian migrants' rush to Europe needs to be put in the proper perspective. Europe is the primary destination for some groups, such as West Asians (including Middle Easterners), but the aggregate migration of all Asian groups to North America far exceeds Europe's total. Even migrants of Indian nationality with their historical ties to and strong communities in Great Britain are more than six times more numerous in the United States and Canada than in the UK.[5]

It is also important to remember that the actual presence of Asians in the European population is masked to a certain degree by the fact that many migrants have become citizens in the countries they have settled in. In Belgium, for example, over the last decade an average of about 150 Indians per year have acquired Belgian citizenship, 172 when the last figures were released in 1999. [6] The data from Denmark, France and Spain too show that over the past decade thousands of Pakistanis, Sri Lankans and Indians have been naturalized in those countries.[7]   Other Asian groups to acquire nationality in these European states include migrants from Thailand, the Philippines, Vietnam, and China. As one might expect, the United Kingdom, which for historical reasons has the closest ties to South Asia has by far the largest contingent of new citizens of South Asian origin. Indeed, roughly 10,000 of them or more are naturalized in the UK every year, 14,786 when data was last reported in 1999.[8] There are also thousands more from the Middle East and the remainder of Asia.

One Asian group that is routinely neglected is Central Asians. This is largely because their

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[4]   http://www.bundesauslaenderbeauftragte.de/daten/tab12.pdf

[5]   *Trends in International Migration: 2001*, OECD, 2001, p. 65; The data also show that a greater proportion of the Indian nationals in Britain acquire citizenship than those in America. This does not, however, make up for the shortfall. See below.

[6]   *Ibid*, p. 334

[7]   *Ibid*, pp. 335-40

[8]   *Ibid*, p. 341

numbers are negligible in most of Europe. In Germany, however, they now make up a vast and still growing segment of the population. Most of the immigrants in this group are ethnic Germans who despite long separation from Germany, centuries in many cases, have heretofore been allowed to acquire German citizenship almost immediately. But in the sociological sense (and often culturally and linguistically as well) they are essentially foreigners. Their numbers are indeed prodigious: over 100,000 Kazakhs acquired German citizenship in 1995 and a somewhat lower number in each year since, 83,478 at last reporting in 1998. [9] To put these figures in perspective, in the latter half of the nineties twice as many Kazakhs were naturalized in Germany as Turks, historically Germany's most numerous and visible immigrant group. However, the Kazakh immigrants have a special legal status as ethnic Germans, which gives them virtually immediate access to such critical resources as government services and the labour market and thus more of an incentive to move. The same laws have enabled many thousands more of German and Jewish ancestry from the Russian Federation to legally enter Germany as well.

Refugees and Forced Migrants

One major data source of migration that needs to be included in any estimate of the overall migration total is the amount of asylum applications. However, it must be emphasised that forced migrants are a very special group and if they are officially recognized as refugees they enjoy certain privileges under international law. Other migrants do not have a comparable legal status.[10] Reliable and detailed statistics are kept on the numbers of asylum applicants, their countries of origin and destination, and the determinations made by review boards on their legal status. On this score, of the forty top countries of origin of asylum seekers entering Europe (not just the European Union) fourteen were Asian[11] in the first two thirds of 2002,

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[9] *Ibid*, p. 336

[10] According to the most current statistics available, Europe (broadly defined) has a refugee population of 2.2. million out of an overall foreign population many times larger. See *UNHCR Statistical Yearbook 2001*.

[11] The definitions of 'Asia' and 'Europe' vary and can be controversial. The broadest definition of Asia and the one relied on in this paper is the UN Population Division's definition, which breaks the continent into four areas: Eastern Asia (ranging from Mongolia, to Japan, to the southern border of China), South-central Asia (from Sri Lanka, India and Pakistan, to Kazakhstan, to Burma), South-eastern Asia (from Thailand, to the Philippines, to Indonesia), and Western Asia (from the Arabian Peninsula to the Caucasus, to the Mediterranean). 'Europe' is broken into Eastern Europe (from the Russian Federation to Bulgaria, to Poland), Northern Europe (from Ireland and the United Kingdom to Scandinavia and the Baltic states), Southern Europe (from Iberia to Greece and the Balkans), and Western Europe (France, the Benelux countries,

which reflects recent trends.[12] Indeed, of the 212,125 Asylum Applications lodged from January to August 2002, 84,221 or roughly 40 per cent concerned Asian countries of origin. Iraq is the largest country of origin of all asylum seekers in Europe. In the first two thirds of 2002 more than 19,000 Iraqis applied. Even small Asian countries such as Georgia and Armenia are the sources of thousands of Asylum applicants per year. (See Table 2)

Table 2: Asylum Applicants in Europe (January-August 2002)

Country of Origin	Asylum Applicants in Europe (Jan-Aug 2002)
Iraq	19,263
Turkey	16,497
Afghanistan	10,373
Georgia	5284
Armenia	5059
China	4810
Iran	4633
India	4229
Vietnam	2621
Azerbaijan	2588
Sri Lanka	2530
Syria	2303
Pakistan	2095
Bangladesh	1936
TOTAL Asia	84,221
TOTAL South Asia	10,790
All Countries	212,125
Proportion Asian	39.7 %
Proportion South Asian	5.1%

Source: Trends in Asylum Applications, January - August 2002, Monthly Applications Submitted in Europe by Origin, 2002, http://www.unhcr.ch/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=STATISTICS&id=3d94530b7&page=statistics

One has every reason to believe that these numbers are perfectly accurate. But what the numbers may leave out are the many persons whose cases never come before the review boards. There is no telling exactly what proportion of those who in a sociological sense are refugees or forced migrants apply for asylum, but one must suppose that the rate is

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Germany, Austria, and Switzerland). See http://www.un.org/esa/population.

[12] Trends in Asylum Applications, January - August 2002, Monthly Applications Submitted in Europe by Origin, 2002. Full year statistics that exist for the each year of the past decade paint a similar picture. As the intensity of regional conflicts has waxed and waned the asylum totals increase and decrease correspondingly.

substantially lower than 100 percent. For as governments across Europe enact stricter standards for granting refugee status, the likelihood of being accepted declines as does the incentive to apply, while the incentive to seek other ways of entering Europe stays the same. The data for the last few years show that application rates are indeed tailing off in some EU countries, but increasing in other member states. This may have to do with an increased fear of denial on the part of migrants than lower levels of migration. Similarly, if one country or another is rightly or wrongly perceived as safer or to be more receptive than others, then refugees may choose to apply there.[13] In addition, most recently released UNHCR statistics indicate that application rates are decreasing in the EU. Whereas in 2001 asylum applications in the world's leading industrialised states rose by an estimated 8 percent over the previous year's total, they rose by only 3 percent in Europe and actually declined by 1 percent in the Member States of the European Union.[14] Those who must flee persecution in their habitual places of residence but are unable or unwilling to apply for asylum abroad may either become internally displaced within their country of origin or may become what are known as irregular immigrants, those who enter another country without legal permission or documentation. The most common way irregular migrants enter foreign countries is to obtain a standard tourist visa and simply remain in the country as so-called visa-overstayers.

Family Reunification

Family reunification is the most important avenue for legal migration into Europe, and it naturally figures highly in the process of policy making. All European states have laws and

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[13] Acceptance rates naturally vary according to the countries of origin. Since the political change in Afghanistan, which had for some years been the leading origin of refugees throughout the world, Afghan refugees have been increasingly encouraged to return home. Many European states (Belgium, Denmark, Germany, and the Netherlands) have delayed pending decisions while they evaluating their positions. Some have lifted their delays and now tend to turn down Afghan applicants. Great Britain and France have actually negotiated agreements with the new Afghan government and the UNHCR on arrangements for repatriation. The EU itself also funds a 'Return Action Programme' including a special 'Afghanistan Programme' with an annual budget of about The UNHCR's position is that decision delays should be lifted for the most vulnerable groups and that those willing to repatriate should be supported. (Bundesamt für Migration und Fluchtlinge: www.bafl.de/template/aktuelles/ee_brief_2002/content_eebrief_2002_10.htm)

[14] *UNHCR Statistical Yearbook 2001*, p. 13. The application decline is more dramatic in some countries than in others. Belgium, Italy, and the Netherlands reported the sharpest declines at –42, -38, and –26 percent respectively. This is not to say that Europe is somehow not bearing its fair share of the world's refugee burden. Indeed, looking at the question from a more long-term perspective, in the last two decades the world's industrialised countries have officially admitted around 2 million asylum seekers, 1.6 million of them (80%) admitted by European countries.

are parties to international human rights conventions that enshrine the family as the basic unit of society and the principle that the family structure must not be unduly obstructed by the state. However, as a point of law this does not translate directly into unrestricted family reunification privileges for immigrants' and European citizens' foreign spouses and children. While EU law and national laws all provide some rights of family reunification, nowadays it is frequently either restricted, subject to waiting periods, or does not include full, immediate access to the labour market. It is important to note that European jurisprudence generally says that for the purposes of reunification, the 'family' means only the immediate family of spouses and children; it does not include other relations who may habitually live in the same household, making for a narrower definition than would be used in other parts of the world.

In recent months Denmark has enacted some of the most thoroughgoing reunification laws, and its example may be a sign of things to come. Under Danish law family reunification is not allowed for anyone over 60 years old. For younger married couples to get family reunification, both spouses must be at least 24, and they must be able to demonstrate that they have sufficient resources to support themselves. Denmark also has an unusual new regulation known as the '51 per cent rule,' which says that, except under very special circumstances, in order for a person legally living in Denmark to be granted family reunification with a spouse from a country outside of the European Union, the couple must share a collective attachment to Denmark that exceeds their collective attachment to any other country. In addition to having the effect of curtailing legal immigration, such laws ostensibly serve to prevent forced and bogus marriages. [15]

Irregular Migrants

Irregular migrants are the last group making up a significant component of the migrant total. There are various ways of becoming an irregular migrant: to enter a country without permission (i.e. without a visa), to remain in a country past visa expiration, or to take up employment without a permit. Naturally, these modes of becoming an irregular migrant are not mutually exclusive. It is also possible to start as a regular migrant and later become irregular and to be irregular and later to be granted legal permission to stay and/or to work, in

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[15] See Catherine Hall Uttenthal & Henry Edward Orren, 'When a Floor Becomes a Ceiling: Danish Immigration Law and International Human Rights Conventions' (unpublished manuscript, 2002).

other words to be regularised. Irregular immigrants are sometimes smuggled or trafficked into Europe by international criminal organizations and sometimes participate in illegal activities when they arrive, for example to pay debts to smugglers. This being the case, they and those who employ or otherwise assist them risk deportation or prosecution if they are discovered. Of course, irregular migrants do not register with any government agencies or do anything to reveal their presence. On the contrary, they do everything they can to avoid detection, sometimes going so far as to destroy any travel and identity documents they may have to conceal their origins and routes. Assistance networks throughout the regions make the whole process possible. Data from law enforcement agencies on the number of persons intercepted at border crossings and caught illegally residing in the member states are a starting point for making an estimate. According to recent press reports, Europol, the European Union's law enforcement arm, estimates that about 500,000 immigrants enter the EU illegally each year, a substantial number of them from Asian countries. An estimated 400,000 of them eventually become asylum applicants.[16]

Looking at current migration from Asia to Europe raises the question of its possible development in the future. In general, we can expect that the overall level of Asian migration will increase. Labour migration will remain important, as there will continue to be a need for at least highly skilled workers and service personnel. In recent years some European countries—notably Germany—have tried to fill labour market shortages through recruitment schemes, for example those aimed at Indian Information Technology specialists and Southeast Asian health workers. Such programs are likely to proliferate in the next few years. As far as forced migrants are concerned, even if some long-standing refugee producing conflicts such as the one in Afghanistan are solved, it is likely that new conflicts will arise in regions where virulent ethnic and religious fault lines exist. In addition, from the point of view of those already settled in Europe, the demand for family reunification will almost certainly increase. Meanwhile, given the income disparities between richer and poorer states and regions and the rapid population increase, which will bring the developing world's population to an estimated 90 percent of the world's total by 2050, immigration pressure is certain to keep rising. There is bound to be an increase in intermediary players like ethnic networks and trafficking organisations, which will assist would-be migrants to reach their destinations. The second part

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[16] *Der Spiegel*, 25/2002, p. 117

of this paper analyses in detail the political mechanisms being created to manage forced and voluntary migration to Europe, which in the 1990s has become the most important domestic political issue in many European countries.

Major Shifts in National European Migration and Refugee Policies in the 1990s

During the 1990s, in almost all EU countries the political perception of immigration underwent a dramatic change. This change occurred in the face of momentous events such as the fall of the iron curtain and the outbreak of violent conflicts all over the world. In this new environment would-be migrants from the former Soviet bloc enjoyed new freedom to travel outside their home countries, hundreds of thousands of civilians from places like Central Asia and the former Yugoslavia were forced from their homes, and the EU countries found themselves in the position of having to absorb an extremely large influx of new migrants. In Germany, for example, immigration tripled from 1990 to 1993 to the point that the local German authorities were completely overburdened with housing and processing all the newcomers, mostly ethnic Germans and asylum seekers. The system's inability to keep immigration satisfactorily 'under control' triggered a wave of ant-immigrant sentiment and even some very ugly incidents of violence targeted at foreigners. The situation was not helped by a new breed of populist politicians who sought to reap political profits from the public's unease about immigrants. Even in those member states not directly affected by increased inflows, asylum seekers were increasingly equated with economic migrants abusing national asylum systems. Correspondingly, all countries have shifted their political priorities from immigration and refugee protection to fighting irregular immigration.[17]

Refugee Policy: Furnishing Fortress Europe

With regard to refugee policy all European countries have put limits on access to asylum procedures, accelerated the decision and appeals processes, and restricted refugees' labour

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[17] The following section is based on SOPEMI Reports, U.S. Committee for Refugees Country Reports, and European Council for Refugees and Exiles (ECRE) Country Reports (2001), http://www.ecre.org/publications/countryrpt01.shtml, and the US Committee for Refugees. World Refugee Survey (2002), http://www.refugees.org/pub/wrs02b.cfm, both 24 September 2002. See also Steffen Angenendt, Imke Kruse, Forced Migration and Refugee Protection in the European Union, in: Steffen Angenendt and Carolina G. Hernandez (eds.), Foreign Workers, Refugees, and Irregular Immigrants: Political Challenges and Perspectives for Asia-Europe Co-operation, Tokyo: JCIE 2002 (forthcoming).

market access. Some countries—especially Southern European countries—have combined these policies with new forms of temporary protection. Others have instead concentrated on regularisation campaigns of irregular migrants to re-establish control of the flow of forced migration.

Since the early 1990s, Germany and Austria have been particularly burdened with asylum seekers. Along with the Netherlands they were the first countries to introduce stricter conditions for access to asylum procedures. Subsequently, other EU countries soon adopted these restrictive measures, with regard to six aspects.

New concepts: "safe countries of origin" and "safe third countries"

In most European countries except for Belgium, Finland, Ireland, and Italy, asylum seekers have to provide far more proof of their political persecution if they come from so-called "safe countries of origin". These are countries considered to be free from persecution, and they are usually listed in the national foreigners laws. Asylum applicants from these countries have to convince the authorities in an accelerated procedure that they are subject to individual persecution.

In addition, the so-called "safe third country" concept allows the respective government to send asylum seekers back to any country they crossed before arriving at their final destination. This principle is based on the claim that applications should be filed in the first "safe" place. The list of "safe third countries" usually includes EU member states as well as neighbouring states. This means that an applicant may be unable to apply for asylum in any of the member states if he or she passed through another safe third country. To qualify as a safe third country, the country in question must observe international human rights standards and the non-refoulement principle of the Geneva Convention. Austria, Denmark, Finland, France, Germany and the United Kingdom make use of this principle even in cases of mere transit through a safe third country.

Acceleration of asylum procedures

Many states have recently introduced time-constraints, limited procedural safeguards, and restricted possibilities to appeal asylum decisions. A typical example is the Netherlands, where three measures new measures have been introduced: appeals are replaced with a faster hearing

in combination with an investigation procedure, the examination period of applications is limited to six months, and the grounds for refusals will be revised. As a result, in 2001, in about 80 percent of all cases a decision was reached within six months. In the United Kingdom asylum seekers must now complete a form that, if applicants are incapable of filling them in proper English or simply fail to submit the form within the requested 14-days-period, suffices to reject the asylum application. In France, Greece, Italy and Portugal all border applications are handled by means of accelerated procedures. Generally, safeguards are limited in these procedures where, like in Denmark and Finland, the right to appeal may be restricted, and the extent of legal aid may be reduced. In Germany, Denmark and Spain all asylum seekers are entitled to legal assistance at any time of the procedure. In several member states forced migrants who are subject to accelerated procedures even have limited social rights, e.g., they are not entitled to medical screening and have no access to education.[18]

Lowering Protection Standards

As a complementary measure to these restrictive reception policies, most EU member states have introduced a special status for civil war refugees: Germany offered temporary protection for refugees from Bosnia-Herzegovina and from Kosovo, and according to the 1997 Swedish Immigration Law, foreigners may be granted residence for humanitarian reasons, for instance, if they are threatened with torture or other forms of inhumane treatment, and refugees from civil war regions may be granted a two-year residence permit.

In the United Kingdom, in order to avoid the overburdening of asylum procedures in cases of a mass influx of refugees, an "exceptional leave to remain" was introduced on the basis of humanitarian grounds or unsettled conditions in the countries of origin. This status can be granted for four years (under certain conditions also to rejected asylum seekers). It has been used for Bosnian refugees for example. Similar provisions were developed in Spain.

In France, the leftist government that ruled the country from 1997 to 2002 passed a new law for foreigners that also granted refugee status to a larger group of immigrants by broadening the range of legitimate reasons qualifying for protection. The government introduced the concept of "territorial asylum" to victims of non-state persecution, to rejected asylum seekers

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[18]   Directorate General for Justice and Home Affairs. Comparative Analysis of Reception Conditions for Persons seeking protection in the Member States of the European Union. Brussels 2000: 34.

who could face torture, and to people whose life would be under threat in their home country. In practice, this status was only granted in 30 cases in 1998.[19] In 1999 Greece also introduced a temporary status for rejected asylum seekers who cannot be returned for humanitarian reasons. So far, this status has been granted mainly to refugees from Iraq.

Deteriorating Benefits and Accommodation

In principle, asylum seekers are provided with accommodation, basic health care and social benefits in all EU member states. However, during the 1990s several states reduced these benefits below the standards of welfare benefits for citizens, and certain groups of forced migrants have been totally excluded from these benefits, for instance those who lack personal papers or who have committed criminal offences. These individuals must refer to charitable organisations, which are often overburdened. In a number of countries, material assistance has been substituted for financial aid to reduce economic incentives to apply for asylum.

Detention Centres and Deportation

In many EU countries detention centres have been built for irregular immigrants or those new immigrants who are denied entry at the border. Thus, detention at the beginning is used to obtain information about travel routes and identities of the persons seeking protection to ensure repulsion at the border, while detention at the end of the procedure is used to facilitate deportation. In some countries, living conditions in these centres have been seriously criticised by human rights groups. In addition, in all EU countries substantial efforts have been made to deport rejected asylum seekers. In Austria, for example, this even holds for asylum seekers who are in a second-instance appeal procedure.

In several states (e.g., Denmark, Germany, the United Kingdom) asylum seekers may now be distributed throughout the country to ease the burden on individual communities and to prevent the disappearance of rejected asylum seekers. In Austria, since the 1997 Asylum Act asylum seekers may be detained during the procedure to ensure their deportation in case their request is denied. In Greece, detentions are routinely used to reduce irregular immigration (in 2001 alone, about 220,000 irregular immigrants were arrested), including a significant

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[19] European Council on Refugees and Exiles (ECRE). Social and legal conditions for asylum seekers and refugees in Western Europe: France. Brussels 2000.

proportion of forced migrants. Some countries even restrict the free movement of individuals seeking protection in a number of ways. For example, Germany and Denmark require applicants to stay three months in a mandatory accommodation that they assign to asylum seekers immediately after their filing of an asylum claim.

All in all, restrictive approaches are having the effect of bringing down the numbers of asylum seekers in the EU member states that implement them. The experience of the 1990s was that asylum applications dropped off when governments introduced restrictive policies. However, they promptly went up in surrounding countries until they compensated by introducing restrictive measure of their own. Thus, a race is now under way to have the most restrictive immigration laws in the region. The trend appears set to continue, and the laws may become more and more restrictive until international human rights standards do not permit them to go any further.

Migration Policies: Makeshift and Masquerade

At present the European Union states offer labour-migrants only very limited channels for legal immigration from outside the EU. In the post war decades most of the heavily industrialised states of Northern and Western Europe enacted Guest Worker programmes to shore up their labour forces and stimulate economic growth. Guest Worker programmes generally took the form state-set quotas for migrant workers or bilateral agreements with other states, and often operated through government offices actively recruiting workers in the countries of origin. The programmes were always meant to be temporary. However, after the recession triggered by the 1973 'oil crisis', most of the state programmes were called off. Since the mid-1970s there has been an official labour recruitment stop. Ironically, the recruitment stop had reverse effects: While it did cut off new labour immigration, it also prompted many of the temporary guest workers to stay in Europe permanently. It thus laid the foundation for the foreign population in today's Europe. Under national and EU law, no job may now be filled by a third state national unless it cannot be filled by a domestic worker or another EU citizen.

Nevertheless, several states are highly dependent on steady flows of migrant labour, and certain exceptions to the 'non-recruitment' policy have been made. For example, various Member States do allow for temporary employment of foreigners in seasonal industries such

as agriculture and tourism. Such contracts are only short term and do not allow for permanent settlement. Foreign students too are increasingly viewed as a potential source of valuable talent for the local economies, and some states now are open to the option of converting student visas into more permanent work visas. The practice is extensive in some states. For example, in 2000 Germany issued 340,000 temporary labour contracts. Such a high figure indicating heavy dependency on foreign labour, even though the recruitment stop officially indicates the opposite. As mentioned above, the most important legal immigration channel today is family reunification. Many states have, however, introduced waiting periods for reunification with spouses and children and restricted access to the labour market. Ethnic communities residing outside of the nation states, such as ethnic Germans in Eastern Europe and Central Asia, also enjoy privileged access to citizenship and the labour market. In addition, most states also administer special recruitment schemes for highly skilled workers. The recruitment schemes for technology specialists are the most well known, but similar programs also exist for a wide variety of professions from employees in international corporations and academicians to performers and specialty chefs. It should be pointed out though that even this kind of recruitment only provides a very small fraction of the labour supply, it still tends to avoid permanent settlement. The German government's Green Card program, for instance, reflects an earnest effort to import technology specialist from outside Germany. But the Green Cards circumscribe the workers' flexibility once they arrive in the country and are limited to five years in duration. In other words, they do not go far enough to genuinely welcome outsiders, and not surprisingly the government has been disappointed with the demand. Programs like this are a start, but alone they will never be an effective solution to Europe's structural deficiencies.

Irregular Migration: Regularisation Policies, Identity Controls and Enforcement

In the 1990s, some EU countries experienced a strong increase in irregular immigration.[20] In order to re-establish control, regularising irregular immigration became a priority especially for Southern European countries such as France, Greece, Italy, Portugal and Spain.

In France, regularisation programs were implemented as early as 1981/82 and again in

1997/98. Approximately 121,000 irregular immigrants benefited from the first program and about 78,000 from the second one. The second campaign was primarily focused on regularising those family members who had already been living illegally in France, especially Algerians and Moroccans. These legalisation campaigns, both of which were introduced by the governing Socialist Party, were very controversial domestically. Regularisation programs have also been a substantial part of migration policy in Italy, Spain, and Greece. Although the primary motive of the regularisation campaigns is to re-establish control over those who have entered the country clandestinely, this policy can also be characterised as a kind of retroactive immigration management strategy, which allows the state to fill employment gaps. In Spain for example, the overwhelming majority of immigrants find employment as agricultural workers, making the largely agricultural southern part of the country highly dependent upon this source of inexpensive labour.

In stark contrast to regularisation policies, several EU member states have recently introduced more stringent identity controls, including a legal basis for fingerprinting asylum seekers (Eurodac). In Denmark for instance, the applicants' fingerprints can be recorded as part of the application procedure in order to establish identity and entitlement to the asylum procedure. Furthermore, Danish authorities have the right to require immigrants to take a DNA test if they seek to invite family members to live with them. Since 1998, most EU states have also required the inspection of travel documents at check-in for so-called "high risk flights", i.e., those flights with the greatest likelihood of carrying potential asylum seekers. As a result, transportation companies have to check the validity of visas of particular travellers. This measure has proven effective in preventing some forced migrants from applying for asylum.

Several EU countries have also turned to military forces to support border authorities, especially in Southern EU countries. The Italian government, for example, reported that in 2001 about 20,000 irregular boat people were discovered with the assistance of military forces, and that at least twice that number is estimated to have slipped into the country undetected. Italy has deployed its navy to Albanian harbours to stop irregular migrants. Greece has deployed land mines on its border with Turkey that since 1999 have reportedly

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[20] Steffen Angenendt, Imke Kruse. Irreguläre Wanderungen und Internationale Politik. In: Matthias Blum, Andreas Hölscher, Rainer Kampling (Ed.). Die Grenzgänger. Wie illegal kann ein Mensch sein? Opladen 2002: 11-24.

killed at least 20 irregular immigrants. Since 1996, more than one million Albanians have been stopped by Greek authorities at the Albanian-Greek border alone. Spain has undertaken substantial efforts to better cope with the growing influx of undocumented immigrants and asylum seekers from the Canary Islands and across the Strait of Gibraltar, coming from the Spanish enclaves of Ceuta and Melilla (in 2001, about 15,000 irregular immigrants from these origins were apprehended).

After the September 2001 terrorist attacks in the United States several EU governments introduced new anti-terror policies that would allow them to better control inflows of migrants and refugees and to monitor them during their residence. As a part of theses measures, national and international data sharing between government agencies shall be improved. Additional measures were discussed to exclude potential terrorists from asylum procedures and to facilitate their deportation.

The German government responded to September 11 with two security laws.[21] First, changes in the association law expanded the state's power to proceed against extremist associations. Secondly, asylum law was modified to completely disallow persons demonstrably planning or supporting acts of terrorism from entering the country. Possibilities for deportation were also expanded.

Even the European Commission deliberated on internal security and published a working paper on the "relationship between safeguarding internal security and complying with international protection obligations and instruments"[22].

To sum up, the immigration and asylum laws of the EU Member States tend to be rather similar, but there are also substantial differences. One reason for the differences is the fact that the EU states—despite their similarities and relative prosperities when compared with other regions of the world—have very different migration traditions. Some countries have historically been countries of emigration, and some of these, like Germany, have become immigration countries only in the twentieth century. Others, like France, have had a longer tradition as immigration countries. These differing historical experiences have repercussions on the level and structure of migration and on the crafting of national policies. To illustrate,

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[21] Cf. http://www.bmi.bund.de/dokumente/Pressemitteilung/ix_61828.htm, 3 September 2002.

[22] Cf. http://europa.eu.int/eur-lex/en/com/wdc/2001/com2001_0743en01.pdf, 3 September 2002.

the foreign presence in the member states varies enormously, from 1.6 percent in Portugal to 36 percent in Luxembourg. This raises the question of how the ongoing political integration under way in Europe will impact this policy field. The removal of internal border controls within the territory has already been accomplished, so it is obvious that consensus must somehow be achieved on the development of a common asylum and immigration policy in order for political integration project to continue. In order to view the issues from this perspective, a brief overview of the cooperation in this area is necessary.

The European Co-operation in Migration and Refugee Policies

The *Treaty of the European Economic Community* signed by six European states in 1957 was the first major step toward European integration to be taken in the post war period and was the precursor of today's European Union. The member states did not envision a common European migration policy for third country nationals, but only the free movement of European Community (EC) citizens. In 1974, the European Council discussed the abolition of internal European border controls for the first time. Ten years later, the European Commission pointed to the necessity of abolishing internal border controls by 1992 and to intensifying external border control, police co-operation and reconciliation in the field of asylum and migration policy. In 1987, the "Ad-hoc Group on Immigration" with five working groups (asylum, visa, communication, false documents, and external border) was appointed for the co-ordination of immigration and asylum policies of the member states.

The first *Schengen Treaty* (1985) established a new form of intergovernmental co-operation between some of the EC member states in the field of migration and asylum policy. France, Germany, Luxembourg, Belgium and the Netherlands agreed upon a step-by-step reduction of border controls. In 1990, the second Schengen Treaty substantiated the project, for example in terms of visa regulations, responsibility for asylum applicants, co-operation of police and judicial authorities, and the establishment of a so-called Schengen Information System (SIS). The latter came into force in 1995. Since then, all EC member states except for the United Kingdom and Ireland have joined the treaty.

The 1990 *Dublin Convention* introduced procedures for determining which member states were responsible for hearing individual asylum claims. The aim was to prevent so-called 'asylum shopping,' the practice of applying for asylum under another jurisdiction after the rejection of an

initial claim. In other words, all refugees are allowed to apply for asylum in Europe only once. With respect to this agreement, the lack of procedural guarantees, e.g. the right to appeal, has increasingly become a source of complaints. Naturally, effective implementation of the Dublin Convention would require a high level of harmonisation of asylum procedures within the EU. Some important steps have been taken to get the Dublin Convention up and running, notably a variety of measures aimed at helping the member states track the secondary movements of asylum seekers after arrival in EU territory. Still, differences on many important questions remain.

In 1992, the *Maastricht Treaty on the European Union* established the EU and helped integrate at least part of the intergovernmental co-operation into Community law: The EC assumed responsibility for visa regulations while the rest of migration and asylum policy remained the responsibility of member states as "matters of common interest". While the Maastricht Treaty did include some measures aimed at harmonising asylum and migration policies, it did not oblige member states to co-operate.

In this sense, the 1997 *Amsterdam Treaty on the European Union,* which came into effect in 1999, represented a profound change. Important parts of migration and asylum policies were brought under the EU's jurisdiction, and an "area of freedom, security and justice" (Article 2) was proclaimed. The member states committed to developing common migration and asylum policies within five years and then – after the casting of a new vote – to decide if majority voting should be applied to this policy field, which would be an important step towards harmonisation. Until this change takes effect in 2004, decision-making will continue to be carried out on intergovernmental basis. In the meantime, common regulations have to be worked out for questions of free movement of all people 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. So far, questions of burden sharing, long-dated visa and right of residence of third country nationals are excluded from the list.

At the 1999 *European Council meeting in Tampere* (Finland), the member states agreed to work towards establishing a Common European Asylum System on the basis of the Geneva Refugee Convention, a Europe-wide fair treatment of third country nationals, common measures to control migration flows, and a European Charter of Basic Civil Rights. The envisioned European Asylum System is supposed to include common standards for a fair and 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. After the Tampere meeting, the European Commission established a so-called 'scoreboard' as a schedule for the development of a common migration and asylum policy. [23]

Since Tampere, the European Commission has emerged as a "pacemaker" of a European migration and asylum policy and has presented nearly twenty communications and proposals for EU directives in this policy field, which, in total, frame a comprehensive and liberal policy.[24] In September 2000, the Council founded the European Fund for Refugees and agreed upon the establishment of Eurodac, a system to compare fingerprints necessary for an effective application of the Dublin Convention. In addition, a Council directive on minimum standards for granting temporary protection in the event of a mass influx of displaced persons has been adopted.

The political importance of these developments in the field of asylum and refugee policy during the last decade can hardly be exaggerated. Yet, as long as unanimity is needed for nearly all decisions, a common European policy will be difficult to establish.[25] There exist numerous severe disputes among member states that need to be solved like the recognition of non-state and gender-based persecution, the access to protection, the human conditions in asylum procedures, regulations of family reunification, the question of temporary protection, the protection of the most vulnerable groups (women and separated children) and the social integration of refugees in the receiving countries.

For the time being, European immigration policy is a work in progress, and no one can say with certainty which direction it will take in the future. The agendas from the Union's regular Justice and Home Affairs meetings show that the questions are very much alive and continue to be hotly debated. However, little of consequence has recently been implemented. There are some signs that the Member States are more and more reluctant to liberalise immigration and asylum policy and critically to transfer authority over the issue to the EU institutions. These policies are still closely guarded bastions of national sovereignty. Nevertheless, if and how the integration of migration and asylum policies plays out, the project will face certain challenges that can already be

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[23] Cf. http://europa.eu.int/comm/dgs/justice_home/pdf/com2000-167-en.pdf, 3 September 2002.

[24] Cf. Steffen Angenendt. Entwicklung und Perspektiven der europäischen Migrations- und Asylpolitik. In: Friedenswarte 1-2 (2002).

[25] The likelihood of a common European asylum policy is widely discussed by Colleen Thouez. Towards a Common European Migration and Asylum Policy? UNHCR Working Paper No. 27. August 2000.

seen on the horizon.

Challenges for the European Countries

Obviously, in the near future, Europe will be confronted with additional migration flows, and some of them also with increasing ethnic heterogeneity. Finding adequate political arrangements for this new reality will be one of the major political challenges in the coming years.

Economic Challenges: Globalisation and Labour Shortages

In the future, all EU countries will need more immigrants. One reason is the demographic process of ageing populations confronting all these societies. This will have repercussions on labour markets, on social security systems, and in a much broader sense on these countries' economic capacity for innovation.

Several EU countries are now facing severe labour shortages, especially with regard to highly skilled workers and low-skilled workers in the service and agricultural sectors. Even in countries with high domestic unemployment these shortages cannot be filled from the domestic labour market, by any combination of currently available strategies.[26]

Strategies so far proposed for Europe to cope with these labour shortages include better integration of unemployed people into the economic process, more older employees, work permits for immigrants who are living in the respective countries but who are not yet allowed to work, promotion of employment amongst women, and enhanced education and training systems. But the economically advanced countries still need to import labour, especially highly skilled labour. Obviously, domestic unemployment is a serious political impediment to doing so. Therefore, strong political leadership is essential to promote the idea of additional immigration. The need to compete for immigrants is already being felt as current intensified efforts by some states to attract "high potentials" demonstrate: the competition for the 'best brains' is under way.

A related aspect is the question of brain drain. During the 1980s this emigration of skilled and

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[26] See for the German example: Report of the Independent Commission on Migration to Germany, *Structuring Immigration – Fostering Integration* Report by the Independent Commission on Migration to Germany, (Berlin, 2001), http://www.eng.bmi.bund.de/Annex/en_14625/Download.pdf

highly skilled persons from less prosperous countries was regarded as a kind of post-colonial exploitation of scarce resources. However, as a result of a more careful evaluation, it has become clear that under certain conditions emigration by skilled workers can have benefits for the country of origin. Some countries like South Korea and the Philippines benefit by training skilled workers, nurses for example, to work abroad, and a substantial number of migrants re-migrate bringing capital and entrepreneurial expertise back home with them. Obviously, the economic effects of emigration depend on the general conditions prevailing in the respective country, especially on the extent of the availability of surplus skilled workers. But sometimes, the emigration of skilled workers actually helps to ease tensions on the labour market. Many Asian countries including Pakistan actively promote emigration in pursuit of various economic and social goals.

Demographic Challenges: Ageing and Shrinking Populations

In addition, most EU countries have rapidly ageing populations. Life expectancy has been increasing for decades while the number of children born per family has decreased. The long term effects are dramatic: The age group with low birth rates will have even fewer new born children for each age group than the generation before them. This means that the number of births will continue to decline in the future. This is radically changing the age structure within countries. Population projections of the United Nations show that in all EU countries (except Ireland) the proportion of people over 65 years of age will double in the next 50 years.

Short-term changes in behaviour cannot significantly hinder this demographic development. It is therefore certain to have considerable consequences for national economic development and the employment markets and to cause serious problems for the social security systems. Countries depend on having a sufficient number of gainfully employed people continuously working in order to provide for a smaller number of children, adolescents, and elderly people. Despite the fact that for nearly two decades inflows of migrants and refugees have clearly been of greater importance in demographic development than natural population growth, up to now European policy makers have not sufficiently responded to this demographic challenge.

According to figures from the OECD, the EU states would have to allow a net immigration of 47 million people of working age, just to compensate for the increasing age burden occurring

between 2010 and 2020.[27] This would be seven times the net immigration that took place between 1985 and 1995. A policy allowing such a high net immigration is too enormous and under current conditions too impractical to be seriously considered. Although it cannot completely counteract the demographic forces now in motion, policy makers will need to embrace immigration as a means of coping with their ageing population problems. Thus, demographic developments have as yet no direct impact on migration flows, but this may change when Europe begins to experience the consequences of ageing and shrinking populations.

Humanitarian Challenges: International Obligations and Political Pressure

Policy-makers and the European general public are finding it more and more difficult to distinguish between forced and voluntary migration. Too often migrants do not leave their homes voluntarily, but are forced to leave their countries by sheer economic necessity. On the other hand, refugees are not always politically persecuted on an individual basis, but are trying to escape general violence or ruined economic living conditions. In addition, migrants and refugees use similar networks and draw more and more on smugglers to get access to countries with restrictive immigration regulations.

These developments pose a serious political challenge in Europe, because they fuel public scepticism in the receiving countries of the respective government's capability to control immigration. In the era of globalisation with decreasing political power of nation states, continuing resistance to the erosion of national sovereignty, and reduced legitimacy of governance, this has become a highly symbolic policy field. The problem of distinguishing between refugees and migrants and of managing these mixed flows can only be addressed by well-defined and comprehensive policies for both migration and asylum. This means a transparent and well-defined integration policy that opens legal channels for those migrants needed for economic and demographic reasons. Lucid policies are also required for immigrants taken in on humanitarian grounds and for their families.

For Europe the main challenge with regard to forced migrants is to offer protection to persecuted and threatened individuals and groups of people and to fulfil the EU states'

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[27] See also UN Population Division, Department of Economic and Social Affairs, *Replacement Migration: Is it A Solution to Declining and Ageing Populations?* (New York: UN Secretariat, 2000).

commitments as reliable members of the international community. This primarily means strengthening and promoting the international refugee protection system based on the Geneva Refugee Convention and the European Human Rights Convention. In so doing, it is essential to adhere to the principles of the Convention, especially to the principle of Non-refoulement, and to interpret the Convention liberally. Generally, the EU member states must be generous towards those who are entitled to protection and assistance while strictly enforcing the law where abuses occur. This includes fair procedural provisions that facilitate rapid decision-making regarding requests for protection. Limited protection against persecution and procedures that leave refugees in the dark about their future for a prolonged period of time runs counter to this objective.

Effective refugee policy not only depends on general legal and procedural conditions, but it also focuses on the local population's acceptance of refugees. In the long term, the protection of refugees cannot be implemented unless the host society supports the policy. However, the fact that in many European states many persons who clearly do not need protection in fact receive it reduces both the local population's acceptance and its readiness to bear the financial and social burden associated with their continued stay in the country. The credibility and integrity of asylum procedures also suffer as a result. It must be ensured that persons who need protection actually receive it and those who do not must return to their homeland once their application has been rejected.

In general, asylum policy must provide adequate forms of protection for persecuted people. That is a basic humanitarian obligation of modern civilisation, democracy, and civilised international relations. Therefore, a comprehensive protection system is needed. This system, taking care of persecuted individuals and groups, including additional provisions for temporary protection, needs to be in line with the respective country's international humanitarian obligations. An additional challenge is the treatment of smuggled and trafficked forced migrants, balancing respect for the human rights of those who use the assistance of smugglers to gain access to the host country with the need to police this very dangerous activity.

Social Integration of Migrants: Preventing the Rise of a New Under Class

Another political challenge is a better social integration of immigrants. Despite the integration

efforts that have been conducted in several European countries since the 1970s, much work still needs to be done to achieve true economic and social integration, which is another prerequisite for the public acceptance of immigrants by host societies. Today most immigrants who entered Europe since the 1970s are significantly worse off than natives. This holds for nearly all immigrant groups and is manifested in every measurable respect (i.e. housing, schooling, employment, etc). Migrants in Europe now constitute a new underclass, and in economic terms they still play the role of cyclic shock absorbers, in other words the first to lose their jobs in times of recession. This is just as true for those with temporary work permits as for those on long-term contracts. More successful integration will require a permanent political and social undertaking involving all the people living in the countries concerned with immigrants participating on equal terms in the economic, social, political, and cultural life. Integration also needs to promote tolerance, acceptance, and mutual respect between different groups of the population. The host country must provide opportunities for integration, and immigrants should be entitled and obliged to make use of them. On the other hand, a willingness on the immigrants' part to learn the language of the host country, recognise its legal system, and accept its basic values is also indispensable.

However, the pursuit of these strategies is hindered by a variety of factors, among them the fact that immigrant groupings are far from homogenous. While many are well educated and have found their place in the society, others have not. Thus, integration policy must be tailored to fit the different needs especially of people with fewer chances for participation, such as foreign children and adolescents, women, and unemployed persons.

<u>Regional Harmonisation of National Policies: Sovereignty vs. Supranationalism</u>

An important challenge for European asylum and migration policies in general is to integrate national policies into the common European policy the member states agreed to create in the 1997 Amsterdam Treaty. Still, at present national migration and asylum policies differ greatly from member state to member state. The European Commission has the difficult task of proposing rules that balance the interests of all EU countries with the necessity of promoting European integration. It has presented several proposals for nearly all aspects of a future common asylum and migration policy. The member states are obliged to encourage these harmonisation efforts and contribute to bringing about a rapid agreement on the intended measures. In reality, the member states' own national interests differ greatly, and the entire

project of integration in this policy field has been called into question.

Migration and Security: New Threats, New Strategies?

With respect to the growing concern about security risks posed by international terrorism, a precondition for addressing security effectively would be to develop more sophisticated entry-exit control systems and to find ways for an international exchange of the information gained through these systems. The currently existing systems are unsatisfactory in both Asian and European countries. Too often there are rigid entry controls, but hardly any exit controls.

Even if these controls were tightened, the possibility that terrorist organisations could use smuggling and trafficking operations to move persons clandestinely would remain open. For the time being, there is little empirical evidence that this has occurred in Asian or European countries. The recent experiences with terrorists are more likely to show that terrorist organisations tend to install their members legally in the host countries. Nevertheless, especially in the case of future installation of more elaborate entry control and tracking systems, one cannot exclude the possibility that terrorist organisations could also use clandestine paths to move their people around the world.

As long as this uncertainty remains, security policy and anti-trafficking policy need to go hand-in-hand. This kind of thinking is already under way in the EU and at an intra-Asian level through counter-terrorism efforts taken up by Indonesia, the Philippines, and Thailand who were later joined by Malaysia and Cambodia. These states' co-operation in intelligence and information exchange appears to be working in tracking the transnational movement of persons linked to international terrorist and criminal organisations.

Recommendations for Asian-European Co-operation in Asylum and Migration Policies

In conclusion, there are also a number of strategies that European and Asian governments could pursue together to manage migration movements between the two regions cooperatively and comprehensively. The following are some suggestions for future action in this regard. [28]

Generally speaking, a comprehensive asylum and migration policy must address at least three

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[28] See also the 2002 Council for Asia-Europe Co-operation's policy recommendations for the Copenhagen ASEM meeting.

challenges: safeguarding economic prosperity through a sophisticated migration policy, offering protection to those in need while fulfilling international humanitarian commitments, and fostering social integration of immigrants.

Accept and Promote Internal and International Mobility

Given the growing economic importance of national and international mobility for sending and receiving countries, Asian and European governments should engage in a dialogue to define rules and regulations that encourage mobility. These should correspond with their economic needs, but should also take into account that a protection of their labour forces at home and abroad would be a precondition for gaining public support. Political leaders should promote the idea of human mobility, and should consider positive experiences made with inter-regional guest worker programs and highly-skilled migration schemes. Transaction costs limiting mobility, as for example exit fees or prohibitive recruitment fees, should be minimised. Above all, additional legal channels for migration need to be opened between Asia and Europe for the mutual benefit of both regions.

An intensified co-operation between Asia and Europe would be highly desirable, because it can be expected that Asia will in future become an even more important migration source for EU countries, and that it might replace migration from Eastern Europe, which will probably soon decline due to the economic and demographic transition of these countries. Thus, to develop additional temporary and permanent migration channels between Asia and Europe would be of mutual benefit and would also reduce pressure on the European asylum systems.

Strengthen the Protection of Refugees, IDPs and Migrants

Most Asian states—especially Southeast Asian states—have neither signed the Geneva Refugee Convention nor developed a common regional protection system for refugees. This lack of protection under international law should be addressed as soon as possible. In addition, the growing number of Internally Displaced Persons (IDPs) in Asia warrants new regional and international recognition and solidarity. For the year 2002 the EU has budgeted 36.1 million Euros to assist Asian refugees and the displaced in Asia.[29] These resources are helpful and

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[29] *Die Europäische Gemeinschaft hilft den Flüchtlingen und Vertriebenen in Asien und Lateinamerika*, European Commission, Luxembourg: 2002, p. 15

should be maintained. But in order for Asia to become truly effective in relieving suffering, legal instruments of protection comparable to the Geneva Refugee Convention must be developed.

The international protection of migrants is even less developed than that of refugees. In many countries, serious human rights violations of migrants are reported. It would be in the interest of the sending as well the receiving states to adhere to the existing international protection schemes such as the International Labour Organization (ILO) Conventions and to develop additional protection instruments.

Asian and European policy-makers should engage in a dialogue on how best practices for the protection of refugees, IDPs, and migrants can be identified and shared.

Fight Trafficking and Smuggling of Migrants

Irregular migration, i.e., violation of immigration, residence or labour market regulations, is growing world-wide and raises serious political concern in many parts of the world. Irregular migration undermines national and regional asylum and migration policies and reduces public support for labour migration as well as for refugee protection. The most effective instrument to reduce irregular migration would be to open additional legal migration channels. This should be combined with information campaigns on immigration policies and living conditions of irregular migrants abroad. The protection of undocumented migrants (especially women), who often fall victim to international trafficking organisations, should be enhanced. Asian and European governments should carefully consider if amnesties for irregular migrants would be helpful to uncover these trafficking organisations.

Second, the fight against trafficking should be expanded through all possible instruments developed for combating international organised crime, including intelligence co-operation. A continuous discussion on how to control in- and outflows and how to track migration movements along with a serious appraisal of migration-related aspects of international terrorism must commence. For if an effective system could be created to combat smuggling and trafficking while simultaneously regulating migration, it would also pay dividends in terms of public support for more liberal immigration policies generally.

Involve Civil Society in Migration Policies

Labour migration in Asia is often conducted through private agencies with little state involvement. In Europe, due to highly regulated labour markets, governments play a more significant role. Still, involvement of NGOs and other civil society organisations in Europe has steadily increased in recent decades. For example, several refugee assistance organisations have emerged and have been incorporated in framing national and European policies. An exchange between Asia and Europe on the experiences made with deregulation of labour migration policies and civil society involvement in this policy field could be of mutual benefit in many ways, including among others in the area of human rights.

Labour migration policy should also have a human rights dimension. Up to now there has been little support from governments of both regions with respect to minimum standards for the foreign labour force. Asian and European policy makers should discuss these topics, including the question of whether remittances of labour migrants could be used to allocate funds to protect foreign workers abroad.

Promote Social Integration of Migrants and Refugees

In many Asian and European countries the social integration of migrants and refugees is partial at best, especially in countries that officially refuse permanent immigration and that have developed only temporary immigration schemes, both for migrants and refugees. But, in reality, temporary immigration unintentionally becomes permanent, and a lack of appropriate policies often leads to the marginalisation of this part of the population. This is politically and economically dangerous and has to be addressed by developing legal instruments which open up immigrants' opportunities for a better economic, social and cultural participation and involvement in civil society.

Nevertheless, in several countries, strategies and instruments for fostering the social integration of immigrants have been developed. Asian and European political leaders should discuss these matters to identify best practices appropriate for their countries.

Consider Foreign Policy Aspects in Migration Policies

Even if in most countries of the world transnational migration is considered a matter of domestic policy, it is obvious that migration and refugee movements also have an impact on

bilateral and international relations, and therefore are also a subject of foreign policy. In recent years, European institutions have started to incorporate this issue into the foreign policy agenda through the creation of the High Level Working Group on Asylum and Migration.

With regard to Asian and European co-operation, a working group consisting of representatives of EU member states, the European Commission, ASEAN and other Asian states should develop further policies linking asylum and migration issues and foreign affairs, with particular emphasis on tackling the root causes of forced migration. In addition, both sides should strengthen their commitment to upholding human rights and monitoring the implementation of both public instruments (international conventions, etc.) and private instruments (business sector mission statements or codes of conduct) that enforce human rights.

The economically advanced countries should assist developing countries in the design and implementation of policies relating to the movement of people, protection of refugees, and societal integration of migrants and refugees. Provisions for extra-territorial refugee protection or reception "in the region of origin" should only be implemented with caution and only where the physical integrity and rights of all persons received or protected are guaranteed. And it should be ensured that displaced persons are not forced back into dangerous environments nor prevented from leaving their country in search of protection elsewhere.

Expand Regional Co-operation Within and Between the Regions

National asylum policies can only be effective if their principles are shared by neighbouring states. This is obviously the case in the EU, where a common market with free movement of goods, services, capital, and persons has been established and where internal border controls have been removed. But it is also true for regional structures with a lower degree of integration like ASEAN. Generally, harmonised policies are a comparative virtue for those countries participating, and further co-operation between countries of origin and receiving states is needed.

Thus, Asian and European policy makers should first promote co-operation in asylum matters within their region. Given the complex nature of this policy field, and given the dominance of national interests concerning regulations which might have a deep impact on core aspects of national sovereignty, a co-operation in this policy field raises difficult questions. But, in

general, common policies are often more sophisticated and comprehensive than national policies. The European Commission's proposals for a common asylum and migration policy might serve as an example.

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