More power, less sympathy?[1]

The response of the international community in Europe to migration during economic crises compared

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During the stagnant decade of the 1930s, the League of Nations' High Commissioner for German Refugees unsuccessfully called for European countries to treat refugees with hospitality in the face of increasing hostility. During the 1970s and early 1980s, the European Commission similarly called upon European member states to treat its non-European migrants in a more sympathetic fashion. Despite these calls, neither the High Commissioner in the 1930s nor the European Commission after the oil crisis held considerable sway in challenging states' migrant policies. Today, the European Commission's ability to affect member states' migration policies has increased dramatically with the incorporation of migration issues into the Directorate-General of Justice and Home Affairs. But this paper will argue that the European Commission responsible for migration during the present economic crisis has a less benevolent view of migrant rights than their Commission precursors in the 1970s and early 1980s and the League of Nations' High Commissioner for German Refugees in the 1930s.

The European Commission today promotes migration policies that often complement rather than challenge member states' restrictive practices. This paper will try to describe how this transition occurred by providing a brief overview of the international community in Europe's influence on migration since the end of the First World War, focusing particularly on times of economic crisis. The first part will concentrate especially on the European international community's response to migration during the 1930s, whilst the second part of the paper will discuss how the European Commission's influence on migration policies – particularly those relating to third country nationals – has developed from the time of the oil crisis in the 1970s up until the current crisis. By doing so, this paper aims to demonstrate in the final section that although the influence of the international community in Europe to improve and protect the rights of migrants has grown, its sympathy for migrants has, at the same time, decreased. Reference will be made in the

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final section to Italy's recent treatment of some of its minorities and migrants in an attempt to highlight this transition.

Tightening the borders: The 1930s

Widespread belief in economic liberalism in Europe saw controls on foreigners diminish in the second half of the nineteenth century but this trend was reversed during the First World War as countries returned to economic and territorial protectionism. Instead of lifting these bellicose measures after the 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. New approaches to nationalism perceived that a named human population shared a common history, territory and language. Anyone considered ineligible from sharing these traits, such as ethnic minorities or migrants, became conspicuous in the eyes of the public and governments. To amplify this even further, the post-war emergence in many western countries of modern systems of social organisation – the so-called "welfare state" – led to an even greater distinction between citizen and non-citizen.[2] The consequences of increases in passport control, as well as the popular support for the ethnic state in Europe meant that entry – and stay – became more difficult to attain for refugees and economic migrants alike.

Despite a noticeable decrease in migrants compared to the 1920s, people attempting to migrate in the crisis-hit 1930s received considerably more hostile treatment from European governments than their 1920s' counterparts. States strengthened their enforcement mechanisms to restrict and expel migrants and refugees because of the financial strain and security threat they allegedly posed. Indeed, even the League of Nations department responsible for refugees, set up in 1921, failed to foresee the continuation of Europe's refugee problem into the 1930s. Fridjhof Nansen, the first League of Nations High Commissioner for Russian Refugees, repeated the widely held view in 1926 that refugee problems remained finite and solvable.[3] This coincided with western governments' insistence that the League's 'refugee work must be liquidated with the utmost rapidity'.[4] The aftermath of Hitler's accession to power in Germany quickly contradicted this view, as people began to leave Nazi Germany in increasing numbers.

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[2] James Hathaway, *The Rights of Refugees under International Law*, Cambridge, Cambridge University Press, 2005, p. 83.

[3] Michael Marrus, *The Unwanted. European refugees in the twentieth century*, Oxford & New York: Oxford University Press, 1985, p. 109.

[4] S. Lawford Childs quoted in Hannah Arendt, *The Origins of Totalitarianism*, New York: Schocken Books, 2004 (originally published in 1951), p. 358.

Despite refugees numbering far less in the 1930s, contrasting economic conditions emanating from the 1929 Great Crash meant refugees fleeing Nazi persecution received more hostile treatment at the hands of European states. Furthermore, these same countries' efforts to appease Germany meant they repeatedly saw refugees as potential troublemakers.[5] Lamentably for the refugees fleeing the Nazi regime in the 1930s, governments strengthened legislative and enforcement mechanisms to facilitate easier expulsion measures.

Following Hitler's accession to power, people began to leave Nazi Germany in increasing numbers. Roughly 150,000 departed Germany from 1933 to the start of 1938,[6] although accurate statistical data remains absent.[7] Some Jews, noted Yehuda Bauer, actually returned to Germany in this period because of the harsh conditions they endured in other countries, especially in Romania and Poland, where anti-Semitism remained rife.[8] 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's objections to the League of Nations.[9]

The League of Nations' attempts to administer more comprehensive definitions of states' obligations to refugees in the 1930s only applied to those already termed refugees by the League, such as the Russian and the Armenian refugees from the 1920s. Therefore, those fleeing Nazi persecution remained outside the gambit of the agreements on refugees already approved by states. James McDonald, Nansen's successor as head of the League of Nations Refugee Committee had noted in 1935 that 'the daily grace in the High Commissioner's office was "Thank God for Palestine,"'[10] on account of its absorption of Jewish refugees. But the Arab Revolt of 1936 made the British wary of the effects continuing Jewish emigration could have on its ruling of Palestine. In 1937 the Palestinian Royal Commission – set up in the wake of the 1936 Arab revolt – recommended that the British government cap Jewish emigration to Palestine at 12,000 per annum for the following five years; leading to Palestine's closure as an emergency escape route.[11]

[5] Michael Marrus, *The Unwanted*, p. 113.
[6] Sir John Hope Simpson, *The Refugee Problem. Report of a Survey*, London: Oxford University Press, 1939, p. 139.
[7] Michael Marrus, *The Unwanted*, p. 130.
[8] Yehuda Bauer, *A history of the Holocaust*, New York: Franklin Watts, 1982, p. 123. Quoted in Michael Marrus, *The Unwanted*, p. 135. See *ibid*, pp. 141-5 for details about anti-Semitism in Romania and Poland.
[9] Louise Holborn, *Refugees: A Problem of Our Time*, Vol. I, Metuchen, N.J.: Scarecrow Press, 1975, p. 14.
[10] Michael Marrus, *The Unwanted*, p. 163.
[11] See Sir John Hope Simpson, *The Refugee Problem*, pp. 434-5 and Michael Marrus, *The Unwanted*, pp. 152-3.

Similarly, the United States, Britain and France began to frown upon Jewish emigration to Shanghai, an open city which required no documents to land and where 17,000 Jewish refugees had settled by 1939. They feared that increasing numbers would upset the delicate balance of interests that allowed their strange relationship with Japan over the area to continue.[12]

Following just over two years as High Commissioner for German Refugees, 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.[13]

He also stipulated that the decision to separate his office from the League of Nations fundamentally weakened his position.[14] 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.[15] 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.[16] 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 difficulties caused by their continued entry at a time of economic

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[12] Michael Marrus, *The Unwanted*, p. 181.
[13] 'Letter of Resignation of James G. MacDonald', 27 Dec 1935, C1538 20A-80732-22873, p. ix, League of Nations archives.
[14] *Ibid*, p. vi.
[15] Michael Marrus, *The Unwanted*, p. 164.
[16] 'Inter-Governmental Conference on the Legal Status of Refugee coming from Germany', Second Meeting, 2 July 1936, S.R.A./1st Session/P.V.2., League of Nations archives.

depression, stating its preference to 'aid the refugee coming from Germany to settle elsewhere' rather than allow him settle in its territory.[17] Resembling recent asylum debates, Belgium thought countries should be allowed to ask refugees to return to the country in which they found first asylum.[18] 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.[19] 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.[20]

Contrasting sharply with the role private voluntary organisations (PVOs – termed non-governmental organisations [NGOs] after the Second World War) had in representing Russian and Armenian refugees in discussions throughout the 1920s and early 1930s, PVOs played a negligible role in the session debates for the 1936 and 1938 conferences. 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 *Anchluss*.[21] 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 the American Congress.[22]

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[17] *Ibid*.

[18] Inter-Governmental Conference on the Legal Status of Refugee coming from Germany', Fourth Meeting, 3 July 1936, S.R.A./1st Session/P.V.4, League of Nations archives.

[19] Belgium, Denmark, France, the Netherlands, Norway, the UK and Switzerland.

[20] France also ratified the convention but this came in 1945. See Neremiah Robinson, *Convention relating to the status of refugees. Its History, Contents and Interpretation*, New York: Institute of Jewish Affairs, 1953, p. 3.

[21] In France, for example, substantial sections of the Communist and Socialist Parties, the League of Rights of Man and Citizen, the Catholic Left and several Jewish bodies continued to promote more generous policies, resulting in the Popular Front's slackening of immigration restrictions in 1936. In the United Kingdom, pro-asylum opinion caused the British government to repeal its restrictive policies brought in after the *Anschluss* of 1938. See Marrus, *The Unwanted*, p. 153.

[22] Tommie Sjoberg, *The Powers and the Persecuted. The Refugee Problem and the Intergovernmental Committee on Refugees*, Lund: Lund University Press, 1991, p. 113.

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.[23]

In July 1938, twenty-nine governments came together in a small French town to discuss the problem of refugees fleeing Nazism. 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.[24] 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.[25]

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'.[26] Soon after the Evian 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.[27]

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

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[23] Dorothy Thompson, 'Refugees: A World Problem', *Foreign Affairs*, Vol. 16, No. 3, April 1938, pp. 375-387. See also Sjoberg, *The Powers and the Persecuted*, pp. 70-71 and p. 116.

[24] See Sjoberg, T. (1991) *The Powers and the Persecuted. The Refugee Problem and the Intergovernmental Committee on Refugees*, Lund: Lund University Press, 124.

[25] Resolution adopted by the Intergovernmental Committee (Evian) on July 14th, 1938. Published in *League of Nations Official Journal*, Vol. 19, 1938, pp. 676-677.

[26] See Marrus, *The Unwanted*,170-2.

[27] *Ibid*, 169.

an uncontrollable flood'.[28] 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'.[29] But the cessation of the High Commissioner's office on 1 January 1939 closed this avenue off despite the marked augmentation of refugees fleeing Nazism and Fascist Spain. By the outbreak of war in September 1939, the number of people who escaped Nazism since 1933 increased to 400,000.[30] More would have left except for the increasingly restrictive immigration policies of European countries caused by anti-Semitism, labour shortages and refugees' destitution.

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 – and immigrants, particuarly refugees – better than the League of Nations. Moreover, exclusive measures could not be maintained in the wake of the Second World War, particularly in Europe, because fertility rates had become precariously low by the late 1930s. The carnage caused by the Second World War added extensively to this problem. With millions of Europeans dead, millions more displaced and thousands of destroyed cities in need of restoration: Europe needed labour, especially when the European economy began to take off once again.

Thousands of migrants originally came from other European countries such as Italy, Ireland (to the UK), Spain, Yugoslavia, and Portugal; to name but a few examples. Nevertheless, this failed to meet demand and hence countries had to look to the edges of Europe and beyond for migrant labour. The United Kingdom, France, the Netherlands and Belgium received large numbers of migrants from their colonies, while Germany received large numbers of Turks under the *Gastarbeiter* scheme. Immigration policy was largely

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[28] Claudena Skran, *Refugees in Inter-war Europe*, Oxford: Clarendon Press, 1995, p. 53.
[29] Neill Malcolm, 'Refugees coming from Germany', 22 Aug 1938, A.25.1938.XII, League of Nations archives.
[30] League of Nations, 'International Assistance to Refugees: Supplementary Report to the Twentieth Assembly by Sir Herbert Emerson' (20 Oct. 1939), p. 2. Contained in Fonds UNHCR 5, 'Personal Papers of Gustave G. Kullmann, Box 6. Its report recorded that 225,000 Jews fled from Germany, 134,000 Jews from Austria and Bohemia-Moravia, and 40,000 non-Jews from both. See also Skran, *Refugees in Inter-war Europe*, 54.

nonexistent – the British Commonwealth immigration in 1962 and the German 1965 Foreigners Law reprsented the main exceptions – and it became the job of employers and job seekers to dictate immigrant policy rather than states.[31] Indeed, definite immigration policies only emerged when the number of immigrants began to place substantial demands on social services and when the 1973 oil crisis brought an abrupt end to demands for foreign labour.[32] Even though many EU countries began to limit the in-flow of migrant workers, however, family reunification of those already in situ meant that migration continued at a steady pace since the growth of inherently liberal principles in many western states throughout the second half of the twentieth century made it increasingly difficult for governments to exercise complete control over migration.[33]

1970s-1980s: European Commission vs. European states

The 1957 Treaty of Rome stated that 'freedom of movement for workers shall be secured within the Community' and that this would 'entail the abolition of any state discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment'.[34] Although many experts interpreted this to only apply to European member citizens, Peter Oliver contends that these and other regulations conferred certain rights on members of non-Community families relating to education, work and residence.[35] The European Commission began to take a further interest in conditions facing immigrants soon after the oil crisis when it published its social action programme of 1974. One of the action programme's stated objectives related to achieving 'an equality in living and working conditions' for 'all migrant workers and their families, whether they come from the countries of the Community' or 'whether legally admitted from third countries'.[36] The Commission felt that:

> The migration population live and work in conditions substantially inferior to those of the indigenous population. Discrimination against migrant workers exists in various

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[31] Tomas Hammer, *European immigration policy: a comparative study*, Cambridge University Press, Cambridge, 1985, pp. 292-3.
[32] *Ibid*.
[33] Christian Joppke, 'Why Liberal States Accept Unwanted Immigration', *World Politics* 50.2, 1998, pp. 266-293, p. 271.
[34] Article 48 (1) & 48 (2), Treaty of Rome.
[35] Peter Oliver, 'Non-EC Nationals and the Treaty of Rome', *Yearbook of European Law*, 1985, pp. 57-92, p. 62. For references to the differences in interpretation on whether non-Community nationals were included in the Article 48, see *ibid*, fn 21.
[36] Commission of the European Communities, 'Social Action Programme', in *Bulletin of the European Communities*, Supplement 2/74, 1974, p. 23.

> forms throughout the Community, in such matters as social security, housing and rights to participate at different levels of decision making.[37]

In the Commission's opinion, there was 'an urgent need for the Community to assume its overall human responsibilities towards the whole migrant population, irrespective of its country of origin'. It felt that this could only be achieved by developing 'an overall approach to coordinate different aspects'.[38] Later that same year, it proposed an action programme in favour of migrant workers and their families. In it, the Commission criticised member states' treatment of third country migrants even more explicitly and voiced its aim to 'move towards [the] concertation of immigration policies'. While migrants coming from other member states acquired many of the same rights as those of indigenous workers under Community legislation, third country migrants:

> ... do not have the right to freely enter the territory of the host country for the exercise of employment; they are required to possess a work permit and are subject to administrative controls … Third country migrants are liable to deportation, too often at the discretion of the host country authorities.[39]

Again, the Commission's suggestion to tackle this problem revolved around the aim of 'adopting a common strategy to meet the problem'.

When the Council took note of the Commission's proposals in its resolution of 9 February 1976, it failed to outline whether or not member states should consult each other over the issue of providing rights for third country migrants. By contrast, when the Council discussed the subject of clandestine immigration, it considered it 'important to strengthen cooperation between Member States in the campaign against illegal immigration of workers who are nationals of third countries'. It also sought to 'undertake appropriate consultations on migration policies vis à vis third countries'.[40] This split in inclination of European member states to on the one hand confer with one another over matters of

[37] *Ibid*.
[38] *Ibid*, pp. 23-4.
[39] Commission of the European Communities, 'Action programme in favour of migrant workers', transmitted by the Commission to the Council on 18 December 1974., in *Bulletin of the European Communities*, Supplement 3/76, 1976, pp. 10-22, p. 14.
[40] Council of the European Communities, 'Council resolution of 9 February 1976 on an action programme for migrant workers and members of their families', in *ibid*, pp. 7-8, p.8.

prohibition, while on the other hand avoiding consultation with regard to the treatment of immigrants within member states was, in many ways, a sign of things to come.

Throughout the late 1970s and early 1980s, the European Commission and the European Parliament made various calls to act on immigration, including the 1977 Joint Declaration on fundamental rights, which affirmed respect for the 1950 European Convention on Human Rights. But Andrew Geddes fittingly commented that 'as with many EU denunciations of racism and xenophobia, the declaration was essentially symbolic and not backed by attribution of competence to act.'[41]

By the mid 1980s, migration to the EU increased substantially; making a Community policy all the more necessary in the eyes of the Commission. In 1985, the Commission put forward a set of guidelines for such a policy. In it, the Commission highlighted some of the problems associated with immigration:

> A number of Member States had to face similar problems: inadequate social education infrastructure and housing shortages as migrant families were increasingly reunited, difficulties in cultural assimilation, uneasy relationships between the national and foreign communities, and potential competition on the labour market.[42]

Many of the recommendations contained foresight and appeared to include a genuine wish to help migrants to enjoy a better standard of living in society. For example, the Commission aimed to 'provide members of their [migrant workers] families residing in the Community with the same protection in the field of social security as Community nationals' because 'workers in the same objective situation cannot be treated differently on the sole basis of nationality.'[43] In July of that same year, the Council endorsed the Commission's proposals but when the Commission attempted to go further by setting up a prior communication procedure on migration policies, five member states opposed such developments. The Commission had asked the member states to provide it with 'draft measures they inten[ded] to take with regard to third country workers and members of their families, in the areas of entry, residence and employment', along with 'the texts of provisions laid down by law, regulation or administrative action already in force, and also

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[41] Andrew Geddes, *Immigration and European integration: towards fortress Europe?*, Manchester University Press, Manchester, 2000, p. 54.
[42] European Commission, 'Guidelines for a Community policy on migration', in *Bulletin of the European Communities*, Supplement 9/85, 1985, p. 6.
[43] *Ibid*, p. 14.

the texts of agreements made with third countries.'[44] The Commission wanted to 'facilitate the adoption of a common position … particularly as regards international instruments relating to migration'. For Germany, France, the Netherlands, Denmark and the UK it was a step too far: the Commission had exceeded its competence. Consequently, the five countries proceeded to make submissions to the European Court of Justice against the Commission, arguing that the Treaty of Rome had made no provision for a common policy in the social field and that the Commission's role was designated to exclusively deal with non-binding instruments.[45]

At the oral procedure stage of the court hearing, the Commission communicated its past problems with the member states regarding a common migration policy.[46] The European Court of Justice annulled certain parts of the Commission's decision, with the overall effect of fudging the issue. What the case did show, however, was the intent of many of the member states to keep the Commission, which had shown itself to be in favour of integrating migrants into European societies, away from an issue that they saw as something for them alone to contemplate. Various states considered the Commission's attempt to dictate member states' social policies as an attack on their sovereignty. In 1986, European justice and interior ministers created an Ad Hoc Group on Immigration (AHI). Importantly, this was an intergovernmental body set up on an intergovernmental initiative with little Commission involvement.

The Schengen Agreement, signed in June 1985 by the Benelux countries, France and Germany, went on to significantly shape immigration policy in Europe for years to come. Although Schengen originated as a reaction to roadblocks set up by truck drivers irritated by the long delays they experienced when passing between the Franco-German borders,[47] it incongruously came to signify "Fortress Europe" due to the inclusion of a number of measures relating to the harmonization of regulations concerning checks at external frontiers, the improvement of international co-operation at the level of the police and judiciary, the harmonisation of visa and immigration policies and of legislation on the control of illicit traffic of drugs and weapons.[48] Julian Schutte has pointed out that 'the most spectacular novelty' in the Implementing Convention, set up to instigate the necessary

[44] European Commission, 'Commission decision of 8 July 1985', contained in *ibid*, pp. 19-20.
[45] Kenneth R. Simmonds, 'The concertation of Community migration policy', *Common Market Law Review*, Vol. 25, pp. 177-200, p. 182 and p. 183.
[46] *Ibid*, p. 197.
[47] Gallya Lahav, *Immigration and Politics in the New Europe: Reinventing Borders*, Cambridge University Press, Cambridge, 2004, p. 42.
[48] Julian J.E. Schutte, 'Schengen: its meaning for the free movement of persons in Europe', *Common Market Law Review*, Vol. 28, pp. 549-570, p. 550.

measures in the five years before the agreement came into force in 1990, related to the creation of a set of common automated data relating to wanted persons called the Schengen Information System. It aimed 'to help with the maintenance of public order and security, and the enforcement of the laws on the control of aliens'.[49] The 1987 Single European Act (SEA) and the 1992 Maastricht Treaty confirmed these objectives.

Nonetheless, just as European countries appeared to gain a grip on achieving a consensus to control of economic migrants attempting to gain access to the EU, another phenomenon emerged. Between 1985 and 1994, over 3.4 million people made asylum applications in the EU as a result of increasing international conflicts (the break-up of Yugoslavia, in particular), the fall of the Berlin Wall in 1989 and the subsequent collapse of the Soviet regime.[50] As primary economic migration became more difficult, potential migrants also looked to asylum as a way of entering the EU. In an attempt to regulate this in-flow, European immigration ministers adopted the Dublin Convention in 1990 in order to eradicate so-called "asylum-shopping" by ensuring that an asylum seeker could only make an application in his/her country of arrival.

The international community's attitude to migration during the present crisis

In the 1990s, member states' tendency to remove the possibility of Commission tinkering with national immigration and asylum policies for non-EU citizens continued, with asylum numbers remaining 'too high' and politically explosive for most countries' governments to give up national competency.[51] Instead, trans-governmental working groups, comprised of government ministers from various member states with responsibility for asylum, brought forward several initiatives. Nonetheless, various teething problems with these new restrictive practices meant they only bore fruition in the 2000s. Virginie Guiraudon acutely surmised the idea behind these moves:

> Building upon pre-existing policy settings and developing new policy frames, governments have circumvented national constraints on migration control by creating transnational co-operation mechanisms dominated by law and order officials, with EU institutions playing a minor role. European trans-governmental

[49] *Ibid*, p. 559.
[50] Eurostat, 'Asylum-seekers in Europe 1985-1995', *Statistics in Focus*, 1996.1, p. 1.
[51] Timothy Hatton & Jeffrey Williamson, 'Refugees, Asylum Seekers and Policy in Europe', National Bureau of Economic Research Working Paper Series, 2004, http://www.nber.org/papers/w10680 (19 Aug 2009). See p. 25 and p. 32.

working groups have avoided judicial scrutiny, eliminating other national adversaries and enlisted the help of transnational actors such as transit countries and carriers.[52]

Although intra-national discussions on migration in Europe began in the 1980s, the 2000s marked the reintegration of asylum and third country migration policies into the domain of Brussels. The 1999 European Council meeting at Tampere 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. Significantly, member states allowed migration to return to the European Commission domain only after it became firmly established under the responsibility of the EU's third pillar, which represented security and justice affairs, rather than under the directorate-general representing employment, social affairs and equal opportunities.[53] This meant that security continually superseded rights. The Commission had thus lost its long battle to moderate European asylum and migrant policy as the member states' restrictionist views won out.

This became more obvious in certain European countries' dealings with migrants. The initiation of the Italy-Libya deal in late September-early October 2004, for example, allowed for Italian authorities to transport over 1,400 recently-arrived boat people from Lampedusa to Libya only days after their disembarkation to the consternation of rights groups.[54] Much of the sympathisers' resistance centred on Libya's continuing failure to sign the Geneva Convention and Italy's repatriation of migrants without clear access to proper asylum procedures, much to the chargrin of NGOs such as *Medicins sans Frontieres* and the UNHCR.[55] The Italian government countered these criticisms by maintaining its actions corresponded to all national and international norms.[56] Crucially, the European Commission – in contrast to the European Parliament and the Council of Europe – mutely supported the Italian government's measures.[57]

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[52] Virginie Guiraudon, 'European Integration and Migration Policy: Vertical Policy-making as Venue Shopping', *Journal of Common Market Studies*, Vol. 38.2, June 2000, pp. 251-71, p. 251.

[53] For more information on this process, see Guiraudon, V. (2000) 'European Integration and Migration Policy: Vertical Policy-making as Venue Shopping', *Journal of Common Market Studies*, 38 (2): 251-71. See also Costello, C. (2003) 'EU Asylum Law and Policy', Fraser, U. and Harvey, C. (eds.) *Sanctuary in Ireland: Perspectives on Asylum Law and Policy*, Dublin: IPA, 18-50

[54] Figure taken from 'L' Onu contro i rimpatri lampo. Ma il centro si svuota', *Corriere della Sera*, 8 Oct 2004

[55] 'Rimpatri forzati in Libia, ma gli sbarchi continuano', *Corriere della Sera*, 3 Oct 2004 and '"Salvaguardare il diritto d'asilo" Boldrini: va rispettata la convenzione di Ginevra Gran parte dei Paesi nordafricani non lo fanno', *La Stampa*, 19 Oct 2004.

[56] 'L' Onu contro i rimpatri lampo. Ma il centro si svuota', *Corriere della Sera*, 8 Oct 2004.

[57] 'A Bruxelles un documento sui flussi migratori. Il commissario Ue: l'Italia ha fatto sforzi eroici "Si' ai centri d'accoglienza nei Paesi del Nord Africa, serve una strategia comune"', *La Stampa*, 5 Oct 2004. For the European

Due to the increasing difficulties stemming from the current economic crisis, governments have used the restrictive advances made during the late 2000s, utilising rhetoric relating to the growth of unemployment and the burden placed on local facilities by migrants, to treat certain migrants more adversely than in previous decades. Symbolising the increase in Italy's anti-immigrant measures, Italy's navy began to intercept and return boat people to Libya again in May 2009 without screening them first for asylum, in a move that provoked the wrath of several human rights NGOs and the UNHCR.[58] The European Commission failed to question Italy's tactics for several months despite pressure from NGOs and the European Parliament.[59] A similar phenomenon occurred in 2008 when Italy began fingerprinting Roma; in contrast to vocal criticism from the European Parliament, the European Commission quietly endorsed Italy's plans.[60]

Conclusion

This paper has attempted to show that the influence of the international community to adjudicate in migrant affairs in Europe has increased substantially since the 1920s. Nonetheless, the paper argued that the increase in the authority of the international community has come at a significant price. The European Commission, currently the most powerful international broker in affecting migration policies in Europe, has adopted a much less critical role of states' restrictive practices during the present crisis than its predecessors in the 1970s and the League of Nations High Commissioner for Refugees in the 1930s. One recent incident does provide a glimmer of optimism for those in favour of enshrining the rights of migrants and minorities at what is a difficult economic time, however. In early 2010, the European Commission split the Justice and Home Affairs directorate-general into two distinctive departments. The new Commissioner of the Justice department, Viviane Redding, recently launched a scathing attack on France's deportation of Romanian and Bulgarian Roma, referring to it as "a disgrace" and "shocking". Although the Commissioner subsequently backed down from her threat to instigate infringement procedures on France in the European Court of Justice because of France's positive

Parliament's reaction, see European Parliament, Resolution by the European Parliament on Lampedusa, 14 April 2005 and for the ECtHR's ruling on the action, see Le rapport du Commissaire aux droits de l'homme du Conseil de l'Europe (CommDH (2005)9, du 14 décembre 2005). Quoted in ECHR 11593/05 présentée par Mohamed SALEM et soixante-dix-huit autres requérants contre l'Italie, final decision: 11 May 2006.

[58] See, for example, Human Rights Watch, *Pushed Back, Pushed Around. Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers*, New York: HRW, 2009.

[59]'Migranti:clandestinio richiedenti asilo? La Ue vuole notizie sul respingimento', *La Repubblica*, 31 Aug 2009.

[60] 'EU clears Berlusconi over Roma gypsies', *Times*, 4 Sept 2008.

reaction to Commission criticism, it shows that the international community in Europe can exert real influence over the migration policies of member states if the political desire to do so exists.

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