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Mini-symposium

After the Arab Spring
EU Asylum and Migration Policy in Flux
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Special Symposium of *Comparative Migration Studies*
After the Arab Spring: EU Asylum and Migration Policy in Flux

Guest Editors: Christian Kaunert (University of Dundee, UK) &
Sarah Léonard (University of Dundee, UK)

In recent years, asylum issues have become increasingly contentious in Western Europe and have been at the core of electoral campaigns in several EU Member States (Kaunert, 2009; 2010; Kaunert and Léonard, 2012). In several countries in the European Union (EU), populist or radical right-wing parties campaigning on an anti-immigration platform have achieved strong electoral scores, including the True Finns in Finland, the Freedom Party in Austria under Joerg Haider and, more recently, Heinz-Christian Strache, the National Front in France, the Northern League in Italy, the People's Party in Denmark, as well as the Freedom Party under Geert Wilders in the Netherlands. As a result of the often salient character of asylum and migration during electoral campaigns, many states have seen frequent policy reforms in the area of asylum and migration. However, in most countries, strong rhetoric on migration matters is not exclusive to radical parties, but rather permeates the whole electoral debate. This can be seen in the promises made by politicians such as David Cameron and Nicolas Sarkozy to considerably reduce the number of migrants if elected, which they made during their electoral campaigns in 2010 and 2012 respectively. Thus, European governments widely see migration as a challenge and their migration policies in need of reform. In many cases, these national debates have been inexorably linked to reflections on (national) identity and – especially since 2009 – economic fears. Migration from outside the EU has become an ever more politicised area in domestic spheres which has shifted upwards to the European level and even outwards towards the external sphere (Lavenex, 2006).

At the same time, regime change in several states in the Middle East has also led to significant migration flows, prompting renewed talks of 'migration crisis' in several European states and further changes to policies.

The protests and uprisings for dignity, justice and responsive governments in the Middle East and Africa herald a political, social and economic transformation in the Mediterranean region. A number of countries (e.g. Egypt, Tunisia, Libya) are going through transition from authoritarianism towards more inclusive political regimes, whilst others (e.g. Jordan, Morocco, Syria) are struggling to avoid radical political regime changes. These require a review of conditions for successful regime changes and transition to democracy, since the region has long been defined as resistant to change by both academics and policy-makers. These significant societal developments have very significant implications on the potential for asylum and migration cooperation across the Mediterranean. This symposium examines the extent to which, if any, the Arab Spring has influenced asylum and migration cooperation across the Mediterranean. Traditionally, European states and the European Union have been criticised for prioritising their security concerns, such as terrorism, irregular immigration, and crime, over encouraging democratic reforms in the Southern Mediterranean. In other words, the balance between democracy and security was perceived to be heavily tipped towards the latter, at the expense of the former. The recent Arab Spring and the political changes that it has unleashed make it necessary and topical to re-examine the cooperation between Europe and North Africa on these asylum and migration matters. What has been the impact of the Arab Spring on asylum and migration cooperation across the Mediterranean? What is the resulting new balance between democracy and security in the relations between Europe and North Africa?

In addition, asylum and migration are also policy issues on which the EU has been increasingly cooperating, in particular since 1999. The Stockholm programme adopted in 2009 foresees the development of a 'Europe of responsibility, solidarity and partnership in migration and asylum matters', which would have a 'dynamic and comprehensive migration policy' based on the so-called 'Global Approach to Migration', a Common European Asylum System (CEAS) and an integrated border management system for the EU's external borders. In turn, these EU policy developments have had a significant impact on the national policies of the Member States. The influence of the EU over the Member States is set to become increasingly important as the EU seeks to go beyond minimum standards to adopt common standards with respect to various issues, most notably in the field of asylum. This special symposium is focused on recent developments in the European Union as it moves towards the consolidation of various measures on migration and asylum. The entry into force of the Treaty of Lisbon in December 2009 and the implementation of the Stockholm Programme on

the Area of Freedom, Security and Justice (AFSJ) provide the backdrop to the analysis in these articles.

The contributions to this special symposium consider aspects of the highly complex and multi-faceted approaches to asylum and migration at the European level, especially after the Arab Spring, which provided an important new background to some political debates in Europe. This special symposium begins with Paoletti's article on the impact of the Arab Spring on the Italian migration policy and discourse. Her article analyses the relationship between the emergency rhetoric used by politicians and the policies implemented in Italy in response to the inflow of migrants from North Africa in 2011, notably the language used by policy-makers and the way in which it translated into the concrete policies adopted. On this basis, she also examines the implications for the EU-Italian cooperation on asylum and migration policy after the Arab Spring.

Völkel conducts a similar analysis at the level of the European Union. He starts from the basic observation of two conflicting targets of EU asylum and migration policy: security versus human rights, which according to him, lead to paradoxical EU migration policies. In his view, the 'increasing perception of (uncontrolled) immigration as potential security threat has led to a migration approach that is mainly based on defence and deterrence' (Völkel, this issue). With a specific focus on the Mediterranean region, his article reveals five paradoxes, whereby EU immigration policies not only fail to reach their objectives, but also achieve opposite results.

Finally, Mitsilegas examines the EU asylum system itself. His article analyses how national asylum systems interact under European Union law, following the criteria of allocation of state responsibility to examine asylum applications set out in the Dublin Regulation. His article tackles two key concepts in the evolution of European asylum law in particular: the concept of solidarity and the concept of trust, the application of which has been demonstrably weak in the EU asylum system.

Overall, the contributions to this special symposium examine two inter-related phenomena: the Arab spring with its asylum and migration implica-tions for Europe, as well as the national and European policy dimensions of the EU asylum and migration systems. The Geert Wilders and Nigel Farages of Europe will continue to securitize foreigners for electoral gains – but, the important question is how Europe reacts to internal securitization from populists, as well as external pressures from events. Time will tell.

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The Arab Spring and the Italian Response to Migration in 2011

Beyond the Emergency

Emanuela Paoletti

Abstract

This paper seeks to unpack and explain the relationship between the emergency rhetoric used by Italian politicians and the policies implemented in Italy in response to the influx of irregular migrants from North Africa during 2011. It analyses how the language relates to the policies adopted and considers the impact on relations between Italy and the European Union (EU) in the area of migration. Accordingly, I address two main questions. How can we understand the emergency lexicon in relation to the policies adopted by Italy in response to irregular arrivals from North Africa in 2011? Secondly, what are the implications for EU-Italian engagement? In other words, how has the vehement and popularized emergency-centred debate in Italy affected interaction between Italy and the EU?

To tackle these questions, the analysis is divided into five sections. The first section introduces the academic discussion on migration in Italy and focuses on three themes central to this paper: emergency, ambiguities in migration policies, and the EU as *vincolo esterno* (external constraint). The second section illustrates briefly the methodology employed and explains the selection of the case-study. Thirdly, I outline and examine the policies implemented by Italy between January and December 2011 and investigate the shifting language along the crisis-normality continuum. The fourth section turns to the international level and chronicles the relations between Italy and the European Union concerning irregular arrivals from North Africa. With regard to the latter, attention is given to the implications of the agreement between Tunisia and Italy. The domestic and international strands are brought together in the fifth section, which probes the reliance on discourses of emergency in the way that migration and asylum policies are presented vis-à-vis the European Union. Fear, I argue, remains a key factor in the shaping of ideas and policies across

both the domestic and international domains. However, not all the policies adopted can be ascribed to the logic of fear alone, and indeed some actually run counter to the emergency rationale that shapes the wider political debate.

1.   Introduction

As a result of the pro-democracy uprisings in 2011, hundreds of thousands of irregular migrants, refugees and asylum-seekers fled Libya for neighboring countries such as Tunisia, Egypt and Niger, and tens of thousands more sailed towards Italy. Because of this large and irregular influx, ideas of invasion and emergency framed the public debate in relation to migration during the uprisings. Academics broadly agree that fear and misrepresentation have characterized the stance of the EU as a whole, and that of southern European countries, such as Italy, in particular. The Arab Spring has amplified the logic of criminalization and securitization that has long marked immigration debate in Italy and elsewhere (Carrera, den Hertog & Parkin 2012). The public attention framed by an emergency prospective has partially hindered an informed discussion (Triandafyllidou and Ambrosini, 2011 and Zupi, 2012).

Against this background, this paper seeks to unpack and explain the emergency rhetoric in the language used by Italian politicians vis-à-vis the policies implemented by their government in response to the influx of migrants from North Africa in 2011. The aim is to test the notion of emergency by comparing the discursive constructions with the actual policies. The paper analyses the variations in the language and the policies adopted and considers how these affected EU-Italian relations in the area of migration. In keeping with these broad objectives, I address two main questions. How we can we understand the emergency lexicon in relation to the policies adopted by Italy in response to arrivals from North Africa in 2011? Secondly, what are the implications for EU-Italian interaction in the area of migration? In other words, how has the vehement and popularized emergency-centred debate in Italy affected the interaction between Italy and the European Union?

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2.   Setting the discussion

The rich literature that, since at least the 1980s, has investigated migration flows to and through Italy is an apt reminder of the need to maintain an historical perspective when studying migration trends and policies in Italy. Migration flows to, from and through Italy have been investigated by, inter alia, Bonifazi (1998), Calavita (1994), Colombo and Sciortino (2004), Pugliese (2002), Zincone (2000 and 2006). Ample attention has been given to the role of media and public opinion (Diamanti and Bordignon, 2001), asylum and arrivals by sea (Monzini, Pastore, Sciortino, 2004; Coslovi, 2007; Ambrosini and Marchetti, 2008; Hein 2010), integration (Zincone, 2000 and 2001; Ambrosini, 2001; Campani 2008) and racism and criminality (Palidda, 1996 and Campani 1993). The same applies to the development of Italian legal framework on migration (Pepino, 1999; Livi Bacci, 2002; Caputo, 2002, Paleologo, 2007), the situation in the labour market (Calvanese and Pugliese 1988, and Reyneri, 2010) and the Euro-Mediterranean context (Fargues and Fandrich, 2012; Nascimbene and Di Pascale, 2011; Cassarino, 2012; Geddes, 2008). This academic output testifies to a debate that is both long-standing and diversified. In the context of this ample literature, three themes are relevant for our initial purposes: emergency, ambiguities of migration policies and the EU as *vincolo esterno*.

The first strand centres on the notion of 'crisis', here used interchangeably with that of 'emergency'. This debate is not new to migration. In fact,

some would argue that crisis is intrinsic to that debate. As Joppke puts it, during migration crisis Western states frequently end up admitting more immigrants than their restrictive policies would officially sanction (Joppke, 1998: 11). The sense of crisis stems from a perceptible increase in the burden that migrants impose on the host community (Zolberg, 1989: 415). Based on this literature, the starting assumption of this paper is that the European debate on migration is skewed towards fears of crisis and images of a putative invasion from neighboring, poorer countries (de Haas, 2007). On the one hand, right-wing populist rhetoric is becoming increasingly hegemonic in European countries (Wodak and Meyer, 2009). The populist norm treats the category of foreigners as the single pervasive challenge to society. Two distinct aspects related to the employment of emergency lexicon are worth noting. On the other hand, "notionally restrictionist policies" are often in tension with an expansionist policy reality (Joppke, 1998: 18-19). As Castles eloquently argues, if measured against their stated objectives, migration policies appear to fail (Castles, 2004). One of the reasons for this relates to the misleading way in which politicians present their goals to the electorate, linked to the short-term policy cycle determined by the length of electoral periods. Geddes put it simply, "politicians may want to be seen to build the fortress because when immigration is a salient issue there are likely to be votes in seeking 'zero immigration.'" (Geddes, 2000: 27). This leads to the second theme elaborated in the literature and at the centre of this endeavor, i.e. contradictions in Italian migration discourses and policies.

As Zincone has observed, the Italian approach to migration is characterised by a mismatch between the empirical functioning of immigration systems and the apprehension of such functioning by policy-makers and legislation (Zincone 2009). This relates to the dichotomy between "benevolent" practices that are addressed to expert committees and "low-strata" lobby, and malevolent ones that rely on extra-political domains (Zincone, 1998). Italian immigration policies run on a dual track: on the one hand, increasing repression of criminal behaviour while, on the other, gradual extension of rights to immigrants (Zincone, 1998). As Pastore similarly noted, Italy's tumultuous migratory system has been driven by economic and demographic factors, with politics and culture seeking in vain to catch up (Pastore, 2004). The resulting schizophrenia heralds good-looking pieces of legislation with concrete policy responses that have, however, suffered from insufficient funding and an inadequate administrative culture (Pastore, 2004). Another aspect adds to this complexity: the relationship with the European Union, to which I now turn.

A third major thread in the scholarly debate concerns the role of the European Union and, in particular, the domestic impact of EU obligations. According to a classic argument, the EU acts an external constraint, a *vincolo esterno* (Dyson and Featherstone 1996). Analytically, the concern here is with the structural power of actors and domestic institutions and how the EU reconfigures these in terms of *interests* and *ideas.* The underlying assumption is that different domestic political structures "refract Europeanization in different directions" (Radaelli, 2000). As initially propounded by Guido Carli (1993), the approach explores how the Italian technocratic elite employs an externally-imposed discipline to overcome the problems posed by the *partitocrazia*, the domination of government by parties. In a country characterized by entrenched impediments to reform, the EU-driven constraints – so it is postulated – act as catalysts for domestic policy change. This paper builds upon these three concepts in order to better understand the multifaceted relationship between the construction of the emergency discourse and the policies actually implemented. However, before turning to the empirical analysis, some words on methodology and case selection are in order.

3.   The methodological and theoretical framework

In mainstream linguistics, the definition of discourse analysis focuses on the semiotic interpretation of units of either spoken or written language. The emphasis is on the analysis of texts, detecting and tracing signs and symbols in their social contexts. In particular, from the perspective of "critical discourse analysis", the concern is with the role played by language in producing power relations and social and political identities. This approach thus reflects on the symbolic representations of the written and spoken word and of power relations (Chadwick, 2000: 284). Overall, research into discourses combines the study of language use, verbal interaction, conversation, text and communicative events (Van Dijk, 2011). In this paper I propose a minimal definition of political discourse as the sum of ideas articulated in the public discourse (Chadwick, 2000: 289). It is assumed that access to, and control over, certain discourses reflects and reproduces mechanisms of power (Van Dijk, 2011). Embedded as they are in political, social and historical contexts, I look at how discourses conflate shifting voices and motivations and how they are reflected on policy decisions at both domestic and European level. The approach addresses the "polyphony" of texts (Wodak and Meyer, 2009: 17) and their contradictions at the interface

between Italian domestic politics and European response. The employment of discourse analysis, with its particular affinity to socially situated power variables, helps us to understand and explain the relationship between the conjured exodus of migrants from North Africa and the actual policy response to migration flows.

For reasons of space, I focus on the language used in parliamentary debates. The empirical section is based on the texts of Italian parliamentary debates accessed through the online archives of the Italian Parliament, as well as official legal texts and ordinances. Material was selected on the basis of the pertinence to migration flows in 2011. The same applies to the research on the European dimension, which relies on official documents. For the sake of balance, primary sources have been complemented with secondary material, including interviews and public statements. Undoubtedly such a focus on parliamentary debates is not problem-free. Parliamentary actors have limited leeway, since migration is an executive-dominated area. In addition, given coalitional politics and 'behind closed doors' negotiations, it is difficult, in fact impossible, to capture all aspects of the decision-making process. Similarly, I do not look at other relevant voices such as media and non-governmental organizations. It follows that the analysis presented herein is in no way regarded as comprehensive. Having briefly defined the methodology, I now turn to case-selection.

The selected case enjoys a broader representativeness while being demarcated in time. The so-called Arab Spring has unleashed profound changes, with far-reaching impacts on regional patterns of mobility. The magnitude of the migratory flows that have accompanied the uprisings in North Africa and the protracted war in Syria testify to their historical significance. Put simply, since 2011 the Euro-Mediterranean region as a whole has witnessed migratory flows as unanticipated as much complex. In the public debate in Europe and neighboring countries, notions such as humanitarian emergency and crisis response are becoming entrenched, even normalized. This is in stark opposition to the exceptional, ad hoc connotation that these expressions suggest. These reflections form the context, and explain the focus, of this paper. In relation to ongoing developments in the Euro-Mediterranean region there is a need to probe the relationship between the rhetorical employment of emergency vocabulary in relation to the policies implemented; and the case of the Italian response offers a case in point. It is circumscribed in time in so far as the outflow from North Africa in relation to the crisis in North Africa in 2011 has now ended. Italy's position is also emblematic because of its geographical proximity to North Africa, and its role as a transit and destination country. It speaks to a central

predicament of today's migration management from the European point of view: that of responding in a concerted manner to unexpected and large scales migratory flows. The case of Italy lends itself to the analysis of the dichotomy between representations of extra-ordinariness and the routine nature of policy responses.

4.   The domestic level: unpacking the relationship between discourses and policies

Since January 2011, migratory patterns to Europe and across North Africa have changed in significant ways. Two types of movements can be identified, and the comparison between the two gives a sense of the extent of the supposed "migration crisis": arrivals in 2011 versus those in the course of the previous decade. The first movement concerns third country nationals who fled North Africa for Europe. Between January and August 2011, 52,000 people arrived in Italy by boat from North Africa: 27,000 from Libya and the remainder from Tunisia (UNHCR, 2011). A comparison with the data on arrivals recorded over the course of the previous decade, when on average 20,000 irregular migrants a year landed on Italian shores (figure 1), leads to one fairly simple conclusion: in the wake of the Arab Spring, irregular migration towards Italy has increased. It follows that arrivals in Italy by sea recorded during 2011 are high by historical standards. This applies specifically to refugees and asylum-seekers. In fact, the number of asylum requests submitted in 2011 was three times the figure for 2010: in 2011 34,120 applied for asylum, while in 2010 10,050 requests were lodged (SPRAR, 2011 and UNHCR, 2012). Yet two important caveats apply.

First, these numbers represent a small proportion of overall arrivals in Italy. In fact, Italy's yearly migration quotas have increased over the years. Interestingly, even the centre-right coalition of Silvio Berlusconi, which had won the 2001 election after proposing restrictions on migration, was forced to bow to the requests of employers' associations for drastic increases. After a slight decrease in 2002, the 2005 quotas were three times as high as those for 1999 (Cuttitta, 2008: 47). The continuous rise in migration quotas demonstrates that the actual demand for labour in Italy has been much higher than political actors have been willing to admit (Pastore, 2007). These measures evidence the mismatch between what politicians say in terms of reducing migration and actual immigration politics.

Secondly, irregular migrant flows to Italy in 2011 represent only a fraction of those across North Africa during the same year. According to

the International Organization for Migration (IOM), as of October 2011 about approximately 700,000 third country nationals had crossed Libya's borders into Tunisia and Egypt, as well as into Algeria, Niger, Chad and Sudan (IOM, 2011). This reveals seemingly paradoxical trends. While irregular migratory flows to Italy in 2011 were lower than regular arrivals, and limited compared to the movements recorded across North Africa, the internal political discussion focused on the idea of "emergency". As I shall argue below, Italian immigration policies implemented with respect to North Africa transcend this unilateral framing and speak to a diverse range of interests and audiences, going *beyond the emergency logic.*
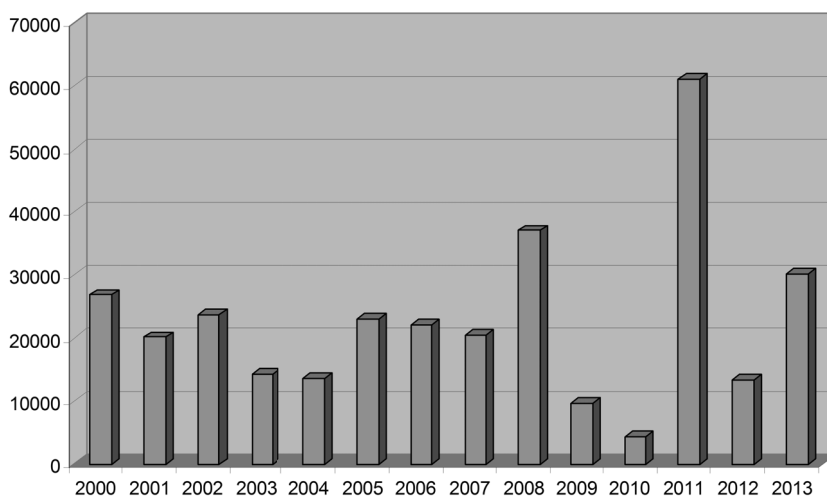
Figure 1   Irregular arrivals to Italy by sea between 2000 and 2013

Source: Elaborated from Cuttitta (2008) and European Union Agency for Fundamental Rights (2013)

In the early days of the unrest across North Africa, the Italian government took action to address the looming "human tsunami" from North Africa. On 12 February 2011, Prime Minister Berlusconi issued a decree establishing a state of humanitarian emergency in Italy (Consiglio dei Ministri, 2011) and enacted extraordinary measures in order to provide adequate facilities and deliver humanitarian assistance within Italy (Consiglio dei Ministri, 2011). Under the Prime Ministerial Order n. 3924 on 12 February 2011 (Ordinanza del Presidente del Consiglio dei Ministri), the Prefect of Palermo was appointed Special Commissioner with full powers to implement programmes in response to the emergency (Campesi, 2011 and Governo, 2011). To do so,

the Special Commissioner was provided with around 200 troops from the Armed Forces (Governo, 2011).

Subsequently, in a decree published in the Official Gazette on 11 April 2011 Italy declared a state of humanitarian emergency across North Africa, in order to strengthen the humanitarian response there (Gazzetta Ufficiale, 2011a). Italy committed herself to "to engage in extraordinary and urgent measures in order to provide humanitarian assistance in North Africa, while ensuring the effective fight against illegal immigration within the national territory" (Presidenza del Consiglio dei Ministri, 2011b).

In addition, on 31 March 2011, the Italian Minister of the Interior tabled a plan to accept migrants who had arrived from Tunisia since January 2011 (Senato della Repubblica, 2011a and Ministero dell'Interno, 2011b). As detailed further below, with resources made available from the Civil Protection Fund all regions were requested to take an active part in the reception of migrants, refugees and asylum-seekers from North Africa (Libero, 7 April 2011). Another ordinance by Prime Minister Berlusconi, published in the Official Gazette on 24 September 2011, allocated €230 million to tackle the "humanitarian emergency in the country in relation to the exceptional influx of citizens from the countries of North Africa." The budget of the National Fund of Civil Protection included €46 million for the provision of shelters (Gazzetta Ufficiale, 2011b).

Legislation on the repatriation of third-country nationals was also revised. On 2 August 2011, the Italian Parliament ratified law 129/2011 containing provisions for the implementation of European Directive 2004/38/EC on the free movement of EU citizens and for the transposition of Directive 2008/115/EC on the repatriation of irregular third-country nationals (Parlamento Italiano, 2011). This law authorized the forcible removal from Italy of individuals not fulfilling the requirements set out by the EU Directive on Free Movement and who failed to comply with an order to leave the country within a certain timeframe. Furthermore, law 129/2011 increased the time-limit for the detention of irregular migrants from six to 18 months (Amnesty International, 2011).

Notably, however, despite the "migration crisis" in North Africa, standard migration policies continued to be implemented. This was the case, for example, of migration quotas and the European Integration Fund. On 17 February 2011, the Italian Ministries of the Interior and of Manpower issued the decree on annual quotas, and 60,000 places for third-country nationals were made available (Ministero dell'Interno, 2011a). Similarly, as part of the initiatives funded by the European Integration Fund (EIF), the Italian Ministry of the Interior initiated the implementation of measures

to facilitate the integration of migrants, refugees and asylum-seekers into Italian society (Ministero dell'Interno, 2011d).

As part of the EIF, between January and September 2011, the Italian *Sistema di Protezione per Richiedenti Asilo e Rifugiati* (SPRAR) collaborated with Civil Protection to assist 4,865 persons from Afghanistan (13.7%), Somalia (13.1%), Eritrea (10.8%), Nigeria (7.6%) and Pakistan (5.9%) (SPRAR, 2011: 47). Furthermore, as part of the *Piano per l'accoglienza dei migranti* envisioned in the Decrees of 12 February and 7 April 2012, the Italian regions provided assistance to 22,216 persons in the form of food, housing and healthcare. This was made possible by collaboration between regions and so-called "implementing partners", including civil society organizations (SPRAR, 2011: 48).

On 17 September 2011, the European Commission granted Italy the sum of €27 million in co-financing for the implementation of the annual programme for 2011 (Ministero dell'Interno, 2011c). This fund covered a variety of activities, such as language training, employment generation workshops, assistance with accommodation, cultural mediation and intercultural dialogue (Ministero dell'Interno, 2011d).

From this brief review, it can be argued that Italian migration policies in 2011 present numerous inconsistencies, alternating between short-term, emergency-oriented approaches and long-term ones going beyond irregular arrivals from North Africa. Indeed, the fact that not all the policies implemented during and after the crisis in North Africa were of the former type is highly significant. To an extent, this complexity reflects the domestic political debate, which tends to demonize and scapegoat migrants. To better understand the fuzzy relationship between discourse and practice in relation to notions of crisis, I turn to two issues that framed the debate on migration in response to the uprisings in North Africa: repatriations to Tunisia and the setting up of camps in Italy.

The first issue relates to the repatriation of persons who had reached Italy by sea from North Africa. Notably, the Italian Right-wing party Lega Nord (Northern League) insisted on the repatriation of irregular migrants. This position emerges from the following quote by the Lega parliamentarian Lorenzo Bodega during a parliamentary debate:

> The worry felt by many Italians, who fear the arrival of potential terrorist fugitives or mere profiteers exploiting the confusion in order to land in Italy in the guise of refugees, is justified. Maroni is therefore right to request support from Europe. This should not be used to facilitate the stay of abusive but should be used to encourage their repatriation. Lega Nord supports an

attitude of firmness, so that Italy is not overwhelmed by an unsustainable number of migrants (Senato della Repubblica, 2011b: VIII).

Unsurprisingly, Roberto Maroni, the pro-Lega Minister of the Interior, was a vocal proponent of bilateral agreements with the governments of countries such as Tunisia, as well as with Libya's National Transitional Council. Upon the finalization of the accord with Tunisia, Maroni explained that the measures would prevent clandestine immigration and thus allow Italy to "turn off the tap" of irregular migrants from North Africa (Corriere della Sera, 5 April 2011). Arguments in favour of repatriation often made reference to a lack of European support. This position is summarized in the following statement by Sonia Vitale, Undersecretary of the Interior, before Parliament on 28 September. Viale maintained:

> It is the duty of all European Member States to help countries under particular migratory pressures such as Italy today, not only in terms of equitable burden-sharing but also with regard to the assumption of specific responsibilities (Camera dei Deputati, 2011c: 4).

As a matter of fact, the ostensible need for forceful action due to the absence of European support represents an element of continuity in the discourse of Italian politicians, one that features irrespective of party distinctions. At the same time, the emergency rhetoric served to galvanize attention and to secure extra support from Brussels. In fact, since the onset of arrivals from North Africa in the 1990s, both Lega and the Italian government as a whole blamed the European Union for failing to take a tough stance on the issue of migration and to support Italy (Geddes, 2008: 358).

The second issue regards the role of the Italian regions in the provision of shelter for those fleeing from North Africa. The government proposal to set up camps across Italy for migrants fleeing North Africa generated intense debate. Strong resentment was voiced by Italian regions and politicians concerning both the location and the type of assistance involved. During a parliamentary debate the head of *Partito Democratico*, Pier Luigi Bersani, condemned the Italian government's slow response to a crisis which, in his view, was neither unprecedented nor unforeseeable (Camera dei Deputati, 2011d). The President of the Italian Confederation of Regions, Vasco Errani, opposed the measure in so far as the "tendopoli" (tent cities) would be "unmanageable" (La Stampa, 2011). Accommodation in host families was put forward as a possible alternative. As the mayor of Padova, Silvio Zanonato, observed, regions like Veneto were in favour of a "tangible kind of solidarity"

whereby migrants would be hosted in small structures in different towns and cities in Veneto (Corriere del Veneto, 2011).

Eventually, the government made it clear that all regions, with the exception of Abruzzo (because of the 2009 earthquake), were expected to provide assistance and that "refusal would not be justified" (Fatto Quotidiano, 31 Marzo 2011). Yet the process of selecting the sites was dogged by controversies. For example, on 29 March 2011 the region of Tuscany lamented the fact that it had been informed of the opening of a camp in the town of Pisa by the national media rather than through official channels (Camera dei Deputati, 2011d). These quarrels notwithstanding, Italian regions made space available to host up to 50,000 persons.

This brief review of the debate among Italian politicians sheds light on the complex relationship between rhetoric and policies. On the one hand, ideas centred on the notion of emergency informed the Italian policy response to the crisis in North Africa, and to the irregular arrivals in particular. On the other hand, Italy also undertook a wide range of actions unconnected with any putative prospect of invasion by migrants from North Africa. In other words, notions of *imagined* crisis only partially capture Italy's multifaceted response to the humanitarian crisis in Libya and the region.

We are thus led to two of the central themes of this paper, those of crisis and of ambiguities instrumental to test emergency discursive practices. The crisis lexicon, which nourishes public anxieties, is partially at odds with the policies implemented (Zincone, 1998). Diverging interests and actors disclose a multifaceted policy milieu. These multiple dimensions of Italian policymaking have had a significant impact on the country's relations with Europe.

5.   The international level: relations between Italy and the EU

In its interactions with Europe on the increasing migratory flows from North Africa, Italy's objective was straightforward. As the Prime Minister put it, in all its bilateral and multilateral exchanges Italy sought to "block migrant fluxes" (TGSky, 31 March 2011). In this context, the diplomatic re-engagement between Italy and Tunisia in 2011 provides insightful clues.

On 5 April 2011, Italy and Tunisia signed an "exchange of notes" (Il Secolo, 3 April 2011). While the full details of this agreement remain undisclosed at the time of writing, it reportedly envisaged active cooperation between the two nations, both to prevent irregular arrivals in Italy and to repatriate

Tunisian nationals (Senato della Repubblica, 2011a: vi). As the then Minister of the Interior, Roberto Maroni, made it clear, the goal of this agreement was to reinforce the collaboration between Italian and Tunisian security forces "in order to prevent the arrival of clandestine migrants on Italian shores. In fact the agreement envisions simplified procedures for repatriation" (Camera dei Deputati, 2011a). For our initial purposes, two aspects of the agreement are worth mentioning: the issuance of temporary protection permits, and repatriation to Tunisia. Above all, they illustrate the extent to which the EU mechanisms and related emergency discourses were together used as a Trojan Horse for at least a temporary solution to irregular arrivals from North Africa. If nothing else, the emphasis on emergency served the purpose of appealing for extra help from Brussels.

With regard to the former, on 7 April 2011 the Council of Ministers formally agreed to issue temporary residence permits on humanitarian grounds to Tunisian citizens who had reached Italy between 1 January 2011 and 5 April 2011. The Italian Prime Minister signed a decree implementing Article 20 of the "*Testo Unico*" on migration. Approximately 25,000 Tunisian nationals who had landed in Italy during that period were granted temporary protected status and, *in principle*, free circulation within the Schengen area (Pascouau: 2011: 1). As mentioned above, this proposal initially met with significant objections. The government had first to win over its political allies, and especially Lega Nord, which saw this temporary protection as an amnesty in disguise. Eventually, support was secured on the grounds that the measure would alleviate the migratory pressure on Italy, inasmuch as it would allow Italy to act as a transit zone as opposed to a destination (Campesi, 2011). As Umberto Bossi put it: "I agree with this solution as long as they go to France and Germany" (Quotidiano Nazionale 6 April 2011, quoted in Campesi, 2011). On 6 October 2011 the temporary permits were renewed for a further six months (Presidenza del Consiglio dei Ministri, 2011a).

As we shall see, this decision gave rise to intense debate at the European level. The dispute with France and the EU shows the extent to which the *vincolo esterno* strategically employed by Italy proved to be a double-edged sword. Free movement within the Schengen area, which was used as leverage in the decision to grant temporary protection, led to negative side-effects. Similarly, excessive use of emergency language was arguably intended primarily to secure extra European support.

The second aspect of the proposal entailed the repatriation of Tunisians who arrived after the signing of the agreement. Between April and October 2011, 3,385 Tunisian nationals were returned to Tunisia (Ministero dell'Interno, 2011e). To some Italian politicians, the immediate decrease

in migration from Tunisia to Italy once the agreement came into force represented evidence of its success (Senato della Repubblica, 2011c: 18). As the Italian Minister of the Interior declared on 31 May, "the agreement with Tunisia is working. In fact since April the number of arrivals from Tunisia has been very small" (Camera dei Deputati, 2011b). However, the discussions with other European member countries were not unproblematic: the Italian decision to grant temporary permits proved particularly controversial.

On 11 April 2011, the European Justice and Home Affairs Council rejected the joint Italian-Maltese demand to extend temporary residence permits for Tunisian migrants to cover the rest of Europe. The resulting disappointment felt by the Italian government was voiced by Roberto Maroni, who bemoaned the lack of support shown to Italy and questioned "whether there is any point in remaining in the EU" (European Parliament, 2011). From 5 April 2011 onwards France intensified checks along the border with Italy and on 17 April blocked cross-border rail traffic (Wall Street Journal 8 April 2011). The French move prompted an immediate reaction from Lega Nord. Protesters from Lega demonstrated in Ventimiglia, arguing that the arrival of Tunisians was a direct consequence of France's decision to attack Libya (Il Fatto Quotidiano, 4 April 2011). The diplomatic dispute gave rise to remonstrations on the part of Lega Nord. On 17 April, the Italian Ministry of Foreign Affairs lodged a formal protest with the French government, claiming that the French measures were "illegitimate and in clear violation of general European principles" (The Guardian, 17 April 2011).[1]

To add nuance to the picture, it is noteworthy that the EU-wide approach to North Africa refrained from endorsing the "migration crisis" jargon, and instead advocated a broader notion of mobility. Following the fall of Tunisia's Ben Ali on 14 January and of Egyptian President Hosni Mubarak on 11 February 2011, the European Commission (EC) made a commitment to support nascent democracies and to implement a comprehensive approach to migration. On 8 March 2011, the EC President, José Manuel Barroso, launched the "Partnership for Democracy and Shared Prosperity with the Southern Mediterranean". This incentive-based approach involved, among other things, "Mobility Partnerships" to provide a comprehensive framework that would ensure that the movement of persons between the EU and a third country would be "well-managed" (European Commission, 2011). The overarching aim was to maximize the positive impact of migration on development while combating irregular migration. Specific activities included visa facilitation agreements, labor migration between Member States and third countries, voluntary return arrangements, working arrangements with Frontex, and the conclusion of readmission

agreements (European Commission, 2011). By and large, in addressing the needs of emerging democracies across North Africa, the European Commission sought to minimize the significance of the "migration crisis" and instead to frame arrivals in Lampedusa as an ordinary afflux of irregular migration (Campesi, 2011: 1). Against this multifaceted background, an underlying thread becomes noticeable in the Italian context, namely that of an *imagined* crisis.

6.   Likening domestic to international engagement: crisis as normality

The stirring up of alarmism about a looming migration crisis is not a new political device. Since they are bound up with broader processes of social change and structural socio-economic transformations (Castles and Miller, 2003), migration and refugee movements often invite to debates centered on the idea of "crisis" (Zolberg, 2001). To an extent, party politics is the culprit. Fear-mongering and questioning of the stability of the system are intrinsic to electoral and party dynamics. To a certain degree this explains the endurance of emergency-centered political approaches – largely at the level of discourse as opposed to actual policies – which are legitimized through a multitude of legal instruments and policy decisions. In other words, the shrewd utilization of powerful images of impending disasters is a well-established political tactic. These, however, remain merely "images" in so far as both migration patterns and policy responses reveal a more much differentiated picture, defying that of crisis. As demonstrated in the first section, in the case of migration to Italy the available figures easily discredit the sensationalist representation of an invasion. In fact, the number of arrivals to Italy from North Africa was very low, not only in comparison with movements across North Africa but also in the context of annual immigration quotas to Italy. As the Commissioner for Human Rights at the Council of Europe, Thomas Hammarberg, documented in the report following his visit to Italy on 26-27 May 2011, migrants from Libya to Italy make up just 2 per cent of people who have left Libya as a result of the conflict. Indeed, according to the Commissioner's count, as of 7 September 2011, 98 per cent of those leaving Libya crossed land borders into Tunisia, Egypt, Niger, Chad and Algeria (Council of Europe, 2011). This observation is relevant in so far as it contextualizes the idea of either a developing or imminent migration crisis in Italy. It follows that the *relative* magnitude

of migration as experienced by Italy, and by Europe as a whole, during 2011 necessitates a critical reassessment of the notion of "crisis."

On the one hand, a number of measures reinforcing the idea of crisis were indeed put forward. Yet on the other, Italy supported measures and financed multilateral actions inspired by a greater set of considerations. In turn, the mixed and contradictory emphasis on the "invasion" is implicated with the broader internal and international debate and serves a shifting range of interests. We are thus led to consider the complex landscape of agenda-setting and the multiple lines of connection between domestic and international realms. The mismatch between the discursive use of emergency and policies implemented shows the deep-seated contradictions that have long been postulated by Zincone (1998). At the same time, attempts to use EU mechanisms as an external safety-valve - such as the recourse to emergency discourse to secure EU support and the issuance of temporary permits exploiting the Schengen area - present numerous limits and are not sustainable. In fact EU-Italian relations have been characterized by a mixed-policy response.

Italy expressed alarm about irregular arrivals from North Africa, and in the discussions with Brussels priority was given to actions serving to crack down on the flow of "clandestine" migrants. Notably, in the aftermath of the revolutions Italy was among the first countries to seal agreements on migration with Tunisia and Egypt (Ministero degli Esteri, 2011) and, well before the fall of Tripoli, with Libya's National Transition Council (Memorandum of Understanding, 2011). Yet elements of openness towards migration and a more diversified migration response can also be observed. Beyond the ostensible crisis of irregular arrrivals, both Italy and the EU sought to support democratic transition across North Africa. Discrepancies between bilateral and multilateral arrangements, and between discourse and policy stances, persist confirming Italy's "propensity for self-contradiction" (Zincone, 1998). The populist commitment to an imagined territorial identity – epitomized in the stance taken by Lega Nord as well as by the Italian government – remains a tactic (but one only symbolically effective) of dividing citizens from 'strangers' and securing electoral leeway (Anderson, Gibney and Paoletti, 2011). Yet the mix of policies endorsed by Italy is as complex as it is heterogeneous.

Conclusions

The primary objective of this paper was to document and explain, at least in part, the Italian domestic debate and policies on migration during the political unrest in North Africa in 2011. The comparison between public representations of emergency and policies implemented can advance our understanding of crisis and migration towards an appreciation of nuances and counter-trends. Without embracing overly simplistic, Manichean accounts, I contend that the prevailing discursive theme of politicians tends to champion the sovereign "right to exclude" as a means of confronting supposedly impending migrant invasions of historic proportions. Yet a close examination of irregular flows in 2011 in fact shows that the numbers involved are not unprecedented. Such an exaggeration of the scale of migration flows is far from being a recent tendency. A large body of scholarship has documented the mechanics of how, and the reasons why, states feel compelled to reaffirm the shared significance of national membership, by targeting irregular migrants who only account for a proportion of overall migration trends (Geddes, 2000 and Joppke, 1998). The interesting twist, however, rests in the connection between this rhetoric and the policies adopted. Although the vocabulary of crisis was used extensively to justify the passage of urgent legal emergency measures, Italy continued to enact initiatives that went well beyond merely limiting the irregular arrival of migrants. Policy-making swings between persistency and emergency and related ambiguities (Zincone, 1998) are a continuing feature of Italian migration policy. The same applies to the attempt to engineer policies that can make opportunistic use of EU mechanisms. For example, the reliance on emergency discourse in relation to irregular arrivals when seeking European support and the issuing of temporary permits can be explained if we approach the relationship between Italy and the EU through the lens of *vincolo esterno*. Strategic advantages could be secured by either being bound by, or seemingly against, EU commitments. In the process we have seen how discourses and policies are being redefined by the international dimension.

An important corollary to this claim is that that the multifarious cycle of emergency rhetoric carries implications for, and is affected by, broader foreign policy dynamics. Italy's fluctuating stance, in calling for European help on migration while undermining the very rationale of the Schengen Treaty, exposes the fault-lines of Italian domestic and foreign policy. In fact, the opportunistic use of EU mechanisms is no panacea. It exposes domestic weaknesses and the concomitant 'credibility problem' vis-à-vis

EU partners (Dyson and Featherstone 1996: 11). To be sure, Italy's fickle behavior and its awareness of being "last among the great, first among the small" are enduring features of its century-long history in the community of nations (Bonvicini et al., 2011). Images of crisis complement and further consolidate these traits.

While this paper has expounded some of the trends behind Italian political behavior during the so-called Arab Spring, several questions remain to be answered. More attention should be paid to parties at the margins, as well as to the role of civil society in either fostering or hindering contending emergency mentalities on migration. In questioning our initial point of observation and our underlying assumptions, we may learn a great deal about the political environment within which parties operate and the extent to which the politics of emergency forms part of a more diversified tapestry of ideas and actors.

Note

1. Despite these disputes, Italy and France found some grounds for collaboration. On 8 April 2011, the French and Italian Interior Ministers announced an agreement for "joint air and naval patrols off the Tunisian coast to block departures of irregular migrants from Tunisia." Reportedly, the new measures were to be carried out with the assistance of Frontex (Migrants at Sea, 2011).

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Money for Nothing, the Cricks for Free

Five Paradoxes in EU Migration Policy

Jan Claudius Völkel

Abstract

The conflictive targets of achieving security for itself, and assuring basic human rights for irregular migrants, have led to paradox EU migration policies. The increasing perception of (uncontrolled) immigration as a potential security threat has contributed to a migration approach that is driven primarily by principles of defence and deterrence. Focusing on the Mediterranean region, this article points to five paradoxes, in areas where EU immigration policies and actions not only fail to reach their targets but often generate opposite outcomes. This comes at high costs in terms of financial contributions and human losses. In addition, these policies unnecessarily reduce the EU's negotiating power in other policy fields. The article concludes with recommended changes in EU migration policies and calls for an end to the hitherto security-dominated approach to migration.

Keywords: European Union, Migration Policy, Stockholm Programme, Securitization, Frontex, Readmission Agreements, North Africa, Arab Spring

1.   Introduction

2014 is the final year of the European Union's Stockholm Programme period. Agreed upon by the European Council in December 2009, the Stockholm Programme outlined the plans for developing the EU's Justice and Home Affairs (JHA) policies for the following five years, including the main aim of making the European Union an area of freedom, security, and justice (European Council, 2010). This strategy, in its chapters 5 and 6, also tackles the question of how to deal with people who intend to enter the EU, whether voluntarily (mainly for working purposes, coming on regular or irregular

ways) or enforced (mainly asylum seekers, but also trafficked persons). Maintaining the balance between being open for those who need access while protecting itself from uncontrolled irregular influxes of migration is the core challenge for the EU, as outlined in those two chapters.

In the action plan related to the Stockholm Programme, the European Commission (2010: 7) stated in April 2010 that '[t]he prevention and reduction of irregular immigration in line with the Charter of Fundamental Rights is equally important for the credibility and success of EU polices [sic!]'.

The years of the Stockholm Programme 2010-2014 have seen major events with lasting impact on the EU's performance in the area of migration and asylum policy. First, the implementation of the Lisbon Treaty, enacted in December 2009, brought fundamental changes to the EU structure as a whole, including how it presents itself to, and interacts with, external actors (Lavallée, 2011). Second, the pervasive economic crisis in many EU Member States has reduced the overall disposition to welcome people from other parts of the world and triggered massive population movements from southern to northern EU Member States of +45 per cent between 2009 and 2011 (OECD, 2013: 11). Non-EU immigrants seeking employment now face increased competition from EU passport holders with unrestricted EU-wide work permissions, which now (as of January 2014) includes Bulgarians and Romanians. Third, the accession of Croatia to the EU on 1 July 2013 has further extended the external borders of the EU, now being adjacent to Bosnia-Herzegovina and – though only with a very short borderline of just 25 km – Montenegro. With the notable exception of Kosovo, all official passport holders from western Balkan states have since December 2010 enjoyed visa-free access to the EU for up to 90 days (within a period of 180 days). Fourth, after the inception of Frontex as the European Border Protection Agency in 2004, major initiatives aimed at tightening control of the EU's external EU borders have been introduced, the digital fingerprint database EURODAC or the satellite-based surveillance programme EURO-SUR representing some of the most prominent examples here.

Finally, the revolutionary events in North Africa as well as in many countries of the Middle East have changed significantly the political, societal, and economic circumstances along the eastern and southern Mediterranean coastline. Regimes that over decades had seemed stable have suddenly begun to face unprecedented protests from their own people. As recent as 2012, indices such as Freedom House or the Bertelsmann Transformation Index (BTI) recognized remarkable improvements in the state of democracy in several countries – Egypt and Tunisia in particular –

though most improvements in Egypt have been rolled back since summer 2013 (Völkel, 2013).

These five developments truncate the EU's migration cooperation, which has traditionally viewed North African states as pre-frontier barriers to irregular entries. After analysing the altered circumstances under which EU migration policy has been formulated and implemented (after both the changes brought by the Lisbon Treaty and the changes induced by the Arab Spring), five paradoxes will be elaborated that show how intentions and outcomes in EU migration policies often differ. The guiding hypothesis states that *the increasing perception of irregular migration as a threat to security (rather than a humanitarian disaster) has led to schizophrenic EU actions that exacerbate the problems they are intended to resolve.* In advancing this argument, the article draws on Düvell's (2011: 275) idea that 'regulations that are meant to prevent unwanted migration often have unintended side-effects and instead encourage irregular migration'. In addition, this article argues that such regulations are hardly cost-effective and instead impair the EU's negotiation positions in other policy fields. In conclusion, the article will develop some ideas for the further development of the Stockholm Programme, as its extension and advancement will be discussed throughout 2014.

2.   EU migration policy under altered circumstances

The revolutionary wave weeping through North Africa and the Middle East in winter 2010/2011 was the first litmus test for the European Union's fundamentally revised external action structure. Initiated by the Lisbon Treaty on 1 December 2009, the creation of the double-hat position of the High Representative of the Union for Foreign Affairs and Security Policy and Vice-President of the European Commission (HR/VP), as well as head of the European External Action Service (EEAS), was only one important shift within the EU power structure. Making the EU Charter of Fundamental Rights compulsory for all EU action – including external relations – strengthened the framework for ensuring human rights through EU activity (Mink, 2012: 142). Though proclaimed in 2000, it was only Article 6 of the Lisbon Treaty that eventually defined the Charter's legal obligation. This Article also called for the EU's accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms, thereby increasing the weight of humanitarian considerations in actions taken by the EU. In line with this, the Lisbon Treaty outlines in Article 21 the guiding

principles upon which EU foreign policy must be built, namely 'democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law'.

These principles gain particular relevance in the discussion about the treatment of irregular migrants and the EU's idea of 'third safe countries', namely, its strategy of externalizing and extraterritorializing 'a substantial part of their immigration policies [...] in exchange of substantial financial support' (Caillault, 2012: 133) unto countries such as Libya or Morocco. Detention centres were set-up along the Mediterranean coast, Frontex arranged for joint missions and trainings with personnel from the neighbourhood, and with the now much-debated European Border Surveillance System (EUROSUR) the 'pre-barrier territories' are set to become increasingly important to EU border control (Seiffart, 2012). As a result, for

> the case of the EU's relations with North African countries, we have seen the emergence of an extensive system of security governance based on such instruments as readmission agreements, capacity building, export of surveillance technology, or information exchange. This stems from the fact that, in most of those countries, governments view themselves as guardians or policemen of European security (in return, of course, for certain favours) rather than defenders of their own citizens (Pawlak, 2012: 96).

Given the fact that even after the Arab Spring all countries in the EU's southern neighbourhood 'lack adequate guarantees, leave a far too large margin of appreciation to EU Member States and thus could necessarily lead to human rights violations' (Mink, 2012: 120f.), one would expect a drastic curtailing of these policies if EU decision-makers were to take the Lisbon Treaty seriously and respect human rights concerns as requested.

2.1 Depoliticized relations and stronger autocracies as consequence of EU action

The Lisbon Treaty also provides for an increased standing of the European Parliament (EP) and the Court of Justice of the EU (CJEU) in external affairs (Kaunert and Léonard, 2012: 16). Protocol 24 of the Lisbon Treaty stipulates that the CJEU 'has jurisdiction to ensure that in the interpretation and application of Article 6 [...] the law is observed by the European Union'.[1] Drawing primarily on Articles 77 to 79 and 218(6) of the Treaty on the Functioning of the European Union (TFEU), the EP 'has often voiced concerns over

external cooperation objectives in the JHA field being implemented at the expense of human rights and civil liberties' (Trauner and Carrapico, 2012: 8). This clearly has made the work of EU diplomats in countries with dubious democratic standards more difficult. In the case of Egypt, for example, the EP called upon the Commission in March 2013 to stop the imbursement of EU support as long as the (then Morsi) government failed to meet minimum democratic standards (European Parliament, 2013). Discrete discussions between representatives from the EU and the Egyptian government now must grapple with the Sword of Damocles resulting from possible EP inquiries into what exactly is going on. Similar problems arise with other mediocre human rights performers. In consequence, partner governments will be more hesitant to share ideas and plans with the EEAS as absolute confidentiality cannot be assured and the risk of potentially compromising information reaching the public through EP scrutiny is enhanced (Senior staff member EU Delegation Cairo, 2012, personal communication).

In that sense, it is surprising that increased EP influence might contribute to a further de-politicization of the EU's relations with the Middle East and North Africa (MENA), as politically sensitive topics might be underaddressed in mutual negotiations. As a result of the disillusionment over the 'politicized' approach of the 1995 Euro-Mediterranean Partnership, the EU has concentrated its MENA relations more and more on 'technical cooperation' (Bauer, 2011: 420; Holden, 2011). In accordance with the EU Commission's own credo, '[t]he most effective way of achieving change [in the region] is [...] a positive and constructive partnership with governments, based on dialogue, support and encouragement' (European Commission, 2001: 8), the construction of democratic façades was all too often celebrated as 'substantive progress'. A bit of increased electoral freedoms here, combined with considerable economic liberalization there were welcomed and praised as the Amman, Cairo, or Damascus Spring in the early 2000s (Völkel, 2014: 266). For sure, the EU succeeded in assuring stability for itself, but it mainly failed in its aspirations to contribute to democratization and higher standards for human rights in the region.[2]

In fact, it soon became clear that EU attempts to 'transform the region into an area of peace, democracy, stability, and prosperity' (Noi, 2012: 63) not only failed, but that these efforts actually helped strengthen authoritarian regimes in the region (Durac and Cavatorta, 2009: 11ff.). Demands for serious political reforms in the MENA region were postponed 'with the fear that rapid democratic transformation would most probably lead to instability through violent upheaval and civil war, bringing anti-Western Islamist parties to power and perhaps causing a rise in terrorist activities' (Noi, 2012:

73). Furthermore, with the creation of the Union for the Mediterranean (UfM) in 2008, the EU claimed 'a growing role of southern countries in its work in order to underline their co-ownership of the process' (Emara, 2010: 199). These measures ultimately gave these regimes more power (Reiterer, 2009: 322) and enhanced their hitherto low sense of ownership in the process (Comelli, 2010: 396). Though driven by good intentions, a negative outcome was that 'the institutional set-up elevates Arab regimes to become formal veto-players, and the prioritized policy areas have – from an Arab regime perspective – the advantage of being de-politicized and stripped of any ambitious macro-political goals such as democratization' (Schlumberger, 2011: 135).[3]

2.2 EU migration policies: external affairs seen through the interior ministers' eyes

The EU's focus on security diluted the concept of 'a ring of well-governed countries' (European Council, 2003: 8) to a concept of a ring of 'well-enough-governed countries'.[4] By including immigration, asylum, and visa policies in the first pillar, thereby subsuming these policies to the EU's Area of Freedom, Security, and Justice (AFSJ), 'a strong emphasis was placed on the need to develop an "external dimension of JHA for the EU"' (Longo, 2013: 40; internal quote refers to Monar, 2004). One outflow of this was the 'quasi-militarization of European external borders with the erection of fences at Ceuta and Melilla, the creation of Frontex, the EU external border control agency, and the installation of an early-warning radar system, e.g. along the Spanish coast' (Caillault, 2012: 137).

This security-driven approach to migration[5] (Bigo, 2009; Huysmans and Squire, 2009; Kaunert and Léonard, 2012: 2f.; Vollmer, 2011) also resulted from the fact that the two main actors in the conception of EU migration policy 'have been the European Commission's Directorate-General for Home Affairs (DG Home) and the Council's High Level Working Group on Migration and Asylum (HLWG)' (Carrera, 2013) but not external affairs actors. Primarily interior ministers led negotiations in the mid-1980s over the Schengen Agreement, a process that placed considerable emphasis on the internal security dimension of free border crossing. This set the overall tone of migration policy and even today, 'EU Home Affairs policy makers remain very much in the driver's seat of the external dimensions of the EU's migration policy agenda, which *de facto* means Ministries of Interior-like actors playing at diplomats' (Carrera, 2013; emphasis in original). Consequently, in 2011, it was the DG Home which

took the lead in drafting the Communication on a dialogue for migration, mobility, and security with the Southern Mediterranean countries, [...], while the EEAS was, to a large extent, sidelined in this decision-making process. It is not only in the internal preparation of the Dialogues, but also in the negotiations with third countries that DG Home Affairs has been taking a leading role. It is DG Home and not the EEAS that has led the majority of diplomatic missions abroad to promote and discuss the content of the Mobility Partnerships and the EU's 'insecurity approach' to migration from North Africa (Carrera, 2013).

The struggle between foreign and interior politicians within the EU framework also became visible in the aftermath of the political changes that took place in Egypt and Tunisia in early 2011. In efforts to reposition herself to the new situation, HR/VP Catherine Ashton presented the EU's new Mediterranean Strategy 'A Partnership for Democracy and Shared Prosperity with the Southern Mediterranean' (PfDSP) on 8 March 2011 (European Commission, 2011a). On 25 May 2011, the Commission tabled a comprehensive revision of the EU's European Neighbourhood Policy Strategy, 'A New Response to a Changing Neighbourhood' (European Commission, 2011b). Behind the façades of unified external action, however, Italy and France started struggling – mainly through their Interior Ministries in the Justice and Home Affairs Council and with reference to Article 2(2) of the Convention implementing the Schengen Agreement – with how to deal with increased inflows of irregular migrants from North Africa. Denmark began discussing the re-introduction of custom controls, while Germany, the Netherlands and others demanded the right to reinstate border controls. In short, some EU governments anticipated recanting one of the EU's central and most appreciated achievements, the abolishment of internal border controls.[6]

In line with the approach of depoliticizing its collaboration, the EU increasingly concentrated on economic cooperation with the MENA region. The general credo of liberalization was intended to sow the terrain for all cooperation activities in the economic sphere. Despite some successes, improved trade relations and EU-induced liberalization policies also brought economic problems to the MENA countries. These include a squeeze-out of the middle class, reduced social security, and the unfettered accumulation of wealth among the leading classes (Reynaert, 2011: 629f.). These economic inequalities have become, 'together with a lack of liberty, the root cause for the revolutions and the protests in the region' (Reynaert, 2011: 630). It was not by coincidence that '[t]he "Arab Spring" began in Tunisia and Egypt, two countries where new economic policies inspired by "orthodox" and "neoli-

beral" recipes over the years had increasingly eroded the existing relatively egalitarian social contract and coalitions reflecting it' (Kienle, 2012: 549).

Hirschman's (1970) dictum of people protesting with either their feet or their voice was confirmed once again by the events in Tunisia, Egypt and Libya beginning in December 2010. People not only took out to the streets but also left their countries, making use of the collapsed border and coastal controls. Indeed, the year 2011 saw a dramatic increase of irregular migration from North Africa into the EU, especially from Libya and Tunisia, with sky-rocketing numbers of asylum applications lodged in the EU especially by Tunisians (+911% in 2011 compared to 2010), Libyans (+293%), and Egyptians (+85%).[7] However, scholars like Fargues (2011) stress that the rise in numbers was not as dramatic as politicians like to pretend, especially not in the long run. In 2012, the total number of detected illegal border crossings into the EU fell by 50 per cent compared to 2011, from c. 150,000 to c. 73,000 (Frontex, 2013: 5). With regard to the central Mediterranean area in particular, the decline was even greater at 82 per cent, from 59,000 to 10,379 (Frontex, 2013: 18), and in the western Mediterranean, the numbers decreased by 24 per cent to 6,397, falling roughly the level of the years 2008 and 2010 (Frontex, 2013: 20).[8]

2.3 Mobility partnerships and readmission agreements as questionable 'carrots' for third countries

One of the most lucrative EU offers for the 'good performers' among the Arab transformation countries are mobility partnerships. The principal idea behind these mobility partnerships is to offer more access to Europe in exchange for improved border-protection cooperation, which includes the signing of readmission agreements. In addition to the 'advanced status' partner country Morocco, the Arab Spring shifted the spotlight on to Tunisia and Egypt as possible new mobility partnership addressees (Maroukis and Triandafyllidou, 2013: 2). Tunisia, motivated by the 'advanced status' promise, entered into negotiations and finally signed the mobility partnership on 3 March 2014 (European Commission, 2014). It then joined the circle of primarily Eastern European countries that had signed EU mobility partnerships, such as Moldova (2008), Georgia (2009) and Armenia (2011). In contrast, the Egyptian government directly refused the request (European Commission, 2013b: 12). Seeberg (2012: 14) argues that

> [t]he reason for the Egyptian decline has to do with the fact that the Egyptian authorities have stated that they cannot commit to any agreement as long as the new political leaders have been unable to take responsibility for the question.

This reflects only one side of the coin. In fact, Egyptian representatives perceive the proposed mobility partnership, which aims to reach a readmission agreement, as benefitting the EU exclusively (Senior staff member League of Arab States, Cairo, 2012, personal communication). A readmission agreement would involve the concluding partners agreeing to readmit their own nationals, or third nationals that have moved through their territory, should they enter or stay irregularly in the agreement partner's territory. EU negotiators consider these agreements useful in cases 'of irregular migrants, whose itinerary, but not their identity, can be established. With readmission agreements in place, nationality may no longer be the decisive factor for return, if transit through a country can be proved' (Roig and Huddleston, 2007: 365).

For Egyptians, however, the full mobility partnership package is perceived as 'restricted, non-permanent and highly conditional' (Carrera et al., 2012: 13), as the hoped-for visa facilitation cannot be guaranteed by the EU (Roig and Huddleston, 2007: 376f.). This is indeed regrettable for both sides, as the current procedures for obtaining Schengen visas are for the educated Egyptian elite in particular expensive, complicated, and even humiliating. A visa reform especially for multiple travellers (business men, academics, also students) could make a real difference here (Senior faculty member Cairo University, 2012, personal communication). But all that has thus far been offered is that

> [o]n 27 February 2012 the European Commission adopted a Decision establishing the list of supporting documents to be presented by visa applicants in Egypt. From 1 March 2012, all EU Member States require the same set of documents from visa applicants wishing to travel to the European Union (Schengen area). This measure is a huge simplification for the some 120,000 visa applicants in Egypt, who now no longer face differing requirements (European Commission, 2013b: 12).

Because the EU internal decision-making structure in the field of visa issuance is complicated and unpredictable (all Schengen member states have to agree, visa facilitations can be retracted on short note, etc.), these modest improvements make it only moderately more attractive for southern countries to engage in mutual mobility commitments.

If the EU wants to win southern countries' consent to readmission agreements and mobility partnerships, it must offer more than its migration portfolio. This could involve substantial and costly offers in other areas of development cooperation. Senegal, for instance, linked its readmission

agreement negotiations with Spain to an additional €15 million in development cooperation (Roig and Huddleston, 2007: 378). The example of Turkey, as discussed below, is also illustrative of this effect.

3. Five paradoxes of the EU's Mediterranean migration policy

Considering the general trend in EU migration policies (security-driven, little incentives for third countries), we can identify five paradoxes in the EU's migration policy towards third countries, meaning activities and behaviour that lead to counterproductive results. Each paradox supports the argument that the concentration on security within EU migration policy is the wrong approach to combating irregular migration, as it neither reduces the number of irregular migrants nor assures the necessary access to EU territory for legitimate asylum seekers. Furthermore, in pursuing this approach, the EU actually weakens its negotiation position in other policy fields by granting its negotiating partners leverage. Finally, the EU undermines its credibility as a human rights advocate that, in turn, makes it easier for autocratic rulers to argue against implementing minimum democratic standards in their countries.

3.1 The EU chooses a sledgehammer to crack a nut. But it is far from hitting the nutshell

The first paradox is that the EU is fighting the problem with the wrong means. Since having gone operational, the budget for Frontex has been increased from €19.6 million (in 2006) to €93.95 million in 2013 – an increase of almost 480 per cent.[9] This budget is just in addition to the national expenses spent by EU Member States on border protection, which in many cases also underwent exorbitant increases. The Heinrich Böll Foundation calculates that the total costs for the EUROSUR programme will involve another €318 million (in its least expensive version) to €913 million (in the most expensive version) in addition to annual operating costs (Hayes and Vermeulen, 2012: 51). Expenses for the multiple border control related initiatives under the €1.4 billion European Security Research programme, the European Defence Agency and similar initiatives have to be considered too. Hence, in the name of 'security', the EU and its member states have increased their border-protection spending by multiple-digit percentages, despite all the economic turbulence most European states have been subject to.

While the militarization of EU borders through Frontex and the attendant exploding costs might be justified by the need to fight international crime (e.g., cross-border weapons and drugs smuggling, human trafficking), the same is not true for irregular migration, as most irregular migrants within the EU arrive with a valid tourist visa and then simply overstay (Triandafyllidou and Ambrosini, 2011: 271f.). Consequently, '[f]ocusing on border control seems particularly inappropriate given that most African irregular migrants actually enter Europe legally, subsequently overstay their visa, and only then become irregular in the end' (Caillault, 2012: 137). Mediterranean boat migration or Eastern European river crossings, meanwhile, make only for a minor share of irregular migration into the EU (De Haas, 2007: 4). According to data from the Italian interior ministry,

> only 10% of the foreigners who resided illegally in Italy in 2002 had entered the country illegally by sea, while 15% had entered the country illegally by land, and 75% were overstayers [...]. The share of illegal arrivals by sea was estimated at 4% in 2004, 14% in 2005, 13% in the first six months of 2006 (Cuttitta, 2007: 3).

Similarly, Coslovi (2007: 2) speaks of 61 to 75 per cent overstayers among all irregular residents in Italy for the first half of the 2000s, and even Frontex (2013: 18) admits 'that overstaying is a very common modus operandi for irregular migration to the EU'. Even if one were to argue that Frontex military patrols help mitigate irregular migration, it does so at high costs for relatively little outcome, which means the EU principle of proportionality is clearly disregarded.[10]

This critical finding can also not be refuted with the argument that

> Frontex pursues a homogeneous border management practice rather less through practical cooperation in operations but rather through its risk analysis activities, as they serve to create – for the first time in the history of the European Union's external border – a unified image of that very border (Kasparek and Wagner, 2012: 190).

Paying €93.95 million primarily for 'risk analysis activities' is questionable by any standard. The EU Commission's Joint Research Centre, located in Ispra, Italy, with its seven scientific institutes, or the European University Institute in Florence and Fiesole would surely welcome a certain share of such funding and produce analyses of equal or better quality.

3.2   The EU pushes more people into clandestine migration

Another paradox result was produced by the introduction of biometric Schengen visas in 2012. Martin (2012: 281) has shown that by obliging travellers to register in the upcoming Registered Travellers Programme, the EU is 'extending its capacity to control mobility far beyond its jurisdiction, gathering up personal data from ever more countries in the world'. Clearly, this poses legal questions for the EU. But it also creates another problem: it essentially nudges those non-EU nationals who enter the EU with the intent to stay irregularly (i.e., those persons planning to live illegally in the EU under any circumstance) to forfeit applying for a Schengen visa (and then overstay) and enter clandestinely through the Mediterranean (Member of the Secretariat of the European Parliament, Florence, 2012, personal communication). They therefore avoid having their fingerprints registered in an EU-wide database, which makes identifying their nationality much easier and therefore increases the risk of being sent back once found in Europe. In the absence of clear documentation, the long-lasting procedures involved with identifying an illegal migrant and proving nationality or origin increases a migrant's chances of remaining in Europe. As Düvell (2011: 293) pointed out,

> a significant (unintended) effect of limiting regular immigration and restricting employment is that migration is driven into informal, shadow and niche activities. These findings show that despite the political intention of preventing and reducing irregular migration various legislations instead contribute to its emergence.

This implies that more fatalities will be the consequence, it seems the EU is creating the very irregular migrants it then tries to push back with massive investments in Frontex and upscale border protection technology. Unsurprisingly, at the EU's eastern border, 'many more migrants opted for clandestine entry (hiding in lorries or trains) during 2012 compared to 2011' (Frontex, 2013: 27). A certain share of these migrants can presumably be attributed to the introduction of biometric Schengen visa.

The introduction of biometric data has also been associated with the increasing number of desperate attempts to avoid documentation. Grant (2011: 148) tells the story of a young man residing illegally in the EU who 'used a lit cigarette to burn the fingerprints off his ten fingers [...] to prevent his prints being checked against migration databases, such as EURODAC, and to avoid return to a country of feared persecution'.[11]

A similar effect, namely the push of possible migrants from regular into irregular options, can occasionally be observed on the national level. For example, Italy's

> misuse of the existing quota system tends to increase the chances of beco-ming a legal resident migrant for an undocumented migrant who is already in Italy, than for a potential migrant who is trying to gain legal access to the Italian labour market from abroad (Maroukis and Triandafyllidou, 2013: 3).

Following the conclusion of the Egypt-Italy readmission agreement in 2007, some 5,000 Egyptian nationals illegally residing in Italy were legalised (Migration expert, Cairo, 2012, personal communication). This sent the message to people outside the EU that it was easier to enter Italy irregularly and hope for subsequent legalization than to enter by official means and apply for a regular work permit from the outset. Reliable numbers for the entire EU are difficult to assemble, but Rosenblum (2010: 1) speaks of ap-proximately five million formerly irregular migrants since the 1980s whose status has since been legalized within the EU.[12]

3.3 The EU makes irregular migration more dangerous and contributes to higher death toll

Frontex' successful narrowing of key migration routes in the Mediterranean through enhanced control of the shortest (and hence mostly favoured) transfer stretches is schizophrenic, as it must be presumed that it does not reduce the number of clandestine migrants, but simply diverts the routes. Already in 2006, a

> briefing to the European Parliament concluded that efforts to curb the number of migrants trying to reach Europe had not led to a decrease in the number of irregular migrants; instead, they have had the effect of displacing migration from one place to another and were accompanied by an increa-sing number of fatalities at the EU's external borders (Grant, 2011: 140).

Given that full control of the entire Mediterranean area is impossible, closing up the shortest paths to EU entry, namely the Strait of Gibraltar between Morocco and Spain or the Strait of Sicily between Tunisia and Italy/Malta, has led to a diversion of migrants' routes and an extension of the transfer distances. For example, Kasparek and Wagner (2012: 185) argue that 'Greece has become the main gate of irregular migration to Europe

[...] is partially due to the closure of the routes in the Western Atlantic and Central Mediterranean'.

Spijkerboer (2007) reaches similar conclusions. Though the reliability of available data was (and still is) questionable, he argues that in the case of increased border controls and the closure of relatively unproblematic transit routes through the Mediterranean, 'rather than abandoning their plans to travel to Europe, these migrants had simply chosen more dangerous migration routes, which exposed them to even greater risks' (Grant, 2011: 140). The number of deadly incidents in the Mediterranean would therefore increase rather than decrease through intensified border controls.

Frontex representatives and supporters of strict border control on the side of the EU and the member states understandably see it differently, and proudly point to statistics showing how the number of irregular migrants in the Mediterranean has been reduced through increased control and the closure of the most popular boat routes. When, for example, the western and central Mediterranean routes were almost closed through increased surveillance activities,

> Frontex recorded drops of some 90 per cent in the detection of irregular migration on the Central Mediterranean route to Malta and on the West African route to the Canary Islands. NGOs also reported steep reductions in the number of reported deaths at EU sea borders (Grant, 2011: 139).

However, those arguing these points overlook the fact that the reduced numbers counted in the areas under high control were not offset or even outweighed by higher death toll numbers in the high seas beyond their control. In principle, juggling with statistics regarding refugee numbers in the Mediterranean is difficult. For example, after the RABIT operation took place at the Greek-Turkish border between November 2010 and March 2011, 'Frontex did report a decrease in numbers of irregular border crossings. However, as this might also be due to the heavy winter, this particular statistical data does not allow for a rigid interpretation' (Kasparek and Wagner, 2012: 188).

In effect, passage routes are growing in length and are increasingly more dangerous for refugees. More fatalities must be expected. Or, as Frontex (2013: 5) states with regard to the 2012 Greek border-protection upgrade, '[t]here remains the risk of resurgence of irregular migration, since many migrants may be waiting for the conclusion of the Greek operations before they continue their journey towards Europe'. If that is the case, then once again considerable sums are being spent for a hardly satisfying outcome.

In addition, diverting routes through the Mediterranean involves higher financial costs for the refugees as professional traffickers demand higher fees. Human trafficking thus becomes an even more lucrative activity for traffickers – as a result of EU policy.

3.4 EU Readmission Agreements result from internal requirements, not external necessities

Another paradox involves the EU's special keenness on concluding EU Readmission Agreements (EURA) with third countries. 'Since 1999, when competence in this area was conferred on the European Community, the Council has issued negotiating directives to the Commission for 18 third countries' (European Commission, 2011c: 2). These 18 countries mainly comprise potential future EU Member States (Western Balkans and Eastern Europe) in line with the EU's 'concentric circles' model (Panizzon, 2012: 102f.), but also illustrative countries such as Georgia, Russia, Pakistan, or Hong Kong.[13]

Once the Commission is tasked with negotiating a readmission agreement with third countries, all EU Member States should stop any national negotiations conducted in parallel. However, this is in practice rather clumsy, as the interpretation of competence-sharing differs among various EU members (Roig and Huddleston, 2007: 369). The Lisbon Treaty (Article 79(3), combined with Article 79(1) and 4(2)(j)) left the exact division of competences in the area or readmission agreements unspecified, and it is up to further legal interpretations to decide who should be assigned with which negotiation powers and which decision competences (Panizzon, 2012: 124ff.).

So far, third countries clearly prefer concluding readmission agreements with individual EU Member States over the EU. There are two key reasons for this:

> Given the higher developmental impact of bilateral migration agreements, which unlike EURAs, offer labour market access quotas in exchange for cooperation on readmission we find there are justified reasons why migrant source countries often prefer such bilateral migration agreements over EURAs. The preference for bilateralism, however, can also be explained by the weak obligations to uphold the human rights of readmitted citizens and third-country nationals (TCN) or the total absence of such rights guarantees (Panizzon, 2012: 104).

In 2013, the five North African countries Morocco, Algeria, Tunisia, Libya and Egypt had readmission agreements with five EU Member States in different states of negotiation (cf. table 1). The data reveal that there is close cooperation against irregular migration especially in the western Mediterranean (Morocco with Portugal and Spain) and the central Mediterranean (Algeria, Libya and Tunisia with Italy; Malta is negotiating with all close southern neighbours but has to date not successfully concluded negotiations).

Table 1   Agreements linked to readmission between northern and southern Mediterranean countries[14]

	Algeria	Egypt	Libya	Morocco	Tunisia
Cyprus	-	-	-	-	-
France	**EL** 1984-1994 **PC** s 2003	n since 2007[15]	f 2007	**EL** 1983-1993 **PC** f 2001	**EL** 1984-1994 f 2009
Greece	-	**PC** f 2000	-	-	**PC** s 1990
Italy	f 2006 **PC** s 2009	**PC** f 2000 f 2007	**AA** s 2000 **AA** s 2003 **MU** s 2006 **PC** s 2007 **MU** s 2011 **EL** 2012	s 1998	f 1999 **PC** s 2003 **AA** s 2009 s 2011
Malta	n since 2001	n since 2001	**PC** 1984 n since 2001	-	n since 2001
Portugal	-	-	-	f 2004	-
Spain	**P** f 2004	-	-	**PA** 1992 **MU** s 2003 **MU** s 2007 **PC** f 2012 f 2012 (of the 1992 agreement)	-

AA Administrative Arrangement; **EL** Exchange of Letters; **MU** Memorandum of Understanding; **P** Protocol; **PA** Provisional Agreement; **PC** Police Cooperation Agreement – f *in force;* n *negotiated;* s *signed.*

Given the lack of incentives the EU has to offer while trying to sign readmission agreements (due to its dependence on member states' willingness to implement the benefits promised to the third countries), it is no surprise that no other country could have been convinced to enter into negotiations so far.

> [I]t is not so much the EU approach to a third country that determines the success or failure of EU external migration policy. Instead, the domestic

preferences of the third country concerned condition whether or not its
government will choose to cooperate with the EU on migration issues'
(Reslow, 2012: 394).

Egypt's hesitation towards an EU readmission agreement (see chapter 2.3)
is rooted in its unsatisfying experiences with Italy. The readmission agree-
ment between both countries, signed in November 2005 and put into force
in 2007, has been poorly implemented so far: just a few dozens of Egyptians
get readmitted per month, a number that deems small compared to the
thousands of Egyptians believed to be residing illegally in Italy. As there are
almost no Italians who live illegally in Egypt, the benefit for the Egyptian
government is minimal. In an attempt to provide the Egyptian government
an incentive to conclude the agreement, the Italian government offered to
accept 8,000 qualified Egyptian workers with a proper work permit in Italy.
So far, however, only around 160 Egyptians have been successfully placed,
mainly because Italy demands standards that Egypt is unable to fulfil, such
as HACCP hygienic certificates for gastronomy personnel – which are not
applied in Egypt (Migration expert, Cairo, 2012, personal communication).

Hence, the mere existence of a readmission agreement does not neces-
sarily mean that it is applied in practice. For example, despite an existing
readmission protocol between Turkey and Greece, only 1,281 Turks were
effectively readmitted between 2006 and 2010, though Greece has presented
requests for 62,816 people (Triandafyllidou and Ambrosini, 2011: 258f.).

Among the Mediterranean countries, the EU Commission has negotia-
ted only with Morocco (since April 2003), Tunisia (since 2011), and Turkey
(since May 2005). In addition, the Commission received a mandate from the
Council to start negotiations with Algeria in November 2002, but which have
never started. Negotiations with Tunisia were quick and smooth (see chapter
2.3), but negotiations with Morocco and Turkey have been long and thorny.
This was mainly due to two reasons: For one, both governments demanded
linking the signature of the readmission agreement with a visa facilitation
agreement (a request that was also made by almost all governments, incl.
Algeria; yet, only 11 of the 18 EU Readmission Agreements (concluded or
still under negotiation) indeed contain visa liberalization[16]). But here, the
Commission cannot make substantial promises, as visa facilitation must
be concluded by the Council, and member states have been far from being
united on the idea of easing access for citizens from the countries concerned.
Devisscher (2011: 93) observes that in EU readmission negotiations, '[w]
here measures have been taken, they are not legally binding and where
they are, commitments on the part of the Union are weak, while in parallel

imposing strict obligations on the third country'. Turkey's government has repeatedly emphasized that it is not willing to implement the readmission agreement with the EU even after its signature if visa facilitation is not included (Today's Zaman, 2013). Hence, despite recent successes, with the signatures of the Turkish government under the readmission agreement on 16 December 2013 and Morocco's signature under an even more encompassing Migration and Mobility Partnership on 7 June 2013, there is plenty of due cause for scepticism that the agreements will be put into effective practice (Coleman, 2009: 27ff.).

Another arguable paradox might be seen in the fact that EU Member States have been willing to unify their efforts to combat irregular migration (excepting the examples elucidated above) but have failed to forge a common position on how best to steer regular migration. The Blue Card initiative, proposed by the Commission in 2007 and specified by the Council's Directive 2009/50/EC in May 2009, aims to improve incentives for regular labour immigration but suffers from 'the many "mayclauses" that provide the member states with wide discretion and, as a consequence, reduce the "attractiveness" as initially framed by the Commission' (Eisele, 2013: 2). Until the EU Commission proposes more clear incentives for partner countries, better results in migration partnership negotiations with third countries remain unlikely. The Commission's next interim report on the Blue Card initiative, expected for summer 2014, will hopefully bring some improvement here.

Financial expectations also play a role. During its negotiations with the EU, Turkey wanted 'the readmission agreement to include strong funding from the EU, mirroring similar funding that is available to EU Member States under the "resettlement policies" within the European Refugee Fund' (Kasparek and Wagner, 2012: 186). However, the Commission is limited in terms of its capacity to make such offers, as

> [t]he only instrument that could in principle provide this additional funding to third countries is the Thematic Programme for cooperation in the areas of migration and asylum. But the Thematic Programme has a very limited budget (approximately 54 million EUR annually) and is designed to cover cooperation activities world-wide, meaning that the resources potentially available for a specific third country are very small (European Commission, 2011c: 7).

Many southern Mediterranean countries have also raised concerns regarding the mandatory 'Third Country Nationals' (TCN) clause that obliges

the partner countries to not only readmit their own nationals but also citizens from third countries that came into the EU via their territory. Meanwhile, the governments argue that they cannot be held responsible for the behaviour of citizens from other countries, and the EU argues that TCN is necessary as countries are also main transit countries for irregular migrants from other countries. Without such a clause, readmission agreements made little sense for the EU (European Commission, 2011c: 9). However, it is important to note that even the Commission itself criticizes the lengthy process of TCN negotiations and also questions the pressure coming from the member states at that point:

> It has been Commission's experience that by the time the third country finally accepts the principle of a TCN clause, a lot of time will already have been lost and further concessions are then necessary in order to agree on the precise language and preconditions of the clause, often to the detriment of its effectiveness. To maintain such effectiveness a use of appropriate leverage would have been useful in cases when it is particularly relevant for the EU to have a TCN clause included. Readmission of own nationals should typically not require important incentives. Interestingly, MS' bilateral readmission agreements seldom include a TCN clause (mainly where there is a common land border). Yet MS always demand a TCN clause at EU level (European Commission, 2011c: 9).

The high costs and effort incurred by negotiations, coupled with the fact that most readmission activities around the Mediterranean are already subject to bilateral agreements (though these are often implemented rather loosely) raise the question as to why the EU needs to engage in all these negotiations. The reasons for this are related to the institutional growth of the EU as a political entity. Since the Treaty of Amsterdam, which places asylum and visa issues within the European Community's sphere of responsibilities, since the implementation of the Schengen Agreement and later the Stockholm Programme in 2009 and, most recently, since the EU level has been afforded more power in external affairs through the creation of the HR/VP and the EEAS, it is only logical that the EU should also work towards a common border-protection policy and address the return of irregular migrants. The creation of Frontex in 2004 is the most visible manifestation of this idea.

However, this is neither the problem of the negotiation partners, nor does it find the unqualified support of all EU Member States. Greece, Italy, and Malta, each of which are at the forefront of clandestine migration in

the central Mediterranean, have had problems with the unified border-protection approach. In particular, they have voiced concerns about their national agreements and border-protection measurements being challenged (Kasparek and Wagner, 2012). This current 'dual' state of affairs, in which readmission agreements are pursued at both the EU and individual member-state level allows participating third countries to play each level against the other. Thus, as long as EU competences in this regard remain poorly defined, the EU will continue to undermine its noble efforts to speak with one voice in external relations.

3.5 The EU is losing ground in very important negotiations

The EU's insistence on negotiating and reaching readmission agreements leads to a fifth paradox that deserves consideration here: The EU unnecessarily loses arbitration ground in other negotiations. As happened between Senegal and France, '[r]eadmission has already proven to be an obstacle in bilateral agreements and almost caused the failure of the negotiations on the accord de gestion concertée des flux migratoires' (Reslow, 2012: 408).

This problem also arises in EU negotiations. The insistence on things that the partner government cannot (or does not want to) fulfil casts long shadows on parallel negotiations. In the wake of the Arab Spring, for example, people in North Africa often felt that the EU perceived them as '"areas of risks", not partners or friends' (Bauer, 2011: 425). As a result, a sense of mistrust regarding the EU's real intentions spread among North African populations, and complaints were often expressed about the EU preaching democracy but meaning stability.

The EU's insistence on 'unfulfillable' conditions and requests make an already difficult situation even more difficult for the negotiators on both sides, and unnecessarily so. This is even more astonishing when considering the 'relevance' of migration in the overall negotiations between the EU and individual partner countries. Egypt, for example, is not a significant country of origin, though '[r]ecently a rise in migration to Europe – mostly irregular – especially Italy and France, has been recorded' (Badawy et al., 2013: 75). Despite having a population larger than that of all other four North African states combined (c. 86 million in Egypt, c. 80 million in Algeria, Libya, Morocco and Tunisia), only 224,122 Egyptians reside in the EU, compared to 4,464,963 Egyptian migrants in total who mainly live and work in the Arab Gulf countries. This means that only five per cent of all Egyptian migrants live in the EU, most of them in Italy (Bartunkova and Völkel, 2010: 14). This is in clear contrast to Algeria, Morocco and Tunisia from where roughly 90% of migrants make their life in the EU (cf. table 2).

Also, in absolute numbers, there are clearly fewer Egyptians than people from the Maghreb living in Europe. Overall, with a total of 4.6 million, North Africans comprise approximately 20 per cent of the total 23 million immigrants who live in the EU.

Table 2 Emigration from North Africa to the EU compared to total numbers (Fargues, 2013: 6)

	Algeria	Egypt	Libya	Morocco	Tunisia	TOTAL
in EU	877,398	224,122	66,344	3,056,109	414,077	4,638,050
overall	961,850	4,464,963	100,565	3,371,979	466,595	9,365,952
% in EU	91.2%	5.0%	66.0%	90.6%	88.7%	49.5%

Given these relatively low numbers, it is not surprising that Egypt has not pursued a stringent migration policy in its relations with the EU in particular. Indeed, the Egyptian government has, in principle, been more interested in technical than 'political' cooperation (Senior staff member Egyptian Ministry of International Cooperation, Cairo, 2012, personal communication). With the demise of the Mubarak regime and the series of interim governments that followed, any migration-steering measures were put on ice. In the absence of a long-term perspective and as short-term domestic topics dominated the political agendas, negotiations with the EU came to a halt (Senior faculty member American University in Cairo, 2012, personal communication).[17]

The only migration-related issues relevant for Egypt are the high levels of remittances from workers abroad and the ease of the domestic job market through the 'export' of labour. Though scientific evidence for their exact effectiveness is difficult to furnish (Nassar, 2008), remittances are the third biggest source of income for the Egyptian budget, after revenues from the Suez Canal and tourism, totalling up to 4 per cent of GDP (Bartunkova and Völkel, 2010: 15). As tourism drops to unprecedented low record numbers, and as the income generated by the Suez Canal declines (Egypt Independent, 2013), the income from Egyptians abroad is growing in importance. However, because most remittances are arriving from guest workers in Gulf countries, it is unlikely that the Egyptian government will be very keen on regulating Mediterranean migration into the EU in the near future – even if (according to opinion polls) more Egyptians are expressing the desire to emigrate during this period of political and economic turmoil.

Finally, the will to cooperate with southern Mediterranean countries in the fight against irregular migration bears some risks for the EU as it attempts to strengthen and support human rights. According to the European

Commission (2011c: 12), readmission agreements with countries exhibiting a poor human rights record lead to massive criticism and major policy dilemmas. To resolve this problem, the Commission recommended introducing 'a suspension clause [in the readmission agreements] for persistent human rights violations in the third country concerned' (European Commission, 2011c: 12). However such safeguard clauses would generate the next paradox: Given that none of the regimes in North Africa adequately guarantee respect for human rights, with the possible exception of Tunisia, why should the EU run the risk of concluding agreements whose implementation it cannot guarantee? Moreover, why should the EU load another burden on its shoulder, as it would have to defend its cooperation in the fight against irregular migration with backhanded governments? The European Parliament's move in early 2013 to stop any support for Egypt due to its questionable performance in terms of ensuring democratic standards has clearly shown what the consequences of such an approach are: constant worry and a constant source of disputes. Given the already poorly satisfying results of EU-MENA relations and negotiations, this approach would constitute an unnecessary stumbling block that hinders rather than helps.

4.   Conclusions

In 2014, the last year of the Stockholm Programme, much is at stake with the EU's migration policy. Many steps have been taken by the European Commission and the EU Member States that have produced, at best, questionable results:

> Instead of reducing migration, intensified border controls have led to a rise in irregular migration, the use of new and more dangerous migration routes, thus increasing the risks and costs for the migrants involved, and leasing to the professionalization of smuggling methods (Caillault, 2012: 137f.).

The Commission has tried to react quickly to the altered circumstances in its Arab neighbourhood since 2011 (Teti, 2012). Nonetheless, it is still struggling to find the best strategy to improve cooperation with the southern Mediterranean countries in the field of border protection (Völkel, 2014). The Commission's Communication on the Global Approach to Migration and Mobility of November 2011 is indicative of this struggle. It proposes a Common Agenda on Migration and Mobility as a 'light alternative' for those

countries that are not willing to sign a full-fledged mobility partnership. Clearly, the EU wants a lot, but it has little to offer (Reslow, 2012: 414).

It is clear that when concentrating on border protection alone, 'the effectiveness of both unilateral and multilateral policies to regulate forced migration flows is limited' (Thielemann, 2012: 21). But despite this insight, continuing to treat migration from North Africa as a potential security threat 'has damaged the EU's credibility in terms of the promotion of democracy and human rights' (Freyburg, 2012: 141). The EU's support of North African dictators for the sake of stability has damaged its reputation among the Arab public and has negative consequences for its role as a political power and peace broker in the region. Credibility is crucial for diplomatic success (Völkel, 2008: 19f.), and the EU's credibility has suffered considerably due to the EU's over-emphasis on Arab (and sub-Saharan) migrants as a potential security threat. In short, the EU's pursuit of domestic interests has effaced its diplomatic effectiveness in migration policy.

So, what is needed? For one, migration must not be perceived through the lens of security interests exclusively. The EU, with its demographic problems, should surely see migration first and foremost as an opportunity to compensate for the lack of workers. However, the continuing growth of populist movements and right-wing parties in Europe will make this difficult. Even more importantly, there is an urgent need in these times of European crisis to conduct honest and sober discussions about the risks and opportunities inherent to migration.

Second, the ongoing humanitarian catastrophe in the Mediterranean with thousands of lives lost at sea each year should prompt a serious re-thinking of existing practices. The trend in recent years towards tightening rather than loosening visa policies is clearly misguided and wrong-headed. All too often, this approach simply compels individuals to choose irregular entry into the EU and does not lead to a factual reduction of influx numbers.

Third, it is time for concrete improvements in immigration policy to be made by EU and member-state decision-makers. Hopefully, revision talks about the Stockholm succession programme will allow for the Blue Card initiative to be fully implemented. Also, the competence dispute in the field of readmission agreements between the Commission and member states must be clarified.

Finally, the EU can make use of the existing stock of tools at its hands to help improve the performance of North African decision-makers in the field of migration. Awareness-raising and capacity-building efforts for mid-level public administration is a worthy initiative, especially with regard to reintegration programmes for returning (irregular as well as regular)

migrants (Senior staff member IOM Cairo, 2012, personal communication). Suitable offers are available through TAIEX and Twinning but have yet to find resonance among potential partners (Senior staff member Ministry of International Cooperation Cairo, 2012, personal communication). Raising awareness about how to make use of such campaigns is therefore advisable here.

Acknowledgements

Notes

1. Article 6 TEU states that the EU 'recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights'.
2. Freyburg (2012) has shown for the case of Morocco, that the EU, by externalizing its migration policy regime onto countries south of the Mediterranean, "exports" three core principles of democratic governance, namely transparency, accountability, and participation (to different extents, though).
3. The predominant concentration of UfM actors on the Israel/Palestine conflict, leading to the paralyzation of almost all UfM activities, can be seen as illustrative evidence.
4. Kausch and Youngs (2009: 967) speak of '*firmly* governed states'.
5. Interestingly enough, migration policy aspects are listed in EU country progress reports under headline 5: Cooperation on Justice, Freedom and Security, and not under the chapters 'Political Dialogue' or 'People-to-People contacts', where migration could also be very well subsumed.
6. For example, the Netherlands decided to reinstall surveillance cameras along the Dutch borders (Rettman, 2012).
7. UNHCR 2012 data. It must be noted that in absolute terms, most asylum applications in 2011 of Mediterranean countries came from Syria (6,725), followed by Tunisia (5,248) and Algeria (4,062). Libya (2,710) and Egypt (1,994), meanwhile, remained of only minor importance.
8. Despite the decreasing immigration numbers from North Africa, the European Commission (2013a: 3) noted that '[w]hile the total number of asylum applications remained well below the peak of 425 000 in 2001, there was an increase of 9.7 % compared to 2011 in the total number of asylum applicants in 2012, amounting to just over 330 000, primarily resulting from an increased influx of asylum seekers from Syria'.
9. See the Frontex budget data at http://www.frontex.europa.eu/assets/About_Frontex/ Governance_documents/Budget/Budget_2013.pdf (last visited 2 May 2013).
10. See on Immigration Detention and Proportionality also Flynn (2011).
11. EURODAC 'is a database containing the fingerprints of asylum-seekers, which is used to ascertain whether (and in which EU Member State) a given asylum-seeker has already

applied for asylum in the EU. It has been operational since January 2003' (Kaunert and Léonard, 2012: 11).

12. Though it is unclear how many of them were simply turned into regular immigrants through, for instance, the accession of their home country as new member state to the EU.

13. See the complete list in European Commission (2011c: 2ff.).

14. Data as of February 2013, taken from the Return Migration and Development Platform (RDP), http://rsc.eui.eu/RDP (accessed 2 August 2013).

15. This date is not included in the RDP database but accrues from Mourad (2008).

16. cf. the list at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/visa-policy/index_en.htm (accessed 8 April 2014).

17. However, it seems that the government under President Mohamed Morsi has recognized the relevance of (regular) migration for the country's development, as in 2012 Egypt 'started preparations for a household survey on migration, to be carried out in 2013' (European Commission, 2013b: 11). The toppling of Morsi on 3 July 2013 has finished this enterprise for the moment.

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Solidarity and Trust in the Common European Asylum System

Valsamis Mitsilegas

Abstract

The article examines the evolution of concepts of solidarity and trust in the Common European Asylum System by analysing the legislative and judicial development of the Dublin system of intra-EU transfers of asylum seekers. The article argues that concepts of solidarity and trust which focus exclusively on the needs and interests of EU Member States are inadequate to address the requirement for the EU to respect fully human rights, in particular after the entry into force of the Lisbon Treaty. The article puts forward a concept of solidarity based on the individual which would ensure the full respect of the rights of asylum seekers.

Keywords: European Union, migration, asylum, Common European Asylum System, Dublin, solidarity, trust, human rights

1.   Introduction

The Lisbon Treaty has called for the development of a common European asylum policy, taking forward the first stage of European integration in the field achieved post-Amsterdam. Such common asylum policy is not synonymous however with a uniform asylum system across the EU marked by a single asylum procedure or a single refugee status across the Union. Rather, the determination of asylum applications continues to take place at the national level, with national procedures and national determination outcomes. The focus of this article will be to analyse how these national asylum systems interact under European Union law, following the criteria of allocation of state responsibility to examine asylum applications set out in the Dublin Regulation. The main features of the Dublin system will

be explored, and its emphasis on automaticity in inter-state cooperation leading to the transfer of asylum seekers between Member States will be highlighted. Automaticity in inter-state cooperation on asylum poses fundamental questions both as regards the capacity of all EU Member States at any given time to apply the Dublin system and, more importantly, as regards the impact of automatic transfers to the fundamental rights of the affected asylum seekers. In order to address these questions, the article will focus from a legal perspective on two key concepts in the evolution of European asylum law: the concept of solidarity and the concept of trust. The conceptualisation of solidarity and trust by European Union institutions will be evaluated critically, with the focus being primarily on the recent seminal ruling of the Court of Justice of the European Union in the case of *N.S.* and its impact on the development of European asylum law. The article will then demonstrate the extent to which the Court's case-law has influenced the development of concepts of solidarity and trust in post-Lisbon secondary European asylum law, in particular with regard to the so-called Dublin III Regulation. The article will cast light on the evolution of the concepts of solidarity and trust in the legal order of the European Union, while highlighting the persistent limits in the protection of the fundamental rights of asylum seekers in the European Union which are exacerbated by national differences in protection. The article will put forward the need for a reconceptualization of solidarity and trust from the perspective of the asylum seeker and underpinned by an effective commitment to the protection of fundamental rights in the European Union.

2. Inter-state cooperation as the basis of the Common European Asylum System – the system established by the first Dublin Regulation

While a key element of the evolution of the European Union into an Area of Freedom, Security and Justice has been the abolition of internal borders between Member States and the creation thus of a single European area where freedom of movement is secured, this single area of movement has not been accompanied by a single area of law. This is certainly the case with European asylum law. Already in 1999, the European Council Tampere Conclusions stated that 'in the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum throughout the Union.' (paragraph 15). However, 15 years after this statement, asylum applications in the EU are still examined by

individual Member States following a national asylum procedure. The abolition of internal borders in the Area of Freedom, Security and Justice has thus not been followed by a unification of European asylum law. The focus has rather been on the gradual harmonisation of national asylum legislation with the entry into force of the Amsterdam Treaty leading to the adoption of a series of minimum standards in the field of asylum law, which led to the adoption of a series of Directives on minimum standards on refugee qualification[1], asylum procedures[2] and reception conditions for asylum seekers[3]. The Lisbon Treaty contains a legal basis enabling a higher level of harmonisation in European asylum law: Article 78(2) TFEU enables inter alia the adoption of measures for common asylum *procedures* and reception condition standards. A number of further harmonisation measures have been adopted by the EU legislator since the entry into force of the Treaty.[4] These harmonisation measures have been accompanied by a cooperative system of intra-EU allocation of responsibility for the examination of asylum claims. Such a system had already been established in public international law shortly after the fall of the Berlin Wall by the 1990 Dublin Convention (Blake, 2001), which was replaced post-Amsterdam by the Dublin Regulation.[5] Placed in the broader context of the construction of an Area of Freedom, Security and Justice, the Dublin Regulation has been designed to serve not only asylum policy, but also broader border and immigration control objectives. According to the Preamble to the Regulation, 'the progressive creation of an area without internal frontiers in which free movement of persons is guaranteed in accordance with the [then] Treaty establishing the European Community and the establishment of [the then] Community policies regarding the conditions of entry and stay of third country nationals, including common efforts towards the management of external borders, makes it necessary *to strike a balance between responsibility criteria in a spirit of solidarity*'(Preamble, recital 8. Emphasis added.).

The significance of border control considerations is evident in the formulation of the criteria established by the Regulation to allocate responsibility for the examination of asylum applications by Member States. The Regulation puts forward a hierarchy of criteria to determine responsibility (Chapter III of the Regulation, Articles 5-14). While on top of this hierarchical list one finds criteria such as the applicant being an unaccompanied minor (Article 6), family reunification considerations (Articles 7 and 8) or a legal relationship with an EU Member State (such as the possession of a valid residence document or a visa- Article 9), following these criteria one finds the criterion of irregular entry into the Union: if it is established that

an asylum seeker has irregularly crossed the border into a Member State having come from a third country, this Member State will be responsible for examining the application for asylum (Article 10). Irregular entry thus triggers state responsibility to examine an asylum claim. The very occurrence of the criteria set out in the Dublin Regulation sets out a system of automatic inter-state cooperation which has been characterised as a system of negative mutual recognition (Guild, 2004). Recognition can be viewed as negative here in that the occurrence of one of the Dublin criteria creates a duty for one Member State to take charge of an asylum seeker and thus recognise the refusal of another Member State (which transfers the asylum seeker in question) to examine the asylum claim. The Dublin Regulation thus introduces a high degree of automaticity in inter-state cooperation. Member States are obliged to take charge of asylum seekers if the Dublin criteria are established to apply, with the only exceptions to this rule (on the basis of the so-called sovereignty clause in Article 3(2) and the humanitarian clause in Article 15 of the Regulation) being dependant on the action of the Member State which has requested the transfer. As in the case of mutual recognition in criminal matters (Mitsilegas, 2006), automaticity in inter-state cooperation is accompanied with the requirement of speed, which is in this case justified on the need to guarantee effective access to the asylum procedure and the rapid processing of asylum applications (Article 17(1) and Preamble, recital 4).

Notwithstanding the claim of the Dublin Regulation that one of its objectives is to facilitate the processing of asylum applications, it is clear that the Regulation has been drafted primarily with the interests of the state, and not of the asylum seeker, in mind. The Regulation establishes a mechanism of automatic inter-state cooperation aiming to link allocation of responsibility for asylum applications with border controls and in reality to shift responsibility for the examination of asylum claims to Member States situated at the EU external border. The specificity of the position of individual affected asylum seekers is addressed by the Regulation only marginally, with the Regulation containing limited provisions on remedies: a non-suspensive remedy to the asylum seeker with regard to the decision not to examine his or her application (Article 19(2)) and the decision concerning his or her taking back by the Member State responsible to examine the application (Article 20(1)(e)). The asylum determination system envisaged by the Dublin Regulation has been a system aiming at speed. This objective has recently been confirmed by the Court of Justice which in the case of *Abdullahi* (Case C-394/12, judgment of 10 December 2013), stated that one of the principal objectives of the Dublin Regulation is the

establishment of a clear and workable method for determining rapidly the Member State responsible for the processing of an asylum application so as to guarantee effective access to the procedures for determining refugee status and not to compromise the objective of the rapid processing of asylum claims (paragraph 59). Privileging the interests of the state in relation to the position of the asylum seeker is linked to the perception that the abolition of internal borders in the Area of Freedom, Security and Justice will lead to the abuse of domestic systems by third-country nationals. The terminology of abuse can be found in cases before the Court of Justice of the European Union, with Advocate General Trstenjak recently stating that the purpose of the hierarchy of criteria in the Dublin Regulation is first to determine responsibility on the basis of objective criteria and to take into account of the objective of preserving the family *and secondly to prevent abuse in the form of multiple simultaneous or consecutive applications for asylum* (Case C-245/11, *K,* Opinion of 27 June 2012, paragraph 26, emphasis added). In the political discourse, this logic of abuse has been encapsulated in the terminology of 'asylum shopping'. Giving evidence before the House of Lords European Union Committee on the draft Dublin Regulation, the then Home Office Minister Angela Eagle stated that the underlying objectives of the Regulation were 'to avoid asylum shopping by individuals making multiple claims in different Member States and to address the problem known as 'refugees in orbit'... it is in everybody's interests to work together to deal with some of the issues of illegal migration and to get some coherence into the asylum seeking issue across the European Union'(House of Lords 2001-2002 paragraph 27). Under this logic of abuse, the Regulation aims largely to automatically remove the unwanted, third-country nationals who are perceived as threats to the societies of the host Member States. The legitimate objective of applying for asylum is thus securitised in the law of the European Union.

3.   Solidarity in the Common European Asylum System

As seen above, the basis of the Common European Asylum System remains the determination of asylum claims at the national level. Central to this system, the Dublin Regulation aims at allocating state responsibility for the examination of asylum applications and involves thus the regulation of the interplay between national asylum systems. The operation of the Dublin Regulation has raised a number of questions involving fairness and solidarity in the allocation of such responsibility. While the Preamble

to the Dublin Regulation stresses the need to 'strike a balance between responsibility criteria in a spirit of solidarity' (Preamble, recital 8) key criticisms as regards the system established by the Regulation have been that it disregards the particular migratory pressure that certain EU Member States situated on the EU external border are facing, and that it results into these Member States being allocated a disproportionate number of asylum applicants compared with other Member States. In its 2007 Green Paper on the future Common European Asylum System, the European Commission accepted that the Dublin system 'may de facto result in *additional burdens* on Member States that have limited reception and absorption capacities and that find themselves under particular migratory pressures because of their geographical location '(European Commission, 2007:10, emphasis added). The impact of increased migratory pressures on national systems has also been highlighted with regard to Greece by the Court of Justice in its ruling in *N.S.*, where the Court noted that the parties who have submitted observations to the Court were in agreement that 'that Member State was, in 2010, the point of entry in the European Union if almost 90% of illegal immigrants, that influx resulting in a disproportionate *burden* being borne by it compared to other Member States and the inability to cope with the situation in practice.' (Joined Cases C-411/10 and C-493/10, *N. S. and M. E.*, judgment of 21 December 2011, paragraph 90, emphasis added). What is common to both passages is that they focus on the impact of migration flows on the state, rather than on the asylum seeker, and that they use the term 'burden' to describe increased pressures upon the state- with asylum seekers thus viewed implicitly as a burden to national systems. Solidarity here thus takes the form of what has been deemed and analysed as 'burden sharing' (Betts 2003; Boswell 2003; Noll 2003; Thielemann, 2003 a and b) and in particular from a legal perspective the sharing of the responsibility for increased flows of asylum seekers. As with the logic of abuse underpinning the Dublin system, the logic of burden sharing in effect securitises asylum flows by viewing asylum seekers and asylum seeking in a negative light (Noll, 2003). As it has been eloquently noted, asylum has historically been seen as ripe for burden sharing because the reception and protection of internally displaced persons is widely seen as a burden on receiving countries which can occur unexpectedly and on a large scale (European Parliament, 2011).

The conceptualisation of asylum flows from a burden sharing perspective promotes a concept of solidarity which is state-centered, securitised and exclusionary. Solidarity is state-centered in that it places emphasis on the interests of the state and not on the position of the asylum seeker. This

emphasis on the interests of the state is confirmed by the provisions of the Lisbon Treaty on solidarity in the Area of Freedom, Security and Justice. According to Article 67(2) TFEU, the Union shall ensure the absence of internal border controls for persons and shall frame a common policy on asylum, immigration and external border control, based on solidarity *between Member States*, which is fair towards third-country nationals. Article 80 TFEU further states that the policies of the Union on borders, asylum and immigration will be governed by thhe principle of solidarity and fair sharing of responsibility, including its financial implications, *between the Member States.* Solidarity is thus premised upon inter-state cooperation in a system which arguably reflects the broader principle of loyal cooperation under EU law (McDonough and Tsourdi, 2012a). Solidarity is also securitised: as with other areas of European Union law, solidarity in European asylum law reflects a crisis mentality (Borgmann-Prebil and Ross, 2010) and has led to the concept being used with the aim of alleviating perceived urgent pressures on Member States. This view of solidarity as an emergency management tool is found elsewhere in the Treaty, in the solidarity clause established in Article 222 TFEU according to which the Union and its Member States shall act jointly in a spirit of solidarity if a Member State is the object of a terrorist attack or the victim of a natural man-made disaster. The concept of solidarity here echoes the political construction of solidarity in European asylum law, in responding to perceived urgent threats. It is a framed in a way of protecting the state and requires cooperation not between the state and the individual but between the state and the European Union. State-centered securitised solidarity in the field of asylum echoes Ross's assertion that the political power of security can attempt to appropriate solidarity for its own ends (Ross, 2010:39).

Placed within a state-centric and securitised framework, solidarity is also exclusionary. The way in which the concept of solidarity has been theorised in EU law leaves little, if any space for the application of the principle of solidarity beyond EU citizens or those 'within' the EU and its extension to third-country nationals or those on the outside. In a recent thought-provoking analysis on solidarity in EU law, Sangiovanni argues for the development of principles on national solidarity (which define obligations among citizens and residents of member states), principles of member state solidarity (which define obligations among member states) and principles of transnational solidarity (which define obligations among EU citizens as such) (Sangiovanni, 2013:217). Third-country nationals are notably absent from this model of solidarity. This exclusionary approach to solidarity appears to be confirmed by the Treaties, with the Preamble

to the Treaty on the European Union expressing the desire of the signatory states 'to deepen the solidarity *between their peoples* while respecting their history, their culture and their traditions' (Preamble, recital 6, emphasis added). Solidarity functions thus as a key principle of European identity which is addressed to EU Member States and their 'peoples' (see also Article 167 TFEU on Culture), but the extent to which such European identity based on solidarity also encompasses third-country nationals is far from clear (Mitsilegas, 1998). Although asylum law is centered on assessing the protection needs of third-country nationals, and in this capacity they must constitute the primary 'recipients' of solidarity in European asylum law, the application of the principle of solidarity in this field appears thus to follow the exclusionary paradigm of solidarity in other fields of EU law where issues of distributive justice arise prominently. Writing on the position of irregular migrants EU social welfare law, Bell has eloquently noted that third-country nationals lack the ties of shared citizenship, whilst the extension of social and economic entitlements to them cannot easily be based on a reciprocal view of solidarity (Bell, 2010: 151). Asylum seekers seem to be included in a continuum of exclusionary solidarity in this context.

The approach to solidarity based primarily upon the interests of the state and those deemed to be on the inside is further reflected in the Conclusions of the Justice and Home Affairs Council 'on a Common Framework for genuine and practical solidarity towards Member States facing particular pressures on their asylum systems, including through mixed migration flows'.[6] The Conclusions confirm the use of national asylum systems as an element of migration management in the European Union (paragraph 8ii) and put forward a multi-faceted concept of solidarity. At the heart of the Council's approach is a concept of *solidarity based on security, emergency and prevention.* This takes the form of solidarity through the establishment of a mechanism for early warning, preparedness and crisis Management *within* the Dublin System (paragraphs 9-10) with an emphasis on detecting situations likely to give rise to particular pressures in advance (paragraph 10). Beyond Dublin, the Conclusions focus on solidarity through preventive cooperation,(paragraph 12) including the acceleration of negotiations for the establishment of a European Border Surveillance System (EUROSUR- paragraph 12v), and place great emphasis on solidarity in emergency situations (paragraph 13). The focus here is thus not only to support Member States in dealing with asylum seekers within the European Union, but also to prevent the entry of asylum seekers to the Union in the first place (Mitsilegas 2012a). This preventative vision of solidarity is inextricably linked with two parallel visions on solidarity reflected in the Council conclusions: *solidarity based*

on delegation, and solidarity based on externalisation. As regards *solidarity based on delegation*, it is noteworthy that the Council envisages the implementation of solidarity to take place by the operational action of EU agencies such as the European Asylum Support Office (EASO)[7] and the European Borders Agency (FRONTEX)[8] and EU databases such as EUROSUR.[9] . The establishment of EASO is also inextricably linked with the Commission's vision of solidarity in European asylum law (European Commission, 2011). The role of FRONTEX is envisaged by the Council as particularly important in implementing solidarity in emergency situations, with seven out of the thirteen proposed actions referring specifically to the agency and with the agency having a strong preventive and broader migration management role. FRONTEX should in particular 'provide assistance through the coordination of Member States' actions and efforts for control and surveillance of external borders, including continuous monitoring with consultation of Member States concerned and thorough risk analysis of emerging and present threats from illegal immigration and propose appropriate measures to tackle identified threats.' (point 13v). The use of enforcement mechanisms such as FRONTEX and EUROSUR in this context is another example of the securitisation of asylum in the European Union. Reliance on agencies and databases in this context may create gaps in legal responsibility and accountability and may serve to depoliticise state action in the field of migration and asylum (Mitsilegas 2012a). Similar concerns arise from the emphasis on *solidarity based on externalisation.* Externalisation here takes place in particular via cooperation between the EU and its Member States on the one hand and third countries on the other (paragraph 20) (but also FRONTEX and third countries (paragraph 13ix) with the aim of preventing asylum flows into the EU.

A further impetus for the reform of the Common European Asylum System has been created by the Lisbon Treaty itself. Article 80 TFEU introduces the principle of solidarity and fair sharing of responsibility with regard to EU border, immigration and asylum policies and their implementation and states that whenever necessary, Union law in the field shall contain appropriate measures to give effect to this principle. As it has been noted, the principle of solidarity in Article 80 TFEU can act as an interpretative guide for the Court of Justice (Ross 2010), in particular when dealing with questions related to European asylum law (McDonough and Tsourdi 2012b). In interpreting European asylum law in the light of solidarity, the Court will have to introduce a paradigm change: it will have to depart from a state-centered, securitised and exclusionary concept of solidarity and underpin the principle of solidarity with the obligation of the EU and its

Member States to respect fundamental rights- in this manner, the principle of solidarity will be removed from its current exclusive focus on the state (and inter-state solidarity) and will also focus on solidarity towards the affected individuals. The Court has already demonstrated such tendencies in its ruling in *N.S.*, where it linked the principle of solidarity with the need for Member States due to order a transfer under the Dublin Regulation to assess the functioning of the asylum system in the responsible Member State and evaluate the fundamental rights risks for the affected individual if a transfer takes place (paragraph 91). While solidarity is undoubtedly valuable as an interpretative tool in this context, it is submitted that Article 80 TFEU can also be used in conjunction with the asylum provisions in the Treaty (Article 78 TFEU) as a legal basis for the adoption of measures leading gradually to the establishment of a single European Union asylum system.

4.   Trust in the Common European Asylum System – the impact of *N.S.*

As mentioned above, the system of inter-state cooperation established by the Dublin Regulation is based on a system of negative mutual recognition. Mutual recognition creates extraterritoriality (Nicolaidis, 2007) and pre-supposes mutual trust (Mitsilegas, 2006): in a borderless Area of Freedom, Security and Justice, mutual recognition is designed so that the decision of an authority in one Member State can be enforced beyond its territorial legal borders and across this area speedily and with a minimum of formality. As in EU criminal law, in the field of EU asylum law automaticity in the transfer of asylum seekers from one Member State to another is thus justified on the basis of a high level of mutual trust. This high level of mutual trust between the authorities which take part in the system is premised upon the presumption that fundamental rights are respected fully by all EU Member States across the European Union (Mitsilegas, 2009). In asylum law, as evidenced in the Preamble of the Dublin Regulation, such mutual trust is based additionally upon the presumption that all EU Member States respect the principle of *non-refoulement* and can thus be considered as safe countries for third-country nationals. (Preamble, recital 2). In its extreme, this logic of mutual recognition premised upon mutual trust absolves Member States from the requirement to examine the individual situation of asylum applicants and disregards the fact that fundamental rights and international and European refugee law may not be fully respected at all time in all cases in EU Member States, especially in the light of the increased

pressure certain EU Member States are facing because of the emphasis on irregular entry as a criterion for allocating responsibility under the Dublin Regulation. Inter-state cooperation resulting to the transfer of asylum seekers from EU Member State to EU Member State thus occurs almost automatically, without many human rights questions being asked by the authorities examining requests for Dublin transfers.

This system of inter-state cooperation based on automaticity and trust in the field of European asylum law was challenged in Luxembourg in the joint cases of *N.S.* and *M.E* mentioned earlier in the article (*N.S.*) The Court of Justice was asked to rule on two references for preliminary rulings by the English Court of Appeal and the Irish High Court respectively. The referring courts asked for guidance on the extent to which the authority asked to transfer an asylum seeker to another Member State is under a duty to examine the compatibility of such transfer with fundamental rights and, in the affirmative, whether a finding of incompatibility triggers the 'sovereignty clause' in Article 3(2) of the Dublin Regulation. In a seminal ruling, the Court found that an application of the Dublin Regulation on the basis of the conclusive presumption that the asylum seeker's fundamental rights will be observed in the Member State primarily responsible for his application is incompatible with the duty of the Member States to interpret and apply the Regulation in a manner consistent with fundamental rights (paragraph 99). Were the Regulation to require a conclusive presumption of compliance with fundamental rights, it could itself be regarded as undermining the safeguards which are intended to ensure compliance with fundamental rights by the European Union and its Member States (paragraph 100). Most importantly, such presumption is rebuttable (paragraph 104). If it is ascertained that a Dublin transfer will lead to the breach of fundamental rights as set out in the judgment, Member States must continue to apply the criteria of Article 13 of the Dublin Regulation. (paragraphs 95-97). The Member State in which the asylum seeker is present must, however, ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the Member State responsible which takes an unreasonable length of time. If necessary, that Member State must itself examine the application in accordance with the procedure laid down in the sovereignty clause set out in Article 3(2) of the Regulation (paragraph 98). *N.S.* followed the ruling of the European Court of Human Rights in the case of *M.S.S.* (*M.S.S.* v. *Belgium and Greece*, judgment of 21 January 2011, Application No 30696/09). In *M.S.S.,* the Strasbourg Court found Dublin transfers from Belgium to Greece incompatible with the Convention and importantly found both

the sending and the receiving states in breach of the Convention in this context (Moreno-Lax, 2012). *M.S.S.,* which has also proven to be influential on subsequent Strasbourg case-law on onward transfers to third countries (*Hirsi Jamaa*, Application no. 27765/09, concerning the transfer of asylum seekers from Italy to Libya) has contributed to the Court of Justice in opposing the automaticity in the operation of the Dublin Regulation by not accepting the non-rebuttable assumption of compatibility of EU Member States action with fundamental rights.

The Court's rejection of the conclusive presumption that Member States will respect the fundamental rights of asylum seekers has admittedly been accompanied by the establishment by the Court of Justice of a high threshold of incompatibility with fundamental rights: a transfer under the Dublin Regulation would be incompatible with fundamental rights if there are substantial grounds for believing that there are systemic flaws in the asylum procedure and reception conditions for asylum applicants in the Member State responsible, resulting in inhuman or degrading treatment, within the meaning of Article 4 of the Charter (on the prohibition of torture and inhuman or degrading treatment or punishment), of asylum seekers transferred to the territory of that Member State (paragraph 85). Member States, including the national courts, may not transfer an asylum seeker to the Member State responsible within the meaning of the Regulation where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter (paragraph 94). This high threshold is justified on the basis of the assumption that all Member States respect fundamental rights and by the acceptance of the existence, in principle, of mutual trust between Member States in the context of the operation of the Dublin Regulation. According to the Court, it is precisely because of that principle of mutual confidence that the European Union legislature adopted the Dublin Regulation in order to rationalise the treatment of asylum claims and to avoid blockages in the system as a result of the obligation on State authorities to examine multiple claims by the same applicant, and in order to increase legal certainty with regard to the determination of the State responsible for examining the asylum claim and thus to avoid forum shopping, it being the principal objective of all these measures to speed up the handling of claims in the interests both of asylum seekers and the participating Member States (paragraph 78). It cannot be concluded that any infringement of a fundamental right will affect compliance with the

Dublin Regulation, (paragraph 81) as at issue here is the raison d'etre of the European Union and the creation of an area of freedom, security and justice and, in particular, the Common European Asylum System, based on mutual confidence and a presumption of compliance by other Member States with EU law and in particular fundamental rights (paragraph 83). The Court found that it would not be compatible with the aims of the Dublin Regulation were the slightest infringement of other measures in the Common European Asylum System to be sufficient to prevent the transfer of an asylum seeker to the Member State primarily responsible under the Dublin Regulation (paragraph 84) and reiterated the objectives of the Dublin Regulation to establish a clear and effective method for dealing with asylum applications by allocating responsibility speedily and based on objective criteria (paragraph 854 and 855; Mitsilegas 2012b).

N.S. constitutes a significant constitutional moment in European Union law and introduces a fundamental change in the development of inter-state cooperation in European asylum law. The rejection by the Court of the conclusive presumption of fundamental rights compliance by EU Member States signifies the end of automaticity in inter-state cooperation. The end of automaticity operates on two levels. Firstly, national authorities (in particular courts) which are asked to execute a request for a transfer under the Dublin Regulation are now under a duty to examine, on a case-by-case basis, the individual circumstances in each case and the human rights implications of a transfer in each particular case. Automatic transfer of individuals is no longer allowed under EU law. Secondly, national authorities are obliged to refuse to execute such requests when the transfer of the affected individuals will result in the breach of their fundamental rights within the terms of *N.S.* The ruling in *N.S.* has thus introduced a fundamental rights mandatory ground for refusal to transfer an asylum seeker in the system established by the Dublin Regulation (Mitsilegas, 2012b). While the Court of Justice in N.S. placed limits to the automaticity in the operation of the Dublin Regulation, it was careful not to condemn the Dublin system as a whole. The requirement for Member States to apply the Regulation in compliance with fundamental rights did not lead to a questioning of the principle behind the system of allocation of responsibility for asylum applications between Member States. There are three main limitations to the Court's reasoning: Firstly, the Court used the discourse of the presumption of the existence of mutual trust between Member States, although this discourse has been used thus far primarily in the context of cooperation in criminal matters (Mitsilegas, 2006, 2009) and not in the field of asylum law, where the Dublin Regulation has co-existed with a

number of EU instruments granting rights to asylum seekers (Labayle, 2011). Secondly, a careful reading of N.S. also demonstrates a nuanced approach to the sovereignty clause in Article 3(2) of the Regulation: the Court stressed that, prior to Member States assuming responsibility under 3(2), they should examine whether the other hierarchical criteria set out in the Regulation apply. Thirdly, it should be reminded again that the threshold set out by the Court for disapplying the system is high: mere non-implementation of EU asylum law is not sufficient to trigger non-return, systemic deficiencies in the national asylum systems must occur leading to a real risk of breach of fundamental rights (Mitsilegas, 2012b).

In addition to its contribution to questioning automaticity in the Dublin system, the Court's ruling in *N.S.* is important in highlighting that the adoption of legislative measures conferring rights to asylum seekers may not be on its own adequate to ensure the effective protection of fundamental rights in the asylum process. *N.S.* has demonstrated that the existence of EU minimum harmonisation on rights may not prevent systemic deficiencies in the protection of fundamental rights in Member States. Monitoring and extensive evaluation of Member States' implementation of European asylum law and their compliance with fundamental rights is essential in this context. In addition to the standard constitutional avenues of monitoring compliance with EU law at the disposal of the European Commission as guardian of the treaties, the Lisbon Treaty includes an additional legal basis for the adoption of measures laying down the arrangements whereby Member States, in collaboration with the European Commission, conduct objective and impartial evaluation of the Union policies in the field of the Area of Freedom, Security and Justice, in particular in order to facilitate full application of the principle of mutual recognition. (Article 70 TFEU). The Justice and Home Affairs Council has called recently for the establishment of evaluation mechanisms in the field of EU asylum law.[10] On the basis of the findings of European courts in *M.S.S.* and *N.S.*, the work of organisations such as the UNHCR and civil society actors must be central in the processes of monitoring the situation of international protection on the ground in EU Member States. However, the question of the value of the findings of civil society organisations and the UNHCR as evidence before national and European authorities remains open. While both the Luxembourg and the Strasbourg Courts have referred to the work of UNHCR in their rulings, the Court of Justice found in a recent ruling (Case C-528/11, judgment of 30 May 2013, *Halaf v Darzhavna agentsia za bezhantiste pri Ministerskia savet*) that the Member State in which the asylum seeker is present is not obliged, during the process of determining the Member State responsible,

to request the UNHCR to present its views where it is apparent from the documents of that Office that the Member State indicated as responsible by the criteria in Chapter III of the Dublin Regulation is in breach of the rules of European Union law on asylum. However, work done by civil society and UNHCR, the transparency their presence creates and the information produced and its use by national and European authorities, including courts, is key in shifting the focus of solidarity towards the asylim seeker and in contributing towards the establishment of evidence-based trust in the Common European Asylum System.

5.   Solidarity and Trust After Dublin III

Following the Court's ruling in *N.S.*, the revision of the Dublin Regulation post-Lisbon has been eagerly awaited. The adoption of the new instrument (the so-called 'Dublin III' Regulation)[11] may come as a disappointment to those expecting a radical overhaul of the Dublin system. The Regulation maintains intact the system of allocation of responsibility for the examination of asylum applications by EU Member States under the same list of hierarchically enumerated criteria set out in its pre-Lisbon predecessor (see Chapter III of the Regulation, Articles 7-15). However, the Dublin III Regulation has introduced an important systemic innovation to take into account the Court's ruling in *N.S.*: according to Article 3(2) of the Regulation, second and third indent,

'Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in the Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designed as responsible.

Where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the application was lodged, the determining Member State shall become the Member State responsible.'

The European legislator has thus attempted to translate the Court's ruling in *N.S.* to establish an exception to the Dublin system. The high threshold adopted by the Court in the specific case has been adopted in

Dublin III, with the transfer of an asylum applicant beign impossible when there are substantial grounds to believe that there are systemic flaws in the asylum system of the receiving Member State which will result in a risk of specifically inhuman and degrading treatment (and not necessarily as regards the risk of the breach of other fundamental rights). Even when such risk has been established, responsibility does not automatically fall with the determining Member State, which only becomes responsible if no other Dublin criterion enabling the transfer of the applicant to another Member State applies. While it could be argued that the new Dublin Regulation could require expressly a higher level of protection of human rights when designing the Dublin system, the legislative recognition of the *N.S.* principles is important in recognising the end of the automaticity in Dublin transfers and placing national authorities effectively under the obligation to examine the substance of the applicants' relevant human rights claims prior to authorising a transfer. Article 3(2) places thus an end to the automatic presumption of human rights compliance by EU Member States and reconfigures the relationship of mutual trust between national executives.

A greater emphasis on the rights of the asylum seeker is also evident in other, specific, provisions of the new Regulation. The provisions on remedies have been strengthened, in particualr as regards their suspensive effect (Article 27(3). The rights of minors and family members are highlighted, with the Regulation containing strong provisions on evidence in determining the Dublin criteria (Article 7(3)) and in emphasising the possibility of Member States to make use of the discretionary provision which enables them to assume the examination of an asylum claim (the former 'sovereignty clause in Article 3(2) which has morphed into a 'discretionary clause' in Article 17), in particular when this concerns family reunification (Article 17(2)). The emphasis on the protection of the rights of family reunification and of minors has also been evident in the case-law of the Court of Justice in relation to the pre-Lisbon Dublin Regulation. In a case involving unaccompanied minors, the Court has held that since unaccompanied minors form a category of particularly vulnerable persons, it is important not to prolong more than it is strictly necessary the procedure for determining the Member State responsible which means that, as a rule, unaccompanied minors should not be transferred to another Member State (Case C-648/11, *MA, BT and DA v Secretary of State for the Home Department*, judgment of 6 June 2013, paragraph 55). The Court has also extended the scope of the Dublin criterion of examination of a family asylum application on humanitarian grounds, giving a broad meaning to the humanitarian provisions of

the Regulation (Case C-245/11, *K v Bunesasylamt*, judgment of 6 November 2012). The interpretation of humanitarian, human rights and family reunification clauses in an extensively protective manner by the Court signifies another inroad to the automaticity in inter-state cooperation which the Dublin system aims to promote and reiterates the required emphasis on the examination of the substance of individual claims.

A substantive innovation introduced by Dublin III involves the translation of a version of the principle of solidarity into legal terms. Article 33 of the Regulation introduces a so-called mechanism for early warning, preparedness and crisis management. Where the Commission establishes that the application of the Dublin Regulation may be jeopardised due either to a substantiated risk of particular pressure being placed on a Member States' asylum system and/or to problems in the functioning of the asylum system of a Member State, it shall, in cooperation with EASO, make recommendations to that Member State, inviting it to draw up a preventive action plan. Member States are not obliged to act upon these recommendations but they must inform the Council and the Commission whether it intends to present a preventive action plan in order to overcome these problems (Article 33(1)). However, if Member States decide to draw up such a plan, they must submit it and regularly report to the Council and the Commission (Article 33(2)). The system provides for an escalation process: where the Commission establishes, on the basis of EASO's analysis, that the implementation of the preventive action plan has not remedied the deficiencies identified or where there is a serious risk that the asylum situation in the Member State concerned develops into a crisis which is unlikely to be remedied by a preventive action plan, the Commission, in cooperation with the EASO as applicable, may request the Member State concerned to draw up a crisis management action plan. Member States must do so promptly, and at the latest within three months of the request (Article 33(3)). Throughout the entire process for early warning, preparedness and crisis management established in this Article, the Council will closely monitor the situation and may request further information and provide political guidance, in particular as regards the urgency and severity of the situation and thus the need for a Member State to draw up either a preventive action plan or, if necessary, a crisis management action plan. The European Parliament and the Council may, throughout the entire process, discuss and provide guidance on any solidarity measures as they deem appropriate (Article 33(4)). The early warning mechanism established by the Dublin III Regulation is considerably weaker than an earlier Commission version whereby this mechanism would be accompanied by an emergency

mechanism which would allow the temporary suspension of transfers of asylum seekers to Member States facing disproportionate pressure to their asylum systems, which has not been accepted by Member States,[12] presumably on sovereignty grounds. The outcome has been a mechanism which again views the asylum process largely from the perspective of the state and not of the affected individuals. The Preamble to Dublin III confirms this view by stating that an early warning process should be established in order to ensure robust cooperation within the framework of this Regulation and to develop mutual trust among Member States with respect to asylum policy. It is further claimed that solidarity, which is a pivotal element in the Common European Asylum System, goes hand in hand with mutual trust and that early warning will enhance trust (Preamble, recital 22). Solidarity and trust are viewed in reality from a traditional 'burden-sharing' perspective involving negotiation of support by the Union to affected Member States (and with the European Asylum Support Office emerging as a key player). Notwithstanding the case-law of the European courts and the findings of UNHCR and civil society, the position of the asylum seeker appears to still be considered as an afterthought.

6.   Conclusion

The above analysis has demonstrated the limits of the concepts of solidarity and trust in European asylum law when viewed primarily as concepts serving exclusively the interests of Member States and not as concepts based upon the obligations of the European Union and its Member States to respect the fundamental rights of asylum seekers. The case-law of both the Strasbourg and the Luxembourg Courts has exposed the flaws inherent in the Dublin system of inter-state cooperation based upon automaticity and blind mutual trust between national authorities. *N.S.* has introduced the obligation to authorities asked to order a Dublin transfer to examine the fundamental rights implications of such transfer on a case-by-case basis and to refuse to execute a transfer when the latter will result to a breach of fundamental rights as a minimum under the terms described by the Court of Justice. European courts have provided an impetus towards greater scrutiny and evaluation of national asylum systems on the ground, leading to a proliferation and qualitative change of evaluation and monitoring mechanisms at EU level, but also at paying greater attention to evaluation reports by UNHCR and NGOs in the field. The requirement to monitor national asylum systems on the ground also informs the articulation of the

concept of solidarity, with solidarity being increasingly viewed from the perspective of the affected asylum seeker. European asylum law adopted post-Lisbon has made only modest steps in addressing the human rights concerns arising from automaticity in the allocation of responsibility to examine asylum claims in Europe. However, the Court of Justice in a number of follow-up rulings interpreting the Dublin system has begun rebalancing the system towards the direction of the individual and has introduced inroads to the automaticity of the system on humanitarian, human rights and family reunification grounds. Developing the concepts of solidarity and trust from the perspective of the asylum seeker and not primarily of the state will be key to the evolution of the next stages of the Common European Asylum System. There is plenty of room for improvement to the system for the examination of asylum claims currently in place in the EU. Although references are made to a Common European Asylum System, such a system will remain fragmented if the emphasis remains primarily on the interests of the state and not on the affected individuals and if discrepancies remain between national asylum systems. A way forward for a true common system may be the move to a single system of asylum determination and refugee allocation within the EU. The European Commission has considered in a recent Green Paper the joint processing of asylum applications as a way forward[13] and the Justice and Home Affairs Council called for both the examination of the possibility of the voluntary relocation of beneficiaries of international protection within the EU[14] and for a study on the feasibility of joint processing of asylum claims within the EU.[15] In the present European asylum system based on the functioning of national systems, rethinking solidarity from the perspective of the asylum seeker becomes imperative for European asylum law to comply with European constitutional and human rights law.

Notes

1. Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (OJ L304/12, 30.9.2004);
2. Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting or withdrawing refugee status (OJ L326/13, 13.12.2005).
3. Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers, OJ L31/18, 6.2.2003.
4. The second stage asylum Directives entailing a higher level of harmonisation include: the reception conditions Directive (Directive 2013/33/EU, OJ L180, 29/06/2013, p. 96; the procedures Directive (Directive 2013/32/EU, OJ L180, 29/06/2013, p. 60); and the refugee qua-

lification Directive (Directive 2011/95, OJ L337, 20/12/2011, p. 9). These Directives have been accompanied by the Regulation establishing a European Asylum Support Office (EASO) (Regulation No 349, OJ L132, 29.05.2010, p. 11) and by the revised EURODAC Regulation (Regulation No 603, OJ L180, 29/06/2013, p. 1).

5. Regulation 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L50/1, 25.2.2003.

6. 3151st Justice and Home Affairs Council meeting, Brussels, 8 March 2012.

7. Regulation establishing a European Asylum Support Office (EASO) (Regulation No 349, OJ L132, 29.05.2010, p. 11.

8. Council Regulation 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, OJ [2004] L349/1, amended by Regulation 863/2007 establishing a mechanism for the creation of Rapid Border Intervention Teams – OJ [2007] L199/30.

9. Regulation (EU) No 1052/2013 establishing the European Border Surveillance System (EUROSUR), OJ L295, 6 November 2013, p. 11.

10. The Justice and Home Affairs Council of 22 September 2011 on the Common European Asylum System endorsed an asylum evaluation mechanism which would inter alia contribute to the development of mutual trust among Member States with respect to asylum policy- Council doc. 14464/11, p. 8.

11. Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining the application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), OJ L180/31, 29.6.2013.

12. Conclusions of the Justice and Home Affairs Council of 22 September 2011, Council document 14464/11, p. 8.

13. Paragraph 3.3.

14. Paragraph 16.

15. Paragraph 18.

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The Transfer of Pre-departure Integration Requirements for Family Migrants Among Member States of the European Union

Saskia Bonjour

Abstract

Over the last decade, six EU member states have introduced pre-departure integration requirements for family migrants. The Netherlands was the first to introduce such 'civic integration abroad' policies. Its example has been followed by Austria, Denmark, France, Germany, and the UK. While it is well established in the literature that the European Union has played a crucial role in the proliferation of these and similar mandatory integration policies, the question why and how these policies have spread through Europe has not been subjected to analytical scrutiny. This paper shows that while the EU has functioned as a platform for the exchange of ideas, EU institutions such as the Commission have strived to obstruct this process. The only actors promoting the transfer of pre-departure integration measures were national governments. For these governments, representing such measures as a 'common practice' among member states was a strategy to build legitimacy for restrictive reform.

Keywords: pre-departure integration requirements; civic integration policy; policy transfer; Europeanization; family migration policy

1.   Introduction

In March 2005, the Dutch Parliament adopted a policy that was radically innovative: henceforth, foreigners who wanted to come to the Netherlands to live with a family member would have to demonstrate a basic level of knowledge of Dutch language and society, before being admitted to the country. In the next six years, five European countries followed the Dutch example: Austria, Denmark, France, Germany, and the UK now require

family migrants to take the first steps in learning about their new country's language and – in France and Denmark – customs abroad, before leaving their country of origin.[1] This paper examines the role of the European Union in this proliferation of pre-departure integration requirements for family migrants among EU member states.

Since the late 1990s, more and more European countries have introduced civic integration programs, which enable or require migrants to acquire language skills and country knowledge. Pre-departure integration conditions represent the newest and most radical extension of this trend. The proliferation of civic integration policies in general and pre-departure integration requirements in particular has received increasing attention in the literature (cf. Carrera 2006; Goodman 2010, 2011; Groenendijk 2011; Jacobs and Rea 2007; Joppke 2007; Van Oers et al 2010 – see also the PROSINT and INTEC projects[2]).

It is well-established in this literature that the European Union has played a crucial role in the proliferation of these policies in many member states, including countries which are not bound by EU migration law such as Denmark and the United Kingdom. Authors point to non-binding policy instruments like the Common Basic Principles on Migrant Integration, the European Integration Fund, Handbooks on Integration and the European Website on Integration, through which member states have been encouraged to stimulate migrants to learn about their host society's language, institutions, and culture. They also point to binding EU law on immigration, notably the Long-Term Residents Directive and the Family Reunification Directive, in which the notion of submitting entry and residence to integration requirements has been inscribed (Joppke 2007; Carrera and Wiesbrock 2009; Carrera 2006; Guild et al 2009; Böcker and Strik 2011). Groenendijk (2004) emphasises that this approach to integration as a condition for residence rights was introduced to the European agenda by a select group of member states, most notably the Netherlands, Germany, and Austria. As a result of their successful efforts, 'the common EU policy is now a vehicle for legitimising and promoting (...) policies and programmes, which use integration in a civic and conditional fashion' (Carrera and Wiesbrock 2009: 36).

However, the question of how and why these policies have proliferated so fast in Europe has not been satisfactorily answered, mostly because the process of transfer itself has not been subject of analysis until now. As a result, much less is known about to which extent and how national policy-making processes in the field of civic integration have been influenced by EU and other member states' policies. This is especially true for the transfer of pre-departure integration conditions.

Goodman (2011), in an article in which she argues convincingly that pre-departure integration measures aim at migration restriction, rather than at migrant integration, does touch upon the issue of transfer indirectly. She states that the Family Reunification Directive has set 'a supranational precedent that created the political opportunity for national implementation' and 'created a legitimacy that makes it possible for member states to link integration requirements to immigration' (Goodman 2011: 235, 242). Besides this supranational source, Goodman points to learning among member states, with Dutch pre-departure integration policies serving as a 'model' that has 'inspired' other member states (Goodman 2011: 250-252). In this article, I will argue that Goodman is right in describing 'horizontal' mimicking processes among member states as crucial to the proliferation of pre-departure integration measures, but that she over-estimates the 'vertical' role of supranational sources such as the Family Reunification Directive.

I will show that the European Union has played a much more ambiguous role. As a result of the introduction of European migration policies, the EU has indeed come to function as a platform for exchange and promotion of policy ideas among member states, including the idea of pre-departure integration measures. However, supranational law and supranational institutions only played a minor part in facilitating this transfer. Different categories of actors operating at EU level have influenced the process of transfer in opposite ways (cf. Block & Bonjour 2013). The legitimacy of the Family Reunification Directive as a legal basis for pre-departure integration measures was controversial and weak from the very start. EU institutions, most notably the Commission, have strived to obstruct rather than promote the diffusion of pre-departure integration policies. Instead, member states were the main actors of transfer.

The following section sets the scene by providing a brief comparative description of pre-departure integration requirements in Austria, Denmark, France, Germany, the Netherlands, and the UK. In the third section, I explore the role of the EU in the transfer of these requirements, arguing that the EU served as a platform for horizontal diffusion among member states. The fourth and final section presents an analysis of government documents and parliamentary deliberations in five out of six countries concerned, omitting the Danish case because my language skills do not permit access to Danish primary sources.[3] This analysis shows that policy transfer was aimed not at rationally identifying the most effective policy solution, but at legitimation: national politicians build legitimacy not primarily by comply-

ing with formal EU norms, but by following each other's lead, i.e. by fitting into the informal norm set by shared policy practice.

2.   Six versions of pre-departure integration requirements for family migrants[4]

Pre-departure integration requirements for the admission of family migrants are a recent invention. Previously, language requirements have been used in migrant selection procedures where language skills were directly relevant to the grounds for admission, i.e. in the selection of labour migrants or of ethnic migrants (Groenendijk, 2011). For example, as of 1997 Germany required so-called *Aussiedler* to prove their belonging to the German nation by demonstrating German language skills (Block 2012). The innovation of the new pre-departure integration requirements lies in that now, language requirements are applied to migrants whose claim to admission is grounded in the moral value of family life – a claim on which their language skills have no bearing. The first time the admission of family migrants was submitted to integration conditions was in the 1990s in Germany, where foreign children between 16 and 18 years old were required to prove either proficiency in German or ability to integrate before being allowed to join their parents (Seveker and Walter 2010). Also in Germany, in 2005, family members of *Aussiedler* were required to demonstrate a basic level of German language skills before being granted access to German territory and citizenship (Block 2012). The idea of applying language requirements generally to the first admission of non-EU family migrants was first launched in the Netherlands in April 2000 by Jaap de Hoop Scheffer, then leader of the Christian Democrat Members of Parliament (Dutch Lower House 2000).

Thus, one might debate whether pre-departure integration measures for family migrants are a German or a Dutch invention. Whatever the case may be, the Dutch were the first to lay down in law that non-EU family migrants would be required to fulfil pre-departure integration requirements. The Dutch Law on Civic Integration Abroad entered into force in March 2006. The Danish were next to adopt pre-departure measures in April 2007, but their policy entered into force only in November 2010. Germany and France followed closely, with pre-departure integration conditions entering into force in August 2007 and January 2008 respectively. The British government first announced its intention to introduce a language requirement for foreign spouses in March 2007, but the Labour government put off the actual implementation. It was the current Conservative-Liberal coalition

which introduced the requirement in November 2010, only six months after entering office. Austria is the most recent country to have followed suit, with language requirements adopted by Parliament in April 2011 and entered into force in July 2011.

These six versions of pre-departure integration measures bear striking resemblances. In all six countries, the new integration condition applies to third-country nationals[5] who wish to immigrate to join a family member. In the UK, Germany, and Denmark, the integration requirement only applies to migrants who come to join a spouse or partner, while in Austria and the Netherlands it also applies to adult children, and in France also to children aged 16 or older. Family members of refugees are exempted in all six countries, as are family migrants who have completed a certain level of education in the host country's language. Germany and the Netherlands exempt certain (Western) nationalities. As a result of court judgements discussed below, Austria and the Netherlands also exempt Turkish nationals. Austria, the Netherlands and the UK exempt spouses of high-skilled migrants. Germany and the UK exempt family migrants with specific academic or professional qualifications.

In all six countries, family migrants' knowledge of language is tested at a very basic level. In Austria, Germany, the Netherlands, and the UK, language skills are tested at the lowest level of the Common European Framework of Reference for Languages (ECRF), which is level A1. The Netherlands originally tested at a level created especially for the purpose of pre-departure testing, namely level A1 minus. Inspired by the Germans testing at A1, the Dutch have raised the level of their exams to A1 as of January 2011. Denmark and France still follow the original Dutch example, evaluating at level A1 minus. In addition to the language test, the Netherlands and Denmark also test knowledge about the host society, while France includes knowledge of 'the values of the Republic' in its evaluation.

With the exception of France, none of these countries provide courses to prepare for the test. Family migrants are to find and finance these courses themselves. The UK and Germany provide a list of accredited course providers to help applicants select a quality course, while Denmark and the Netherlands have compiled a 'practice pack' which applicants can purchase. In contrast, France offers courses about its language and values for free. This is the first major difference between the six existing versions of pre-departure integration.

The second, most important difference is that while Austria, Denmark, Germany, the Netherlands, and the UK require that applicants pass the test before they are granted a residence permit, France requires only that

family migrants participate in an evaluation and, if the results of this evaluation are insufficient, in a course. If the applicant participates duly in the evaluation and course but is not able to reach the required level, he or she is still admitted to France. Thus in France, unlike in the five other countries, there is an obligation of effort, not of result. All in all, the French measure poses significantly less of an obstacle to family migration than the pre-departure integration requirements in the five others countries: family migrants do not have to pass a test, but only to participate in a course which is offered for free. This different approach to pre-departure integration is due to the specific domestic context in France, where left-wing opposition to these policies was much stronger than in the other five member states, and where government politicians were more wary of opposition by the courts (Bonjour 2010).

Finally, in Denmark, unlike in the other countries, the test is not taken abroad. The Danish originally intended to implement the exams in Danish consulates abroad, following the Dutch example. However, as in the French case, the domestic policy making process led to a different outcome. Examination abroad was found too costly, which is why a more cost-efficient system was developed. Family migrants are granted a special short-term visa to come to Denmark for 28 days in order to pass the integration test. Once in Denmark, they can extend this 'procedural stay' to three months, during which time they may follow a course if they wish. If the test is not passed within three months, the residence permit is refused and the applicant must leave Denmark.

It is probably no coincidence that these six countries are at the forefront of the policy turn towards integration requirements (cf. Goodman 2010). First, Austria, Denmark, France, Germany, the Netherlands, and the UK belong to the 'older' immigration countries in the European Union. All six countries except the UK had formal recruitment programs for labour migrants in the 1960s and early 1970s; the UK, France and the Netherlands have known significant post-colonial migration flows throughout the post-war period; and all six countries have experienced increasingly substantial refugee flows starting in the 1970s. Persons born outside of the EU make up between 7,5 and 9 per cent of the population in all six countries except in Denmark, where their percentage is 6,3 (Eurostat 2011a). Second, the socio-economic situation of the population of non-EU migrant origin is cause for concern in all six countries. The difference in employment rate between the general population and the non-EU born population ranges from 13 percentage points (Germany and the Netherlands) to 9 percentage

points (UK) in these six countries, while the average employment gap in the 27 EU member states is 7 percentage points (Eurostat 2011b: 65).

Most importantly, there are similarities in the way in which the issue of migration and integration is framed by policy-makers. The politicisation of migration and integration has been rising in these six countries since the 1990s, to reach new peaks since the turn of the century (cf. Bonjour 2010; Ersbøll 2010; Guild et al 2009; Scholten et al 2012). In all six countries, politicians worry that socio-economic cleavages overlapping with cultural and ethnic distinctions are threatening the cohesion of their societies. According to dominant political discourse, social cohesion depends on all members of society sharing a minimum level of common values and practices. Also, emphasis is put on the responsibility of migrants for their own integration. Obligatory integration programs in general, and pre-departure integration requirements in particular, are attractive policy solutions for policy-makers who share this problem perception. These requirements make migrants responsible for acquiring skills that should enable them not only to find a job and raise their children to be successful in school, but also to integrate socially and to adhere to the values and identity of their new home country.

Pre-departure integration policies are also very much part of the recent restrictive turn in family migration policies in Europe. Since the mid-2000s, many European countries have tightened income, age, and housing requirements for family migration and sharpened controls on sham marriages (Block and Bonjour 2013). Austria, Denmark, France, Germany, the Netherlands, and the UK are at the forefront of this restrictive turn. Family migration is problematized, first because it is *'subie'* rather than *'choisie'*, i.e. endured rather than chosen, as Nicolas Sarkozy famously put it: family migrants cannot be selected based on socio-economic criteria. Second, family migration is associated with failing integration, where 'traditional', 'non-Western' norms are seen to push young people of migrant background to choose a partner from their own or their parents' country of origin, thus reproducing the pattern of failing integration from generation to generation (Bonjour and Kraler, forthcoming). Pre-departure integration measures are expected to contribute to solving the 'problem' of family migration.

It is worth noting that this convergence towards a common policy paradigm and a common policy practice cannot be explained by party politics, i.e. by the dominance of a particular party family in these six countries. The introduction of pre-departure integration measures has been initiated by left-wing as well as right-wing politicians. In the Netherlands, the centre-Right Balkenende coalition proposed the Law on Civic Integration Abroad, but the Social Democrats voted in favour in 2004 – and the level of the

language test was raised by a Social Democrat minister in 2010 (Bonjour and Vink 2013). Both in Germany and in Austria, pre-departure integration measures were introduced by a coalition of Christian Democrats and Social Democrats – at the initiative of the right-wing coalition party surely, but still with the support of the Left. In the UK, it was actually a Labour MP who first proposed subjecting foreign spouses to pre-entry language tests in 2001, and it was the Labour government under Gordon Brown which first tabled the policy proposal, even if it was the current Conservative-Liberal Cameron government which actually implemented it (Scholten et al 2012). In Denmark, the integration test at entry was introduced by the Liberal-Conservative government with support of the Far-Right Danish People's Party, but also of the political Left (Ersbøll 2010). The sole exception was France, where pre-departure integration measures were introduced by the UMP-government against the strong opposition of the entire left-wing opposition, including the Parti Socialiste. The fact that pre-departure integration requirements were a great deal more controversial in France than elsewhere may go a long way towards explaining why the French policy on this issue is by far the least restrictive (Bonjour 2010).

The question why the 22 other member states have not introduced pre-departure integration requirements (yet) can only be answered tentatively here, since these 22 member states were not subjected to empirical scrutiny in this study. However, perhaps at least part of the explanation lies in the fact that the Southern member states, Finland, and Ireland as well as the member states in Central and Eastern Europe have only recently gone from being countries of emigration to being countries of immigration. Immigration and integration have until now been framed and managed very differently in the 'new' immigration countries of Europe. While restrictive tendencies may certainly be observed, the turn towards civic integration requirements appears to be much less pronounced than in 'older' immigration countries. This is also true for Luxemburg, where immigration is predominantly highly-skilled and of European origin. In Belgium, pre-departure integration measures are favoured by a majority among Flemish politicians, but blocked by their French-speaking colleagues (Jacobs 2011). In Sweden finally, family migration policies have not taken the restrictive turn which can be observed in the other 'old' immigration countries. According to Borevi (forthcoming), this is due to the absence of far-Right pressure as well as to the dominance of the universal welfare state ideology in Sweden.

3.   The European Union as a platform for exchange

In September 2003, the Council of the European Union adopted EU Directive 2003/86/EC on the Right to Family Reunification. This Directive was the very first piece of Community Law about family migration. It lays down minimum norms for the conditions under which third-country nationals living in a member state must be allowed to bring their family members over. For instance, it states that member states may introduce an income requirement to ensure economic self-reliance and a minimum age of no more than 21 years. Member states are free to set less stringent conditions than those allowed by the Directive but they may not introduce more restrictive policies. The Directive is directly binding upon the member states, and the Commission and Court see to it that national policies respect the boundaries it sets. Thus, for the very first time, member states' family migration policies for third country nationals have been subjected to EU-law. One might expect the proliferation of pre-departure integration conditions among member states to be a result of this new legislation: in fact however, the Directive has merely facilitated the transfer, but not caused it directly.

Article 7.2 of the Directive states that 'Member States may require third country nationals to comply with integration measures, in accordance with national law'. Thus, integration measures for family migrants have been inscribed into the Directive. Still, this clause does not provide sufficient explanation for the way pre-departure integration requirements have travelled among member states, for three reasons. First, two out of the six member states which have introduced these requirements are not bound by the Directive. Denmark opted out of the European Asylum and Migration Policy when it negotiated the Amsterdam Treaty and the UK opted out of this Directive. Second, article 7.2 is a so-called 'may'-clause, a 'soft' clause: it allows member states to introduce integration measures, but it does not oblige them to do so. If it was a hard clause, the number of member states having introduced such measures would not be limited to six. Third and finally, article 7.2 of the Directive is quite vague: it does not specify, for instance, that these 'integration measures' should consist of language evaluations. Crucially, it makes no mention at all of such evaluations taking place before entry or conditioning admission to the country. Therefore the Directive cannot be considered the source of the idea of 'pre-departure' integration measures, and cannot explain the similarity of the measures which the six member states have introduced.

However, while the Directive has not directly obliged or pushed member states to introduce pre-departure integration measures, it has facilitated

their transfer, primarily by creating opportunities for the diffusion of knowledge about pre-departure integration measures among member states. The negotiations that led to the adoption of the Directive were a crucial episode in this regard. At the time, none of the member states applied pre-departure integration requirements to family migrants. Article 7.2 about integration measures was introduced into the Family Reunification Directive at the initiative of Austria, Germany, and the Netherlands. According to Commission officials interviewed by Tineke Strik (2011), those three member states had very different intentions at first. Only the Netherlands wanted to introduce a new entry condition for family migrants. The proposal for the Dutch Law on Civic Integration Abroad had not even been presented to Parliament yet at the time, but since the idea of an integration exam before entry was 'in the air', the Dutch delegation wanted to make sure the new Directive would allow for it. The Germans wanted to oblige family migrants to participate in a course once they were in Germany, while the Austrians wanted to be able to refuse to prolong a permit if a family migrant had not successfully integrated. A member of the Dutch delegation stated that 'in the course of the negotiations, the Dutch Law on Civic Integration Abroad took a clearer shape, and that was a shock to everybody. Now that the law is being finalised, they are all very positive about it' (Strik 2011: 110). Thus, in the course of the negotiations, civil servants and ministers responsible for immigration policies were introduced to the idea of pre-departure integration measures, and the Dutch had the opportunity to explain how their policy of 'civic integration abroad' would work. It appears as though they convinced at least some of their colleagues of the worth of such a policy instrument.

Since the adoption of the Directive, the EU has served as a platform for the promotion of such measures in other ways. In September 2008 the European Council adopted the European Pact on Migration and Asylum. This Pact was proposed and drafted by France, which held the presidency of the Union at the time. While it is not legally binding upon the member states, this Pact was signed by the highest political organ in the European Union and therefore carries great political weight. It states that the European Council has agreed 'to regulate family migration more effectively by inviting each Member State (…) to take into consideration (…) families' capacity to integrate, as evaluated by (…) for example, their knowledge of that country's language'(European Council 2008, paragraph I.d). In the Family Reunification Directive, integration measures were still vaguely defined and – most importantly – it was left entirely up to the member states whether they should introduce such measures or not. The Pact goes

further than that, by explicitly encouraging member states to introduce language requirements for family migrants.

Also, in July 2007, the Council established the European Integration Fund, which is to provide financial support to member states' efforts to improve their migrant integration policies. Among the member states' actions eligible for funding, the Council Decision to establish the Fund lists actions that 'prepare third-country nationals for their integration into host society in a better way by supporting pre-travel measures which enable them to acquire knowledge and skills necessary for their integration' (Council of the European Union 2007, paragraph 4.1.c). Here, member states are encouraged to introduce pre-departure integration measures not just with words, but even with money. According to Groenendijk (2011: 8), 'the Netherlands was instrumental in extending the fund's scope' to these measures.

Thus, the EU has served as a platform for exchange of information about pre-departure integration requirements, as well as for the promotion of such requirements, without however imposing obligations upon member states. In this respect, the proliferation of pre-departure integration requirements is similar to what is usually called 'horizontal Europeanization' in the literature, i.e. 'the diffusion of ideas and discourses about the notion of good policy and best practice' through EU policy and politics, 'where there is no pressure to conform to EU models' (Radaelli 2003: 30, 41). However, the transfer of pre-departure integration contrasts with 'horizontal Europeanisation', in that it was operated exclusively by member states, without support from the Commission and Court. Radaelli (2000: 26) describes the EU as 'a massive transfer platform' where 'the European Commission is a very active policy entrepreneur' as it 'suggests best practices, models and original solutions'. Most accounts of horizontal Europeanisation focus on mechanisms such as the Open Method of Coordination (Trubek et al 2005; Radaelli 2003) in which the Commission plays a crucial initiating, facilitating and coordinating role (Telò 2002; De Ruiter 2010). In the case of the transfer of pre-departure integration measures however, the Commission has not played this enabling role: to the contrary, it has tried to obstruct the transfer.

From the very start of the negotiations on the Family Reunification Directive, it was clear that the Commission's policy perspective on family migration clashed with that of certain member states. The Commission's original legislative proposal started from the notion that 'family reunion helps to create sociocultural stability facilitating the integration of third country nationals' (Preamble 4 of the Family Reunification Directive). Only as a result of active lobbying by Austria, Germany, and the Netherlands was

the opposite notion introduced in the Directive, namely that integration might be a precondition for family migration rights (Groenendijk 2004). Until today, the Commission actively resists this notion.

In its 2008 report on the implementation of the Family Reunification Directive, the Commission was very critical about integration measures as a condition for family migration, stating that the aim of such measures should be 'to facilitate the integration of family members'. It questioned the admissibility of policies such as those conducted in the Netherlands and Germany, with high exam fees and inaccessible courses, which the Commission thought likely to result in exclusion, rather than in integration (European Commission 2008: 7-8).

The EU Court of Justice has adopted an interpretation of the Directive which is quite similar to the Commission's approach. In 2006, it ruled that the Family Reunification Directive grants a subjective right to family reunion, and that member states' policies should reflect the objective of the Directive, i.e. 'facilitating the integration (...) by making family life possible through reunification' (Case C-540/03). Reflecting this positive attitude to family reunification, the Court declared in its 2010 Chakroun ruling that the Dutch income requirement of 120% of the minimum wage was too high (Case C-578/08). The Court has not yet ruled about the admissibility of pre-departure integration requirements. However, based on the EU Court's jurisprudence on the EU-Turkey Association Agreement, national courts in both the Netherlands (LJN BR4959) and Austria (VwGH 2008/22/0180) have ruled that sharpened integration and family migration policies for Turkish citizens are incompatible with this Agreement. Hence, Turkish citizens are exempted from pre-departure integration requirements in the Netherlands and Austria.

In March 2011, the EU Court of Justice was asked to determine whether the Dutch policy of requiring family migrants to pass an integration exam before admission was compatible with the Directive. However, in the course of the proceedings the Dutch government granted a permit to the Afghan woman whose husband had initiated the case, after which the Court deemed a ruling unnecessary. It is perhaps no coincidence that the Dutch government granted this permit – thus avoiding a Court ruling – shortly after the Commission had presented its opinion to the Court. This opinion was unequivocal: the Commission advised the Court to rule that '(...) the directive does not allow for a family member (...) to be denied entry and stay only because this family member has not passed the integration exam abroad (...)' (European Commission 2011).

This Commission opinion has not escaped the notice of national courts. In 2012, a Dutch court of first instance ruled that pre-departure integration measures were inadmissible under EU Law (Awb 12/9408). In October 2011, the German Federal Administrative Court ruled that the EU Court should be asked to clarify whether pre-departure integration measures are compatible with the Family Reunification Directive (BVerwG 1 C 9.10). Thus far, the German government has been able to prevent the EU Court from ruling on the matter, by granting visas in every case which was (likely to be) referred to the EU Court for a preliminary ruling (Block and Bonjour 2013). However, in March 2013, the question was once again posed to the EU Court by a German court (C-138/13, Dogan) and at the moment of writing this article (January 2014), the Court proceedings had not been interrupted.

In the meantime, the Commission appears determined to use all means at its disposal to combat pre-departure integration requirements for family migrants. In May 2013, the Commission sent a Letter of Formal Notice to the German government about its pre-departure language requirement, thus initiating the first phase of infringement proceedings (European Commission 2013). In response, the German government maintains that its current policies are compatible with the Family Reunification Directive (German Lower House 2013: 16). If Germany persists, the Commission may eventually ask the EU Court to rule directly on the admissibility of pre-departure integration requirements.

Thus, the EU served as a platform for the diffusion and promotion of policy concepts, thereby providing the opportunity for the transfer of pre-departure integration requirements. However, unlike the common representation of horizontal Europeanisation in the literature, this process occurred against the express opposition of the Commission, rather than with its support. Member states have been the only agents of transfer.

4.   Legitimacy in shared practice: references to transfer in political debates

In sum of the argument in the previous section, the transfer of pre-departure integration requirements among EU member states cannot be explained as the result of supranational coercion or pressure: it was a voluntary process initiated by member states themselves.

In the literature on policy transfer, the dominant assumption is that voluntary transfer is a rational process, in which governments seek information about policy practices elsewhere to identify the most effective solution

to their policy problem. It is acknowledged that actors' rationality is often 'bounded' but this is described as the result of incomplete information or external pressure (Dolowitz and Marsh 2000; cf. Holzinger and Knill 2005). In contrast, neo-institutional approaches to policy transfer emphasise that transfer is not a rational problem-solving strategy, but 'the expression of a need of legitimation': transfer serves primarily to show that the chosen course of action is a 'entirely appropriate means to achieve a socially valued goal'. Particularly where a policy proposal is (likely to be) controversial, 'presenting a measure as a "solution that works" abroad is part of a strategy aimed at naturalising a political choice' (Delpeuch 2008: 10, 14).

As we shall see below, the process of transfer of pre-departure integration requirements confirms the neo-institutionalist view, rather than the rationalist view. If the transfer had been part of a rational problem-solving strategy, then member states would have collected all information available to identify the most effective policy solution. Nothing indicates however that member states were interested in whether pre-departure integration requirements actually *worked*, that is in their effects. The information collected about other countries' policy practices was very limited, especially with regard to policy effects. For instance, no reference at all is made to policy evaluations – such as the 'Monitor Civic Integration Exam Abroad' which was published by the Dutch government at least once a year since November 2007. One might argue that such 'rational policy-learning' is more likely to occur at the level of civil servants, than at the level of parliamentary debates analysed here. However, if information about the effects of other countries' policy practices which supported the introduction of pre-departure integration requirements had been collected during the administrative preparation of policy proposals, there would be no reason for governments to refrain from sharing this information with Parliament. None of the governments presented such information. In fact, when a UK Liberal Democrat MP requested the Minister to 'ask the Netherlands Government whether they sought advice from independent agencies on the effects of their tests on integration', the government simply failed to respond (UK House of Lords 2010). This suggests that the aim of transfer was not rational problem-solving, but creating legitimacy for pre-departure integration requirements. In the UK as in the other member states, pre-departure integration requirements were justified not by showing that similar measures actually worked elsewhere, but only by arguing that they were also implemented elsewhere, as I will illustrate below. In essence, this boils down to the playground argument: 'it's alright, because the others are doing it too'. Politicians sought to build legitimacy for pre-departure

integration measures not by proving their effectiveness, but by representing them as a shared practice among EU member states.

The Family Reunification Directive was also referred to as a source of legitimacy, but only to a very limited extent. The Dutch, French, and German governments referred to the Directive in the Explanatory Memoranda which accompanied their legislative proposals to introduce pre-departure integration requirements. However, the German and almost all the Dutch references were 'weak' legitimacy arguments, limited to stating – truthfully – that EU law allows but does not oblige member states to introduce integration measures for family migrants. The single occasion where the Dutch government presented the EU as a somewhat stronger source of legitimacy was its claim that 'the new integration requirement fits with recent developments in European migration law', such as the Family Reunification Directive (Dutch Lower House 2004a: 16-17). The French government employs a similar formulation, stating that 'these measures are fully in line with the Family Reunification Directive' (French Lower House 2007a). The UK and Austrian governments do no mention the Directive at all, either in policy documents or in parliamentary debates – an omission which is understandable in the British case since the UK is not bound by the Directive, but quite striking in the Austrian case.

The limited reference to the Directive as a source of legitimacy is less surprising when one takes into account that the scope which the Directive allows for integration measures has long been subject to debate among politicians and law scholars (cf. Groenendijk 2011). From the first debates about pre-departure integration measures until today, the German and Dutch left-wing opposition have questioned the government about the compatibility of this measure with article 7.2 of the Directive (Dutch Lower House 2006, 2008a; German Lower House 2007, 2008, 2009a, 2009b, 2010, 2011). The Commission's critical report of 2008 and its unequivocal dismissal of pre-departure integration tests in 2011 as contrary to the Directive have only increased the controversial nature of these measures and thereby increased the need for legitimation, while weakening if not disqualifying the Family Reunification Directive as a source of legitimacy. Politicians therefore looked for legitimation elsewhere, namely in the practices of other member states.

In the course of the Austrian parliamentary debate about pre-departure integration measures, a member of the Christian Democrat coalition party ÖVP remarked:

> This is not a monstrosity or harassment, as it is sometimes presented. In other countries, this is self-evident and in Germany for instance it has been law since 2007 (Austrian Lower House 2011: 115).

The UK government referred to other countries' policies repeatedly when defending its plans to introduce a language requirement for spouses. In 2009 for instance the government stated:

> This policy is in line with thinking in other EU states: the Netherlands, Germany and Denmark have all introduced pre-entry language requirements, with France also introducing new exams on French language and culture pre-entry for family reunification applications in the near future (UK Border Agency 2009: 23).

Thus, other countries sharing the same policy practice represent a source of legitimacy. This is confirmed by the German far-Left opposition attacking government policy precisely for *not* following the majority of other European countries. *Die Linke* and the Greens referred to the government's plan to introduce pre-departure integration measures as a 'restrictive *Sonderweg',* which a member of the Christian Democrat coalition party countered by stating that 'This is not true. (...) The Netherlands! France! More and more countries are opting for this instrument!' (German Lower House 2009b: 2, 2009c: 22640)

France finally is the country where the reference to other countries was most explicitly and elaborately put forward in defence of the government proposal to introduce pre-departure integration measures for family migrants. This policy proposal was first launched by parliamentarian Thierry Mariani, member of the right-wing coalition party UMP, in an information report about *Migrant integration policies in the European Union* which he presented to Parliament in December 2006 (French Lower House 2006). The purpose of the report was to identify good practices in other countries which might help improve French integration policies:

> All immigration countries are confronted, to a different degree, to similar difficulties. Why not be inspired by the good ideas, the good practices of our neighbours – they often have good ideas – and by what works for them?

In this report, Mariani examined the migrant integration policies of the US and Canada, i.e. two 'old immigration countries', as well as of Denmark, Germany, the Netherlands, Sweden, and the United Kingdom, selected

'because the integration policies they conduct are particularly interesting'. According to Mariani, his analysis showed that 'more and more countries tend to turn integration into a condition for admission, so as to start the integration effort as early as possible'. Mariani discussed Dutch pre-departure integration measures and German and Danish plans to introduce similar policies, and concluded that this 'testifies to a real European convergence on this point'. The first among the recommendations with which Mariani concludes his report is for France to 'implement an integration test abroad for family migrants', following the Dutch, German and Danish example. This example confirms that policy makers involved in policy transfer are not rational learners who collect as much information as possible to choose the best policy option (Holzinger and Knill 2005: 783). Rather, policy makers consider only a limited number of policy options implemented in other countries, selected according to a political rather than a scientific logic (Delpeuch 2008: 50). The five EU member states which Mariani selected are those with the most elaborate language and civic integration programs or requirements for migrants. Only on the basis of such a selective comparison could he have come to the conclusion that there is a 'real European convergence' around pre-departure integration measures, which after all had been adopted by no more than three out of 27 member states at the time. The selection of information collected for this report then was clearly based on political motives, i.e. on the wish to legitimate the proposal to introduce pre-departure integration measures.

Mariani's recommendation was taken over by Nicolas Sarkozy, then Minister of the Interior and candidate in the presidential elections. In a speech he made in March 2007, Sarkozy copied Mariani's argument about 'European convergence' literally:

> I want us to follow the example of the Netherlands, which has put in place an integration test for family migrants to take in their country of origin. Germany and Denmark plan to adopt a similar test, which marks a real European convergence' (Sarkozy 2007).

In the parliamentary debates about pre-departure integration measures, the government and the majority MPs referred to the fact that similar measures were implemented in other European countries as proof of their legitimacy. Thus minister Hortefeux declared that 'by creating this test and this course, France joins the ranks of several large European countries' such as the Netherlands and Germany (French Upper House 2007). His referral to the Netherlands as a 'large' European country reveals Hortefeux' wish

to present the Netherlands as an appropriate model to follow. Similarly, a UMP member of parliament stated:

> This is not a leap into the unknown but an adaptation to the European norm: the Netherlands have put in place a pre-departure integration test for family reunification in March 2006, and Germany and Denmark plan to implement it (French Lower House 2007b).

This quote illustrates clearly that what is perceived among politicians as 'the European norm' consists not only of formal EU law, but also and even primarily of what is presented as common practice among EU member states.

That politicians find legitimacy in shared policy practice is evident not only in the references by policy-makers who imported pre-departure integration models, but also in debates among politicians of the main exporter: the Netherlands. Thus the Greens, in an early stage of debates about the integration abroad requirement, pointed out that if the Netherlands went through with this reform, it would be 'the only country in the whole world to require language skills as a condition for the admission of family migrants' (Dutch Lower House 2004b: 12). The argument the Greens were trying to make here was that this was an all too extreme measure which the Netherlands should refrain from implementing. Minister Verdonk, a Conservative Liberal, confirmed that the Netherlands would be the only country in the European Union to impose such a condition, but added that 'I can assure you that my colleague ministers are observing this with great interest' (Dutch Lower House 2004b: 42). Thus the government turned the argument around, presenting the Netherlands as 'acting as a pioneer for other countries to follow' (Dutch Lower House 2008b: 4). A couple of months after the Law on Civic Integration Abroad was adopted, the government added:

> The Netherlands are taking the lead in Europe when it comes to civic integration abroad. Many member states are following these developments with great interest. (...) I expect that other member states will follow our example after we have gained some experience with it and that our system of civic integration abroad will serve as an example for other member states (Dutch Lower House 2005: 15).

The Netherlands was the very first country in the Union to introduce integration requirements as a general condition for the admission of family

migrants and it did not feel comfortable in this outlier position. Dutch politicians therefore actively engaged in turning integration abroad into a common practice among member states. Having other member states follow its lead gave Dutch civic integration policy the legitimacy of serving as a role model, rather than remaining an extreme and exceptional case. This is why the Dutch pushed for the inclusion of pre-departure integration measures among the actions eligible for financial support from the European Integration Fund. It is also why the French tried to encourage other member states to introduce language requirements for family migrants by including this policy measure in the European Pact on Migration and Asylum. To make sure that their policies fitted comfortably within the European norm – in the sense of common, accepted practice among member states – Dutch and French politicians endeavoured to modify this norm.

5.   Conclusion

Over the last decade, six EU member states have introduced pre-departure integration requirements for family migrants. This policy instrument has proliferated through a voluntary mechanism of transfer with the European Union serving as a platform for the exchange of information and ideas among national policy-makers. Because of its voluntary nature, this transfer is similar to 'horizontal Europeanisation' but it differs from mechanisms such as the Open Method of Coordination in that the European Commission opposed rather than supported it. Member states were the only agents of transfer.

An analysis of political debates in five out of the six countries which introduced pre-departure integration measures has shown that transfer is a process aimed not a rational problem-solving, that is at identifying the policy solution that works best, but at creating legitimacy. Politicians seek to justify pre-departure integration measures not by showing that pre-departure measures have proven effective elsewhere, but merely by presenting such measures as a policy practice shared with other member states. Politicians in both the exporting and the importing countries refer to other countries conducting similar policies to legitimise pre-departure integration measures. The 'vertical' legitimacy of pre-departure integration measures, derived 'top-down' from formal EU legislation, appears problematic, as the compatibility of pre-departure integration measures with EU law is subject to increasing debate, with the Commission in particular adopting a critical stance. This is why member states adopt 'horizontal'

legitimacy seeking strategies, where policy legitimacy is derived not from formal legal norms, but from policy practices shared with other countries.

The on-going process of Europeanisation of migrant integration policies is a multifaceted process, a 'struggle' as Carrera (2006: 13) puts it both about the approach to be adopted and about the repartition of competences. This analysis of the transfer of pre-departure integration measures among EU member states draws attention to one of the dynamics – and perhaps the main dynamic – through which this Europeanisation is evolving. What we have observed here is a process of policy transfer driven by (a select group of) member states against the express opposition of the Commission, where policy-making derives legitimacy not from formal European norms, but from shared policy practice.

Notes

1. As we shall see later, Denmark is something of an exception, since family migrants are allowed to enter Denmark for 3 months to take the test, rather than taking the test abroad as the other five countries require.
2. Research Project on *Promoting Sustainable Policies for Integration* (PROSINT): http://research.icmpd.org/1428.html. Research program on *Integration and Naturalisation Tests* (INTEC): http://www.ru.nl/law/cmr/projects/overview/intec/.
3. However, the secondary literature suggests that the process of transfer in Denmark showed strong similarities to my findings in the other five countries. Pre-departure integration tests were explicitly presented by the Danish government as 'following the Dutch example', but requests from the opposition for information about the effects of these Dutch policies were not followed up by the government (Ersbøll 2010: 128-132; Ersbøll & Gravesen 2010: 22-23).
4. This overview is based on the comparative analysis of pre-departure integration measures in Germany, the Netherlands, and the UK presented in Scholten et al (2012), complemented with data on the French case presented in Pascouau (2010) and on the Danish case presented in Ersbøll & Gravesen (2010), as well as with data on the Austrian case provided by the Austrian Ministry of the Interior (2012).
5. Persons who are not citizens of the EU, Norway, Iceland, Liechtenstein, or Switzerland.

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The Transition from School to Work for Children of Immigrants with Lower-Level Educational Credentials in the United States and France

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Abstract

This paper compares the transition from school to work among Mexican-origin youth in the United States and North African-origin youth in France relative to the native-majority youth with similar low-level credentials. The goal is to understand the extent to which these groups experience ethnic penalties in the labor market not explained by social class, low-level credentials, or other characteristics. The patterns of employment for second-generation minorities play out differently in the two contexts. In France, lack of access to jobs is a source of disadvantage for North African children of immigrants, while in the United States, second-generation Mexicans do not suffer from a lack of employment. Indeed, the Mexican second-generation shows a uniquely high level of employment. We argue that high levels of youth unemployment in the society, as is the case in France, means greater ethnic penalties for second-generation minorities.

Keywords: second generation, children of immigrants, Mexicans, North Africans, Labor market, employment

1.　　Introduction

The United States and France are two countries with a long history of immigration. This paper compares the transition from school to work among youth of Mexican origin in the United States and North African origin in France with lower-level credentials. Such a comparison allows us to compare second-generation integration in countries with higher versus lower youth unemployment. We focus on labor market entry because the transition from school to work is the key transition in upward or downward

social mobility. We use the term "ethnic penalties" to describe disadvantages in the labor market outcomes among those of similar age and education levels net of other explanatory factors (Heath and Cheung 2007). The goal is to understand the extent to which these groups experience ethnic penalties in the labor market relative to their peers with lower-level credentials with native-origin parentage.

We examine the contemporary labor market outcomes of Mexican American youth and those of North African descent (also known as Maghrébins) in France because these are two groups that have faced difficulties and discrimination in their host countries and also have a greater likelihood to leave school with lower-level or no educational credentials relative to youth of native majority populations. A question that remains, however, is whether these minority youth in France and the United States experience ethnic penalties in the labor market not explained by low-level educational credentials (Heath and Cheung 2007). Alba and Silberman (2009) have noted that "Mexicans in the US and North Africans in France represent the largest immigrant populations in these two countries whose incorporation can be viewed as problematic" (p. 1). However, to date few empirical comparisons have been made between the two groups. A comparison of these groups is warranted as they share a postcolonial relationship with the host country, represent the largest immigrant populations in each country, and tend to attain lower educational credentials than their European-origin peers. France and the United States, however, offer substantially different economic contexts into which children of immigrants may integrate.

In the past, European immigrants in both the United States and France have undergone an assimilative process whereby ethnic distinction became less meaningful over time and generation. In the United States, European immigrants near the turn of the twentieth century began the assimilative process such that by the third generation ethnicity was largely symbolic (Alba 1990, Gans 1979, Fishman 1972). In France, the "Republican model" of assimilation (see Schnapper 1991) strives to make immigrants into citizens within one generation (Simon 2003, p.1091). This suggests that as immigrants and their children become French citizens the expectation is that they are not culturally or otherwise different from the majority population (Simon 2003).

In the United States, there is a scholarly debate over whether contemporary migrants will follow the same assimilative path as European immigrants of the last century. The assimilation perspective posits that over time and generation ethnic differences become less important for life chances (see for example Alba and Nee 2003). In contrast, the segmented

assimilation model theorizes that changes in the labor market context and the racialization of contemporary migrants offer fewer opportunities for social mobility than were afforded to European immigrants (Portes and Zhou 1993, Portes and Rumbaut 2001). Although European migrants of the past were able to work their way up from low-level positions over time, the segmented assimilation theory suggests that the current economy has an hourglass structure with positions for very low-skilled workers and high-skilled workers but with little room for mobility from low-skilled to high-skilled positions (Portes and Rumbaut 2001). Thus, authors in the segmented assimilation perspective note that assimilation to the mainstream is but one possibility for contemporary immigrants and their children. They note that downward assimilation and maintenance of ethnic outlook are also possibilities. Furthermore, the theory suggests that because new immigrants tend to settle in urban centers occupied by native-born minorities they may assimilate to an "underclass" in part by adopting an adversarial outlook of native-born minorities that thwarts their abilities for social mobility (Portes and Rumbaut 2001). The structural changes in the United States' economy are particularly of importance to Mexicans, who are the only large immigrant group to inhabit the "the social bottom" of the labor market (López and Stanton-Salazar 2001). While segmented assimilation theory was developed based on the U.S. context, it has also been applied to the French case. Silberman et al. (2007) note that "were the Maghrébins an immigrant group in the U.S. they would be identified as a group at risk of 'downward assimilation'" although their situation doesn't fit exactly to the U.S. model (p.23). While the Maghrébins have largely assimilated linguistically and arguably culturally to the French society, there is no native "underclass" from whom Maghrébin youth might adopt an adversarial outlook as suggested by the segmented assimilation model in the U.S. Furthermore, while there is discrimination on the basis of skin tone in France, Maghrébins are more likely to cite that they have been discriminated against on the basis of names (Silberman et al. 2007).

Often ignored in theories of immigrant incorporation is the economic context of the host countries (Gans 1992). A receiving country with high unemployment may offer fewer opportunities to for immigrants and their children to integrate than one with lower unemployment. Richard (1997), for example, argues that employment discrimination against second-generation minorities may be more pronounced when unemployment is high. In the transition from school to work, youth of Mexican and North African origins encounter different labor market contexts. While in both countries young people have higher unemployment than the overall po-

pulation, youth unemployment in France is much higher. French youth have had a harder time finding a job than American young people both before and after the emergence of the great recession. In the year 2000, for example, unemployment for youth 15-24 was 20.6% in France, while only 9.3% in the United States (United Nations Statistics Division 2013). By March 2012, youth unemployment had risen in the United States to 16.4%, still less than in France pre-recession, while French youth unemployment rose to 21.8% (OECD 2012). In the United States, Latinos tend to have higher unemployment than the general population. In 2000, before the recession, the Latino unemployment rate was 4.4% while the overall unemployment rate was 2.6 percent, and by May 2012 when the unemployment rate rose to 8.2 percent overall, that of Latinos rose to 11 percent (US Census Bureau 2010, US Department of Labor 2007/2012). In France, North Africans are less likely to be employed than those of French origin. Using data from 2008, Aeberhardt et al. (2010) find that among those with two North African parents only 52% were employed while among those with two parents born in France 78% were employed. Because of the difference in youth unemployment contexts, France may offer the second generation fewer opportunities for labor market integration than the United States.

2. Immigration Contexts in the United States and France

2a. Mexican Migration and the Second Generation in the United States

Mexican migration to the United States has a long history. After the colonization of the Southwest by the United States in the 19ᵗʰ century, the first half of the twentieth century brought a flow of young male immigrants who were driven by the economic conditions created by the Porfirio reforms and the violence of the Mexican Revolution (Massey et al. 1987, Kanellos 1998). Around World War I labor shortages and recruitment of workers drew hundreds of thousands of Mexicans to work in the United States in manufacturing and agriculture (Massey et al. 1987, Kanellos 1998). During the Great Depression Mexicans faced nativist hostility and forced repatriation. However, labor shortages during World War II led to the recruitment of Mexicans to the United States and in 1942, the Bracero Program was created to fill these labor needs. In 1965, The Hart-Celler Act replaced the quota system based on national origins with one based on family reunification. As

a result of the Bracero Program, changes in immigration policy, economic changes in Mexico brought about by NAFTA, and labor needs in the United States, Mexican migration substantially increased over the course of the next several decades (Massey et al 2002).

Mexicans have now become the largest immigrant group in the United States (Portes and Rumbaut 2001). In the United States, those born in the country are citizens at birth so the second and later generations are citizens. The integration of Mexicans reflects their unique status among immigrant groups in the United States. In addition to being the largest immigrant group, they differ from other large immigration groups in a few important ways. Besides having a shared border with the United States, they are the only group who participated in both the large-scale migration at the turn of the century and the contemporary period (Portes and Rumbaut 2001, Jiménez 2010). As mostly labor migrants from a nearby country with widespread social networks throughout the United States that can even facilitate undocumented migration in a context of high levels of border enforcement, migration of Mexicans to the United States tends to be less selective than other migration flows to the country (Feliciano 2005, Lindstrom and Lopez Ramirez 2010, Takenaka and Pren 2010, Massey and Riosmena 2010).

That Mexican youth have faced scholastic challenges in the United States has been well documented in the research literature (See Portes and MacLeod 1996; Portes and Rumbaut 2001; Eamon 2005; Perlmann 2005). Among factors attributed to such difficulties are limited English language skills, social class, ethnic inequality, sociocultural differences, and discrimination (Macias 1993; Rumberger and Larson 1998, Valenzuela 1999). Valdés (1996) finds that although Mexican parents tend to have positive views of education, they may lack familiarity with the American school system, espouse different values than those of their American peers, and base educational expectations on home country norms. Ream (2005) finds that high instances of residential mobility among Mexican-origin youth limit educationally relevant social capital thus impacting school performance. That said, Telles and Ortiz (2008) have found substantial increases in high school graduation between Mexican immigrant parents and their U.S.-born children, with few gains for later generations. They also find that Mexican-American youth tend to do better educationally than their parents, but worse than their Anglo peers. Alba and Nee (2003) have likewise found that members of the second generation tend to do better scholastically and occupationally than their parents' generation.

Research on the transition from school to work among the children of Mexican immigrants has been more recent as data that would allow

researchers to examine the second-generation's employment outcomes has become more available. Questions remain, however, regarding whether the labor-market transition for second-generation Mexicans with low-level credentials differs from that of their similarly educated native-white peers. Do young workers of Mexican origins face labor market ethnic penalties that cannot be explained by low levels of education? Research has shown somewhat mixed results. Using the Current Population Survey, Model and Fisher (2007) have found that second- and third-generation Mexicans are less likely to be employed than native-born non-Hispanic whites while first generation Mexicans are not different from native-born whites in their likelihood of being employed. They also find that Mexican males have lower mobility by types of occupation by generation than in other groups. Waldinger et al (2007) have found the Mexican second generation to experience a "working class incorporation" with relatively high levels of employment in working-class jobs. In their study of prime-age adults, Luthra and Waldinger (2010) find intergenerational mobility for Mexicans in terms of pay and benefits, but fewer benefits compared to whites, although achieving parity in public sector jobs. Immigrant adults of Mexican origin tend to have lower incomes than other groups even after controlling for human capital (Portes and Rumbaut 2001). Telles and Ortiz (2008) find that in terms of the type of jobs in which Mexican Americans are employed, there are occupational gains across generation with the biggest gains between the immigrant and second generation, but slowed improvement across later generations. However, they note that low levels of education have a large effect on occupational outcomes of Mexican Americans (see also Riemers 1985, Duncan, Hotz and Trejo 2006) calling education "the linchpin of slow assimilation" for Mexican Americans (Telles and Ortiz 2008, p. 274). Brown et al (2011) have found that parents' legal status has significant impacts on both educational and occupational outcomes for their children with the children of those who have legalized their status exhibiting better educational outcomes as well as greater occupational prestige and income.

2b.   North African Migration and Second-Generation Maghrébins in France

The largest immigrant and second generation groups in France are the North Africans or Maghrébins, as they are called in French (Silberman and Fournier 2007). As members of a French colony, Algerians migrated to France to meet the French labour needs created by the Second World War. Their migration to France also occurred after World War II and continued through the Algerian war of independence, which lasted from 1954-1962

(Ibid.). The Harkis, "native Algerians who served in the French Armed Forces," were also resettled in France (Silberman and Fournier 2007, p. 225). Immigration from Morocco and Tunisia also occurred during and following their wars of independence, but is more recent, largely dating from the 1960's and 70's, with Moroccans arriving largely since the late 1970's (Simon 2003). Silberman et al. (2007) note that the Maghrébins population is made up of three different migration streams: 1) those who migrated prior to independence, 2) those who left their countries at the time of independence, and 3) migrants seeking jobs outside their newly independent states (p. 4). They further note that the contemporary second generation is mainly comprised of the children of the latter group. The children of North African immigrants have by now become a sizable population. By 1990, the North African second generation was larger than the immigrant population (Richard 1997).

Similar to the U.S., France has a policy of "jus soli" meaning that citizenship is granted to those born in France (Brubaker 1992, Silberman and Fournier 2007). Unlike the US, the current application of jus soli in France makes it a qualified system whereby citizenship is granted at birth to those with at least one French citizen parent (Silberman and Fournier 2007, Kirszbaum et al 2009). Furthermore, although all those born in France are entitled to French citizenship, it is not given at birth, but rather at the age of majority if the child was born in France and also resided in France during the teenage years (Kirszbaum et al 2009).[1]

There has been a good deal of democratization of the school system in France with the political goal of 80% of students receiving the baccalauréat, the secondary degree (Beaud 2002). The French educational system includes both academic and vocational tracks, with the baccalaureat général being the only diploma that opens the door to higher education. Brinbaum and Kieffer (2005) find that Maghrébin parents tend to aspire for their children to attend the baccalaureat général, or the academic track rather than the vocational one. Thus, although vocational tracks are associated with greater linkage to the labor market, North Africans tend to follow the academic track, which is the most prestigious and most favorably viewed in French society.

While educational credentials are important in predicting labor market outcomes in France, Simon (2003, p. 1111) notes that education may not eliminate the problem of unemployment for North Africans. He finds that Moroccans have difficulty in the transition from school to work with those who drop out or attend short-term vocational programs at greater risk for unemployment (p. 1114). Despite known difficulties in comparing national

unemployment rates, the French labor market arguably provides a more difficult transition from school to work for young people in general than is the case in the United States. In the year 2000, for example, the French youth unemployment rate was over twice that in the United States (United Nations Statistics Division 2013). Young people of North African origin are less likely to be employed than those of French origin (Frickey and Primon 2003; Brinbaum and Werquin 1997). Young people are particularly vulnerable in periods of crisis. Joseph et al (2008) also find that the employment situation has worsened for the second generation between the 1998 and 2004 Céreq surveys. Richard (1997) notes that a surplus of young people in the French labour market may result in discriminatory hiring practices whereby employers favour hiring members of the native majority group. Discrimination in the labour market may also apply to the second-generation Maghrébins despite the fact that many are French citizens. Silberman and Fournier (1999) have found that children of North African immigrants face penalties on the labor market compared to native French.

Brinbaum and Werquin (2004) note that labor market entry is more difficult for young people of Maghrébin origin, who experience higher unemployment spells. Simon (2003) concurs that Moroccans in France have "high levels of unemployment" particularly among women (p. 1096). Brinbaum and Guégnard (2013) find that second-generation North Africans are less likely to be hired than native French although the effect falls from significance for men (but not women) when socioeconomic status is included in the model. Richard (1997) finds that Algerian and Moroccan origin men and Algerian origin women are more likely to face unemployment than other groups. He likewise finds that national origin has real consequences in the French labor market, particularly for North Africans. One such consequence is that the Maghrébins are more likely to accept positions that are below their level of qualification (Richard 1997). Another consequence is that they are more often employed in part time positions and in more precarious jobs than the native born French (Dupray and Moullet 2004; Brinbaum and Guégnard 2013).

There is also a gendered dimension to unemployment in France, particularly for Maghrébins. Brinbaum and Werquin (1999, 2004) note that women are more numerous among the unemployed and spend longer periods of time in unemployment than men. Frickey and Primon (2003) find that for young women of Maghrébin origin the probability of unemployment is double that of Maghrébin men (p. 179). As a result they suggest that Maghrébin women face a "double handicap" in the labor market by virtue of their ethnicity and sex (p. 178).

With a more difficult employment context in France, there is reason to expect that second-generation North Africans may face greater barriers in the labor market than second-generation Mexicans. The higher youth unemployment rate may result in greater discrimination against North Africans in the hiring process and may result in more precarious jobs for North Africans (with part-time rather than full time positions) (Richard 1997, Dupray and Moullet 2004).

3.   Data and Methods

Datasets from both the United States and France are used in the analysis. Every attempt is made to harmonize the data and variables so as to do the same analysis in both countries. The U.S. data used in this research are from the National Education Longitudinal Survey (NELS:88). NELS:88 is a longitudinal, nationally representative dataset that follows the academic trajectories of youth from their pre-high school years through their mid-twenties. It includes data on early labor market entry, as well as social, demographic, and education-related information. NELS:88 was administered in 1988 to 24,599 eighth graders and to their parents, teachers, and principals, and it provides individual, family, and school-level data. Surveys were again administered to the same students in 1990, 1992, 1994, and 2000. The research used a sample of students who remained in the study from 1988 to 2000. The French data used in this research are from Génération 98. This dataset is a survey of those who left school in 1998. This allows us to view a cohort of school leavers who benefited from the democratization of the school system. In the spring of 2001, 55,000 telephone surveys were conducted by the Céreq to learn about the school leavers' labor market experiences over the preceding 3 years. This means that although the data were collected from roughly the same time period, young people in the American dataset are somewhat older and therefore have somewhat more labor market exposure than those in the French dataset. Because children of immigrants without a university diploma are most at risk for downward assimilation, we focus on those with lower level credentials. In order to examine the labor market outcomes of those without a university diploma, we select only those students who have completed high school or below in the United States and baccalauréat and below in France.

3a. Variables

3a.1 Dependent Variables

Two dependent variables are used in these analyses: employment and full time work. Employment is a dummy variable indicating whether the respondent is currently employed. Employment information is taken from the 2000 wave of the NELS:88 dataset in the American case. In the French case employment in 2001 is used. Employment analysis includes only those who are not inactive. Full-time work is based on the respondent's indication of whether he or she is engaged in full time versus part time work. While the number of hours qualifying as part-time work is different in the United States and France, we examine part-time work as an outcome given that in both countries it is associated with employment and economic instability relative to full-time work (See for example U.S. Department of Labor Statistics 2008).

3a.2 Independent Variables
Ethnicity/Generation

Ethnicity/Generation is measured by dummy variables constructed from questions on respondent and parent birthplaces: second generation (U.S. or French-born children with at least one foreign-born parent) versus native majority reference group which in the U.S. is third-and-later generation Non-Hispanic white and in France is native French. One difference between the definition of ethnicity between the French and American data is that in the United States ethnicity is based on self-identification whereas in France it is based on birthplace. In France, respondent and parent birthplaces are used to identify Maghrébins compared to native-born French. This is done because by law ethnic statistics are not collected in France. Unfortunately, it is not possible with this data to distinguish among Algerians, Moroccans, and Tunisians within the Maghrébins category. Included in the native French category are those who are foreign-born of French parentage. Using birthplace as ethnicity is not without problems especially because third-and-later generation Maghrébins cannot be identified and are necessarily included in the native French category.

Gender

Gender is measured by a dummy variable where 1 is male and 0 is female.

Socioeconomic background

Socioeconomic background refers to parental socioeconomic status. In the NELS:88 socioeconomic status is measured by a constructed variable comprised of parents education, occupation and income. It ranges from -2.519 to 2.560. Father's employment is used to measure socioeconomic background in France. It is measured by a series of dummy variables. High-skilled professional is the reference category.

Degree type

In NELS:88 a series of dummy variables distinguishes whether the respondent received a high school diploma, received a GED or certificate, or dropped out. France has a more complex secondary education system that the United States. School type is measured by a series of dummy variables. The academic track is the baccalauréat general. The CAP (Certificat d'aptitude professionelle) and BEP (Brevet d' etudes professionelles), and the baccalauréat professional/technical are different types of vocational tracks. Because receipt of the secondary degree requires that students pass the baccalauréat exam there is also a possibility that a student may complete the course of secondary education without receiving a degree. Therefore there are categories for those who have not received a diploma.

Urbanicity

In the United States, urbanicity is measured by a series of dummy variables indicating whether the individual resided in an urban, suburban, or rural area. The French data provide more specific information on residential location. Paris is the reference category. Large cities include those with 500,000 or more inhabitants. Medium cities are those with 100,000-500,000 inhabitants. Small cities are those with less than 100,000 inhabitants. For each size city, the surrounding urban periphery is also considered separately. In France, there is also an additional category called "multipolarisée". This is a rural area in the periphery of a city where 40 percent or more people work in the nearby city. In the French data a small number of cases, 18 in all, were excluded because the individual resided in an overseas department or elsewhere outside of France.

Means and standard deviations for all variables are in Appendix Tables 1 and 2. In the U.S. there is a higher percentage of those employed and employed in full-time work than in France. In the United States nearly 59% have a high-school diploma, while 16% have a GED or certificate and nearly 25% have no diploma. In France, 37% have the vocational CAP or BEP degree, while 34% have the baccalaureat professional/technical, and

27% have no diploma. Only 1% have the baccalaureat général. The French sample is more urban than the U.S. sample. In the U.S., 14% are urban, while 41% are suburban and 45% are rural. In France, nearly 10% live in Paris, 12% live in a large city center, 16% live in a medium city center and 15% live in a small city center. In terms of those living in the peripheries, nearly 3% live in the Paris periphery, nearly 4% live in a large city periphery, 7% live in a medium city periphery, and 4.5% live in a small city periphery. A little over 6% live in between two cities and 22% are rural. The socioeconomic status variable has a mean value for the U.S. sample of -.602. In the French sample, the most common occupations for fathers are skilled or unskilled non-manual worker (30.1%) and skilled or unskilled manual worker (28.6%).

4. Results

4a. Employment

Figure 1 shows the percent employed by ethnicity and generation in the U.S. and France. Employment is quite high among young people from both groups in the United States. Second-generation Mexicans stand out as having high levels of employment. One hundred percent of the second-generation Mexicans in the NELS:88 sample were employed while nearly 98% of third-and-later generation non-Hispanic whites were employed. In France, another picture emerges when we look at the Génération 1998 data. Among native French young people 87% are employed and among the Maghrébin second generation only 74% are employed.
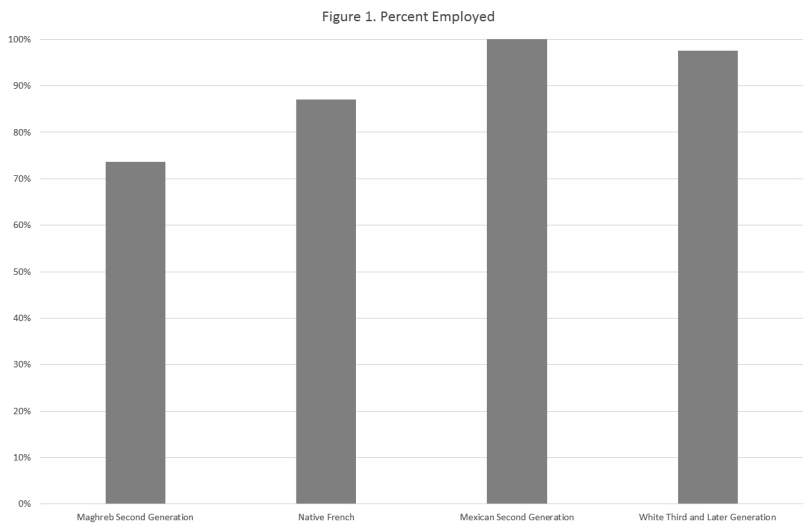
Figure 1   Percent Employed

Table 1 shows the results of logistic regression based on the American NELS:88 data. Compared to Non-Hispanic whites, the Mexican second generation experiences significantly higher levels of employment. Model 2 adds controls for gender, degree type and urbanicity to the equation. Model 2 shows that high school dropouts are less likely to be employed than those with a high school degree. Model 3 adds socioeconomic status to the regression model and it is not statistically significant. Net of socioeconomic status and the other variables, high school dropouts are still less likely to be employed than those with a high school degree.

Table 1.   Logistic Regression: Employment versus Unemployment
**   (N=1116, Source: NELS:88)**

	Model 1		Model 2		Model 3	
	B	Sig	B	Sig	B	Sig
Third-and-later-generation Non-Hispanic White (omitted)						
Second Generation Mexican	10,511	***	10,762	***	10,781	***
	(0.320)		(0.489)		(0.528)	
Male			-0,467		-0,469	
			(0.495)		(0.498)	
High School Degree (omitted)						
GED or certificate			-0,297		-0,277	
			(0.664)		(0.661)	
High-School Dropout			-1,017	*	-0,971	*
			(0.478)		(0.484)	
Urban (omitted)						
Suburban			0,110		0,120	
			(0.719)		(0.723)	
Rural			-0,142		-0,105	
			(0.692)		(0.704)	
Family Socioeconomic Status					0,092	
					(0.305)	
Constant	3,692	***	4,41	***	4,427	***
-2 Log Likelihood	-119,856		-116,254		-116,224	

Standard Errors in parentheses. *** $p<0,001$ ** $p<0,01$ * $p<0,05$

Table 2 shows the results of similar analysis using the French data. Second-generation Maghrébin youth experience a significant disadvantage in employment relative to the French-origin youth. Type of degree is also important in predicting employment. In Model 2 adds gender, type of degree, and urbanicity to the equation. Respondents with the CAP/BEP or no degrees are significantly less likely to be employed relative to those with the general baccalauréat with those with no degrees being the most vulnerable to unemployment. Place is also an important factor in employment. Those living in the large city center, large city periphery, medium city center, and small city center are significantly less likely to be employed than those living in Paris. Model 3 adds social class to the equation. Only those whose father is deceased or doesn't work are less likely than those with high-skilled professional fathers to be employed. When social class is included in the model the CAP/BEP degree type falls just short of significance and those who live in rural areas are now less likely to be employed.

Table 2.   Employed versus unemployed (Source Génération 1998) N=21412

	Model 1		Model 2		Model 3	
	B	Sig	B	Sig	B	Sig
Ethnicity						
French (omitted)						
Maghreb Second Generation	-0,876	***	-0,654	***	-0,627	***
	(0.062)		(0.067)		(0.068)	
male			0,821	***	,811	***
			(0.042)		(0.042)	
Type of degree						
Baccalaureat général (omitted)						
No diploma academic track			-2,053	***	-2,022	***
			(0.258)		(0.259)	
No diploma vocational track			-1,201	***	-1,164	***
			(0.227)		(0.228)	
CAP BEP			-,467	*	-,434	
			(0.227)		(0.228)	
baccalaureat professional/technical			0,291		0,312	
			(0.229)		(0.229)	
Urbanicity						
Paris center (omitted)						
Paris periphery			-0,150		-0,190	
			(0.135)		(0.135)	
Large city center			-,243	**	-,249	**
			(0.084)		(0.085)	
Large city periphery			-,254	*	-0,29	*
			(0.125)		(0.125)	
Medium city center			-,266	***	-,274	***
			(0.081)		(0.081)	
Medium city periphery			-,150		-0,185	
			(0.103)		(0.104)	
Small city center			-0,217	**	-0,217	**
			(0.082)		(0.083)	
Small city periphery			-,065		-,093	
			(0.122)		(0.123)	
Multipolarisee/ between two cities			-,126		-,153	
			(0.107)		(0.107)	
Rural			-,118		-,147	*
			(0.079)		(0.080)	
Father's occupation						
High skilled professional (omitted)						
Farming					0,126	
					(0.132)	

Self employed					-,035	
					(0.097)	
Intermediate professional					0,016	
					(0.110)	
Non-manual worker					-,073	
					(0.080)	
Manual worker					-0.058	
					(0.080)	
Father deceased or doesn't work					-,471	***
					(0.084)	
Doesn't know					-,199	
					(0.121)	
Constant	1,906	***	2,155	***	2,237	***
-2 log liklihood	17088,975		15918,648		15865,967	

Standard Error in parentheses. ***p<0,001 **p<0,01 *p<0,05

4b.   Full-time versus Part-time work

Figure 2 shows the percent of those employed full time among those who are employed by generation and ethnicity in the U.S. and France. Again both American groups have an advantage over their French counterparts. Among those employed, 93% of both second-generation Mexicans and third-and-later-generation Non-Hispanic whites are employed full time. In France, 81% of native French and only 76% of Maghrébin youth who are employed are working full time.

Table 3 shows the results of logistic regression equations on full-time versus part-time work among those who are employed using the NELS:88 data. Second generation Mexicans are not significantly different from third-and-later generation non-Hispanic whites in their likelihood to work full time. Model 2 includes controls for gender, type of degree, and urbanicity. Males are more likely to be employed full time than females. Model 3 adds socioeconomic status to the model but it is not significant.

Figure 2. Percent of Employed Working Full Time
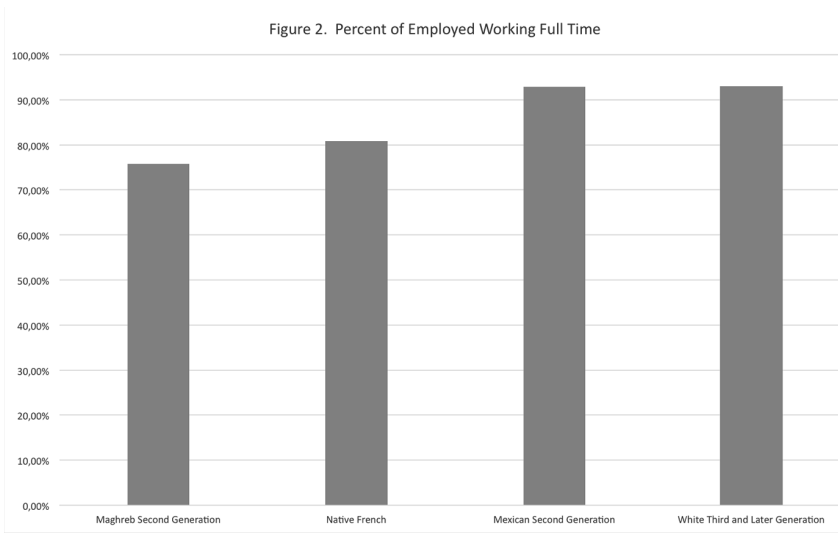
Figure 2

Table 3.   Logistic Regression: Full Time versus Part Time (N=1089, Source:NELS:88)

	Model 1		Model 2		Model 3	
	B	Sig	B	Sig	B	Sig
Third-and-later-generation Non-Hispanic White (omitted)						
Second Generation Mexican	-0,098		0,032		-0,275	
	(0.47)		(0.583)		(0.567)	
Male			2,351	***	2,38	***
			(0.351)		(0.347)	
High School Degree (omitted)						
GED or certificate			0,388		0,319	
			(0.403)		(0.402)	
High-School Dropout			-0,315		-0,486	
			(0.383)		(0.411)	
Urban (omitted)						
Suburban			0,365		0,316	
			(0.465)		(0.463)	
Rural			-0,103		-0,233	
			(0.451)		(0.446)	
Family Socioeconomic Status					-0,369	
					(0.232)	
Constant	2,586	***	1,633	***	1,561	***
-2 Log Likelihood	-277,417		-238,437		-236,971	

Standard Errors in parentheses. *** p<0,001 ** p<0,01 *p<0,05

One should interpret these findings with caution however, because the sample size of the second-generation Mexicans (63) may preclude finding a significant difference due to lack of statistical power. Therefore we use an additional analytical method, propensity score matching which "refers to the paring of treatment and control units with similar values of the propensity score, and possibly other covariates, and the discarding of all unmatched units," to see if we find a significant difference between the two groups in full-time employment (Rubin 2001, p.173). Propensity score matching has been used to re-evaluate logistic regression findings in the case of a small sample size (See Bennett and Lutz 2009). Propensity score matching permits us to compare second-generation Mexicans and third-and-later generation non-Hispanic whites "who are similar to one another across a host of background characteristics." (Bennett and Lutz 2009, p. 86). In this analysis second-generation Mexicans are considered to be the treated state and third-and-later generation non-Hispanic whites are the controls so the propensity score tells us the conditional probability of being a second-generation Mexican. First we must match cases from the treatment and control groups who are comparable on background characteristics. Ideally the matching process will yield a reduction in bias between the two groups on these background characteristics. We use propensity score matching with one-to-one Mahalanobis metric matching for our analysis (Rubin 2001). Following this approach a second-generation Mexican is matched with a third-and-later generation non-Hispanic white "with the smallest Mahalanobis distance on the basis of their propensity score and values on a number of key covariates" including gender, type of degree or not, urbanicity, and family socioeconomic status (Bennett and Lutz 2009, p. 86-87). Table 4 shows the means for the treated and control groups before and after the matching process as well as reduction in bias achieved through the matching process. The propensity score tells us the differences between the two groups across the covariates. Because the bias in the propensity score has been reduced by 98.6% through the matching process and there are no longer significant differences on any of the covariates we can say that the match is a successful one. Table 5 shows the proportion of second-generation Mexicans and non-Hispanic whites working full time in the matched sample. We find no significant differences in full-time work between second-generation Mexicans and third-and-later generation non-Hispanic whites. Thus, using two methods, logistic regression and propensity score matching, we find no significant differences between the two groups in full-time work.

Table 4. Differences between Second Generation Mexicans and Non-Hispanic Whites Before and After Propensity Score Matching

Variable	Unmatched/ Matched	Second Generation Mexicans (Treated)	Non-Hispanic Whites (Control)	p-value	% Reduction in Bias
		Mean			
male	U	0,52381	0,5809	0,374	100
	M	0,52459	0,52459	1,000	
GED or certificate	U	0,14286	0,13353	0,833	100
	M	0,14754	0,14754	1,000	
High-School Dropout	U	0,26984	0,14912	0,010	100
	M	0,2623	0,2623	1,000	
Suburban	U	0,49206	0,38402	0,088	100
	M	0,4918	0,4918	1,000	
Rural	U	0,12698	0,48246	0,000	100
	M	0,13115	0,13115	1,000	
Family Socioeconomic Status	U	-1,1289	-0,53492	0,000	99,8
	M	-1,0905	-1,0916	0,989	
Propensity Score	U	0,20609	0,0486	0,000	98,6
	M	0,19005	0,19233	0,926	

Table 5. Propensity Score Matching Analysis: Proportion of Second-Generation Mexicans and Non-Hispanic Whites working Full Time in the Matched Sample

Second-Generation Mexicans (Treated)	Non-Hispanic Whites (Controls)	Difference	SE	T-statistic
0,869	0,902	-0,033	0,059	-0,56

Table 6 shows the results of logistic regression equations on full time versus part time work among those employed based on the French Génération 1998 data. Second-generation Maghrébin youth are less likely to be employed full time than native French. Model 2 adds controls for gender, type of degree, and urbanicity. Those with no diploma on the academic or vocational track are less likely to be employed full time. Those living in cities or peripheries outside of Paris also are significantly less likely to be employed full time than those living within Paris as are those who live in rural areas. Model 3 adds socioeconomic status to the equation. Those whose fathers are farmers, self-employed, or deceased or not working are less likely to be employed full time than those whose fathers are high-skilled professionals. Net of socioeconomic status and the other controls the second-generation Maghrébin youth are still less likely to be employed full time than native French.

Table 6. **Logistic Regression: Full Time versus Part Time
(Source Generation 1998) N=18435**

	Model 1		Model 2		Model 3	
	B	Sig	B	Sig	B	Sig
Ethnicity						
French (omitted)						
Maghreb Second Generation	-0,307	***	-0,283	***	-0,326	***
	(0.072)		(0.078)		(0.079)	
male			1,398	***	1,416	***
			(0.245)		(0.041)	
Type of degree						
Baccalaureat général (omitted)						
No diploma academic track			-1,391	***	-1,435	***
			(0.245)		(0.248)	
No diploma vocational track			-0,434	*	-0,479	**
			(0.181)		(0.183)	
CAP BEP			-0,159		-0,195	
			(0.179)		(0.181)	
baccalaureat professional/technical			0,052		0,035	
			(0.179)		(0.181)	
Urbanicity						
Paris center (omitted)						
Paris periphery			0,351	**	0,343	**
			(0.147)		(0.148)	
Large city center			-0,323	***	-0,328	***
			(0.082)		(0.083)	
Large city periphery			-0,398	***	-0,381	***
			(0.117)		(0.118)	
Medium city center			-0,350	***	-0,359	***
			(0.078)		(0.079)	
Medium city periphery			-0,219	*	-0,218	*
			(0.098)		(0.098)	
Small city center			-,279	***	-,279	***
			(0.079)		(0.080)	
Small city periphery			-,303	**	-,239	*
			(0.111)		(0.112)	
Multipolarisee/ between two cities			-0,104		-0,084	
			(0.102)		(0.103)	
Rural			-0,307	***	-0,226	**
			(0.075)		(0.076)	

Father's occupation				
High skilled professional (omitted)				
Farming			-0,787	***
			(0.103)	
Self employed			-0,429	***
			(0.086)	
Intermediate professional			0,164	
			(0.103)	
Non-manual worker			-0,041	
			(0.075)	
Manual worker			0,0650	
			(0.076)	
Father deceased or doesn't work			-0,182	*
			(0.085)	
Doesn't know			-0,035	
			(0.125)	
Constant	1,445838	1,138	1,238	
-2 log liklihood	18112,644	16729,706	16589,375	

Standard Error in parentheses. ***p<0,001 **p<0,01 *p<0,05

5. Conclusion

This paper has compared the employment situation of Mexican and North African origin youth with low-level educational credentials relative to youth from native majority populations in the United States and France. The patterns of employment over generation play out differently in the two contexts. In the United States, second-generation Mexicans stand out as having a high degree of employment relative to the majority white population while in France second-generation North Africans experience ethnic penalties on the labor market.

In the French case, the Maghrébin second generation is at a distinct disadvantage in terms of employment and full time work with significant ethnic penalties. What this suggests is that the "Republican model" of assimilation is not functioning in the case of Maghrébin youth in France. At least in the labor market context, the second generation faces a severe lack of access to jobs, particularly full-time jobs. Place is also very important in terms of employment in France. In terms of employment and full time work, those who live in Paris experience an advantage over other workers. Socioeconomic status also matters in France more than in the United States.

In the United States, the Mexican second generation tends to do significantly better in employment. Given that this research focuses on those with relatively low educational credentials, our results indicate that the Mexican second generation likely experiences what Waldinger et al. (2007) refer to as "working-class incorporation," that is very high levels of employment in working-class jobs.

These results indicate that economic context matters for the integration of second-generation minority groups (Gans 1992, Richard 1997, Joseph, et al. 2008). In the United States, with relatively low youth unemployment, the Mexican second generation experiences exceptionally high levels of employment and is able to find full-time employment. In France, where youth unemployment is high, second-generation North Africans experience significant ethnic penalties on the labor market and when they do find work are more likely to work in part-time positions than are native French workers. These results lend credence to Richard's (1997) theory that the second-generation faces greater discrimination on the labor market when unemployment is high. North Africans thus face a more difficult integration implied by the segmented assimilation perspective.

There are some limitations of the comparisons made in this paper. Because employment data for the U.S. includes those who are slightly older than those in the French dataset, this may make the employment outcomes for children of Mexicans appear rosier than those of North Africans. That said, analysis of Génération 92 data from an earlier cohort indicates that North Africans do not fare much better with more time on the labor market. After five years on the labor market they are still at a disadvantage relative to their French-origin peers (Silberman and Fournier 2007).

Another limitation of this paper is that the French sample size is much larger than the American one. This may make it less likely to find statistically significant outcomes in the American case due to lack of statistical power. That the Mexican second-generation was significantly more likely to be employed even with the small sample size gives us confidence in that finding. That there was no significant difference in full time versus part-time work led us to turn to propensity score matching to double-check our findings that the Mexican second generation is not significantly different than similar third-and-later generation non-Hispanic whites. Finding the same results with two methods gives us confidence that this finding is real.

Future research is warranted on this topic. Of crucial import is an understanding of how the recession impacts employment opportunities for members of the second-generation who do not continue on to higher education. Additional research might also investigate the types of jobs that the children

and grandchildren of immigrants undertake when they are employed. The data used in this project do not permit an examination of the types of jobs undertaken by youth. If youth with low level qualifications are employed in working-class jobs as suggested by Waldinger et al. (2007), the claim made by segmented assimilation theorists regarding lack of mobility in an hourglass economy may still hold even for second-generation Mexicans despite high levels of employment. Also warranted is an investigation of workers with greater education levels. Does education preclude ethnic penalties in the labor market for more educated workers? Such research might investigate whether access to the labor market is a source of disadvantage for more highly educated children and grandchildren of immigrants.

Acknowledgements

Note

1. The majority of those identified as second generation in this analysis are French citizens by birth.

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Appendix Table 1. Descriptive Statistics for Variables included in Analysis of NELS:88

	Mean	SD
Dependent Variables		
Employed	0,977	0,149
Employed Full Time	0,930	0,256
Independent Variables and Controls		
Non-Hispanic White	0,939	0,240
Second-generation Mexican	0,061	0,240
Male	0,610	0,488
Type of degree		
High-school graduate	0,587	0,493
GED or certificate	0,156	0,363
High-school dropout	0,249	0,432
Urbanicity		
Urban	,1432	0,350
Suburban	0,407	0,492
Rural	0,450	0,498
Family Socioeconomic Status	-0,602	0,626

Appendix Table 2. Descriptive Statistics for Variables included in Analysis of Génération 1998

	Mean	SD
Dependent Variables		
Employed	0,861	0,346
Employed Full Time	0,804	0,397
Independent and Control Variables		
French	0,928	0,258
Maghreb Second Generation	0,072	0,258
male	0,586	0,493
Type of degree		
No diploma academic track	0,013	0,113
No diploma vocational track	0,260	0,439
CAP BEP	0,370	0,483
baccalaureat professional/technical	0,344	0,475
baccalaureat général	0,010	0,101
Urbanicity		
Paris center	0,097	0,297
Paris periphery	0,029	0,168
Large city center	0,120	0,325
Large city periphery	0,038	0,190
Medium city center	0,158	0,365

Medium city periphery	0,070	0,254
Small city center	0,150	0,357
Small city periphery	0,045	0,206
Multipolarisee/ between two cities	0,063	0,243
Rural	0,220	0,414
Father's occupation		
High-skilled professional	0,082	0,274
Farming	0,047	0,212
Self employed	0,105	0,307
Intermediate professional	0,072	0,258
Non-manual worker	0,301	0,459
Manual worker	0,286	0,452
Father deceased or doesn't work	0,091	0,288
Doesn't know	0,032	0,175