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Research Unit EU Integration
Stiftung Wissenschaft und Politik
German Institute for International and Security Affairs

Andreas Maurer, Roderick Parkes

Asylum Policy and Democracy in the European Union from Amsterdam towards the Hague Programme[1]

Ludwigkirchplatz 3–4
10719 Berlin
Phone +49 30 880 07-0
Fax +49 30 880 07-100
www.swp-berlin.org
swp@swp-berlin.org

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Abstract

Since the early 1990s, there has been a growing tension between democratically expressed calls for a reduction in asylum numbers, and the constraints on Executives' migration-control-capacities inherent in the liberal democratic political system. National Executives have exploited the weakness of these countervailing constraints at the European level in order to restrict asylum in a short-term, reactive fashion in line with popular expectations. Institutional changes made since the entry into force of the Amsterdam Treaty in 1999 have, however, sharpened the 'democratic tension' in European asylum policy-making. Analysing the Programmes for Justice and Home Affairs set out by the European Council, as well as the asylum measures adopted by the EU since Amsterdam, this article asks whether they have had the potential to reconcile the growing direct and indirect democratic pressure to reduce migration flows with the resurgent constraints on migration control at the European level.

I. European Asylum Policy and Democracy

1. The tensions at the heart of asylum policy-making

As the nature and size of migration flows has changed, particularly since the early 1990s, there have been democratically expressed calls for the restriction of asylum numbers. Yet European Executives' capacity to control asylum is constrained precisely because of formal and informal mechanisms within the liberal democratic system designed to temper the will of the majority. These mechanisms seek, for example, to ensure the basic wellbeing of officially recognised national minorities and of non-citizens. Moreover, not only do these mechanisms create a framework in which the narrow interests of citizens are mediated within the national sphere, they also oblige states to perform duties within the international sphere which are not necessarily in their immediate interests. These mechanisms are **legal-normative** in nature. The respective norms, which in large part are codified in law, are asserted and policed by the judiciary, NGOs and parliamentarians, particularly those of Liberal and Left parties.

A second set of constraints particularly marked in democratic systems is **politico-administrative** in form, and arises from the Executive's need to coordinate policies and proposals in particular internally, between a number of different ministries which in turn pursue differing interests and priorities. Asylum and immigration policy may best be described as a 'diffuse' policy area, with implications for a broad number of more clearly delineated policy areas (internal security, social, economic and foreign policy). The migration-interests of different ministries are often competing and difficult to reconcile with one another. Since national Executives are not unitary actors, their attempts to control migration for a particular reason may therefore be undermined by these competing intra-governmental interests.

That migration has increasingly been dealt with by Executives via modes of European inter-state cooperation raises questions about the democratic quality of asylum policy-making: inter-state cooperation often occurs in fora dominated by national Executives, or sections thereof, which meet in relative isolation of popular, judicial and parliamentary oversight (Wolf 2000). Early European-level migration cooperation was no exception. Yet, this early migration cooperation also created opportunities for the regulation of migration in a novel –and potentially better- way. These opportunities arose not just because the 'democratic tension' that characterised asylum policy-making at the national level was relatively weak at the European level: European cooperation also provides tools for migration control not available to the member states acting alone.

Policy-makers did not, however, take advantage of these opportunities to resolve the tensions at the heart of national asylum policy-making. Instead, internal-security-oriented sections of European Executives exploited the relative absence of legal-normative and politico-administrative constraints at the European level in order to formulate short-termist, reactive-restrictive policies more in line with popular pressures at the national level.

Despite some states' success in reducing the numbers of asylum-applications they receive, the asylum policies emanating from the European level have not, therefore, resolved the fundamental tensions in democratic policy-making. Indeed, far from alleviating the popular pressure to restrict asylum numbers, these reactive-restrictive policies may in some cases even have aggravated them. Predicated in large part on popular concerns about the 'security' threat posed by asylum to 'social cohesion', welfare systems and the employment prospects of citizens, reactive-restrictive policies reducing asylum-seekers' social and economic rights have, for example, increased social segregation, welfare dependence and illegal employment.

This paper examines the reassertion both of popular input into European asylum policy-making and of legal-normative/ politico-administrative constraints on Executives' control capacity which has occurred since the entry into force of the Amsterdam Treaty. It asks

whether the policies drawn up by the EU since 1999 have had the potential to reconcile popular democratic pressures to reduce migration flows with the growing EU-level constraints on Executives' control capacity.

2. Asylum policy and the circumvention of democratic mechanisms

The asylum initiatives drawn up in the low-key fora of the early European justice and home affairs (JHA) cooperation were marked by the short-termist, reactive nature of the mechanisms employed to control asylum flows. They also privileged internal security concerns. The notion of asylum-seekers posing a hard (terrorist) or soft (cross-border criminal) threat to internal security was expanded over the years, and asylum-seekers were increasingly treated as an 'existential threat' to social cohesion and national culture, welfare systems and the employment prospects of member state citizens (Huysmans 2000). More functional social and economic policy concerns have been marginalised in policy-making in favour of these somewhat populist ideas. In this way, policies have borne the hallmarks of a highly politicised political process: although policy-making at the European level was characterised by its low-key, technocratic nature, policies have apparently pandered to short-termist, electoral pressures.

Rather than seeing these policy outcomes as the result of the politicisation of policy-making – or, even less, as a rational response to the problem of migration-, some commentators attribute the 'securitisation' of asylum policies to a purposeful exploitation of the opportunities offered by European policy-making fora on the part of European interior ministry officials from a core group of member states (DE; FR; BENELUX). The 'policy-venue-shopping' thesis (Baumgartner/Jones 1993), according to which actors seek out the policy-making venues most congenial to the realisation of their preferences, has been extended to European asylum policy-making (Guiraudon 2000). It posits that JHA integration has been driven by interior ministry officials exploiting the weakness of countervailing politico-administrative and legal-normative constraints in European and EU policy-making fora, and thus circumventing the impediments to their agenda otherwise in place at the national level. By stressing the links between asylum and the internal security concerns that form the core of their competencies at the national level these actors have been able to legitimise their privileged place in European policy-making. Complex social and economic problems have subsequently been dealt with through the conceptual lens, and primarily with recourse to the policy tools, of security professionals. All this helps explain the apparent populism of policy-outcomes and the emphasis on reactive, short-termist policies that rely heavily on entry and exit controls to solve a whole range of migration policy dilemmas (Parkes 2006a).

3. Existing Proposals for Asylum Policy Reform

Suggestions abound for asylum policy to be reformulated in such a way that democratically expressed calls for the restriction of asylum numbers can be reconciled with the legal-normative and politico-administrative constraints on states' migration control capacities. European integration would be instrumental in many of these approaches.

Reconciling migration restriction with legal-normative constraints

When establishing how EU asylum policy-makers can best deal with the legal-normative constraints arising from asylum, refugee and human rights law, the most fundamental issues addressed concern the question of whether the EU should offer access to asylum at all: should the EU instead develop a radically new approach to the abuse of human rights in third countries, and attempt a legal reclassification of the forms of migration to which it is subject. In short, should the EU's asylum policy continue to respect the legal-normative constraints arising from the Geneva Convention and other national and international rights catalogues? Should these legal obligations be reformed or indeed removed altogether?

Although this fundamental question has been touched upon in the past by member state governments (in particular by the Austrians and British), the proposals for reforming asylum policy delineated below appear to offer a means of reducing the numbers of applicants for asylum *without* necessitating a revision of existing refugee and human rights laws.

The international asylum system developed after the Second World War was based on the recognition that, although states were limited in their capacity to intervene in other states, they had a duty to act in the face of human rights abuses in other states. The result was a policy-area marked by its reactivity to external developments, as reflected in the core idea of *non-refoulement*, which restricts states' ability to return individuals to countries where they may be at risk. The high mobility of individuals in the post-Cold War era made this reactivity particularly problematic. However, the greater recourse to extra-territorial interventionism that characterises the post-Cold War era also offers a chance to deal pro-actively with the causes of migration – including human rights abuses – at their source. In this context, asylum policies aimed at lowering the numbers applying for asylum enjoy new opportunities proactively to address the root-causes of migration flows. Therefore, one proposed solution to the dilemma within the democratic system –albeit a long-term one- lies in dealing proactively and curatively with the causes of migration in third countries (Boswell 2003; Parkes 2006b). In this regard, the concerted efforts of the EU's member states may prove more effective than individual initiatives.

This possibility of recourse to extraterritorial intervention has been exploited to a degree by European policy-makers. However, these actors have principally used international activity as a means to *ease* their human rights obligations: member states have erected a system of 'remote control' by which unwanted immigrants are prevented from reaching the territory of the EU where they might activate their rights. Immigration controls have been 'exported' to third countries in order reactively to block migration flows once they have begun. In these policies, forced migrants are conceptually confused with potential illegal immigrants, thus alleviating many of the remaining legal constraints on extra-territorial migration control. Although this has surely had a downward effect on migration numbers, its reactivity as a solution means that in large part (forced) migrants are merely obliged to undertake more dangerous journeys to the EU, whilst the reasons for their movement go largely unaffected. It has allayed rather than resolved the tensions in policy-making arising from legal-normative constraints.

Similarly, member states have sought to mitigate the legal-normative constraints on migration control by reducing the rights of those asylum-seekers that actually reach the EU. Applicants' procedural safeguards have been weakened, and individual claims for asylum have been subject to fast-track and collective treatment. Again, although these policies may have had a downward effect on the numbers of asylum claims made in the EU as prospective asylum-seekers search out more favourable systems, and has certainly affected the proportion of claimants awarded some form of protection, it is an essentially reactive, short-termist solution. Moreover, further restriction of this kind is actually legitimated by reference to the evidence of its failure: the considerable number of asylum-applications still turned down (at least at the first instance) is used to point to high levels of 'asylum-abuse'. Further restriction of this kind is thus deemed necessary. The high number of failed claims is not taken as a spur to look for other, more effective solutions, nor indeed as a reason to ask whether those genuinely in need of international protection are now merely being misclassified as 'bogus' asylum-seekers.

Instead of reactively restricting the procedural rights afforded to asylum-seekers when their claims are handled or of reducing the refugee recognition rates at first instance, experts advocate that states improve the quality and speed of procedures and recognitions (ECRE 2004a). This, it is argued, would help to prevent abuse by 'bogus' asylum-seekers. Here, the EU can play a role, facilitating exchange of information about countries of origin as well as benchmarking best practice in dealing expeditiously with asylum applicants.

The EU also has tools at its disposal that are not necessarily available to member states operating alone or in other international organisations: 'burden-sharing' between the member states would see one state alleviate the pressure on another's legal-normative

asylum system by shouldering some of the responsibility for treating that state's asylum-seekers' claims or caring for them. The development between member states of common minimum standards for the treatment of asylum-seekers above a lowest-common-denominator level is a means of 'soft' burden-sharing (Thielemann 2005a). The EU can also introduce mechanisms for harder forms of burden-sharing, so that those receiving few asylum-applicants are obliged to take more or are prepared to share their resources with other states.

Another key factor in efforts to reconcile the tension at the centre of asylum policy-making in democratic systems appears to be the re-conceptualisation of the relationship between the communal 'right' to security and individuals' –and more specifically non-nationals'- human rights. The security risks attached to asylum, especially after September 11, are in large part connected with the problem that potentially dangerous foreign nationals claiming asylum can enter the territory of the EU and take advantage of certain rights and liberties. Yet the full range of security implications arising from asylum is rather broader. Recent terrorist incidents in Europe have highlighted the EU's need to integrate – or at least not to alienate – resident foreigners. Rather than seeing foreigners' rights and citizens' security as mutually exclusive, talk of a security-rights nexus (Sasse 2005) has grown. The respect of foreign nationals' rights can be a useful tool in the process of integrating them into the host society. Unless the EU was capable of removing asylum as a means for third-country-nationals to remain on its territory for the duration of the claims-process (for example by processing all asylum claims outside the EU), it would have to find a social and economic space for asylum-seekers and refugees.

Coming to terms with the politico-administrative constraints of migration control

In order to meet both the broad range of problems arising from asylum's current (mis-)regulation as – first and foremost - a question of internal security, and in order to come to terms with the resurgent politico-administrative constraints on European level policy-making, policy-makers would have to place internal security concerns within a broader hierarchy of priorities, taking better account of previously marginalised social, economic and foreign policy imperatives. Proposals do indeed exist for policies that aim to reduce asylum numbers and safeguard security but are nevertheless compatible with a broad range of priorities deriving from these various policy-areas. However, it is also important to remember that efforts to temper popular calls for a reduction in asylum numbers need not result in an actual reduction of numbers- they might also seek to mitigate the social and economic problems in the member states that give rise to these calls in the first place.

Academics suggest that the EU's external relations have suffered due to European asylum policies (Boswell 2003; Lavenex 2006; Parkes 2006b). Systems of 'remote control' have, for example, shifted the burden of European migration control *de facto* to third countries. By contrast, newer forms of preventive migration control –those that focus on alleviating the causes of migration- are often in the interests of third states as well. By targeting development, trade, humanitarian and even external security policies at those states producing (forced) migrants, the member states can regulate migration in the mutual interests of both the EU and third countries. Similarly, by sharing third countries' refugee burden and boosting their capacity to deal with displaced persons, the EU may be able to mitigate pressures for forced migrants to move further from their regions of origin.

Perhaps more complicated are the social and economic dimensions of asylum in the host state. European asylum policies have sought to restrict migration on the basis that it poses a threat to 'social cohesion', welfare systems and the employment prospects of member state nationals. These could *best* be preserved by abolishing uncontrolled, and by restricting unwanted, migration. The control of foreigners' entry to, and exit of, the national territory was therefore seen as key to complex migration problems in the social and economic spheres. Moreover, since the generous social and economic treatment of migrants on member state territory can encourage further waves of unwanted or uncontrolled migrants to come to the EU, the rights accorded to migrants have been downgraded as a migration 'pull factor'. Social and economic policy tools have thus been drafted into border control

efforts, and member states' borders have been extended into society and the economy (Jackson and Parkes 2006).

As in the above case of the reduction of asylum-seekers' procedural rights, the evidence of policy failure (in this case the continued presence of unwanted immigrants on EU territory despite the restriction of socioeconomic 'pull factors') has been taken as grounds, not to question the policies' effectiveness, but rather to reinforce them. In fact, since democratic states can not gain full control over human movement, the continued presence of unwanted migrants on the national territory is inevitable; these restrictive policies were, however, based in many ways upon the implicit assumption that total control was possible. Migrants' social and economic treatment would be downgraded until this was achieved. Worse, as noted above, this downgrading of migrants' social and economic position has created many of the conditions it professed to relieve, with welfare systems, social cohesion and employment regulation being jeopardised.

Since the idea of 'total control' of migration represents a political myth rather than a practicable and attainable reality for a democratic system (Bigo 2002), many commentators argue that policy-makers should recognise the limits of control, and treat the presence on the national territory of unwanted and uncontrolled migrants as, to a certain degree, a *de facto* reality. This would allow them to reintroduce more functional social (welfare costs; demographic problems) and economic (the need for both high- and low-skilled workers) considerations into their treatment of asylum-seekers. It is recognised though that, since the mythical capacity for 'total control' underpins the state's very legitimacy in this area, a more honest and realistic policy may prove elusive, particularly with the reassertion of direct popular pressures in European-level decision-making- a publicly-legitimised policy change would have to be based on at least an implicit admission that total control is impossible.

II. Asylum Policy after Amsterdam

1. The post-Amsterdam policy-making framework

Institutional changes made since 1999, particularly via Treaty revisions, have sharpened the tension within EU asylum policy-making between democratically expressed calls for a reduction in asylum numbers and the democratic limits of Executive control. Admittedly, the European Parliament remains somewhat removed from the electorate. Democratically expressed calls for a more restrictive regulation of asylum, although represented by some members of the European Parliament, are in general somewhat diffuse. All the same, the growing awareness and transparency of policy-making appear to have increased popular pressure on European policy-makers. At the same time, previously marginalised actors have gained formal as well as informal vantage points from which to influence policy: the Commission, Parliament and European Court, as well as national ministries, now enjoy more input and oversight of the policy process. This reintroduces legal-normative and politico-administrative constraints into policy-making.

The policy-making framework drawn up at Amsterdam has empowered new actors to exert influence in, and potentially to reform, asylum policy. By bringing asylum matters under the First Pillar, Article 63 (1) and (2) raised the expectations of those who judge European Commission texts „more generous" than those of certain governments influenced by extreme right political parties (Austria, Denmark, France, Italy). Previously marginalised national ministries now enjoy more opportunities to influence asylum policy-making thanks to its gradual communitarisation.

The Amsterdam Treaty also introduced the European Parliament as a consultative body within the new Title covering the „Area of Freedom, Security and Justice". Whilst until May 2004 the EP was only consulted, Article 63 allowed the Council to introduce the co-decision procedure after the end of this transitional period. However, the move towards the application of the co-decision procedure remained subject to a unanimous decision of the Council. This unanimity reserve was put into the Treaty during the last days of the Amsterdam IGC on the insistence of the German government.

The changes to JHA elaborated during the Nice IGC indicate the reluctance of member state governments to move essential parts of a policy field of vital national importance towards supranational rules and institutions while maintaining national reserves and optional vetoes (Maurer 2005; Wessels 2001). The Nice Treaty nevertheless contains a provision laying down a shift to qualified majority in Council and co-decision with the Parliament once "Community legislation defining the common rules and basic principles" had been adopted on a list of prescribed acts, elsewhere referred to as the 'first wave measures'.

2. From Tampere to the Hague: first-wave measures

Beyond the process of treaty change, the construction of an Area of Freedom, Security and Justice was given new impetus by the conclusions of the 1999 Tampere European Council. The Tampere Programme was adopted by the European Council following discussion with the EP's President and alongside a summit meeting organised by the NGO European Council on Refugees and Exiles (ECRE). It had input from national legislatures, particularly the Finnish Parliament (ECRE 2000:43) and bore the imprints of a comparatively open process of deliberation. The Tampere 'milestones' reaffirm the centrality of democracy and the rule of law in the Union's values, and ensure that freedoms are not reserved to citizens of the Union alone. Although access to these freedoms was to be strictly regulated, the controls were to be set at the external borders of the EU rather than within society.

The strict control of access to the freedoms of the Union was also understood as compatible with migrants' continued access to EU territory for asylum purposes (ECRE 2000:81): setting out the aim of creating a common European asylum system, the Tampere Programme elaborates a set of 'first-wave measures' to be adopted by May 2004. In this, the EU was „fully committed to the obligations of the Geneva Refugee Convention and other relevant human rights instruments, and able to respond to humanitarian needs on the basis of solidarity."

Meanwhile, in the paragraphs on the 'external dimension' (i.e. the foreign policy dimension) of asylum, the Programme highlights the need for an approach which tackles the causes of forced migration in third countries.

Balancing restriction with social, economic, foreign policy and humanitarian concerns

There is a disjuncture between the Tampere framework and the measures adopted under it. The reactive-restrictive 'securitarian' dynamic was clear: the above-mentioned concept of 'pull-factors', for example, rests on the idea that the way migrants are treated within the host-country may encourage the arrival of unwanted migrants. Measures to combat pull-factors within society undermined the Tampere Programme's aim to confine immigration control to the border. Instead of dealing pro-actively with the causes and effects of forced migration flows, the border control logic of repelling flows once they have begun was extended, subsuming traditional economic and social concerns. Compared to the provisions in place in all but the EU's southern and eastern member states, the resulting first-wave initiatives set relatively low standards for the social rights of asylum-seekers in the member states. This was designed to reduce 'pull factors', whilst simultaneously restricting asylum-seekers' social contact so as to make their eventual removal more straightforward. Thus, even in a security context where the societal integration of migrants had gained particular salience, policy-makers appeared to work from the underlying assumption that applicants were either 'bogus' or undeserving of asylum and thus would need to be removed, rather than 'genuine' or deserving and thus in need of long-term social integration.

Asylum-seekers' access to the labour market does not appear in the first-wave measures as a means to alleviate welfare or labour market pressures, but rather as an undesirable point of contact between 'forced' and 'voluntary' migration, whereby voluntary immigrants pose as asylum-seekers in order to gain access to the labour market. The Commission proposed that the reception directive grant access to the labour market within six months of an application being made. This was acceptable to Portugal, Sweden and Greece, which offer access to the labour market to avoid overburdening their social welfare systems. Yet for Spain, Ireland, France, Britain and Germany it was unacceptable. The UK pushed for a clause ensuring that asylum-seekers could be obliged to contribute to the costs of their care, so as not to overburden its system. The deadline for access to employment was extended from six to 12 months.

Fig. 1 The First Wave Measures

Temporary Protection Directive	Council Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx	The directive's adoption in mid-2001 might have affected the nature of subsequent measures: member states may be persuaded to countenance 'day-to-day' burden-sharing to ensure that future mass-influxes are dealt with in concert (Thielemann 2005a); this instrument set out the framework for future solidarity before measures dealing with day-to-day burden-sharing had been drawn up.
Dublin II	Council Regulation 343/2003 laying down the criteria and mechanisms for determining the member state responsible for examining an asylum application	Maintains the principle of the controversial Dublin Convention so that, broadly speaking, the state through which an applicant gains access to the EU is responsible for the asylum claim. Political agreement was reached in December 2002.
Reception Directive	Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers	Negotiations ran from May 2001 to January 2003. They were reopened following initial political agreement in April 2002. The final stages were characterised by the UK's efforts to permit the restriction of access to benefits for asylum-seekers who did not make an asylum-application as soon as possible after entering the country.

Qualification Directive	Council Directive 2004/83/EC on minimum standards for the qualification of refugees	Defines those in need of protection and sets out their rights. Its passage was delayed by the concurrent passage of the German Immigration Law. Agreement occurred nine months after the June 2003 date set down by the Seville European Council.
Procedures Directive	Council Directive 2004/83/EC on minimum standards on procedures for granting and withdrawing refugee status	An initial Commission proposal was negotiated during 2001 but ended in deadlock. By April 2004, the Council had agreed a general approach on the renegotiated directive, pending agreement on a legally binding list of 'safe countries of origin'. The measure was finally adopted in December 2005 but without the list.

For a core band of states, activities were still marked by an attempt to circumvent or undermine democratic mechanisms and norms. The House of Lords EU Select Committee criticised the fact that the British government was slow to inform it about EU-level developments, and has also cited several areas where the measures risk undercutting international standards (House of Lords 2001). In early 2004, UNHCR too criticised the proposed procedures directive for dipping below international norms (UNHCR 2004a). It reprised many of these concerns after political agreement was reached (UNHCR 2004b). Many of the instruments developed by Western European states to collectivise and 'fast-track' the processing of asylum claims at the expense of the procedural rights of claimants were formalised in this measure, and states which had not previously employed them were now obliged to.

By contrast, foreign and development policy instruments were increasingly employed in dealing with root-causes of migration. This attempt to re-form asylum policy, by making it less reactive, and more curative, is not unproblematic though. Some critics complain that development aid is targeted not at those areas most in need of it (for fear of making populations there more mobile), but rather diverted to more affluent areas which produce the most illegal immigrants. Development funding has also been explicitly used to soften up states engaged in negotiations with the EU for agreements to combat illegal immigration to Europe or take back nationals removed from Europe. Others point out that aid is employed as a (more or less implicit) bargaining chip in the negotiation of agreements with third countries, conditional on potential beneficiaries signing readmission agreements (Bunyan & Hayes 2003)

Burden-sharing versus securitisation

The 'first-wave' was characterised by arguments about which state or states were bearing the brunt of the European asylum burden. Whilst some states presented net-figures showing that they received the most asylum applications in an EU-wide comparison, other states calculated the burden in terms of the number of asylum-seekers per capita of national population. Still others sought to show that poorly resourced states were bearing the European burden even if this was not reflected in numerical terms.

'Hard' forms of burden-sharing remain stunted. Despite allotting a fixed sum to all member states, the modest European Refugee Fund (ERF) has been attacked for rewarding those states which already make the greatest contribution rather than building the capacity of states which might be seen as 'free-riders'. It is unclear whether the establishment of the ERF points to a burgeoning sense of solidarity within the EU or rather stems from sustained pressure from those member states bearing the most 'structural pull-factors' (Thielemann 2005b).

Forms of soft burden-sharing have, however, been realised: although a core band of member states dominated first-wave negotiations, these were not the countries like Greece or Portugal which generally have the poorest provisions in place. The large member states, in particular UK and Germany, instead set the course for the European asylum system. Southern states' attempts to push for more 'porous' minimum standards – particularly

under the 2002 Spanish Presidency - were generally resisted, and the leeway for them to maintain existing provisions cut. The development of common minimum standards above a lowest-common-level is understood as evidence of burden-sharing amongst those states with previously poor provisions; although this occurred in this case, it resulted from pressure from northern and western member states, rather than from a sense of solidarity amongst those raising their standards. Nor did the former offer much in the way of infrastructural or financial support to those raising their standards.

The influence of 'rival' actors

Within the Amsterdam-Tampere framework, actors other than a core group of interior ministers and their officials failed to leave their mark on the first-wave measures. That actors did not manage fully to exploit the opportunities opened by the policy prescriptions and principles of the Tampere Programme appears to lie in the fact that Amsterdam formally only empowered a small number of new actors in policy-making. Yet even those actors whose institutional position was formally upgraded at Amsterdam had at best a marginal influence. The Prodi Commission advocated a relatively balanced and open Community immigration policy (European Commission 2000). Yet it struggled to justify the liberalisation of asylum in the same terms as it has voluntary migration. Whereas voluntary immigration can be promoted by appealing to states' economic and demographic self-interest, it might prove irresponsible to defend asylum in the same way: this would reinforce the conceptual link between asylum and voluntary immigration, and encourage the perception that access to asylum can be regulated with regard to states' material self-interest. The Commission therefore failed to correct the disequilibrium in asylum policy that arises from the central position of interior ministers and their officials in policy-making. The British Immigration Law Practitioners' Association has analysed the minutes of JHA meetings, and concludes that the Commission failed to steer its proposals through Council meetings (ILPA 2004:4).

Party politics in the European Parliament reinforced its relative exclusion from asylum policy-making. When asylum issues were dealt with by the 1999-2004 Parliament, a split regularly opened up between the Right on one side, and the Socialists, Liberals and Greens on the other. The Centre-Left's expansiveness was encouraged by its exasperation at the fact that the Council sidelined the EP further in the passage of some of the initial pieces of legislation by reaching political agreement before the EP had delivered its opinion. Despite its still marginal position, the Parliament was a prime focus of lobbying on the part of even resource-strapped NGOs. Yet the heady cocktail of abstract demands from certain rights-based NGOs, and its marginal decision-making position, meant that the Parliament occasionally paid too little attention to the practical realities of asylum policy, and failed to ground and legitimise its positions in a way capable of competing with appeals to citizens' security.

Nevertheless, the Parliament has taken advantage of some of the opportunities opened up by the Amsterdam Treaty. The EP is notably challenging the procedures directive before the European Court (Case C-133/06). The directive calls for a list of 'safe countries of origin' to be adopted, laying out a specific decision-making procedure by which this is to occur. This procedure involves qualified majority voting amongst the member states, and a simple consultation of the Parliament. It thus jars with the decision-making process for asylum policy (QMV in Council and co-decision with the Parliament) introduced under the Nice Treaty and the Hague Programme after the first wave measures were concluded. By shifting from unanimity to QMV in Council, but maintaining the constraints on the EP's powers, this special procedure appeared to be part of an effort to sideline those actors within Council and Parliament which had concerns about the introduction of such an instrument, and to facilitate the difficult negotiations about its contents: safe lists collectivise individual asylum applications, allowing states to considerably reduce the procedural rights of asylum-seekers who originate from, or have transited, countries deemed to offer adequate human rights protection. Many parliamentarians feel that their concerns were generally ignored by the Council when it was elaborating the procedures directive. The Parliament sought the annulment either of the offending articles of the procedures directive or of the whole measure.

III. The Hague Programme and the Common European Asylum System

1. Setting the framework for the second wave

The 2005-2010 Hague Programme „reflects the ambitions as expressed in the Treaty establishing a Constitution for Europe" (European Council 2004:12). The Constitutional Treaty would extend QMV and co-decision to the Title IV measures concerned with the free movement of persons. It removes the anomalous rules restricting the ECJ's jurisdiction over asylum policy, and upgrades the quality of human rights protection in the EU, enhancing the idea of the EU as a Community of (democratic) values. Irish, British and Danish opt-outs remain unchanged though. The Constitutional Treaty builds on the Tampere aims by calling for the construction of a common asylum policy. Significantly, it also lays emphasis on solidarity, though whether this refers to solidarity between member states alone, or between the EU and other states is unclear.

The Hague Programme clearly shifts the policy-making framework further from intergovernmentalism and introduces a greater degree of supranational democracy. The final wording adopted to announce these changes suggests that they were not as comprehensive as some member states had wished. An earlier version stated that „full account" had been taken of the EP's more expansive views of institutional change; now simple „account" is taken (Peers 2004a). Nevertheless, the Programme's substance features a widening of the European Parliament's co-decision rights in the EU's migration policy framework. According to the Hague Programme, the Council shall „adopt a decision based on Article 67(2) EC Treaty immediately after formal consultation of the European Parliament and no later than 1 April 2005 to apply the procedure provided for in Article 251 TEC to all Title IV measures to strengthen freedom, subject to the Nice Treaty, except for legal migration" (European Council 2004: 13). For legal voluntary immigration, the veto was retained at Germany's behest and the EP will still only be consulted in this area of decision-making. Since the QMV decision was dealt with last of all, Germany was able to threaten to block the whole Programme unless its wishes were respected.

Given that many commentators see a link between the restriction of channels of legal voluntary migration and a rise in the abuse of asylum systems by economic immigrants, this refusal to change the decision-making process was particularly problematic: many had hoped that a shift to QMV would break the inter-state deadlock in regulating legal voluntary migration at the European level, and lead to a liberalisation of immigration channels.

The scope of the European Court's jurisdiction over JHA has not been expanded, and some suggest that a legal case could be brought against the Council for failure to act in this regard (Peers 2004b). The 2004 Dutch Presidency blocked the extension of the Court's powers, citing worries about overburdening the ECJ with new cases when the Court was already struggling to deal expeditiously with its existing workload (Council 2004). The Hague Programme therefore calls for the Commission to consult with the European Court on speeding up judicial procedures and on possible amendments to its Statutes.

Both the Commission and the Finnish Presidency (second half of 2006) pressed for an extension of the ECJ's powers in 2006. However, they did not consider the question of how to streamline the Court's procedures in any great detail, apparently viewing this more as a political excuse than a practical consideration on the part of those governments opposed to an extension of judicial oversight. One might of course argue that the best preparation for the extension of the Court's powers would be the adoption of asylum policies that conformed more closely to the legal obligations set out in national and international texts. Nevertheless, those states citing concerns about the ECJ's workload do seem to have a point. Moreover, the issue of the expeditious treatment of asylum cases is of relevance beyond the institutional question, not least because the speedy treatment of asylum claims can prove useful in cutting down applications by 'bogus' asylum-seekers, and thus in migration control: currently, the slow administrative and judicial treatment of asylum applications in many member states provides an opportunity for 'voluntary' migrants to make a false asylum claim and remain in the member states for a relatively long period.

Fig.2 Possible changes to improve the ECJ's functioning in asylum cases[2]

Basis	Mode of Change	Proposed Change
RoP	Reform specific to asylum cases	► Use of expedited proceedings in asylum cases ► Application of simplified procedures in asylum cases even without the existence of previous case-law (which would obviously be limited given the restricted nature of the Court's previous handling of asylum).
	General reform	► Further reduce the role of the Advocates General ► Create procedures for dealing expeditiously with infringement proceedings uncontested by the member state governments ► Enhance previous reforms concerning accelerated procedures for preliminary rulings, requests to national courts and for documents, simplified procedures for 'simple questions' and translation requirements
Statute	Specific	► Creation of a specialised 'judicial panel' for asylum cases (this proposal was suggested by the European Parliament, but appears to have failed to take account of the limits of Art. 225a which limits the establishment panels to 'cases at first instance') ► Preliminary delegation of asylum cases to CFI, and the subsequent establishment of judicial panels and appointment of expert judges
	General	► Creation of a 'filter system' for appeals from the CFI ► Creation of further specialised 'judicial panels' (trademark law; competition law)
Treaty change	Specific	► Specialised EU JHA Court subject to the review of the ECJ ► National EU-JHA Courts
	General	► Remove lower national courts' power to refer questions to the ECJ ► Establishment of national EU-law courts ► Abolition of infringement actions, with governments suing the Commission after determination of infringement

[2] For a fuller discussion of these possibilities see: Steve Peers, The Future of the EU Judicial System and EC Immigration and Asylum Law, European Journal of Migration and Law, 7, 2005 upon which this table is largely based; European Court of Justice, Treatment of questions referred for a preliminary ruling concerning the area of freedom, security and justice, 13272/06, 9,9,2006; Briefing of the Confederation of British Industry and the forthcoming House of Lords Report on the possibility of a 'judicial panel' in competition law http://www.parliament.uk/documents/upload/CfEEUCOMPETITIONCOURT.pdf#search=%22house%20of%20lords%20%22judicial%20panel%22%20%22competition%20law%22;. European Parliament, Report on the proposal for a Council decision providing for certain areas covered by Title IV of Part Three of the Treaty establishing the European Community to be governed by the procedure referred to in Article 251 of that Treaty, A6-0072/2004, 2004; Anthony Arnull, Judicial Architecture or Judicial Folly?: The Challenge Facing the European Union, European Law Review, 1999; Jean Paul Jacques & Joseph Weiler, On the Road to European Union- A New Judicial Architecture: An Agenda for the Intergovernmental Conference, Common Market Law Review, 1996; Hjalte Rasmussen, Remedying the Crumbling EC Judicial System, Common Market Law Review, 2000.

2. Steps towards a more balanced asylum policy?

A co-ordinated and balanced policy?

At the heart of the Hague Programme's asylum agenda stands the objective of creating an asylum policy which is co-ordinated with related policy areas. Central to the 'rebalancing' of asylum policy is the relationship between asylum-seekers', and citizens', rights and interests. National legislation adopted since the terrorist attacks on New York and Madrid has reinforced the conception that the rights of citizens are not always compatible with those of asylum-seekers. Indeed some third-country-nationals – 'bogus' asylum-seekers or terrorists for example - may abuse rights accorded to them, at citizens' expense. Some commentators have identified the subsequent shift in the expressed basis of the Programme's legitimacy from the 'rule of law and democracy' of the Tampere Programme, to the 'expectations of citizens' as a worrying one (House of Lords 2005:9).

Rather than taking the opportunity to lend weight to the humanitarian commitments expressed in the Tampere Programme but not carried through in the first-wave measures, the Hague Programme is far less vocal about such concerns. Indeed, the humanitarian side of asylum did not appear to have been a main priority for the Programme's negotiators. The Programme does mention amongst its objectives the provision of „protection in accordance with the Geneva Convention on Refugees and other international treaties" (European Council 2004:12), yet this was only inserted after UNHCR noticed its absence in earlier drafts and raised the matter.

As for the 'external dimension' of asylum, the imperative of cross-pillar coordination – particularly between JHA and foreign policy structures- has been carried forward from the Tampere Programme. However, the emphasis placed on dealing with external root-causes of forced migration in the Tampere Programme has shifted in favour of mechanisms to tackle forced migration flows once they have begun. Nevertheless, foreign and development ministry actors have discovered new opportunities to place their priorities on the EU asylum policy-making agenda. This was notably the case at the Rabat Conference (July 2006) which brought together European and African foreign, development, interior and justice ministers as well as their officials to discuss migration cooperation. Foreign policy actors sought with relative success to ensure that migration be regulated in the common interests of African and European countries.

The social integration of third-country-nationals meanwhile has an important place in the Hague Programme. The Programme talks of the need for „obstacles to integration... to be actively eliminated" (European Council 2004:19). In the political debate surrounding immigrant integration, the attitudes of the immigrants themselves are often conceived as obstacles to their integration. Social and economic rights cannot, therefore, be unconditionally accorded to migrants, and certain attitudinal changes may be demanded in return; yet, the attachment of conditions to rights may be misused as part of a policy to reduce the 'pull factors' of unwanted immigration. In other words, the conditions may be set at an unrealistically high level in order to block access to rights, and thereby to increase control over migration flows. The situation is more complex for refugees. Arguably, refugees are 'involuntarily' in the member states, and UNHCR and some NGOs worry that their access to rights will be made conditional on them fulfilling the same criteria as 'voluntary' immigrants. The Hague Programme does not recognise the special situation of refugees in this regard.

Efforts to set out an overarching framework for integrating legally resident immigrants and refugees were apparent under the Dutch EU-Presidency of 2004, under whose aegis the Hague Programme had been elaborated. These efforts built on the 2003 Thessaloniki European Council's call for common basic principles of immigrant integration to be elaborated- a call repeated in the Hague Programme. The Conclusions of the JHA Council of 19th November 2004 set out these basic principles.

The Conclusions actually considered immigrant integration largely in isolation of questions of controlling entry to the country ('pull factors'). The social and economic treatment of immigrants was not weighed up in terms of its implications for migration control. This

perceived advance was welcomed by commentators for breaking with a line of thinking that had seen immigrants' and refugees' social and economic rights restricted as part of an effort to gain control over human movement. Yet far from breaking with previous thinking, the Conclusions may instead be seen to have taken this to its natural conclusion: by implicitly denying that the treatment of immigrants present on the national territory affects the control of further waves of migration, the Conclusions are based on an unrealistic scenario, which in turn denies the Conclusions the political basis needed to realise them: the Conclusions are effectively based on an impossible situation whereby the state enjoys total control of migration. Only if this hypothetical situation were achieved, would the social treatment of migrants have no (negative) effects on migration control.

Proactive external action or the extension of reactive security-centric measures?

The Hague Programme demands a study on the 'joint external processing' of migrants' asylum claims outside the EU; it also calls for the Commission to develop 'regional protection programmes' (RPP) to support third countries' efforts to deal with displaced persons. Both of these initiatives derive from earlier proposals made by the British government, Italian and German governments, UNHCR and the Commission concerning 'asylum camps' and the 'regionalisation of protection' (UK Government 2003; European Commission 2004c; FAZ 2004; Amnesty International 2004; House of Lords 2004). As was noted above, there are two broad variants of extra-territorial asylum initiative; one seeks to export border controls to third countries and prevent unwanted migrants from reaching the EU, the other seeks to mitigate the causes of unwanted migration. The degree to which these proposals follow a reactive control orientation ('remote control') rather than pursuing pro-active, curative goals can be discerned according to:

The 'external processing' variant has already met with opposition from the European Parliament on the grounds that it would be too geared towards remote control, with some or all asylum claimants potentially being returned to camps outside the EU's borders to have their applications processed. There were fears that the subsequent lack of public, parliamentary and judicial oversight would be exploited to further reduce the legal and procedural safeguards that asylum-seekers enjoy. There is talk of the EP blocking any moves in this direction by ensuring that they did not receive Community funding. Although its 'joint' nature would potentially require a large degree of European integration in asylum procedures and the European Commission therefore has an interest in promoting it, the Commission has not made the study of external processing a priority. Aspects of the initiative should not, however, be written off: *joint* processing generates opportunities for burden-sharing between the member states in resettling refugees in the EU; this is an element that could usefully be built upon.

The RPP are only slightly more advanced. Pilot projects are being developed in Ukraine/Belarus/Moldova and the African Great Lakes region - in other words in a transit region and in a region of origin. They will be complemented by a system for resettling vetted refugees in the EU, which member states can voluntarily sign up to. The reaction to the RPP has been mixed, with centre-left MEPs cautiously welcoming the mooted RPP in the Great Lakes region for burden-sharing with third states and for offering improved protection for forced migrants. They lament the low amounts of funding channelled to the projects, the limited burden-sharing between EU member states in the resettlement programme.

The fact that a country of transit on the EU's external borders has been chosen for the first RPP is also a cause for concern: rather than helping to mitigate the causes of migration flows near their source, situating the RPP in a transit region suggests that the EU is seeking reactively to divert migration flows shortly before they reach the EU. The Commission defends its choice of location as one that is likely to show a rapid and identifiable reduction of asylum claims to the EU, and thus as offering the best possibility of gaining political support from the member states (European Commission 2005). This indicates that as far as the member states are concerned the RPP's primary purpose is to achieve a short-term reduction in the numbers of asylum claims made directly in the EU. Indeed, parliamentarians fear that the Ukrainian RPP will be actively used as part of an effort to prevent asylum-seekers from reaching the EU. There is also a concern that the RPP will be

used as the basis for the expulsion of asylum-seekers from the EU, since they may be deemed to create 'safe' areas outside the EU.

First-wave evaluation

The evaluation of the first-wave measures called for in the Hague Programme as well as in the original measures themselves also looks set to prove controversial. Actors are using the review process as an opportunity to reassert priorities which they felt were sidelined during the initial elaboration of the instruments. Since the Commission lacks the resources to carry out the evaluations on its own, it is relying not only upon member state authorities, but also UNHCR and the so-called Odysseus network of academics for information and input. This in turn provides these actors with an opportunity to make their views heard. It is important to remember that both the Dublin-II regulation, as well as the reception directive which is also under evaluation, were negotiated prior to the EU's enlargement. The new member states may seek to use the evaluation process to introduce their priorities *a posteriori*. This may, for example lend weight to concerns in favour of burden-sharing and offering access to the labour market for asylum-seekers.Two of the earliest first-wave measures to be adopted will be dealt with shortly: the Dublin-II regulation (expected in October 2006) and the reception directive.

Name	**Set Date of Evaluation**
Temporary Protection Directive	Prior to **31 December 2004**, and every five years thereafter, the Commission will report to Parliament and the Council on the application of the Directive and will propose any necessary amendments.
Dublin II	Prior to **March 2006**, the Commission shall report to the European Parliament and the Council on the application of this Regulation and, where appropriate, shall propose the necessary amendments. Member States shall forward to the Commission all information appropriate for the preparation of that report, at the latest six months before that time limit expires.
Reception Directive	By 6 **August 2006**, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary.
Qualification Directive	By 10 **April 2008**, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary.
Procedures Directive	No later than 1 **December 2009**, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary.

Analysis suggests that the Dublin-II regulation could be improved so as to relieve the strain on member states' legal-normative asylum systems: it was noted above that measures promoting burden-sharing between the EU member states are instrumental in reconciling national asylum norms with the strains of international migration. Analysis has shown, however, that the Dublin-II Regulation places the burden for dealing with asylum claims on the member states situated at the eastern and southern borders of the EU: in most cases, it is the state through which an asylum applicant has gained access to the territory of the EU that must take responsibility for assessing the application (UNHCR 2006). This burden-allocation may in turn help explain why some peripheral eastern and southern member states have adopted procedures that strongly disadvantage asylum-seekers sent to them from other states under the terms of the regulation (for an analysis of the Greek case: ECRE 2006a). Those western and northern states that are seen to 'benefit' from the Dublin-II regulation are often all too ready to take advantage of the opportunity to send asylum-

seekers to other member states, even though the mitigating humanitarian circumstances, which allow states to derogate from the regulation under its 'sovereignty clause' and retain responsibility for an applicant, are present (UNHCR 2006).

The Commission and Parliament have called for a revision of the regulation, and the Finnish Presidency has put the issue on the agenda (European Parliament 2006). The Dublin-II Regulation has already been the subject of discussion in the EU's Strategic Committee on Immigration, Frontiers and Asylum (3-5 September 2006). Possible improvements include:

1. burden-sharing efforts to build peripheral states' capacity to deal with asylum claims, and a reinforcement of the 'sovereignty clause' (Art.3(2)) which allows member states to take responsibility for an applicant even though he or she could be transferred to another member state This might prove a politically more acceptable solution than ideas put forward by the European Parliament to allow Malta to function as a 'transit state' under the Dublin-II Regulation (ECRE 2006c).

2. the strengthening of various articles in the Regulation to ensure that asylum applicants transferred to other member states under Dublin-II are not subject to reduced procedural standards.

These changes would be based on two concepts of burden-sharing and would be in the interests of almost all the member states: the first would involve a classic form of burden-sharing with northern and western member states seeking to offset the load on peripheral eastern and southern states. The second employs a more subtle form of burden-sharing in which peripheral states would shoulder the onus: by ensuring that these states do not exploit loopholes in, or indeed ignore, their European obligations whilst assessing asylum applications, this second change would help ensure that the asylum systems of 'conscientious' states are not viewed as more attractive by prospective asylum-seekers. Together, these changes would allow states to improve their control of asylum, but also safeguard the legal standards involved.

Administrative and operative cooperation

It was hoped by national actors exhausted from the effort of legislating for the first wave asylum measures that the object of enhancing administrative cooperation between the member states would provide a relatively depoliticised means of driving forward integration. As with all of the asylum related measures set out by the Hague Programme, the aim of improving "practical and collaborative cooperation" between national asylum services has proved controversial. The question whether to adopt an approach to asylum policy that seeks to safeguard or to weaken the legal and politico-administrative constraints on migration control arises even in this apparently more technical area: cooperation of this kind offers an opportunity for burden-sharing between member states, which could help allay the overload that some smaller and/or poorer member states experience. Information collected by one member state, for example about the situation in a country of origin can be supplied to other member states, which perhaps have less-advanced systems for data collection. This kind of resource- and burden-sharing can alleviate the pressure to downgrade the (procedural) legal rights of migrants, not least by improving the speed of decision-making, thus narrowing the potential for economic migrants to abuse the asylum system.

Member states like Germany have also been involved in the EU-coordinated Operation Hera I on the Canary Islands, which has seen various member states' migration officials sent to the Islands to help identify immigrants (Parkes 2006). This kind of intervention has relieved the pressure on poorly-equipped member states' asylum systems. Since asylum-seekers poorly controlled in these peripheral states can travel further through the EU with relative ease, these interventions may be seen to derive from the narrow self-interest of better equipped member states; however, they also show signs of burden-sharing in the 'Community interest'. The formalised pooling of national asylum experts is on the agenda.

It is also in the interests of those member states with a well-furnished asylum system to share their expertise and knowledge of best practice with other member states. Germany has for example been praised for sharing its expertise on how to deal with traumatised and

homosexual asylum-seekers with other member states. This has not only a positive humanitarian function: by improving reception standards in other countries, it might also help reduce the relative 'pull factors' in Germany's asylum system that make it an attractive option for asylum-seekers. One of the aims of the enhancement of this kind of cooperation was to create a 'level playing field' amongst national asylum systems.

Nevertheless, some member states are reluctant to share certain forms of information with other member states, being rightly concerned that the latter will 'free ride'- i.e. that they will simply rely on better equipped states for information about, for example, the situation in countries of origin rather than collating it themselves. One possible solution - increasing the degree of European level coordination, with common standards for data collection and perhaps even a clear distribution of tasks amongst member states – is rejected by some states as potentially too costly and possibly requiring well-furnished states to rely on the information of poorer national systems.

NGOs emphasise the useful role that they could play in collating information on best practice (ECRE 2006b); the Commission has stressed the benefits of involving NGOs and UNHCR in improving the quality of judicial decision-making (European Commission 2006). However, different national systems rely on different degrees of confidentiality: in states like Germany, the country-information upon which asylum decisions are based is not generally publicly available, whereas the opposite is true in Britain. For governments it is principally a question of cost and benefit: would the benefits of involving NGOs be outweighed by the probable reassertion of legal-normative constraints on their scope for activity that this would bring?

IV. Conclusion

The development of European asylum policy highlights the tension between the democratically expressed will of sections of the electorate and the sometimes countervailing democratic mechanisms which regulate its realisation. European asylum policy integration has been instrumental in responding to and even pre-empting the expressed will of the citizens of the member states. As justification for these developments, policy-makers have cited a desire to safeguard democracy more broadly: when its will is constrained, sections of the electorate may be tempted to turn to those political parties that scorn democratic mechanisms.

This aspect of the EU's 'democratic deficit' is unusual because the margin of manoeuvre won by policy-makers at the expense of democratic oversight has principally been used to respond to the narrow interests of certain national electorates. Only to a limited degree has it been used in a technocratic manner to meet those economic, demographic and humanitarian priorities of asylum and immigration policy in a way that may not appeal to voters. The democratisation of this policy area appears to have reduced the chances for a reform that solves the dilemma set out above.

Nevertheless, whilst the upgrading of the Parliament in policy-making and the growing awareness and transparency of policy-making signal the more direct democratic input of the European electorate, it is the reassertion of those democratic mechanisms mediating the will of the electorate and protecting individuals from the state that will prove most challenging to the current European asylum-policy agenda. With the eventual entry into force of the Treaty establishing a Constitution for Europe, the role of the European Court would be upgraded too.

If these democratic pressures are as uncongenial to the realisation of the security-oriented agenda as the policy-venue-shopping thesis posits, European asylum policy could move in any one of three directions:

Firstly, asylum policy could be re-formed such that measures to reduce the number of asylum applications would be compatible with the reinforced countervailing democratic mechanisms. The emphasis would shift to burden-sharing, curative and capacity-building policies. Where this reconciliation proved impossible, the EU's incapacity to reduce the numbers of asylum-applicants and to mitigate the complex reasons for popular calls for such a reduction could force a fundamental re-conception of asylum, with asylum-seekers no longer being framed as a threat to the interests of citizens. National electorates would need to be persuaded of the rationale behind such a system.

Secondly, and alternatively, where it proved impossible to reconcile policies to reduce the number of asylum-seekers with democratic pressures, some reform of the democratic mechanisms could occur. Perhaps the weak point of the democratic system is the normative protection of third-country-nationals' rights. It is arguable that the only thing that has thus far relieved the pressure to reform the Geneva Refugee Convention is the fact that policy-makers have found ways to circumvent it. If the Convention is enforced with renewed zeal, its future may be put in question. Its reform is an option that has been thrown up by Austria and the UK.

Thirdly, the reassertion of legal-normative mechanisms at the European level also entails the reinforcement of international human rights and refugee norms. This considerably reduces member states' capacity to reform them. The search for more favourable policy-making venues may therefore begin again. The mushrooming of infra-EU groups and arrangements – 'G6', 'Salzburger', 'Pruem'- in which not all member states participate, and from which the Union organs are largely excluded, may be indicative of renewed efforts at venue-shopping.

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