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**EXPLAINING THE EVOLUTION OF EU MIGRATION
POLICIES FROM PAST TO PRESENT: TOWARDS AN
ECLECTIC APPROACH**

Gönenç AKAR

Danışman

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ÖZET

Yüksek Lisans Tezi

Explaining the Evolution of EU Migration Policies From Past to Present:
Towards an Eclectic Approach

Gönenç AKAR

Dokuz Eylül Üniversitesi
Sosyal Bilimler Enstitüsü
Uluslararası İlişkiler Anabilim Dalı
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Bu çalışma İkinci Dünya Savaşı'ndan günümüze kadar, AB'nin evrimleşen göç politikalarını ele almaktadır. AB ülkelerindeki göç politikalarını iki dönem olarak incelenmektedir. İlk dönem, ilk çabalardan Amsterdam Anlaşması'na kadar olan dönemi kapsamaktadır. Bu dönemdeki göç politikalarının gelişimini yapısal-işlevselcilik ve liberal hükümetlerarası kuramlar ile daha iyi değerlendirileceğini iddia etmektedir. İkinci dönem ile ilgili olarak, Amsterdam Anlaşmasıyla birlikte yetki ve karar verme mekanizmasında meydana gelen önemli değişiklikler ise rasyonel, sosyolojik ve tarihi kurumsalcı yaklaşımlar ile incelenmektedir. İlk dönemde, üye devletler göç politikaları konusundaki kendi otoritelerini topluluk yetkisine bırakmakta isteksizdi ve AB kurumları daha az rol oynamıştı. Bundan dolayı, AB göç politikaları Amsterdam Anlaşması'na kadar olan dönemde bağlayıcı olmayan bir şekilde gelişmişti. Fakat 1990'ların sonunda, üye devletler uluslararası arenadaki siyasal, ekonomik ve kültürel gelişmelerin ve AB'nin kendi içindeki gelişmelerin etkisiyle (örneğin süreç bağımlılığı, normatif değerler ve derinleşme süreci gibi) giderek göç konusundaki işbirliğinin gerekliliğini fark etmişlerdir. Göç politikaları hakkında işbirliği olmasına rağmen, ulusal çıkarlar hala daha önemini korumaktadır. Bu nedenden dolayı, devletler anlaşma yaparken kendilerine manevra alanları bırakarak işbirliğini daha kompleks hale getirmişlerdir. Kısaca, bu çalışma eklektik bir yaklaşım benimseyerek göç konusundaki tarihi gelişmeleri çeşitli AB Entegrasyon kuramları ile iki farklı dönemde incelemektedir.

Anahtar Kelimeler: Göç, Göç Politikası, Avrupa Birliği, Maastricht Anlaşması, Amsterdam Anlaşması, Genişleme

ABSTRACT

Master Thesis

Explaining the Evolution of EU Migration Policies From Past to Present:

Towards an Eclectic Approach

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This study addresses the gradual evolution of the EU migration policies since the end of the Second World War until present. It analyzes migration policy of the EU member states in two periods. The first period starts from the initial attempts until the Amsterdam Treaty. It argues that neo-functionalism and liberal intergovernmentalism can better evaluate the evolution of the migration policies in this period. Regarding the second period, this study examines the significant changes beginning with the Treaty of Amsterdam in terms of the authority and the decision-making system through by rational, sociological and historical institutionalist approaches. In the former period, as the member states were reluctant to give their exclusive authority to the Community, the EU institutions played a little role. Thus, migration policies have evolved in a non-binding settlements until the Amsterdam Treaty. Beginning with the late-1990s, however, the member states have increasingly noticed the necessity of cooperation in migration related issues due to the political, economic and cultural developments in the international arena and in the EU itself (such as path-dependency, normative commitments and the deepening process). Although there is cooperation in migration issues, this study argues that national interests are still important; thus the member states keep manoeuvre areas which make the cooperation process more complex. Overall, this study adopts an eclectic approach in which the historical development of migration policy through several European integration theories in two time periods.

Key words: Migration, Migration Policy, European Union, Maastricht Treaty, Amsterdam Treaty, Enlargement

**EXPLAINING THE EVOLUTION OF EU MIGRATION POLICIES FROM
PAST TO PRESENT: TOWARDS AN ECLECTIC APPROACH**

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ABBREVIATIONS

AHWGI	Ad Hoc Working Group on Migration
CEEC	Central and East European Countries
COREPER	Committee of Permanent Representatives
EC	European Council
ECJ	European Court of Justice
EEC	European Economic Community
EP	European Parliament
EU	European Union
EURODAC	EU automated fingerprint identification
IOM	International Organization for Migration
JHA	Justice and Home Affairs
TCNs	Third Country Nationals

INTRODUCTION

In the second half of the twentieth century, international migration emerged as a result of the integration of local communities and national economies into global economy and politics. Aside from being a pervasive and global phenomenon, migration has also become a major concern for the EU, due to the factors such as the increasing international migration mobility, the EU's distinct geo-strategic role in the post-Cold War context and its enlargement process. Member states of the EU have developed diverse policies as an answer to these developments since the end of the Second World War. As migration is an evolving, increasing and significant fact in the enlarging EU, it remains at the center of focus of the EU scholars and international relations scholars in terms of policy changes and perceptions.

Regarding the gradual change and the development in migration policies of the European Union member states, this study analyzes the dynamics behind these policy changes in history by overviewing the significant milestones in their migration policies by applying a theoretical framework. The main research question guiding this thesis is "why current theoretical studies are unable to explain the gradual increase in cooperation on migration policies in the EU".

This study argues that it is convenient to evaluate the gradual development of migration policies in the EU with an eclectic view for the prior and posterior period of the Amsterdam Treaty. The content and the process of cooperation alter according to how states perceive it. However, though state-centric theories give attention to interest-based policy options, they sometimes fail to explain the context of the cooperation. Thus, this thesis aims to combine the strengths and weaknesses of European Integration theories to examine this process by focusing on milestones in history since the post- Second World War until present.

Considering its significance in high politics, state-centric theories regard migration as a security matter, such as illegal migration and asylum. Thus, it predicts that states are expected to act unilaterally and unwilling to cooperate due to security

dilemma. However, in a contradicting manner, the EU members have also taken decisive steps to increase cooperation in migration in recent years. As this study discusses in Chapter three, Trevi Group (1976) and Ad Hoc Working Group on Immigration (1986) were particularly interested in illegal migration problems. Schengen Treaty (1985) and Single European Act (1986) both sought to remove all border controls and to strengthen common external frontier. Palma Program (1988) aimed to provide cooperation between the free movement measures and the internal security involvement and Dublin Convention (1990) deals with asylum applications. These were the initial attempts in which there were minimal immigration policy involvement and informal intergovernmentalism. As the primary example of establishing international cooperation, the Maastricht Treaty (1993) placed migration under the third (intergovernmental) pillar. Later, as the study examines in Chapter four, Amsterdam Treaty (1999) introduced supranational attempts and as a milestone, it transformed the policies under the third pillar, including immigration and asylum, the rights of third country nationals, control of external borders, visas and administrative cooperation in these matters into the first pillar (EC jurisdiction). The Hague Program (2005) was also an action plan requiring EU action on freedom, justice and the security.

Therefore, the leading factors behind this increasing level of cooperation bears scrutiny. Accordingly, the main argument of this study is that state-centric theories are insufficient to explain the gradual cooperation in migration in the EU on its own, because it has an inadequate point of view due to their linkage with state sovereignty. Therefore, different approaches of the various theories, particularly the European integration theories including neo-functionalism, liberal intergovernmentalism, rational-choice, sociological and historical institutionalism are both required to elucidate the gradual movement from informal intergovernmental cooperation to a more communitarized integration in immigration policy inside the EU. This study combines these theories since; migration policy and cooperation have also two main aspects; namely member states and institutions. On the one hand, migration is a part of the European integration and interests are still important in this sensitive subject, thus they have to be considered by theories such as neo-

functionalism and liberal-intergovernmentalism. On the other hand, the European institutions are effective on member states regarding cooperation which are covered by institutionalist approaches.

In general, neo-functionalism argues that interstate cooperation in one area will lead to cooperation in other related area. (spill-over) Furthermore, when the cooperation among states expands and the cross national networks become dense, states are likely to find common solutions to their problems.¹ Contrarily, liberal intergovernmentalism argues that rational actions of the states are affected by domestic pressures or external pressures. In this context, member states make cooperation with the aim of reducing their negative externalities and transactions costs.²

New institutionalism tries to understand that “why and under what conditions” member-states may delegate power to supranational agents. In general, they emphasize the significance of political institutions as mediating systems in the process of policy making both “with regard to power to constrain and to enable policy formulation”.³ Evaluating the social context, international world order and the interactions among the actors, they argue that institutions evolve and develop a significant degree of autonomy on actors by constraining or structuring politics through ideas and meanings. Institutional approaches seem to explain the ‘mediating variable’ character of institutions that provide a strategic context and a historical path-dependency for the member states.

This study further argues that, although the state-centric theories fail to explain the gradual cooperation in migration-related studies in the EU, it successfully asserts that member states did not completely give up their interests or national

¹Anthony Messina, **The Logics and Politics of Post-WWII Migration to Western Europe**, New York: Cambridge University Press, 2007, p. 150.

² Andreas Ette and Thomas Faist “The Europeanization of National Policies and Politics of Immigration: Research, Questions and Concepts”, **The Europeanization of National Policies and Politics of Immigration: Between Autonomy and the European Union**, Palgrave Macmillan, New York, 2007, p. 8.

³ Alexandra Formanek, “Managing Asylum: A Critical Examination of Emerging Trends in European Refugee and Migration Policy, McGill University, Quebec, 2004, p. 15

sovereignty. Instead, in some part of the migration-related issues where member states are tense and not open to cooperation, they protect themselves with a room to manoeuvre by prerogatives, opt-out mechanism and controlling the free movement of persons, ensuring law and order and safeguarding internal security which prevents us from eliminating the state-based theories from the argument. Indeed, institutionalist approaches are criticized for ignoring the content and reasons of state interests. They often do not mention the reason of flexibility of the institutions towards state interests.

During the 1990s, there were some critical developments in the international arena such as the dissolution of Yugoslavia leading to asylum applications and illegal migration, the establishment of the common market, and increasing economic, political and the cultural effect of the globalization which cause the rise of immigration. As a result of these developments, member states became aware of the fact that intergovernmental cooperation would not effectively overcome their problems. As internal and external developments induce cooperation; supranational elements became more effective regarding migration policy in the EU. As one scholar argues, “immigration-related issues have transcended their historical status as ‘low’ questions of domestic public policy to become ‘high’ issues of national and increasingly supranational policy and politics”.⁴

Migration is a developing significant issue in the international arena for various reasons. First, the number of the international migrants has rapidly increased, and is predicted to increase further in the near future.⁵ Second, this subject is not the problem of only a few countries in the world, but to some extent affects all countries. Third, significant global issues like development, poverty and human rights are all linked with migration. Fourth, migrants are “dynamic members of

⁴ Messina, p. 138.

⁵ Migration has continued to increase since mid-1980s both in Europe and in the US. In 2000, 40% of the total migrants in the world lived in Western industrialized states, covering nearly 19 million in the EU.

Fiona B. Adamson, “Crossing Borders: International Migration and National Security”, **International Security**, Vol. 31, No1, 2006, pp. 169-170. technological and cultural changes occurred, then cross-border process with transnational dimensions outspread and gained importance.⁵ As a result, people from different countries were moving across various countries mostly for economic and/or political.

society” in terms of economy.⁶ These migrants affect economic structure of the receiving states as skilled or unskilled workers. Finally, migration has a connection with both high politics including sovereignty and security, and low politics such as economics and demographic issues. Therefore, it has a sensitive place in terms of state policies. Moreover, migration is particularly important in that it directly and simultaneously affects both international politics and at the same time domestic politics.

It is possible to assess migration from a variety of theoretical approaches, including push-pull theory, neoclassical economic theory, liberal theory, labor-market theory or world systems theory. Ernest Ravenstein argues that push-pull process directs the migration and many scholars concur with this argument. Sjaastad (1962) and Todaro (1969) point out neoclassical economic theory relates international migration to the global supply and demand for labor. Furthermore, labor- market theory was developed by Piore in 1979 who argues that “immigrants are recruited to fill these jobs that are necessary for the overall economy to function but are avoided by the native-born population because of the poor working conditions associated with the secondary labor market”.⁷ World-systems theory similarly regards migration as a product of global capitalism. Thus, migration occurs from periphery to center emanating from their structural economic problems (push factors) as the result of industrialized world.⁸ In all of these theories, the cause of migration is often based on the needs in different periods of time and various regions in the world.

This thesis concerns two main audiences, including the European migration studies and IR theories. Most of the existing studies on migration include partial or complete descriptive/ historical analysis without a theoretical base. (Elsen: 2007, Boswell: 2003, Stalker: 2002, Moraes: 2003) While this study does not explore a

⁶ Khalid Koser, **International Migration- A Very Short Introduction**, Oxford University Press, New York, 2007, p. 1.

⁷ “Migration- Theories of Migration”, <http://family.jrank.org/pages/1170/Migration-Theories-Migration.html>, 08,06,2010

⁸ “Migration- Theories of Migration”, <http://family.jrank.org/pages/1170/Migration-Theories-Migration.html>, 08,06,2010

brand new subject, it aims to contribute to the existing literature with a different point of view for the literature that is with an eclectic approach the issue. This thesis is based on a deductive approach which means that it derives its conclusions from the EU integration process and structural, legal and institutional developments, which regard migration issue through a combination of theoretical approaches. Therefore, starting from the first chapter, the study attempts to harmonize the developments regarding migration with theory, rather than writing a separate theory chapter. By this way, it aims to evaluate the subject by trying to fill out the theoretical gaps in the literature. This thesis makes an analysis of various theories including liberal intergovernmentalism, neo-functionalism, rational-choice, historical and sociological (constructivist) institutionalism which are necessary for evaluating the subject from different point of views.

The first chapter introduces the historical development of migration and migration policy-making in three main cycles to the continent following the Second World War. Initial flow of migration started with a labor recruitment by European member states to supply their labor needs for the market. Family reunification comprised the second flow in the 1970s and illegal migration following the dissolution of Yugoslavia emerged as the third flow. During the period of these three flows, within realist attitudes, member states of the European Community recruited labor from outside of the Europe to fulfill their needs and assumed that migrants would return in the future. Thus, member states intended to supply their short-term needs. However, as the process of European integration was continuing, they have taken informal steps related with the never-ending migration to the continent, including the illegal migration flow of the 1990s. Depending on the integrationist policies inside the Community, as member states in the EU get closer in terms of economic and monetary affairs, political ties and common foreign and security policies, formerly unrelated issues like immigration become a part of the gradually rising interstate cooperation. However, in this cooperation, there was the autonomy of national leaders in which the nation-state has the power to frame the international migration and control its national territory by itself.

The second chapter briefly outlines the initial framework of migration policy-making including the Schengen Agreement, Single European Act, Trevi Group, Palma Program, Dublin Convention and the Maastricht Treaty. The study clarifies that regarding the developments until the Maastricht Treaty, as a part of an informal intergovernmentalism, member states participated in these attempts to protect their interests and find mutual solutions to their common problems in migration-related issues without delegating their authority. The most important step in this part is the Maastricht Treaty which introduced the three-pillar structure of the Community framework and put migration related issues under the third pillar. In this context, the Commission and the member states share the 'right of initiative' in the third pillar for decisions regarding immigration. Significantly, the Maastricht Treaty formally emphasized the need for a serious common migration policy. However, the period of Maastricht Treaty was only a formal intergovernmental cooperation as the member states were still reluctant to restrict their national sovereignty. Therefore, many decisions were made in a non-binding nature and institutions had limited effect on member states in the third pillar.

Third chapter discusses the Amsterdam Treaty as a legal framework which put most of the migration related issues under community (first) pillar and brought legal amendments in the structure of the decision-making system. In fact, as the chapter underlines, the cooperation of member states contradicts the arguments of the state-centric theories which claims that since nation states are the primary actor and is prone to act unilaterally, it would avoid cooperation with each other. However, the same chapter also points out that the state-centric theories fail to explain the degree and the depth communitarization of immigration policy after the Amsterdam Treaty (1999). Moreover, they fail to explain how coordination and harmonization can be possible in a subject so closely related to the state sovereignty.

Within the Amsterdam Treaty, particularly to prepare themselves and the union for further enlargements, EU member states delegated their authority to the Community. However, the member-states started to cooperate in security issues that were related to the immigration flows. Their security concerns particularly symbolize

the “lowest common denominator” for the member states towards a supranational cooperation. Accordingly, regarding the rational choice institutionalism, the institutions such as the EU are strategic contexts in which member states provide incentives or information. As a result, with the effect of the internal and external factors in the international arena above, the Amsterdam Treaty was a significant benchmark for further community framework through rules, routines and norms in the context of (historical) institutionalist and sociological perspective.

Furthermore, the third chapter also analyzes the Tampere Conclusions which laid down the policy principles of the Amsterdam Treaty until 2005. While the Amsterdam Treaty contributes to the process by providing a supranational authority for the implementation of migration-related issues, it has also shortcomings due to its fragmented communitarisation, implementation problems and opt-out mechanism. However, the cooperation process continued with Summits which provided the possibility of arguing the treatment of the system. Later, the Hague Program has a similar content with the Amsterdam Treaty and represents the road map for a period 2005 to 2010. Based on these points, this chapter therefore argues that, sociological institutionalist approaches help pointing out the effect of the EU on member states as an institutional actor by its rules, norms and routines including the legal framework.

The third chapter further examines the accession of the new members by 2004 and 2007 enlargement, and touches on the relation between migration and enlargement concerning free movement, labor need and public policy. Enlargements of the European Union in 2004 and 2007 have affected the policy choices of member states concerning immigration. Member states are mostly reluctant to allow accession to new members due to fear of integration, job/market problems emanating from income differences or xenophobia; member states thus seek to balance their fear with their need of enlargement because of their aging population, global competitiveness and growth, and the sustainability of social security systems, and also make inter-state cooperation regarding migration.

FIRST CHAPTER

AN OVERVIEW OF MIGRATION ISSUE

There have been three main flows of migration to Europe and all had different structures. The driving force of the migration wave following the Second World War was to fulfill the exhausted and depleted labor source of the Europe with labors coming from outside. As the resurgence of the European economy depends on this issue, European countries supported migration flow in this period by maintaining it with their existing colonial ties or with bilateral country relations. Especially beginning from 1960s, globalization of markets increased the labor migration. As a result, within the logic of realism, western industrialized states have formed their immigration policy “to regulate labor markets through the use of foreigners”.⁹ The main view of the European states that the migration would be temporary. They thought that in time, these labors would return to their home countries when they earned enough money that may contribute to the development of their countries, however that did not come true. This situation, which is argued in detail below, will be one of the significant propelling reasons that have enforced the EU in taking a common stand regarding migration.

1.1. Historical Development of Migration in Europe

History is significant for this study because it tries to fulfill theoretical gaps through analyzing the changes from the beginning of migration in Europe to today. The history of migration to Europe can be evaluated in three main cycles to better understand how the member states’ national responses and also supranational actors’ attempts have shaped the course of migration policy.

In the 18th and 19th centuries, migration was free and did not require any documents. Until 1914, the main driving forces behind international migration were the “dynamics of colonization and the push and pull of economic and demographic

⁹ Alexander Caviedes, “The Open Method of Co-ordination in Immigration Policy: A Tool for Prying Open Fortress Europe?”, *Journal of European Public Policy*, Vol. 11, No. 2, 2004, p. 291.

forces”.¹⁰ At the beginning of 20th century, the main factors driving migration were colonies and economic and demographic relations among colonial countries. After the World War I, however imperialism ended, and decolonization process took over. Thus, economic migration was replaced by political migration referring to individuals who are seeking to cross borders to escape political persecution or violent conflict.¹¹ Political migration included many displaced persons, refugees and asylum seekers that would cross the national borders in the 20th century. From that time onwards, open migration regimes of the 18th and 19th century turned to close migration regimes in which travel would be possible only with documentation.¹²

Second World War was a huge destruction for all its participants. Europe, which was the main battle field, entered into an economically troublesome period following its end. Millions of people had died in various European countries; industrial and agricultural production had many problems and the city infrastructures entirely collapsed. Further, pressing social problems arose including the mass movement of people following the war, along with persistent problems of sheltering. While the European continent was an exporter of population in earlier decades, following the Second World War, it became the “destination of substantial waves of immigration”.¹³ Due to these problems between 1945 and 1993, nearly thirty-one million migrants and refugees moved through the international borders of Western Europe.¹⁴ At the end of the war, there were dramatic population shifts reaching nearly 15 million people who were transferred from one country to another as returnees and expellees. Particularly, as a result of the border changes, especially between Germany, Poland, and the former Czechoslovakia, many people were forced to relocate. In 1950, 30% of the West Germany was composed of refugees.

¹⁰ James F. Hollifield, “The Emerging Migration State”, **International Migration Review**, Vol. 38, No. 3, 2004, p. 890.

¹¹ Adamson, p. 173.

¹² Ibid.

¹³ Ceri Peach, “Postwar Migration to Europe: Reflux, Influx, Refuge”, **Social Science Quarterly**, Vol. 78, No. 2, 1997, p. 269.

¹⁴ Ibid.

Nevertheless, migration flow slowed down at the beginning of the mid-1950s and then continued at lower levels until the construction of the Berlin Wall in 1961.¹⁵

Following the end of the Second World War, due to their interdependent economics European countries therefore had to cooperate for their economic reconstruction. The basic formal cooperation attempt among the EC member states was the free movement of the EC citizens.¹⁶ Accordingly, the Treaty of Rome (1957), which created an ‘intra-EU migration policy’, also provided free movement for workers along the free movement of services, goods and capital.¹⁷ It further guaranteed that “a citizen of one member country could travel to another country to work or seek work”.¹⁸ However, the free movement of workers here referred to the movement among member states. In this context, national regulation of the countries was responsible and authoritative for the much larger flows from outside the EEC. As a result, the EC members had distinct national responses for ‘the unplanned process of family reunion’ and ‘ethnic community formation’ in the following years.¹⁹ At that point, it was obvious that in fact, states preferred to have the control rather than delegating it to a supranational authority which shows a parallelism with the state-centric theories.

While national governments controlled immigration in Europe, these policies differed from one country to another as well as from one period to another. Thus, countries have shaped and direct their own national migration policies according to the needs and interests of the country itself. The existence of “frictions and strains” among the member states in particular has been effectual in the emerging differences in their subsequent policy developments regarding migration.²⁰ The term of

¹⁵ Peter Stalker, “Migration Trends and Migration Policy in Europe”, **International Migration**, Vol. 40, No.5, 2002, p. 152.

¹⁶ Claude Moraes, “The Politics of European Union Migration Policy”, **Political Quarterly**, Vol.74, No.1, 2003, p. 117.

¹⁷ Andrew Geddes, **The Politics of Migration and Immigration in Europe**, Sage Publications, Great Britain, 2005, p. 129.

¹⁸ Stalker, p. 167.

¹⁹ Stephen Castles, “Why Migration Policies Fail?”, **Ethnic and Racial Studies**, Vol. 27, No. 2, 2004, p. 217.

²⁰ Joanna Apap, Sergio Carrera, “Progress and Obstacles in the Area of Justice & Home Affairs in an Enlarging Europe”, CEPS Working Document, 2003, No: 194, <http://aei.pitt.edu/1818/01/WD194.pdf>, 03, 12, 2009, p. 1.

“ideologies of migration” can help to better understand the variety emanating from different “patterns of political and social thought”.²¹ It basically means that member states may have different determinants about the migration-related policies; thus disagreements can emerge among the countries in the EU. This pattern of ideologies on migration then shapes many other related subjects, such as “citizenship and belonging, rights and responsibilities of members, and obligations toward non-members”.²² As a result of these ideological, political and institutional factors, various discourses on inclusion and exclusion have emerged in different European states.²³

1.2.Three Main Cycles of Migration to Europe

The first period of this migration flow was between 1950s and 1973-74 and migration in this period reached its peak in the 1960s.²⁴ In this period, there was a significant flow of under-skilled labor from the southern countries to the north in Europe.²⁵ Following the destruction of the war, European economies, which gradually recovered themselves, entered into an unprecedented economic boom. Consequently, there was a huge demand for workers especially by Germany, France, and the UK, which were falling short of labor.²⁶ Accordingly, labor needs of the European countries conducted this first period of migration.

As domestic labor could no longer cover the need, many countries in Europe thus sought out outside labor for their economic reconstruction.²⁷ Accordingly, European countries such as the UK, France, Belgium and Netherlands with a long colonial past started to tap into their colonial ties to meet their labor need.²⁸

²¹ Christina Boswell, **European Migration in Flux: Changing Patterns of Inclusion and Exclusion**, The Royal Institute of International Affairs, Blackwell, 2003, p. 3.

²² Ibid.

²³ Ibid.

²⁴ Geddes, **The Politics of Migration...**, p. 17.

²⁵ Channe Lindstrøm, “European Union Policy on Asylum and Immigration. Addressing the Root Causes of Forced Migration: A Justice and Home Affairs Policy of Freedom, Security and Justice?”, **Social Policy and Administration**, Vol. 39, No.6, 2005, p. 589.

²⁶ Stalker, p. 153.

²⁷ Randall Hansen, “Migration to Europe since 1945: Its History and Its Lessons”, **The Political Quarterly**, Vol. 74, No. 1, 2003, p. 25

²⁸ Stalker p. 153.

Meanwhile, those countries without substantial colonial ties, such as Germany, chose to recruit labor particularly from those countries that were close to Western Europe, including the former Yugoslavia and Turkey.²⁹ European countries seeking foreign labor also signed bilateral agreements and undertook legal proceedings for resident permits in order to facilitate the entry of migrant workers.³⁰ As a result of these efforts, during this period, the “net immigration for Western Europe reached around 10 million (compared with net outflows of 4 million for the period from 1914 to 1949)”.³¹

Between 1960s and mid-1970s, many of the Northwestern European states continued to receive a large number of mostly low or under skilled male workers from the Mediterranean countries.³² Worker migrants from Portugal, Spain, Italy, former Yugoslavia, Greece, Turkey, Morocco, Algeria and Tunisia went to Europe for the labor markets in Germany, France, Switzerland, Belgium and the Netherlands. Accordingly, destination for immigration was shaped through the relations among the sending and the receiving countries such as Germany with Turkey, France with the Maghreb and the Iberian Peninsula, Switzerland with Italy and Spain, Belgium with Italy and Morocco, and the Netherlands with Turkey and Morocco.³³ In general, immigrants in Southern Europe preferred migrating into North European countries due to the income differences between these countries, the power of the labor market in the host country and the existence of strong ties in the country of destination.³⁴ All these unskilled migrants usually came for a short-term or seasonal basis, and particularly worked in agriculture, construction, and manufacturing, as well as in the service sectors, such as hotels and catering.³⁵

²⁹ Maria I. Baganha et als., “International Migration and Its Regulation”, **Dynamics of Migration and Settlement in Europe : A State of the Art**, (eds.) Rinus Penninx, Maria Berger and Karen Kraal, Amsterdam, NLD: Amsterdam University Press, 2006, p. 20- 21.

³⁰ Ibid.

³¹ Stalker p. 153.

³² Philip Muus, “International Migration and the European Union, Trends and Consequences”, **European Journal on Criminal Policy and Research**, Vol. 9, No. 1, 2001, p. 33.

³³ Muus, p. 33.

³⁴ Fabio Franchino, “Perspectives on European Immigration Policies”, **European Union Politics**, Vol.10, No. 3, 2009, p. 409.

³⁵ Stalker, p. 161.

As a whole, the logic behind the first period of immigration in Europe was to meet the labor needs of the countries. Subsequently, member states sought to fulfill their market demand as needed. The assumption of the European countries that received labor immigrants was that when immigrants finished their tasks most of them would return to their 'home countries'. Provision of economic recovery in their country of origin would be another reason for the remaining part of the migrants to return to their countries. The remaining small residual part of the immigrants was therefore not expected to cause "serious social or cultural problems".³⁶ However, "the guests stayed" in much larger numbers than the host countries had expected.³⁷

This unexpected outcome gradually became an important fact and carried immigration to a higher level of importance in the EU agenda. Furthermore, beginning from 1970s, migration issue also started to appear on the agenda of European political parties. They gradually understood that immigration not only affected their economies and labor markets, but it also concerned their "welfare, social services and social cohesion".³⁸ As more migrants preferred to stay in the European countries, problems concerning their political or social rights and integration into the host country escalated. In addition to the stay of these migrants, another flow of migration raised including their families.

The second migration flow (family migration) began in mid 1970s, and continued until the end of 1980s. The northern countries ended their labor recruitment due to a general economic slowdown and steeply rising oil prices due to Yom Kippur War in the Middle East.³⁹ Then, by 1973-1974, family migration remained as the main form of migration with the aim of reuniting the families that had been unsettled in the earlier decades. Here, the term family reunion refers to the family members like spouses and children of settled migrants.⁴⁰ During these years, most of the European governments avoided 'punitive measures' and allowed family

³⁶ Baganha et al., p. 21.

³⁷ Geddes, **The Politics of Migration and Immigration in Europe**, p. 15.

³⁸ Boswell, **European Migration in Flux...**, p. 3.

³⁹ Peach, p. 276.

⁴⁰ Geddes, **The Politics of Migration and Immigration in Europe**, p.17.

members of the existing immigrants to join them.⁴¹ However, by late 1970s, European countries had already discovered that short-term migration turned into a long-term settlement.⁴²

During this recession period, European countries again “expected guest workers to leave”.⁴³ These unskilled and cheap labors had arrived in the European labor market during periods of ‘high growth and low employment’. Although the recession period affected the sectors of heavy industry and manufacturing negatively, in which they worked, the ‘return rates’ of the workers, especially from non-EU countries, were low.⁴⁴ Meanwhile, labor migrants that came from the Southern European countries returned to their homeland depending on the economic and political developments in their own countries. Therefore, countries such as Spain, Italy and Greece in particular experienced higher ‘return rates’, due to “improvements in the economies, the return to the democracy (Spain, Greece, Portugal) and the existing or forthcoming membership of the European Community”.⁴⁵

During this second period, initial attempts concerning migration-related issues started in the European Community. Member states discerned the need to consult each other and cooperate in migration-related issues to take effective steps, particularly on economic integration.⁴⁶ As a whole, beginning from these years until 1986, there was a policy-making attempt in national immigration policies. During these years, immigration policies were under national control. Formal attempts for closer cooperation in the community method of decision-making were therefore rejected.⁴⁷ However, important cooperative developments in migration policy in this period did occur, including the establishment of the TREVI Group⁴⁸ in 1976 to deal

⁴¹ Stalker, p. 153.

⁴² Geddes, **The Politics of Migration and Immigration in Europe**, p.15.

⁴³ Stalker, p. 153.

⁴⁴ Hollifield, p. 895, Muus, p. 33.

⁴⁵ Muus, p. 33.

⁴⁶ Bill Jordan, Bo Strath and Anna Triandafyllidou, “Contextualising Immigration Policy Implementation in Europe”, **Journal of Ethnic and Migration Studies**, Vol. 29, No. 2, 2003, p.208.

⁴⁷ Ette and Faist, p. 5.

⁴⁸ “The Trevi group was set up in 1976 by the 12 EC states to counter terrorism and to coordinate policing in the EC. The group's work is based on intergovernmental cooperation between the 12 states,

with internal security measures, and Schengen Agreement in 1985 to ensure “cooperation on mutual abolishment of internal border controls and the development of compensating internal security measures”.⁴⁹

The third period of migration flow began around the end of Cold War in 1989-1990. After the Cold War ended, as a result of the collapse of the USSR and the associated collapse of socialist systems in Western Europe, there was a substantial growth in the number of asylum seekers moving into the Western Europe from the East.⁵⁰ In this new form of migration, people from troubled areas around the world, but particularly Eastern Europeans fled from the conflict and sought asylum in Western Europe.⁵¹ In this new migration flow, in Western Europe, Germany has remained the favorite country for asylum seekers.⁵² Other important destination countries in the EU have included France and the UK and smaller countries like the Netherlands and Sweden.⁵³ In this period, aside from war or conflicts, dissatisfaction about the political conditions in the country of origin also influenced people to migrate. Particularly, in the existence of a repressive regime in which people could not benefit from their voting rights effectively, such political and social instability caused people to move to more democratic states with better conditions.⁵⁴

These developments have resulted with the diversification of the country of origins of international migrants throughout the Europe.⁵⁵ In terms of numbers, from 1989 to 1998, “more than 4 million people applied for asylum in Europe, 43 percent of whom came from elsewhere in Europe, 35 per cent from Asia, and 19 per cent from Africa”.⁵⁶ However, due to the growing pressure about the amount and the structure of migration, Western European governments have started to tighten up on

a process which excludes the main EC institutions - the European Commission and the European Parliament.”

Tony Bunyan, “Trevi, Europol and the European State”, <http://www.statewatch.org/news/handbook-trevi.pdf>, 08,06,2010.

⁴⁹ Ette and Faist, pp. 5-6.

⁵⁰ Peach, p. 277, Hollifield, p. 898.

⁵¹ Stalker, p. 153, Muus, p.34.

⁵² Muus, p. 34.

⁵³ Ibid, p.34.

⁵⁴ Margit Kraus, Robert Schwager, “EU Enlargement and Immigration”, **Journal of Common Market Studies**, Vol. 42, No.1, 2003, pp. 167-168.

⁵⁵ Geddes, **The Politics of Migration and Immigration in Europe**, p.17.

⁵⁶ Stalker, p. 153.

asylum applications. Consequently, an increasing number of people have sought to enter these countries illegally by traveling on their own initiative or through the help of smugglers.⁵⁷ Compared to previous periods, more European countries faced the effects of international migration in this period.⁵⁸

In this period, member states' immigration policy had different and sometimes even contradictory goals. As Bendel argues migration policies may include "the restriction and control of immigration, the protection of refugees, the prevention of refugee movements, the integration of migrants or the attraction of special groups of immigrants", such as those that are highly skilled.⁵⁹ Although powerful domestic actors in states often tend to 'welcome' the flow of capital and commodities, they can also regard immigration and cultural differences as 'potential threats' to national sovereignty and identity.⁶⁰ This is because migration easily removes the transnational boundaries between languages, cultures, ethnic groups and nation-states. Therefore, it can also create problems for "cultural traditions, national identity and political institutions" and reduce the autonomy of nation-states.⁶¹ Nation-states regard migration as a potential economic or political threat is due to its dual effect while it can contribute to development and play an important role in improved social and economic conditions, it can also cause economic stagnation and social inequality. As a result, many governments and political movements tend to restrict, rather than promote the flow of international migration.⁶²

In the following chapter, non-binding formal and informal initial attempts regarding migration policies in the EU will be analyzed. To name all, the Schengen Treaty, Single European Act, Dublin Convention, Palma Program and particularly the Maastricht Treaty will be examined with the help of old integrationist theories; neo-functionalism and liberal intergovernmentalism.

⁵⁷ Stalker, p. 153.

⁵⁸ Geddes, **The Politics of Migration and Immigration in Europe**, p.17.

⁵⁹ Petra Bendel, "Immigration Policy in the European Union: Still bringing up the walls for fortress Europe?", **Migration Letters**, Vol. 2, No. 1, 2005, p. 23.

⁶⁰ Castles, "Why Migration Policies Fail?", p. 211, Stephen Castles, "International Migration at the Beginning of the Twenty-First Century: Global Trends and Issues", **International Social Science Journal**, Vol. 52, No. 165, 2000, p. 271.

⁶¹ Castles, "International Migration at the Beginning...", p. 269.

⁶² Ibid.

SECOND CHAPTER

THE EVOLUTION OF MIGRATION POLICIES UNTIL THE AMSTERDAM TREATY

2.1. Initial Steps in Migration Policy Formation

This part of the thesis examines the initial intergovernmental attempts including the Trevi Group (1976), Ad Hoc Working Group on Immigration (1986), Schengen Treaty (1985), Single European Act (1986), Palma Program (1988), Dublin Convention (1990) and the Maastricht Treaty (1993). It argues that state-centric theories, and liberal intergovernmentalist and neo-functional theories emerged as the leading theories for the period until the Amsterdam Treaty. Accordingly, this part evaluates formal and informal intergovernmental developments about EU migration policy from the end of the Second World War until the Amsterdam Treaty.

The factors which led to migration since the end of 1980s differ from those during the post-colonial period and the subsequent guest worker immigration waves of the 1950s, 60s and 70s due to the changes in the international context. After the Cold War, new migration-related questions arose, including the rapidly increasing number of migrants, their increasing ability to travel from one place to another, the rapidly increasing facilities for international communication and the rising numbers of Diaspora.⁶³ Resulting from the change in the international context, structure and interactions, perceptions have changed.

As a result of the increasing levels of migration in all around the world since the end of 1980s, migration gradually entered the agenda of all European countries, particularly since the end of the Cold War. The process of the European integration during 1980s and 90s changed the member-state based approach in migration related matters towards cooperation. First of all, Kicinger and Saczuk point out ‘outside challenges’, such as increase in illegal immigration, human trafficking, asylum crisis

⁶³ Adrian Favell, “Europeanisation of immigration politics”, **European integration online papers**, Vol. 2, No.10, 1998, p. 2.

and growing economic migration pressure.⁶⁴ As an answer to these challenges, EEC/EU member states have sought common solutions. Thus, at first they have taken cohesive, joint actions and later delegated their competency in migration-related issues to the community level. In this context, delegation is a matter of institutional arrangement which provide a choice to “overcome problems of collective action” in which actors hope benefits from that long-term cooperation.⁶⁵ Put differently, institutional choice here is functional that actors choose them due to their “intended effects”.⁶⁶

Secondly, Geddes links the impetus for composing a common EU migration policy to the factors of economic interdependence and globalization.⁶⁷ In the end of 20th century, globalization has also emerged as a significant and world-wide effective phenomenon influencing political, economic and also cultural aspects. Globalization mainly involves “the rapid increase in cross-border flows” including flows of capital, commodities, ideas and people.⁶⁸ In today’s world system, globalization has also salient effects on the process of migration. For instance, “falling transportation costs, increasing economic integration, path-dependent migration linkages, structural demand for labor within host states and global demographics” are the leading elements that indicate the continuing increases in immigration flows into the developed world.⁶⁹

To understand the increasing cooperation and integration efforts in politics of migration in the European Union since 1980s, two theories of European integration; intergovernmentalism and neo-functionalism particularly stand out. The main factor differentiating these two theories is “the question of which political actors have

⁶⁴ Anna Kicinger and Katarzyna Saczuk. “Migration Policy in the European Perspective- Development and Future Trends”, Central European Forum for Migration Research, 2004, http://www.cefmr.pan.pl/docs/cefmr_wp_2004-01.pdf, 01, 12, 2009, p. 9.

⁶⁵ Hussein Kassim and Anand Menon, “The principal-agent approach and the study of the European Union: promise unfulfilled?”, **Journal of European Public Policy**, Vol. 10, No.1, 2003, p. 123.

⁶⁶ Kicinger, Saczuk, p. 9.

⁶⁷ Geddes, **The Politics of Migration and Immigration in Europe**, p. 127.

⁶⁸ Castles, “Why Migration Policies Fail?”, p. 211, Castles, “International Migration at the Beginning...”, p. 271.

⁶⁹ Wayne A. Cornelius and Marc R. Rosenblum, “Immigration and Politics”, **Annual Review of Political Science**, Vol. 8, 2005, p.106.

decisive influence on the integration process”.⁷⁰ While neo-functionalism emphasizes the “autonomy of supranational officials”, liberal intergovernmentalism emphasizes the “autonomy of national leaders”.⁷¹

First of all, neo-functionalism emerged from the ideas of Ernst Haas.⁷² It supports the view that based on the logic of spill-over, the interstate cooperation in one field leads to cooperation in other related areas.⁷³ Neo-functionalist theory, rooted in theories of interdependence, analyzes that pressure arising from single market integration and also increasing global economic and political change in world politics lead states to seek for international solutions for their domestic problems.⁷⁴ When internationalization of economy leads to economic interdependence and globalization, it also decreases state sovereignty.⁷⁵ Then, following the decline of the transaction costs⁷⁶ of international migration, national borders therefore become more permeable and ‘post national members’ like migrant workers and noncitizens acquire basic citizenship rights due to the effects of globalization. As a result, states’ power of regulating immigration gradually flows and seriously ‘erodes’.⁷⁷ Put differently, “the self-preserving nature of immigration, the constraining impact of economic imperatives and international legal norms” were ‘eroding’ the territorial and functional foundations of the nation state and decreased the ability of states to control migration, they brought European states closer under the subject of the “fortress Europe”.⁷⁸

Supranationalism within neo-functionalist theory approach emphasize that as interstate policy cooperation increases, states find common solutions to their mutual

⁷⁰ Torsten J. Selck, Mark Rhinard, Frank M. Häge, “The Evolution of European Legal Integration”, **European Journal of Law Economy**, Vol. 24, No. 3, 2007, p. 189

⁷¹ Jensen, “Neo-functionalism”, pp. 94-95.

⁷² Ben Rosamond, **Theories of European Integration**, Palgrave, England, 2000, p. 54

⁷³ Carsten Stroyby Jensen, “Neo-functionalism”, **European Union Politics**, (ed.) Michelle Cini, Oxford University Press. 2003, p. 85.

⁷⁴ Andrew Geddes, “ International Migration and State Sovereignty in an Integrating Europe”, **International Migration**, Vol. 39, No. 6, 2001, p. 28.

⁷⁵ Geddes, **The Politics of Migration and Immigration in Europe**, p. 127.

⁷⁶ It defines those risks and penalties that arise when actors engage in negotiation with one another. Rosamond, **Theories of European Integration**, p. 116.

⁷⁷ Messina, p. 149.

⁷⁸ Ette, Faist, p. 8 and Geddes, **The Politics of Migration and Immigration in Europe**, pp. 126-127

problems.⁷⁹ Put differently, as member states in the EU get closer in terms of economic and monetary affairs, political ties and common foreign and security policies, formerly unrelated issues like immigration become a part of the gradually rising interstate cooperation. In time, as the number of significant agreements between member states increase, they transfer “more of their traditional authority and responsibility” about immigration issues to intergovernmental and later supranational institutions.⁸⁰ However, neo-functionalist theory falls short of explaining some factors of the integration process such as the diversity of expectations and interests among the member states.⁸¹

Liberal intergovernmentalism favors the role of nation-states in the process of European integration. It perceives integration as a “zero-sum game” in which integration is limited to policy areas that do not concern crucial issue of state sovereignty. In European integration, interests and actions of nation states drive the process.⁸² Nation-state has the power to manage migration and their rational choices of policies are constrained by external pressures and domestic political pressures. In this state-centric point of view, first of all, the external pressures resulting from increasing international migration and crime lead to the ‘convergence of national preferences’ and hence build a “precondition” for cooperation.⁸³ Put differently, member states cooperate under the framework of the EU to abstain from the “negative externalities and transaction costs” such as protection of the external borders or integration problems.⁸⁴

As Moravcsik argues, while establishing cooperative regimes, states reach their gains by regarding their preferences.⁸⁵ Liberal intergovernmentalism here

⁷⁹ Messina, p. 150.

⁸⁰ Ibid, pp. 156-157.

⁸¹ Rosamond, **Theories of European Integration**, p. 101

⁸² Cini, p. 94. In this context, intergovernmentalism has taken from realist and neo-realist theory regarding interstate bargaining. Particularly, neo-realists argue that “international institutions of all kinds are established to reduce the level of anarchy within the states system, and see the EU as just another of these institutions, albeit within a highly institutionalized setting”. Accordingly, this symbolizes the influence of neo-realism on intergovernmentalism. Cini, pp. 94-95

⁸³ Ette, Faist, p. 8.

⁸⁴ Ibid.

⁸⁵ Andrew MacMullen, “Intergovernmental Functionalism? The Council of Europe in European Integration”, **Journal of European Integration**, Vol. 26, No. 4, 2004, p. 408.

asserts “a liberal theory of national preference formation, a bargaining theory of international negotiations and a functional theory of institutional choice” in its concentrated framework.⁸⁶ As liberal intergovernmentalism suggests, mainly “international interdependence, opportunities for international economic exchange, and the dominant economic interests in national society” modify the preferences of states in the European integration.⁸⁷ Accordingly, in history, EU member states had acted together only in those cases when the costs of compromised sovereignty explicitly outweigh the advantages of collective action.⁸⁸ (agreements on a lowest common denominator)

It further argues that, secondly, rather than exogenous ones, domestic political constraints motivate nation states to cooperate in immigration related matters.⁸⁹ (domestic pluralism) Put differently, factors such as “public opinion, extreme right-wing parties, economic actors, ethnic groups and constitutional courts” cause reduction of control regarding the immigration issue.⁹⁰ For instance, to reply the growing political criticism from xenophobic electorates and also by anti-immigrant groups, EU governments are increasingly cooperating on immigration-related issues to extend their “individual and collective capacity” to decrease non-EU immigration”.⁹¹ Moreover, as a more specific example of using the EU to fulfill domestic policy change was the 1993 reform of Article 16 of the German Constitution that initiated the principle of safe third countries and made it one of its main elements.⁹²

Accordingly, member states develop a common EU immigration policy to avoid domestic legal and political constraints to attain their domestic policy

⁸⁶ Andrew Moravcsik and Frank Schimmelfennig, “Liberal Intergovernmentalism”, **European Integration Theory**, (eds.) Antje Wiener and Thomas Diez, Oxford: Oxford University Press, 2004, pp. 76-77.

⁸⁷ Frank Schimmelfennig, “The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union”, **International Organization**, Vol. 55, No. 1, 2001, p. 49.

⁸⁸ Messina, p. 155.

⁸⁹ Messina, p. 152, Domestic Pluralism, here confirms one-half of the liberal institutionalist model of Moravcsik which argues that “state behavior reflects the rational actions of governments constrained... by domestic societal pressures”.

⁹⁰ Ette, Faist, p. 8.

⁹¹ Messina, p. 152.

⁹² Eiko R. Thielemann, ““The ‘Soft’ Europeanisation of Migration Policy: European Integration and Domestic Policy Change”, 2001, ECSA Seventh Biennial International Conference, <http://personal.lse.ac.uk/thielema/Papers-PDF/JEMS.pdf>, 01, 02, 2010, p.20

objectives.⁹³ Thus, independent from the intensity of the domestic political pressure changing from one country to another, EU governments are highly motivated to delegate responsibility for immigration policy to higher bureaucratic levels to remove this problematic policy area from their domestic political agendas.⁹⁴ Member states seek to embody the interaction between domestic and the EU level. Accordingly, they may affect current policy models by installing “preferred policies” in order to minimize the costs of subsequent domestic adaptation.⁹⁵ Thus, in such a case, cooperation on immigration strengthens state sovereignty rather than weakens it, as liberal intergovernmentalism suggests.⁹⁶

In the period from 1957 to 1986, there was minimal immigration policy involvement in national migration policies. During the post-Second World War period, nation-states had the authority over the policies on immigration in general and the integration of ethnic minorities in particular. Immigrants who came into the continent as the former members of the colonies or as contractual guest workers therefore fell under the ‘exclusive responsibility’ of the host country. European governments at the time behaved carefully about “asserting control over the policing of borders, and the power to decide who is a member of the country and who is not (in citizenship and nationality laws).⁹⁷ Thus, every state has an “exclusive competence to regulate all kinds of relations developed on its territory and to execute legal norms passed by proper authorities”.⁹⁸

During the process, European countries managed migration policies with the understanding that they were a “prerogative” for themselves.⁹⁹ They formed their government policies for immigration with an attempt to control its flows in their

⁹³ Geddes, **The Politics of Migration and Immigration in Europe**, p. 127.

⁹⁴ Messina, p. 152.

⁹⁵ Andrew Geddes, “The Europeanisation of What? Migration, Asylum and the Politics of European Integration”, **The Europeanization of National Policies and Politics of Immigration: Between Autonomy and the European Union**, (eds.) Thomas Faist, Andreas Ette, Palgrave Macmillan, 2007, p. 57.

⁹⁶ Geddes, **The Politics of Migration and Immigration in Europe**, p. 127.

⁹⁷ Geddes, **The Politics of Migration and Immigration in Europe**, p. 127.

⁹⁸ Kicingier, Saczuk, p. 4

⁹⁹ Baganha et al., p. 28.

national interest.¹⁰⁰ Based on the sovereignty principle and following their national interests which they defined as being secure and having a stable economy, the European governments considered themselves as responsible for the conditions regarding the entry and residence of immigrants. Member states of the EU adopted and mainly pursued state-centric policies regarding migration related issues during the post-war period up as a reflection of the international economic and political conditions.¹⁰¹ However, there were also examples of minimal cooperation including the formation of Trevi Group (1976) and Schengen Agreement (1985). Trevi Group was formed by European Member States to cooperate on internal security measures.

The Schengen Agreement (signed in 1985) has been one of the earliest attempts about regulating national immigration policies within the European Community. It sought to find “multinational solutions” to member states’ migration problems. As a result of the declining transaction and transportation costs in the movement of people, many of the member states sought these multinational solutions to control migration flows.¹⁰² As a whole, the Schengen agreement aimed to remove all border controls and also tried to strengthen the common external frontier.¹⁰³ It also included those issues that were related with the immigration and asylum policies and closely linked to security and public order.¹⁰⁴

At the beginning, the Schengen Agreement (signed in 1985) was not a part of the European Community framework. However, it had a “communitarian vocation”, thus it was open to all member states.¹⁰⁵ The agreement initially covered five member states which were France, Germany, Belgium, the Netherlands and Luxembourg.¹⁰⁶ In this period, member states of Schengen Treaty then started to compose common policies on “asylum, immigration and visas, police cooperation

¹⁰⁰ Ibid.

¹⁰¹ Cavedes, p. 291.

¹⁰² Ibid.

¹⁰³ Stalker, p. 167. , Geddes, **The Politics of Migration and Immigration in Europe**, p. 130.

¹⁰⁴ Umberto Melotti, “Migration Policies and Political Cultures in Europe: A Changing Trend”, Vol. 16, No. 2, **International Review of Sociology**, 2006, p. 200.

¹⁰⁵ Ibid.

¹⁰⁶ Besides France, Germany and the Benelux countries, Austria, Denmark, Finland, Greece, Iceland, Italy, Norway, Portugal, Spain and Sweden are also signatories now. Stalker, p. 167.

and the exchange of information between national immigration and police authorities”.¹⁰⁷ From 1990 to 1996, other member states also adopted the Schengen agreement, with the exception of the United Kingdom and Ireland.¹⁰⁸ Beginning from this period, member states usually attain agreements on a lowest common denominator by apparently limiting the transfer of their sovereignty to supranational powers.¹⁰⁹ Accordingly, flexibility option, a practice that opt-out choices have been offered to member states to allow their participation to prevent an unattractive or unacceptable agreements For instance, in Schengen Agreement, important concessions, including an “island exclusion” clause (without having to eliminate external borders), were offered to the UK, Ireland and Denmark to enable their participation, but they rejected.¹¹⁰

Schengen cooperation thus only evolved among signatory countries outside the EU structure until the Amsterdam Treaty, which was signed in 1997 (and entered into force in 1999). From that time onwards, the Amsterdam Treaty integrated the provisions and decisions of Schengen and the ‘Schengen acquis’ (that which has been acquired) became the acquis of the EU.¹¹¹ As neo-functionalist theory argues, member states’ initial attempts about cooperation has accelerated more cooperation initiatives, accordingly their search for common goals had become “increasingly routinized and its fruits embedded in a series of EU treaties and institutions”.¹¹²

The changes in the nature of migration to the EU countries combined with the EU integration process which has propelled the search for a common policy on migration.¹¹³ Therefore, member states would get away from their “self-contained, bordered units” in which immigrants must integrate, and seek after a solution.¹¹⁴ The issue was not only about integrating migrants and minorities into “their more or less

¹⁰⁷ Moraes, p. 117.

¹⁰⁸ Melotti, p. 200.

¹⁰⁹ Michelle Cini, “Intergovernmentalism”, **European Union Politics**, (ed.) Michelle Cini, Oxford University Press, New York, 2003, p. 103.

¹¹⁰ Messina, pp. 155-156.

¹¹¹ Charles Elsen, “From Maastricht to The Hague: The Politics of Judicial and Police Cooperation”, **ERA Forum**, Vol. 8, No 1, 2007, p. 14.

¹¹² Messina, p. 168.

¹¹³ Moraes, p. 117.

¹¹⁴ Favell, “Europeanisation of immigration politics”, p. 2.

reluctant national hosts”.¹¹⁵ What is more, Europe was turning to a “collection of smaller regional units and transnational cultural ties” in political, economic and cultural aspects, a more Europeanized common culture.¹¹⁶ The domestic or international atmosphere lead to changeable policy choices of member states’, however, at the end, these choices brought intra-EU cooperation.

Depending on the changing factors that led to migration, there has been an ‘informal intergovernmentalism’ in terms of migration policies in the EC member states from 1986 to 1993 in which representatives of the administration of the member states entered into a process of cooperation.¹¹⁷ Within the EC, some of member states opposed to the extended supranational competencies. For instance, while the UK supported intergovernmental cooperation, it was against any measures that would threaten their use of external frontier controls.¹¹⁸ During this time period, little progress occurred regarding the coordination of migration policies such as Single European Act, Ad Hoc Working Group on Immigration and Palma Program.¹¹⁹ As rational, goal-oriented and purposeful actors of the international arena, member states thus sought to follow their ‘domestic immigration control objectives’ in the EU level without delegating authority to the supranational EU institutions and tried to add restrictive measures for the new members from Southern Europe.¹²⁰ It means that there was a limited cooperation in this period with an intergovernmental spirit.

Notwithstanding this fact, the Single European Act (SEA) was introduced in 1986 with the view of “removing the internal border controls within the EU” and aimed for establishment of the internal market.¹²¹ Apap describes the main aim of Single European Act as “the internal market shall comprise an area without internal borders in which the free movement of goods, persons, services and capital

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Faist, Ette, p. 5.

¹¹⁸ Geddes, **The Politics of Migration and Immigration in Europe**, p. 132.

¹¹⁹ Ibid.

¹²⁰ Ibid.

¹²¹ Muus, p. 43., Moraes, p. 117.

is ensured in accordance to the provisions of this Treaty”.¹²² As a result of the neo-functional logic and its spillover effect, in the Single European Act, member states committed to the free movement of EU citizens within the borders of the Single Market that obligate them to “harmonize their non-EU immigration policies in order to maximize the success and benefits” of the Single Market.¹²³ On the other side, according to Moravscik, SEA emerged as a result of “the converging of the preferences of the three most important member states of the EC (France, Britain and the Federal Republic of Germany) around versions of neo-liberal political economy”.¹²⁴

When the member states have removed the internal frontiers and permitted free movement, the harmonization of external frontier controls become functional and even necessary.¹²⁵ As one independent argument points out, failure to harmonize their policies may decrease the all economic gains of the Single Market. Accordingly, some member states could have problems in getting employment from the labor markets of other member states, so they would follow “permissive policies” towards less costly non-EU labor. Thus, member states increasingly harmonize their policies to refrain from this negative externality.¹²⁶ Another argument figures out that the Single Market imposed the abolition of the most of the internal border controls which threatens member states’ ability to defend themselves against external security issues like international terrorism or drug trafficking.¹²⁷

Moravscik, within his liberal intergovernmentalist view, offers a two-level game analysis for theorizing European integration. This two level game includes: “a liberal theory of national preference formation and an intergovernmentalist account of strategic bargaining between states”.¹²⁸ At that point, in the former one, these

¹²² Joanna Apap, “Shaping Europe’s Migration Policy, New Regimes for the Employment of Third Country Nationals: A Comparison of Strategies in Germany, Sweden, Netherlands, UK”, **European Journal of Migration and Law**, Vol. 4, 2002, p. 309.

¹²³ Messina, p. 150.

¹²⁴ Rosamond, p. 135-136

¹²⁵ Stephen Stetter, “Regulating Migration: Authority Delegation in Justice and Home Affairs”, **Journal of European Public Policy**, Vol. 7, No.1, 2000, p. 81.

¹²⁶ Messina, p. 151.

¹²⁷ Ibid.

¹²⁸ Rosamond, **Theories of European Integration**, p. 136.

national preferences rise in the structure provided by the domestic political processes of the member states. In the latter one, there are 3 assumptions that Moravcsik points out. First, states voluntarily enter into the non-coercive bargaining environment of the EU. Second, interstate bargaining of the EU is an 'information-rich' setting including the knowledge about preferences and constraints upon other states. Third, the transaction costs of the EU interstate bargaining are low due to the "long time-frame of negotiations".¹²⁹

Moravcsik's study is based on the critique of neo-functionalism and is influenced by the studies of Robert Keohane forming the core of neoliberal institutionalist work. According to Keohane, there is a clear increase of institutionalization in world politics and those contemporary international relations are more than sovereign self-interested states conflicting within the classic realism. Instead, Keohane argues that the dominant institutional arrangements affect state behavior by "the flow of information and opportunities to negotiate, the ability of governments to monitor others' compliance and to implement their own commitments".¹³⁰ In this context, states follow their interests in an anarchic environment, but shaped/changed by the existence of institutions. Moravcsik further argues that "states benefit from and use the institutional environment of the EU for the purposes of domestic legitimation and the pursuit of preferences".¹³¹ This applies to supranational institutions such as the Commission, the European Court of Justice and the European Parliament and also intergovernmental arena such as the Council of Ministers.¹³²

Accordingly, when member states signed the Single European Act, they confirmed that although they would cooperate under the SEA regarding the entry, movement and residence of TCNs, the content of the SEA did not affect their immigration control policies. Put differently, they tended to follow their domestic immigration control purposes at the EU level without 'empowering' the EU

¹²⁹ Rosamond, *Theories of European Integration*, pp. 137-138.

¹³⁰ *Ibid.*, p. 142.

¹³¹ *Ibid.*

¹³² *Ibid.*, p. 143.

institutions and enhanced the restrictive policy approaches towards the newer member states of Southern Europe (Greece-1981, Portugal and Spain- 1986).¹³³ One of the mechanisms in that vein was the establishment of the Ad Hoc Working Group on Immigration (AHWGI) responsible for considering immigration problems, especially with illegal immigration in 1986.¹³⁴ AHWGI included high-level immigration policy officials from member states and the European Court of Justice (ECJ). While the European Parliament (EP) did not have the power to “scrutinize” the workings of the AHWGI, the Commission was pertinent to its developments in a passive way, without pressing it.¹³⁵

Following these developments, in 1988, the Palma Program was formed by a Group of Coordinators including member states for providing cooperation between the free movement measures and the internal security involvement. Further, Palma Program guided measures about asylum and external frontier control. However, the problem related with these measures was that, rather than the supranational laws of the Council, member states had to rely on conventions of the international law. A partial explanation of this outcome was that while the supranational laws were binding, international conventions were based on the ratification of each member state.¹³⁶ It means that although member states have continued to make cooperation by signing treaties including migration issues, Palma Program was a covert triumph of which was still leading policies of the states in that period.

Another key asylum measure was the Dublin Convention that was signed in 1990 among the ‘Schengen-partners’ as the final step of the ‘informal intergovernmentalism’ period.¹³⁷ Within the Dublin Convention, all willing sides reached an agreement about the regulations concerning asylum applications. The

¹³³ Geddes, **The Politics of Migration and Immigration in Europe**, p. 132.

¹³⁴ Stalker, p. 167.

¹³⁵ AHWGI dealt with asylum, external frontiers, forged papers, admissions, deportations and the exchange of immigration.

See Geddes, **The Politics of Migration and Immigration in Europe**, p. 132.

¹³⁶ Ibid, pp. 132-133.

¹³⁷ Melotti, p. 200 In 1990, Dublin Convention was signed by 11 member states in Schengen partners, Denmark joined them in 1991.

Convention thus formalized the asylum issue into a ‘cooperative partnership’.¹³⁸ After Dublin Convention came into force in 1997, it regulated the responsibility of member states for asylum claims.¹³⁹ The Convention aimed for a harmonized policy about “requiring asylum seekers to apply in the first EU country they enter”.¹⁴⁰ Put differently, it means that “the first country entered by an asylum seeker is the one to decide on the claim”.¹⁴¹ By following this procedure, Dublin Convention formalized ‘the safe third country principle’ among many of the EU countries.¹⁴² As a whole, Dublin Convention was a significant action insofar as it formed a model for future action, and following Amsterdam, it was rearranged as a legally binding EU regulation in 2003.¹⁴³

Meanwhile, the problem with this period of informal intergovernmentalism was its inefficiency emanating from the difficulty in the ratification of agreed measures. Moreover, the decisions were made in secret forums without democratic or judicial accountability at the national or European level, therefore they were not truly democratic.¹⁴⁴ Despite these shortcomings, however, these informal attempts helped the interior ministers and officials of member states to collaborate in terms of developing a security frame including immigration and asylum measures throughout the 1990s.¹⁴⁵

Concerning the developments about immigration by the European member states since the 1980s, some basic points particularly stand out in the domestic context. First, main successes regarding policy harmonization in migration have occurred on the intergovernmental level. Second, some of the main initiatives that genuinely “advance” immigration policy in terms of supranationalism have not been fully ratified or implemented yet.¹⁴⁶ Third, the policy areas covered under this

¹³⁸ Berry Tholen, “The Europeanisation of Migration Policy – The Normative Issues”, **European Journal of Migration and Law**, Vol. 6, No.4, 2004, p.326.

¹³⁹ Baganha et al., p. 29.

¹⁴⁰ Stalker, p. 167.

¹⁴¹ Baganha et al., p. 29.

¹⁴² Baganha et al., p. 29.

¹⁴³ Geddes, “The Europeanization of What...”, p. 53.

¹⁴⁴ Geddes, **The Politics of Migration...**, pp. 133-134.

¹⁴⁵ Ibid, p. 134.

¹⁴⁶ Messina, p. 167.

supranational character are not sufficiently ‘comprehensive’, which means that less policy title falls under this supranational structure. Fourth, for the pre-1985 and post-1985 period, the main emphasis under these initiatives was to decrease immigration from non-EU countries.¹⁴⁷

To sum, economic interdependence and globalization especially with the technology and easy travel have intensified the efforts of member states under the title of the fortress Europe. Beginning with the initial attempt, Schengen Agreement, was the first attempt that they sought to implement to reach a multinational solution. The result was more effective in terms of removing borders controls and strengthening external frontier particularly after it was communitarized by the Amsterdam Treaty. Subsequently, Single European Act tried to remove the internal borders for the development of the market and immigration control efforts continued with the Trevi Group, Palma Program and Dublin Convention. All these developments resulted mostly with positive measures directing member states one step further for a common migration policy. This part of the study purports that, in this period until the Maastricht Treaty, initial cooperation attempts regarding migration related issues in the EU induced the changing perceptions of the member states based on the internal factors such as the European integration and external factors such as globalization.

2.2.The Key Legal Issues

2.2.1. Migration Comes into the Institutional Structure: The Maastricht Treaty

At the beginning of 1990s, bi-polar structure of the Cold War ended resulting in changes in domestic socio-economic structures. Following the dissolution of Soviet Union in 1991, the EC was aware of the historical chance to “reunite Europe and develop its own identity in a multi-polar world” which is closely connected to

¹⁴⁷ Messina, pp. 167-168.

the West but forming its own “independent regional political regime”.¹⁴⁸ However, a fully economic union assumed insufficient to attain this fact. Therefore, a more comprehensive legal framework was needed both to affect economic matters belonging to the EC/EU and also to exercise authority to make political decisions representing one, united Europe.¹⁴⁹ First of all, a political spillover was necessary which Haas defines as “the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new center, whose institutions possess or demand jurisdiction over the pre-existing national states.”¹⁵⁰

As a result of increased immigration and asylum issues in the post-Cold War period, the member states recognized that informal intergovernmentalism was ‘problematic’ and inefficient.¹⁵¹ However, member states have not agreed about the way of the change yet. The point was that any reformation in Treaties or change in the immigration competency would require the consent of all member states.¹⁵² This issue was important, since the British and Danish governments stressed that they would not ratify the common policies. Member states could choose an option ranging from status quo to fully integrated common policies. Their preference was formal intergovernmentalism and status quo of Denmark, the UK, Greece and Ireland. The situation contemplated that the deal among the member states would be based on ‘a form of intergovernmentalism’ that drove immigration and asylum closer to the legal framework of the Treaty but “fell short of full cooperation”.¹⁵³ As intergovernmentalism argues, rational choices of national leaders are therefore necessary to understand the EU integration and their approach towards migration policies. These choices reflect opportunities and constraints resulting from economic interests, relative power of states in the international arena and role of institutions in interstate commitments.¹⁵⁴

¹⁴⁸ Albert Bauchinger, “EU Policy Regarding Asylum and Immigration: An Assessment of the Post-Amsterdam Period”, Webster University, Vienna, 2007, p. 40.

¹⁴⁹ Ibid.

¹⁵⁰ Rosamond, **Theories of European Integration**, pp. 66-67

¹⁵¹ Geddes, **The Politics of Migration...**, p. 134.

¹⁵² Ibid.

¹⁵³ Geddes, **The Politics of Migration...**, p. 134

¹⁵⁴ Moravcsik and Schimmelfennig, p. 78

The Maastricht Treaty (Treaty of the European Union), signed in 7 February 1992, would be the necessary progressive institutionalist step which established the European Union (EU). Significantly, Maastricht Treaty was a significant pace for the European integration and provided a ‘coherent action’ among all of its members.¹⁵⁵ As a result of the Maastricht Summit, three-pillar structure was introduced to balance the power between the supranational level and the member-state level.¹⁵⁶ Moreover, the Maastricht Treaty put the three founding treaties of the European Community under the first pillar (supranational pillar). From that time onwards, sovereignty mainly rested within EU institutions, such as the central role of the Commission when initiating legislation proposals or the relatively strong power of the European Parliament under the co-decision procedure.¹⁵⁷ According to the treaty, the first pillar includes the “traditional Community business” which means that the European Community will have the authority for the issues grouped under this pillar.¹⁵⁸

Besides creating the first pillar, the Maastricht Treaty has introduced two additional pillars “to promote deeper political integration within the legal framework of the EU”.¹⁵⁹ The second pillar was the Common Foreign and Security Policy dealing with foreign and external affairs and the formation of a common defense and security policy.¹⁶⁰ The third pillar has been defined as Justice and Home Affairs (JHA).¹⁶¹ After the Maastricht Treaty has divided the matters in the Community into three pillars, migration and asylum agreements has taken place in the third pillar.¹⁶² Also, differently from the usual decision-making process in the Community pillar, the Council was the ‘focus’ for the decision-making system in the third pillar as an indicator of the intergovernmental pillar. Furthermore, the Commission, European Court of Justice and European Parliament were largely outside from this pillar regarding immigration and asylum policies.¹⁶³

¹⁵⁵ Elsen, p. 15.

¹⁵⁶ Ibid, p. 41.

¹⁵⁷ Ibid.

¹⁵⁸ Moraes, p. 121.

¹⁵⁹ Bauchinger, p. 41.

¹⁶⁰ Ibid.

¹⁶¹ Moraes, p. 121.

¹⁶² Tholen, p. 326.

¹⁶³ Geddes, “International Migration and...”, p. 25.

It was intergovernmental because the member states were still reluctant to give up their national sovereignty regarding significant areas such as foreign affairs, national defense and internal security. They wanted to keep most of the control on the national level “by agreeing to the mostly urgently needed intergovernmental cooperation”.¹⁶⁴ Thus, the hardest point was to find a compromise between the interest of the member states and the EC/EU itself. As a result of the intergovernmental cooperation in the 2nd and the 3rd pillars, policy-making emerged in various intergovernmental conventions such as EUROPOL, Fraud, External Frontiers and Schengen. Most of the actions fell into soft law, such as non-binding recommendations, resolutions, and conclusions to harmonize member states’ divergent interests.¹⁶⁵

2.2.2. Cooperation under the Third Pillar of the Maastricht Treaty

Following the Maastricht Treaty and the Treaty on European Union, immigration fell under the third pillar, Justice and Home Affairs. The decision-making system was the unanimity of the Council of Ministers which is a procedure formed to protect every distinct sovereignty.¹⁶⁶ These decisions were mostly inter-state agreements which are related to “visa systems, preventing the access of foreigners to the national labor market, obtaining the status of resident and the fight against illegal immigration and employment”.¹⁶⁷ In this context, the Commission only shares the ‘right of initiative’ in the third pillar for decisions regarding immigration. Meanwhile, the consultation of the European Parliament has been compulsory and the Council, its Secretariat and the European Court of Justice have had a certain limited jurisdiction about conventions.¹⁶⁸ In this context, the European Court of Justice cannot adjudicate on the “validity of provisions”, nor can it affect the enforcement of provisions.¹⁶⁹

¹⁶⁴ Bauchinger, p. 42.

¹⁶⁵ Tanja A. Börzel, “Mind the gap! European integration between level and scope”, **Journal of European Public Policy**, Vol. 12, No.2, 2005, p. 226.

¹⁶⁶ Catherine Withol de Wenden, “ Post-Amsterdam Migration Policy and European Citizenship”, **European Journal of Migration and Law**, Vol. 1, 1999, p. 91.

¹⁶⁷ Ibid.

¹⁶⁸ Elsen, p. 15.

¹⁶⁹ Caviedes, p. 293.

At that point, liberal intergovernmentalist approach is in effect in which member states dominate the legal framework of the EU regarding migration. During this formation, mainly international interdependence and the pressure of economic interests in national societies shape the preferences of member states about the changes in the framework/treaties. Accordingly, being a 'purely' intergovernmental pillar, it takes 'output' from the EU institutions, such as the Commission and the EP only as an advisory function. Though member states consult and ask for opinion/information, these are legally non-binding forms of cooperation. In the end, after a consultation process, the Council is the one that makes the decisions.¹⁷⁰

Despite it is not a supranational success, the Maastricht Treaty has positively affected the migration policy in the EU, by recognizing the issues concerning the immigration and asylum as a 'common interest', but they were not common policies. Geddes has enumerated these issues below:

“Asylum policy, external frontiers- particularly the crossing of these frontiers and the exercise of controls, immigration policy and policy regarding TCNs (third country nationals), conditions of entry and movement by nationals of third countries on the territory of member states, conditions of residence by nationals of third countries on the territory of Member States, including family reunion and access to employment, combating unauthorized immigration, residence and work by TCNs.”¹⁷¹

Moreover, the member states benefited from the intergovernmental pillar benefited in terms of minimizing the 'involvement' of supranational institutions.¹⁷²

The Intergovernmental Conference of 1996-1997 analyzed the pillar arrangement of the Maastricht Treaty. Parties to the conference mentioned many remaining 'contentious' points that the EU and the member states should resolve.¹⁷³ A particular problem about the immigration issue at the EU level is about “the harmonization of national trends”, which basically refers to the divergent attitudes

¹⁷⁰ Bauchinger, p. 43.

¹⁷¹ Geddes, **The Politics of Migration...**, p. 135.

¹⁷² Ibid.

¹⁷³ Gallya Lahav, “Ideological and Party Constraints on Immigration Attitudes in Europe”, **Journal of Common Market Studies**, Vol. 35, No. 3, 1997, p. 380.

among member states.¹⁷⁴ Each country has posited another interest-based reason for not supporting a common migration policy, though there have been some supporter countries.

For the supporters of the intergovernmental method, the Maastricht Treaty has strengthened their hand over the supporters of communitarian/supranational approach.¹⁷⁵ Under the intergovernmental cooperation of the third pillar, Commission was “ineffectual”, available instruments were in “appropriate” and the decision-making mechanism was “cumbersome”.¹⁷⁶ This is because in the system of the Maastricht Treaty, Council of Ministers has to take decisions unanimously which impeding any outcome or decreasing it to the lowest common denominator.¹⁷⁷ Also, in this system, many decisions were made in ‘a non-binding nature’, the process lacked the necessary transparency associated with democratic rules and the institutions had limited effect on member states about the migration issue within the third pillar. For instance, the European Parliament did not have a say in the process. Moreover, the European Commission and the European Court of Justice are given a rather limited right of initiative.¹⁷⁸ Accordingly, for supranationalists, the existence of unanimity voting rule, non-binding nature of the decisions and also the shared right of initiative of the Commission were significant defects of the Maastricht system.

In the same year with the Maastricht Treaty, Edinburgh European Council also took place, where “the formal phase of EU cooperation began”.¹⁷⁹ In the Edinburgh Summit, European states defined migration control as central to their national sovereignty and identity. However, the governments of states and European Commission officials also pointed out that restrictions could not work alone to solve migration related problems. Thus, they adopted extra measures, including “addressing the causes of migration such as preservation of peace and ending armed

¹⁷⁴ Lahav, p. 380.

¹⁷⁵ Apap, p. 310.

¹⁷⁶ Lydia Morris, “Globalization, Migration and the Nation-state: Path to a Post-National Europe”, **British Journal of Sociology**, Vol. 48, No:2, p. 202.

¹⁷⁷ Ibid.

¹⁷⁸ Tholen, p. 326.

¹⁷⁹ Moraes, p. 119., See also Edinburgh European Council Conclusions, 1992.

conflicts; respect for human rights; the creation of democratic societies and adequate social conditions and liberal trade policies to improve economic conditions”.¹⁸⁰ Moreover, the summit has also accepted that the coordination in the fields of foreign policy, economic cooperation, immigration and asylum policy are required to realize these indicated targets.¹⁸¹

Despite these measures taken in Edinburgh Summit, problems related with the efficiency and democracy of the structure (such as the ratification of the agreed measures and decisions in secretive forums without any accountability) continued. Also, during the Maastricht period, member states were slow on the development of the process and the role of supranational institutions was minimal. Steps like the ratification of the Dublin Convention and the safe third country principle allowed the member states to pursue their ‘restrictive policy objectives’.¹⁸² Third pillar, which included the migration-related issues similarly contained weak rules in terms of decision making. For instance, as mentioned above, the treaty pointed out that member states had a national veto in the Council of Ministers (the Council of the EU) and agreements would not be binding on member states. As a result, harmonization of the immigration policy became a “cumbersome, bureaucratic and ineffective process”.¹⁸³

Notwithstanding these problems, however, in the middle of 1990s, new attempts appeared to arrange the immigration and asylum policies under the EU framework. A chief propelling factor behind this search was the increasing asylum applications and illegal immigration succeeding the disintegration of Yugoslavia and the ensuing conflict in the Balkans during this period. Furthermore, the establishment of the common market, the rising of immigration, as well as security concerns emanating from these developments unquestionably altered the nationalistic

¹⁸⁰ Castles, “Why Migration Policies Fail?”, p. 218.

¹⁸¹ Castles, “Why Migration Policies Fail?”, p. 218.

¹⁸² Geddes, **The Politics of Migration...**, p. 136.

¹⁸³ Adam Luedtke, “Fortifying Fortress Europe? The Effects of September 11 on EU Immigration Policy”, **Immigration Policy and Security: US, European and Commonwealth Perspectives**, (eds.) Terri E. Givens, Gary P. Freeman, David L. Leal, Routledge, New York, 2009, p. 132.

perception on migration issues.¹⁸⁴ When these external pressures emerged and migration started to increase intensively, then this situation led to convergence of national preferences. Member states preferred to avoid ‘negative externalities and transaction costs’ instead of struggling by themselves.

At this juncture, member states adopted the intergovernmental cooperation in migration-related matters as a way of avoiding national restrictions and as an opportunity to exclude the European Court of Justice or other social actors. However, at the end of 1990s, they became aware of the shortcomings of the intergovernmental cooperation.¹⁸⁵ Intergovernmentalist theory consider the institutional structure of the EU as a dependent variable; as the product of treaty bargaining. However, it is not possible to understand institutional choice without initially understanding institutional consequences. Thus, the treatment of intergovernmentalists reduces their ability to understand institutional choice. For instance, in the Maastricht Treaty, while the most people give attention to the decision to move monetary union, most significant political reform in the treaty was the formation of co-decision procedure.¹⁸⁶ The fact is that “institutions determine how policy objectives will be translated into political outcomes”.¹⁸⁷

Accordingly, since late 1990s, supranationalism and cooperation have advanced further among member states regarding asylum, illegal migration and border control in which they both refrain from the negative effects of these matters and seek to legitimize their action¹⁸⁸. EU member states then aimed for ‘convergent immigration policies’ as a result of their declining capacity to impede free flow of labor and capital led by globalization.¹⁸⁹ Accordingly, contrary to expectations, they chose to cooperate while allocating a room of manoeuvre for themselves. However, when their interests did not obviously converge, there was less policy harmonization

¹⁸⁴ Kerstin Rosenow, “Europeanisation of Integration Policies”, **International Migration**, Vol.47, No.1, 2009, p. 141.

¹⁸⁵ Rosenow, p. 141.

¹⁸⁶ George Tsebelis, Geoffrey Garrett, “The Institutional Foundations of Intergovernmentalism and Supranationalism in the European Union”, **International Organization**, Vol.55, No.2, 2001, p. 386

¹⁸⁷ Ibid, p. 387

¹⁸⁸ Faist, Ette, p.8.

¹⁸⁹ Caviedes, p. 291.

or communitarization in migration-related issues.¹⁹⁰ In such a context, social institutions like the EU have become an intervening variable that affecting the ways that actors follow preferences, rather than change them.¹⁹¹ Accordingly, when the EU have succeeded economic union and come closer to the political union, member states' migration policies has been affected by this development.

¹⁹⁰ Messina, p. 155.

¹⁹¹ Ben Rosamond, "New Theories of European Integration", in **European Union Politics**, (ed.) Michelle Cini Oxford University Press, Oxford, 2003, p. 115.

THIRD CHAPTER

THE EVOLUTION OF MIGRATION POLICIES AFTER THE AMSTERDAM TREATY

This chapter argues that Amsterdam Treaty takes a significant place in immigration policies of the EU by communitarizing the issue. Accordingly, member states have delegated their authority to the EU institutions regarding immigration policies. The period before Amsterdam Treaty has been analyzed through neo-functionalism and liberal intergovernmentalist theories. However, the period beginning with Amsterdam Treaty and including Tampere Conclusions, Summits and the Hague Program will be mostly examined by the new institutionalist approaches covering rational choice, sociological (constructivist) and historical institutionalism. According to new institutionalist approaches, intergovernmentalism and neo-functionalism pay “insufficient attention” to institutional rules which regulate the decision-making in the EU. Furthermore, European integration theories minimize the effect of the Maastricht Treaty in 1992 (and also the effect of the Single European Act) about its agenda power setting which includes the capacity to make proposals that are difficult to change.¹⁹²

3.1. Amsterdam Treaty: Shift to the Community Pillar

The institutional perspective on treaty reform regarding migration (the Amsterdam Treaty) challenges the assumptions of the liberal intergovernmentalism. Regarding the institutional perspective, decision-making is embedded in a settled historical, institutional and temporal context that helps to form and constrain the possibilities of policy choices.¹⁹³ First, “decisions are often made on the basis of rules and norms accumulated from the past experiences and learning”, rather than products of preferences and the prediction of past events.¹⁹⁴ Second, institutionalized rules and the procedures help guiding decision-makers to interpret and generating

¹⁹² Geoffrey Garrett and George Tsebelis, “An Institutional Critique of Intergovernmentalism”, **International Organization**, Vol. 50, No. 2, 1996, p. 270.

¹⁹³ Ulf Sverdrup, “An Institutional Perspective on Treaty Reform: Contextualizing the Amsterdam and Nice Treaties”, **Journal of European Public Policy**, Vol. 9, No.1, p. 123.

¹⁹⁴ *Ibid.*

meaning from the context. In this context, abiding rules provide increasing decision makers' "normative judgments and their understanding of appropriate alternatives and actions".¹⁹⁵ Third, institutions improve in a path-dependent way. Put differently, decisions that are made at one level provide opportunities and constraints for decision-making at a later level. In this context, institutional design is a "complex process of matching existing institutions, actions and contexts in ways that are complicated and of long duration".¹⁹⁶

Institutions are based on rules, norms, conventions and "discursive" structure that affect human interaction.¹⁹⁷ The EU is the most deeply institutionalized international organization in the world composed of supranational institutions and intergovernmental bodies.¹⁹⁸ Although liberal intergovernmentalism was the leading theory regarding the European integration during 1990s, later international scholars from two different sides of institutionalism have questioned its main theoretical assumptions. The first group supporting rational choice institutionalism and historical choice institutionalism, adopted the rationalist assumptions of Moravcsik, however, they have refused the "institution-free model of intergovernmental bargaining as an accurate description of the integration process".¹⁹⁹ Other group supporting sociological institutionalism and constructivism have brought up more essential objections especially by rejecting the methodological institutionalism of rational choice approach. Instead, they have supported the view that "national preferences and identities were shaped, at least in part, by EU norms and rules".²⁰⁰ It is significant to examine that most of the institutionalist studies regarding the EU would support Mark Pollack who argues that the new institutionalism has the character of starting with the intergovernmentalist claim about member-state primacy, however then considers how "institutions structure individual and collective

¹⁹⁵ Sverdrup, p. 123

¹⁹⁶ Ibid.

¹⁹⁷ Thielemann, p.4.

¹⁹⁸ Mark A. Pollack, "The New Institutionalisms and European Integration", **European Integration Theory**, (eds.) Antje Wiener and Thomas Diez, Oxford University Press, Oxford, 2004, p. 137.

¹⁹⁹ Mark A. Pollack, "Theorizing the European Union: International Organization, Domestic Polity or Experiment in New Governance", **Annual Review of Political Science**, Vol. 8, 2005, p. 361.

²⁰⁰ Ibid, p. 362.

policy choices”.²⁰¹ Accordingly, EU outcomes cannot be analyzed just with an analysis of preferences and relative state power.²⁰²

As a result of the intergovernmental conference in Turin, the Amsterdam Treaty (signed in 2 October 1997) came into force on 1 May 1999 and formulated the basic orientations about the migration policy for the next developments.²⁰³ In the Amsterdam Treaty, member states of the EU performed a major reform in Justice and Home Affairs by integrating immigration and asylum into the Community pillar. Put differently, member states delegate authority to the EC regarding issues related to immigration and asylum. There were two main reasons that stimulated the political will of the member states. First, the European Parliament, the European Commission and most part of the member states agreed on the inadequacy of the institutional reforms brought by the Maastricht Treaty in the third pillar. Although the Maastricht Treaty sought for the urgent precautions that the developments in the international context required, the decision making process lacked the necessary efficiency and the legitimacy. Second, another set of progress was needed before the further EU enlargements, particularly in the community framework.²⁰⁴

After its ratification, competence for the external dimension of the immigration and asylum policy moved from the intergovernmental third pillar JHA to the first pillar and therefore fell under Community legislation.²⁰⁵ As a whole, the period began by the Amsterdam Treaty is also defined as “increasing communitarization”.²⁰⁶ It settled the competences about immigration and asylum in TEC Title IV on ‘Visas, Asylum, Immigration and Other Policies Related to the Free Movement of Persons’ of the EC Treaty.²⁰⁷ Until the introduction of this treaty, policies on migration and asylum continued at the intergovernmental level as in the case of Schengen Treaty and Dublin Convention.²⁰⁸ Amsterdam Treaty, however

²⁰¹ Rosamond, *Theories of European Integration*, p. 116.

²⁰² *Ibid.*

²⁰³ Apap and Carrera, p. 1., See also Tampere Council Conclusions, 15-16 October 1999, SN200/99

²⁰⁴ Bauchinger, p. 51.

²⁰⁵ *Ibid.*

²⁰⁶ Ette, Faist, p. 6.

²⁰⁷ Caviedes, p. 293.

²⁰⁸ Muus, p. 43.

transformed the policies under the Justice and Home Affairs pillar, including the “migration, asylum, the rights of the third country nationals, control of external borders, visas and administrative cooperation in these matters” into the first (community) pillar.²⁰⁹ Member states have seen migration control related with national sovereignty and identity, thus there is not community competence on immigration controls and rights of third country nationals.²¹⁰

At that point, member states acted rationally and preferred to delegate authority in most of the migration to the supranational agencies because they believed that particularly in issues such as illegal migration or external migration, the EU itself would more successfully manage. Rational-choice institutionalism defines institutions as “formal legalistic entities and sets of decision rules that impose obligations upon self-interested political actors”.²¹¹ It is driven by logic of consequentialism which argues that actors make preferences for a certain object by evaluating expected consequences of their actions. Thus, they rationally evaluate the costs and benefits of various strategy options for their actions by considering the attitudes of other actors.²¹² Institutions are significant for rational-choice institutionalists, because they behave as “intervening variables”.²¹³ They do not change the ‘preference functions’, instead they affect the ways that actors follow these preferences.²¹⁴ Institutions limit or widen the order of available choices for actors “to realize their interests”.²¹⁵ Thus, states and other actors functionally choose international institutions to advance their own interest.²¹⁶

²⁰⁹ Gabriele Orcalli, “Constitutional Choice and European Immigration Policy”, **Constitutional Political Economy**, Vol. 18, No.1, 2007, p. 13. and also see Lindstrøm, p. 591.

²¹⁰ Castles, “Why Migration Policies Fail?”, pp. 217-218

²¹¹ Rosamond, **Theories of European Integration**, p. 115.

²¹² Tanja A. Börzel, Thomas Risse, “Conceptualizing the Domestic Impact of Europe”, in **The Politics of Europeanization**, (eds.) Kevin Featherstone, Claudio M. Radaelli Oxford University Press, 2003, p. 63.

²¹³ Rosamond, “New Theories of European...”, p.115.

²¹⁴ Ibid.

²¹⁵ Thomas Risse, “Social Constructivism and European Integration” , in **European Integration Theory**, (eds.) A. Wiener and T. Diez, Oxford University Press, Oxford, 2004, p. 163.

²¹⁶ Alexander Wendt, “Driving with the Rearview Mirror: On the rational Science of Institutional Design”, **International Organization**, Vol. 55, No. 4, 2001, p. 1020.

The objective of rational choice institutionalists is the changing relative power of institutions.²¹⁷ Studies of rational institutionalism particularly concentrate on two groups of questions. On the one hand, they deal with “why and under what conditions” member-states may delegate power to supranational agents such as the Commission or the Court of Justice.²¹⁸ In the context of EU migration policy, member states have delegated power to supranational agents mainly due to inadequacy of the institutional reforms and necessary settlements before the enlargement. On the other hand, they ask what happens when supranational agents such as the Commission or the Court of Justice behave differently from the preferences of member-states.²¹⁹ Institutional approaches analyze the character of the institutions if they are strategic context that provide inducement/ information for actors or constraints on the behavior of the actors.²²⁰ In the Amsterdam Treaty, member states have taken an institutionalist step, because they have seen benefits for themselves from the functions performed by those institutions. A significant function is particularly the reduction of transaction costs.²²¹

Amsterdam Treaty was a significant turning point regarding the communization of immigration and asylum policy by bringing a greater role for EU institutions in decision making and the use of EC legal instruments like directives and regulations.²²² The Amsterdam Treaty formed new legal instruments in the Third Pillar such as “decision” and “framework decision” which are binding on member states and more effective than the “joint actions” and “conventions” of the Maastricht period.²²³

²¹⁷ Rosamond, “New Theories of European...”, p. 115.

²¹⁸ Pollack, pp. 142-143.

²¹⁹ Ibid.

²²⁰ Jeffrey T. Checkel, “Social Construction and Integration”, **Journal of European Public Policy**, Vol. 6, No. 4, 1999, pp. 546-547.

²²¹ Rosamond, **Theories of European Integration**, p. 116

²²² Virginie Guiraudon, “Immigration and Asylum: A High Politics Agenda” in (eds. Maria Green Cowles and Desmond Dinan) **Developments in European Union**, Palgrave, Basingstoke, 2004, p. 166.

²²³ Elsen, p. 15.

According to sociological institutionalism²²⁴ and constructivist approaches of IR, driven by the logic of appropriateness”, action is based on “rules, practices and norms that are socially constructed, publicly known and anticipated”.²²⁵ These collective norms and “intersubjective meanings” in a structure affect the ways that states determine their aims and what they perceive as “rational”.²²⁶ It is the institutional context/ institutions including informal norms and conventions and also formal rules; they “constitute” actors and influence states’ seeing the world.²²⁷ Institutions provide member states to understand “who they are, what their context is, and what might be the motivations of other actors”.²²⁸ For instance, “international and national human rights norms and their interpretation by the Courts are of course not just legal obligations. They also influence interests, preferences and identities, shaping conceptions of what actors consider appropriate behavior. In doing so, they limit the options that policy makers consider to be open to them when taking decisions on asylum matters.”²²⁹

Significantly, though the logic of consequentialism or the logic of appropriateness is based on expected consequences or norms/rules, two logics of action are “not mutually exclusive”.²³⁰ Therefore, it is generally difficult to explain political action depending on one of these logics. Any noteworthy action is likely to include elements of the each logic. On the one hand, interests by which they evaluate their expected consequences form political actors, on the other hand, the rules embedded in their identities and political institutions shape political actors. They both calculate consequences and follow rules, thus the relationship between the two is often “subtle”.²³¹

²²⁴ Sociological institutionalism is a “strand” of literature which is closely related with the constructivist turn in international and European studies. Rosamond, “New Theories of European...”, pp. 116-117.

²²⁵ Thielemann, p. 5.

²²⁶ Börzel, Risse, pp. 65-66.

²²⁷ Pollack, “The New Institutionalisms...”, p. 139.

²²⁸ Rosamond, “New Theories of European...”, p. 117.

²²⁹ Thielemann, pp. 15-16

²³⁰ James G. March and Johan P. Olsen, “The Institutional Dynamics of International Political Orders”, *International Organization*, Vol. 52, No. 4, 1998, p. 952.

²³¹ Ibid.

According to the treaty, the Commission would obtain an exclusive right of initiative after a five-year transition period. Until that period (2004), the Commission will share the right of initiative with the member states.²³² In this transition period, the Council would continue to be the sole legislative body and thus make decisions unanimously in most of the issues after consultation with the European Parliament on a proposal from the Commission or on the initiative of a member state.²³³ Put differently, while the European Parliament would only have a consultative role, the Commission would share its powers of proposal with the member states.²³⁴

During this five-year period, member states were expected to take measures about “the removal of internal border controls, cooperation in the control of the outer borders, and the harmonization of visa requirements and asylum policy (including criteria for determining the responsible state, minimum standards for refugee protection and due process)”.²³⁵ On the other side, the European Court of Justice would only be able to act depending on the basis of a “referral from the highest courts in the member states (this removes the right to give preliminary judgments)”.²³⁶ Significantly, the European Court of Justice has no jurisdiction regarding national border-crossing measures aiming safeguarding internal security. Furthermore, the article 63 of the EC allows member States to protect or introduce national regulations that are compatible with the Treaty and international agreements in measures regarding²³⁷

“- the conditions of entry and residence, and standards on procedures for the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunion,

²³² Guiraudon, p. 166.

²³³ There was an exception for the United Kingdom and Ireland, because they did not sign the Schengen Agreements. Moreover, there were special provisions for Denmark, Norway and Iceland. See Richard Plender, “EU Immigration and Asylum Policy- The Hague Programme and the Way Forward”, *ERA Forum*, Vol. 9, No. 2, 2008, p. 303.

²³⁴ Geddes, “International Migration and...”, pp. 25-26.

²³⁵ Tholen, p. 326.

²³⁶ Geddes, “International Migration and...”, pp. 25-26.

For detail, see The Treaty establishing the European Community (as amended by the Treaty of Amsterdam), http://eur-lex.europa.eu/en/treaties/dat/12002E/pdf/12002E_EN.pdf, Article 67, the decision-making procedure

²³⁷ The Treaty establishing the European Community (as amended by the Treaty of Amsterdam), http://eur-lex.europa.eu/en/treaties/dat/12002E/pdf/12002E_EN.pdf, Article 63

- illegal immigration and illegal residence, including repatriation of illegal residents;
- definition of the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.”²³⁸

Therefore, the European Court of Justice had a little, constrained authority on the amendment of any national measures related to security.²³⁹ In this context, the ECJ cannot apply preliminary rulings against decisions when there is any judicial remedy under the national law.²⁴⁰ Rather than being a full supranationalization, Amsterdam Treaty connoted a “cautious communitarization” because the basis of the decision-making system would remain intergovernmental until at least 2004.²⁴¹

At the end of the transition period, by 2004, member states would provide the free movement of persons together with measures on “the crossing of external borders, asylum, visas, immigration, increased judicial cooperation on civil matters and administrative cooperation”²⁴² Furthermore, a significant amendment was the change of Commission’s joint power of initiative to the ‘exclusive power of initiative’ by May 2004.²⁴³ It means that issues related with immigration and asylum would be under the jurisdiction of the European Community.²⁴⁴ Thus, Council of Ministers would take decisions on the basis of qualified majority voting rather than unanimous voting which meant an abandonment of sovereignty.²⁴⁵ For instance, the exercise of the codecision procedure after Maastricht and Amsterdam Treaties and the changes about the voting rules in the Council (from unanimity to qualified majority) have been alterations in the institutional rules of the EU. They do not change the ‘preference functions’, instead they affect the ways that actors follow

²³⁸ Orcalli, p. 13.

²³⁹ Ibid.

²⁴⁰ Geddes, **The Politics of Migration...**, p. 141.

²⁴¹ Geddes, “International Migration and...”, p. 25.

²⁴² Plender, p. 303.

²⁴³ Hélène Oger and Ségolène Barbou Des Places. “Making the European Migration Regime: Decoding Member States’ Legal Strategies”, **European Journal of Migration and Law**, Vol. 6, No. 4, 2005, p. 357.

²⁴⁴ Stalker, p. 167.

²⁴⁵ De Wenden, p. 92.

these preferences.²⁴⁶ Accordingly, actors have figured out the ways that they need to behave to notice their preferences.²⁴⁷ This condition also increased the role of the European Parliament and allowed the European Court of Justice to have more competencies in the ‘stronger’ first pillar.²⁴⁸

Only the UK, Ireland and Denmark have opted out of the common immigration, asylum and civil law policies.²⁴⁹ While Denmark declared itself as “free to choose whether or not to apply any new decisions” and cooperates only in visa policy, the UK and Ireland stayed outside the Schengen Agreement altogether, stating that they only participate in those issues concerning the “police and legal cooperation in criminal matters and its information system”.²⁵⁰ They did not sign the Schengen Treaty and also Title IV, particularly because of “reluctance in giving up their national sovereignty” in terms of national border control.²⁵¹ Based on this fact, communitization is partially limited due to the decision of these ‘opt outs’.²⁵² Although the UK, Denmark and Ireland have excluded themselves from cooperation by the opt-out mechanism, there has been an opt-in option for them provided by protocols added to the Amsterdam Treaty. By this option, as their national interests are consistent with actions or regulations, they are able to join. Thus, the EU did not exclude their ‘future participation’ for a common migration policy. For other member states, however, national veto power in the EU institutions was gradually reduced and the competency of the European Parliament gradually expanded.²⁵³

Member states have chosen communitization in this policy field due to 4 main reasons. First, member states are engaged in deepening the economic integration by forming the free movement of persons. Thus, the ‘functional need’ to provide the similar effect in the internal and external border controls and related

²⁴⁶ Rosamond, “New Theories of European...”, p. 115.

²⁴⁷ Ibid.

²⁴⁸ Elsen, p. 15.

²⁴⁹ Kicinger, Saczuk, p. 14.

²⁵⁰ Melotti, p. 201.

²⁵¹ Bauchinger, p. 58.

²⁵² Orcalli, p. 13.

²⁵³ Petra Bendel, “Everything under control? The European Union’s Policies and Politics of Immigration”, **The Europeanization of National Policies and Politics of Immigration: Between Autonomy and the European Union**, (eds). Thomas Faist, Andreas Ette, Palgrave Macmillan, New York, 2007, p. 33.

issues like visas, asylum and immigration has emerged.²⁵⁴ Second, based on the previous experiences and lessons, member states have become aware that only the Community instruments and ways could be a ‘guarantee’ for the success of these aims. Third, as migration policies are sensitive issues, member states have sought to secure themselves through joining supranational framework with the help of control mechanisms.²⁵⁵ Finally, member states which were reluctant to communitise migration policies later consented to it as they have the option of flexibility clauses and opt-outs.²⁵⁶

However, Rational choice institutionalist views cannot be excluded the argument, as member states have been sensitive about delegating all decision-making to the EU level regarding migration and asylum policies. Guild et al. point out that the predominance of intergovernmentalism” and “the principle of subsidiarity”²⁵⁷ shape the basis of common EU migration policy under the logic of keeping a room of manoeuvre for themselves, particularly in legal migration.²⁵⁸ Although the migration policy has been under the ‘shared competence’ of the EU and the member states since the Amsterdam Treaty, the latter ones continue to protect their role in “the management of admissions, stay and inclusion of non-EU nationals”.²⁵⁹ Member states strive for their primary role in the field of legal migration, including the “conditions of entry and residence, and standards on procedures for the issue by member states of long-term visas and residence permits, including those for the purpose of family reunification” by applying unanimity rule and consultation procedure.²⁶⁰ It means that further integration towards a common migration policy is supported by member states if it serves their national interests.

²⁵⁴ Stetter, p. 96.

²⁵⁵ Stetter, p. 96

²⁵⁶ Ibid.

²⁵⁷ According to subsidiarity principle which is approved in the Maastricht Treaty , if the EU can more effectively undertake a task than the member states, which act independently, the EU will be responsible for this task.

Messina, p. 139.

²⁵⁸ Elspeth Guild, Sergio Carrera and Alejandro Eggenschwiler, “Informing the Immigration Debate”, **CEPS Background Briefing**, 2009, p. 2.

²⁵⁹ Ibid.

²⁶⁰ Ibid.

In the entire context, Amsterdam Treaty is significant as it has ensured “a legal basis and a political direction” for the immigration and asylum issues in the EU.²⁶¹ Moreover, it has become a starting point for other significant developments in the EU, such as the “aspects of a common asylum system covering the definition of refugee status, conditions for the reception of asylum seekers and a database on rejected claims (EURODAC)”.²⁶² Starting with the Amsterdam Treaty, a series of agreements and declarations are adopted which show “political will of the member states to move towards common migration and asylum policies”.²⁶³ During the period from the ratification of Amsterdam Treaty (1999) to 2004, 39 measures were agreed. Most of the measures were related with “coercive” sides of migration policy including asylum, irregular migration, trafficking, smuggling and border controls. Contrarily, migration policy regarding labor migration remains weak.²⁶⁴

To sum up, during 1990s, member states have both dealt with the intra-EU migration related with the market as well as the extra-EU migration concerning the population control and security.²⁶⁵ The result was “the process of centralization in decision making and policy development in the field of migration” after the Amsterdam Treaty entered into force.²⁶⁶ While they have become closer to the delegation of the supranational authority to resolve this issue, however, they have also retained their ‘national discretion’ in many issues. For instance, until 2004, member states continued to possess the veto power, due to the unanimity principle. Also, some member countries have benefited from the opt-out mechanism or made some reservations. Moreover, states still retain a lot of discretion in some issues that the treaty did not deal “conclusively”, such as family reunification.²⁶⁷ In addition to these factors, regarding migration and asylum, the role of European Parliament is

²⁶¹ Geddes, “The Europeanization of What...”, p. 52.

²⁶² *Ibid.*, p. 53.

²⁶³ Andrew Geddes, “Europe’s Border Relationships and International Migration Relations”, **Journal of Common Market Studies**, Vol. 43, No. 4, 2005, p. 797.

²⁶⁴ *Ibid.*

²⁶⁵ Tholen, p. 326.

²⁶⁶ *Ibid.*

²⁶⁷ *Ibid.*

limited to the ‘consultative’ and while the role of the European Court of Justice is larger than before, it is still constrained.²⁶⁸

3.2. Implementing Amsterdam Treaty: Tampere Conclusions

At the Tampere Summit in 1999, the EU member states acceded to develop balanced common policies in immigration and asylum issues.²⁶⁹ The signatories of the treaty met in the summit to design “tangible and timely progress” to implement the necessary measures decided by the Amsterdam Treaty.²⁷⁰ They had already committed to fighting illegal migration, but they were also aware of the need to deal with giving fair-treatment to third country nationals, fighting racial and ethnic discrimination, respecting international obligations of asylum and considering labor market needs for foreign workers.²⁷¹ Particularly, the emphasis of the summit was on the freedom and rights of European residents. Accordingly, a common immigration and asylum policy was essential to take off internal borders and maintain full freedom of movement.²⁷²

The Tampere Summit is significant because for the first time the Council was explicit both in demanding for the EU to work formally towards a binding common EU policy.²⁷³ Furthermore, the summit has asked for a harmonization in the legislations of the member states about the admission and the stay of non-nationals.²⁷⁴ The summit also has provided an important impetus for the homogenization of the EU migration policies, in the sense that it has introduced some definite and necessary measures that member states had to follow. Thus, it has helped the members shifting their migration policies in congruence with the emerging common policy. According to the Council, member states should consider the economic and the demographic conditions of the EU countries and the needs of the immigrants’ countries while developing the issue. The ‘progressive

²⁶⁸ Ibid.

²⁶⁹ Guiraudon, “Immigration and Asylum...”, p. 170.

²⁷⁰ Messina, p. 145

²⁷¹ Guiraudon, “Immigration and Asylum...”, p. 170.

²⁷² Ibid.

²⁷³ Moraes, p. 120.

²⁷⁴ Melotti, p. 202.

improvement' of the status of immigrants was similarly another subject that was pointed out as important. Moreover, common measures to fight racism, xenophobia and all forms of economic, social and cultural discrimination were drawn out as necessary.²⁷⁵

In the conclusions of the summit, there were ten general milestones for providing the progress toward the formation of the area of freedom, security and justice.²⁷⁶ In this context, the principles that the process require include;

“partnership with countries of origin and transit to promote human and political rights, a common European asylum system based on the full and inclusive application of the Geneva Convention; a more vigorous integration policy to ensure fair treatment and rights of third country nationals and obligations comparable to those of EU citizens and the management of migration flows, with an emphasis on secure external borders and fighting crime”.²⁷⁷

Moreover, the Tampere Summit proposed having a closer cooperation between the EU consulates in third countries and the establishment of common EU visa issuing offices. The Council paid attention to the security dimension of the migration issue here, for instance, by dealing with irregular migration. Thus, the European Council has demanded crucial ‘sanctions’ against “those who engage in trafficking in human beings and economic exploitation of migrants”.²⁷⁸ Moreover, the Council has also pointed out the necessity of “the effective control of the Union’s future borders, the incitement of voluntary return and the readmission agreements with concerned third countries”.²⁷⁹

By focusing on all these requirements in detail, the Tampere Conclusions aimed for providing a coherent migration and asylum policy for the member states

²⁷⁵ Ibid.

²⁷⁶ John D. Occhipinti, “Police and Judicial Cooperation”, in (eds. Maria Green Cowles and Desmond Dinan) **Developments in European Union**, Palgrave, Basingstoke, 2004, p. 185.

²⁷⁷ Franck Düvell, Bill Jordan, “Immigration, Asylum and Welfare: The European Context”, **Critical Social Policy**, Vol. 22, No. 3, 2002, pp. 505-506.

²⁷⁸ Anneliese Baldaccini and Helen Toner, “From Amsterdam and Tampere to The Hague: An Overview of Five Years of EC Immigration and Asylum Law”, (eds.) Anneliese Baldaccini, Helen Toner, Elspeth Guild in **Whose Freedom, Security and Justice? EU Immigration and Asylum Law and Policy**, Oxford and Portland, Oregon, Hart Publishing, 2007, p. 3.

²⁷⁹ Ibid, pp. 3-4.

particularly as an institutional norm-based part of the community order and as a preparation for the enlargement. As this study argues, social (constructivist) institutionalism approach is valid for the subject that member states following the norms, rules and routines of the community to accommodate with the conditions of the international context like the enlargement as it serves member state interests. Furthermore, Rittberger suggests a mechanism which is called “hailed convergence” in which the process of developing a regional policy is shaped by common aims, but also restrained by fears of losing sovereignty. Accordingly, a common policy emerges in migration mainly because “it is necessary for other dimensions of the regional integration process to continue, but which countries are reluctant to engage in”.²⁸⁰ In this type of policy convergence, related to the liberal intergovernmentalist theory, member states delegate controversial issues to the supranational level. Policy of hailed convergence particularly helps us explaining cooperation in difficult issues such as migration in which states experience the challenge “balancing their commitment to promote both national interests and cooperation efforts”.²⁸¹

The first clear response of the Commission to the Tampere Conclusions was the two Communication of European Commission both for the European Council and the European Parliament regarding Community Immigration Policy (22 November 2000). This communications announced that “the existing zero immigration policies which have dominated thinking over the past 30 years are no longer appropriate within the new economic and demographic context”.²⁸² Particularly, labor shortages in some sectors and a demographic decline in Europe due to the low fertility rates make this impossible.²⁸³ Individual member states were already recruiting highly-skilled workers. Demographic issues can also become a leading cause of migration, particularly in terms of fertility, mortality, age-structure and labor-force growth.²⁸⁴

²⁸⁰ Berthold Rittberger, “Research Agenda Section”, **Journal of European Public Policy**, Vol. 14, No:1, 2007, p. 160.

²⁸¹ Ibid.

²⁸² Caviedes, p. 298.

²⁸³ Guiraudon, “Immigration and Asylum...”, p. 170.

²⁸⁴ Castles, “International Migration at the Beginning...”, p. 271.

For instance, by a decision in Germany in 2000, the Green Card regulation, the country proposed 20.000 green cards for Indian computer programmers.²⁸⁵ Similarly, the UK introduces a scheme for independent migration in 2002, so-called Green Cards. Accordingly, the country demanded three out of the four criteria to be met to get a highly skilled Migrant Program (HSMP) permit.²⁸⁶ Denmark also announced in 2002 that they were open to work permit applications of highly skilled workers between the age 18 and 45 due to their shortages in some IT and Telecom skills.²⁸⁷ However, these countries did not suggest this as an EU policy, because “the point was to recruit the best for themselves rather than share with other member states”.²⁸⁸

However, due to the difference in national attitudes towards the admission and integration of third country nationals, the Commission was ‘convinced’ that the first step must be “the open discussion of the issues” to try to have a consensus.²⁸⁹ Accordingly, new open method of coordination (OMC) has been formalized and introduced at the Lisbon European Council in March 2000. The main actors of OMC are the Council (strong role as the coordinator), the Commission (as the policy initiator), the relevant committee(s) and the European level social actors.²⁹⁰ Regarding the open method of co-ordination, “member states set common goals and targets rather than reaching agreement on binding EU norms”.²⁹¹ The OMC procedure is likely to be applied for the first six-year period for general immigration policy and asylum policy “to support and complement EC legislation while providing a framework for reviewing the implementation of these instruments together with the

²⁸⁵ Guiraudon, “Immigration and Asylum...”, p. 170.

²⁸⁶ These four criteria were; 1. Holding a Phd or equivalent qualification, 2. Having a five years of graduate experience, 3. Have been earning at least € 64,000 and 4. Be able to demonstrate a significant achievement in their field.

Apap, p. 319.

²⁸⁷ Ibid, 320.

²⁸⁸ Guiraudon, “Immigration and Asylum...”, pp. 170-171.

²⁸⁹ Caviedes, p. 298.

²⁹⁰ Ibid, pp. 295-296.

²⁹¹ Guiraudon, “Immigration and Asylum...”, pp. 168-169.

member states”²⁹² OMC procedure is substantial because it does not pressure for harmonization and it is flexible.²⁹³

In the OMC process, member states have to compare and evaluate immigration policy in an “open forum” together with very liberal civil societal and international actors which have a risk of losing control over the agenda-setting process. Therefore, this soft-law learning process constitutes a greater threat to sovereignty in policy-making than an undeveloped Community legislative competence in which “the members still designate which areas are incorporated into Community Law”.²⁹⁴ Theoretically, as sociological institutionalism argues, this (OMC) symbolizes a socialization process in which actors internalize new norms and rules through arguing, persuasion and social learning to redefine their interests and identities.²⁹⁵

To sum up, the Commission has followed a ‘two-phase’ approach since the Tampere Conclusions by aiming to provide a basic legal framework focusing on the development of minimum standards in articles displayed by Amsterdam Treaty and also by consolidating it with the open method of coordination to foster “gradual convergence of legislation, policy and practice”.²⁹⁶ The EU, in particular, emphasized concerns regarding asylum, irregular migration, readmission and return.²⁹⁷ These attempts are mostly provided and supported by enhancing the legal framework and advancing further through summits in the Community.

²⁹² Ibid, p. 299.

²⁹³ Ibid, p.302. Germany’s request at the Nice Conference to keep immigration and asylum policy outside of qualified majority voting until 2004 and the UK’s and Ireland’s decision to opt out all of visa and immigration proposals display the lack of a consensus in the harmonization approach and give importance to a suitable solution should respect the member states’ flexibility concerns.

²⁹⁴ Caviedes, p. 306.

²⁹⁵ Börzel, Risse, p. 66.

²⁹⁶ Geddes, “Europe’s Border Relationships...”, p. 798.

²⁹⁷ Ibid.

3.3. Enhancing the Legal Framework and Cooperation through Summits: The Effect of 9/11 Attacks

Reorganization of immigration policy in the EU was divided with September 11 attacks. 9/11 attacks and coinciding economic slowdown stimulated security-based view of migration control.²⁹⁸ The threat of Islamic fundamentalism emerged after the attacks on the Twin Towers in New York and the Pentagon in Washington in 2001 followed by the US intervention in Afghanistan and Iraq with the support of the UK, Italy and Spain and Poland (which was an EU candidate at the time). Moreover, the terrorist attacks in Madrid on 11 March 2004 and London on 7 July 2005, as well as the numerous attacks upon the British and Italian citizens in different parts of the world increased the already existing fears and sensitivity toward security.²⁹⁹ Since these terrorist attacks, immigration has climbed up onto the higher levels of the EU agenda as a security threat. Thus the EU member states have decided that they can weaken this threat only through ‘common action’.³⁰⁰ For example, the Council demands the Commission to analyze the relationship between safeguarding internal security and fitting with international human rights obligations.³⁰¹

While the Commission and the Council make statements about the linkage between terrorism and migration/ asylum, Germany emphasized that “the fight against terrorism required the creation of an EU visa identification system”.³⁰² Subsequently, EU leaders made this proposal in the European Council of Leaken took place on 14-15 December 2001, in which the member states also reintroduced the commitments of Tampere. The Council approved the proposal in February 2002 which shows the acceleration of decision-making in this extent.³⁰³ In the summit, member states dealt with the factors that trigger migration such as social and economic developments of the sending countries. However, there were problems

²⁹⁸ Guiraudon, “Immigration and Asylum...”, p. 171.

²⁹⁹ Melotti, p. 204.

³⁰⁰ Adam Luedtke, “European Integration, Public Opinion and Immigration Policy”, **European Union Politics**, Vol. 6, No. 1, 2005, p. 84.

³⁰¹ Guiraudon, “Immigration and Asylum...”, p. 171.

³⁰² Ibid.

³⁰³ Ibid.

related with the resistance of some member states about coordinating their actions for an area which had previously their 'exclusive responsibility'.³⁰⁴ In this context, both rational choice and sociological institutionalism are effective that member state follow the institutional rules of the game by adopting the commitments of the Tampere, but they also put their rational choices into forward through Summits in which they are more effective actors.

In the summits of the EU national administrations of each member state saliently put forward their different point of views and diverging national interests regarding migration policies. Following the Leaken Summit, for instance, Germany and Austria had particular concerns regarding the risk of mass migration from eastern European countries and consequently did not want to ease the visa process for the citizens of these countries. Meanwhile, France was sensitive about the limitations of its sovereignty through supranational arrangements, so it supported the principle of subsidiarity. In general, while the EU member states supported for pursuing more open policy for legal migration, they did not want to recognize or give more rights to illegal migration.³⁰⁵

Another factor that led to tightening of immigration policies were the electoral success of xenophobic populist parties in Europe. Xenophobic parties gained ground in local and regional elections particularly in Flanders (Belgium) and Hamburg (Germany).³⁰⁶ Moreover, after the 9/11 period, both far-right parties and centrist political parties have also used the issue to continue "stringent restrictions on migration".³⁰⁷ By pointing out at immigrants as a 'security threat', these actors have tried to legitimize the introduction of strict measures about tightening and banning migration.³⁰⁸

³⁰⁴ Melotti, p. 203.

³⁰⁵ Melotti, p. 203.

³⁰⁶ Guiraudon, "Immigration and Asylum...", p. 172

³⁰⁷ Boswell, "European Migration in Flux...", p. 2.

³⁰⁸ Christina Boswell, "Migration, Security and Legitimacy: Some Reflections", **Immigration Policy and Security: US, European and Commonwealth Perspectives**, (eds.) Terri E. Givens, Gary P. Freeman, David L. Leal, New York: Routledge, 2009, p. 93.

In the second half of 2001, the Commission, in its report, summarized the developments concerning the attempts of the member states from the Amsterdam Treaty to 2001. In this context, it pointed out that after the ‘pillar switch’ executed in the Amsterdam Treaty, Tampere Conclusions would be urgently applied based on the certain deadlines (conclusions would be implemented until 2004). However, the real problem was that although the European Commission mentioned some positive developments such as creation of a European Refugee Fund, a directive on Temporary Protection and the establishment of the Eurodac system, adversely, the Commission emphasized the ‘reluctance’ against proposed measures (for instance, refusing to yield national prerogatives on visa policy³⁰⁹) by one or more member states in other areas. The Commission further mentioned that this attitude could negatively affect the whole process regarding necessary measures.³¹⁰ Generally, the Commission report has pointed out that common action by all of the member states is necessary for the most effective result regarding the implementation of the treaty conclusions. Furthermore, the Commission’s 2001 communication about the coordination of national migration policies include an attempt by the Commission to “stake a role” as the coordinator of national policies for migration drafted by member states regarding the “management of migration flows, admission of economic migrants, partnership with third countries and the integration of third country nationals.³¹¹ Put differently, as taking a coordinating role responsible of initiation, mobilization and mediation, the Commission holds this as an opportunity for supranational activity.³¹²

To sum up, based on the Amsterdam Treaty and the policies formed in the Tampere European Council of 15-16 October 1999 and the Seville Conclusions of 21-22 June 2002, the Commission thus composed the main elements for framing a common policy on migration for the EU. The next European Council took place in June 2003 in Thessaloniki. During the meeting in Thessaloniki, there was a shift from the emphasis on border control to more attention on ‘integration of immigrants’

³⁰⁹ Messina, p. 157.

³¹⁰ Geddes, **The Politics of Migration and Immigration in Europe**, p. 139.

³¹¹ Geddes, “International Migration and...”, p. 31.

³¹² Ibid.

and ‘cooperation with countries of origin’.³¹³ In general, these summits provided concurrent atmosphere for convergence of member state interests regarding migration policies of the EU to easily apply the Tampere Conclusions. Furthermore, in time, member states made less use of their right of initiative and they prefer to call upon the Commission to develop the ideas that they put forward. Moreover, member states control the agenda, but delegate policy elaboration to the Commission, “as in the case of the post-September 11 demand by Germany for a new visa identification system.”³¹⁴

3.4. The Hague Program 2005-2010

Since the beginning of 2000s, there were some key EU directives and regulations about asylum and migration. However, as Linstrom points out, this progress can “hardly be hailed a comprehensive and common European Policy on Asylum and Migration”.³¹⁵ From 1999 to 2004, member states have also adopted some ‘legal instruments’ besides action plans and policy documents. All these steps have significantly affected the free movement and residence of third country nationals, or those demanding access to the territory of the EU for protection or other purposes.³¹⁶ It means that rather than the strong state-centric policy choices, member states have acted in congruence with their perceived national and international interests, including their need for labor or economic, political and social changes around the world.

The developments since 1990s, the Amsterdam Treaty, subsequent the Tampere Conclusion, Summits and the Hague Program point out that “early decisions provide incentives for actors to perpetuate institutional and policy choices inherited from the past”. (path-dependence)³¹⁷ accordingly, historical institutionalism defines institutions as “formal rules, compliance procedures and standard operating practices that structure relationships between individual units of the polity and the

³¹³ Castles, “Why Migration Policies Fail?”, pp. 220-221.

³¹⁴ Guiraudon, “Immigration and Asylum...”, pp. 172-173.

³¹⁵ Lindstrøm, p. 598.

³¹⁶ Baldaccini and Toner, p. 1.

³¹⁷ Pollack, “The New Institutionalisms...”, p. 140.

economy. This means that institutions comprise not just formal constitutional entities, but also instances of established informal interaction and aspects of ‘normative social order’ such as conventions, codes of behavior and standard constraints upon behavior.”³¹⁸ They concentrate on the long-term effects of institutional choices made at specific period in time.³¹⁹

As historical institutionalism argues, institutional choices that member states have taken in the past can endure or become ‘locked-in’, by this way, shapes and restrain actors later in time, in their future political choices and outcomes.³²⁰ Particularly, lock-in of formal institutions refers to the acquirement of distinctive and ongoing agendas by the bodies like the Commission, as in the case of the period following 2004. Moreover, the ECJ also became an effective of the quasi-constitutionalization of the treaties and the general expansion of European-level policy competence.³²¹

By the end of 2004 in particular, there were two developments regarding the asylum and migration Policy for the EU. First, while the control and surveillance of external borders remain under the national discretion, the European agency has ensured a specialized border assistance program which is called the “Management of Operation Cooperation at the External Borders”, and was established in 2005.³²² Second, the European Council developed the Hague Program in November 2004 in Brussels after the 5-year period of Tampere ended.³²³ In the Hague Program, the European Council has demanded for “a strategy covering all external aspects of the Union policy on freedom, security and justice, based on the measures developed in this program to the Council.”³²⁴ Following the first implementation phase of the Tampere Conclusions, the Hague program has outlined the agenda for the EU for the period between 2005 and 2010, as the second implementation phase. While the first

³¹⁸ Rosamond, **Theories of European Integration**, p. 115.

³¹⁹ Pollack, *The New Institutionalisms...*, p. 148.

³²⁰ *Ibid*, pp. 139-140.

³²¹ Rosamond, **Theories of European Integration**, p. 117

³²² Bendel, pp. 36-37.

³²³ Lindstrøm, p. 598.

³²⁴ *Ibid*, p. 598-599.

step aims to provide external border control, the latter maintains the strategy for the member states in that 5-year period while applying Tampere Conclusions.

Accordingly, the Hague Program is an Action Plan for Freedom, Justice and Security and offers detailed proposals for EU action on “terrorism, migration management, visa policies, asylum, privacy and security, the fight against organized crime and criminal justice”.³²⁵ The Hague Program focuses on ten areas requiring primary action mainly including the “common European asylum system, measures for foreigners to legally work in the EU, European framework for the successful integration of migrants, partnerships with third countries, policy of expel/ return of illegal immigrants, a fund for the management of external borders, Schengen information system and common visa rules”.³²⁶ In this period, leaders of the EU reconcile to use qualified majority decision-making and co-decision making in the issues of asylum, immigration and border control issues, but issues related with legal immigration remains subject to the decision making rule of unanimity.³²⁷

To summarize, the Hague Program aims to complete the incomplete implementation of the Tampere Conclusions and adopt new measures for accelerating the accommodation of developments towards a valid EU Area of Freedom, Justice and Security. It is generally very similar to the provisions asserted by the Tampere Conclusions. The basic difference between the Conclusions and the Hague Program is that the latter clearly points out the provisions of the 2004 Constitutional Treaty without the impossibility of envisaging its disapproval. Therefore, significant reforms could not enter into force in 2006 as predicted.³²⁸ However, in the end, the Hague Program generally frames the policy on immigration and asylum for a period of 5 years, until 2010. By this way, while the member states maintain the migration control through the border assistance program, the Hague Program outlined the road map for a 5-year period. Significantly, although the Hague Program emphasizes the need for the member states to exchange information

³²⁵ “The Hague Programme - Ten priorities for the next five years”, http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/index_en.htm

³²⁶ Plender, p.305. (for detail see the same article)

³²⁷ Messina, pp. 145-146.

³²⁸ Bauchinger, pp. 104-105.

with some instruments, it is not a breach against national policy making competencies, particularly in the area of legal immigration.³²⁹

Hague Program can be evaluated as an evolution because it aims to complete the Tampere Program, to provide influence in areas like mutual recognition or harmonization, to enforce particularly to monitoring the implementation of European instruments in the member states and to confirm again the need to fight against terrorism related with 9/11 attacks and Madrid bombings. However, Elsen emphasized that Hague Program is not a revolution, because there are only some new ideas or approaches inside it.³³⁰

3.5. Enlargement

As Commission evaluated in 2001, “the coincidence of the Tampere timetable and theta of the enlargement process means that the two are intrinsically linked. In putting in place the necessary legislative and cooperation measures foreseen by Tampere timetable, the Union is in effect creating a new and constantly evolving *acquis* with potentially significant consequences for the candidate countries”.³³¹ Particularly, the enlargement and migration have a close linkage in terms of issues such as borders and admission. For instance, as mentioned before, the new member states had an important duty before the enlargement that they were regarded as the ‘gatekeepers of Europe’s eastern borders’.³³² After the enlargement, they are now responsible from the eastern borders as members of the Union. For instance, following the accession of Poland, the EU exercises stronger controls with its borders with the Ukraine and Belarus.³³³

The enlargements in 2004 and 2007 were ‘unprecedented’, since the income inequality between the Central and Eastern European countries and the EU15 were extensive. Furthermore, in most of these countries unemployment rate was much

³²⁹ Messina, p. 146.

³³⁰ Ellen, p. 23.

³³¹ Geddes, “International Migration and State...”, p. 33.

³³² Tholen, p. 331.

³³³ Geddes, “International Migration and State...”, p. 34.

higher than the EU15.³³⁴ Most of the EU15 countries thus eschewed ‘invasion’ by ‘cheaper labor forces’ of the new member states.³³⁵ Since the new members from the Central and Eastern Europe are post-communist states, they did not have “western political, economic, legal, and administrative tradition” of the post-World War II period that mostly shaped contemporary approaches towards asylum seekers and immigrants in Western European countries.³³⁶ During the communism period in CEEC³³⁷ countries, community members restrained the migration from these countries. After the collapse of communism, there raised potential ‘strong economic incentives’ as a result of the transition from socialist order to the market economy which attracted the CEEC to migrate.³³⁸

The Eastern enlargement symbolizes a puzzle both for the EU itself and also for the conventional theories of European integration. Most of the member states should in fact be opposed to the enlargement due to the substantial financial costs of enlargement.³³⁹ Accordingly, Schimmelfennig uses sociological institutionalism to explain and considers that the EU is a “liberal community of states committed to the rule of law, human rights, democracy and to a social market economy”.³⁴⁰ As a result, member states of the EU have taken the responsibility for a normative obligation and “rhetorical commitment to community values entrapped EU member states to offer accession negotiations to the CEE and other Eastern European countries despite the initial preferences against enlargement”.³⁴¹ However, constitutive norms to some extent affect the behaviors of actors. Thus, when the social (constructivist) institutionalist account seems insufficient to explain the argument among member states regarding the conditions of accession to new

³³⁴ EU 15 was Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom.

³³⁵ Sandra Lavenex and Emek M. Uçarer, “The External Impact of European Integration: The Case of Immigration Policies,” **Cooperation and Conflict**, Vol. 39, No. 4, 2004, p. 430.

³³⁶ Ibid.

³³⁷ CEEC defines the former communist states in Europe. These were Bulgaria, Romania, Estonia, Latvia, Lithuania, Poland, Czech Republic, Slovakia, Hungary, and Slovenia.

³³⁸ Anzelika Zaiceva and Klaus F. Zimmermann. “Scale, Diversity, and Determinants of Labour Migration in Europe”, **Oxford Review of Economic Policy**, Volume 24, Number 3, 2008, pp. 433-434.

³³⁹ Pollack, “The New Institutionalisms...”, p. 152.

³⁴⁰ Risse, p. 172.

³⁴¹ Ibid.

members, rationalist account like liberal intergovernmentalism is capable of supposing the behavior of the EU during and in the result of the enlargement negotiations.³⁴²

Before the 2004 enlargement of the European Union, member states were mainly concerned about “the expected wave of labor migration from the less wealthy acceding countries from Central and Eastern Europe”.³⁴³ Accordingly, immigration wave after the 2004 enlargement would weaken “the affluence of the wealthier part of Europe” especially in countries that have borders with sending countries.³⁴⁴ Moreover, the EU enlargement has created a fear of integration, job/market problems or xenophobia. Accordingly, the member states have been reluctant to give up their exclusive right of initiatives due to their fear of enlargement. Therefore, their fear of enlargement motivates the member states to cooperate on migration related issues.

As neo-functionalist theory argues, as a result of the collapse of communism in the east, Western European states have become “vulnerable” to migration pressures from the East and the West. For that reason, to protect good relations with the Eastern countries and provide a positive political benefit (such as labor supply) from their admission to the EU, member states were likely to cooperate.³⁴⁵ Due to their aging population, global competitiveness and growth, and the sustainability of social security systems, member states thus seek to balance their fear with their need of enlargement.³⁴⁶ Thus, people from the new members have been necessary both for the relief of labor market shortages and for a better economic performance in the EU. The new member states have been regarded as the ‘gatekeepers of Europe’s eastern borders’,³⁴⁷ Put differently, in this case, the larger and significant aim of hauling the

³⁴² Risse, p. 173.

³⁴³ Miloslav Bahna, “Predictions of Migration from the New Member States after Their Accession into the European Union: Successes and Failures”, **International Migration Review**, Vol. 42, No.4, 2008, p. 844.

³⁴⁴ Ibid.

³⁴⁵ Messina, p. 151.

³⁴⁶ Martin Kahanec, Klaus F. Zimmermann, “Migration in an Enlarged EU: A Challenging Solution?”, DIW Berlin Discussion Paper No. 849, 2008, <http://ssrn.com/abstract=1430839>, p. 3.

³⁴⁷ Tholen, p. 331.

Eastern states into the circle of the EU “outweighed any loss of national sovereignty that might result from interstate cooperation on immigration”.³⁴⁸

The enlargements of the European Union in 2004 and in 2007 thus have brought significant demographic change in Europe in terms of migration and the mobility of populations.³⁴⁹ East European migrants are ‘regional free movers’ rather than immigrants. They tend to be in ‘temporary circular and transnational mobility’ by the flow of economic demand within the open borders, instead of seeking long-term permanent immigration and asylum. Furthermore, prior to the 2004 enlargement, many East Europeans were already able to move and work in the West, so the ‘official’ enlargement only managed ‘a situation well established in practice on the ground’.³⁵⁰ In this context, new labor migrants would close the gap in the labor market both in specialized sectors like “information technology, health care and also in low skilled jobs like manufacturing, agriculture and catering”.³⁵¹ At the end, it comes to the conclusion that post-enlargement migration provided young skilled-unskilled labor force for member countries.³⁵² According to Zimmermann, “there is no overall evidence that natives' wages are strongly depressed or that unemployment substantially increases as a consequence of immigration”.³⁵³

Following 2004 and 2007 enlargements, all EU15 members, except the UK, Sweden and Ireland have applied transitional provisions and temporarily closed their labor markets to the new members, hence their rights were partially ‘frozen’.³⁵⁴ As a result of such restrictions on migration, the citizens of the new member states could not use the rights effectively in all EU 15 countries.³⁵⁵ Meanwhile, the UK, Ireland and Sweden have preferred to open their labor markets benefiting from the advantage of not having a common border with the new member states. Also, some countries

³⁴⁸ Messina, p. 151.

³⁴⁹ Adrien Favell, “The New Face Of East–West Migration in Europe”, **Journal of Ethnic and Migration Studies** Vol 34, No.5, 2008, p. 3.

³⁵⁰ Ibid.

³⁵¹ Boswell, **European Migration in Flux...**, p. 1.

³⁵² Kahanec, Zimmermann, p. 3.

³⁵³ Ibid, p. 16.

³⁵⁴ Ettore Recchi, “Cross-State Mobility in The EU; Trends, Puzzles and Consequences”, **European Societies**, Vol. 10, No. 2, 2008, p. 198.

³⁵⁵ Ibid.

were ‘distant’ from the new member states in terms of their language. Moreover, the new member states did not accede to the labor market of these three countries before May 1, 2004.³⁵⁶ The attitude of the remaining EU countries about the labor market entry, however, was inconsistent with one of the main principles of the internal market of the EU, free movement.³⁵⁷ In the course of time, EU 15 countries accepted the process, brought down transitional barriers and allowed freedom of movement for the new members with the effect of need for labor force and the institutional context.³⁵⁸

Although migration intentions in candidate countries were ‘relatively conservative’, public concerns in the EU15 caused significant effect on the old member states’ migration policies.³⁵⁹ Specifically, the EU15 countries had concerns about the adverse effects of enlargements on the ‘labor markets and welfare tourism’ inside their countries.³⁶⁰ Thus, they restrained the opportunities about ‘permit-free employment’ since they seek to revise the integration of the Eastern and Western European labor markets.³⁶¹ Public policy has influenced the migration attitudes and policies of the EU member states, because they live with migrants in a country and member states are concerned with their opinion. Public policy is an important element for the migration policies in European countries and even in liberal countries of the Europe, the public may show reaction about the results of the migration issue affecting social, economic and security aspects of a country.³⁶² In the end, migration issues affect the people of the receiving state in terms of job opportunities, integration of the immigrants or security matters and public opinion.

The public policy in Europe remains ‘polarized’ about migration policy between the national governments and the EU. European people seem to believe that if the issue belongs to the international arena or if the supranational EU authority

³⁵⁶ Ibid.

³⁵⁷ Roos Pijpers and Henk van Houtum, “The European Union as a Gated Community: The Two-faced Border and Immigration Regime of the EU”, *Antipode*, Vol.39, No.2, 2007, p. 298.

³⁵⁸ Favell, “The New Face Of East–West...”, p. 3.

³⁵⁹ Bahna, p. 845.

³⁶⁰ Zaiceva and Zimmermann, p. 433.

³⁶¹ Recchi, p. 198.

³⁶² Boswell, *European Migration in Flux...*, p. 1.

more effectively handles the migration and asylum policy, there is no need for accordance with the 'national culture and identity'. However, in areas like political asylum, cultural policy, VAT, education, agriculture/fishing, unemployment, immigration, workers rights, broadcasting/press, health/welfare, and defense, Europeans prefer national governments over the authority of the EU.³⁶³ Another important point is that formal steps, especially treaties related with migration policies in the EU have a positive effect on the views of the European public opinion. For instance, after Maastricht Treaty was enacted in 1993, there was a decrease in percentage of people (7%) supporting migration policies by national governments.³⁶⁴

³⁶³ Gallya Lahav, "Public Opinion Toward Immigration in the European Union: Does It Matter?", **Comparative Political Studies**, Vol. 37, No. 10, 2004, p. 1174.

³⁶⁴ *Ibid*, p. 1176.

CONCLUSION

Migration is a relatively new issue in international relations and continues to change, so with the support of incoming researches migration and its policy designs come into light. This thesis has sought to overview the main sequential developments concerning immigration and immigration policy in the EU. Particularly, it follows an inquisitory approach to understand the process of the emergence of an EU migration policy together with the member states' attitudes, by analyzing European Integration theories including neo-functionalism, liberal intergovernmentalism, rational-choice, sociological and historical institutionalism. The fundamental questions it has raised include: How can one explain the gradual delegation of the authority by the members to the supranational actor in a self-interested based policy such as migration? Which one of the theories examined in this thesis, including European integration theories best explains the phenomenon? Rather than explaining the gradual development of the EU migration policies through one basic theory, this study has sought to underline that different theories are needed explain different portions of the subject known as migration.

In this study, the interest-based rationalist arguments emphasize how the national member state actors provide international venues for the pursuit of policy objectives in migration-related issues from the post-war period to Amsterdam Treaty. The thesis tried to analyze the period beginning from the Second World War until the Amsterdam through neo-functionalism and liberal intergovernmentalism which symbolizes the old European integration theories. First of all, neo-functionalist arguments mainly support the view that cooperation in one area leads to more cooperation in other related areas. Accordingly, economic integration would reinforce all the states involved and this would then lead to political integration. In the context of EU migration policies, it is convenient to explain the efforts such as the Schengen Treaty or Single Market Integration with neo-functionalist theory. Member states attempted to harmonize their economic policies to facilitate their political integration.

On the other hand, liberal intergovernmentalism argues, states and their governments are the main actors directing the process of integration within the context of their preferences. In such a context, the existence of external pressures results from international migration lead member states to cooperate to abstain from negative externalities and transaction costs such as internal and external pressures including the protection of external frontiers, or the effect of third country national integration. Thus, member states supported and applied the initial framework about cooperation in migration policies. Member states needed labor to recover the economy of the continent, and to act in concert to hold their power against the world. As their interests converge, they have taken place in legal frameworks such as the Schengen Treaty, Single European Act or Maastricht Treaty.

Nevertheless, both neo-functionalist and liberal intergovernmentalist theories fail to explain what is going on in the contemporary EU. They are not comprehensive enough to understand the question of how and why. At this juncture, the thesis has relied on the historical and sociological(constructivist) institutionalism to introduce further interpretation concerning the ideas, norms, knowledge, culture, social context and the logic of appropriateness for the gradual development in the EU migration policy. It is the institutional context of the EU that shapes the identity, roles and the ideas of the member states towards a common migration policy. Accordingly, the thesis argues that the EU has evolved and developed a significant degree of autonomy from member states by constraining and structuring politics through socially constructed meanings including norms and political and economic developments in the international context. Actors' rationality, preference formation and strategic bargaining is therefore framed particularly through the legal framework in migration-related issues including Maastricht Treaty, Amsterdam Treaty, Tampere Conclusions and the Hague Program. Globalization-led economic problems and political ones such as security concerns have further caused member states to approach the issue from a different point of view.

For the period following the Amsterdam Treaty, member states also fulfilled the requirements of belonging to a community by collective action based on norms,

ideational factors and the social context as social (constructivist) institutionalism point out with the effect of internal and external global factors. However, rational choice institutionalism also perceives the EU as an intervening variables which rather than changing the preferences of the member states, it affect the ways that actors follow these preferences. In this framework, institutions provide both strategic contexts and incentives or information for member states. Thus, related with the argument of this thesis, although delegating authority to supranational agents in migration-related issues is contradictory due to its relation particularly with the sovereignty, it also seems valid because in time, member states of the EU succeeded to provide a room of manoeuvre for themselves through reaching at the lowest common denominator. For instance, in the EU, although member states have cooperated regarding illegal migration, they provide an essential room of manoeuvre for themselves by not delegating the decisions regarding legal migration such as the management of admissions, stay and inclusion of non-EU nationals. They also continue to take common measures through summits. However, the final word also rests with them. In this framework, although the existence of legal, binding norms, member states of the EU are taking the advantage of the minimum standards to follow in migration and asylum policies and the chance of opt-out mechanisms.

As there is room for manoeuvre for the national security matters in the articles of the Amsterdam Treaty, such as the harmonization of the national systems; the member states have benefited from these spaces to realize their national interests including the admit, residence or integration of migrants. Regarding the rational-choice perspective, it is possible for member states to cede their attempts when any decision is contrary to their national interests. However, when the member states formed an institution like the EU, they have also accepted the requirements of the collective action embedded in norms, ideational factors and the social context. For instance, if states have the power or ability to control their borders, they do not prefer to delegate their authority to supranational actors. As Geddes argues, cooperation and integration between the EU member states do not mean that member states have weakened or have lost their authority to the EU. Instead, by sharing power with the EU they continue to supply new international venues for the pursuit of policy

objectives. Cooperation therefore invigorates the executive parts of national governments, especially interior ministers at the expense of courts and parliaments.

The existence of minimum standards about immigration policy issues provides a wide room of manoeuvre to the member states of the EU. On the other hand, some main issues like the long-term resident status and family reunification are under the authority of the EU law. Thus, member states cannot change or ‘go below’ the minimum standards. In these issues, the EU principles like “transparency, proportionality and rule of law” remain on the agenda. Also, monitoring and evaluation mechanisms of the EU legal system deal with these issues.³⁶⁵ The expression of minimum standards is another defining feature while talking about the EU immigration policy. The problem, however, is the variations about the implementation of the EU measures among member states. As a result, ‘coherency’ as the key of a common migration system decreases.³⁶⁶ While member states provide the minimum standards for a common migration policy through a legal framework, they also maintain their interests by the remaining standards inside their country, especially in the legal framework.

³⁶⁵ Guild et al., p. 2.

³⁶⁶ Guild et al., p. 3.

REFERENCES

Articles

ADAMSON, Fiona B. "Crossing Borders: International Migration and National Security", **International Security**, Vol. 31, No1, 2006, pp. 165-199

APAP, Joanna. "Shaping Europe's Migration Policy, New Regimes for the Employment of Third Country Nationals: A Comparison of Strategies in Germany, Sweden, Netherlands, and UK", **European Journal of Migration and Law**, Vol. 4, 2002, pp. 309-328

BAHNA, Miloslav. "Predictions of Migration from the New Member States after Their Accession into the European Union: Successes and Failures", **International Migration Review**, Vol. 42, No.4, 2008, pp. 844-860

BENDEL, Petra. "Immigration Policy in the European Union: Still bringing up the walls for fortress Europe?", **Migration Letters**, Vol. 2, No. 1, 2005, pp. 20-31

BOSWELL, Christina. "Theorizing Migration Policy: Is There a Third Way?", **International Migration Review**, Vol. 41, No. 1, 2005, pp. 75-100

BORZEL, Tanja A., "Mind the gap! European integration between level and scope", **Journal of European Public Policy**, Vol. 12, No.2, 2005, pp. 217-236

CASTLES, Stephen. "Why Migration Policies Fail?", **Ethnic and Racial Studies**, Vol. 27, No. 2, 2004, pp. 205-227

CASTLES, Stephen. "International Migration at the Beginning of the Twenty-First Century: Global Trends and Issues", **International Social Science Journal**, Vol. 52, No. 165, 2000, pp. 269-281

CAVIEDES, Alexander. "The Open Method of Co-ordination in Immigration Policy: A Tool for Prying Open Fortress Europe?", **Journal of European Public Policy**, Vol. 11, No. 2, 2004, pp. 289-310

CHECKEL, Jeffrey T. "Social Construction and Integration", **Journal of European Public Policy**, Vol. 6, No. 4, 1999, pp. 545-560

CHECKEL, Jeffrey T. "The Constructivist Turn in International Relations Theory", **World Politics**, Vol. 50, No. 2, 1998, pp. 324-348

CORNELIUS, Wayne A. and Marc R. Rosenblum. "Immigration and Politics", **Annual Review of Political Science**, Vol. 8, 2005, pp. 99-119

DUVELL, Franck and Bill Jordan. "Immigration, Asylum and Welfare: The European Context", **Critical Social Policy**, Vol. 22, No. 3, 2002, pp. 498-517

ELSEN, Charles. "From Maastricht to The Hague: The Politics of Judicial and Police Cooperation", **ERA Forum**, Vol. 8, No 1, 2007, pp. 13-26

FAVELL, Adrien. "The New Face Of East–West Migration in Europe", **Journal of Ethnic and Migration Studies**, Vol. 34, No.5, 2008, pp. 699-841

FAVELL, Adrian. "Europeanisation of immigration politics", **European integration online papers**, Vol. 2, No.10, 1998, pp. 1-23

FORUM, Johan. "Decision-making in a Complex Environment: A Sociological Institutional Analysis of Competition Policy Decision-making in the European Commission", **Journal of European Public Policy**, Vol. 9, No. 2, 2002, pp. 219-237

FRANCHINO, Fabio. "Perspectives on European Immigration Policies", **European Union Politics**, Vol.10, No. 3, 2009, pp. 403-420

GARRETT, Geoffrey and George Tsebelis, “An Institutional Critique of Intergovernmentalism”, **International Organization**, Vol. 50, No. 2, 1996, pp. 269-299

GEDDES, Andrew. “Europe’s Border Relationships and International Migration Relations”, **Journal of Common Market Studies**, Vol. 43, No. 4, 2005, pp. 787-806

GEDDES, Andrew. “ International Migration and State Sovereignty in an Integrating Europe”, **International Migration**, Vol. 39, No. 6, 2001, pp. 21-42

GUILD, Elspeth, Sergio Carrera and Alejandro Eggenschwiler. “Informing the Immigration Debate”, **CEPS Background Briefing**, 2009, pp.1-4

HANSEN, Randall. “Migration to Europe since 1945: Its History and Its Lessons”, **The Political Quarterly**, Vol. 74, No. 1, 2003, pp. 25-38

JORDAN, Bill, Bo Strath and Anna Triandafyllidou. “Contextualising immigration policy implementation in Europe”, **Journal of Ethnic and Migration Studies**, Vol. 29, No. 2, 2003, pp. 195-224

KASSIM, Hussein and Anand Menon. The principal–agent approach and the study of the European Union: promise unfulfilled?”, **Journal of European Public Policy**, Vol. 10, No.1, 2003, pp. 121-139

KRAUS, Margit and Robert Schwager. “EU Enlargement and Immigration”, **Journal of Common Market Studies**, Vol. 42, No.1, 2003, pp. 165-181

LAHAV, Gallya. “Public Opinion Toward Immigration in the European Union: Does It Matter?”, **Comparative Political Studies**, Vol. 37, No. 10, 2004, pp. 1151-1183

LAHAV Gallya, “Ideological and Party Constraints on Immigration Attitudes in Europe”, **Journal of Common Market Studies**, Vol. 35, No. 3, 1997, pp. 377-406

LAVENEX, Sandra and Emek M. Uçarer. “The External Impact of European Integration: The Case of Immigration Policies,” **Cooperation and Conflict**, Vol. 39, No. 4, 2004, 417-443.

LINDSTRØM, Channe. “ European Union Policy on Asylum and Immigration. Addressing the Root Causes of Forced Migration: A Justice and Home Affairs Policy of Freedom, Security and Justice?”, **Social Policy and Administration**, Vol. 39, No.6, 2005, pp. 587-605

LUEDTKE, Adam. “European Integration, Public Opinion and Immigration Policy”, **European Union Politics**, Vol. 6, No. 1, 2005, pp. 83-112

MACMULLEN, Andrew. “Intergovernmental Functionalism? The Council of Europe in European Integration”, **Journal of European Integration**, Vol. 26, No. 4, 2004, pp. 405-429

MARCH, James G. and Johan P. Olsen, “The Institutional Dynamics of International Political Orders”, **International Organization**, Vol. 52, No. 4, 1998, pp. 943-969

MELOTTI, Umberto. “Migration Policies and Political Cultures in Europe: A Changing Trend”, Vol. 16, No. 2, **International Review of Sociology**, 2006, pp. 191-208

MONAR, Jörg. “The Area of Freedom, Security and Justice after the 2004 Enlargement”, **The International Spectator**, Vol. 38, No. 1, 2003, pp. 33-50

MORAES, Claude. “The Politics of European Union Migration Policy”, **Political Quarterly**, Vol.74, No.1, 2003, pp. 116-131

MORRIS, Lydia. "Globalization, Migration and the Nation-state: Path to a Post-National Europe", **British Journal of Sociology**, Vol. 48, No:2, pp. 192-209

MUUS, Philip. "International Migration and the European Union, Trends and Consequences", **European Journal on Criminal Policy and Research**, Vol. 9, No. 1, 2001, pp. 31-49

OGER, H el ene and S egol ene Barbou Des Places. "Making the European Migration Regime: Decoding Member States' Legal Strategies", **European Journal of Migration and Law**, Vol. 6, No. 4, 2005, pp. 353-379

ORCALLI Gabriele, "Constitutional Choice and European Immigration Policy", **Constitutional Political Economy**, Vol. 18, No.1, 2007, pp. 1-20

PEACH, Ceri "Postwar Migration to Europe: Reflux, Influx, Refuge", **Social Science Quarterly**, Vol. 78, No. 2, 1997, pp. 269-283

PIJPERS, Roos and Henk van Houtumn. "The European Union as a Gated Community: The Two-faced Border and Immigration Regime of the EU", **Antipode**, Vol.39, No.2, 2007, pp. 291-309

RECCHI, Ettore. "Cross-State Mobility in The EU; Trends, Puzzles and Consequences", **European Societies**, Vol. 10, No. 2, 2008, pp. 197-224

PLENDER, Richard. "EU Immigration and Asylum Policy- The Hague Programme and the Way Forward", **ERA Forum**, Vol. 9, No. 2, 2008, pp. 301-325

POLLACK, Mark A. "Theorizing the European Union: International Organization, Domestic Polity or Experiment in New Governance", **Annual Review of Political Science**, Vol. 8, 2005, pp. 357-398

ROSENOW, Kerstin. "Europeanisation of Integration Policies", **International Migration**, Vol.47, No.1, 2009, pp.133-159

SCHIMMELFENNIG, Frank. "The Community Trap: Liberal Norms, Rhetorical Action, and the Eastern Enlargement of the European Union", **International Organization**, Vol. 55, No. 1, 2001, pp. 47-80

SELCK, Torsten J., Mark Rhinard and Frank M. Häge, "The Evolution of European Legal Integration", **European Journal of Law Economy**, Vol. 24, No. 3, 2007, pp. 187-200

STALKER, Peter. "Migration Trends and Migration Policy in Europe", **International Migration**, Vol. 40, No.5, 2002, pp. 151-179

STETTER, Stephen. "Regulating Migration: Authority Delegation in Justice and Home Affairs", **Journal of European Public Policy**, Vol. 7, No.1, 2000, pp. 80-103

SVERDRUP, Ulf. "An Institutional Perspective on Treaty Reform: Contextualizing the Amsterdam and Nice Treaties", **Journal of European Public Policy**, Vol. 9, No.1, pp. 120-140

THOLEN, Berry. "The Europeanisation of Migration Policy – The Normative Issues", **European Journal of Migration and Law**, Vol. 6, No.4, 2004, pp. 323-351

WENDT, Alexander. "Driving with the Rearview Mirror: On the Rational Science of Institutional Design", **International Organization**, Vol. 55, No. 4, 2001, pp. 1019-1049

WITHOL DE WENDEN, Catherine., "Post-Amsterdam Migration Policy and European Citizenship", **European Journal of Migration and Law**, Vol. 1, 1999, p. 91.

ZAICEVA, Anzelika and Klaus F. Zimmermann. “Scale, Diversity, and Determinants of Labour Migration in Europe”, **Oxford Review of Economic Policy**, Volume 24, Number 3, 2008, pp. 428-445

Books

BAGANHA Maria I. et al. “International Migration and Its Regulation”, **Dynamics of Migration and Settlement in Europe : A State of the Art**, NLD: Amsterdam University Press, Amsterdam, 2006, pp. 19-40

BALDACCINI Anneliese and Helen Toner, “From Amsterdam and Tampere to The Hague: An Overview of Five Years of EC Immigration and Asylum Law”, (eds.) Anneliese Baldaccini, Helen Toner, Elspeth Guild in **Whose Freedom, Security and Justice? EU Immigration and Asylum Law and Policy**, Hart Publishing, Oxford and Portland, 2007, 1-22

BENDEL, Petra. “Everything under control? The European Union’s Policies and Politics of Immigration”, **The Europeanization of National Policies and Politics of Immigration: Between Autonomy and the European Union**, Palgrave Macmillan, New York, 2007, pp. 32-48

BORZEL, Tanja A. and Thomas Risse. “Conceptualizing the Domestic Impact of Europe”, **The Politics of Europeanization**, Oxford University Press, Oxford, 2003, pp. 57-80

BOSWELL Christina, “Migration, Security and Legitimacy: Some Reflections”, **Immigration Policy and Security: US, European and Commonwealth Perspectives**, Routledge, New York, 2009, pp. 93-107

BOSWELL Christina, **European Migration in Flux: Changing Patterns of Inclusion and Exclusion**, The Royal Institute of International Affairs, Blackwell, 2003

CINI, Michelle. "Intergovernmentalism", **European Union Politics**, Oxford University Press, New York, 2003

ETTE, Andreas and Thomas Faist. "The Europeanization of National Policies and Politics of Immigration: Research, Questions and Concepts", **The Europeanization of National Policies and Politics of Immigration: Between Autonomy and the European Union**, Palgrave Macmillan, New York, 2007, pp. 3-31

GEDDES, Andrew. "The Europeanization of What? Migration, Asylum and the Politics of European Integration", **The Europeanization of National Policies and Politics of Immigration: Between Autonomy and the European Union**, (eds.) Palgrave Macmillan, New York, 2007, pp. 49-70

GEDDES, Andrew. **The Politics of Migration and Immigration in Europe**, Sage Publications, Great Britain, 2005

GUIRAUDON Virginie, "Immigration and Asylum: A High Politics Agenda" in (eds. Maria Green Cowles and Desmond Dinan) **Developments in European Union**, Palgrave, Basingstoke, 2004, pp. 160-180

JENSEN, Carsten Stroby. "Neo-functionalism", **European Union Politics**, Oxford University Press, New York, 2003, pp.85-98

KOSER, Khalid. **International Migration- A Very Short Introduction**, Oxford University Press, New York, 2007

LUEDTKE, Adam. "Fortifying Fortress Europe? The Effects of September 11 on EU Immigration Policy", **Immigration Policy and Security: US, European and Commonwealth Perspectives**, Routledge, New York, 2009, pp. 130-147

MESSINA, Anthony M. **The Logics and Politics of Post-WWII Migration to Western Europe**, Cambridge University Press, New York, 2007

MORAVCSIK, Andrew and Frank Schimmelfennig. “Liberal Intergovernmentalism”, **European Integration Theory**, Oxford University Press, Oxford, 2004, pp. 67-87

OCCHIPINTI, John D. “Police and Judicial Cooperation”, in (eds. Maria Green Cowles and Desmond Dinan) **Developments in European Union**, Palgrave, Basingstoke, 2004, pp. 181-199

POLLACK, Mark A. “The New Institutionalisms and European Integration”, **European Integration Theory**, Oxford University Press, Oxford, 2004, pp. 137-156

RISSE, Thomas. “Social Constructivism and European Integration”, **European Integration Theory**, Oxford University Press, Oxford, 2004, pp. 159-175

ROSAMOND, Ben. “New Theories of European Integration”, in **European Union Politics**, (ed.) Michelle Cini Oxford University Press, Oxford, 2003, pp. 109-127

ROSAMOND, Ben. **Theories of European Integration**, Palgrave, England, 2000

Graduate Thesis

BAUCHINGER Albert, “EU Policy Regarding Asylum and Immigration: An Assessment of the Post-Amsterdam Period”, Webster University, Vienna, 2007

FORMANEK Alexandra, “Managing Asylum: A Critical Examination of Emerging Trends in European Refugee and Migration Policy”, McGill University, Quebec, 2004

Internet

APAP, Joanna and Sergio Carrera, “Progress and Obstacles in the Area of Justice & Home Affairs in an Enlarging Europe”, CEPS Working Document, No: 194, 2003, <http://aei.pitt.edu/1818/01/WD194.pdf>, pp. 1-15

BUNYAN, Tony, “Trevi, Europol and the European State”, <http://www.statewatch.org/news/handbook-trevi.pdf>, 08,06,2010

KAHANEC, Martin and Klaus F. Zimmermann. “Migration in an Enlarged EU: A Challenging Solution?”, DIW Berlin Discussion Paper No. 849, 2008, <http://ssrn.com/abstract=1430839>, 01, 12, 2009

KICINGER, Anna and Katarzyna Saczuk. “Migration Policy in the European Perspective- Development and Future Trends”, Central European Forum for Migration Research, 2004, http://www.cefmr.pan.pl/docs/cefmr_wp_2004-01.pdf, 01, 12, 2009

THIELEMANN, Eiko R. “The ‘Soft’ Europeanisation of Migration Policy: European Integration and Domestic Policy Change”, 2001, ECSA Seventh Biennial International Conference, <http://personal.lse.ac.uk/thielema/Papers-PDF/JEMS.pdf>, 01, 02, 2010

“The Hague Programme - Ten priorities for the next five years”, http://ec.europa.eu/justice_home/news/information_dossiers/the_hague_priorities/index_en.htm, 27, 12, 2009

Bunyan, Tony. “Trevi, Europol and the European State”, <http://www.statewatch.org/news/handbook-trevi.pdf>, 08, 06, 2010

“Migration- Theories of Migration”, <http://family.jrank.org/pages/1170/Migration-Theories-Migration.html>, 08,06,2010