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ABBREVIATIONS

| | |
|----------------------|--|
| <i>AHIG</i> | Ad Hoc Immigration Group |
| <i>BNP</i> | British National Party |
| <i>CDA</i> | Christian Democrat Appeal |
| <i>CDMG</i> | European Committee on Migration |
| <i>CERD</i> | Committee on the Elimination of Racial Discrimination |
| <i>COM</i> | Communication |
| <i>COMECE</i> | Commission of the Bishops' Conferences of the European Community |
| <i>CSU</i> | Christian Social Union of Bavaria |
| <i>DVU</i> | German People's Party |
| <i>EC</i> | European Community |
| <i>ECOSOC</i> | Economic and Social Council of United Nations |
| <i>ECRI</i> | European Commission Against Racism and Intolerance |
| <i>EEC</i> | European Economic Community |
| <i>EIS</i> | European Information System |
| <i>EMN</i> | European Migration Network |
| <i>EU</i> | European Union |
| <i>EUMC</i> | European Monitoring Center on Racism and Xenophobia |
| <i>FPÖ</i> | Austrian Freedom Party |
| <i>GATT</i> | General Agreement on Tariffs and Trade |
| <i>ICCPR</i> | International Covenant on Civil and Political Rights |

| | |
|----------------------|--|
| <i>ILO</i> | International Labour Organization |
| <i>IMF</i> | International Monetary Fund |
| <i>IOM</i> | International Organization for Migration |
| <i>ITS</i> | Identity, Tradition and Sovereignty Group |
| <i>ibid.</i> | Ībidem (Latin: In the same place) |
| <i>KLDP</i> | National Dutch Police Service Agency |
| <i>MDI</i> | Dutch Complaints Bureau for Discrimination on the Internet |
| <i>MEP</i> | Member of European Parliament |
| <i>MPF</i> | Mouvement pour la France |
| <i>NDP</i> | National Democratic Party |
| <i>NF</i> | National Front |
| <i>NFP</i> | National Focal Point |
| <i>NGO</i> | Non-governmental organization |
| <i>NRR</i> | New Radical Right |
| <i>ODIHR</i> | Office for Democratic Institutions and Human Rights |
| <i>ONI</i> | Office National d'Immigration |
| <i>Op.cit</i> | Opere Citato (Latin: In the work cited) |
| <i>OSCE</i> | Organization for Security and Cooperation in Europe. |
| <i>PVV</i> | Freedom Party |
| <i>RAXEN</i> | European Racism and Xenophobia Network |
| <i>SEA</i> | Single European Act |
| <i>SIS</i> | Schengen Information System |
| <i>TCN</i> | Third Country National |
| <i>TEC</i> | Treaty on European Community |

| | |
|----------------------|--|
| <i>TEU</i> | Treaty on European Union |
| <i>UDF</i> | Union for French Democracy |
| <i>UK</i> | United Kingdom |
| <i>UMP</i> | Union for a Popular Movement |
| <i>UN</i> | United Nations |
| <i>UNCHR</i> | United Nations Commission on Human Rights |
| <i>UNESCO</i> | United Nations Educational, Scientific and Cultural Organization |
| <i>UNHCR</i> | United Nations High Commissioner for Refugees |
| <i>USA</i> | United States of America |
| <i>VVD</i> | People's Party for Liberty and Democracy |

INTRODUCTION

According to International Organization for Migration (IOM)¹, there are an estimated 191 million migrants worldwide in 2005, up from 176 million in 2000. Migrants comprise 3 percent of the global population. There are roughly 30 to 40 million unauthorized migrants worldwide, comprising around 15 to 20 percent of the world's migrant stock. At the regional level, European figures show that migrant population is about 56 million comprising 7.7 per cent of the total population. Seven and eight million of them are undocumented. The estimated number of migrants rose from 1980 to 2000 in both industrialized countries, from 48 million to 110 million, as well as the developing world, from 52 million to 65 million². With the global share of three percent, the influence of migration on various social, political and cultural formations are rather obvious.

In recent years, international migration and migrants hit the headlines across Europe in its various forms. For example, the Spanish Canary Islands alone saw over 30,000 immigrants arriving by sea in 2006, six times more than in 2005, while Italy and Malta were also heavily targeted.³ Since 1998, about 6,049 immigrants have landed in Malta which is 1.5% of the around 400,000 population.⁴ In May 2007, 27 Africans spent three days clinging to tuna nets about half way between Malta and Libya, while the two countries wrangled over who should take them in.⁵ In July 2006, almost 60 European and African countries are meeting in Rabat, Morocco for a major conference on immigration, following a radical rise of illegal migrants flowing to the EU from the south.⁶ Regularising illegal immigrants or repatriation of them, their legal status and integration problems have still been issues of various platforms throughout the European Union.

¹ International Organization for Migration, <http://www.iom.int/jahia/page254.html> (12.04.2007)

² Migration and Asylum in Europe, 2003, http://209.85.165.104/search?q=cache:odtSdnahfGoJ:ec.europa.eu/justice_home/doc_centre/asylum/statistics/docs/2003/2003_annual_statistics_report.pdf+%22international+migration+dynamics+and+european+developments%22&hl=tr&ct=clnk&cd=1&gl=tr (09.05.2007), p.105.

³ Renata Goldirova, "Frattini: deaths of migrants at sea are 'European failure'", EU Observer, 06.06.2007, <http://euobserver.com/?aid=24208> (02.07.2007)

⁴ Aleander Balzan, "Frattini promises more help with immigration problems", EU Observer, 04.04.2006, <http://euobserver.com/9/21309> (05.04.2006)

⁵ Renata Goldirova, *ibid.*

⁶ Lucia Kubosova, "EU and Africa join forces to tackle immigration", EU Observer, 10.07.2006, <http://euobserver.com/22/22051> (14.07.2006).

This serves widening of migration issue in a variety of theoretical and practical frameworks. Arising from this situation, the need to define and understand migration leads that various scientific disciplines such as anthropology, demography, economics, geography, legal studies, political science and sociology have built up different traditions of studying human migration. They pose different questions, collect different kinds of material, use their own method of analysis. This, of course, leads to different findings and in consequence different problems and solutions.

Political scientists have recently joined the discussion on international migration, emphasizing role of the regulations of the receiving states whose borders may not be crossed by non-belongers without explicit or tacit consent, in international migration. This approach, underlining migrants as non-belongers who need to ask for permission (legally as well as socially) in order to enter in a state's territory, to live there and to be a part of it, is also the approach of the thesis.

Actually, international migration in its various forms challenges organizational and conceptual boundaries, such as states' borders and has challenging effects on the ways of thinking about "us" and "them". In Europe, especially in the post-Cold War period, it has witnessed new types of migration and new forms of state and international response to this movement as well as new forms of reactions to migrants. Migrants have always been the target of exclusionary and hostile attitudes. However, the end of Cold War together with growing globalization, has had a substantial impact on migrants. Changing boundaries between West and East, rising security concerns, economical problems, ambivalences in cultural and political spheres, all have affected the perception of migrants which causes in 2000s new basis for exclusion and hostility in a variety of forms such as rising nationalism, racism and xenophobia.

Today, this issue should be seen in its deeper dimensions. Effective mechanisms against racism, xenophobia and other forms of intolerance presuppose interdisciplinary analysis including approaches of international politics and international law, as well as analysis from a historical perspective.

In the thesis, the aim is, on the one hand, to establish a link between migration and xenophobia in theoretical framework and on the other hand, to show the reflections of this relationship in practice and hence to evaluate the changing or unchanging patterns in this process. For this reason, each part is constructed upon two pillars. The

first one is theoretical pillar within which the intention is to define basic concepts of the related issue and understand the general framework. The second one is the practical pillar. In this case, the intention is to show the reflections of the issue, either in the form of its politicization or in the form of measures taken against it.

In the first chapter, migration is defined through both theoretical and practical side. Here, problems identified in theoretical part (i.e. definition paradoxes) are specifically emphasized, as having serious impact on practical part (i.e vulnerability of migrants).

In the second chapter, the concept of xenophobia is discussed in relation to its interaction with other related concepts such as nationalism, racism and citizenship. Then, the measures against xenophobia in international and regional level, specifically in the European Union, are mentioned.

The third chapter of the thesis, is the evaluation of European Union Case within the framework of the two previous parts. The presence of the migrants in European Union and the reflections of this situation in both European and Member States' level are analyzed and in recent years, a significant change within this process, Islamophobia, is identified as a new issue deserving further analysis.

CHAPTER I

MIGRATION AND MIGRANTS' RIGHTS

I. UNDERSTANDING MIGRATION

Understanding and defining migration has been significantly important for the evaluation of the migrants' status in the host countries. Because varying definitions and positions of different actors have been decisive in the construction of political, social and also economical rights of migrants. The clashes between theory and practice have always been dominant in the issue of migration and migrants' rights.

As Marsella and Ring indicates that the term migration refers the act or process by which people, especially as a group, move from one location to another⁷. In theoretical framework, international migration is generally defined as “movement by people across state borders that leads to permanent settlement”⁸. Relatedly, immigration refers to the process of people leaving one country for “permanent residence” in another. Emigration refers to the process of people leaving a country. In the works on migration and in international documents, the terms migration and immigration are both used. In the thesis, migration and migrant are preferred as a general term in theoretical context. However, in European context, immigration and immigrants are used to define migration to Europe and migrant population coming to Europe.

According to International Labour Organization statistics, there are 150 million migrants, 80 millions of them workers, in the world today⁹. International Organization for Migration predicts that the total number of international migrants will approach 250 million by the year 2050.¹⁰ As it is indicated in the World Conference on Racism, immigration is hardly a recent or localised phenomenon. From the beginning of human

⁷ Anthony J. Marsella and Erin Ring, “Human Migration and Immigration: An Overview”, in Leonore Loeb Adler and Uwe P. Gielen (Eds.), **Migration : Immigration and Emigration in International Perspectives**, Westport: Praeger Publishers, 2003, p. 11

⁸ Andrew Geddes, **The Politics of Migration and Immigration in Europe**, First Edition, London: Sage Publications, 2003, p.7

⁹ Press Kit: Issues-Migration and Discrimination, World Conference Against Racism, <http://www.un.org/WCAR/e-kit/migration.htm> (14.03.05).

¹⁰ International Labour Office (ILO), International Organization for Migration (IOM), Office of the United Nations High Commissioner for Human Rights (OHCHR) in consultation with Office of the United Nations High Commissioner for Refugees (UNHCR), **International Migration, Racism, Discrimination and Xenophobia**, August 2001, p.1

evolution in Africa around 7 million years ago, to around A.D 1000, all habitable lands in the world had been occupied by human beings.¹¹ Women and men leave their homelands in search of a better job. People also leave their own countries because of civil conflicts and insecurity or persecution. Whatever the reason, in this globalised world, it is witnessed unprecedently high labour mobility and an increasing pressure of migration between countries.¹²

A. Definition

Migration, as a phenomenon, requires us to consider macrolevel (e.g institutional influences) and microlevel (e.g the structure of the personal social network) analysis.¹³ Values, motives, symbol systems are also have to be taken into consideration. It is also quite complex task that requires considering it from many points of view and drawing on the contributions of many disciplines.

It is obvious that different disciplines and approaches are required for examining different variables and different aspects of the phenomenon. This complexity in relation to the definition and conceptualization of the term leads to the occurrence of different definitions which are changed in relation to the focus of the actor and this mostly serves for the politicization of the migration issue. This means that the implications of the migration can be shaped according to the actor which define it. For example, refugees or asylum seekers or permanent migrants can be a reason for unrest in a society where temporary migrant workers or seasonal migrants are welcomed. This mostly depends on the interests of the society.

A definition of migration may be arised through works of international organizations (practical definition) and through international migration theories (theoretical definition)

1) Practical Definiton of Migration

The most simplistic and general form of migration definition has been introduced under the United Nations (UN) umbrella. United Nations Educational,

¹¹ Anthony J. Marsella and Erin Ring, op.cit., p. 4.

¹² World Conference Against Racism, “Working Far From Home – Migration and Discrimination”, <http://www.un.org/WCAR/e-kit/migration>. (30.09.2005)

¹³ Robert J. Kleiner, Barnabas I. Okeke and Tom Sorensen, Foreword, in Leonore Loeb Adler and Uwe P. Gielen (Eds.) **Migration : Immigration and Emigration in International Perspectives**, Westport: Praeger Publishers, 2003, p.10.

Scientific and Cultural Organization (UNESCO) defines it as crossing of the boundary of a political or administrative unit for a certain minimum period of time. It includes the movement of refugees, displaced persons, uprooted people as well as economic migrants. Moving from one area to another within one country is called as internal migration, whereas moving one state to another is international migration. Moves which remain inconsequential for both individual and society, such as tourism and organised transfer of refugees from states of origin to a safe haven, cannot be counted as migration.¹⁴ UNESCO classifies international migrants as:

“Temporary Labour Migrants (guest workers or overseas contract workers):

People who migrate for a limited period of time in order to find employment and send money home.

Highly skilled and business migrants: This is people with qualifications who seek employment through international labour markets for scarce skills. Many countries welcome such migrants.

Irregular Migrants (Undocumented or Illegal Migrants): People who enter country usually in search of employment without the necessary documents and permits.

Forced Migrants: It includes not only asylum seekers and refugees but also people forced to move due to external factors such as environmental catastrophe or development projects.

Family Reunification Migrants: People sharing family ties joining people who have already entered an immigration country. Many countries recognise in principle the right to family reunion for legal migrants.

Return Migrants: People who return to their countries of origin after a period in another country.”¹⁵

United Nations Commission on Human Rights (UNHCR) differentiates migrants from refugees, asylum seekers, displaced persons, naturalised persons and other types of migrants. Accordingly, following persons should be considered as migrants:

“- Persons who are outside the territory of the State of which they are nationals or citizens, are not subject to its legal protection and are in the territory of another State;

¹⁴ UNESCO Glossary Migration/Migrant, <http://portal.unesco.org/shs/en> (02.08.05)

¹⁵ ibid.

- Persons who do not enjoy the general legal recognition of rights which is inherent in the granting by the host State of the status of refugee, naturalised person or of similar status;

- Persons who do not enjoy either general legal protection of their fundamental rights by virtue of diplomatic agreements, visas or other agreements.”¹⁶

On the other hand, UN defines refugees, asylum seekers and displaced persons through specific conventions or declarations. The 1951 Convention relating to the Status of Refugees is the key legal document in defining who is a refugee, their rights and the legal obligations of states. In the 1951 Geneva Convention, the term refugee applies to any person who:

“ due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or owing to such fear, is unwilling to return it.

In the case of a person who has more than one nationality, the term “the country of his nationality” shall mean each of the countries of which he is a national, and a person shall not be deemed to be lacking the protection of the country of his nationality if, without any valid reason based on well-founded fear, he has not availed himself of the protection of one of the countries of which he is a national.”¹⁷

Based on this conventions, the refugee definition is commonly understood to include three essential elements:

“- There must be a form of harm rising to the level of persecution, inflicted by a government or by individuals or a group that the government cannot be or will not control;

- The person’s fear of such harm must be well-founded

- The harm or persecution, must be inflicted upon the person for reasons related to the person’s race, religion, nationality, political opinion or membership in a particular social group.”¹⁸

¹⁶ UN General Assembly Fifty-Seventh Session, **Human Rights Questions: Human Rights Situations and Reports of Special Rapporteurs and Representatives**, A/57/292, First Report of the Special Rapporteur (E/CN.4/2000/82), 2000.

¹⁷ **Convention relating to the Status of Refugees**, Article 1A(2), <http://www.unhcr.ch/html/menu3/b> (16.08.2005)

¹⁸ **UNESCO Glossary Refugee**, <http://portal.unesco.org/shs/en> (16.08.2005)

Asylum seekers are people who move across borders in search of protection but who may not fulfill the strict criteria laid down by the 1951 Convention. They differ from refugees on the point that an asylum seeker describes someone who has applied for protection as a refugee and is awaiting the determination of his or her status. However, refugee is the term used to describe a person who has already been granted protection. Asylum seekers can become refugees if the local immigration or refugee authority deems them as fitting the international definition of refugee.¹⁹ According to Article 1 of the UN Declaration on Territorial Asylum (1967), the state is the sole authority to evaluate the grounds for the grant of asylum and if there are serious reasons for considering that a person has committed a crime against peace, a war crime and a crime against humanity, the right to seek and to enjoy asylum may not be invoked.²⁰

The displacement of people refers to the forced movement of people from their locality or environment and occupational activities. The reasons may be armed conflict, natural disasters, famine, development and economic changes.²¹ There are also definitions arising from states' national approaches. Usually, states distinguish migrants on the basis of nationality and/or grounds for admission in their national law.²²

The first common characteristic of above definitions is that all seem to be migrant (person) based. This means that the act of migration is defined in relation to the person who performs it. For example, migration can be short-term or long-term; migrants could live in one country and work in another. The second characteristic is that all of the definitions are formed in relation to the states' priorities and concerns. By this way, states also construct those forms of migration that become viewed as policy problems. These definitions are shaped in the political sphere and do not specifically emphasize economic conditions in defining migration. These are the international migration theories which give particular importance to economy. E.G. Ravenstein, from whom many of the generalisations or laws of migration developed, has seen economic motive as always being predominant in the matrix of factors influencing the decision to migrate.²³ This approach brings a different point of view in defining migration.

¹⁹ UNESCO Glossary Asylum seeker, <http://portal.unesco.org/shs/en> (16.08.2005)

²⁰ United Nations Declaration on Territorial Asylum, <http://www.unhcr.bg/bglaw/en> (16.08.05)

²¹ UNESCO Glossary Displaced Person/Displacement, <http://portal.unesco.org/shs/en> (16.08.2005)

²² See Annex 1 for Table 1. Types of Migrants.

²³ Michael Todaro, **Internal Migration in Developing Countries: A Review of Theory, Evidence, Methodology and Research Priorities**, Geneva: International Labour Office, 1976, p.16.

2) Theoretical Definition of Migration

The theories of international migration mostly focus on the reasons which cause people to migrate. Their aim is understanding migration rather than defining it. In understanding migration, the most important questions are the followings: Why people migrate? Is migration necessary? Pieter C.Emmer states that without migration the geographical differences in personal and national incomes would be even greater than they already are.²⁴ As argued by Emmer, migration usually increased the rate of economic growth in both sending and receiving areas although emigration entails a financial loss for the sending region in that the emigrants on the other hand, had been consumed food, labour, and medical and educational services before their departures.

People migrate because of many different reasons as will be explained below through different migration theories. Although we cannot say that economic factors are the sole cause of migration, when we look at the history of international migration we see an undeniable link between economic conditions and flows of people. Briefly, summary of the modern history of international migration has been classified under four periods by Massey:

“In the first period, from 1500 to 1800, we have witnessed a period of colonization, economic growth and mercantalist capitalism and consequently a flows out of Europe. The second period began in the nineteenth century with the spread of industrialism and from 1800 to 1925 many people left the industrializing countries of Europe in order to search of new lives in the Americas and Oceania. In the third period, the large scale European emigration faltered with the outbreak of the First World War and almost stopped with the onset of Great Depression in 1929. During the 1940s, Second World War’s time, there was a mobility which was not related to economic conditions but stemming from refugees and displaced persons.”²⁵

A sharp break with the past came during the 1960s and migration became truly global phenomenon. Besides Canada, United States of America (USA), Australia, New Zealand and Argentina which were traditional migrant-receiving nations, countries of Western Europe such as Germany, France, Belgium, Switzerland, Sweden and the Netherland began to attract significant numbers of migrants. After 1960, migration to

²⁴ Pieter C.Emmer, “Was Migration Beneficial?”, in Jan Lucassen and Leo Lucassen (Eds.), **Migration, Migration History, History**, Berne: Peter Lang AG, European Academic Publishers, 1999, p.111

²⁵ Douglas S. Massey, Joaquin Arango, Graeme Hugo, Ali Kouaouci, Adela Pellegrino and J.Edwards Taylor, **Worlds in Motion Understanding International Migration at the End of the Millenim**, Oxford: Clarendon Press, 1998, pp.1-3.

Western Europe and United States differed substantially in form, magnitude and consequences from earlier mass movement, because on the one hand these migrants were assumed to be very distinct in cultural respect and opposed to assimilation due to a strong return myth promoted by the sending state and on the other hand, the receiving state expected sojourners and therefore made no initial attempt to assimilate them.²⁶ During the 1970s, even long time nations of emigration such as Italy, Spain and Portugal began to receive immigrants from Mediterranean region and Africa. And in 1980s, international migration had spread into Asian countries such as Japan, Taiwan, South Korea, Hong Kong, Singapore, Thailand and Malaysia which were adjuncted to wealthy industrialized nations as Asian Tigers.

The 1990s and the beginning of the new millenium confirmed the increasing role of migration in the context of economic globalisation. Geopolitical changes of past decades, particularly liberalization of movements of persons from Central and Eastern Europe enlarged geographical frame of reference for international migration. A direct link has been established between economic globalisation and international migration. As Bauman said that:

“...freedom of trade and investment would soon reach its limits if it were not complemented by the right of job-seekers to go where the jobs are waiting to be filled.”²⁷

While the USA, Australia and Canada remained the major migrant receiving countries, Europe also faced significant migration flows and largest numbers of asylum seekers.

However, two clashing intentions of governments affect both globalization process and migrants seriously. On the one hand, governments encourage free circulation of capital, finance, investments and the businesspeople who carry them. On the other hand, they tighten immigration laws, restrict the rights to asylum and blacken the image of “economic migrants”. This complex situation urges to understand and define migration in more wider context, in both theoretical and practical framework.

Given its many and diverse forms, migration experts highlight the difficulty of specifying what actually is meant by the term international migration. While at a basic

²⁶ Jan Lucassen and Leo Lucassen, “Migration, Migration History, History: Old Paradigms and New Perspectives”, in Jan Lucassen and Leo Lucassen (Eds.), **Migration, Migration History, History**, Berne: Peter Lang AG, European Academic Publishers, 1999, p.24.

²⁷ Zygmunt Bauman, **Community: Seeking Safety in an Insecure World**, Cambridge: Polity Press, 2001, p.102

level, international migration can be defined as permanent or semi-permanent movement by people across state borders, the growth of short-term, rotation or contract migration shows how the distinction between permanent and temporary becomes blurred, so too does the distinction between economic migration (presumed voluntary) and asylum (presumed involuntary).²⁸ As many other theoreticians working on migration, Marsella and Ring expects migration will continue in the future in waves and numbers that will be as great as waves of the past.²⁹ They also indicates that forced migration will be increasing and growing number of illegal migrants will show up around the world who request asylum. The reasons for this are set by them as increasing world population, increasing world poverty, continuing abuses and exploitation of women, political and religious persecution and abuse, natural disasters, man-made disasters such as terrorism, nuclear accidents, toxic waste, pollution and growing resentment and antagonism towards immigrants from non-Western countries which may lead to force immigrants to migrate several times before finding acceptability. According to them, the new international migration waves will be from south to north and from east to west. Western Europe, North America and Australia will continue to be preferred destination. Schmitz emphasizes the main motives leading people to migrate as of economic and political nature and calls 20th century as “the century of refugees.”³⁰ So whatever the reason, it is the time of great and globewide migration and consequently, the need to understand the migration phenomenon becomes urgent.

B. International Migration Theories

Different disciplines look at migration phenomenon from different perspectives reflecting their own priorities and their own level of analysis. For example, because geography is about spatial differentiation, geographers focus upon the interplay between physical, social, economic and political conditions in spatial context. Political scientists focus on the role of the states in international migration. Economists underline the role of labour supply and labour demand. Anthropologists look at the networks and transnational communities, while sociologists draw attention to the importance of social and human capital. Historians portray the migrant experience in all of its complexity and demographers focus on the movement of peoples across boundaries in

²⁸ Andrew Geddes, op.cit., p.8.

²⁹ Anthony J. Marsella and Erin Ring, op.cit., p. 15.

³⁰ Paul G.Schmitz, “Psychological Factors of Immigration and Emigration: An Introduction”, In Leonore Loeb Adler and Uwe P. Gielen (Eds.) **Migration : Immigration and Emigration in International Perspectives**, Westport: Praeger Publishers, 2003, p. 24.

order to show how such movements affect population dynamics in the sending and receiving societies.³¹

Theory building is closely related to the levels and units of analysis. In migration research, these vary both within and between disciplines.³² Although migration is used to be explained by economic factors by classical migration theories, especially after 1990s, international system became more complex. Consequently, classical international migration theories became inadequate to explain complexities of current situation and traditional approaches have been started to be questioned and new dynamics affecting international migration have been taken into consideration. For example even if most of the theories of international migration are linked to economic, geographic and demographic factors, today psychological (e.g. values, hope, fear) and psychosocial (e.g. identity) variables are needed to be included in the theories in order to have better solutions for migrants' problems. Today, international migration theories, both traditional and new ones, are reconsidered by those who works on migration. Especially, Douglas Massey, Stephen Castles, Caroline Brettell, James F. Hollifield, Jan Lucassen and Leo Lucassen, Tomas Hammar, Grete Brochman, Kristof Tomas, Thomas Faist and Alejandro Portes have detailed works in relation to the old and new perspectives on international migration.³³ A summary of essential features of the different theories as distilled from these sources, specifically from Massey and his colleagues, as the co-author of a major theoretical statement, may serve to define migration.

- Neoclassical Economics Model

The traditional approach basically explains the causes of migration through push and pull factors. Accordingly, push factors such as demographic growth, low living standards, lack of economic opportunities and political repression, force people to

³¹ Caroline B. Brettell and James F. Hollifield, Preface, in Caroline B. Brettell and James F. Hollifield (Eds), **Migration Theory: Talking Across Disciplines**, New York: Routledge, 2000.

³² *ibid.*, p. 8.

³³ For Migration Theories cf. Stephen Castles and Mark J. Miller, **The Age of Migration: International Population Movements in the Modern World**, New York: The Guilford Press, 1998 passim ; Douglas S. Massey, Joaquin Arango, Graeme Hugo, Ali Kouaouci, Adela Pellegrino and J.Edwards Taylor, **Worlds in Motion: Understanding International Migration at the End of the Millenium**, Oxford: Clarendon Press, 1998 passim; Tomas Hammar, Grete Brochman, Kristof Tomas and Thomas Faist (Eds.), **International Migration: Immobility and Development, Multidisciplinary Perspectives**, New York: Berg, 1997 passim; Caroline B. Brettell and James F. Hollifield (Eds.), **Migration Theory: Talking Across Disciplines**, New York: Routledge, 2000, passim; Jan Lucassen and Leo Lucassen (Eds), **Migration, Migration History, History: Old Paradigms and New Prespectives**, Bern: Peter Lang, 1999, passim; Alejandro Portes (Ed.), **The Economic Sociology of Immigration: Essays on Networks, Ethnicity and Entrepreneurship**, New York: Russell Sage Foundation, 1998, passim.

leave the areas of origin. Whereas pull factors such as demand for labour, availability of land, good economic opportunities and political freedoms, attract people to certain receiving countries.³⁴ The causes of migration lie in a combination of push and pull factors.

As the oldest and best-known traditional approach to migration, Neoclassical Economics Model focuses basically economic disparities between areas of origin (migrant sending country) and areas of destination (migrant receiving country). Accordingly, migration is related to differentials in wages and employment. The conditions are evaluated by rational actors seeking to maximize utility. The decision to migrate is based on the rational cost/benefit analysis of the individual.

Gunnar Malmberg uses the push-pull model for evaluating migration movement from the perspective of a geographer and see migration as one of the central themes in population geography. He classifies this traditional approach as macro-theory in which the population aggregates responding to the conditions at the place of origin and potential destinations. He argues that living conditions at the places of origin and destination are major determinants in influencing geographical theories of migration. He criticizes the push-pull model mainly on the point that it does not draw attention to the restructuring of neither the demographic, physical, socio-economic nor political conditions that create important preconditions for migration and fails to deal with the influence of migration of information flows, personal contacts and social networks in migration systems. However, he does not underestimate the influential perspective of push-pull model in geography. He says that although this model has been strongly criticized, it has maintained its important position in geographical textbooks due to its simplicity and internal logic which facilitate understanding the mechanisms of international migration.³⁵

Neoclassical Economic Model is mainly criticized on the point that it omitted to incorporate migrants themselves into the theory and on the point of its inadequacy in explaining contemporary migration movement. For example, Marsella and Ring criticize classical theories on the point that they are linked to economic, geographic and

³⁴ Stephen Castles and Mark J. Miller, **The Age of Migration: International Population Movements in the Modern World**, New York: The Guilford Press, 1998, p.20.

³⁵ Gunnar Malmberg, "Time and Space in International Migration", In Tomas Hammar, Grete Brochmann, Kristof Tamas and Thomas Faist (Eds.), **International Migration, Immobility and Development: Multidisciplinary Perspectives**, New York: Berg Publisher, 1997, p.29.

demographic factors and fail to incorporate psychological variables such as values, hope, fear etc.³⁶ Castles and Miller also stress inadequacy of the theory by arguing that this model cannot explain why a certain group of migrants goes to one country rather than another, for example why have most Algerians migrated to France and not Germany, while the opposite applies to Turks.³⁷

This gives way to develop new alternative views of migration which can be called as new approaches to migration. Rather than considering solely macro factors in migration movement, new approaches focus on migrants themselves, their interaction with their environment, their problems with state policies and their family life without omitting macro level factors. Traditional approach is challenged by various theories representing new approach. These theories provide alternative explanations to international migration.

- New Economics of Labour Migration Theory

The essentially individualistic nature of neoclassical theory is challenged by the New Economics of Labour Migration Theory which argues that migration decisions are not made by isolated individual actors but by larger units of related people such as families, households or sometimes communities, in order to maximize income and minimize risk. By this way, household can easily diversify their sources of income by allocating different family workers to different labour market. It furtherly claims that migration cannot simply be explained by income differences between two countries. Chances of secure employment, availability of capital for entrepreneurial activity and the need to manage risk over long period have also been factors shaping migration.

Sociologist Alejandro Portes has also argued strongly in favour of something other than the individual as the unit of analysis by saying that:

“actors are rational, in the sense of pursuing goals through deliberately selected means but they are not socially atomized. On the contrary social relationships enter every stage of the process, from the selection of economic goals to the organization of relevant means.”³⁸

³⁶ Anthony J. Marsella and Erin Ring, op.cit., p. 9.

³⁷ Stephen Castles and Mark J. Miller, op.cit., p.21.

³⁸ Alejandro Portes, “Economic Sociology and the Sociology of Immigration: A Conceptual Overview”, in Alejandro Portes (Ed.), **The Economic Sociology of Immigration: Essays on Networks, Ethnicity and Entrepreneurship**, New York: Russell Sage Foundation, 1998, p.3

New Economics of Labour Migration has added “relative deprivation” as a factor affecting migration decision. Households send workers abroad not only to improve their incomes in absolute terms but also to increase them relative to other households. As said by Massey:

“If household utility is negatively affected by relative deprivation, then even though a poor household’s absolute income and expected gains from migration remain unchanged, its incentive to participate in international migration increases if, by sending a family member abroad, it can hope to reap a relative income gain in the community. The likelihood of migration thus grows because of the change in other household’s incomes.”³⁹

New Economics of Labour Migration Theory is a macrolevel decision model as Neoclassical Theory. However, the two theories differ in the units assumed to make the decision to migrate: the individual or the household.

- The Segmented Labour Market Theory

The Segmented Labour Market Theory stands apart from above discussed models of rational choice. This theory argues that international migration stems from the real labour demands of modern industrial societies. Michael Piore has been the most forceful proponent of this theoretical viewpoint arguing that international migration is caused by a permanent demand for migrant labour that is inherent to the economic structure of developed nations.⁴⁰ As Zolberg has also indicated that capitalist economies relied on migrant labor as well as national ones. Migration itself fluctuated widely in the second half of the nineteenth century and reaching a record level in the first decade of the twentieth. As of 1910, approximately one-fourth of the American white male labour force was foreign-born. Similarly, Britain received substantial numbers of Irish migrants from the mid-eighteenth century on; something like one-third the population of the major industrial cities of England and Scotland was Irish.⁴¹ This shows that migration is mostly caused by pull factors in receiving societies.

According to this theory, the existence of primary and secondary sector workers defines international migration. In a developed nation, there is an inherent

³⁹ Douglas Massey, “Why Does Immigration Occur? A Theoretical Synthesis”, in Charles Hirschman, Philip Kasinitz and Josh De Wind (Eds.), **The Handbook of International Migration**, New York: Russell Sage Foundation, 1999, p.37.

⁴⁰ *ibid.*

⁴¹ Aristide R. Zolberg, “How Many Exceptionalisms?”, in Ira Katznelson and Aristide R. Zolberg (Eds.), **Working - Class Formation: Nineteenth-Century Patterns in Western Europe and the United States**, Princeton: Princeton University Press, 1986, p.442

duality between labour and capital and this dualism extends to the labour force in the form of a segmented labour force. Capital is a fixed factor of production; owners of capital must bear the cost of its unemployment. However, labour is a variable factor of production that can be released when demand falls. This creates distinction among workers. In the primary sector, workers are educated and get stable, secure and skilled jobs. It is expensive for employers to let them go. On the other hand, in secondary sector, workers hold unstable, unskilled jobs; they may be laid off at any time with little or no cost to the employer. In this circumstance, secondary sector is not attractive for native workers who are instead willing to work in primary sector where wages are higher, jobs are more secure and there is a possibility of occupational improvement. Consequently, employers are obliged to turn to immigrants in order to fill the shortfall in demand within these secondary sector. This imbalance between the structural demand for unskilled workers and limited domestic supply of such workers has generated a long-run demand for migrant workers in developed countries.

Segmented Labour Market Theory also underlines the role of enclave economy on generating migration in a developed country. In general, enclave economy emerges when an initial wave of elite migrants possessing significant amounts of financial, human, social and cultural capital concentrated disproportionately in one urban area and after becoming established there and founding new business enterprises, employs successive waves of lower status but aspiring migrants from the same country.⁴² Thus, enclave economy also generates its own demand for migration and serves additionally to the persistence of migration.

This theory does not completely oppose macrolevel theories which put actors (individual or household) as a defining factor in the process of migration. However, it comes closer to the microlevel analysis by emphasizing the role of a wider community, namely native people in a developed country, and complex relations within this community, in shaping migration. It underlines that the negative qualities that people in developed countries attach to low wage job may open up employment opportunities to foreign workers. This leads in the long run to the classification of some jobs as migrants' jobs and by this way, this segmented structure of labour market becomes significant in the process of international migration.

⁴² Douglas Massey, *op.cit.*, p.39.

- World System Theory

Macro level explanation to international migration is also provided by the World System Theory which has its intellectual roots in Marxist political economy. Especially Latin American theorists and additionally dependency theorist Immanuel Wallerstein worked on this subject and emphasized that developing nations (called as peripheral nations by Wallerstein) were being forced into dependency by structural conditions dictated to them by powerful capitalist countries (called as core countries by Wallerstein) and remained outside the global capitalist system.⁴³ This theory basically argues that the penetration of the capitalist economic relations into non-capitalist or pre-capitalist societies creates a mobile population that is prone to migrate.

It emphasizes the significance of macro organization of socioeconomic relations, namely Capitalist system, in shaping international migration. Contrary to neoclassical view, it states that international migration has little to do with the wage rates and employment differentials between countries. It rather emerges as a natural consequence of capitalist market formation in the developing world and the political structure of global economy. For world systems theories, labour migration is one of the main ways in which links of domination are forged between the core economies of capitalism and its underdeveloped periphery.⁴⁴

On the other hand, this theory puts additional dimensions (cultural dimension, geopolitical dimension) for explaining international migration. For example, core capitalist countries need international security in order to preserve this global trading regime. The tool of this need, military bases or armed intervention, can also be a factor to promote migration. A soldier may acquire a local spouse who has generally a privileged claim on entry to his husband's country and additionally, she may seek to sponsor the migration of their brothers, sisters, fathers etc.

In the cultural dimension, the theory emphasizes the colonial past of core countries. The cultural links are long standing when core countries established administrative and educational system in order to facilitate penetration. In this circumstance, this ideological and cultural connections, reinforced today's facility on

⁴³ World Systems Theory, <http://www.fordham.edu/ha/sall/mod/wallerstein.html> (07.05.2007)

⁴⁴ Stephen Castles and Mark J. Miller, op.cit., p.23.

mass communication, channel international migration to particular core countries, i.e., Algerians to France, Indians and Pakistanis to Britain, Surinamese to Netherland.

- Social Capital Theory

New theories brings new emphasis to the migration theories. The role of the information, migrant networks and social capital in starting and sustaining migratory movements are emphasized by **Social Capital Theory** . Massey and others quoted from Bourdieu and Wacquant that:

“social capital is the sum of the resources, actual or virtual, that accrue to an individual or a group by virtue of possessing a durable network of more or less institutionalized relationships of mutual acquaintance and recognition”⁴⁵

Migrants may use social capital in order to maintain or improve their position in a society. Massey states that:

“Migrant networks are sets of interpersonal ties that connect migrants, former migrants, and non migrants in origin and destination areas through ties of kinship, friendship, and shared community origin. They increase the likelihood of international movement because they lower the costs and risks of migration.”⁴⁶

This theory underlines the significance of minimizing risk of migration and by this way, it complements New Economics of Labour Migration theory. Massey states that:

“Networks make international migration extremely attractive as a strategy for risk diversification or utility maximization...Every new migrant expands the network and reduces the risks of movement for all those to whom he or she is related, eventually making it virtually risk-free and costless to diversify household labor allocations through emigration”⁴⁷

Castles names it as ‘cultural capital’ (knowledge of other countries, capabilities for organising travel, finding work and adapting to a new environment) and underlines its role in shaping migration phenomenon.⁴⁸ Jan and Leo Lucassen who look at migration process from historical point of view, also signify the essential function of

⁴⁵ Douglas Massey, op.cit., p.43

⁴⁶ ibid., p.44

⁴⁷ ibid.

⁴⁸ Stephen Castles and Mark J. Miller, op. cit., p.25.

migration networks within human societies, especially with respect to family and the labour market.⁴⁹

- Theory of Cumulative Causation

Douglas Massey's own contribution to the international migration issue is the Theory of Cumulative Causation. According to him,

“Causation is cumulative in the sense that each act of migration alters the social context within which subsequent migration decisions are made, typically in ways that make additional movement more likely. So far, social scientists have discussed 8 ways that migration is affected in this cumulative fashion: the expansion of networks, the distribution of income, the distribution of land, the organization of agriculture, culture, the regional distribution of human capital, the social meaning of work and the structure of production”⁵⁰

This theory has been developed to convey the notion that a variety of factors may reinforce each other. It can be said that Cumulative Causation Theory, in a way, establish links between theories. For example, in the receiving countries, once immigrants have been recruited into particular occupations in significant numbers, those jobs become culturally labeled as “migrant job” and native workers are reluctant to fill them and this reinforces the structural demand for immigrants (Segmented Labour Market Theory). Similarly, once the number of network connections in an origin area reaches a critical threshold, migration tends to become self-perpetuating because each act of migration creates the social structure needed to sustain it (Social Network Theory). Seeing some families vastly improve their income through migration makes families lower in the income distribution feel relatively deprived, inducing some of them to migrate (New Economics of Labour Migration).

1) Common Characteristics of Theories

Massey makes a generalization across all theories and lists four elements necessary for a satisfactory theoretical account of international migration:

“1) A treatment of the structural forces that promote emigration from developing countries,

2) A characterization of the structural forces that attract immigrants into developed nations,

⁴⁹ Jan Lucassen and Leo Lucassen, Introduction, in Jan Lucassen and Leo Lucassen (Eds.), **Migration, Migration History, History**, Berne: Peter Lang AG, European Academic Publishers, 1999, p.32.

⁵⁰ Douglas Massey et.al., op. cit, p.46.

- 3) A consideration of the motivations, goals, and aspirations of the people who respond to these structural forces by becoming international migrants,
- 4) A treatment of social and economical structures that arise to connect areas of out and in migration.

Any theoretical explanation that embraces just one of these elements will necessarily be incomplete and misleading and will provide a faulty basis for understanding international migration and developing policies to accommodate it.”⁵¹

With reference to these four elements, it can be said that none of above mentioned theories are entirely complete in itself. Rather, they complement each other. These theories sought to explain why international migration began and how it persisted across space and time. A distinction should be made between those which predict the onset of migration streams (Neoclassical Economics of Migration Theory, New Economics of Labour Migration Theory, World System Theory, Segmented Labour Market Theory) and those which focus on their continuation (Social Network Theory and Cumulative Causation Theory).

Another classification can be made on the basis of macro and micro approaches. For example, macrotheories refer to historical-structural factors and primarily ask questions as to the size and direction of migration movements and focus on the necessary conditions for migration to take place such as different standard of living in two or more countries (Neoclassical Economics of Migration Theory, New Economics of Labour Migration Theory, World System Theory, Segmented Labour Market Theory). Microtheories, on the contrary, may answer the question of who migrates, why and how. They then refer to decision making processes and motives of individual migrants (Social Network Theory, Cumulative Causation Theory).

Despite of these different classifications and focuses, the theories' explanations are not necessarily contradictory. All theories play some role in explaining contemporary migration pattern. In other words, different theories focus on the different aspects of migration. This means that:

“World Sytem Theory treats forces that promote emigration from developing countries.

⁵¹ *ibid.*, p.50.

World System Theory, Segmented Labour Market Theory and Neoclassical Economics Theory explain for why developed countries attract immigrants.

Social Capital Theory and World System Theory explain how structural links emerge to connect areas of origin and destination.

Neoclassical Economics Theory and New Economics of Labour Migration Theory deal with the motivations of the people who become international migrants.

Theory of Cumulative Causation describes how international migration promotes changes in personal motivations and origin, destination and intervening structures to give immigration a self-perpetuating, dynamic character.”⁵²

As seen, migration is an enormously diverse field of study with “not only one unique migration theory” prevalent. Its complexity arises firstly from the great variety of “migrants” and secondly from the existence of various scientific disciplines which deals with migration phenomenon.

Consequently, the need for a multidisciplinary approach to the migration is necessary because of the difficulty in explaining contemporary migration movements. Although macro theories are essential in understanding migration, many researchers underline the roles of the micro theories in migration process. For example, Fischer, Martin and Straubhaar underlines the role of micro theories in analysing migration from a multidisciplinary perspective.⁵³ Castles signifies that out of such critique emerged a new approach implying that any migratory movement can be seen as the result of interacting macro (large scale institutional factors such as the political economy of the world market, interstate relationships and the laws, structures and practices established by the states of sending and receiving countries to control migration) and micro (networks, practices and beliefs of the migrant themselves) structures.⁵⁴ Massey advise to adopt broader position that causal processes relevant to international migration might operate on multiple levels, rather than adopting narrow argument of theoretical exclusivity.⁵⁵ Brettel and Hollfield emphasize the fact that in relation to the migration issue, agreement on a single explanation or model is less likely. Each discipline has its preferred or acceptable lists of questions, hypotheses and variables. For this reason, in

⁵² *ibid.*

⁵³ Peter A.Fischer, Reiner Martin and Thomas Straubhaar, “Should I Stay or Should I Go?”, In Tomas Hammar, Grete Brochmann, Kristof Tamas and Thomas Faist (Eds.), **International Migration, Immobility and Development: Multidisciplinary Perspectives**, New York: Berg Publisher, 1997, p.88.

⁵⁴ Stephen Castles and Mark J. Miller, *op.cit.*, p.24.

⁵⁵ Douglas Massey et al, *op.cit.*, p.50.

order to better understand migration, it is necessary to establish a dialogue across disciplines.⁵⁶ This will also help to develop better mechanisms for migration management and for migrants' rights protection.

2) Definition Paradoxes

Although these theories are significant in explaining international migration, formulating concrete expectations becomes difficult. Because definitions of migration are either valid, but very abstract in relation to the practical situation. All of the theories have links, directly or indirectly, with the economics. Politics is almost absent in theoretical framework. Especially two critical political elements are distinguished by Myron Weiner:

“The first is that international population movements are often impelled, encouraged or prevented by governments or political forces for reasons that may have little to do with economic conditions. Indeed, much of the international population flows, especially within Africa and South Asia, are only marginally determined, if at all, by changes in the global or regional political economy. And secondly, even when economic conditions create inducements for people to leave one country for another it is governments that decide whether their citizens should be allowed to leave and governments that decide whether immigrants should be allowed to enter and their decisions are frequently based on non-economic considerations.”⁵⁷

In this framework, the most important factor which is ignored by the theories, is the role of the state in shaping migration. This situation is stated by Dirk J. Van de Kaa, in his article on international migration's impact on European stability, as:

“Nowadays, the flow of migrants between countries is regulated by charters, covenants, treaties and similar agreements involving group of states and by such other rules and practices as individual countries may choose to apply. The manner in which illegal migrants and migration are dealt with similarly depends on decisions taken after weighing the national and international repercussions quite carefully. It may thus be deduced that in exploring the issue of future mass migration to Europe it is not sufficient to make an inventory of the types of migration streams that may be expected according to the different theories. It is also necessary to investigate how such streams may be shaped in view of the relations between the countries involved. Political, military, security and economic interests

⁵⁶ Caroline B. Brettell and James F. Hollifield, op.cit., p.3.

⁵⁷ Myron Weiner, “Security, Stability and International Migration”, **Draft of a Paper in preparation for publication for Defense and Arms Control Studies Program**, Center for International Studies, Massachusetts Institute of Technology, December 1990, p.5

will largely determine the steps and decisions receiving countries will take in regard to immigration.”⁵⁸

The state’s role is not only significant in relation to shape international migration, but also in defining what is migration and who is migrant as said before. Although theories do not take state’s role into consideration in the migration phenomenon, states are extremely significant in defining migration in international arena. As seen before, international organizations’ definitions are affected by states’ policies. States have power to define who is migrant, what are the rights of him/her. A special category of migrants, “refugees and asylum seekers”, which are not taken into consideration by migration theories, today, constitutes very large part of the migrants. This category of migrants, is not only a classification in social and political sciences but also a term under international law, and relatedly, an enormously important component of today’s global migration problem. Migration policies including entrance policies, integration policies, policies to make migrants return and policies to keep migration temporary, are mainly practical innovations shaped only by states, with little theoretical knowledge.⁵⁹ Consequently a definition paradox arises from the different focuses and different considerations between theories and international organizations, namely between theory and practice.

In 1990s and 2000s, instead of singling out one factor causing people to move, the concept of “migration dynamics” seems to be emerging.⁶⁰ This means that instead of focusing on political or economic reasons for migrating, studies in migration dynamics also take into account the connection between the two. By this way, global demographic development, ecological factors and human rights violations come to be considered as a major further cause of migration in the future.

II. THE RIGHTS OF MIGRANTS

Migration has increased in recent decades and this leads to growing concern among governments, civil society and international organizations. As Massey said:

“Whatever the case, given the size and scale of contemporary migration flows, and the potential for conflict and misunderstanding inherent in the diverse, multi-ethnic societies

⁵⁸ Dirk J. Van de Kaa, “International Mass Migration: A Threat to Europe’s Borders and Stability?”, **De Economist Publisher: Springer Netherlands**, Vol. 144, No.2 (July 1996), p.282.

⁵⁹ European Commission, **Pre-feasibility Study on the Possible Establishment of a European Migration Observatory (working document)**, Brussels, 20 June 1994, p.2.

⁶⁰ *ibid.*, p. 15

now forming around the world, political decisions about international migration will be among the most important made over the next two decades.”⁶¹

Today, in the pursuit of profit, the movement of capital across national borders is promoted and facilitated but that of labour (persons) is restricted and controlled. Because of the growing competition in the global market, states on the one hand, try to spend less in social welfare, education and healthcare and on the other hand, they want to benefit from the internationalization of the migration by recruiting cheap labour. The belief that migrants are economically necessary but socially undesirable cause gross human rights violations. Furthermore, migrants and particular segments of the society living on the margins, are often in competition with each other for welfare services. This breeds xenophobic acts within society. Migrants can be exposed to racism and xenophobia, when leaving their own country, as well as when transiting another country or entering their country of destination.

In 1990s, xenophobic behaviour was spreading in several societies in the world and acts of racist violence increased. This was a “new kind of racism” based on cultural differences, rather than biological ones which were the case in old form of racism leading to Nazism and Fascism. Globalization and new migration patterns are set as two significant causes of the emergence of these xenophobic and racist movements according to the UNESCO.⁶² In this circumstance, migrants are differentiated as one of the most vulnerable group to racism, xenophobia and discrimination in different regions in the world.

Globalization and increased population flows have urged international community for the need to address the particular vulnerability of migrants. By the time, establishing minimum standards for the prevention of the violation of migrant’s rights become important. Today, it cannot be said that the rights of migrant workers are legally unprotected. There is a number of national and international organizations and non-governmental organizations (NGOs) dealing with migrant’s human rights including discrimination, racism and xenophobia. In this section, the focus will be on the efforts of pioneering organizations such as International Labour Organization, United Nations, Council of Europe that each of them has taken significant measures relating to the migrants. And then, European Union’s legal documents will be analyzed within the

⁶¹ Douglas Massey et al, op.cit.,p.59.

⁶² UNESCO Glossary **Xenophobia**, <http://portal.unesco.org/shs/en> (02.08.05)

scope of the migrant's rights protection in international and regional levels. Before this, it's worth to explain international instruments used in international law briefly in order to better evaluate their effects.

International law order is mostly regulated by declarations, conventions, treaties and covenants. Declaration is the formal act of deliberative body and has global importance. But when approved or adopted, it is recommendatory and aspirational rather than binding. So declaration has a different consequence from a treaty which has become effective through the required number of ratifications. However, arguments have developed for viewing all or part of the declaration as legally binding, either as a matter of customary international law or as an authoritative interpretation of the UN Charter.

The term treaty has regularly been used as a generic term embracing all instruments binding at international law concluded between international entities, regardless of their formal designation.⁶³ The 1969 Vienna Convention on the Law of Treaties defines a treaty in its Article 2(1)(a), as:

“an international agreement concluded between States in written forms and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”⁶⁴

The 1986 Vienna Convention extends the definition of treaties to include international agreements involving international organizations as parties.⁶⁵

The term “Convention” can have both a generic and specific meaning. As a generic term, Article 38(1) of the Statute of the International Court of Justice refers to international conventions whether general or particular as a source of law, apart from international customary rules, general principles of international law, judicial decisions and the teaching of the most highly qualified publicists.⁶⁶ This generic use of the term embraces all international agreements, in the same way as does in the generic term treaty.

⁶³ **Explanation of Terms**, <http://www.law.qub.ac.uk/humanrts/treaies/terms.html> (24.0.2005)

⁶⁴ **1969 Vienna Convention on the Law of Treaties**, <http://www.un.org/law/ilc/texts/treaties.html> (01.09.05)

⁶⁵ Article 2(1)(a) of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations, 21 March 1986, <http://www.un.org/law/ilc/texts/trststat.htm> (01.09.05)

⁶⁶ Article 38(1) of the Statute of the International Court of Justice, <http://www.icj-cij.org/icjwww/ibasicdocuments/Basetext/istatute.htm> (01.0.05)

The Convention as a specific term, it generally used for formal multilateral treaties with a broad number of parties. Conventions are normally open for participation by the international community as a whole, or by a large number of states. Usually the instruments negotiated under the auspices of an international organization are entitled conventions.⁶⁷ For example, ILO has regulations on the form of Conventions which are binding for countries which ratify them. It has also recommendations. However, they are not subject to ratification, therefore they do not carry the legal requirement of Conventions.⁶⁸ The Covenant again binds the state parties in accordance with its terms. For this reason, before mentioning measures taken by the international human rights organizations, it is important to stress the importance of treaty/covenant/convention based regulations for effective solutions in migrants rights protection rather than declarations and recommendations.

In understanding migration, besides theories, international legal documents are also important. Many international organizations have serious works in relation to migration. The most significant ones are International Labour Organization (ILO) and United Nations in international level and Council of Europe, Organization for Security and Co-operation in Europe(OSCE) and European Union (EU) in European level.

A. International Level

Here, the practical side of the migration, namely, migrant's rights, will be examined with reference to basic international legal documents. Migration has not been absent from discussion of international and regional institutions in the postwar period. Three key institutions were established after World War II to manage the conduct of international economic relations such as International Monetary Fund (IMF), World Bank and General Agreement on Tariffs and Trade (GATT, which has recently named the World Trade Organization). These institutions included neoliberal norms, rules and procedures in order to forge an open economy, but they did not extend this approach to migration. The general trend toward liberalization did not applied to international labour migration. Thus, migration is less institutionalized (and less liberalized) than other economic issues. The reason is the fact that migrants are also sociopolitical actors and migration issue bring serious concerns in the states' political agenda. So, it can be said that the paradox mentioned in relation to the definition of migration, became an

⁶⁷ Explanation of Terms, <http://www.law.qub.ac.uk/humanrts/treaies/terms.html> (24.0.2005)

⁶⁸ International Legislation and Standards, <http://www.int.osha.eu.int/legislation> (24.06.05)

important factor in shaping migrant's rights. Post-war international economic organizations were not willing to deal with migrant's rights issue because of the political nature of the subject.

A number of intergovernmental agencies in international and regional level, have been involved in various aspects of international migration. United Nations, International Labour Organization (in relation to labour migration), Organization for Economic Cooperation and Development (as regards the analysis of economic and migration trends), International Organization for Migration, European Union and even World Trade Organization, have discussed migration or migrants in the context of their mandates. Here, those are most significant ones in relation to the migrants' rights, will be examined.

1)International Labour Organization's Documents

International Labour Organization (ILO)'s documents were basically within the context of preserving the rights of migrant workers. ILO was one of the first global organizations at the forefront of advancing the recognition and protection of the rights of migrant workers. The two significant ILO Conventions were dealing with treatment of migrant workers in the workplace and labour market.

One of them is ILO Convention No. 97 on Migration for Employment⁶⁹ which entered into force on January 22, 1952. This Convention defines the term migrant for employment in its Article 11 as

“a person who migrates from one country to another with a view to being employed otherwise than on his own account and includes any person regularly admitted as a migrant for employment”

The Convention also entails provisions for gathering and exchanging information and cooperation among member states in relation to the migrants' issues, for equality of treatment, remuneration, membership of trade unions of the migrants. In its annexes, it covers the work condition and general condition of life of the migrants, provides the supervision of contracts between employer and migrant for employment, entails simplification of administrative formalities, interpretation facilities and several

⁶⁹ ILO Convention No. 97, <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C97> (15.05.2007)

assistance for the protection of the migrants' rights. For example, Article 8 (1)⁷⁰ prevents migrants for employment who has been admitted on a permanent basis and the members of his family who have been authorised to accompany or join him, from being returned to their territory of origin or the territory from which they emigrated because the migrant is unable to follow his occupation by reason of illness contracted or injury sustained subsequent to entry, unless the person concerned so desires or an international agreement to which the Member is a party so provides.

However, in paragraph 2 of the article the competent authority of the country has been given the power to determine that the provision of paragraph 1 shall take effect only after a reasonable period shall in no case exceed five years from the date of admission of such migrants. Additionally, some issues such as legal provisions in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities and any other contingency which is covered by social security scheme left to regulate by states' own national laws. Regulations or the realizations of this type of issues are possible only to the extent that national laws and regulations permit.⁷¹

Although this convention's aim is to overcome the abuse of migrants and protect their rights, realization of some rights are left to the states' competences. Setting limitations for the protection of certain types of rights, for example rights related to social security, generally have close relation with the migrants' vulnerable position in the society.

Other ILO document is Convention No. 143 on Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers⁷² which entered into force on December 9, 1978. The term "basic human rights of all migrant workers" was firstly used in this Convention. In the Article 1, it states that

"Each member for which this Convention is in force undertakes to respect the basic human rights of all migrant workers"

This Convention has also provisions for illegally employed migrant workers and those who employ workers who have immigrated in illegal conditions. It also provides systematic contact and exchange of information at the national and

⁷⁰ See Annex 2, ILO Convention No. 97, Article 8

⁷¹ See Annex 2, ILO Convention No.97, Article 6 (1)(b)

⁷² ILO Convention No.143, <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C143> (15.05.2007)

international level. It urges states to make national laws and regulations for the effective detection of the illegal employment of migrant workers and for the definition of administrative, civil and penal sanctions. It guarantees migrants' certain rights in case of the loss of job.⁷³

In the Convention, cultural rights of migrant workers and of their family members are also mentioned. Member states undertake to pursue a national policy designed to promote and guarantee them. They enact necessary laws and promote educational programmes in order to encourage the efforts of migrant workers and their families to preserve their national and ethnic identity, including the possibility for children to be given some knowledge of their mother tongue. However again, all these shall be realized by methods appropriate to national conditions and practice. The Convention urges member states to facilitate the reunification of the families of all migrant workers legally residing in its territory and it specifies the family members as spouse, dependent children, father and mother. Therefore the objective of the ILO project is to inform policy-makers, employers and worker organizations and to engage in anti-discrimination training activities and mechanisms to redress the problem.⁷⁴

Although it is not issued exclusively for migrants, ILO Convention No.111 also can be served for the protection of the migrants' equal treatment rights within the field of employment against racial discrimination.⁷⁵ Article 1(1) of the Convention provides a definition of discrimination such as:

“(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist and with other appropriate bodies”

Article 2 sets out various obligations of the Member States, stating that:

“Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions

⁷³ See Annex 2, ILO Convention No.143, Article 8(1) and Article 9(1)

⁷⁴ Fernand de Vareennes, **Strangers in Foreign Lands: Diversity, Vulnerability and the Rights of Migrants**, http://www.unesco.org/most/paper_devareennes.pdf (15.05.2007), p.14

⁷⁵ ILO Convention No.111, <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111> (15.05.2007)

and practice, equal opportunity and treatment in respect of employment and occupation, with a view to eliminating any distinction in respect thereof.”

As we have seen, within the ILO framework, the idea of preserving the rights of migrant workers in the workplace and employment sector, by the time, leads to the effort to set standards for broader application of human rights norms. The preservation of their cultural rights, the rights of their family and children come to the fore as issues of concern.

2) United Nation's Documents

Human rights movement has a significant role on migrant's rights. United Nations is the pioneer of human rights organizations giving firstly a formal and authoritative expression to the human right movement that began at the end of Second World War with its Charter.⁷⁶ Although in the Charter, the term “human rights” appears infrequently (Second paragraph of the Preamble, Article 1(3), Article 13 (1) (b), Articles 55 and 56, Article 62(2) and Article 68)⁷⁷, it has given way to the preparation of a human rights declaration with its Article 68 providing that one of the UN organs, the Economic and Social Council (ECOSOC), “shall set up commissions in economic and social fields and for the promotion of human rights.” Only one substantive human rights receives direct mention in the Charter: equal protection.⁷⁸

In 1946, ECOSOC established the Commission on Human Rights which prepared Universal Declaration of Human Rights. This Charter and related instruments, such as Universal Declaration of Human Rights of 1948, International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights which became effective in 1976, are considered as the core of the universal human rights system. The Commission on Human Rights became world's single most important human rights organ. Together with this Commission, other UN organs have played major roles in developing universal human rights by drafting and approving treaties and declarations and by monitoring, authorizing or ordering state actions.

Universal Declaration of Human Rights includes economic and social rights as well as civil and political rights, which can be considered as the constitution of the

⁷⁶ Henry J. Steiner and Philip Alston, **International Human Rights in Context, Law, Politics, Morals**, Newyork: Oxford University Press Inc., 2000,p. 137

⁷⁷ Charter of the United Nations, <http://www.un.org/aboutun> (15.05.2007)

⁷⁸ Henry J. Steiner and Philip Alston, *op.cit.*, p.138.

entire movement. It protects fundamental human rights without distinction of any kind, such as race, colour, sex, language, religion, political and other opinion, national or social origin, property, birth or other status. Protection of the individual's physical integrity, privacy and family, procedural fairness of government in relation to the trial procedure and deprivation of individual's liberty, establishing equal protection norms, freedom of movement and residence, the right to seek asylum, to nationality, to marry are rights protected by Universal Declarations of Human Rights.⁷⁹

The two Covenants⁸⁰ develop in detail the basic rights of UN Declaration and include several rights in order to use for the protection of the migrants' human rights. Each one of the rights of the International Covenant on Civil and Political Rights (ICCPR) must be guaranteed without discrimination between citizens and aliens. Article 26 of ICCPR states that:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”

The rights set forth in the Covenant apply to everyone, irrespective of reciprocity and irrespective of his or her nationality or statelessness. According to Article 2(1), each state party must ensure the rights in the Covenant to all individuals within its territory and subject to its jurisdiction. Moreover, Article 13 of the ICCPR is specifically dealt with aliens stating that:

“An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.”

The Covenant does not recognize the right of aliens to enter or reside in the territory of a state party. It is in principle a matter for the State to decide who it will

⁷⁹ Universal Declarations of Human Rights, <http://www.ohchr.org/english/issues/education/training/udhr.htm> (17.01.07).

⁸⁰ International Covenant on Civil and Political Rights, <http://www.ohchr.org/english/law/ccpr.htm>, (17.01.07) and International Covenant on Economic, Social and Cultural Rights, <http://www.ohchr.org/english/law/cescr.htm> (17.01.07)

admit to its territory. However, once aliens are allowed to enter the territory of a State party, they are entitled to the rights set out in the Covenant. Aliens thus have an inherent right to life, protected by law, and may not be arbitrarily deprived of life. They must not be subjected to torture or to cruel, inhuman or degrading treatment or punishment; nor may they be held in slavery or servitude. Aliens have the full right to liberty and security of person. If lawfully deprived of their liberty, they shall be treated with humanity and with respect for the inherent dignity of their person. Alien may not be imprisoned for failure to fulfil a contractual obligation. They have the right to liberty of movement and free choice of residence; they shall be free to leave the country. Aliens shall be equal before the courts and tribunals, and shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law in the determination of any criminal charge or of rights and obligations in a suit at law. Aliens shall not be subjected to retrospective penal legislation, and are entitled to recognition before the law. They may not be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence. They have the right to freedom of thought, conscience and religion, and the right to hold opinions and to express them. Aliens receive the benefit of the right of peaceful assembly and of freedom of association. They may marry when at a marriageable age according to the law of the State where they reside. Their children are entitled to those measures of protection required by their status as minors. In those cases where aliens constitute a minority within the meaning of Article 27*, they shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practise their own religion and to use their own language. Aliens are entitled to equal protection by the law. There shall be no discrimination between aliens and citizens in the application of these rights.

According to the Article 12, once an alien is lawfully within a territory, his freedom of movement within the territory and his right to leave that territory may only be restricted by law if it is necessary to protect national security, public order, public health or morals or the rights and freedoms of others and is consistent with the other rights recognized in the present Covenant.

* Article 27 of ICCPR: “ In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language”

The rights protected by this Covenant are quite important because it constitutes, together with the International Covenant on Economic, Social and Cultural Rights, the basis of modern international human rights system and most importantly, as already said, covenants have binding power on state parties in accordance with its terms.

In 1990s, with increasing importance of human rights issue, migrant's rights has also been taken at the center of this discourse. Human rights are universal (they apply everywhere), indivisible and inalienable (they cannot be denied to any human being). Consequently, human rights framework helps to better treatment of migrants within the society they live. In 1985 the need for further efforts to be made on behalf of the social position of migrant workers and their families is recognized by the United Nations Economic and Social Council with the Resolution 1985/24.⁸¹ It emphasized the protection of migrant families and sought a substantial improvement of the conditions of family integration. This long and slow trend of extension to migrants of basic human rights principles lead to the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which built on the above mentioned ILO Conventions.

Before coming to this Convention, other important documents of UN specifically those which deal with discrimination, racism and xenophobia will be evaluated in relation to its impact on migrants' rights.

The earliest initiative of the United Nations is the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others⁸² which is entered into force on July 25, 1951. Article 17 of this Convention is specifically constructed for the immigrants and emigrants in order to protect them being trafficked for the purpose of prostitution.⁸³

On April 22, 1954, UN Convention relating to the Status of Refugees⁸⁴ is entered into force. This Convention defines the meaning of the term refugee and includes provisions in relation to their juridical status, their property, their access to

⁸¹ Fernand de Varennes, op.cit., p.14

⁸² UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, <http://www.unhcr.ch/html/menu3/b/33.htm> (03.08.05)

⁸³ See Annex 3, UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, Article 17.

⁸⁴ UN Convention relating to the Status of Refugees, http://www.unhcr.ch/html/menu3/b/o_c_ref.htm (03.08.05)

Courts, their gainful employment, housing, education, public relief, labour legislation and social security, administrative assistance, their freedom of movement, identity papers, travel documents, their expulsion and their naturalization. In this framework, the Contracting States shall accord to refugees the same treatment as is accorded to nationals in the issues related to fundamental rights and freedoms. The restrictions shall to be made by law only if national security and public order are concerned.

In Article 1 B(1) of the Convention, it states that:

“For the purpose of this Convention, the words “events occurring before January 1951” in Article 1 Section A , shall be understood to mean either a) events occurring in Europe before January 1951”; or b) “events occurring in Europe or elsewhere before 1 January 1951”; and each Contracting State shall make a declaration at the time of signature, ratification or accession, specifying which of these meanings it applies for the purpose of its obligations under this Convention”

In 1967, the Protocol Relating to the Status of Refugees removed this geographical and temporal restrictions from the Convention. It incorporated post-1951 refugees and explicitly included those from outside Europe in the definition. Some countries however still define refugees by the geographic limitations of the 1951 definition and do not recognize non-European refugees.

Signatories to the Convention undertake to protect refugees by allowing them to enter and granting temporary or permanent residence status. Refugees have the right to apply for asylum. It is also laid down that refugees should not be compelled to go to states where they are in danger of persecution. However the right to grant asylum is a right of the state. States’s economic and ideological considerations also play a significant role in defining refugees. In this subject, Jan and Leo Lucassen emphasized the labour market influence on admission policies towards refugees. They give the example of people fleeing from behind Iron Curtain (especially after the revolts in Hungary in 1956 and in Czechoslovakia in 1968). They are welcomed by Western countries for ideological and humanitarian reasons. Lucassens argue that in practice, however, each country tried to select the most able and best educated among the refugees.⁸⁵ No one was interested in people who were elderly, sick or disabled.

⁸⁵ Jan Lucassen and Leo Lucassen, op.cit., “Migration, Migration History, History: Old Paradigms...”, p.16.

States also have security concerns in relation to granting refugee status. Myron Weiner emphasizes the potential of refugees as a political risk to the host country and a source of international conflict by saying that:

“Since refugees are legally defined by most countries as individuals with well founded fear of persecution the decision to grant asylum or refugee status implies a severe criticism of another state. ... Moreover, to classify individuals as refugees with a well founded fear of persecution is also to grant them the moral (as distinct from political) right to oppose a regime engaged in persecution so judged by the country that has grant them asylum... Governments are often concerned that refugees to whom they give protection may turn against them if they are unwilling to assist them in their opposition to the government of their country of origin...Refugees have launched terrorist attacks within their host country, illegally smuggled arms, allied with the opposition against host government’s policies, participated in drug traffic, and in other ways eroded a governments willingness to admit refugees”⁸⁶

Additionally, a decision to grant refugee status to a small number of individuals might open the floodgate beyond what society is prepared to accept. States prefer restrictive criteria for keeping the influx small. Another reason of restrictive criteria is what called “bogus claims”. This means that individuals who wish to enter a country but cannot do so under guestworker system or other migration laws, may resort to claiming political asylum.

All EU Member States ratified this Convention with reservations except Italy, Czech Republic, Germany, Slovakia, Slovenia. Romania and Bulgaria have also signed it without reservation.⁸⁷ Most of the reservations were issued on the subject of gainful employment, namely Article 17. Denmark, France, Greece, Ireland, Sweden, Austria and Malta had issued reservations on this article.⁸⁸ Additionally, for example, Netherlands issued declaration on the subject of freedom of movement and a territorial application clause. Ireland issued declarations or reservations in relation to the administrative assistance, fiscal charges and expulsion. Sweden had on the issues of exemption from exceptional measures, personal status, labour legislation and social security and administrative assistance. This reservations shows the effects of states’ priorities in granting refugee status.

⁸⁶ Myron Weiner, *op.cit.*, pp.15-19.

⁸⁷ Richard Plender (Ed.), **Basic Documents on International Migration Law**, Boston : Martinus Nijhoff Publishers, 1997, p.158

⁸⁸ See Annex 3 UN Documents, UN Convention relating to the Status of Refugees, Article 17.

The third initiative was on the education issue. UNESCO Convention Against Discrimination in Education⁸⁹ was adopted by the General Conference of UNESCO in 1960. In the Convention, the term “education” refers to all types and levels of education, and includes access to education, the standard and quality of education, and the conditions under which it is given. The Convention’s aim is to eliminate and prevent discrimination which has the purpose or effect of nullifying or impairing equality of treatment in education. (Article 1) According to the Article 5(a):

“Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace;..”

Article 3(e) is specifically deals with foreign nationals. It states that:

“In order to eliminate and prevent discrimination within the meaning of this Convention, the States Parties thereto undertake:

(e)To give foreign nationals resident within their territory the same access to education as that given to their own nationals”

The Convention has also clause for immigrants to protect their own culture.⁹⁰

UN Convention on the Reduction of Statelessness⁹¹ which was entered into force on December 13, 1975 aim to ensure that everyone has a nationality. According to the Article 1(a) Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless, at birth, by operation of law or upon an application being lodged with the appropriate authority. In the EU, Austria, Denmark, France, Germany, Ireland, Netherlands, Sweden, Slovakia, Czech Republic, Latvia and United Kingdom are parties to the Convention. However, most of these countries, namely Austria, France, Ireland and United Kingdom have issued declarations on the right to deprive a person of his nationality.⁹²

France has also entered a reservation to the Articles 11 on the establishment of the body to which a person claiming the benefit of this Convention may apply for the

⁸⁹UNESCO Convention Against Discrimination in Education, http://www.unhchr.ch/html/menu3/b/d_c_educ.htm (03.08.05)

⁹⁰ See Annex 3 UN Documents, UNESCO Convention Against Discrimination in Education, Article 2(b)

⁹¹ UN Convention on the Reduction of Statelessness, <http://www.unhchr.ch/html/menu3/b/o> (06.09.05)

⁹² See Annex 3 UN Documents, UN Convention on the Reduction of Statelessness, Article 8(3)

examination of his claim and Article 14 dealing with submission to the International Court of Justice in case of a dispute between Contracting States.⁹³ Germany has entered a general reservation and a reservation to above mentioned Article 1(1). This declarations show the sensibility of nationality issue for above mentioned States.

In 1987, June 26, UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁹⁴ was entered into force. The Convention provides that no one may be subjected to torture or cruel, inhuman or degrading treatment or punishment. Each State Party shall take effective legislative, administrative, judicial and other measures to prevent acts of torture in any territory under its jurisdiction.(Article 2(1)). According to Article 3(1), no State Party shall expel, return (“refouler”) or extradite a person to another state where there are substantial grounds for believing that he/she would be in danger of being subjected to torture.

UN Convention on the Rights of the Child⁹⁵ was entered into force on September 2, 1990. This Convention’s aim is to ensure special care and assistance to child besides universally recognized fundamental human rights and duties. In this framework, certain provisions are closely concerned with the situation of the migrant child with the aim of ensuring respecting their rights without discrimination of any kind.⁹⁶ Being aware of the fact that non-nationals have difficulties in benefiting certain rights, the Convention has also ensured the right to acquire a nationality for the child as far as possible.⁹⁷ The Convention has also taken measures on family reunification.⁹⁸

This Convention is ratified by 192 countries. Only two countries have not ratified : USA and Somalia which have signalled their intention to ratify by formally signing the Convention.

The most important document on the migrant’s rights is UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families⁹⁹ which was entered into force on July 1, 2003. A final draft of the Convention was adopted by

⁹³ See Annex 3 UN Documents, UN Convention on the Reduction of Statelessness, Article 11 and Article 14.

⁹⁴ UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, <http://www.ohchr.org/english/law/cat.htm>, (17.01.07)

⁹⁵ UN Convention on the Rights of the Child <http://www.ohchr.org/english/law/cat.htm> (06.09.05)

⁹⁶ See Annex 3 UN Documents, UN Convention on the Rights of the Child, Article 2(1)

⁹⁷ See Annex 3 UN Documents, UN Convention on the Rights of the Child, Article 7

⁹⁸ See Annex 3 UN Documents, UN Convention on the Rights of the Child, Article 9(1) and Article 10(1)

⁹⁹ UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. <http://www.unhcr.ch/html/menu3> (06.09.05)

the UN General Assembly in December 1990. This is the most significant attempt to develop an international regime for migrant workers. Unlike ILO treaties, it covers a wider sphere of migrants such as workers in “irregular situation”, itinerant and self-employed workers. It represents a significant step in protecting the rights of migrants and thus contribute to their integration and acceptance in society. It recognizes the critical role that migration of workers plays in global economy. Furthermore, migrant workers are considered more than labourers or economic entities. They are social entities with families. It contains provisions for equality of treatment between women and men migrant workers, between documented and undocumented workers; and between nationals and non-nationals and takes into account the above mentioned labour and human rights standards. It is the most comprehensive international instrument to date on migrant workers.

Considering that if the fundamental rights of all migrant workers are more widely recognized, employment of irregular migrants will be discouraged, the Convention grants also certain additional rights to regular migrant workers and members of their families. According to the Article 3, it shall not apply to refugees and stateless persons.

With this Convention, the global community now has an international definition of migrant workers, one which recognizes both men and women as migrants. The Convention defines “migrant worker” as:

“a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national”

and “members of the family” as :

“persons married to migrant workers or having with them a relationship that, according to applicable law, produces effects equivalent to marriage, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the States concerned.”

It also provides definitions of certain categories of migrant workers such as frontier worker, seasonal worker, seafarer, worker on offshore installation, itinerant worker, project-tied worker and self-employed worker.

The rights in the Convention fall under two main headings: the human rights of migrant workers and members of their families (Part III) and other rights of migrant workers (Part IV). Part III rights are applicable to all migrant workers, regardless of their status. It brings to the fore that migrants, not just citizens, are entitled to the full protection of most international human rights standards. Whereas the rights in Part IV are applicable only to migrant workers in a regular or documented situation.

Rights in Part III involve obligations on the Part of States of employment.¹⁰⁰ Part IV goes one step further and provides for additional rights for migrant workers and members of their families in a regular and documented situation involving obligations on the part of both States of employment and States or origin.¹⁰¹

The Convention goes much further than previous treaties by providing policy guidelines in Part VI to States on how to address the problems of international migration and encourage collaboration and dialogue between concerned States. The Convention ensures all migrant workers and the members of their families fundamental human rights without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, marital status, birth or other status. On the other hand, there are some limitations to these rights on certain issues. However these limitations have to be prescribed by law and have to be necessary to protect public safety, order, health or morals or fundamental rights and freedoms of others. The limitations are on the issues of right to leave and enter to any country, religion, freedom of expression, deprivation of liberty, expulsion, joining trade unions and association (subjects only to the rules of the organization concerned), right to choose residence and on the choosing their remunerated activity.

In relation to the xenophobia, Article 16(2) specifically regulates migrant workers and members of their families' rights to entitlement to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.

¹⁰⁰ See Annex 3 UN Documents, UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, Part III.

¹⁰¹ See Annex 3 UN Documents, UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, Part IV.

The Convention extends the concept of “equality of treatment” by calling for migrant workers and members of their families who are non-nationals in States of employment to be treated equally to nationals in certain situations. This reinforces the indivisibility of human rights regardless of nationality. They have the right to equality with nationals of the State concerned before the courts and tribunals (Article 18), on conditions of work, terms of employment such as minimum age of employment, restriction on home work and remuneration (Article 25), with respect to social security (Article 27) and medical care that is urgently required for the preservation of their life or the avoidance of irreparable harm to their health, in respect of protection against dismissal from work, unemployment benefits, access to public work schemes intended to combat unemployment and access to alternative employment in the event of loss of work or termination of other remunerated activity (Article 54)

Especially the child of migrant worker is considered carefully. Each child of migrant worker shall have the right to a name, to registration of birth and to a nationality (Article 29). Child’s access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child’s stay in the State of employment (Article 30). Article 44 protects the unity of the families of migrant workers. Article 45(2) urges States of employment to pursue a policy, where appropriate in collaboration with the State of origin, aimed at facilitating the integration of children of migrant workers in the local school system, particularly in respect of teaching them the local language.

Migrant workers and members of their families shall have the right to participate in public affairs of their State of origin (means the State which the person concerned is a national, according to the Article 6 of the same Convention) and to vote and to be elected at elections of that State, in accordance with its legislation. (Article 41) However, migrant workers may enjoy political rights in the State of employment if that State, in the exercise of its sovereignty, grants them such rights according to the Article 42.

The Convention has detailed arrangements regarding to the residence permission, work permit and employment with the aim to protect migrant workers against being in an irregular position. It also takes measures in order to eradicate illegal

or clandestine movement of migrant workers and members of their families and to struggle against the persistence of their irregular situation.

It makes special arrangements for frontier workers, seasonal workers, project-tied workers, specified-employment workers and self-employed workers in Part V.

The Convention established a Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families for the purpose of reviewing the application of the Convention and may share information with and seek assistance of other specialized agencies and intergovernmental organizations.

This Convention entered into force after Guatemala deposited the twentieth ratification required in March 2003. Algeria, Azerbaijan, Belize, Bolivia, Bosnia and Herzegovina, Burkina Faso, Cape Verde, Colombia, Ecuador, Egypt, El Salvador, Ghana, Guatemala, Guinea, Honduras, Kyrgyzstan, Libyan Arab Jamahiriya, Mali, Mexico, Morocco, Philippines, Senegal, Seychelles, Sri Lanka, Syria, Tajikistan, Timor Leste, Turkey, Uganda and Uruguay are parties to the Convention. No State of employment from the West has ratified the Convention. This shows the reluctance of more developed countries to accept its legally-binding standards.

The same year, UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children¹⁰² was also entered into force on December 25, 2003. Trafficking and migrant smuggling have increased parallel with increasing obstacles to legal migration. This Protocol, together with the Protocol against the Smuggling of Migrants by Land, Sea and Air¹⁰³, includes important provisions in order to protect the rights of the migrants. In appropriate cases and to the extent possible under domestic law, States parties to the Trafficking Protocol are to protect the privacy of trafficking victims and ensure the necessary facilities on legal proceedings and for the physical and psychological recovery of victims. The special requirements of children such as housing, education, care, are taken into account in application of these provisions. The Protocol has also aimed at preventing trafficking and protecting trafficked persons from re-victimization. According to the Smuggling Protocol, States

¹⁰² UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, 2000, http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf (15.05.2007)

¹⁰³ UN Protocol Against the Smuggling of Migrants by Land, Sea and Air Supplementing the United Nations Convention Against Transnational Organized Crime, 2000, http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_smug_eng.pdf (15.05.2007)

parties are required to take all appropriate measures to preserve the internationally recognized rights of smuggled migrants, especially, the right to life and the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment (Article 6(3) of the Protocol).

It is highly important to make an effort to block illegal migration, which not only exposes migrants abuse during their voyage but also, because of their illegal status, affects their rights in the country of destination.

UN, as a pioneer organization in human rights protection, has serious efforts in relation to the improvement of migrants' rights. It has conventions on several issue areas, such as nationality, employment, education, refugees, illegal migration, torture, human trafficking and so forth. Although these conventions are binding for the signatory states, it is obvious that states are quite reluctant to bind themselves, especially in critical issues which infringed upon the states' priorities (e.g nationality, granting of refugee status or social security rights). Consequently, state appears again as a major determinant of rights.

B. European Level

At the European level, Council of Europe, OSCE and EU are the most important organizations in shaping migrants' rights. The mechanisms of these three organizations are not completely separate from each other because almost all European states are the members of these organizations. Here, the measures taken under European Union mechanism will be examined in greater detail as the subject of the thesis implies.

1) Council of Europe's Documents

From the 1950s onwards, Council of Europe has several initiatives especially regarding to the situations of refugees, asylum seekers and migrants in the form of resolutions and recommendations. Its aim is to protect the fundamental rights and freedoms of these group by taking strength from European Convention on Human Rights. This Convention and its Protocols¹⁰⁴ protect everyone's rights to life, liberty

¹⁰⁴ Council of Europe, **Convention for the Protection of Human Rights and Fundamental Freedoms** as amended by Protocol No.11 with Protocol Nos: 1,4,6,7,12 and 13, September 2003, <http://www.echr.coe.int/NR/rdonlyres/D5CC24A7-DC13-4318-B457-5C9014916D7A/0/EnglishAnglais.pdf> (15.05.2007)

and security of person, fair and public hearing within a reasonable time by an independent and impartial tribunal, respect for private and family life, freedom of thought, conscience and religion, freedom of expression, freedom of assembly and association with others and to marry. No one shall be subjected to torture and inhuman or degrading treatment or punishment. No one shall be held in slavery or servitude. No one shall be required to perform forced or compulsory labour. And most importantly, Article 14 of the Convention states that:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

However this is not a general protection provision: it only protects against discriminatory practices affecting rights and freedoms recognized in the Convention and is therefore limited assistance in a number of areas of significant impact for migrants. On the other hand, Article 16 of the same Convention gives Member States the power to impose restrictions on the political activity of aliens in relation to the Article 10 (Freedom of expression), Article 11 (Freedom of Assembly and Association) and Article 14 (Prohibition of Discrimination). This clearly shows the State's determining power in migrants' rights issue.

The rights of the migrants are also protected by some Protocols to the Convention. In the Fourth Protocol (entered into force 2 May 1968), in the Article 2, everyone's right to liberty of movement and the right to choose residence are regulated. According to the Article 3;

“1.No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

2. No one shall be deprived of the right to enter the territory of the State of which he is a national.”

This clause has restricted power because it sets nationality as a precondition for protection. However, Article 4 of the same Protocol protects aliens against collective expulsion.

Again, Article 1 of the Seventh Protocol to the European Convention (entered into force 1 May 1988) for the Protection of Human Rights and Fundamental Freedoms, includes also an article which is specifically dealt with aliens, According to this article:

“1.An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed;

- a) to submit reasons against his expulsion;
- b) to have his case reviewed ; and
- c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

2.An alien may be expelled before the exercise of his right under paragraph 1.a,b,c of this article,when such expulsion is necessary in the interest of public order or is grounded on reasons of national security.”

Another significant development providing opportunities for enhanced action in the field of migrant’s rights protection was the adoption in June 2000, by the Committee of Ministers of the Council of Europe of Protocol No.12 which broadened the scope of the Convention’s Article 14 on non-discrimination and provided a protection before public authority . Article 1 of the Protocol 12 states that :

“1. The enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1.”

All EU Member States are parties to the Conventions and its Protocols despite of some reservations, declarations or territorial application clauses.¹⁰⁵ The declarations or reservations are especially issued regarding to the right to liberty and security (Article 5 of the Convention) and right to fair trial (Article 6). Austria, Czech Republic, Estonia, Finland, France, Ireland, Lithuania, Malta, Portugal, Slovakia, Spain have reservations or declarations on one or both of these articles, as was the status on August

¹⁰⁵ For the list of declarations made with respect to Convention and its Protocols: <http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp> (11.08.2005).

11, 2005. Some states such as France, Ireland, Spain and United Kingdom have declarations on Article 15 (Derogation in case of emergency). In relation to the freedom of expression Malta and Spain have declarations and also Spain has declaration on the issue of Freedom of Assembly and Association (Article 11 of the Convention)

European Convention On The Legal Status of Migrant Workers¹⁰⁶ (entered into force 1 May 1983)

Although this Convention covers several aspect of the migrant's life such as employment conditions, housing, work permit, taxation on earnings, training, social security, medical assistance, industrial hygiene, migrant's right to organise and family reunion, it has only 11 Parties. These are Belgium, France, Germany, Greece, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden and Turkey. France has issued reservation on family reunion and social security and Germany has reservations on the issue relating to the providing information, schooling, language training and social security.

This Convention is actually quite restrictive: it does not apply to all "migrant workers", but to a much more limited category: citizens of European countries which have ratified this Convention which still total only 11 countries.

Revised European Social Charter (entered into force in 1999)¹⁰⁷

The European Social Charter sets out rights and freedoms and establishes a supervisory mechanism guaranteeing their respect by the States Parties.¹⁰⁸ Following its revision, the 1996 revised European Social Charter has been gradually replaced the initial 1961 treaty. The Revised Social Charter also includes provisions concerning the rights of migrants. Article 16 regulates the right of the family to social, legal and economic protection; Article 18 regulates the right to engage in a gainful occupation in the territory of other parties and Article 19 regulates the right of migrant workers and their families to protection and assistance.

Most of the EU Member States signed revised European Social Charter, however most of them haven't ratified it yet. Austria, Czech Republic, Denmark,

¹⁰⁶ Council of Europe, **European Convention on the Legal Status of Migrant Workers**, European Treaty Series No.93, Strasbourg, 24.11.1977.

¹⁰⁷ Council of Europe, **European Social Charter (revised)**, European Treaty Series No:163, Strasbourg, 03.05.1996.

¹⁰⁸ Council of Europe, **European Social Charter**, European Treaty Series No. 035, Turin, 18.10.1961.

Greece, Hungary, Luxembourg, Netherlands, Slovak Republic and Spain signed but they haven't ratified it as in the situation at 1 June 2005. Germany, Latvia, Malta and Poland have not even signed yet.¹⁰⁹

The main intergovernmental body responsible for migration activities in the Council of Europe is the European Committee on Migration (CDMG) which was set up to establish European co-operation in the field of migration including the situation and social integration of populations of migrant origin and refugees and community relations. CDMG has prepared many policy papers and management strategies regarding to the migration problems. In these documents, minimizing trafficking and irregular movement and the development of channels of legal migration, protection of migrant's human rights and the establishment of sustainable bilateral and multilateral cooperation between countries of origin, transit and destination are generally emphasized points. The CDMG organizes regional debates* for the achievement of these aims and in many reports, it provides recommendations for effective integration policies.

2) Organization for Security and Cooperation in Europe's Documents¹¹⁰

Considering that the movements of migrant workers in Europe have reached substantial proportions, and that they constitute an important economic, social and human factor for host countries as well as for countries of origin, OSCE also involved in migration issue as an other European level organization. Firstly, in 1975 with Helsinki Final Act, economic and social aspects of migrant labour are taken into consideration.

In this framework, ensuring equality of rights between migrant workers and nationals of the host countries in employment, social security, work and living conditions; family reunification and allowing persons to leave and enter the host state temporarily in order to visit members of their families; migrant children's right to access to education and right to supplementary education in their own language, national culture, history and geography, are all mentioned.

¹⁰⁹ Signature and ratifications of the European Social Charter, its Protocols and the European Social Charter (revised), Situation at 1 June 2005, http://www.coe.int/T/F/Droits_de (16.08.2005)

* Regional Round Table in Sofia (October 2002) on Labour Migration as an Alternative to Irregular Migration; Mediterranean Migration Conference in Malta (April 2003) ; A regional Conference in Kiev (October 2003) "Migration Policies on the eve of EU enlargement: What Challenges for Future co-operation within the East European Region"

¹¹⁰ Richard Plender (Ed.), op.cit, pp.337-350.

In 1990, in the Document of the Copenhagen Meeting of the Conference on the Human Dimension, protection and the promotion of the rights of the migrant workers are again stressed.

In 1991, with the Charter of Paris for a New Europe, participating states affirm that without discrimination, every individual has the right to freedom of thought, conscience and religion or belief, freedom of expression, freedom of association and peaceful assembly, freedom of movement; no one will be subject to arbitrary arrest or detention, subject to torture or other cruel, inhuman or degrading treatment or punishment and they ensure that everyone will enjoy recourse to effective remedies, national or international, against any violation of his rights. They recognize that the issue of migrant workers and their families legally residing in host countries have economic, cultural and social aspects as well as their human dimension and reaffirm that the protection and promotion of their rights, as well as the implementation of the relevant international obligations are their common concern. In the Charter, the participating states also express overtly their determination to combat all forms of racial and ethnic hatred, anti-Semitism, xenophobia and discrimination against anyone as well as persecution on religious and ideological grounds.¹¹¹

In the same year, with the Document of the Moscow Meeting of the Conference on the Human Dimension, participating states agree to remove all legal and other restrictions with respect to travel within their territories for their own nationals and foreigners. Restrictions may be imposed only in accordance with national law and if they are necessary and officially declared for military, safety, ecological or other legitimate government interests. Similarly, the rights of the migrant workers and their families lawfully residing in the participating states are respected and may be restricted only by law. These restrictions have to be consistent with international standards. In the Document, the States also condemn all acts of discrimination on the grounds of race, colour and ethnic origin, intolerance and xenophobia against migrant workers.

To sum up, at the European level, Council of Europe and OSCE have initiated certain documents which can be used for the protection of migrants' rights. The most important document is European Convention on Human Rights and Fundamental Freedoms and its Protocols because there is also a judiciary mechanism (European

¹¹¹ Conference on Security and Co-operation in Europe, **Charter of Paris for a New Europe**, Paris 1990, <http://www.hri.org/docs/Paris90.html> (16.08.2005)

Court of Human Rights) to enforce these rules. However, the limits of the rights and freedoms recognized in the Convention also determined the scope of its impact. Additionally, Convention gives states power to impose restrictions on some issues. And these issues are usually the ones which cause serious results for migrants. For example, everyone's right to liberty of movement and right to choose residence (4th Protocol of ECHR) is subject to nationality condition. Since most of the migrants are not nationals, they can not use this clause on their behalf. On the other hand, states are willingness to apply some measures so they don't ratify related documents (e.g. European Convention on the Legal Status of Migrant Workers, European Social Charter). Council of Europe works also as policy initiator via its European Committee on Migration. OSCE is less active than Council of Europe and has more limited power. Although Council of Europe lacks an institutional mechanism within the EU to enforce compliance with its resolutions, the Council of Europe's meetings on migration related matters carry substantial political weight.¹¹²

3) European Union's Measures

In its communications on immigration and employment¹¹³ and in Green Paper "Confronting demographic change: new solidarity between generations"¹¹⁴, the Commission emphasized that on account of demographic trends, a decline in employment could be expected after 2010. The reduction in size of the labour force between 2010 and 2030 will be equivalent to some 20 million workers for the EU-25. Given the impact that demographic decline and population ageing will have on the economy and on European competitiveness, the Commission feels that more sustained immigration flows will be needed to meet requirements of the European labour markets. Therefore, it is stressed that common criteria and rules that are transparent and more closely harmonized at European level to be adopted for the admission of economic migrants.

In the EU, construction of the immigration policy had always been an issue of competence among two approaches. On the one hand, member states are unwilling to

¹¹² Demetrios G.Papademetriou, **Coming Together or Pulling Apart, The European Union Struggle with Immigration and Asylum**, Washington: Carnegie Endowment for International Peace, 1996, p.34

¹¹³ Commission of the European Communities, COM (2003) 336 final, **Communication from the Commission to the Council, The European Parliament, The European Economic and Social Committee and the Committee of the Regions, on immigration, integration and employment**, Brussels, 03.06.2003.

¹¹⁴ Commission of the European Communities, COM (2005) 94 final, **Communication from the Commission, Green Paper "Confronting demographic change: a new solidarity between the generations"**, Brussels, 16.03.2005.

surrender their sovereign power on the issue of immigration and prefer supporting initiatives of intergovernmental bodies which are comprised of national governments and on the other hand, European Community institutions have the intention to construct a common European Immigration Policy.

As many times said, 1973 oil embargo and the resulting recession were important factors brought the immigrant issue to the fore. Papademetriou put Community's enlargement of 1974 when Denmark, the United Kingdom and Ireland were admitted and subsequent enlargements incorporating Greece (1981), and Spain and Portugal (1986) as another factor affecting immigration policy.¹¹⁵ Because, enlargement raised the issue of free movement of persons within the expanded territory of Community and the need to harden the Community's external borders.

Although the Commission of the European Community (EC) circulated a set of proposals about third country nationals and their families in 1974 such as EC's first Social Action Programme, especially from the mid 1980s, it repeatedly discussed migration, but failed to come up with a common policy towards entrants from non-Community countries. Since the 1980s, EU co-operation and integration have intensified. This has important implications for the politics of migration and immigration in Europe and what can be called its four Europeanised faces such as free movement, aspects of immigration and asylum policy, the creation of EU citizenship and anti-discrimination laws.¹¹⁶

The first attempt to develop a Community policy on migration took place when the Commission issued and the Council adopted its Guidelines for a Community Policy on Migration in 1985.¹¹⁷ The Guidelines, being aware of the permanent status of immigrants, identified a number of priorities such as freedom of movement for third country nationals, the need to regularize their status and remove all obstacles to equal treatment, that needed attention before the larger Community goal of European Citizenship could be realized. This initiative was consultative and non-binding.

After 1985, the Commission had focused on the working and living conditions of third country nationals. At that times, there were also preparations for the Single European Act (SEA) which was the first major reform of European Economic

¹¹⁵ Demetrios G.Papademetriou, op.cit., p.18.

¹¹⁶ Andrew Geddes, op. cit., p.126

¹¹⁷ Demetrios G.Papademetriou , op.cit., p.20.

Community (EEC) legal framework since the 1957 Rome Treaty. The Milan Council met from June 1985 to February 1986. That times' Commission President Jacques Delors has thought that the move to abolish frontiers between EC countries would in turn convince member states of the need to cooperate on admission and other border control measures and thus creating a context for subsequent efforts to bring immigration policy into the institutional framework of the EC.¹¹⁸ The original text of the Treaty of the European Communities did not indicate how to deal with asylum and immigration matters. Consequently, although the SEA did not include mention of common immigration policies, Article 8a of the SEA set policy goals that could not be fully realized without EC-wide policies on immigration.¹¹⁹ It states that “the Community shall adopt measures with the aim of progressively establishing the internal market over a period expiring on 31 December 1992”. It defined “internal market” as “an area without frontiers in which the free movement of goods, persons, services and capital is ensured”.^{*} It became apparent that compensatory measures were necessary to make up for the loss of security due to the abolition of internal border controls.

Article 118 is another source for the construction of common migration policy. All EC social policies have their foundation in Article 118, which specifically charges the Commission with promoting cooperation between member states in matters relating to employment, labor law and working conditions, vocational training, social security and other social policies.^{**} Guidelines for a Community Policy on Migration was also taken on the basis of Article 118 of the Rome Treaty.

On the other hand, although until the 1990s, these issues remained strictly national concerns, the complexity and sensitivity of EC's free movement goals and their central relationship with external border controls and immigration issue resulted in the intensive consideration of the phenomenon by a growing number of organizations

¹¹⁸ibid., p.22.

¹¹⁹ Single European Act, OJ L 169 of 29.06.1987

^{*} **Article 8 A:** La Communauté arrête les mesures destinées à établir progressivement le marché intérieur au cours d'une période expirant le 31 décembre 1992, conformément aux dispositions du présent article, des articles 8 B, 8 C et 28, de l'article 57 paragraphe 2, de l'article 59, de l'article 70 paragraphe 1 et des articles 84, 99, 100 A et 100 B et sans préjudice des autres dispositions du présent traité.

Le marché intérieur comporte un espace sans frontières intérieures dans lequel la libre circulation des marchandises, des personnes, des services et des capitaux est assurée selon les dispositions du présent traité.

^{**} **Article 118 A:** 1. Les Etats membres s'attachent à promouvoir l'amélioration, notamment du milieu de travail, pour protéger la sécurité et la santé des travailleurs et se fixent pour objectif l'harmonisation, dans le progrès, des conditions existant dans ce domaine.

2. Pour contribuer à la réalisation de l'objectif prévu au paragraphe 1, le Conseil, statuant à la majorité qualifiée sur proposition de la Commission en coopération avec le Parlement européen et après consultation du Comité économique et social, arrête par voie de directive les prescriptions minimales applicables progressivement, compte tenu des conditions et des réglementations techniques existant dans chacun des Etats membres.

outside of the formal treaty structure. In EC, some old intergovernmental groups expanded their mandate to deal with this issue, some others were newly established. Measures have been taken within the framework of interstate cooperation which was largely left to ad hoc groups. Trevi Group was one of them which was formed in 1976 at the request of the United Kingdom (UK) Presidency to coordinate efforts against terrorism. The Trevi Group brought together senior Justice and Interior officials to discuss law enforcement issues. In 1980, its mandate was extended to include issues related to illegal immigration and asylum flows. The Commission also participated in the Trevi Group's activities. In 1990, due to the increasing security concerns, Trevi Group agreed on a program that would focus on reinforcing and building on existing cooperation in the fight against terrorism, drug trafficking, organized crime and illegal immigration. In 1993, the work of the Trevi Group was incorporated into the Justice and Home Affairs provisions of the Maastricht Treaty.¹²⁰

The other mechanism was named as Ad Hoc Immigration Group (AHIG). It was created in 1986 and was composed of high level immigration policy officials from the member states and dealt with asylum, external frontiers, forged papers, admissions, deportations and the exchange of information. AHIG grew out of Trevi Group, but it did not replace it. Although a representative of the Commission was included in the AHIG from the beginning, the Commission has not possessed the right of initiative. The European Court of Justice and European Parliament had no powers to scrutinize the AHIG's work. It was replaced by the K4 Committee's Steering Group I (Immigration/Asylum) after the Treaty on European Union entered into force in November 1993.¹²¹

The Horizontal Group On Data Processing was created in 1989 by the Coordinator's Group on the Free Movement of Persons to coordinate the processing of data exchange among member states. It established European Information System (EIS) like the Schengen Information System (SIS). EIS is designed to combat more serious forms of crime, as well as to strengthen external border controls and police cooperation in fighting illegal immigration networks.

¹²⁰ Timothy Bainbridge, **The Penguin Companion to European Union**, London: Penguin Books, 2002, p.519

¹²¹ Demetrios G.Papademetriou, op.cit., p.28.

Custom Mutual Assistance Group was established in 1989 to focus on customs and other technical information-exchange and maintenance issues in order to strengthen and coordinate customs checks at external borders.

The most important of the interstate measures is the Schengen Agreement. It was a parallel development that saw intensive patterns of co-operation on free movement and internal security.¹²² On June 14, 1985, France, Germany, the Netherlands, Belgium and Luxembourg signed the Schengen Agreement which envisaged the removal of the intra-EC borders in exchange for strengthening the region's external borders, in a way, like the Single European Act. The Agreement was intended to remove the internal frontiers among its signatories by January 1, 1990, two years prior to the anticipated removal of such frontiers among all EC member states. The Schengen Convention of 1990 laid down common rules for visas, the right of asylum, checks at the external borders and cooperation between police forces and customs authorities to allow freedom of movement for individuals within the territories of the signatory countries without disturbing law and order. A reporting system has been set up for the exchange of data about the identity of individuals called Schengen Information System (SIS). On 26 March 1995, the Schengen agreement came into force for those signatory states which had established the necessary procedure: Germany, Belgium, Spain, France, Portugal, Luxembourg and the Netherlands. This meant complete removal of border controls for people moving between these countries. The European Commission participates as an observer at the Schengen ministerial meetings and has been fully engaged to Agreement's implementation. Schengen Agreement formally became part of the EU's *acquis* following the ratification of the Amsterdam Treaty in 1999.

In the same time, European Council recognized overlapping agendas and duplication among the various process. Therefore, in December 1988 Rhodes meeting, it directed each member states to appoint a person responsible for coordinating Community activities relating to the free movement of persons. These individuals constituted the Coordinators's Group on the Free Movement of Persons which was replaced by the K4 Committee after the Treaty on European Union. The Group was charged with coordinating, giving an impetus to, and unblocking the whole complex of intergovernmental and Community work in the field of the free movement of persons. The Group's first report called Palma Document was adopted by the European Council

¹²² Andrew Geddes, *op.cit.*, p.131

at its June 1989 meeting in Madrid. It outlined a dual strategy of first strengthening checks at the Community's external frontiers and then abolishing internal borders.¹²³

In forging ahead with the Palma Document's proposed agenda and timetable, on June 15, 1990, the key asylum measure, Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities or the "Dublin Convention" was signed by 11 European Community member states and by Denmark the following year.

The Convention sets out several criteria for determining which state is responsible for examining asylum applications and also establishes strict time limits for examining an asylum application. According to the Convention, the order of responsibility is set out as follows:

“- The state where the applicant has a close family member with recognized refugee status within the meaning of the 1951 Geneva Convention.

- The state issuing a residence permit or entry visa, or if more than one, the state issuing the permit or visa with the longest validity of the latest expiration date.

-If a transit visa was issued, the responsibility will rest with either the destination state or the state where the application is lodged, depending on the particular circumstances

-In cases of demonstrable illegal entry, the first entry state will usually be responsible unless an asylum application is made in another state where the applicant stayed for longer than six months

-In cases of illegal entry, the state that waived the requirement for a visa will usually be responsible. If none of the above criteria apply, the state where the application is lodged will be responsible.”¹²⁴

The Convention also sets up obligations and procedures regarding the transfer or taking back of the applicant between states. Actually, The Convention did not harmonize the rules so that procedures in member states became the same; rather it sought approximation with the effect that only one member state would be responsible for judging an asylum application.¹²⁵ However, nothing in the Convention interferes with a signatory's right to send applicants back to a third state that is not a member of

¹²³ **Palma Document**, Reference: DOC/89/1, 27.06.1989, <http://www.europa.eu.int/rapid/pressReleasesAction.doc> (14.04.2006)

¹²⁴ Convention Determining the State responsible for Examining Applications for Asylum lodged in one of the Member States of the European Communities-Dublin Convention, **OJ C 254**, 19/08/1997, p.1-12.

¹²⁵ Andrew Geddes, op.cit.,p.133

the European Union. This Convention did not enter into force until 1998 in all EU countries. Member States are still adjusting to its application.

In the early 1990s, specifically with the collapse of Soviet Bloc, the need to make regulation of migration became more urgent. Western Europe was worried by fears of uncontrolled influxes from the East. Central and Eastern European countries had not been yet EU member states at that time. In Rome Council on December 14-15, 1990, member states agreed that it should be considered whether and how activities currently conducted in an intergovernmental framework could be brought into the ambit of the Union, such as certain key areas of justice and home affairs, namely immigration, visas, asylum and the fight against drugs and organized crime.¹²⁶ Afterwards, they began to really consider the value of harmonizing their immigration policies and the possibility of bringing these policies into the Community's institutional framework. Parallel to this development, the core element of Dublin framework were put in place at a meeting of immigration ministers held in London between 30 November and 1 December 1992. A non-binding resolution on "manifestly unfounded applications for asylum" was adopted, which meant that an application could be judged manifestly unfounded if it was not covered by either the Geneva Convention or New York Protocol, because there was no fear of persecution in the applicant's own country, or because the claim was based on deception or an abuse of procedures. A resolution on "a harmonised approach to host third countries was also agreed at the London meeting, which intended to return rejected asylum-seekers to "safe third countries". Central and Eastern European countries were defined as safe, with the effect that asylum seekers entering the EU from central and eastern European countries could be returned to them.¹²⁷ By this way, this region became a buffer zone to absorb migration pressure on EU member states.

According to Geddes, despite of the fact that routinized interaction was achieved between interior ministers and officials and security frame was expanded to include immigration and asylum in 1990s, this informal approach on intergovernmental level has most importantly two main weaknesses: Firstly, it was inefficient because it was difficult to ratify agreed measures and secondly, it was undemocratic because

¹²⁶ European Council in Rome, **Conclusions of the Presidency** , 14-15 December 1990, http://www.europarl.europa.eu/summits/rome2/default_en.htm (15.05.2007)

¹²⁷ Andrew Geddes, op.cit., p.133.

decisions were made in secretive forums without democratic or judicial accountability at national or European level.¹²⁸

Problems arising from informal intergovernmentalism formed the basis of the search for formal, treaty-based, supranational mechanisms. The need for the consent of all member states made this goal quite difficult to achieve. This was tried to resolve by a system of pillar structure introduced with the Maastrich Treaty which was signed in 1993. By then, the European Community, having previously dealt with matters mostly of an economic nature, developed into a political union built on three pillars, namely, European Communities, the Common Foreign and Security Policy and cooperation in Justice and Home Affairs.

The Maastricht Treaty, in its third pillar, recognised the following immigration and asylum issues as being of “common interest”, not “common policies”:

“-Asylum policy

-External frontiers, particularly the crossing of these frontiers and the exercise of controls.

-Immigration policy and policy regarding Third Country Nationals (TCNs).

-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 unauthorised immigration, residence and work by TCNs.”¹²⁹

The way the third pillar was structured gave the Community institutions only a small part to play and no real way of exercising any control over the Member States decisions:

“- The Court of Justice was competent to interpret conventions only where there is a clause in the text (convention or other) expressly providing for this;

-The European Parliament could be consulted by the Council, but most of the time it was only informed;

¹²⁸ *ibid.*, p.134.

¹²⁹ See, Annex 4 Articles of Treaty on European Union, Article K.1 (1), (2), (3) of Maastricht Treaty.

-The European Commission's right of initiative was limited to certain areas and was shared with the Member States;

-The Council was often paralysed by the requirement to take every decision by unanimous vote.”¹³⁰

A new Article 100c was added to the Community Pillar that covered visa policies and allowed the Council, acting unanimously, to draw up a list of third countries whose nationals needed visas to enter EU member states.¹³¹ On the other hand, visa policy was also to be dealt within the Third Pillar (Justice and Home Affairs Pillar) by Article K.1. Issues which were relegated to the Third Pillar of the Treaty, would not fall under the authority of the Commission, the Court or Parliament. This caused some complications. Although Article 100c has not prevented member states to pursue common interests in relation to the issues mentioned in Article K1, and even in some way, facilitated it, there were functional and institutional linkages with the other two pillars. In this case, pressure was likely to grow from the states which were under greater pressure from immigration from the south and east preferred supranational mechanisms, and these states may insist for all measures to be located within the main “Community” Pillar. United Nations High Commissioner for Refugees (UNHCR) evaluated intergovernmental cooperation under Maastricht Treaty Third Pillar by stating in one of its documents that:

“The intergovernmental cooperation under the Maastricht Third Pillar did not yield much noticeable result and led to the adoption of incomplete and non-binding resolutions. The status of these instruments remained unclear and their contents were often considered too general and lacking in ambition. In fact, member states were not willing to incorporate these instruments into their national laws, policies and procedures.”¹³²

Treaty of Amsterdam which entered into force in May 1999 turned a new page in the history of Justice and Home Affairs and reshaped cooperation on justice and home affairs by setting up an area of freedom, security and justice. It brought immigration and asylum into the Community Pillar in a new Treaty title as Title IV, covering free movement, immigration and asylum together; but at the same time confirmed intergovernmentalism as the basis for decision-making until at least 2004.¹³³

¹³⁰ The Amsterdam Treaty: A Comprehensive Guide, Freedom, Security and Justice, <http://www.europa.eu/scadplus/leg/en/lvb/a11000htm>, (01.11.2006).

¹³¹ See Annex 4 Articles of Treaty on European Union, Article 100c (1), (2) of Maastricht Treaty.

¹³² Introduction to the European Union and the European Asylum Harmonisation Process, www.unhcr.org/cgi-bin/tehis/vtx/home/opendoc.pdf, p.8 (06.11.06).

¹³³ See Annex 5 Articles of Treaty on European Communities, Title IV, Article 61 to 69.

Title IV gave the Council of Ministers the responsibility to adopt measures with a view to ensuring, within five years of Treaty ratification (2004), the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders and related external border control, asylum and immigration.¹³⁴ Annexed to the Treaty, there is a Protocol on “integrating the Schengen Acqui into the framework of the European Union” and several other protocols setting out the special position of the United Kingdom and Ireland as non-signatories to the Schengen agreements and of Denmark as a country which has preserved its position on all questions relating to the free movement of persons except for those on visas.

Title IV does not take up all the issues of common interest in the old third pillar. It has only been the issues concerning immigration and the circulation of people that have been transferred such as asylum, crossing of external borders, immigration policy, circulation of people and legal cooperation in civil matters. The other issues of common interest relating to the prevention of criminality, the fight against terrorism and drug trafficking and judicial co-operation in criminal matters remain in the remit of the Treaty of the European Union under Title VI (Third Pillar). In effect, Amsterdam Treaty keeps a Title VI newly entitled as “provisions on police and judicial co-operation in criminal matters” to deal with all matters relating to criminal policy.¹³⁵ As seen, the Amsterdam Treaty deals with issues of immigration and police and the fight against criminality separately and puts an end to the conflation between the foreigner and the criminal which has been strongly criticized.

The transfer of some of the issues of common interest to the European Community Pillar entails changes in institutional mechanisms. The new solutions set up in the Amsterdam Treaty seem above all to be an extension of the institutional framework. During the transitional period of five years following the entry into force of the Treaty of Amsterdam, Council is required to adopt, by unanimity and in consultation with the European Parliament, measures to remove internal border controls and to establish common procedures for external control. But after five years, questions relating to external frontiers may, by unanimous decision of the Council, become subject to the co-decision procedure which set out in Article 251 of Treaty on European Community.¹³⁶ Other related questions may also be transferred to co-decision by a

¹³⁴ See Annex 5 Articles of Treaty on European Communities, Title IV, Article 62.

¹³⁵ See Annex 4 Articles of Treaty on European Union, Title VI.

¹³⁶ See Annex 5 Articles of Treaty on European Communities, Article 251.

unanimous decision of the Council. However, issues relating to visas will remain subject to consultation procedure within which neither the Council nor the European Commission was obliged to take much account of the Parliament's view.

The new Treaty gives the Court of Justice a larger role to play in the areas of justice and home affairs. In the new Title IV, which concerns free movement of persons, asylum, immigration and judicial cooperation in civil matters, the Court of Justice now has jurisdiction in the following circumstances:

“- if a national court of final appeal requires a decision by the Court of Justice in order to be able to give its judgement, it may ask the Court to rule on a question concerning the interpretation of the title or on the validity and interpretation of acts by the Community institutions that are based on it;

- the Council, the Commission or a Member State can ask the Court to rule on a question regarding the interpretation of the new title or of acts adopted on the basis of it.”¹³⁷

The Court of Justice does not, however, have the right to rule on measures or decisions taken to abolish all checks on individuals (both EU citizens and non-EU nationals) when they cross the internal borders.¹³⁸

As Article 251 implies that immigration issues are no longer the exclusive competence of the Council and its member states, but are shared with the other institutions of the European Community. Especially, European Parliament gained power because co-decision procedure allows the Parliament to veto by an absolute majority of its total membership a legislative measure upon which agreement cannot be reached with the Council of Ministers. On the other hand, co-decision procedure might have side-effect on the point that it weakens the power of European Commission. By negotiating in the Conciliation Committee, the Council and European Parliament can largely exclude the Commission.¹³⁹

Despite of the real advances, the limitations are nonetheless to be found in the text of the Treaty. In general, member states can opt out from the new provisions by invoking public order and national security. This means that exceptional measures can be taken in cases of emergency and security.¹⁴⁰ More importantly, in relation to the

¹³⁷ See Annex 5 Articles of Treaty on European Communities, Article 68 (1),(3).

¹³⁸ See Annex 5 Articles of Treaty on European Communities , Article 68 (2).

¹³⁹ See Annex 5 Articles of Treaty on European Communities, Article 251(3),(4),(5),(6),(7) and Article 252.

¹⁴⁰ See Annex 5 Articles of Treaty on European Communities , Article 64 .

measures on immigration policy such as 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, there is an exception that they shall not be subject to the five-year transition period. This means that Member States will define the time for the adoption of related measures.¹⁴¹ Furthermore, Member States may introduce national provisions compatible with this treaty and international agreements in relation to immigration and the rights of third country nationals.¹⁴²

As seen, although Amsterdam Treaty was the institutional starting point of a change of approach for immigration policies, Member States still retains power in relation to above mentioned issues which have serious concerns for state sovereignty. Security implications of migration issue after 1990 was another important stimulus in including related matters within the Community competence. EU was never intended to be simply an economic entity, since it is made up of approximately 480 million¹⁴³ Europeans who are first and foremost citizens. Maastricht Treaty added foreign and security policy and justice and home affairs policy as EU responsibilities to the well-established economic policies of the European Community. These responsibilities are augmented and developed by Amsterdam Treaty of 1997 which came into force on May 1999. After the Treaty of Amsterdam, numerous measures have been taken on the Community level, relating to the immigrants, with special focus on immigrant integration as a part of security policy.

The special Tampere European Council was held in October 1999 to translate its justice and home affairs provisions into practice. On the basis of the Amsterdam Treaty and the priorities set out by the Tampere European Council, a Community policy on migration and asylum is gradually being put in place. The Tampere Summit held in Tampere on 15-16 October 1999, is a step towards the development of the EU's impact on the daily life of the European citizens. This is achieved by ensuring that everybody can live and move freely and safely throughout the European Union, while enjoying the same legal protection as the nationals of the EU member state in which they happen to be.¹⁴⁴

¹⁴¹ See Annex 5 Articles of Treaty on European Communities, Article 63.2 (b), 63.3 (a), 63.4.

¹⁴² See Annex 5 Articles of Treaty on European Communities, Article 63.3 and 63.4.

¹⁴³ Nice Zirvesi, <http://www.belgenet.com/arsiv/ab/nicezirve.html> (06.05.2007)

¹⁴⁴ European Commission, Directorate General Justice and Home Affairs, **Tampere: Kick-start to the EU's Policy for justice and home affairs**, Fact Sheet No. 3.1, 2002, http://ec.europa.eu/councils/bx20040617/tampere_09_2002_en.pdf (15.05.2007)

A Common EU Asylum and Migration Policy is one of the themes covered by the Summit. At the Tampere European Council, the Member States set out the four key areas for the development of a common policy on asylum and immigration, namely: partnership with the countries of origin, a common European Asylum System, fair treatment of third country nationals and more efficient management of migration flows.¹⁴⁵ Commission undertakes to coordinate national policies, to exchange best practices, to monitor the impact of community policy and to organise regular consultation with third countries.

Paragraph 2 of the Presidency Conclusion states that:

“The European Union has already put in place for its citizens the major ingredients of a shared area of prosperity and peace: a single market, economic and monetary union, and the capacity to take on global, political and economic challenges. The challenges of Amsterdam Treaty is now to ensure that freedom, which includes the right to move freely throughout the Union, can be enjoyed in conditions of security and justice accessible to all. It is a project which responds to the frequently expressed concerns of citizens and has a direct bearing on their daily lives.”

Paragraph 3 complements this by stating that:

“This freedom should not, however be regarded as the exclusive preserve of the Union’s own citizen... It would be in contradiction with Europe’s tradition to deny to such freedom to those whose circumstances lead them justifiable to seek access to our territory. This in turn requires the Union to develop common policies on asylum and immigration...These common policies must be based on principles which are both clear to our own citizens and also offer guarantees to those who seek protection in or access to the European Union.”

Paragraph 4 emphasizes the need of a common approach to ensure the integration of the third country nationals into the society who are lawfully resident in the Union.

Under the heading of Common EU Asylum and Migration Policy, the Presidency Conclusion draws attention to the need of a comprehensive approach to migration addressing political, human rights and development issues in countries and regions of origin and transit. (Paragraph 11) It emphasizes working towards establishing a Common European Asylum System, based on full and inclusive application of the

¹⁴⁵ Tampere European Council: Presidency Conclusions, 15-16 October 1999, http://www.europa.eu.int/council/off/conclu/oct99_en.htm (13.05.05)

Geneva Convention, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement (Paragraph 13). In the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union (Paragraph 15).

Regarding to the third country nationals, it is stated that

“...A more vigorous integration policy should aim at granting them rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia” (Paragraph 18).

With respect to the management of migration flows, European Council stresses the need for more efficient management of migration flows (Paragraph 22). It calls for closer co-operation and mutual technical assistance between the Member States’ border control services, a common active policy on visas, and where necessary the establishment of common EU visa issuing offices (Paragraph 23 and 24).

Following the European Council in Tampere, which explicitly called for a more vigorous integration policy and with the help of Amsterdam Treaty which conferred powers on the Community in the areas of migration and asylum, in 2000 and 2001, several acts were proposed or adopted for the development of a Common Policy on Asylum and Migration by 2004 at the latest.¹⁴⁶

In its Communications after 2000, the Commission especially stressed the need for a holistic approach which takes into account not only the economic and social aspects of integration but also issues related to cultural and religious diversity, citizenship, participation and political rights. Furthermore, a number of EU financial instruments and other initiatives directly or indirectly support the integration of immigrants such as European Social Fund, European Refugee Fund and certain innovatory measures (EQUAL, URBAN). On the other hand, most of the member states realized the persistence of obstacles to integration and insufficiency of their efforts of developing national integration policies and recognized the need to act collectively at EU level.

¹⁴⁶ Commission of the European Communities, COM(2001)387, **Communication from the Commission to the Council and the European Parliament, On An Open Method of Coordination for the Community Immigration Policy**, Brussels, 11.07.2001.

As part of the follow-up to Lisbon strategy, the Commission sets out in the Communication COM (2003) 336, proposals to support the introduction of effective policies concerning the integration of third country nationals. This Communication also examines the roles that immigration will play in achieving the Lisbon objectives.¹⁴⁷ In Seville European Council , bearing in mind the problem of illegal migration, the Council requested that immigration policy be incorporated into the Union's relations with third countries. Commission Communication COM (2002) 703 deals with integrating migration issues in the European Union's relations with third countries. Third country nationals residing illegally in the EU present a major challenge for the integration process. Union adopted a variety of instruments for facilitating integration in the following areas:

- “-the right to family reunification;
- the status of third country nationals who are long-term residents;
- the conditions of entry and residence of third-country nationals for the purpose of paid employment or self-employed economic activities;
- admission of students and volunteers;
- minimum standards for reception of asylum seekers and minimum standards for the qualification and status of third-country nationals and stateless persons as refugees or as persons who otherwise need international protection;
- combating discrimination (Directives 2000/43/EC and 2000/78/EC);
- granting third-country nationals the same protection as EU workers in the field of social security when moving in the EU.”¹⁴⁸

In 2000s, it became also clear that for developing new immigration policy initiatives, reliable and comparable data at EU level was needed. For this reason, European Migration Network (EMN) was put in place in 2002 as a pilot project whose function is to collect, analyse and distribute data on asylum and immigration in order to provide back up for the European Union's decision-making process in this area. The network was co-financed by the Commission and the Member States.

¹⁴⁷ Commission of the European Communities, COM(2003)336, **Communication from the Commission to the Council and the European Parliament, The European Economic and Social Committee and the Committee of the Regions on Immigration, Integration and Employment**, Brussels, 03.06.2003.

¹⁴⁸ Commission of the European Communities, COM(2002) 703, **Communication from the Commission to the Council and the European Parliament Integrating Migration Issues in the European Union's Relations with Third Countries**, Brussels, 03.12.2002.

In 2004, The Hague Programme succeeded the 1999 Tampere Programme. It was the first multiannual programme to fix priorities for an area of freedom, security and justice. The Commission presented an Action Plan to the Council, setting ten specific priorities and an annex listing the concrete measures and actions to be taken over the next five years. Promoting respect for fundamental rights for all people, migration management and integration of immigrants were among these 10 priorities.¹⁴⁹

The establishment of Common European Asylum System was another priority with the aim of establishing a common procedure and a uniform status for persons benefiting from asylum. The establishment of return procedures and speeding up the conclusion of readmission agreements were measures taken in this framework. On the other hand, creation of a Border Management Agency, the development of effective visa policy including creation of common application centres for visas and a European common consular service, were initiatives supporting above mentioned measures.

The Commission's evaluation of the Tampere Programme of 2 June 2004¹⁵⁰ and the recommendation adopted by the European Parliament on 14 October 2004¹⁵¹ have been taken into account in the Hague Programme. Basing on the introduction of the procedure (co-decision procedure) under Article 251 of Treaty on European Community (TEC) for areas of Title IV TEC, the Programme abolished unanimous voting and bring co-decision and qualified majority voting in relation to the all Title IV measures (free movement of persons, immigration and asylum) with the "exception of legal immigration".

Actually, EU's main dilemma lays in the fact that migration phenomenon has both security side and economical side. This is the difficulty of balancing two sides of the migration which bothers EU mostly. On January 2005, the Commission prepared a Green Paper¹⁵² whose main aim is to launch a process of indepth discussion involving the EU institutions, Member States and civil society on admission procedures for the economic migration of third country nationals. In the Commission's view, common

¹⁴⁹ **Communication from the Commission to the Council and the European Parliament: The Hague Programme-Ten Priorities for the next five years**, COM(2005) 184, Not published in the Official Journal, <http://www.europa.eu/scadplus/leg/en/lvb/16002.htm> (31.12.2006).

¹⁵⁰ Commission of the European Communities, COM (2004) 401, **Communication from the Commission to the Council and the European Parliament, Area of Freedom, Security and Justice: Assessment of the Tampere Programme and Future Orientations**, Brussels, 02.06.2004.

¹⁵¹ European Parliament, P6_TA (2004) 0022, 14.10.2004 http://www.europarl.europa.eu/comparl/libe/elsj/events/hearings/20051017/documentation_en.htm (15.05.2007).

¹⁵² Commission of the European Communities, COM(2004) 811, **Green Paper on An EU Approach to Managing Economic Migration**, Brussels, 11.01.2005.

criteria and rules that are transparent and more closely harmonised at European level need to be adopted for the admission of economic migrants. The admission of third country nationals for the purposes of employment varies from one Member State to another as it is governed by their domestic legislation. Since the Treaty of Amsterdam, the European Union has had the necessary legal basis for adopting measures relating to certain areas of immigration policy. Nevertheless it is for the Member States to determine the number of third-country nationals that can be admitted. The Commission proposes a Community approach because the decision to admit third-country nationals into the territory of a Member State inevitably affects the other Member States.

Until that time, as listed in Commission Communication COM(2004) 412¹⁵³, third country nationals wishing to work in the EU must satisfy certain criteria. For example, they need a job offer, adequate financial resources and sickness insurance to be eligible for a temporary residence permit. In order to allow third country nationals into their countries, several Member States have concluded bilateral employment agreements. Bilateral agreements signed in recent years have generally concerned the admission of seasonal or temporary workers employed in agriculture, construction, tourism and catering. Spain, for instance, signed agreements with Bulgaria, Colombia, the Dominican Republic, Ecuador, Morocco and Romania which are traditional sources of illegal immigration. Some governments determine annual quotas by sector of activity, geographic region or country of origin. After 1990s, the application of regularisation measures has increased. Some member states regularise illegal migrants who are already in unlawful employment. However, in the Green Paper prepared on January 2005, Commission points that regularisations should not be regarded as a way of managing migration flows. It stresses facilitating the mobility of third country nationals, the recognition of their professional qualifications within EU and puts the integration of third country nationals legally residing in the Member States as an essential objective for the EU.¹⁵⁴

The Green Paper, emphasizing the importance of the European level common criteria, also brings a new principle called “Community preference” and defined it as:

¹⁵³ Commission of the European Communities, COM(2004) 412, **Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Study on the link between legal and illegal migration**, Brussels, 04.06.2004 .

¹⁵⁴ *ibid.*

“Member States will consider requests for admission to their territories for the purpose of employment only where vacancies in a Member States cannot be filled by national and Community manpower or by non-Community manpower resident on a permanent basis in that Member States and already forming part of that Member State’s regular labour market”¹⁵⁵

It is stipulated that as from January 2006¹⁵⁶, long term residents will enjoy the benefit of Community preference over potential migrants in the Member State of residence. The Commission has proposed to grant Community preference to migrant workers who having worked for some years in a Member State, returned temporarily to their country of origin and wish to return to work in that same Member State. The Commission has also wondered whether Community preference could also be granted to workers who are not - or not yet- permanent residents and who, for different reasons, are looking for a new job.

With this proposal, Commission aims to give migrants greater encouragement to become legal and at the same time to promote temporary migration and brain circulation. This could benefit migrants, their countries of origin and the European Union. It is accepted that a succesful European policy on economic migration requires that flows are managed in cooperation with the countries of origin and transit.

Moreover, in the asylum issue, the goal to adopt minimum EU standards and the limitation of national legislation were completed in December 2005. In this framework, Dublin II Regulation (2003) established objective criteria for determining which member state was responsible for a particular asylum application and stopped the practice of “asylum shopping” and EURODAC enables a member state to compare fingerprints of asylum seekers or foreign citizens who are illegally on its territory, in order to verify whether they have submitted an asylum application in another member state.¹⁵⁷

In summary, all these measures show the awareness of the EU in relation to the multidimensional nature of the migration issue. However, is it possible to identify a distinct European migration policy influenced by the international and/or supranational law and politics?

¹⁵⁵ COM(2004) 811, op.cit., p.8.

¹⁵⁶ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third country nationals who are long-term residents, **OJ L 16/44**, 23.01.2004

¹⁵⁷ Asylum, <http://www.euractiv.com/en/illegal-immigration-asylum-border-control/article-117508> (12.04.2007)

It is clear that the free movement of people has been one of the EU's central aspirations and this has immigration and asylum implications. Old 15 European countries have voluntarily pooled their sovereignty regarding to a number of issues, especially in economical issue, e.g market integration issues. In this framework, free movement for EU citizens is a supranational right guaranteed by European laws that over-ride member states laws. This means that the right to free movement was initially linked to economic function. However, even in the free market issue, restrictions come to the fore when new members, namely Central and Eastern European Countries, are concerned. The only member states of the old EU-15 which never introduced temporary measures against workers from the new member states are United Kingdom, Ireland and Sweden. From 2011, all old member states are obliged to ensure complete freedom of movement for labour. Although European Commission has urged all old member states to lift their national restrictions, arguing that the May 2004 enlargement has not resulted in an overwhelming influx of new workers or increased unemployment among home citizens, most of the member states are not willing to do so immediately.¹⁵⁸

In the EU, there is a balance between intergovernmentalism expressed through Council of Ministers and European Council and supranationalism in the forms of the Commission, European Court of Justice and European Parliament. Although supranational institutions have been created with the capacity to make and implement laws that binds participating states in general, EU Member States have so far held the upper hand in matters relating to immigration and asylum. European integration has proceeded with most vigour in free movements of EU citizens within the single market (intra-EU migration); it has proceeded more cautiously in extra-EU migration matters such as immigration and asylum due to the security concerns. Since 1980s, there have been restrictions on those form of migration defined as unwanted.

Security concerns lead states to search for restrictive measures in relation to the EU external borders. The dilemma, between EU's single market freedoms and security, namely between freedom of person, freedom of goods, freedom of capital and freedom of services which are sine qua non principle of EU single market and states' sovereignties, appears obviously. The parameters of a Common Migration Policy have begun to emerge with some Commission prompting, but questions remain about the political will of the Member States. As Andrew Geddes states that:

¹⁵⁸ Lucia Kubosova, "Western Europe remains wary of new member state workers", *EU Observer*, 30.04.2006, <http://euobserver.com/921469> (01.05.2006)

“Intergovernmental influences have shaped immigration and asylum cooperation and even after the Amsterdam Treaty communitarised these issues there has been reluctance to cede powers to supranational institutions and thus risk unexpected outcomes in sensitive political areas.”¹⁵⁹

However, recently, there are fascinating Commission’s initiatives in relation to the immigrant integration. Communications in 2000s have potential to make real difference in immigrants’ lives conditions within the EU.

DISCUSSION

Despite all of these initiatives, it is still the case that migrants in Europe and in many parts of the world had much more limited legal protection than might initially be assumed. As seen in above mentioned international documents, the measures needed for the protection of the migrant’s rights are founded in all human rights treaties or conventions. However, until 1990, a special treaty which specifically dealt with migrant’s rights is not prepared. Initially, the measures have mostly been taken within the employment context, even if there have been references to migrant’s family life or educational and cultural life. Although the intention of the International Convention on the Protection of the Migrant Workers and Members of Their Families is again to regulate the rights of workers, it is not limited to the employment context but regulates the entire spectrum of worker’s rights. The scope has been widened with a human rights point of view so as to take migrant as, not only a labourer but also as an individual who has rights independent from his/her labourer status, as a human being. This leads to the better formulation of family and children’s rights, their educational and cultural rights and even illegal migrants’ rights.

However, if we look at the ratification of international documents, we saw that they had only limited success especially in terms of ratification by Western countries or they have been ratified with reservations depending on the states’ priorities such as sovereignty, nationality or security.

The achievement of the modern nation-state coincided with increasing linkages of rights and obligations to citizenship. Being an “alien” has now significant importance

¹⁵⁹ Andrew Geddes, *op.cit.*, p.147.

and defining immigrant in legal terms is very important. While currently migration within the state is considered as an human right (Universal Declaration of Human Rights Article 13-1) and states are not to prevent emigration (Univesal Declaration of Human Rights Article 13-2), there is no automatic right to enter a country of one's choice which means there is no right to immigrate. Similarly, there is no individual right to be granted asylum under the present international law. Rather, the right to grant asylum is a right of the state. This shows that various mechanisms to control and regulate migration are recognized in international law as an essential part of the sovereignty of the state.

Consequently, states' interests and priorities have determining impact on the migrant's rights issue. Some countries have the view that migrants are somehow not entitled to the full protection of human rights law, because of the belief that there are some rights which only citizens are entitled to. The protection of the migrant's human rights is seen something incompatible with either the exercise of sovereignty by states or the practical implementation of national security policies. Thus, the legal issue of nationality appears as an essential element in the protection and in the integration of all migrant populations. The migration movement has increased the number of people in Europe whose nationality continues to be an issue of contention and exclusion.

As seen in this chapter, it has been taken attention to the fact that migrants are in quite disadvantageous position regarding to the protection of their rights, because of certain conditions arising from either states' own politics or international human rights standards. Whereas globalization and international migration reveal new insights to the concept of nation-states and human rights, it is still the state who has power in shaping migrants' rights. Although a lot of things is done in the international legal framework, the national implementation is still falling behind the legal documents.

Political science has long neglected international migration. Until recently, the dominant approach on migration had assumed that immigrants either assimilate into a host country society or migrate temporarily with the plan to return eventually to their country of origin. Today, there is increasing awareness regarding to the immigrant's permanent position in the society. This results to the fact that the political identities, interests and demands of the migrant-based communities are restructured in a global context. Migration is also now being discussed widely in political science discipline with regard to both control and integration policy in the West. Similarly the concepts of

“home” and “host” country are being transformed in the context of emerging transnational migrant communities. This urges states to reappraise the traditional concepts of sovereignty and citizenship in order to overcome migrants’ human rights violations.

Among these violations, xenophobia has specific importance. Usually, people defines “home” in relation to the outside, accordingly, fear, danger, the unknown, foreign and alien are all part of that what is “not home”.¹⁶⁰ Xenophobia flourishes such an environment in which migrants’ perceptions of where is “home” or “not home” have strongly complex. So, just as perceptions of home have been radically changed and redefined in the light of migration and emerging migrant communities, why do not change occur in the notions of non-home, outside or foreign? Saskia Sassen has underlined that old concepts of belonging do not fit present realities and she has defined migrations as the acts of settlement and of habitation in a world where the divide between origin and destination is no longer a divide of Otherness, a world in which borders no longers separate human realities.¹⁶¹ Today, one of the central debates, emerging largely from within the field of economics but with resonance in law and political science, is between those who see a positive impact of migration and hence propose an admissionist policy and those who highlight the negative impact and advocate more restrictionist policy.¹⁶² In the next chapter, being aware of the fact that there is a vicious circle of migration and xenophobia, the concept of xenophobia will be defined and evaluated within the framework of international documents.

¹⁶⁰ Nadjé Al-Ali and Khalid Koser, “Transnationalism, international migration and home”, In Nadjé Al-Ali and Khalid Koser (Eds.), **New Approaches to Migration**, London: Routledge, 2002, p.7.

¹⁶¹ Saskia Sassen, **Guests and Aliens**, New York, The New Press, 1999, p.6.

¹⁶² Caroline B. Brettell and James F. Hollifield, op.cit., Introduction, p.19

CHAPTER II

XENOPHOBIA

I.UNDERSTANDING XENOPHOBIA

Recent decades, it has witnessed a number of overlapping developments, such as globalization, migration, problems of nation-states composed of different national and ethnic groups, effects of the end of Cold War etc., which all have caused serious threats to the world security and peace. Wars in different part of the world, one of them was in Europe, former Yugoslavia, have raised wider questions about a family of concepts, namely nationalism, national identity, national culture, racism, xenophobia, sovereignty of nation-state and citizenship, and the potential of these in creating violent instability in international society. Consequently, understanding xenophobia becomes more and more important in today's global order.

In this chapter, xenophobia, as a serious problem of today, first will be defined and then analyzed within the above mentioned framework by emphasizing the role of the “migrants’ otherness” in the formation of xenophobic attitudes and related threats. In this scheme, the role of state, as a key actor through the control of migration and definition of rights of different groups, - the most important one is the citizenship right - will be underlined.

A. Definition of Xenophobia

Originally the word xenophobia comes from the Greek words *xénos*, meaning “the stranger” and “the guest” and *phobos*, meaning “fear”. As defined by the major actors in international arena dealing with migrants as well as xenophobia issue such as International Labour Organization, International Organization for Migration, Office of the United Nations High Commissioner for Human Rights and Office of United Nations High Commissioner for Refugees, xenophobia means “fear of the stranger”, although today the term is taken to mean “hatred of strangers”. According to the joint documents of above mentioned organizations, xenophobia can be understood as “an

attitudinal orientation of hostility against **non-natives** (emphasis added by the author of the thesis) in a given population”.¹⁶³

Thus, in understanding xenophobia, it is important firstly to state who can be considered as foreigner in a society or state. Generally, those perceived to be outsiders or foreigners are migrants, refugees, asylum-seekers, displaced persons and non-citizens. As the definition of the term implies that the foreigners are the most vulnerable group to xenophobia. Secondly, the sources of these xenophobic attitudes must also be considered, What circumstances or factors would lead to hostile behaviour toward foreigners?

Isthiaq Ahmed asserted that as regards the politics of control in the North, some categories of people (especially those cultural groups who at that moment in time are considered to be “not one of us”) are not desired.¹⁶⁴ The reason of the fear is the idea that aliens ideas and life styles may challenge, undermine or overwhelm existing ways of life. The fear is the same around the world: “They are not like us, and they do strange things” or “I don’t trust them, they are different from us”.¹⁶⁵ According to Marcella and Ring, this fear is linked to the human nature: People initially fear what is different, and feel anger toward those most readily identifiable because of differences. However, they claim that although these are natural responses, they can be changed if new perspectives and values are fostered.¹⁶⁶

These arguments imply that being different and most importantly, perception of this difference is crucial in defining xenophobia. Almost in every migrant receiving country, there is a distinction between “good “ and “bad” migrants, i.e former those who are accepted and the latter those who are rejected. This distinction is constructed also regarding to the economical, political or security concerns of the country considering the general conjuncture of the world of that time. This means that the perceptions and relatedly the politics and the applications can be changed over time. Sassen gives the example of the Germany’s attitude towards Polish workers in 1930s. Neither State nor nation reacted to all foreigners, such as the Swedes or the Italians as they reacted to

¹⁶³International Labour Office (ILO), International Organization for Migration (IOM), Office of the United Nations High Commissioner for Human Rights (OHCHR) in consultation with Office of the United Nations High Commissioner for Refugees (UNHCR),**International Migration, Racism, Discrimination and Xenophobia**, August 2001, p.2.

¹⁶⁴ Isthiaq Ahmed, “Exit, Voice and Citizenship”, In Tomas Hammar, Grete Brochmann, Kristof Tamas and Thomas Faist(Eds.), **International Migration, Immobility and Development**, New York: Berg, 1997, p.183.

¹⁶⁵Anthony J. Marsella and Erin Ring, op.cit., p. 8

¹⁶⁶ibid., p. 18

Poles. Because State viewed these Poles as ineluctably alien, people who wanted to reconstitute Poland and whose presence in Germany threatened the State's eastern border.¹⁶⁷ In the same period, Dutch government had been sending back every asylum seeker (including Jewish ones) unless he or she could prove "an immediate danger of life" because of the fear of offending the powerful and intimidating Nazi regime and the concern about the high employment among the indigenous population.¹⁶⁸

The issue of defining who is foreigner has also close links with the issue of defining one's own identity. A complex national and social identity is continuously constructed and reshaped in its (often antipathetic) interaction with outsiders, strangers, foreigners and aliens: the "others"; You know who you are only by knowing who you are not.¹⁶⁹ Social Identity Theory formed by Henri Tajfel and John Turner, in order to understand the psychological basis of intergroup discrimination, posits that people's motivation to achieve or maintain a positive social identity through the distinctiveness of their own group is the basis of the tendency to favour the ingroup over outgroup.¹⁷⁰ According to this theory, we often put others (and ourselves) into categories by labeling someone as a Muslim, a Turk or a Jew. We also associate with certain groups (our ingroups) which serves to bolster our self-esteem and we compare our groups with other groups, seeing a favorable bias toward the group to which we belong.¹⁷¹ Ingroups are groups we identify with, and out groups are ones that we don't identify with. Tajfel and Turner claim that group members compare their group with others, in order to define their group as positive, and therefore by implication see themselves in a positive way. Intergroup biases in general, and prejudice and xenophobia in particular, could be regarded as mechanisms through which positive distinctiveness and positive social identities are achieved; in other words prejudice against migrants could be seen as an example of intergroup biases.¹⁷²

Considering the formation of Western Civilisation and European Identity, in their book about the history of western racism Davies, Nandy and Sardar have found the roots of the concept "Other" in both of the two pillars of Western civilisation;

¹⁶⁷ Saskia Sassen, op.cit., Introduction to English Edition, p.59

¹⁶⁸ Jan Lucassen and Leo Lucassen, op.cit., "Migration, Migration History, History: Old Paradigms...", p.15.

¹⁶⁹ Robin Cohen, "Fuzzy Frontiers of Identity: The British Case", in Harry Goulbourne (Ed.), **Race and Ethnicity: Critical Concepts in Sociology**, Volume II, London: Routledge, 2001, p. 135

¹⁷⁰ Margarita Sanchez-Mazas, Patricia Roux and Gabriel Mugny, "When the outgroup becomes ingroup and when the ingroup becomes outgroup: xenophobia and social categorization in a resource allocation task", **European Journal of Social Psychology**, Vol.24, (1994), pp.417-423, p.417

¹⁷¹ **Social Identity Theory**, <http://www.tcw.utwente.nl/theorieenoverzicht/Theory> (22.08.2006)

¹⁷² Agustin Echebarria Echabe and Jose L. Gonzales Castro, "Images of immigrants: A Study on the xenophobia and permeability of intergroup boundaries", **European Journal of Social Psychology**, Vol.26, (1996), p.342.

Christianity / Biblical tradition and Classicisms / Classical Greek. They have argued that on the one hand, Europe's self-identity has been influenced from the concept of "intolerance towards Other" within Christianity. They have mentioned about the influence of Crusades and Papal Bulls on Europe's cultural and intellectual products: Papal bulls provided the geo-political context for the Atlantic quest and as some literary classics, i.e Chaucer's Canterbury Tales, make clear, any non-Christian people could be an appropriate target for crusading.¹⁷³ On the other hand, the influence of "barbarism concept" of Classical Greek, particularly concerning separateness from Other people, reinforce the first pillar. The concept of barbarian comes from "barbaroi" which was used to define all non-Greek speaking people. For the Greeks, such an inability in any person or race betrayed predominantly a negative human condition because language was the tool of reason.¹⁷⁴

Davies, Nandy and Sardar say that:

"The categories and attributes of humanity they employed to think about themselves and about non-Greek have endured in Western thought. It was the Greeks who introduced the pygmies (the Kynokephaloi), the dog-headed people (the Skiapodes), the shadow-footed people (the Akepheloi), the people with no head and with their eyes on their chest as well as the Cyclops, the people with only one eye. Greek literature is also replete with hybrid races; minotaures, centaurs and satyrs. The monstrosity of Other people the physical character of their being, is a direct corollary of the difference of their lifestyle and behaviour from the Greek norm"¹⁷⁵

The terms "civilisation" and "culture" were always used in the singular till the nineteenth century and the concept of "other" has been existed for centuries in Europe's thought. This dualism between "West" and the "Other", upon which Western civilization was constructed, has been deepened during the colonial past of Europe. This situation, shaped by the differentiation and inferiorization of the "Other", has also had serious reflexions in the following years, on a variety of concepts such as racism and nationalism, which are significant in understanding xenophobia today.

David Theo Goldberg links this conceptualization of Other to racism issue. He evaluates European expansion, enslavement and colonization from the perspective of its impact on classic racism on the point that they were the racisms of self-proclaimed

¹⁷³ Merrylyn Wyn Davies, Ashis Nandy and Ziauddin Sardar, **Barbaric Others: A Manifesto on Western Racism**, London: Pluto Press, 1993, p.8-9.

¹⁷⁴ *ibid.*, p.26

¹⁷⁵ *ibid.*, p.28

European superiority in pursuit of new sources of wealth, a servile labour supply, expansive empires and expanding spheres of global dominance, exotic goods and adventurous excitement.¹⁷⁶

He underlines the role of colonialism and its associated institutions in shaping contemporary ideas about race and racism in Europe by stating that:

“This is a radically anti-relational presumption, one failing to understand how much modern and contemporary Europe has been made by its colonial experiences, how deeply instrumentalities of the Holocaust such as concentration camps were products of colonial experimentation, how notions such as racial hygiene can be traced to racially predicated urban planning around sanitation syndromes by colonial regimes, how the operations of emergency law worked out in colonies like India were re-imported into European contexts such as Ireland and later Nazi Germany. As a small but significant symbolic token of how this relational tie between Europe and settler colonialism was sewn through race, recall how whites and those deemed not white in the colonies were formally and informally categorized as ‘Europeans’ and ‘Non-Europeans’ in bureaucratic and popular discourse”¹⁷⁷

Peter Alter on the other hand, while emphasizing nationalist interests as the driving forces behind the colonial expansion of the European powers, he draws attention to the potential of violence hidden under the term nationalism by stating that:

“Between 1918 and 1945, nationalism became synonymous with intolerance, inhumanity and violence. Wars were fought and heinous crimes perpetrated in its name. It inspired the violent expulsion of people from their homelands, and justified campaigns of territorial conquest. For individuals and whole peoples alike, nationalism signalled danger, restrictions on liberty, and not infrequently a threat to their very survival. The policies of extermination pursued by the National Socialists during the Second World War are the most horrifying examples.”¹⁷⁸

In recent times, the vast diversity of peoples around the world has urged Europe to create a one gigantic category of Otherness. This means that the distinctness of a particular Other was lost in the generality shared with all Others, that of being different and sundered from the West.¹⁷⁹ At the same time, the terms racism and

¹⁷⁶ David Theo Goldberg, “Racial Europeanization”, **Ethnic and Racial Studies**, Vol.29, No.2 , (March 2006), p.331

¹⁷⁷ *ibid.*, p.337.

¹⁷⁸ Peter Alter, **Nationalism**, London: Edward Arnold, 1993, p.2.

¹⁷⁹ *ibid.*, p. 89

nationalism have also been transformed during the last decades, although they have been still conceptualized in relation to “Other”.

After World War II, at least in Europe, it became almost impossible to speak racism as being shaped on the classical basis which means being based on biology and physiology, in other words based on visible, more or less fixed and strict determinants. For Europe, the Holocaust is the defining event of racially inscribed histories. Since it happened in European soil, Europe reduced racism issue to the Jewish question and has seen race only in the cauldron of anti-semitism which still continues to traumatize political dialogue and debate in Europe today. However, by the time, especially after 1989 and after the fall of Berlin wall, a new race matrix emerged, as argued by Tonci A. Kuzmanic, which functions mainly on the basis of culture.¹⁸⁰ He states that:

“In order to produce racist difference today, it is no longer necessary to be of “different colour”. Mostly it is enough to practice another way of life, which is not the same as the dominant social form of life in a particular environment “should be” and one could be racially different...Since the barriers among races are no longer naturalized, the fixed lines of differences are no longer clear, and the very concept of race as well as that of difference(s), has undergone revolutionary transformation.”¹⁸¹

World Racism Report of 1998 defines new racism as an ideological commitment to the virtues of difference and also emphasizes the paradox of this new racism by stating that:

“[...]By asserting a radical cultural pluralism, the new racism based on cultural difference tries, paradoxically, to look like genuine anti-racism and to show respect for all group identities. Claim’s about the other’s inferiority are disguised as respect for the other’s difference.”¹⁸²

Construction of identity in relation to “Other”, together with the above mentioned transformation of the term racism, can easily be a reason for xenophobia in a way that basic commonalities which might unite are ignored; minor differences such as language, culture and history are emphasized. This may also give way to the violent nationalist conflicts. For example, as an example from Europe, the Bosnian Muslims tend to emphasize religion as the core of their ethnic identity; the Slovenes, Croats and

¹⁸⁰ Tonci A.Kuzmanic, “Post-Socialism, Racism and the Reinvention of Politics”, in Mojca Pajnik (Ed.), **Xenophobia and Post-Socialism**, Ljubljana: Mirovni InSTITUTE, 2002, p.21.

¹⁸¹ *ibid.*, p.22.

¹⁸² BILTES, **World Racism Report 1998**, Istanbul: Intermedia, 1999, p.15

Macedonians, their languages; the Serbs, their history.¹⁸³ Thus, ethnic formation and assertion can also be a tool for constructing an “Other” and showing xenophobic attitudes towards other. And as in the case of Balkans in 1990s, this attitude may lead to deportation, genocide or ethnic cleansing.

Us vs. Them dichotomy may be sharpened in certain specific time periods. In her article on Muslim community in Britain, Claire Alexander argues that Asian identities in British society have been re-imagined by the events of 1980s and 1990s, such as Salman Rushdie Affair and Gulf War, along religious and cultural lines. Categories have become transfixed around religious difference rather than national / regional-cultural affiliations.¹⁸⁴ As mentioned in the article, Rushdie Affair proved a powerful impetus for renewed public debates around immigration, integration and citizenship, in which notions of race, culture and national belonging focused in the evocation of an inalienable and implacable religious-cultural strangeness.¹⁸⁵

However, as said in the beginning of this part by Marcella and Ring’s words, who are from Us and who are Others, are not unchangeable. The best example is again from Europe: Eastern Europe. After World War II, Eastern Europe expressed a crucial difference of political and of economic governance. At that time, Western Europe was defined more or less by a common commitment to liberal democracy, human rights and market economics. After the collapse of Communism, Eastern Europe has been moving West and Europe has been united around the core values which the West has consistently, since 1945, championed. Today, it is no longer possible to talk about Eastern Europe as if the ex-communist countries remained fundamentally different from “us” in the West.¹⁸⁶ Consequently, this changeable nature of “Us and Them” gives hope for the future in relation to the fight against xenophobia.

To sum up, xenophobia is always defined in relation to “Other”, more specifically, basing on the “difference of the Other”. It has close links with the perception of the other and one’s own identity formation through this perception. Construction of identity upon dualism of Us vs. Them is the source of xenophobia.

¹⁸³ Dawa Norbu, “The Serbian Hegemony, Ethnic Heterogeneity and Yugoslav Break-up”, in Harry Goulbourne (Ed.), **Race and Ethnicity: Critical Concepts in Sociology**, Volume II, London: Routledge, 2001, p.18.

¹⁸⁴ Claire Alexander, “Re-Imagining the Muslim Community”, in Harry Goulbourne (Ed.), **Race and Ethnicity: Critical Concepts in Sociology**, Volume II, London: Routledge, 2001 p. 43

¹⁸⁵ *ibid.*, p.44

¹⁸⁶ Istvan Pogany, “Accommodating an Emergent National Identity”, in Harry Goulbourne (Ed.), **Race and Ethnicity: Critical Concepts in Sociology**, Volume II, London: Routledge, 2001, p. 80

Although the “object” (Other) of xenophobia is changing time to time, the “subject”(existence of xenophobia) is not easy to change as long as the “Other” exists.

In this circumstances, the hypotheses set forth by Samuel Huntington in 1993, in his article titled “The Clash of Civilizations”, today, seems to make sense. This paper does basically set forth the hypotheses that differences between civilizations are real and important; civilization-consciousness is increasing and the paramount axis of world politics will be the relations between “the West and the Rest”.¹⁸⁷ In Huntington’s theory, the values and interests of Western civilizations (particularly European and North American for him) and non-Western civilizations (Confucian, Japanese, Islamic, Hindu, Slavic-Orthodox, Latin American and African civilizations as classified by Huntington) will differ sharply and it will require an effort to identify elements of commonality between Western and other civilizations. Because otherwise, the reflections of this situation are significantly serious in political as well as in legal frameworks.

B. Reflections of Xenophobia

Although above mentioned changeability on the objects of “Otherness” gives hope for the prevention of xenophobic attitudes, on the other hand, the various strategies used by society for preserving its coherence may serve as a source for breeding xenophobia and most of the time, this leads to the worsening of the situation for foreigners. Pierre André Taguieff has drawn attention to the significance of nationalist movements and its relations with xenophobia in the manifestation of racism today. He stated that:

“Since the end of 19th century, racism has manifested itself predominantly in the form of nationalism. It appears first in conventional xenophobic nationalism targeting the neighbouring country as a priority, then in modern-day ethno-nationalism, which rejects minorities and “immigrants” regarded as dangerous for identity of homogeneity of the dominant people, or for internal order or even for the sovereignty of the nation-state. It therefore seems necessary that the fight against racism take into account these privileged vehicles of racism, the nationalist movements, whether they lean on the existing nation

¹⁸⁷ Samuel P.Huntington, “The Clash of Civilizations ?”, **Foreign Affairs**, Vol. 72, No. 3 ,Summer 1993, pp.22-49, p.48

states, or whether they assert themselves against the latter by taking the form of separatist micro-nationalist movements.”¹⁸⁸

1) Reflections in Political Framework: Nationalism and Racism

As xenophobia, nationalism is also constructed in relation to “Other”. Considering the European experience, the first expression of the European nationalism was determined by a conviction of the superiority of the European over the non-European areas of the world. While emphasizing at the same time, the paradoxical nature of the European nationalism, Ariane Chebel D’Appollonia states that:

“Intellectual supremacy, military power, economic development, and commercial prosperity marked Europe as a homogenous whole and gave it a unity far beyond national divisions. Until the First World War, European nationalism was mixed with Eurocentrism. European universalism was paradoxically founded on the particularism of the continent: it was precisely because European culture was unique that it could claim to be also universal.”¹⁸⁹

A combination of conditions by the early twentieth century altered the perception of “other” in Europe. The rising importance of borders and sovereignty over national territories and ascendance of variously conceived constructions of national identities provided fertile soil for the emergence and persistence of “other” as a subject towards which a national identity was constructed. Europe, in the nineteenth century became a plurality of nation-states rather than just a state-system which had been created by the Treaty of Westphalia in 1648. During the twentieth century, the national idea became the dominant form of legitimizing the state and played a critical part in the disintegration of empires. The nationalism associated with states seeking sovereign control over their territories and the strength of the interstate system transformed the whole notion of “foreigner”. As said by Saskia Sassen:

“Between the early 1880s and World War I several massive refugee flows were initiated. About 2.5 million Jews left Eastern Europe. Hundreds of thousands of refugees were also created in the late 1800s and early 1900s by the gradual disintegration of the Ottoman Empire and savage nationalist battle that ensued. Of particular interest here is that the events of this time in the Balkans show us, without any ambiguities, how a different meaning of the notion of “foreigner” or “outsider” emerged, different from that which had

¹⁸⁸ Pierre-André Taguieff, “Rethinking anti-racism”, **Label France**, No:38, January 2000, http://www.diplomatie.gouv.fr/label_France/English/Dossier/2000/17racisme.html (18.01.2007)

¹⁸⁹ Ariane Chebel D’Appollonia, “European Nationalism and European Union”, in Anthony Pagden (Ed.), **The Idea of Europe: From Antiquity to the European Union**, UK: Woodrow Wilson Center Press and Cambridge University Press, 2002, p.175.

prevailed for many centuries in Western Europe, though it was also beginning to change there toward the mid-1800s.”¹⁹⁰

The refugee movements and the nationalist movements of the time have created a visible category of “Other” in Europe. Nationalism is assumed to provide the basis of peaceful coexistence among people, mutual respect and tolerance of different national identities. However, the alternative face of nationalism is that it can provide the basis of a regimented life in which the individual is a vehicle of the collective will in hostility towards the hated “other”. This image is associated with nationalist authoritarianism of the late nineteenth and early twentieth centuries, culminating in the fascism of Germany and Italy.¹⁹¹ Christopher Dandeker has differentiated two faces of nationalism in European history by stating that:

“In European history, there have been two faces of nationalism. First, it has been linked with the emancipatory, democratic liberation of peoples as in the creation of citizenship status from absolutist polities in nineteenth century Europe and the associated liberal ideal of a network of peaceful republican democracies. However, there is a second face of nationalism; one associated with the repressive and violent side of human conduct through the xenophobic and authoritarian organization of citizenries in militarized confrontations with and subordination of other peoples. The prime examples are the development of authoritarian nationalism and imperialism in Europe between 1880 and 1918 and the rise of fascism between 1918 and 1945”¹⁹²

In relation to the impact of the visibility of Other on racism, Les Back and John Solomos have underlined the role of the sizeable number of Jewish migrants, in other words “Others”, coming from Eastern Europe in the development of a political anti-semitism in particular localities in Europe in the period of late nineteenth century. They stated that:

“The usages of racial theories by the Nazis thus provided not only a basis for the articulation of anti-semitism but a means of justifying the ‘final solution to the Jewish question’ and the inevitability of a ‘race war’. From this perspective the political

¹⁹⁰ Saskia Sassen, op.cit., p.78.

¹⁹¹ Christopher Dandeker, Introduction, in Christopher Dandeker(Ed), **Nationalism and Violence**, New Brunswick and London: Transaction Publishers, 1998, p.4

¹⁹² Christopher Dandeker, “Nationalism, Nation-States and Violence at the End of the Twentieth Century: A Sociological View” , in Christopher Dandeker (Ed.), **Nationalism and Violence**, New Brunswick and London: Transaction Publishers, 1998, p.28.

consequence of Nazi racial theories, with their emphasis on race as a total criterion, provided the basis for the extermination of Jews.”¹⁹³

William I.Brustein and Ryan D. King have also accepted that otherness of Jewish community became visible by Jewish immigration and by various anti-Semitic acts enacted in this period, even though they have also mentioned about other reasons for the increase of anti-Semitism in Europe, i.e, declining economic well-being, growth of leftist support and identification of Jews with the leadership of the political left in the decades before the Holocaust.¹⁹⁴

As seen, the presence of “Other” is significant in the formation of the nationalist movements and nationalism. However, nationalism, as a concept, is not easy to be theorized. Umut Özkırmılı asserted that a single, universal theory is not available in the case of most social phenomena, not only nationalism.¹⁹⁵ Nationalism has been tried to define on the basis of several dichotomies such as objective markers (ethnicity, language, religion, territory, common history, common descent or ancestry, common culture) vs. subjective markers (self awareness, solidarity, loyalty and common will) ; culture or politics; civic or ethnic; premordialist or modern. Özkırmılı discussed these definitions and types of nationalism in his works¹⁹⁶ and called for an alternative conceptualization in order to define nationalism by stating that:

“we need for an alternative conceptualization of nationalism, one that moves us beyond the objective / subjective and culture/politics dichotomies, while at the same time enabling us to capture what is common to all nationalism. I suggest that both of these aims will be achieved if we see nationalism as a particular form of ‘discourse’ ...This suggest that people live and experience through discourse in the sense that discourses impose frameworks that limit what can be experienced or the meaning that experience can assume, thereby influencing what can be said or done. Hence nationalism is a particular way of seeing and interpreting the world, a frame of reference that helps us make sense of and structure the reality that surrounds us.”¹⁹⁷

In this circumstance, the concept of “Other” becomes a factor which prevent us from transcending dualisms as long as the connotations of “other” include

¹⁹³ Les Back and John Solomos, Introduction, in Les Back and John Solomos (Eds), **Theories of Race and Racism: A Reader**, London: Routledge, 2000, p.11.

¹⁹⁴ William I.Brustein and Ryan D.King, “Anti-Semitism in Europe Before the Holocaust”, **International Political Science Review**, Vol.25, No.1, 2004, p.47

¹⁹⁵ Umut Özkırmılı, **Theories of Nationalism: A critical introduction**, Houndmills: Macmillan Press, 2000, p.226.

¹⁹⁶ For Debates on Nationalism, see Umut Özkırmılı, **Theories of Nationalism: A critical introduction**; Houndmills: Macmillan Press, 2000 and Umut Özkırmılı, **Contemporary Debates on Nationalism**, New York: Palgrave Macmillan, 2005.

¹⁹⁷ Umut Özkırmılı, **Contemporary Debates on Nationalism**, New York: Palgrave Macmillan, 2005, p.29-30.

inferiorization, exclusion and hostility. Because, although different approaches have different emphasis in relation to the definition of the nation, such as common political will in the concept of political (or civic) nation and common heritage and language in the concept of cultural (ethnic) nation, distinction from or comparison with “other”, - often in more or less hostile way-, has always been significant to build a national consciousness at least temporarily. For example, in 19th century, German national consciousness was inspired by anti-French and anti-Danish sentiments; Italians by Habsburg monarchy; Southern Balkans by Ottomans and Irish by England. Actually, the nation-building processes are not without paradoxes: nations celebrating their independence are not immune from seeking to homogenize their own internal differentiations while emphasizing their differences from other nations.¹⁹⁸ This nation building process perceives “other” or “foreigner” as a threat either to the national culture in which nation finds its roots or the sovereignty of the nation state and consequently, opens the door of cultural racism.

In this framework, Zygmunt Bauman mentions about two strategies which each society uses for dealing with strangers and for preserving its social domination , i.e. inclusivist or phagic strategy which assimilates the strangers to the neighbours and exclusivist or emic strategy which merges strangers with the aliens. According to him, these two strategies together polarize the strangers and attempt to clear up the most vexing and disturbing middle-ground between the poles of neighbourhood and alienness – between “home” and “abroad”, “us” and “them” and they put strangers an “either-or” situation such as conform or be damned, be like us or do not overstay your visit, play the game by our rules or be prepared to be kicked out from the game altogether.¹⁹⁹ He finds a relation between the rejection of strangers and cultural racism stating that:

“The rejection of strangers may shy away from expressing itself in racial terms, but it cannot afford admitting being arbitrary lest it should abandon all hope of success: it verbalizes itself therefore in terms of the incompatibility or unmixability of cultures, or of the self-defence of a form of life bequeathed by tradition...Arguments that wish to be as firm and solid as those once anchored in the images of soil and blood now have to dress themselves in the rhetoric of human-made culture and its values...it is culture itself , rather than a hereditary collection of genes, that is represented by these ideologies as immutable:

¹⁹⁸Christopher Dandeker, op.cit., “Introduction”, p.9

¹⁹⁹ Zygmunt Bauman, **Life in Fragments: Essays in Postmodern Morality**, Oxford: Blackwell, 1995, p.180

as a unique entity which should be preserved intact, and a reality which cannot be significantly modified by any method of cultural provenance.”²⁰⁰

By the same token, Michel Wieviorka, in his work on nationalism, populism and ethnicity titled as “La Démocratie a l’Epreuve”, has underlined the role of racism in nationalism and emphasized the installation of what he has called as antimodern face of nationalism in today’s Europe, which is open to racism and xenophobia.²⁰¹ According to him, racism has two logics. The first one is inferiorization. In this situation, the group has a place in society, but the members of the group have to be situated in the very lower part of the social scale, i.e, they have low salary jobs or they are exploited by employers etc. The second one is differentiation. In this case, the group is overtly segregated, they don’t have place in the society. Because they are considered as a threat for the homogeneity of the culture or for the economy.²⁰²

In practical life, these two logics are associated with each other and make the Other visible in the society as the marginalized, insecure and dangerous class in the eyes of the dominant group. As said by Montserrat Guibernau, race is a way of naming the difference between members of a particular collectivity and the “other”, the “alien”. She describes racism as:

“[...] an ideological discourse based upon the exclusion of particular collectivities because of their biological or cultural make-up. The specificity of racism lies in its constant invocation of a difference that attributes superiority to one group to the detriment of another, and favours the growth of hostile feelings towards those who have been defined as “different”.”²⁰³

This form of racism, based on cultural identities and differences, describes its targets and its victims as being culturally different, and irremediably so, fundamentally incapable of being integrated into society and sharing the values of the dominant group.²⁰⁴ Wieviorka gives example of immigrants in Europe who are accused of being the vectors of cultural forms – primarily Islam – which are incompatible with the democratic principles of separating religion from politics or with the equality of women.

²⁰⁰ *ibid.*, pp.187-188

²⁰¹ Michel Wieviorka, **La Démocratie a l’Epreuve: Nationalism, Populism, Ethnicité**, Paris : Edition La Découverte, 1993, p. 63

²⁰² *ibid.*, p. 48-49

²⁰³ Montserrat Guibernau, **Nationalism: The Nation-State and Nationalism in the Twentieth Century**, Cambridge: Polity Press, 1996, p.86.

²⁰⁴ Michel Wieviorka, The Making of Differences, **International Sociology**, No.19, (2004), p.285.

This kind of “differentialist” racism functions to keep immigrants at a distance and perhaps even to justify demands for their expulsion. In Wiewiorka’s words:

“It radicalizes cultural differences by naturalizing them – be it those of the dominant group which have no difficulty in linking nationalism with racism, or those of the minority group.”²⁰⁵

Pnina Werbner has drawn attention to the role of modern nation states in this scheme. She states that:

“The impulse of modern nation-state to pulverize its ethnic peripheries and stubborn minorities in the cultural blender of nationalism, to nationalize the cultural other in a continual process of education, socialization, intimidation and sheer coercion, has been widely documented by anthropologists from Ernst Gellner to Stanley Tambiah. Whether or not this is the way nationalism is actually pursued in contemporary Europe today,...there is little question that the impulse towards cultural homogenization exists in most modern nation-states.”²⁰⁶

She arrives at a contemporary vision of racism and xenophobia from the dualism inherited in the logic of racism which is seen in Bauman as assimilation and expulsion and in Wiewiorka as inferiorization and differentiation. She claims that by defining the collective Other as naturally different and inferior, ideologies of racism legitimize both collective oppression and violent exclusion. Violent racists perceive themselves as the historical victims of oppression and violence, defending the nation against the evil aggressor and potential usurper.²⁰⁷ What is significant here is that the contents and definition of this “evil aggressor” is not determined objectively. It is often determined according to some kind of subjective rationality, grounded in fears and collective mythologies of prior sufferings. There are many examples of this set by Werbner such as Afrikaner anti-imperial nationalism in South Africa, Buddhist anti-Tamil national violence in Sri Lanka, Jewish anti-Arab religious nationalism in Israel, working class racism, anti-Semitism and Islamophobia in Europe.²⁰⁸ This subjectivity makes harder the fight against xenophobia because the definition of “other” or “foreigner” changes time to time, person to person, culture to culture and even place to place.

²⁰⁵ *ibid.*, p.286.

²⁰⁶ Pnina Werbner, “Islamophobia: Incitement to religious hatred – legislation for a new fear?”, *Anthropology Today*, Vol 21, No.1, (February 2005), p.6

²⁰⁷ *ibid.*, p.7

²⁰⁸ *ibid.*

Bauman, actually, differentiate racism from xenophobia. For this reason, firstly, he referred tri-partite classification of Pierre André Taguieff who has equated racism and heterophobia (resentment of different) as :

“...Both appears ‘on three levels’ or in three forms distinguished by the rising level of sophistication. The ‘primary racism’ is in his view universal. It is a natural reaction to the presence of an unknown stranger, to any form of human life that is foreign and puzzling. Invariably, the first response to strangeness is antipathy, which more often than not leads to aggressiveness. Universality goes hand-in-hand with spontaneity. The primary racism needs no inspiring or fomenting; nor does it need a theory to legitimize the elemental hatred...At such a time it can be lifted to another level of complexity and turn into a ‘secondary’ or (rationalized) racism. This transformation happens when a theory is supplied (and internalized) that provides logical foundations for resentment. The repelling Other is represented as ill-willed or ‘objectively’ harmful – in either case threatening to the well-being of the resenting group. For instance, the resented category can be depicted as conspiring with the forces of evil in the form construed by the resenting group’s religion, or it can be portrayed as an unscrupulous economic rival...Xenophobia, or more particularly ethnocentrism (both coming into their own in the age of rampant nationalism, when one of the most closely defended lines of division is argued in terms of shared history, tradition and culture), is most common contemporary case of ‘secondary racism’. Finally the ‘tertiary’ or mystifactory racism, which presupposes the ‘lower’ levels, is distinguished by the deployment of a quasi-biological argument.”²⁰⁹

But then, he has criticized Taguieff’s synonymical use of racism and heterophobia. Bauman has defined two concepts such as ‘heterophobia’ and ‘contestant enmity’ which I prefer to evaluate as two steps of xenophobia, i.e, heterophobia is the first one and contestant enmity is the second one.

According to Bauman:

“Heterophobia seems to be a focused manifestation of a still wider phenomenon of anxiety aroused by the feeling that one has no control over the situation, and that thus one can neither influence its development, nor foresee the consequences of one’s action. Heterophobia may appear as either a realistic or an unrealistic objectification of such anxiety –but it is likely that the anxiety in question always seeks an object on which to anchor, and that consequently heterophobia is a fairly common phenomenon at all times and more common still in an age of modernity, when occasions for the ‘no control’ experience become more frequent, and their interpretation in terms of the obtrusive interference by an alien human group become more plausible.

²⁰⁹ Zygmunt Bauman, “Modernity, Racism, Extermination”, In Les Back and John Solomos (Eds.), **Theories of Race and Racism: A Reader**, London :Routledge, 2000, p.214.

He distinguished heterophobia from contestant enmity, a more specific antagonism generated by the human practices of identity-seeking and boundary-drawing. In the latter case, sentiments of antipathy and resentment seem more like emotional appendages to the activity of separation; separation itself demands an activity, an effort, a sustained action. The alien in this case threatens to penetrate the native group and fuse with it – if preventive measures are not set out and vigilantly observed. This is the ‘enemy in our midst’ case – one that triggers a vehement boundary-drawing bustle, which in its turn generates a thick fall-out of antagonism and hatred to those found or suspected guilty of double loyalty and sitting astride the barricade.”²¹⁰

Bauman differentiates racism from both heterophobia and contestant enmity. He states that:

“... racism manifests the conviction that a certain category of human beings cannot be incorporated into the rational order, whatever the effort... racism sets apart a certain category of people that cannot be reached (and thus cannot be effectively cultivated) by argument or any other training tools, and hence must remain perpetually alien... racism demands that the offending category ought to be removed beyond the territory occupied by the group it offends. If such conditions are absent, racism requires that the offending category is physically exterminated. Expulsion and destruction are two mutually exchangeable methods of estrangement.”²¹¹

Here, Bauman made a distinction on the basis of the “intolerance” shown by a group of people towards an alien. Heterophobia and contestant enmity can be evaluated as a form of intolerance, however racism is an act of extermination of alien, a policy and an ideology. Bauman defended the absence of continuity or natural progression between heterophobia or contestant enmity and racism by giving an example from the Nazi regime. According to him, there was not enough ‘mob’ to be violent in spite of enormous resources devoted by the Nazi regime to racist propaganda, the concentrated effort of Nazi education and the real threat of terror against resistance to racist practices. However, he also accepted that the overwhelming majority preferred to close their eyes and plug their ears and mass destruction was accompanied not by the uproar of emotions, but the dead silence of unconcern.²¹² By the same token, a great number of Germans welcomed an energetic and vociferously advertised action aimed at the segregation,

²¹⁰ *ibid.*, pp. 214-215.

²¹¹ *ibid.*, p.215.

²¹² *ibid.*, p.220-221.

separation, and disempowering of the Jews – those traditional expressions and instruments of heterophobia or contestant enmity.²¹³

This shows the unpredictable character and latent potential of these concepts. On the one hand, it is not possible to say that xenophobia will ultimately lead racism. However, on the other hand, it is undeniable that xenophobic feelings or attitudes have significant roles in shaping racist as well as nationalist movements. Because xenophobia is constructed upon perceptions, irrationality and subjectivity which have always been used to breed nationalism and racism.

In the article about the subjective rationality of xenophobic and racist beliefs, Jens Rydgren emphasized the impact of stereotyping and prejudices in the formation of xenophobic attitudes. He stated that

“ in our first meetings with individuals, our perception may be governed by salient categorizing aspect in the form of stereotypes. When we lack information about an individual , we interpret him or her in the light of our “knowledge” of the social group or category to which he or she belongs. When this category is an “out-group”, from our perspective, our stereotypes may be mingled with negatively evaluated beliefs and/or affects. When this happens , we have a prejudiced stereotypes”.²¹⁴

He mainly concerned with racist and ethnic stereotypes and prejudices which are probably the most important forms of xenophobia. The first fact of ethnicity is the application of systematic distinctions between insiders and outsiders; between Us and Them. Ethnicity is constituted through social contact.²¹⁵ Peoples’s first thoughts and impressions of others take off from social categorization and from beliefs and attitudes about the social group or category in question and race and ethnic characteristics are among the most immediately visible and noticeable. This kind of prejudiced stereotypes has severe implications in relation to xenophobia towards immigrants because immigrants can be easily differentiated from the host society. For example, in this situation, if immigrants are often referred as criminals, unemployed, uneducated in various part of the daily life, i.e, media, politics, statistics etc. then people, more easily

²¹³ Ibid., p.222.

²¹⁴Jens Rydgren, “The Logic of Xenophobia”, **Rationality and Society**, Vol. 16, No.2, (2004), Sage Publications, pp.123-148, p. 130

²¹⁵ Thomas Hylland Eriksen, **Ethnicity and Nationalism: Anthropological Perspectives**, London: Pluto Press, 1993, p.18

tends to recall and verify their stereotypes about them and they start to use analogism. As said by Rydgren:

“when we are facing a “black box”, we need some theory or guidance : and this is when analogism is commonly used”In this way, new information improves the usefulness of the analogism or stereotype as a guiding principle such as “since individual A is an immigrant and a criminal and individual B is an immigrant, then B is a criminal as well.”²¹⁶

Racialization arises from the combined effects of all these exclusionary attitudes and also goes one step further by blaming foreigners for their isolation and by portraying them as a threat to society.²¹⁷ The creation of collective identities through such prejudices against foreigners has always been an indispensable factor in constructing and preserving national culture as well as nation state. The threat discourse is also used in such cases in a way that foreigners are seen as a threat for the future of the nation state and for the homogeneity of national culture which is expected to be as homogeneous as possible for a secure society. Guibernau saw this type of nationalism as one which associated with racism and stated that:

“This type of nationalism possesses a particular way of seeing the basic relation between “us” and “them” and uses it in the construction of national identity. The “other” is not someone who makes us aware of our own particularities, someone we can learn from, respect live with and take as a point of reference in the construction of our own identity. This nationalism sees in the “other” a potential or factual enemy, but above all someone inferior.”²¹⁸

A national identity is needed for the construction of a nation. But because nation is not always homogeneous, this identity has to be a “man-made identity” which also has to be “accepted” by the “nation”. Only in such a case that a national identity is assumed to be safe and unproblematic. In today’s global world, this “Project” is becoming more and more difficult to manage. Bauman has emphasized the threat which a nation or national identity or national culture, is face to face today by stating that:

“The paradox of the man-made collective identities of the nation-state era – the kind of identities which might hold fast only when perceived as “given” and thus cast beyond human power of manipulation – has not gone away; if anything, it has become

²¹⁶ Jens Rydgren, *op.cit.*, p.140.

²¹⁷ Stephen Castles, “Citizenship and the Other in the Age of Migration”, Philip Spencer and Howard Wollman (Eds.) **Nations and Nationalism: A Reader**, New Jersey: Rutgers University Press, 2005, p.312.

²¹⁸ Montserrat Guibernau, *op.cit.*, p.90.

sharper than at any previous stage of the modern era. Its solution, on the other hand, has become more difficult than ever. Identities may be safe and “unproblematic” only inside a secure social space: spacing and identity – production are two facets of the same process. But it is precisely the great modern Project of a unified, managed and controlled space which has today come under pressure and faces its critical challenge...Concerns with identity (that is, the uncontentious social space), complete with xenophobia they gestate in volumes inversely proportional to the self-confidence of its carriers, will in all probability seek anchor in the territory classified as “culture” which indeed, is virtually tailor-made to meet the intrinsically contradictory demand”²¹⁹

This kind of security concerns have also serious impacts on the increase of xenophobia. Sara de Master and Michael K.Le Roy stated that:

“Xenophobia is only one of many attitudes regarding foreigners and represents one of the extremely negative views.... Its common use has come to signify the expression of mistrust, fear, and/or hatred of foreigners linked to an identification of the nation as the representative of culture. Foreigners are seen as carriers of a different culture with the potential to threaten the integrity of one’s own nation...Since each culture consists of a unique mix of orientations, foreigners inevitably threaten to alter the domestic culture through the introduction of new orientations.

Because membership in a nation is often equated with an ethnic heritage, cultures may appear relatively fixed and distinct in character from each other. This national cultural identity contributes to the xenophobic perception of stark, irreconcilable differences between cultural groups. The “strangeness” at the heart of xenophobia finds its source in the apparent disparity between nations and their associated cultures. Strangeness creates fear not only because the foreign culture is unknown, but also because contact with it threatens to alter the known and make it strange as well....”²²⁰

The fear felt by nation towards foreigners is caused not only from the perception of threat to national culture, but also caused from the ambiguity in relation to the Other’s culture. As quoted from Karl Deutsch by Erik Von Kuehnelt-Leddihn:

“...members of any given national group feel more trustful toward another member of the same group, because they can (to a certain extent, anyway) foretell that person’s reactions. This is not possible with someone from a completely different culture. Such a person is a stranger; he cannot be trusted. From there it is but a short step to regarding him as an enemy.”²²¹

²¹⁹Zygmunt Bauman, op.cit. “**Life in Fragments:....**”, p.186.

²²⁰Sara De Master and Michael K.Le Roy, Xenophobia and the European Union, **Comparative Politics**, Vol.32, No.4 (July 2000), p.425

²²¹Erik Von Kuehnelt-Leddihn, “Xenophobia on the March”, **National Review**, 22.01.1990, p.44

Xenophobia is mostly developed within the security discourse which is generally used for legitimizing discriminatory attitudes toward foreigners. This has sharpened the classical division between Us vs. Them which has already been present in every stage of the nation-building process. As a result, in the age of migration, the approach of the nation-state to Us vs. Them dichotomy, has various consequences for foreigners. As a form of socio-political identity²²², citizenship is highly significant in observing reflections of xenophobia in legal framework.

2) Reflections in Legal Framework: Citizenship

The topic of citizenship is of course a large one. More and more theorists are drawn to reflect on various crisis that are rendering citizenship ever more problematical today. Here, I limit myself to highlighting only a few aspects of the problem that have effects on migrants' status and rising xenophobia.

Stephen Castles has drawn attention to the paradox between citizen and national and defined this as one of the major problems of the age of migration. He states that:

“...in the era of modernity, citizenship referred to the nation-state. Becoming a citizen depended on membership of a specific national community (for example, being French, German, Italian). A citizen was always also a member of a nation, a national. So citizenship is meant to be universalistic and above cultural difference, yet it exists only in the context of a nation-state which based on cultural specificity on the belief in being different from other nations.”²²³

Purvis and Hunt have set the results of this contradiction as xenophobia and racism by stating that:

“The increasing polarity which has manifested itself inside the countries of the West has been mirrored in important ways by the growing gap between the First and Third Worlds. The prospect of mounting migration from the latter once again poses the problem of citizenship in its starkest terms. The presumed convergence of nation, state and population has been, if not shattered, certainly destabilized. Hence the question has become sharply posed as to who is entitled to partake of available economic and social resources.

²²² Derek Heater, *A Brief History of Citizenship*, New York: New York University Press, 2004, p.1.

²²³ Stephen Castles, *op.cit.*, p.302.

This question is all the more pressing because of the possibilities it opens up for the politics of xenophobia and racism.”²²⁴

In all democratic countries, citizenship is not only a proof of membership in a country, but also guarantees individuals some sets of rights and regulates individuals’ obligations. Although the meaning of citizenship differs widely between countries, the key characteristic of most types of citizenship is the inclusion of some and exclusion of others. As said by Jacqueline Bhabha:

“Given the escalation in migration, transnational relationship, dual affiliations and regional associations, the relationship between nation-state and citizen’s rights is as much a question about who is and who is not included within the notion of citizenship as it is about the ‘hallmarks’ or attributes of citizenship itself. In fact, I will argue that exclusion from citizenship is a central aspect of the project of constructing citizenship itself.”²²⁵

As seen, the main contradiction between migrants and citizenship is the fact that although the principle of citizenship demands the inclusion of “Others” into the political community, the principle of national belonging demands their exclusion. This means that admitting the Other into the national community through citizenship and giving “Other” the right to have equal participation in the expression of political will and to have equal rights, appears as a threat to national cohesion and identity. David McCrone and Richard Kiely differentiate nationality and citizenship by stating that nationality is in essence a cultural concept which binds people on the basis of shared identity while citizenship is a political concept deriving from people’s relationship to the state.²²⁶ Helen Elizabeth Hartnell evaluates ‘nationality’ and ‘citizenship’ as both capturing fundamental aspects of the content and meaning of belonging. However, she states that whereas the meaning of nationality has remained relatively stable within the so-called Westphalian system from which it emerged, the meaning of citizenship has evolved over time and differs from place to place. She gives the example of European Union citizenship as an example of the challenge to the familiar meaning of citizenship.²²⁷ On the other hand, she finds nationality more broader and more inclusive than citizenship, since it is a necessary but not always sufficient condition for

²²⁴ Trevor Purvis and Alan Hunt, “Identity Versus Citizenship: Transformations in the Discourses and Practices of Citizenship”, *Social and Legal Studies*, Vol. 8, No. 4, London: Sage Publications, 1999, p.460

²²⁵ Jacqueline Bhabha, “Belonging in Europe: citizenship and post-national rights in Europe”, *International Social Science Journal*, Vol. 51, Issue 159, (1999), p.13.

²²⁶ David McCrone and Richard Kiely, “Nationalism and Citizenship”, in Harry Goulbourne (Ed.), *Race and Ethnicity: Critical Concepts in Sociology*, Volume II, London: Routledge, 2001, p.171.

²²⁷ Helen Elizabeth Hartnell, “Belonging: Citizenship and Migration in the European Union and in Germany”, *Issues in Legal Scholarship*, Issue 9, (May 2006), The Berkeley Electronic Press, pp.343-344.

citizenship. She gives the example of British case where various status recognized under the British Nationality Act such as British Overseas Territories Citizen, British Overseas Citizen, British Subject without Citizenship and British Protected Person and states that:

*“For example, not all British nationals enjoy the privileged status of British citizen... (This) show citizenship may constitute a narrower and more exclusive category, or subset, of nationality when viewed in terms of membership.”*²²⁸

In this circumstances, laws and regulations regarding to citizenship is clearly of crucial importance to both migrants and states. It is possible to assume that being a non-citizen will affect how one feels about one’s own country of residence as well as about other migrants.²²⁹

Castles asks:

*“[...] if the citizen is a person who belongs both culturally and politically to one specific nation-state, what of migrants who settle in one country without abandoning their cultural belonging in another? The migrant has always been the “Other” of the nation. National identity is often asserted through a process of exclusion – feelings of belonging depend on being able to say who does not belong. But if the Other is part of society (as a worker, parents or tax-payer, for example), how can national distinctiveness be maintained?”*²³⁰

States are the sole authority to define who are its citizens and who are not. States vary widely in their treatment of nationality and citizenship. Furthermore, Laws on citizenship or nationality have close relationship with state’s treatment of migrants. States differ in the degree to which they tolerate or promote multiculturalism, on the one hand or press migrants to integrate into the host country, on the other. William Safran has set three basic principles of citizenship acquisition: *ius sanguinis*, *ius soli* and naturalization and has stated that all states have used one or more of these, or different combinations thereof.²³¹ Citizenship Law basically derives from two competing principles: *ius sanguinis* which is based on descent from a national and *ius soli* which is based on birth in the territory of the country. *Ius sanguinis* has been seen historically as

²²⁸ *ibid.*, pp.346-347

²²⁹ Mikael Hjerm, “Education, xenophobia and nationalism: A comparative analysis”, **Journal of Ethnic and Migration Studies**, Vol.27, No.1, (January 2001), p.51.

²³⁰ Stephen Castles, *op.cit.*, p.301

²³¹ William Safran, “Citizenship and Nationality in Democratic Systems: Approaches to Defining and Acquiring Membership in the Political Community”, **International Political Science Review**, Vol. 18, No.3, (1997), pp.313-335, p.314.

appropriate for an emigration country which wished to retain the allegiance of people who had settled elsewhere. On the other hand *ius soli*, is particularly useful for integrating migrants of diverse national origins into a new nation. A further principle is growing in significance at present: *ius domicili* according to which people may gain an entitlement to citizenship through residence in the territory of a country.²³²

Similarly, Purvus and Hunt have named two types of citizenship as ethno-cultural model (*ius sanguinis*) and civic-national model (*ius soli*) and has evaluated these types in relation to their effects on the migrant population. Accordingly:

“ In practice, the discourses of citizenship and national identity have converged in different ways, with the span between these poles occupied by a variety of citizenship practices as numerous as the nation-states which give them institutional embodiment. The ethno-cultural model is perhaps the most explicit in its homogenizing imperatives, with eligibility for membership constrained from the outset, reserving citizenship status (and, in turn, its accompanying rights and obligations) to those who meet strict ethno-cultural criteria. In practice, however, the civic-national model, for all its talk of openness, is also generally shot through with assumptions about national culture and language. The problem is not so much with the expectation that immigrants assimilate to an extent that renders them capable of functioning with some measure of political, cultural, and linguistic fluency. Rather, just what they are being assimilated to is problematic, with the homogeneity of the nation too frequently assumed and too seldom subjected to critical scrutiny.”²³³

For this reason, nation-state’s citizenship and immigration policies have the effects of manipulating foreigner’s status in the society and hence the level of xenophobia. Hjern argues that it is primarily citizenship and immigration policy regimes that will affect the constitution of nationalism and xenophobia or vice versa. Furthermore, countries differ substantially in both their rules of naturalisation and their ideologies of nationhood. For example, many countries are favourably inclined to dual citizenship but some, notoriously Germany, are not or have not been. Ireland, the Netherlands, Sweden, Denmark and Norway grant local voting rights to non-citizens, as do some local states within Germany and Switzerland.²³⁴

Hjern has classified ten countries (Australia, Canada, Austria, Germany, Italy, Spain, the Netherlands, Sweden, the Czech Republic and Hungary) in five pairs where

²³² Stephen Castles, *op.cit.*, p.307.

²³³ Trevor Purvis and Alan Hunt, *op.cit.*, p.466.

²³⁴ Alisdair Rogers, Jean Tillie and Steven Vertovec, “Introduction: Multicultural Policies and Modes of Citizenship in European Cities”, in Alisdair Rogers and Jean Tillie (Eds.), **Multicultural Policies and Modes of Citizenship in European Cities**, England: Ashgate Publishing, 2001, p.3

the institutionalised conceptualisation of the nation, as expressed in citizenship and immigration regimes, differs in important respects. Accordingly:

“Australia and Canada, two countries built on immigration that have since the early 1970s declared that they are striving towards multiculturalism. The latter includes a citizenship regime based on *ius soli* and *ius domicili*, with a comparatively short residence period demanded to naturalise.

Sweden and Netherlands are also sometimes referred to as multicultural countries, but they require longer period of residency for naturalisation than Australia and Canada. Immigration regime may be somewhat liberal. Especially Sweden deploys comparatively liberal immigration policies for asylum-seekers but has at the same time in practice closed its borders for other types of immigration. This closure is also witnessed in the Netherlands.

Germany and Austria are two countries in which ethnicity has had and still does have a significant role in how nationhood is institutionalised. Germany has different citizenship policies for ethnic compared to non-ethnic Germans and declare itself as a ‘no immigration country’. In Austria, descent is the main principle for naturalisation and the country requires a comparatively long period of residency which is as in Germany, combined with a quite restrictive guestworker immigration system.

Italy and Spain differ from the above ones because they have a history of being emigration countries. The two countries have lately become immigration countries. Immigration regimes made progressively stricter, while at the same time asylum laws have been made less strict and combined with increasing resource allocation towards the integration of immigrants.

Czech Republic and Hungary have much in common with other Eastern European countries when it comes to the formation of nationality, exhibiting a quest for national unity based on ethnic homogeneity. The two countries seem to differ from the other eight in that they have institutionalised a strong sense of nationalism and exclusionary politics in order to strengthen self-awareness in the construction of a modern mythologised nation-state.”²³⁵

As also shown by this classification that different conceptualization of nationhood and citizenship policies have different effects on foreigner’s status in the society. In relation to the both occurrence and persistence of xenophobia, the most significant effect of these different conceptualizations is the occurrence of exclusionary practices towards foreigners.

²³⁵ Mikael Hjerm, *op.cit.*, pp.39-41.

These practices had dated back to the Classical times, in particular Athens in the fifth and fourth centuries B.C and to Rome from the third century BC to the first AD. The classical account of citizenship as an Athenian ideal excludes the greater part of the human species from access to it, including immigrants. As said by Derek Heater:

“During the fifth and fourth centuries BC the number of citizens is reckoned to have been about 30,000 (expanding temporarily in the middle of that period to 50,000 or so). This figure must be multiplied by about four to account for children and wives to give the total of those in the citizenly category – only men were citizens proper. In addition to the citizens were many thousands of both metics and slaves. Metics were immigrants, short-stay and permanent, who were legally free and enjoyed some limited rights and were subject to obligations of military service and taxation. The slaves were, of course, by definition, unfree.”²³⁶

Roman citizenship was in many of its features strikingly different from the Greek. The Romans instituted citizenship of various grades; afforded opportunities to slaves to acquire the dignity of citizen; and spread the title with exceeding generosity to individuals, to whole communities even, beyond the city, in due course, to the very confines of its ‘world empire’.²³⁷ However, some means must exist to identify those who are eligible for the status: a Roman citizen had to be distinguished from a man who was of more lowly status, or was unfree, or was illegitimate, or who was a foreigner.²³⁸ By the same token, the strict theory of Roman law which remained throughout its history was that the *ius civile* was only for citizens, and, as there was originally no other law than *ius civile*, the foreigner was both rightless and dutiless.

J.G A. Pocock argues that today’s exclusionary nature of citizenship in the West is the remnant of that times:

“Equality is something of which only a very few capable, and we in our time know, at least, that equality has prerequisites and is not always easy to achieve. For Aristotle the prerequisites are not ours; the citizen must be a male of known genealogy, a patriarch, a warrior, and the master of the labour of others (normally slaves) and these prerequisites in fact outlasted the ideal of citizenship, as he expressed it, and persisted in Western culture for more than two millenia. Today we all attack them, but we haven’t quite

²³⁶ Derek Heater, *op.cit.*, p.26.

²³⁷ *ibid.*, p.30.

²³⁸ *ibid.*, p.31

got rid of them yet, and this raises the uncomfortable question of whether they are accidental or in some way essential to the ideal of citizenship itself.”²³⁹

Germany has been given most of the times as an example of exclusionary practice of citizenship. It had applied 1913 Citizenship Act based on the principle of *ius sanguinis* for many years, as against the Franco-American model according to which membership in the national community was defined largely in functional and voluntarist terms.²⁴⁰ According to the German system :

“The *Volksgeist* – the “spirit” of the people as embodied in its customs, language and folklore – came to be regarded as a reflection of the race and to be traced back to a mythical, preindustrial past, so that only those who inherited the *Volksgeist* would be considered as genuine members of the German nation and entitled to citizenship. This interpretation reached its height during the Nazi regime: Jews and Gypsies were considered to be racially unfit to belong to the German national community, deprived of their citizenship, and finally marked for extinction.”²⁴¹

Hartnell has evaluated 1913 Act from the point of immigrants and states that:

“[...] where there is a large foreign population, as in Germany since the second World War, the *ius sanguinis* principle “constantly reproduces ‘new-born’ foreigners” in practice, since it denies citizenship to children born on German soil to foreign parents. Such a regime ultimately denies equality, in particular to second- and third- generation foreigners who have no opportunity to naturalize in the country of their birth.”²⁴²

In the early 1990s, German naturalization law was liberalized and moved the country a considerable distance towards *ius soli*:

“Under a law that came into effect in 1991, foreigners between the ages of 16 and 23 will be naturalized “as a rule” (subject, however, to the discretion of officials) if they have lived in Germany for at least eight years, have attended school in the country or at least six years, and have not been convicted of a major felony. Foreigners older than 23 will be naturalized “as a rule” if they have legally resided in Germany for at least 15 years, have not been convicted of a crime, and show that they can support themselves and their families...In all cases, applicants must give up their previous citizenship.”²⁴³

²³⁹ J.G.A Pocock, “The Ideal of Citizenship Since Classical Times”, In Ronald Beiner (Ed.), **Theorizing Citizenship**, Albany: State University of Newyork Press, 1995, p.31

²⁴⁰ William Safran, op.cit., p.320.

²⁴¹ *ibid.*, p.321

²⁴² Helen Elizabeth Hartnell, op.cit., p.376.

²⁴³ William Safran, op.cit., p.322.

In January 1, 2000, new Citizenship Act entered in force in Germany. It does not fully abandon *ius sanguinis* in favor of the *ius soli* principle but introduces the *ius soli* principle in certain cases. For example:

“Under the *ius soli* provisions of the new Citizenship Act, a child born in Germany to non-German parents automatically becomes a German citizen, provided that the parents meet certain criteria, including legal residence in Germany for a period of eight years. Citizenship is also available as a matter of right to other persons through naturalization, if the applicant has lawfully resided in Germany during the eight years preceding the application and satisfies all other statutory criteria.”

However, there have been still exclusionary practices:

“[...]Inclusive group selectivity continues to exist in the form of “automatic citizenship...for ethnic Germans. Thus, some potential immigrants remain entitled to German citizenship, while other long-term German residents who wish to naturalize still face limited opportunities to do so.

The liberalization of voluntary naturalization has not come without a cost. In particular, the right to naturalize on the basis of long-term residency may not be exercised if the applicant lacks sufficient knowledge of the German language, if he or she can be shown to have acted against the constitutional order, or if there are grounds for deportation. Further requirements include a written commitment to uphold the liberal democratic German constitutional order, the ability to support him or herself, and renunciation of his or her former citizenship. In general, no naturalization is possible unless the applicant shows that he or she is both willing and able to integrate into German society.”²⁴⁴

Safran gives the example of Britain, as an other form of exclusionary practice, and states that:

“The pressure exerted upon British government to control immigration forced them to maintain subtle distinctions among several different classes of British subjects, with different rights of entry and, in effect, different access to the rights of citizenship. These distinctions were reaffirmed in a number immigration laws passed between 1962 and 1971; some of them were incorporated into the British Nationality Act of 1981 (effective in 1983), which include the following hierarchy of citizenship: (1) full British citizenship; (2) British citizenship by virtue of birth in dependent territories; and (3) British citizenship by virtue of birth in areas formerly under British protection. Only members of class (1) have

²⁴⁴ *ibid.*, p.323.

the automatic right to live in the United Kingdom, the others being subject to immigration law.”²⁴⁵

By the same token, Jacqueline Bhabha emphasized the exclusionary nature of European Union citizenship created in Maastricht by the Treaty on European Union (1992). Article 17 (1) of the Treaty on European Community provides that:

“Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship.”²⁴⁶

Accordingly, only nationals of member states are EU citizens, and the question of establishing who is a national is left entirely up to each member state. She stated that:

“By deciding to accord EU citizenship on the basis of member-state nationality rather than residence or some other form of permanent affiliation within Europe, member states enshrined the traditional sovereign prerogative over questions of citizenship, but failed to provide an inclusive basis for belonging in Europe. Given the divergent and complex criteria applied by individual member states to determine eligibility for nationality – birth, descent, residence, ancestry, compliance with a range of linguistic, cultural or other legal qualifiers – the EU definition establishes a unitary basis for exclusion rather than a coherent set of criteria for inclusion.”²⁴⁷

Similarly, Hartnell also take attention to the fact that this formulation reveals a fundamental continuity between state-based citizenship and EU citizenship although she accepts the dramatic deviation from modern concepts of citizenship marked by EU citizenship.²⁴⁸ She mentions about the significance of EU level migrants’ rights rather than state-based citizenship rights in the discourse of belonging by stating that:

“EU citizenship constitutes a dramatic adaptation to an environment characterized by increasing intra-EU migration (mobility) and decreasing Member State salience. Yet the dramatically changing nature of citizenship captures only part of larger debates about belonging in the EU. Indeed, questions about “the community of belonging and more specifically, about how to define borders of belonging” are not limited to the realm of nationality or citizenship. Rather, other forms of social exclusion such as those based on “ethnicity, race, and gender” may be (or become) more salient than those based on nationality or citizenship. From this perspective, the development of rights in the EU legal

²⁴⁵ *ibid.* p.324

²⁴⁶ Article 17(1) of the Treaty on European Community, http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002E/pdf/12002E_EN.pdf (15.05.2007).

²⁴⁷ Jacqueline Bhabha, *op.cit.*, p.15.

²⁴⁸ Helen Elizabeth Hartnell, *op.cit.*, p.348.

order, including the evolving notion of equal opportunities for migrants may be a more important arena for contests over belonging than the arena of citizenship itself.”²⁴⁹

These examples show that even if different classifications of citizenship exist, “exclusionary” nature of the citizenship concept is common to each type and has still been persisted. This exclusionary attitude, especially prohibition against dual nationality or different classification of citizenship may well be perceived as “unwillingness” on the part of the host country to welcome immigrants. Countries’ approaches to “outsiders”, hence immigration laws and relatedly citizenship laws have been related to each other. As generally accepted, *ius soli* countries are more prone to include foreigners than *ius sanguinis* countries. Castles emphasized European countries’ strong historical links between imagined cultural community and political belonging, as a factor which makes more difficult for them to change their access criteria. He compares naturalization figures of 1988 and 1995 and tries to make a distinction between *ius sanguinis* countries and *ius soli* countries. He concludes that:

“Naturalization rates are still very low in the *ius sanguinis* countries which used to recruit guest-workers: Germany, Austria and Switzerland. Countries with models combining elements of *ius soli* and *ius sanguinis* – France, Belgium, the UK – have intermediate rates. Sweden and Netherlands have done most to change rules to include immigrants and now have naturalization rates close to those of Australia or Canada.”²⁵⁰

Although this kind of rough classification is, in a way, simplification of this complex issue, on the other hand, it gives us a better embarkation point to analyse the effect of nationalistic and xenophobic values in the construction of citizenship regimes which reflects the conceptualisation of nation-states. The existence of “Other” in every stage of this process, namely in identity formation, in nation-building, in defining citizenship status, aggravates the complex nature of the xenophobia issue. As said by Purvis and Hunt:

“Unfortunately, the fluidity of the concept of nation has manifested a disturbing tendency to closure and constriction in times of crisis, with legitimate access to citizenship rights being preserved for those who meet new standards of stringency on the criteria of recognition. At its most chauvinistic, this logic clears the space for both xenophobic policing of the boundaries of the nation (protecting the nation from external others such as

²⁴⁹ *ibid.*, p.360.

²⁵⁰ Stephen Castles, *op.cit.*, p.308

‘illegal immigrants’) and governing the moral fabric of the citizenry (either normalizing or marginalizing the internal other).”²⁵¹

Although the exclusionary practices regarding to the citizenship have been a factor breeding the “otherness” of immigrants, other social and political factors have also prevent their full public participation. Beyond the political sphere, there are numerous other modes of exclusion affecting immigrants such as restricted access to labour market, denial of differential provisions of social welfare resources including programmes for training, health, housing, insurance etc.

Considering this situation, different theoreticians have look at xenophobia through different lenses, for example, some of them through economics as well. Echebarria and Gonzales explain xenophobia towards immigrants issue with reference to Realistic Conflict Theory which is developed by Muzaffer Sherif in 1961. This theory accounts for inner group conflict, negative prejudices and stereotypes as a result of actual competition between groups for desired resources.²⁵² Brief and Others quoted from J. Sidanus and F. Pratto’s work in 1999, called “Social Dominance: An intergroup theory of social hierarchy and oppression” states that:

“[...] the perception that one’s group’s gain is another’s loss translates into perceptions of group threat, which in turn causes prejudice against the out group, negative stereotyping of the outgroup, in-group solidarity, awareness of in-group identity and internal cohesion, including tolerance of ingroup deviants, ethnocentrism, use of group boundary markers and discriminatory behaviours.”²⁵³

Basing to this theory, Echebarria and Gonzalez claim that:

“According to the traditional xenophobic discourse, immigrants are seen as foreigners competing with and depriving the ingroup of its scarce resources. Moreover, intergroup biases in general, and prejudice and xenophobia in particular, are directly related to the level of perceived threat experienced by the group.”²⁵⁴

Stephen Castles also establish a link between economic situation and the rising xenophobia towards migrants and evaluates this by stating that:

²⁵¹ Trevor Purvis and Alan Hunt, op.cit., p.466.

²⁵² Muzaffer Sherif, <http://www.muskingum.edu/psych/psycweb/history/sherif.htm> (22.08.2006)

²⁵³ Arthur P. Brief, Elizabeth E. Umphress, Jeorg Dietz, John W. Burrows, Rebecca M. Butz and Lotte Scholten, “Community Matters: Realistic Group Conflict Theory and The Impact of Diversity”, **Academy of Management Journal**, Vol.48, No.5, (2005), p. 831.

²⁵⁴ Agustin Echebarria Echabe and Jose L. Gonzales Castro, op.cit., p.342.

“[...] at a time of economic decline, sharing a shrinking social cake with new groups appears as a threat to the conditions of the local working class...It is much easier to turn these groups into the scapegoats for the social crisis, by blaming them not only for their own marginality, but also for the decline in general standards. Migration is therefore seen as a central aspect of North-South conflict, and migrants may be perceived as infiltrators who will drag the rich countries down to Third-World poverty. The ‘enemy within’ is the racialized ‘underclass’ in the new urban ‘gettos’.”²⁵⁵

In summary, in defining xenophobia, the concept of “Other” has been significantly important. The construction of identity through Us vs. Them dichotomy leads xenophobic tendencies which can easily be used by states in relation to their priorities such as nation-building or preserving sovereignty. The use of “Other” in defining nation or national and the juxtaposition of nation and state cause many problems in the age of migration. The increase in the number of people which have multiple citizenship and which have family, social and economic connections in more than one country, questions the principle of nation-state exclusivity. The continuing attempt to base citizenship on membership of an imagined cultural community leads to political and social exclusion and the racialization of difference.²⁵⁶

Jacqueline Bhabha evaluates racism and nationality issues as significant problems of third-country nationals permanently settled within member states of the EU by stating that:

“Third-country nationals permanently settled within member states of the EU are usually spared the immigration difficulties of non-settled aliens, although they are indirectly affected by them because of the impact of their relatives and associates, and because of the attendant racism which at times turns all ‘foreigners’ into objects of suspicion and scrutiny.”²⁵⁷

This makes necessary to work out new modes of inclusion for “Others”. Here again, the significance of the state comes to the fore as the sole authority to decide a person’s citizenship status. Soysal drew attention to the institutionalized duality between the two normative principles of the global system: national sovereignty and universal human rights. She states that:

“[...] inasmuch as the ascription and codification of rights moved beyond national frames of reference, postnational rights remain organized at the national level. The world is

²⁵⁵ Stephen Castles, *op.cit.*, p.305.

²⁵⁶ *ibid.*, p.314.

²⁵⁷ Jacqueline Bhabha, *op.cit.*, p.19.

still made up territorially configured political units; implementation and enforcement of global rules and norms lie with national political structures. Simply put, the exercise of universalistic rights is tied to specific states and their institutions.”²⁵⁸

This means that although civil rights are guaranteed by law for everyone (including non-citizens) and in many cases the right of non-citizens have been expanded through supranational legal norms laid down by such bodies as the United Nations, the International Labour Organization and the Council of Europe, political rights are highly complex: many resident non-citizens are denied political rights, while others have been granted limited rights such as the vote in local elections.²⁵⁹ Bhabha sets deportation as a particularly compelling example of the difference in status between lawful permanent resident and EU citizens within Europe and mentions about the racist and xenophobic consequences of the issue. Accordingly:

“The issue arises primarily in the context of criminal activity and the liability to expulsion following criminal conviction, when aliens are subjected to so-called ‘double jeopardy’, typically deportation at the end of their prison sentence[...]The problem of double jeopardy is a significant one for two reasons. Firstly, it affects a population increasingly marginalized by xenophobic and racist activity, unemployment and urban decay, a population which is of critical importance for an inclusive policy of European identity formation. Secondly, it raises starkly the problem of race-based discrimination within the current European political order, and tests the proposition that human rights are the common foundation for the EU as it moves into the next century and phase of expansion.”²⁶⁰

Otherness of immigrants becomes decisive not only in determining their rights but also in establishing the link between xenophobia and immigrants’ rights. Today, even though a large proportion of immigrants in Europe have not been incorporated into a formal scheme of citizenship, they are nevertheless incorporated into many rights and privileges of citizenship. As stated by Yasemin Nuhoğlu Soysal, many transnational organizations such as International Labour Organization and the Council of Europe and also national court systems which increasingly activate transnational human rights conventions as the basis of their decisions, have contributed substantially to the expansion of foreigners’ rights.²⁶¹ Soysal evaluates this as an anomaly for the

²⁵⁸ Yasemin Nuhoğlu Soysal, “Changing Citizenship in Europe: Postnational Membership and the National State”, In David Cesarani and Mary Fulbrook (Eds.), **Citizenship, Nationality and Migration in Europe**, London: Routledge, 1996, p. 24.

²⁵⁹ Stephen Castles, *op.cit.*, p.310.

²⁶⁰ Jacqueline Bhabha, *op.cit.*, p.20.

²⁶¹ Yasemin Nuhoğlu Soysal, *op.cit.*, p. 256.

predominant conception of citizenship which assume a “natural” dichotomy between citizens and aliens and argues that while states reinforce more and more strict boundaries, at the same time, transnational pressures toward a more expansive membership and individual rights penetrate the same national boundaries and profoundly transform the nature of citizenship.²⁶² Her assertions may be evaluated from the point of its impact on xenophobic sentiments. She emphasizes changing (or diminishing) impact of citizenship in defining national identity and refers to the reinvention and reassertions of national identities in eastern but also western Europe. She evaluates violent vocalization of anti-foreigner group and demands for restrictive refugee and immigration policies throughout Europe as the consequences of new articulation of national identities occurring in the form exclusionary manner.²⁶³

The changeable and ambiguous nature of the terms xenophobia, nationalism and racism, make them difficult to theorize. This situation urges to take practical measures in order to prevent harmful consequences of this ambiguity. Nationalistic and xenophobic values are prevalent in all societies. Even though, these values are increasing or decreasing in different societies, there are no signs that such values will disappear in the near future. Besides other conditions such as lack of human capital and specific historical conditions of conflict, immigrant groups are highly vulnerable due to their weak legal position and racial stigmatization. In this framework, preserving migrants’ human right appears as the necessary condition for preventing their vulnerability.

II. MEASURES AGAINST XENOPHOBIA

In her book on European migration history called “Guests and Aliens”, Saskia Sassen has stated that:

“Europe’s history, especially of the nineteenth and early twentieth centuries, shows the extent to which the status of the outsider – the one that does not belong to the extant community – marks the immigrant. Even if they have the same diets, the same religion,

²⁶² *ibid.*, p. 258.

²⁶³ *Ibid.*, p. 259.

similar music and similar life rituals, no matter: they did not belong to the local community and town”²⁶⁴

Although this is a quite pessimistic quotation, the importance of legal measures emerges as sine qua non element of combating racism, xenophobia and intolerance towards immigrants, in such a deep rooted and persistent situation. Law not only protects victims and offers a remedy to them, but also demonstrates society’s firm opposition to racism, xenophobia and related intolerance. Even though all human rights documents are based on the non discrimination and equality of human beings, the characteristics of the problem of migrant’s vulnerability to xenophobic attacks urges states to take specific measures. Here, the initiatives on this issue will be examined firstly within the general framework of international law and then specifically within the European context with particular emphasis on the European Union.

A.General Framework in International Arena

In the international sphere, there are many few international instruments which can be used in order to combat against xenophobia. Among them one important document is **UN Convention on the Elimination of All Forms of Racial Discrimination (Entry into force on January 4, 1969)**²⁶⁵ which is the cornerstone of the fight against racism at the global level and it is clearly devoted to protection against racial discrimination. However, we can not say that it provides necessary protection against xenophobia.

In the Article 1(1) , the Convention, defines racial discrimination as:

“any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

Article 2 obliges Member States to condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races.

Article 4(a) of this Convention states that:

²⁶⁴ Saskia Sassen, op.cit., “Introduction to English Edition”, p.16.

²⁶⁵ **UN Convention on the Elimination of All Forms of Racial Discrimination**, <http://www.unhcr.ch/html/menu3/b> (18.08.2005)

“States Parties shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as actions of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof”.

Paragraph (b) of the same article states that:

“States Parties shall declare illegal and prohibit organisations, and also organised and all other propaganda activities, which promote and incite racial discrimination, and shall recognise participation in such organisations or activities as an offence punishable by law.”

The Convention has been ratified by all EU Member States and all have recognized the competence to receive and process individual communications of the Committee on the Elimination of Racial Discrimination under Article 14 (1) of the Convention²⁶⁶ except Estonia, Greece, Lithuania, Slovenia and United Kingdom of Great Britain and Northern Ireland as in case on June 2004.²⁶⁷

This Committee has only power to make suggestions and recommendations based on the examination of the reports and information received from the States Parties.

The inadequacy of the Convention in relation to xenophobia comes from the second paragraph of Article 1 emphasizing that;

“This Convention shall not apply to distinctions, exclusions, restrictions or preference made by a State Party to this Convention between citizens and non-citizens.”

It is important to differentiate xenophobia and discrimination against foreigners from racial discrimination against nationals in order to implement effective remedies. Different states have different citizenship law. Migrants have not always easily acquire nationality. This non-national status makes them much more vulnerable against racist attacks. This article can additionally be used by the states to apply discriminatory practices against migrants and gives ways to the difficult naturalization processes. It must be aware of the fact that migrants, especially illegal migrants are outside the legal

²⁶⁶ See Annex 3 UN Documents, Article 14 of the Convention on the Elimination of Racial Discrimination

²⁶⁷ Office of the United Nations High Commissioner for Human Rights, **Status of Ratifications of the Principal International Human Rights Treaties as of 09 June 2004**, <http://www.unhcr.ch/html/menu3/b> (18.08.2005)

protection in many states. Lack of legal status makes them on the one hand vulnerable to xenophobic attitudes and on the other hand leaves them reluctant to access to justice.

The international community's growing interest in the protection of the human rights of the migrants was evidenced by the numerous world conferences and multilateral forums. The growing awareness about the migrant's human rights in 1997, led to the establishment of the Working Group of intergovernmental experts on the human rights of migrants under United Nation. In 1999, a Special Rapporteur on the human rights of migrants is appointed. A World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa, in 2001. Only in 2002, four resolution were adopted to the protection of the human rights of migrants.²⁶⁸ Again, United Nations Millenium Declaration also mentions about the need to take measures to ensure respect for and the protection of the human rights of migrants, migrant workers and their families, to eliminate the increasing acts of racism and xenophobia in all societies and to promote greater harmony and tolerance in its paragraph 25.²⁶⁹

However, as seen, neither a special document has been prepared for migrants' protection against xenophobia, nor a specific definition of xenophobia has been arisen from UN documents. The most important international document which can be used for fighting xenophobia is United Nations Convention on the Elimination of All Forms of Racial Discrimination, has limited effect in relation to the migrants (most of them are not nationals) because of its citizen / non-citizen discrimination. Although there is a Committee established to receive petitions from individuals or groups of individuals, it has no judiciary power and the competence of the Committee has been defined by State Party to the Convention.

At the European level, the judicial or quasi-judicial mechanisms and legal standards of the Council of Europe which are of relevance to the fight against racism and xenophobia. European Convention of Human Rights and its Protocols are the most important instruments in both human rights and migrants' rights protection. Council of Europe has also worked together with the OSCE on a number of occasions in the field of combating racism and intolerance. It has especially jointly prepared seminars and

²⁶⁸ E/CN.4/RES/2002/58 Violence against women migrant workers; E/CN.4/RES/2002/59 Protection of Migrants and Their Families; E/CN.4/RES/2002/62 Human Rights of Migrants, <http://www.unhcr.ch/huridocda/huridoca.nsf> (07.09.05)

²⁶⁹ United Nations Millenium Declaration, <http://www.ohchr.org/english/law/millenium/htm> (08.09.05)

conferences with the Office for Democratic Institutions and Human Rights (ODIHR), the principal OSCE institution responsible for promoting progress in Human Dimension.

The institution of the Commissioner for Human Rights was established in 1999 at the Council of Europe's 50th anniversary in order to strengthen human rights protection in Europe. On the basis of his mandate entrusting him with the task of promoting for the effective observance of human rights, the Commissioner for Human Rights of the Council of Europe is by nature an established actor in the fight against racism and intolerance. The European level institution which is established specifically for this purpose called European Commission Against Racism and Intolerance (ECRI). This is the Council of Europe body entrusted with the task of combating racism, xenophobia, antisemitism and intolerance in greater Europe, from the perspective of the protection of human rights. It was set up by the first Summit of Heads of States of the Council of Europe held in Vienna in October 1993 and reinforced by 1997 Summit held in Strasbourg. On 13 June 2002, the Committee of Ministers of the Council of Europe adopted a new Statute for ECRI which consolidated its role as an independent human rights monitoring body on issues related to racism and racial discrimination. Its term of references are to review member States' legislation, policies and other measures to combat racism, xenophobia, antisemitism and intolerance and their effectiveness; to propose further action at local, national and European level; to formulate general policy recommendations to Member States; and to study international legal instruments applicable in the matter with a view to their reinforcement where appropriate.²⁷⁰ ECRI's programme of activities comprises three aspects: the country-by-country approach, work on general themes and activities in relation to civil society.

ECRI's most important initiatives can be classified roughly under 3 headings. Firstly, ECRI has general policy recommendations which are addressed to the governments of all member States and cover the most important areas of current concern in the fight against racism and intolerance. Until now, ECRI's adopted 9 general policy recommendations. Another area of the ECRI's work is the collection of examples of "good practices" in combating racism and intolerance. And thirdly, ECRI has significant impact on the preparation of the Protocol No.12 to the European

²⁷⁰ Council of Europe, European Commission Against Racism and Intolerance, **Activities of the Council of Europe with relevance to combating racism and intolerance**, Strasbourg, February 2004, p.8

Convention on Human Rights.²⁷¹ Following a proposal made by ECRI, the appropriate Council of Europe bodies have prepared the Protocol No.12, making Article 14 of European Convention on Human Rights, general in scope and containing a non-exhaustive list of discrimination grounds.

In implementing its activities, ECRI co-operates with the European Monitoring Centre on Racism and Xenophobia (EUMC) which is an European Union agency, on the basis of an agreement signed between Council of Europe and European Community.²⁷² This agreement provides the legal basis for the development of co-operation between the two bodies. The Management Board of the Monitoring Centre includes a member appointed by the Council of Europe and that since the adoption of ECRI's new Statute in June 2002 a member of the EUMC Management Board is also invited as an observer to all ECRI plenary meetings. ECRI also maintains a regular exchange of information with the Committee on the Elimination of Racial Discrimination (CERD), the monitoring body established under the United Nations International Convention on the Elimination of All Forms of Racial Discrimination. It also co-operates on a regular basis with United Nations High Commissioner for Refugees (UNHCR), UNESCO and non-governmental organisations.

Following the decision of the United Nations General Assembly in December 1997 to convene a world conference against racism, racial discrimination, xenophobia and related intolerance, the Council of Europe was entrusted with the preparation at the European level of the World Conference, which took place from 31 August to 8 September 2001 in Durban. The European Conference against racism took place on 11-13 October 2000 at the Council of Europe's headquarters in Strasbourg. Over 500 participants attended the European Conference including ministers and senior government officials, the Council of Europe, the European Union and United Nations bodies, non-governmental organizations and other representatives of civil society. The Conference's main emphasis is on the strengthening of democratic values and respect for human rights requires building a society in which all people enjoy the same right and opportunities. The General Conclusion of the Conference reaffirmed that ethnic, religious, cultural and linguistic diversity in Europe is a source of social vitality and wealth. It also underlined that acts of racism and racial discrimination are serious violation of human rights, threatening democratic societies and their fundamental

²⁷¹ *ibid.*, p.12

²⁷² Official Journal L 44 of 18.02.1999, 1999/132/EC

values, and should be combated by all lawful means. The Conference notably condemned the continued and widespread occurrence of racism, racial discrimination, xenophobia, antisemitism and related intolerance, underlining the reasons related to language, religion, national and ethnic origin or belonging to a minority. Such occurrences target in particular persons such as migrants, asylum seekers, refugees, displaced persons, non-nationals, indigenous peoples or Roma/Gypsies and Travellers.²⁷³

The Council of Europe has also activities relating to the migrant's human rights via its Committee on Migration, Refugees and Population. This Committee, firstly upholds the human rights of migrants, refugees and displaced persons and works to bring about an improvement in their living conditions. Secondly, by proposing solutions in keeping with the humanitarian values of the Council of Europe, it seeks to respond to member States' concerns about significant movements of migrants and refugees, issues related to the integration of migrants and population trends.²⁷⁴ It further examines community relations in multicultural societies, including the situation and integration of migrant workers and their economic, political and social rights. However, its significance is limited in the sense that it shall only prepare reports for debate in the Assembly.

It is seen that parallel to the international progress, European level measures have been gained momentum after 1990s. At the European level, there are special bodies which deals with intolerance, racism and xenophobia (ECRI, EUMC) and most importantly, there is a judicial mechanism (European Court of Human Rights). However, this has limited impact in relation to the migrants' rights due to the both limited scope of the Convention and the power of states to issue restrictions which have been already mentioned in detail in Chapter I. A specific body which deals with xenophobia is established under European Union umbrella, named as European Monitoring Center on Racism and Xenophobia (EUMC). It has significant importance mostly on the point that it is one of the main source of data while examining the relation between immigrants and xenophobia in European Union. On the other hand, European Union has many serious initiatives on this issue which are worth to discuss in detail.

²⁷³ Council of Europe, European Commission Against Racism and Intolerance, **Activities of the Council of Europe with relevance to combating racism and intolerance**, Strasbourg, February 2004, p.17.

²⁷⁴ Committee on Migration, Refugee and Population, http://www.assembly.coe.int/committee/MIG/Role_E.htm

B. Special Focus on European Union

Actions taken by the European Union regarding to the prevention of racism and xenophobia can be considered under two main structure either in the political framework , as a part of general human rights considerations or in legislative framework with special emphasis on immigrants' integration and the right of third country nationals. A paralel structure is also used in the EU to fight against xenophobia which is to mainstream the fight against racism into other policies such as employment policy, the external relations policy and programmes providing financial support. For example, the European Employment Strategy launched by Luxembourg Jobs Summit in November 1997 was designed to enable the Union to regain the conditions for full employment and to strengthen cohesion by 2010. This strategy is an important instrument in the fight against racism because the employment guidelines which have, since 1999, included the principle of non-discrimination in the labour market.²⁷⁵ The external relations policy also deals with racism through the agreements made with non-EU states. All the agreements include human rights clauses covering also combatting racism and non-discrimination. 1993, the Copengahen European Council defined the political criteria which countries applying for membership for the EU must satisfy. These are “the stability of institutions guaranteeing democracy, rule of law, human rights and respect for and protection of minorities”. In the enlargement process, great importance is attached to the applicant countries' policies to combat racism and to protect minorities.

Moreover, many EU programmes that provide financial aid, contain provisions on racism such as :

- “ - Community Action Programme to combat discrimination (2001-2006)
- The Community initiative EQUAL which deals with discrimination on the labour market
- The programme relating to the Community framework strategy on gender equality
- The European Fund for Refugees which provides support for refugees

²⁷⁵European Employment Strategy,
http://www.ec.europa.eu/employment_social/employment_strategy/index_en.htm (17.05.2006)

- The Grotius Programme which aims to foster legal cooperation on general and criminal issues between the Member States
- External programmes such as those financed by the European Initiative for Democracy and Human Rights (EIDHR) which concentrates on the candidate countries; TACIS which focuses on the Newly Independent States and Mongolia; projects relating to the Republics of Former Yugoslavia and those organized under the Stability Pact for South-Eastern Europe.”²⁷⁶

1) EU Measures in Political Framework : Human Rights Discourse

EU's approach to xenophobia was initially shaped within the general human rights discourse. In 1977, the European Parliament, the Council and the Commission stressed the prime importance they attach to the protection of fundamental rights, as derived in particular from the constitutions of the Member States and the European Convention for the Protection of Human Rights and Fundamental Freedoms by a joint declaration.²⁷⁷ Since then, the European Community institutions have numerous occasions reaffirming their concern to defend human rights and basic freedoms and have condemned all forms of intolerance, racism and xenophobia. Although each institution's role has significant impact separately, the collaboration and interactions between their initiatives have been a real accelerator for the whole issue.

In 1984, European Parliament established the Parliamentary Committee of Inquiry into the rise of Fascism and Racism in Europe, leading to the adoption of the Evrigenis Report in 1986 and this report was followed by a Joint Declaration against Racism and Xenophobia by the European Parliament, the Council and the Commission.²⁷⁸

From 1990s onwards, with the rising security concerns among member states due to the collapse of Eastern Bloc and the probable influx of immigrants from Central and Eastern European States, xenophobia towards immigrants issue became more and more important. Because, now, immigrants, being legal or illegal, may be a source of insecurity within state. Xenophobic attitudes and intolerance towards immigrants have

²⁷⁶ Contribution to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, <http://www.europa.eu.int/scadplus/leg/en/lvb/r10107.htm>, (05.05.06), p.2

²⁷⁷ **Joint Declaration by the European Parliament, the Council and the Commission, Official Journal of the European Communities**, No. C 103, (27.04.1977), p.1

²⁷⁸ Jan Niessen and Isabelle Chopin (Eds.), **Anti-Discrimination Legislation in EU Member States**, Report prepared by Leonor Palma Carlos, Migration Policy Group under the guidance of Migration Policy Group on behalf of the European Union Monitoring Center on Racism and Xenophobia, 2002, p.7

threaten many European ideals such as respect for human rights, democracy, unity within diversity etc. For this reason, from the 1990s onwards, EU's initiatives have not separated three issues, namely immigrants' rights, xenophobia and security from each other. Consequently, combating racism and xenophobia became indispensable for the realization of many EU objectives. In 1992, Evrigenis report prepared in 1986, was edited by the British Member of European Parliament Glyn Ford and was published with the title of "Fascist Europe: the Rise of Racism and Xenophobia". In 1994, European Council's Consultative Commission on Racism and Xenophobia was established in order to examine outburst of racial intolerance and make recommendations.²⁷⁹

A series of initiatives at the EU level which have been specifically related to racism and xenophobia began in 1995. In the same year, although combating racism has still been seen as primarily a matter of Member States or their regional or local authorities, there has been also a broad consensus in favour of suitable action at Community level. Most importantly, the Commission produced a Communication on Racism, Xenophobia and Anti-Semitism in which it sets out its plan of action to combat discrimination on these grounds.²⁸⁰ In the Communication COM (95) 653, Commission stressed the link between integration policies and policies for fighting racism and xenophobia with special emphasis on the prevention of racial discrimination and xenophobia and the promotion of equal treatment at the place of work. It further mentioned about legal cooperation so that effective penalties for the same racist behavior would be available everywhere. In the same year, a series of resolutions were adopted at community level in various issue areas in order to introduce different levels of responsibility into this combat such as:

“- Resolution of 5 October 1995 on the fight against racism and xenophobia in the fields of employment and social affairs (Official Journal C 296, 10.11.1995)

- Resolution of the Council of 23 October 1995 on the response of educational systems to the problems of racism and xenophobia (Official Journal C 312, 23.11.1995)

-European Parliament Resolution of 27 April 1995 on racism, xenophobia and anti-semitism (Official Journal C 126, 22.05.1995)

²⁷⁹ **The New European Monitoring Center**, Merger Vol. 4 No. 2, <http://www.ercomer.org/merger/vol4no2> (24.12.2006)

²⁸⁰ Communication on Racism, Xenophobia and Anti-Semitism, COM (95) 653, <http://europa.eu.int/scadplus/leg/en/cha/c10409.htm> (14.04.2006)

-European Parliament Resolution of 26 October 1995 on racism, xenophobia and anti-semitism (Official Journal C 308, 20.11.1995)²⁸¹

In the EU, criminal law measures also form an important tool for combating racism and xenophobia. On July 15, 1996, the Joint Action is adopted by the Council on the basis of Article K.3 of the Treaty on the European Union.²⁸² Accordingly, Common action on judicial cooperation in criminal matters shall include:

“(a) facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States in relation to proceedings and the enforcement of decisions;

(b) facilitating extradition between Member States

(c) ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation

(d) preventing conflicts of jurisdiction between Member States

(e) progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking.”²⁸³

The Joint Action stressed that because of the different treatment in the Member States, the perpetrators of such acts benefited from this by moving from one country to another to avoid prosecution. In order to prevent this, the Action’s main objective was to ensure effective legal cooperation between member states in combating racism and xenophobia. Member States were asked to ensure that a number of racist and xenophobic behaviours listed in the Joint Action be punishable as criminal offences. These behaviours were:

“(a) public incitement to discrimination, violence or racial hatred in respect of a group of persons or a member of such a group defined by reference to colour, race, religion or national or ethnic origin;

(b) public condoning, for a racist or xenophobic purpose, of crimes against humanity and human rights violations;

²⁸¹ **Action Plan Against Racism**, <http://www.europa.eu.int/scadplus/leg/en/cha/c10417.htm>, (05.05.2006)

²⁸² OJ L 185, 24.7.1996, p.5.

²⁸³ Article 31 of Title VI of the Treaty on European Union, http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002M/pdf/12002M_EN.pdf (15.05.2007)

(c) public denial of the crimes defined in Article 6 of the Charter of the International Military Tribunal appended to the London Agreement of 8 April 1945 insofar as it includes behaviour which is contemptuous of, or degrading to, a group of persons defined by reference to colour, race, religion or national or ethnic origin;

(d) public dissemination or distribution of tracts, pictures or other material containing expressions of racism and xenophobia;

(e) participation in the activities of groups, organizations or associations, which involve discrimination, violence, or racial, ethnic or religious hatred.”²⁸⁴

After one month, Council adopted the Resolution proclaiming 1997 as the European Year Against Racism and in 1997, United Nations General Assembly held a decision to hold a World Conference in 2001 on the issue of Racism, Racial Discrimination, Xenophobia and Related Intolerance. The European Commission played an active part in the preparations for the World Conference. In the same year, on June 2, for monitoring racism and xenophobia throughout the Union, a special body was established: European Union Monitoring Center on Racism and Xenophobia.²⁸⁵ This center has set up and coordinated a European Racism and Xenophobia Network (RAXEN). It collects, records and analyzes information communicated to it by research centers, Member States, Community institutions, non-governmental organizations and international organisations. It has a responsibility to highlight and expose the negative developments in European societies and at the same time draw attention to positive trends and perspectives.

The first report on the implementation of the Joint Action of 1996 was produced in 1998. The conclusions of the report indicated that Member States had, to a very significant degree, implemented the provisions of the Joint Action. However, it appeared that additional steps could be undertaken. This assessment was confirmed by the information provided by the Member States after the first evaluation report, which has shown that there was scope for further improvement of Member States' criminal law provisions to combat racism and xenophobia. For example, some difficulties have

²⁸⁴ 96/443/JHA: Joint Action of 15 July 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning action to combat racism and xenophobia, **Official Journal L 185**, 24/07/1996, p. 5-7.

²⁸⁵ Council Regulation (EC) No.1035/97 of 2 June 1997 establishing a European Monitoring Center on Racism and Xenophobia, **OJ C 237**, 15.8.1996, p.1

still been experienced regarding extradition and mutual legal assistance even after the adoption of the Joint Action.²⁸⁶

In 1999, The Treaty of Amsterdam has created a new phase of cooperation on issues such as freedom, security, and justice through the development of “common actions” in the fields of police cooperation, judicial cooperation in criminal matters, and the prevention of and fight against racism and xenophobia under the Title VI. There is to be closer cooperation between judicial authorities and other relevant authorities of the Member States and certain criminal laws in Member States are to be approximated. The object of the Title VI is preventing and combating the followings: “ racism and xenophobia, terrorism, trafficking in persons and offences against children; drug trafficking; arms trafficking; corruption and fraud.”²⁸⁷

These objectives will be achieved through:

- “ -closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through Europol;
- closer cooperation between judicial and other competent authorities of the Member States, both directly and through Europol;
- approximation, where necessary, of rules on criminal matters in the Member States.”²⁸⁸

The Council of the European Union is the main actor in the decision-making process under Title VI and the Member States have sole responsibility for cooperation in this field. Before adopting a framework decision or decision or establishing a convention, the Council has to consult the European Parliament. The Commission is fully involved in the discussions in the areas covered by Title VI and its power of initiative has been extended to cover all fields. The Court of Justice has jurisdiction to give preliminary rulings on the validity and interpretation of framework decision and decisions, on the interpretation of conventions and on the validity and interpretation of the measures implementing them. Regarding preliminary rulings, the Member States are required to make individual declarations accepting the jurisdiction of the Court of

²⁸⁶ Proposal for a Council Framework Decision on combating Racism and Xenophobia presented by Commission, http://www.europa.eu.int/smartapi/cgi/sga_doc (24.12.2006)

²⁸⁷ See Annex 4, Title VI of the Treaty on European Union or http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002M/pdf/12002M_EN.pdf (15.05.2007)

²⁸⁸ See Annex 4, Title VI, Article 29 of the Treaty on European Union or http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002M/pdf/12002M_EN.pdf (15.05.2007)

Justice and stating which national court or tribunal is empowered to request the Court of Justice for a ruling.²⁸⁹

The instruments used for achieving above mentioned objectives are also set out in Title VI as:

- “- joint positions defining the approach of the Union to a particular matter;
- framework decisions to approximate the laws and regulations of the Member States. Like directives (the instruments used in the Community Pillar), framework decisions are binding upon the member states as to the result to be achieved but leave the choice of form and methods to the national authorities;
- decisions for any other purpose except approximating the laws and regulations of the member states. These decisions are binding and the Council, acting by a qualified majority, adopts the measures necessary to implement them at Union level.
- Conventions, which are adopted by the member states in accordance with their respective constitutional requirements. Unless they provide otherwise, conventions enter into force once they have been ratified by at least half of the member states that adopt them.”²⁹⁰

Until that time, although no legislative action has been taken in the Community level, above mentioned developments, namely criminal law measures taken on the basis of Joint Action, establishment of European Union Monitoring Center as the special body for working on xenophobia and racism and various resolutions and communications in this field, have been formed the infrastructure for the future legal developments. In 1997, Amsterdam Treaty introduced a new Article extended the anti-discrimination provisions to include gender, race, ethnicity, religion, age, disability and sexual orientation. Article 13 states that:

“ Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial and ethnic origin, religion of belief, disability, age or sexual orientation.”

²⁸⁹ See Annex 4, Title VI, Article 34, 35 and 36 of the Treaty on European Union or http://europa.eu.int/eur-lex/lex/en/treaties/dat/12002M/pdf/12002M_EN.pdf (15.05.2007)

²⁹⁰ See Annex 4, Article 34 of the Treaty on European Union.

This gave the Community for the first time the power to take legislative action to combat discrimination. This article was subsequently modified by the Nice Treaty to allow for the adoption of incentive measures by qualified majority voting in the Council. Article 13 allows the Commission to propose a series of measures defining a legal framework to combat discrimination.

2) EU Measures in Legislative Framework : Equality Directives and Framework Decision

Amsterdam Treaty has overtly extended the framework within which legislative measures have been taken and in post-Amsterdam period, immigrants' integration and the rights of third country nationals have been specifically considered while taking measures in the field of the prevention of xenophobia and racism. In this period, the infrastructure established within the political framework in 1990s, has begun to be used to not only to take legislative measures, but also to monitor their enactments and to push forward the whole process.

Most significant of these measures include an action programme and a legislative section consisting of two directives to ensure equal treatment, one irrespective of racial or ethnic origin, namely Council Directive 2000/43/EC on equal treatment between persons irrespective of racial or ethnic origin and the other in employment and occupation named as Council Directive 2000/78/EC on equal treatment in employment and occupation. For both Directives all the EU Member States should have adapted their laws, regulations and administrative provisions as necessary. Deadlines for implementations are 19 July 2003 for the first one and 2 December 2003 for the other one. This signalled the intent of the EU Member States to incorporate into national legislation by 2003 minimum standards across EU in the key fields of discrimination. They have required significant changes to national law in all Member States, even those that already had comprehensive anti-discrimination legislation. According to these directives, Member States are responsible for disseminating information on equal treatment and giving one or more independent bodies the task of promoting this principle. New specialised equality bodies have been set up in Member States. By his way, the legal basis to combat discrimination at the national and European level should be considerably strengthened when Member States apply the EU Directives and begin to implement them effectively.

The two Equality Directives have had special importance because they have provided very useful basis for “European level” measures. Before the Directives, there existed in all EU Member States some form of legal framework which guaranteed the principle of non-discrimination or equal treatment on the grounds of race or ethnic origin, religion or belief, but the nature and scope of the framework differed widely. For example Belgium, Denmark, France, Ireland, Netherlands, Portugal, Sweden and the UK had specific anti-discrimination legislation. Germany, Greece, Spain, Italy, Luxembourg, Austria and Finland had provisions in their Constitution or criminal law to combat discrimination or promote equal treatment. Some states (Belgium, Ireland, Luxembourg, Netherlands, Portugal, Finland, Sweden and UK) had specific Equal Treatment Bodies, some others (Denmark, Germany, Greece and France) had bodies which addressed non-discrimination and equal treatment matters as part of a broader context either under human rights or dealing with integration matters.²⁹¹ These two Directives aim to tackle both direct and indirect forms of discrimination and thus go beyond provisions in many member states. This legislation has been targeted particularly at the labour market and employment. And it had also several implications not only on the material scope of protection, the availability and accessibility to legal remedies, but also on the burden of proof required to pursue cases which means that once a prima facie case of discrimination has been established, it shall be for the respondent to prove that there has been no breach of the principle of equal treatment.

However, in the Directives, the labour market still remain the key focus for non-discrimination legislation with regard to the grounds of religion or belief, with occupation being stressed in addition to employment, but the grounds of racial and ethnic origin will now cover the main fields of social, economic and educational activity with a particular emphasis on access to these fields. These Directives have represented significant progress in ensuring protection against discrimination in the European Union. The Racial Equality and Employment Equality Directives are complemented by a Community action programme to combat discrimination.²⁹² Certain EU funds such as EQUAL or European Social Fund have supported projects to tackle discrimination.

²⁹¹ European Monitoring Center on Racism and Xenophobia, **Racism and Xenophobia in EU Member States, Trends, Developments and Good Practice in 2002, Annual Report – Part 2**, p. 20.

²⁹² Commission des Communautés Européen, COM(1999) 564, **Communication de la Commission au Conseil, au Parlement Européen, au Comité Economique et Social et au Comité des Régions concernant un certain nombre de mesures communautaires de lutte contre la discrimination**, Bruxelles, 25.11.1999, http://eur-lex.europa.eu/LexUriServ/site/fr/com/1999/com1999_0564fr01.pdf (15.05.2007)

In 1999 Tampere Summit, the Commission has invited to come forward as soon as possible with proposals implementing Article 13 of the EC Treaty on the fight against racism and xenophobia. The Summit also covers third country nationals rights and their integration. By then, the need for common EU-wide measures is accepted and the scope of initiatives is widened. By this way, the link between xenophobia and immigration and/or immigrant integration is overtly set at the Union level and in 2000s, measures regarding to the immigrant integration become indispensable for the policies of preventing xenophobia. In the Vienna Action Plan which is prepared in order to determine how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, racism and xenophobia have been referred as one of the specific forms of crime to identify how could it be best combated by an EU approach. Directorate General of Justice, Freedom and Security has been created in 1999 from a Task Force of around 80 staff, responsible for a wide range of policies at the Commission level, including xenophobia as well as migration. Today, this Directorate General comprises 325 permanent, 95 temporary staff. At the Lisbon European Council of March 2000, EU defined a 10-year strategy aimed at long term economic growth, full employment, social cohesion and sustainable development. It was agreed that Member States should coordinate their policies for combating poverty and social exclusion and produce National Action Plans, which have subsequently highlighted the need to give greater emphasis to raise the employment levels of groups that are currently under-represented and to addressing the integration of immigrants.²⁹³ Council Directive 2003/109/EC provides third-country nationals who were long term residents, the right of access to the labour market on the same conditions as nationals with an exception regarding those activities involving exercising of public authority.²⁹⁴

The Charter of Fundamental Rights proclaimed in December 2000, reaffirms the European Union's commitment to the principle of non-discrimination. Article 21 of the Charter bans discrimination on the six grounds listed in Article 13 of the EC Treaty, as well as seven additional grounds such as social origin, genetic features, language, political or other opinion, membership of a national minority, property and birth. The Charter is already an important reference document for the European Court of Justice in its interpretation of Community law although Constitution has not been approved yet.

²⁹³ Joint Report by the Commission and the Council on social inclusion, http://europa.eu.int/comm/employment_social/soc-prot/soc-incl/final_joint_inclusion_report_2003_en.pdf (15.05.2007)

²⁹⁴ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, **OJ L 16/44**, 23.01.2004.

On September 21, 2000, the European Parliament requested that a Framework Decision to replace the Joint Action²⁹⁵ be adopted.²⁹⁶ Against this background the Commission has been presenting a proposal for a Framework Decision which has basically two purpose.²⁹⁷ First one is to ensure that racism and xenophobia are punishable in all member states by effective, proportionate and dissuasive criminal penalties which can give rise to extradition or surrender. Second one is to improve and encourage judicial cooperation by removing potential. By this way, EU member states will be able to define a common EU criminal law approach to this phenomenon. Framework Decision provides common definitions and penalties, provisions on jurisdiction, extradition and exchange of information which facilitate judicial cooperation and mutual assistance in criminal matters. According to the Article 3 of the Framework Decision, racism and xenophobia will mean:

“the belief in race, colour, descent, religion or belief, national or ethnic origin as a factor determining aversion to individuals or groups”.²⁹⁸

Article 4, taking Joint Action of 1996 as the basis, lists offences concerning racism and xenophobia and expanded to cover insults or threats made in public, when they are made towards individual or groups concerned for a racist or xenophobic purpose . It also obliges member states to punish these forms of racist and xenophobic conducts as criminal offences. The choice offered by the Joint Action, either to incriminate these forms of conduct or to derogate from the principle of dual criminality is abolished. In Article 8, racist and xenophobic motivation has been taken as aggravating factor when imposing the penalty for an “ordinary” offence. The member states shall have taken the necessary measures to comply with this Framework Decision by 30 June 2004. At the Justice and Home Affairs Council Meeting held on 24 February 2005, Council requested its preparatory bodies to examine the draft Framework Decision and emphasized the need to give the new Member States time to examine the text. At

²⁹⁵ **Joint Action adopted by the Council** on the basis of Article K.3 of TEU, OJ L 185, 24.07.1996, p.5

²⁹⁶ **OJ C 146** of 17.5.2001, p.110.

²⁹⁷ **OJ C 75 E** of 26.03.2002, p.269

²⁹⁸ Commission of the European Communities, COM(2001) 664, **Proposal of 28 November 2001 for a Council Framework Decision on combatting racism and xenophobia**, Brussels, 28.11.2001, [http://216.239.59.104/search?q=cache:eLstOBINnMJ:eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0664en01.pdf+COM\(2001\)+664&hl=tr&ct=clnk&cd=2&gl=tr](http://216.239.59.104/search?q=cache:eLstOBINnMJ:eur-lex.europa.eu/LexUriServ/site/en/com/2001/com2001_0664en01.pdf+COM(2001)+664&hl=tr&ct=clnk&cd=2&gl=tr) (15.05.2007)

the Justice and Home Affairs Council Meeting on 2-3 June 2005, Ministers re-examined the text of the Framework Decision , but failed to reach an agreement.²⁹⁹

The legal basis of this Framework Decision is the Treaty on European Union (TEU). Article 29 of the Treaty sets out the development of common action among the member states in the fields of police and judicial cooperation in criminal matters and the prevention and fight against racism and xenophobia as a means of achieving the Union's objective of providing citizens with a high level of safety within an area of freedom, security and justice. Article 31(a), (b), (c), (d) and (e) lists several aspects which are to be included in common action with regard to judicial cooperation in criminal matters. Article 34 (2)(b) of the TEU refers to framework decisions as the regulations of the member states. Framework decisions are to be binding upon the member states as to the result to be achieved but shall leave to the national authorities the choice of the form and methods. They shall not entail direct effect.³⁰⁰

In 2001, Laeken Declaration set overtly that racism is on the rise.³⁰¹ Council Decision of 27 November 2001 established a Community Action Programme to combat discrimination (2001-2006). The goal is to encourage concrete measures to combat discrimination and to supplement the activities of the Community and the Member States. The Commission will present by 31 December 2005 at the latest an evaluation report on the implementation of the programme.³⁰²

In 2004, Commission analyzed the progress made in the fight against discrimination based on sex, racial and ethnic origin, religion or belief, disability, age or sexual orientation in the Green Paper. It indicates that enormous progress has been made during the last five years in developing a legal and policy framework. However, much remains to be done in order to ensure the full and effective implementation of this framework across the enlarged EU.³⁰³

²⁹⁹ European Monitoring Center on Racism and Xenophobia, **The Annual Report on the Situation regarding Racism and Xenophobia in the Member States of the EU**, 2006, p.118

³⁰⁰ See Annex 4 Articles of Treaty on European Union, Title VI Provisions on Police and Judicial Cooperation in Criminal Matters.

³⁰¹ The Future of the European Union-Laeken Declaration, http://www.europa.eu.int/constitution/futurum/documents/offtexts/doc151201_en.htm (31.12.2006)

³⁰² Council Decision of 27 November 2000 establishing a Community action programme to combat discrimination (2001 to 2006), **OJ L 303** of 02.12.2000, p.23

³⁰³ Equality and non-discrimination in an enlarged European Union, <http://www.europa.eu.int/scadplus/leg/en/lvb/114157.htm> (05.05.06)

The security of the European Union and its Member States has acquired a new urgency in 2000s. The mutual dependency between immigration and security issues and indirectly immigrant's rights and immigrant's integration has been emphasized in various EU documents. In 2004, Hague Programme succeeded the 1999 Tampere Programme. It was the first multiannual programme to fix priorities for an area of freedom, security and justice. The objectives of the Hague Programme has been set as:

“ to improve the common capability of the Union and its Member States to guarantee fundamental rights, minimum procedural safeguards and access to justice, to provide protection in accordance with the Geneva Convention on Refugees and other international treaties to persons in need, to regulate migration flows and control the external borders of the Union, to fight organised cross-border crime and repress the threat of terrorism, to realise the potential of Europol and Eurojust, to carry further the mutual recognition of judicial decisions and certificates both in civil and in criminal matters, and to eliminate legal and judicial obstacles in litigation in civil and family matters with cross-border implications.”³⁰⁴

As seen, although xenophobia has a significant impact in all these objectives, the Programme does not explicitly set fighting against xenophobia separately, as one of the ten primary objectives. However, the issue has been taking part in relation to the promoting respect for fundamental rights for all people. In November 2004, with the Union's initial five year policy on justice and internal affairs coming to an end (1999-2004), the Hague Council adopted a new programme for the Union to run from 2005 to 2009 which covers similar ten priorities among which xenophobia issue again has taken place within the framework of fundamental rights protection.³⁰⁵

The Commission adopted on 30 June 2005 proposals for a Council Regulation establishing a European Union Agency for Fundamental Rights and for a Council Decision empowering the Agency to pursue its activities in areas referred to in Title VI of the Treaty on European Union.³⁰⁶ In this context, European Council recalling its firm commitment to oppose any form of racism, antisemitism and xenophobia, has welcomed the Commission's communication on the extension of the mandate of the

³⁰⁴ Council of the European Union, **The Hague Programme: strengthening freedom, security and justice in the European Union**, as approved by the European Council at its meeting on 5 November 2004, 16054/04, Brussels, 13 December 2004.

³⁰⁵ Commission of the European Communities, Communication from the Commission to the Council and the European Parliament, **The Hague Programme: Ten Priorities for the Next Five Years**, The Partnership for European Renewal in the Field of Freedom, Security and Justice, COM (2005) 184, Brussels, 10.05.2005

³⁰⁶ European Monitoring Center on Racism and Xenophobia, **The Annual Report on the Situation regarding Racism and Xenophobia in the Member States of the EU**, Annual Report 2006, p.115

European Monitoring Center on Racism and Xenophobia towards a Human Rights Agency.

At 4-5 December 2006, Justice and Home Affairs Council, the Member States of the European Union reached an agreement that from early 2007 the EUMC's mandate will be extended to become the EU Agency for Fundamental Rights. The Agency will be a centre of expertise on fundamental rights, advising the Union and its Member States on how to better implement fundamental rights related Union legislation and other EU activities. On the other hand, the Agency will continue the work of the European Monitoring Center on Racism, Xenophobia and Anti-Semitism.³⁰⁷

In 2005, it is proclaimed 2007 as "European Year of Equal Opportunities for All – Towards a Just Society". The public must become more familiar with European legislation on equality and non-discrimination. The aim in 2007 will be to convey to the entire population the message that everyone, regardless of their gender, race or ethnic origin, religion or beliefs, disability, age or sexual orientation, has the right to equal treatment. The fundamental challenge will be to show that the notion of equality does not mean "uniformity". It will acknowledge the diversity of Europe as a source of socio-economic vitality that should be tapped in order to compensate for demographic effects on the supply of labour.³⁰⁸

To sum up, xenophobia comes to the agenda of EU especially after 1995 following Union's general human rights considerations which had been already begun in the late 1970s. The first initiatives had been taken place within the framework of Title VI of the Treaty on European Union concerning the criminal aspects of the fight against racism and xenophobia. (Joint Action which later replaced by Framework Decision)

In EU's fight with xenophobia, post-Amsterdam period marks the beginning of a new era which can be named as legislative era. In this period, immigrants' rights and integration have been specifically emphasized. Article 13 of the Amsterdam Treaty is the most important component of this new approach. It gave way to the implementation of Two Equality Directives which have to be now binding for the

³⁰⁷ EUMC to become Fundamental Rights Agency, <http://www.eumc.europa.eu/eumc/index.php> (31.12.2006)

³⁰⁸ European Year of Equal Opportunities for All (2007) – Towards a Just Society, <http://www.europa.eu.int/scadplus/leg/en/cha/c10314.htm>, (05.05.06)

member states. However, In its 2005 Equality and Non-discrimination Report³⁰⁹, the Commission notes that five of the Member States did not manage to meet the deadlines for full implementation of the Two Equality Directives. These five countries, Germany, Greece, Luxembourg, Austria and Finland, have been referred to European Court of Justice by the Commission for not communicating transposition of the Directives. In 2005, Greece has adopted legislation and the cases concerning Greece have been discontinued and regarding to Austria, as of October 2005, there is a last remaining federal province to transpose the Directives.³¹⁰ Similar unwillingness has also shown in relation to another directive, Council Directive 2003/109/EC concerning the status of TCNs who are long-term residents. The deadline for the implementation of this Directive was January 2006. However, by the end of 2005 only a minority of Member States had notified the Commission of its transposition.³¹¹

These are measures taken on the basis of non-discrimination principle. Considering the multiple discrimination experienced by migrants on the basis of their religion, race, national or ethnic origin, language, colour, nationality, gender and even legal status and in various area of their life, the anti-discrimination measures are crucial importance. However, there are also critics about anti-discrimination laws on the point that they may have negative effect on social tension. Hartnell states that:

“[...] while, EU-prescribed anti-discrimination laws are likely to provide a growing avenue for underprivileged persons to seek legal remedies, they cannot fully resolve the inequalities, and may even serve to exacerbate social tensions by fueling resentment against migrant groups.”³¹²

In 2000s, after the Tampere Summit, relation between TCNs' integration and prevention of racism and xenophobia has been explicitly set. In 2001, Laeken Declaration definitely set that racism on the rise. In the same year, EU firstly define xenophobia in a proposal for a “Council Framework Decision on Combatting Racism and Xenophobia” and additionally, it established a direct link between immigrants' integration and xenophobia through various Communications. However, a lot still needs to be done and the Council must assume its responsibilities to implement the Tampere objective to step up the fight against racism and xenophobia. Negotiations with a view

³⁰⁹ European Commission (2005), **Equality and Non-Discrimination**, Annual Report 2005, April 2004.

³¹⁰ European Monitoring Center on Racism and Xenophobia, **The Annual Report on the Situation regarding Racism and Xenophobia in the Member States of the EU**, Annual Report 2006, p.25-27

³¹¹ *ibid.*, p.126.

³¹² Helen Elizabeth Hartnell, *op.cit.*, p.399.

to adopting “Framework Decision on Combating Racism and Xenophobia” need to be restarted. Presidencies have the duty to keep the item high on their political agenda. Because the Framework Decision on the one hand will establish a European framework for punishing racist and xenophobic offences and on the other hand, it will be a step toward a common minimum standard on data collection on racist violence and crime which has significant impact on policy formation. However, as indicated in the Annual Report 2006 of the European Monitoring Center on Racism and Xenophobia, although the issue has been still on the EU’s agenda, various Member States have raised objections and concerns with respect to the content and wording of the proposal.³¹³

Although above mentioned key events marked the EU’s genuine political commitment to combat racism and xenophobia and highlighted the dynamic development in this area, in primary legislation’s framework, EU has not directly refer immigrant’s vulnerability in relation to the xenophobic attacks. EU has taken xenophobia mainly under two headings. Firstly, it takes the issue within the context of fundamental human right discourse and secondly within the context of criminal law, with the idea to punish xenophobic acts in all Member States by the same way with the aim of ensuring an area of freedom, security and justice for the “citizens” of Europe. The new mandate of EUMC as Fundamental Right Agency from 2007 onwards, again determines the position of xenophobia within the framework of fundamental rights. The effects of this new broader mandate may be controversial. It can be negative in relation to xenophobia and/or immigrant’s rights: “the issue of anti-racism can be once again marginalized”. Or on the contrary, immigrants vulnerability would better take place within this broader human right context. This will deserve closer investigation in the future.

DISCUSSION

It can be easily said that in the EU, the basis of the fight against xenophobia or racism is mostly the non-discrimination principle. Actually, the EC Treaty contains no express provisions on racism or xenophobia. However, this does not mean that they are

³¹³ European Monitoring Center on Racism and Xenophobia, **The Annual Report on the Situation regarding Racism and Xenophobia in the Member States of the EU**, Annual Report 2006, p.122

not contrary to *acquis communautaire*. In the Opinion of March 28, 1996, European Court of Justice states that:

“well settled that fundamental rights form an integral part of the general principles of law whose observance the Court ensures. For that purpose, the Court draws inspiration from the constitutional tradition common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories... Respect for human rights is therefore a condition of the lawfulness of Community acts”³¹⁴

In this context, although EC is not party to the European Convention on the Protection of Human Rights and Fundamental Freedoms, because of the constitutional implications for the Community, all of the EU Member States are parties to this Convention and its Protocols. Whilst the Treaty of Maastricht proclaimed its respect for the European Convention of Human Rights and the Geneva Convention, the Amsterdam Treaty made this a general principle of the European Union. In effect, it is envisaged that the respect of the basic rights, such as those guaranteed by the European Convention of Human Rights, will become the general principles of community law. As a result, European Court of Justice acknowledged its responsibility to ensure respect for human rights within the scope of Community Law. Consequently, both racism and xenophobia are contrary to a superior rule of Community law. Fundamental rights must form an integral part of Community law. This should provide the legal basis for action to combat racism and xenophobia, derives from international human rights obligations and from the common constitutional traditions of the Member States, as well as the position of those obligations within the framework of Community law.

In the article “EC Law and the Means to Combat Racism and Xenophobia”, Elspeth Guild confirms this and sets especially four sources of inspiration for the prohibition of racism and xenophobia in the EU.³¹⁵ These are European Convention for the Protection of Human Rights and Fundamental Freedoms, United Nations International Covenant on Civil and Political Rights, International Convention on the Elimination of all Forms of Racial Discrimination and finally International Labour Office Convention No.111 (1958) which provides basis for the prohibition of racial discrimination within the field of employment. In the article, it is also stated that a

³¹⁴ Opinion 2/94 of the Court, 28.03.1996, Accession by the Community to the European Convention for the Protection of Human Rights and Fundamental Freedoms, paragraph 33,34.

³¹⁵ Elspeth Guild, “EC Law and the Means to Combat Racism and Xenophobia”, in Alan Dashwood and Siofra O’Leary (Eds.), **The Principle of Equal Treatment in EC Law**, London: Sweet and Maxwell, 1997, p.197

review of the national laws of the Member States indicates that condemnation of racism and/or xenophobia exist in some form or another in the constitutional traditions and/or legislation of each State, although the scope of each provision varies from one Member State to the next. Guild emphasizes that they are integral part of the general principles of law whose observance the European Court of Justice ensures. Consequently, protection from racial discrimination constitutes a human right respect for which is a condition both for the lawfulness of Community acts and for the acts of Member States which come within the scope of Community law.

But what is important here, is taking attention to the fact that even in the area where Court competence is partially ensured, it is difficult to prevent racial discrimination or xenophobia. So how it will be in the area which is outside of the Court jurisdiction, namely, i.e some part of the Justice and Home Affairs Pillar of the European Community Treaty such as legal immigration where Member States have been always and still the sole authorities.

It is obvious that there are more European level measures than international ones which can be used for the prevention of xenophobia. This situation may be the results of both the Continent's past experience, namely Nazism experience and European Union's future aims towards unity. EU does not allow European people to forget Holocaust. On 27 January 2005, the sixtieth anniversary of the liberation of Nazi Germany's death camp at Auschwitz-Birkenau, Parliament adopted a resolution on remembrance of the Holocaust, anti-semitism and racism, which encouraged Holocaust education through the EU and suggested declaring 27 January European Holocaust Memorial Day.³¹⁶ Although resolution has also mentions about reinforcing measures against attacks on minority groups "including Roma and third-country nationals in the Member States", it shows that EU has still seen racism from a small window, mainly as an anti-semitism issue.

On April 18, 2007, after six years of heated political debate, EU member states are set to agree on a common anti-racism law. The latest draft foresees an EU-wide jail sentence of at least one to three years for "publicly inciting to violence or hatred, directed against a group of persons or a member of such a group defined by reference to

³¹⁶ EP resolution T6-0018/2005, adopted on 27 January 2005, publication in OJ pending.

race, colour, religion, descent or national or ethnic origin.”³¹⁷ However, the wording has been carefully chosen to make it acceptable to the UK, Ireland and the Scandinavian countries, who were particularly worried about the scope of freedom of speech.³¹⁸

Although several initiatives such as the anti-discrimination law, measures on the approximation of criminal procedure or the proclamation of 2007 as the year of “Equality for All” shows the awareness of the Union on migrant’s vulnerability, it is obvious that “unity within diversity” principle is quite far from to be real, for the time being. There has still been questions of whether non-discrimination rules or citizenship laws can be solution for xenophobia. Considering the definition and the formation of the xenophobia and additionally political threats caused by xenophobia, we can easily say that even primary legislation’s measures would not be adequate.

Despite increasing activity at the EU level regarding both xenophobia and migrant’s rights issues, crucial questions of belonging still remain in Member States’ hands. In regard to citizenship, the crucial question of inclusion or exclusion thus far remains a Member State prerogative. For example, regarding to immigrants, the EU has taken minimal steps towards a common approach to the question of integration but defers to the Member States to do what they deem necessary to make diversity work. Nira Yuval Davis mentions about another area of struggle for outsiders as an alternative solution by saying that although citizenship, “full and legitimate belonging”, has become the focus of the political struggles of many marginalized and excluded groupings, there have been another area of struggle which has been much more significant for “outsiders”. As she has pointed out:

“...before we consider these different kinds of citizenship rights, we need to consider another kind of rights – spatial rights – namely, the right to enter a state or any other territory of a political community and once inside, the right to remain there. Much of the energy of different political projects relating to the politics of belonging focus on these issue: the right to migrate, the right to abode, the right to work and, more and more recently, the right to plan a future where you live (since people who have been granted full residence rights as refugees can be told after many years of living and working in a state, no

³¹⁷ Renata Goldirove, EU close to agreement on hate crime law, **EU Observer**, 18.04.2007, <http://euobserver.com/22/23885> (09.05.2007)

³¹⁸ Renata Goldirove, EU agrees breakthrough hate-crime law, **EU Observer**, 20.04.2007, <http://euobserver.com/22/23902> (09.05.2007)

matter what their life projects are, that their country of origin is now 'safe' and therefore they are obliged to return there.)”³¹⁹

EU claims that European societies are multicultural and their diversity is a positive and enriching factor. Unfortunately, racist and xenophobic forms of conduct persist around the world. Events in different parts of Europe show the existence of racist and xenophobic attitudes. Many reports show that there are ethnic/racial minorities, immigrants and refugees in all Member States who are vulnerable to racial crime and discrimination. Parallely, EU measures on xenophobia has mostly taken in relation to the criminal matters. However, reducing this issue, which may have the potential to cause serious threats such as extreme nationalism and racism, to just a criminal issue may lead to the oversimplification of the events and underestimation of the multidimensional nature of today's global order. According to Taguieff, this reinforces the tendency to explain the behaviour or attitudes of others, when they are seen as reprehensible, as motivated by “natural” predispositions, instead of being assumed to be explicable by situational factors (early instilling of prejudices, inadequate education, competition for jobs, etc.).³²⁰

The collapse of Eastern Bloc has unleashed a new wave of nationalist hatred as well as a new influx of migrants (foreigners). In this circumstances, the popular commentaries in the newspapers or on the television screens reproduce the xenophobic discourse by blaming migrants for economical, political or social inadequacies of the country and also by repeating “the clash of civilisations” rhetoric. Consequently, considering xenophobia is highly important in this framework, the need to understand it is all the more urgent. The absence of a theoretical framework in relation to xenophobia make the situation worse. Additionally, the complex nature of both “xenophobia” and “migration” prevent us from reaching clear cut reasons and concrete solutions. As the title of thesis implies, the relation between migrants' presence and xenophobia in the European Union deserves further analysis. In the next part, a concrete solution, at least for the European Union, will be tried to be reached through closer looks in European cases.

³¹⁹ Nira Yuval Davis, “Belonging and the Politics of Belonging”, **Patterns of Prejudice**, Vol.40, No.3, Routledge, (2006), pp. 197-214, p.208

³²⁰ Pierre-André Taguieff, op.cit.

CHAPTER III

MIGRATION IN THE EUROPEAN UNION AND ISLAMOPHOBIA AS THE NEW REFLECTION OF XENOPHOBIA

I. MIGRATION IN THE EUROPEAN UNION AND ITS REFLECTIONS

It is undeniable that there is a direct relation between the presence of the “foreigners” and xenophobia. Group antagonisms arising from freshly fomented concerns with boundary-drawing and boundary maintenance tend to focus today in most Western countries on immigrant workers. There are political forces eager to capitalize on such concerns. As said by Zygmunt Bauman:

“In all countries that attracted in the time of post-war economic reconstruction large numbers of immigrant workers, the popular press and the populistically-inclined politicians supply innumerable examples of the new uses to which racist language is currently put.”³²¹

Considering the European Union case, recent resurgence of a particular segment of migrant population as the target of xenophobic attitudes requires further analysis. In this context, Nira Yuval Davis, while evaluating belonging as a changeable concept according to the discourse or time within which it has been considered, has undelined a recent important historical reality and its impact on foreigners:

“In these post-9/11 (and in Britain, post-7/7 times), “strangers” are seen not only as a threat to the cohesion of the political and cultural community but also as potential terrorists, especially the young men among them. And who is a “stranger” is continually being modified and contested with growing ethnic, cultural and religious tensions in, as well as in between, societies and states.”³²²

The aim of this chapter is to show that this is the politicization of “immigration issue” which gives way to the rise of xenophobia in the European Union and to highlight the significant areas such as the politics of common EU identity and the politics of nationalism in which immigrants have always been used. In this framework,

³²¹ Zygmunt Bauman, op.cit. “Modernity, Racism, Extermination...”, p.226.

³²² Nira Yuval Davis, op.cit., p.208.

Islamophobia, as a tool of recently emerged hostility, will be examined in greater detail.

A. Background of Migration in the European Union

It is helpful to analyze migration history of the Western Europe in the post Second World War period in order to better establish the relation between migration issue and its politicization. Considering the multi-dimensional effects of the end of the Cold War for European Union, it's better to explain this phenomenon with reference to two different period of time, such as before and after the Cold War, from which some significant data can be gathered for evaluating the reflections of the migration issue in the form of xenophobia.

1) Migration Before the Cold War

The first period of the Western European migration is between 1950s and 1973-4, driven by west European economic reconstruction. The predominance of economic motivations was the common feature of the migratory movements of the 1945-1973 period. In Europe, there was an extraordinary process of economic growth in the late 1940s and 1950s. In the five years to 1958 (that is after the period of recovery from the war), European industrial output increased by 30 per cent (50 per cent in West Germany, 48 per cent in France and 40 per cent in Italy).³²³ When their economies expanded swiftly, the European countries have depended upon immigration and the newcomers thus rapidly found jobs. Consequently, it can be said that foreign worker migrations to Western Europe were caused primarily by economic considerations on the part of migrants, employers and governments.³²⁴ Between 1945 and the early 1970s, in Europe, two types of migration were significant : migration from European periphery to Western Europe often through “guestworker systems” and migration of colonial workers to the former colonial powers.

Guestworkers travelled in the context of state regulation. Many arrived as part of bilateral labour agreements between the home and host nations. For example, France established Office National d'Immigration (ONI) in 1945 to organise recruitment of workers from Southern Europe. Similarly, Germany, in the late 1950s, recruited

³²³ Nigel Harris, *The New Untouchables, Immigration and the New World Order*, London: I.B Tauris Publishers, 1995, p.8

³²⁴ Stephen Castles and Mark J.Miller, op.cit., “*The Age of Migration*”, p.67.

workers from Mediterranean countries through the Federal Labour Office establishing recruitment offices in the sending countries such as Italy, Greece, Turkey, Morocco, Portugal, Tunisia and Yugoslavia. They are conceived as temporary labour units and necessary permits for work such as residence permit and labour permit were granted them for restricted periods and were often valid only for specific jobs and areas. Permanent settlement had not been envisaged for the foreign workers.

Other type of migrants in Europe were colonial workers. Migration from former colonies was important especially for Britain, France and the Netherlands. As stated by Castles and Miller:

“In France, by 1970, there were over 600,000 Algerians, 140,000 Moroccans and 90,000 Tunisians. Likewise, the principal flows into Britain are from the New Commonwealth (former colonies in the Caribbean, the Indian sub-continent and Africa), increased steadily as 218,000 in 1951; 541,000 in 1961; 1.2 million in 1971; 1.5 million in 1981. The Netherlands had two main inflows from former colonies: Dutch East Indies (now Indonesia) and Caribbean territory of Surinam. Between 1945 and the early 1960s up to 300,000 immigrants entered Netherlands from Dutch East Indies and by the late 1970s there were estimated to be 160,000 Surinamese in Netherlands.”³²⁵

The political environment in North America and Europe in the 1960s signalled a reconsideration of the process and by the 1960s onwards, Europe's governments began to gradually introduce regulations on immigration. Between 1967 and 1973, the number of foreign workers expanded enormously and family reunification became more important because this was the only ground for entry into another country. Wives, children and other relatives who were not employed (or not reporting employment) expanded and changed the nature of migrant communities. The oil crisis, inflation and recession that began in 1973, marked the end of open movements of labour. After 1973, as a result of some transformations in the world economy and economic downturn, recruitment of both foreign workers and the colonial workers largely ceased. By this way, the second period in European migration history, defined as family migration period, was accelerated in the mid-1970s. The decision to restrict labour migration did not lead to the end of immigration. Family reunification and permanent settlement continued. With emergence of second and third generation born in Western Europe, colonial migrants and their descendants had become visible social groups. Migration up

³²⁵ Stephen Castles and Mark J. Miller, *op.cit.*, pp.73-74.

until mid-1970s had mainly been of young working-age men. Following this, a process of longer term settlement began with the family reunification. This urged the development of community infrastructure and at the same time, it has altered the demographics and social and political dynamic of migrant communities. Since 1974, family reunion has provided steady inflow of additional foreign workers throughout Western Europe. Because the new comers were not only non-working dependants, but also men and women eager to join the labour force. So, it is important to ask here why Western European governments had applied a family reunion policy while at the same time, they had ceased to recruit labour immigrants. What were their intentions? Castles and Miller claim that the significance of family-based immigration in the policies of Western democracies stems from the priority accorded to humanitarian and human rights consideration. According to them, this reflects the power of immigrant-origin minorities in democratic political systems and claim also that family based immigration facilitates integration of immigrants.³²⁶ However, the fact that today, immigrants have still quite far from been integrated, makes these arguments highly questionable.

In the wake of the recessions in the 1970s and 1980s, almost all industrialized countries abandoned labour recruitment and then introduced more restrictive immigration policies.³²⁷ On the other hand, by the late 1980s, it was becoming customary to treat the European Community as a single labour market, and to see intra-EC mobility as analogous to internal migration within a national economy.³²⁸ This has signaled the third period in European migration history, which is called as the illegal immigration period and asylum migration period.

There was a general tightening up of controls in the 1970s and 1980s. As stated by Castles and Miller, most states enacted or reinforced sanctions punishing illegal employment of aliens.³²⁹ It is impossible to accurately determine the number of immigrants either attempting or succeeding to enter the Member States illegally due to the clandestine nature of the crime. But asylum applications in the Member States can be used as an indication concerning the nature of the flows of immigrants into the European Union from other areas of the world.³³⁰ As a phenomenon emerged in 1980s,

³²⁶ *ibid.*, p.95

³²⁷ *ibid.*, p.97

³²⁸ *ibid.*, p.81

³²⁹ *ibid.*, p.96

³³⁰ Europol, Organized Illegal Immigration into the European Union, http://www.europol.europa.eu/publications/SeriousCrimeOverviews/2005/overview_illegal_immigration.pdf (12.04.2007)

asylum seekers became the largest entry category in several European Union countries. Asylum applications rose everywhere, but especially in Germany, owing to the liberal provisions of its post-war constitution (later amended). In the eight years to 1991, the number of people applying for refugee status in Europe increased from 65,000 to half a million and to nearly 700,000 in 1992.³³¹

The asylum trends are determined by a variety of factors, both in the region of origin and destination, such as the collapse of communism in central and eastern Europe (late 1980s), armed conflicts in Croatia and Bosnia-Herzegovina (early mid-1990s), as well as conflicts, human rights violations and persecutions in a number of countries including Afghanistan, Iraq, Liberia, the Russian Federation, Somalia and Sudan.³³²

Throughout 1980s, immigrants have not increased as rapidly as before, yet they have not decreased. Meanwhile, Southern European countries, Italy, Spain, Greece and Portugal, experienced some return migration from former labour-recruiting Western European countries. By the 1980s, especially Italy and Spain, became receivers of immigrants of non-Community nationals from Africa and Asia.³³³

The migratory patterns of 1980s has several impacts on EU's approach to migration and xenophobia. Because, during the 1980's, there has been a distinct increase in Third World immigration, mainly from Asia and since 1985, the number of asylum-seekers has exceeded the number of legally admitted foreign workers. Although there had already been sporadic opposition in most European countries to large scale immigration towards 1970, this had been relatively marginal. As argued by Nigel Harris:

“Official reactions in the late 1960s for the first time focused public attention on immigration as an important issue, and as such were the prelude to the rise of anti-immigrant political movement in the 1970s. Governments now began to argue that immigration control was a primary means to combat racism against immigrants, rather than itself being an important source of racism.”³³⁴

³³¹ Nigel Harris, op.cit., p.127.

³³² United Nations High Commissioner for Refugees, Field Information and Coordination Support Section Division of Operational Services, **Asylum Levels and Trends in Industrialized Countries 2006**, UNHCR, Geneva, 23.03.2007, p.4, See also Annex 1 Table 3. Asylum Claims Lodged in 38 Industrialized Countries, (1980-2006)

³³³ See Annex 1 Table 4 Number of foreigners registered in Italy and Spain and change in that number between 1980 and 1990

³³⁴ Nigel Harris, op.cit., p.11

Increasing third world migration and/or illegal migration became motivator of common approaches in relation to migration and asylum issues. States had taken several measures to deal with this problem such as enforcement of border controls and visa requirement, reinforcement of rules for the detention and deportation of illegal residents, establishment of special bureau for providing centralized information on the issue and enactment of laws which increase penalties for employment of foreigners without a work permit. The concern to restrict entry has had qualitative as well as quantitative implications: it has not merely been a question of strictly controlling the numbers of persons admitted, as said by Jacqueline Bhabha:

“Since the first Schengen Agreement of 1985, through the later Schengen 1990 and Dublin 1990 Conventions, European harmonization has treated questions of immigration and asylum as a subcategory of criminal activity, administratively bracketed with terrorism and drug smuggling as a form of international crime, and controlled by means of police surveillance and electronic information technology in addition to more traditional forms of border control.”³³⁵

This sceptical attitudes shaped both immigrants’ status in EU society and European people’s attitudes towards them. On the other hand, in this period, in order to clear up the existing immigration situation, to make a fresh start or as an extension of continuing influx and the need for stabilisation of population in the country of residence, the number of naturalization tended to increase. This situation was mostly evident in the Netherlands, Belgium, Spain and Portugal although the trend was less evident in France and seems to be moving opposite direction in the United Kingdom.³³⁶ Some European countries such as Austria, United Kingdom, Belgium, Netherlands, Portugal, Spain and Sweden, offered amnesty and legal status to illegal immigrants between 1970 and 1997.³³⁷ In spite of these initiatives for integration, the “difference” became more and more apparent with the rise of third world immigration. In 1990s, this situation has been further exacerbated by the rising security concerns.

2) Migration After the Cold War

In 1990s, the collapse of Eastern bloc and new global order have further changed migratory process seriously. From the end of 1980s and in 1990s, pressure

³³⁵ Jacqueline Bhabha, op.cit., p.18

³³⁶ European Commission, Directorate General V Employment, Industrial Relations and Social Affairs, **The EC Member States and Immigration in 1993 (Working Document)**, Synthesis Report of the Information Network on Migration from Third Countries (RIMET) by Claude-Valentin Marie, 1995, p.27-29.

³³⁷ Stephen Castles and Mark J.Miller, op.cit., p.97

grew for restrictions on asylum seeker entry. Then, EU states began to restrict the right to asylum by enacting several Aliens Acts. Sweden, France, Luxembourg, Spain, Austria and the Netherlands tightened up entry rules. Consequently, as a proportion of applicants, the numbers accepted in France fell from 60 per cent (1983) to 30 per cent (1987); in Switzerland, from 16 per cent (1984) to 8 per cent (1987); and in Britain, from 40 per cent (1982) to 8 per cent (1987).³³⁸ International agreements were introduced to prevent applications in more than one European country such as Dublin Asylum Convention. In the state level, despite their lack of popularity, one or two programmes offering migrants incentives to leave were maintained or renewed, some in the traditional form of financial incentives aimed at legally established workers (France, Netherlands) and others, aimed at more specific target groups, such as asylum seekers, refugees, people refused asylum, or even illegally resident foreign nationals (Germany, Denmark, Belgium, France, Netherlands).³³⁹ In 1990s, governments have further increased the legal requirements to enter their country. European Commission Working Document on the EC Member States and Immigration summarizes these restrictions. Accordingly:

“Germany amended its constitution (Basic Law) and a new Article 16a was inserted to preventing the abuse of the right to asylum and complying with the Schengen Agreements, in July 1, 1993. Accordingly, people arriving from another member state of the European Union or other country party to the Geneva Convention on Refugees and the European Convention on Human Rights will not be able to claim asylum.*

³³⁸ Nigel Harris, **The New Untouchables: Immigration and the New World Worker**, I.B Tauris Publishers, London, New York, 1995, p.128

³³⁹ European Commission, Directorate General V Employment, Industrial Relations and Social Affairs, *The EC Member States and Immigration in 1993* (Working Document), Synthesis Report of the Information Network on Migration from Third Countries (RIMET) by Claude-Valentin Marie, 1995, p.26.

* Article 16a – Right of Asylum:

- (1) Persons persecuted on political grounds shall have the right of asylum.
- (2) Paragraph(1) on this Article may not be invoked by a person who enters the federal territory from a member state of the European Communities or from another third state in which application of the Convention Relating to the Status of Refugees and of the Convention for the Protection of Human Rights and Fundamental Freedoms is assured. The states outside the European Communities to which the criteria of the first sentence of this paragraph apply shall be specified by a law requiring the consent of the Bundesrat. In the cases specified in the first sentence of this paragraph measures to terminate an applicant’s stay may be implemented without regard to any legal challenge that may have been instituted against them.
- (3) By a law requiring the consent of the Bundesrat, states may be specified in which on the basis of their laws, enforcement practices, and general political conditions, it can be safely concluded that neither political persecution nor inhuman or degrading punishment or treatment exists. It shall be presumed that a foreigner from such a state is not persecuted, unless he presents evidence justifying the conclusion that contrary to this presumption, he is persecuted on political grounds.

In the Netherlands, the new Aliens Act, adopted in September 1993, speeds up the procedures, limits the possibilities for appeal against the decisions of the Foreign Chamber and does away with the suspension of proceedings granted under the old law.

In Belgium, the Law of 6 May 1993 revising the law of 15 December 1980, on the entry, residence, establishment and expulsion of foreign nationals, was passed and echoed many recent measures across the European Union.

In the United Kingdom, the new law in force since 1 July 1993 is in a similar vein, stepping up the control of applications, limiting the right to housing and above all, clamping down on the possibility of appeal to an independent judge against administrative decisions.

Portugal brought a legislation on 29 September 1993, containing more specific restrictions concerning “activities considered prejudicial to the State” which could constitute grounds for refusing refugee status.”³⁴⁰

However, immigration restrictions of many industrialized countries prepared the ground for the development of illegal immigration. The intolerance towards illegal immigration was quite obvious and this type of migration became so central to the politicization of migration since the 1990s. One of the most important factor resulting to the politicization of the migration issue is the confusion of the concept of illegal or irregular immigration with refugees and asylum-seekers. During the 1990s, the concept of illegal or irregular immigration has been frequently confused with refugees and asylum seekers. As stated by Düvell:

“The reasons behind such confusion are multiple. Refugees do not usually have a visa when they appear at the point of entry, and because they have no visa they cannot enter legally and therefore often find access through illegal means. Moreover, because states have more or less closed their front doors, this has left only the asylum path open to would-be migrants. Also, undocumented immigrants, when they have been apprehended, have often applied for asylum in order to prevent immediate deportation. Finally, post-Cold War refugees and asylum seekers have generally been perceived as a burden and are not much desired in Europe, which has prompted a general scapegoating and stereotyping. In all cases, it is difficult to establish whether an immigrant is in fact a refugee, deserving international protection or whether she or he is, for example an undocumented worker.”³⁴¹

³⁴⁰ European Commission, Directorate General V Employment, Industrial Relations and Social Affairs, **The EC Member States and Immigration in 1993 (Working Document)**, Synthesis Report of the Information Network on Migration from Third Countries (RIMET) by Claude-Valentin Marie, 1995, pp.51-56.

³⁴¹ Franck Düvell, “Irregular Migration: A Global, Historical and Economic Perspective”, Franck Düvell (Ed.), **Illegal Immigration in Europe Beyond Control?**, UK, Palgrave Macmillan, 2006, pp.28-29.

Although it is not easy to have quantitative and qualitative data on illegal (irregular or undocumented) immigrants, according to Frank Düvell's work on illegal migration in Europe, it is estimated that the size of illegal immigrants in Western Europe is between 4 and 7 million.³⁴² In his work, Düvell also mentions about the diversity of Europe's illegal immigrant population and make some assumption to characterize them. Accordingly:

“ Firstly, EU's irregular immigrants are characterized primarily by their origin from neighbouring regions, Eastern and South Eastern Europe, North Africa (the Maghreb).

Secondly, they move within migration systems based upon past colonial ties; the mostly African Francophone world moving towards France and to some extent Belgium, the Anglophone world towards the UK and there is similar link between South-east Asia and the Netherlands.

Thirdly, illegal immigrants move within migration systems established in the post-war period and through guest workers schemes; Turks in Germany and Belgium, Turks and Moroccans in the Netherlands.

Fourth, illegal immigrants are related to refugee crises during the 1980s and 1990s, either because rejected asylum seekers did not return or because these recent migrants attracted further illicit chain migration.

Fifth, European countries that have not previously been integrated into any such migration systems, as for instance Greece and Italy, have witnessed the emergence of new migration systems, either by transforming from a country of transit into a country of immigration because of their economic growth.

Sixth, beyond geographically characterized systems, illegal immigrants move within global labour markets such as that for domestic labour, entertainment and sex.

Seventh, Europe's global cities, such as London, Paris, Brussels or Berlin and international port cities, such as Hamburg, Rotterdam or Marseille have developed an additional attraction related to their economic and political interconnection with the world.

Eighth, each refugee, immigrant or ethnic minority community, even if it is very small, acts as a bridgehead for networks and encourages further immigrants to come.”³⁴³

This complexity made illegal migration harder to handle. As the visibility of illegal migrants becomes apparent within the community, exclusion of them and

³⁴² Ibid., p.17-18.

³⁴³ Ibid., p.19-20.

politicization of the issue becomes more and more obvious. In this context, it is worth to underline that in 1980s, considerable Muslim population arrived in northern Europe as refugees seeking asylum; initially from Afghanistan, Iran, Iraq and Lebanon and then, in the early 1990s, from the former Republic of Yugoslavia and Somalia. In the northern European states such as United Kingdom, France, Belgium, Germany, the Netherlands and Sweden, where Muslims arrived in the 1960s as workers who were later joined by their families during 1970s, second generation has been arisen. In a number of southern European states, such as Greece, Spain, Cyprus and others, Muslim communities have a long historical presence. Since the 1990s, Greece, Italy and Spain have been receiving large numbers of new Muslim migrants.³⁴⁴ Since the early 1990s, migration from predominantly Muslim countries into Europe can be broadly characterised as follows:

“(1) In the north of Europe, Muslim migration has been dominated by, largely, legal entry through refugee/asylum application and employment opportunities; motivated by war and civil unrest at Europe’s borders and associated economic push and pull factors.

(2) In the south of Europe, Muslim migration has been dominated by, largely, illegal entry (including trafficking in human beings) as a reflection of the geographical proximity of countries with Muslim populations to southern Europe, and motivated by the same factors as migration to the north of Europe.”³⁴⁵

Increasing asylum applications and illegal migrations in 1990s have significant impact on the rise of xenophobia towards immigrants. Illegal migration, together with the upsurge in refugees and asylum seekers entries from the mid-1980s, became a focus for aggressive campaigns from the extreme right. In 2000s, restrictive asylum policies across Europe, (especially Dublin II Regulation and EURODAC in 2003), have primary impacts upon the decreasing trends of the asylum applications in the EU. 2004 United Nations High Commissioner for Refugees Statistical Yearbook indicates that new asylum applications lodged in the 38 industrialized countries* fell by 22 per cent, from 471,000 in 2003 to 365,900 in 2004 and during 2004, the largest relative decrease in annual asylum claims was reported for North America (- 29%), followed by Australia and New Zealand (- 26%), Western Europe (-24%) and Central Europe (- 15%).³⁴⁶

³⁴⁴ European Monitoring Center on Racism and Xenophobia, **Perceptions of Discrimination and Islamophobia**, 2006, p.12

³⁴⁵ European Monitoring Center on Racism and Xenophobia, **Muslims in the European Union: Discrimination and Islamophobia**, 2006, p.23

* This includes EU-25, Australia, Bulgaria, Canada, Iceland, Japan, Liechtenstein, New Zealand, Norway, Republic of Korea, Romania, Switzerland, Turkey and the United States.

³⁴⁶ United Nations High Commissioner for Refugees (UNHCR), **2004 UNHCR Statistical Yearbook: Trends in Displacement, Protection and Solutions**, August 2006, p.41-42

However, neither this decrease nor the settlements of guestworkers and their families from the mid-1970s onwards, don't prevent immigrants issue to be used in a number of context breeding xenophobia. The settlement of guest workers in Europe with the family reunification and second and third generation migrants born in host countries have been seriously altered demographic, social and political dynamics in European society. From 1980s onwards, rising asylum applications and illegal immigration, mostly from significantly different and supposedly "inferior" cultures of Africa and Asia have been further exacerbated the situation. The visibility arisen from the difference breeds exclusion and politicization and gives way to the use of immigrants in EU level politics as well as member states' internal politics.

B. Xenophobic Reflections of the Politicization of Migration

Most societies react with alarm when there is an unregulated large scale illegal migration of people. Consequently, in the European Union, especially the period after 1989, may be classified as an epoch that the struggle for "our" values and also "our" nation or supranation are aggressively pushing aside everything and everybody that endangers this situation. Xenophobia, in this period, functions in the service of the "protection" of what is "ours". The belief of "we" as individuals and "our" pure values of civilization are being protected from the "others" creates divisions along dichotomies such as "good-bad", "better-worse", "ours-theirs", "we-them" and this becomes a source of rising populisms and nationalisms.³⁴⁷

Although it is not possible to deny the presence of immigrant population in the EU; in the member states, immigration of third country nationals is seen either as not always desired outcome of former colonial domination or the results of (former) economic needs and human rights issues (the arrival of refugees and asylum seekers and family reunification)³⁴⁸. The presence of immigrants in European societies is mostly evaluated negatively and immigrants have usually used to live on the margins of the society as "non-Europeans". Their marginal situation may be aggravated because of the several variables such as the size of the immigrant population, the distinctiveness of

³⁴⁷ Mojca Pajnik, "Introduction: Towards The Others and Those Different", *Xenophobia and Post-Socialism*, (Ed. Mojca Pajnik), Mirovni InSTITUTE, 2002, p.8

³⁴⁸ Philip J. Muus and Elsbeth W. Van Dam, **Comparative Research on International Migration and International Migration Policy, Migration from the Maghreb and Turkey to the European Union, and from Mexico, Guatemala and El Salvador to the United States**, European Commission, June 1996, p.2

their culture or their ethnicity or the difference of their colour. The very basic idea behind this attitude is the fact that difference is not always easy to be tolerated.

Beginning from the second half of 1990s, there have also been some indicators which have shown that perception of ideological threat (religious or nationalistic) may be much more significant in relation to the rise of intolerance towards immigrants rather than economical ones. For example, the Turks in Germany, and other Islamic migrants and even former guest workers such as Moroccans in the Netherlands and Belgium and the Algerians in France, were considered unassimilable because of their allegedly unbridgeable cultural differences.³⁴⁹

As mentioned in a European Commission's Working Document, from 1990s onwards, intolerance has been mounting in all countries and all sections of the population. Accordingly:

“In the Netherlands, racist attacks and other acts of xenophobia (racist graffiti, threatening letters, arson attacks on cafes, shops and homes) against foreigners increased alarmingly in 1993. The information service of criminal investigation bureau recorded 337 cases in the first half of 1993, which is generally considered to be well below the real figure.

In Germany, acts of hostility and offences against foreigners continue, and the attempted killing of a Turkish family in Solingen at the end of May 1993 has caused great concern.

In United Kingdom, there has been concern about the rising fortunes of extreme right wing groups and the influence exerted by the British National Party (BNP) and the National Front (NF). The link between mounting intolerance and the increased activity of extreme right wing and neo fascist groups seems obvious. In Tower Hamlets, a very poor area of east London, a BNP candidate was returned to the local council in September 1993 to become the only elected representative of an extreme right-wing group in the whole of Great Britain. There were also numerous incidents during the election campaign.

In Greece, racism starts to become a reality. A European Union study (Philip Morris Institute) on how people in the Member States view foreigners puts Greece third in the list of countries which dislike them most, behind Italy and Germany. 57% of the Greeks

³⁴⁹ Leo Lucassen, **The Immigrant Threat**, University of Illinois Press, Urbana and Chicago, 2005, p.145.

interviewed said that there were too many foreigners in Greece, a negative attitude which is clearly spreading, since only 45% of the sample gave this answer the year before.”³⁵⁰

Regarding to the EU level politics, post-1990 period is significant to evaluate this hostility towards immigrants. The changes occurred in Europe during 1990s, especially security concerns arising from the fall of Iron Curtain and the changes of EU's institutional and political structure, economic difficulties may be some of the significant factors breeding this hostility towards foreigners. In other words, the theme of the diversity of Europe has been reopened in connection with historical phenomena such as the fall of Soviet regime, the accompanying explosion of nationalisms and regionalisms, the growing number of member states in the European Union, and the new waves of migrants from the East and South.³⁵¹ The reflections of these developments have been seen in both European Union and Member States' level.

1) Reflections in the European Union Identity Politics

The experience of two world wars, combined with ever increasing migration for political, economic or broadly cultural motives across the rapidly dissolving frontiers of Europe, have forced upon Europeans the uneasy sense that their self-confidence in knowing just who they are is almost certainly unfounded.³⁵² European Identity and European values have also become topics of debate in the overall context of economic globalisation and perceived external threats. The largest EU enlargement in 2004 and the Constitutional contract which was signed by the Heads of State and Governments but failed to win the overall support of the EU citizens, led the EU into a state of uncertainty. Luisa Passerini saw recent decade's growing debate about European identity as a sign of uncertainty and discomfort on the one hand and regressive operations to protect old values on the other. She said that:

“when human beings feel unrooted, they try to reassure themselves by identifying enemies and dangers and by declaring their loyalty to collective organisms.

³⁵⁰ European Commission, Directorate General V Employment, Industrial Relations and Social Affairs, The EC Member States and Immigration in 1993 (Working Document), Synthesis Report of the Information Network on Migration from Third Countries (RIMET) by Claude-Valentin Marie, 1995, p.78-79.

³⁵¹ Luisa Passerini, “From the Ironies of Identity to the Identities of Irony”, in Anthony Pagden (Ed.), **The Idea of Europe: From Antiquity to the European Union**. Woodrow Wilson Center, UK : Cambridge University Press, 2002, p.197.

³⁵² Anthony Pagden, “Introduction” in Anthony Pagden (Ed.), **The Idea of Europe: From Antiquity to the European Union**, Woodrow Wilson Center, UK: Cambridge University Press, 2002, p.1.

Frequently, then, these identifications are of a regressive nature and express the need for self-protection against the unknown.”³⁵³

Indeed, the discourse of European identity is a symptom of anxieties about non-Europeans. The key influences of European experience, such as Christianity, Enlightenment, Industrial Revolution have always been used to differentiate “European civilization” from “Others”. Regarding to this subject, Talal Asad gives the example of Muslim immigrants’ exclusion by stating that :

“it is because these historical moments have not influenced Muslim immigrants’ experience that they are not those whose home is Europe.”³⁵⁴

Growing possibility of interaction with “non-European” in the post-1990 period has also severe implications for the future of EU. At the same time with the fall of Eastern Bloc, 1991 marked the beginning of a new phase in European Union history. In this year, Treaty on European Union, promising deeper economic and political integration, was negotiated in Maastricht. Until the mid 1980s, when Single European Act was adopted, economic issue dominated the agenda and integration meant facilitation of trade and joint economic ventures among members. By the beginning of 1990s, when the European Communities were completing the Single Market programme and, at the same time facing the challenge of integrating Central and Eastern Europe, the issue of European integration together with the concept of European citizenship was recognized as indispensable for promoting a sense of belonging to the European Community among its citizens.³⁵⁵ The Maastricht Treaty’s resolve to “create an ever closer union among the peoples of Europe”³⁵⁶ and its goals as the development of a common foreign and security policy and cooperation on matters of internal security (justice and home affairs) indicate a clear determination to political integration within and among members of the EU.

In 1990, European Council decided that political and economic integration should be pursued by holding two parallel Intergovernmental Conference to discuss further steps on Economic and Monetary Union on the one hand and European Political

³⁵³ Luisa Passerini, op.cit.,p.193.

³⁵⁴ Talal Asad, “Muslims and European Identity: Can Europe Represent Islam?” in Anthony Pagden (Ed.), **The Idea of Europe: From Antiquity to the European Union**, Woodrow Wilson Center. UK: Cambridge University Press, 2002, p.215.

³⁵⁵ Antje Wiener, “Citizenship”, in Michelle Cini (Ed.), **European Union Politics**, Oxford, 2003, p.409.

³⁵⁶ “Preamble to the Treaty on the European Union (The Maastricht Treaty)” reprinted with permission from Treaty on European Union (Office for Official Publications of the European Communities, 1992) in Brent F. Nelsen and Alexander C.G Stubb (Eds.), **The European Union: Readings on the Theory and Practice of European Integration**, London: Lynne Rienner Publishers, 1998, p.69.

Union on the other hand. This led to the drafting of a new treaty in 1991 and in 1992, “Treaty on European Union” signed at Maastricht. However, further progress of economic and political unification and incorporation of new areas into the realm of greater Europe did not be followed by a parallel reinforcement of the sense of European identity and this accelerated “ambivalence” even further which was seen by Bauman as the great fear of modern lifes.³⁵⁷ As also said by Anthony Pagden that:

“The identity of “Europe” has always been uncertain and imprecise, a source of pride for some and hatred or contempt for others. Like all identities it is a construction, an elaborate palimpsest of stories, images, resonances, collective memories, invented and carefully nurtured traditions.... Because it is collective, there are those who have argued that any such thing as a “European” identity is, at best, an illusion. “Europe” now exists as an economic, and increasingly political, entity. But this has no wider cultural or affective meaning. It merely describes the signatory states of the Maastricht Treaty. Yet, if that is all Europe was now, or had ever been, the Maastricht Treaty would never have come into being”³⁵⁸

While all 12 nations ratified the Maastricht Treaty , some did so with great difficulty such a way that:

“The Treaty failed to secure the necessary five-sixth majority in the Danish parliament and in the referendum that followed (2 June 1992) it was defeated by 50.7 to 49.3 per cent of the vote. A second referendum was held on 18 May 1993 and the Treaty has secured a majority of 56.8 per cent with the help of permanent opt-out from stage 3 of European Monetary Union and necessary clarification on citizenship which were granted to Denmark at the European Council meeting in Edinburg in December 1992. Other governments decide to press ahead with ratification even though technically the Treaty could not enter into force without having been ratified in all 12 member states. A referendum in Ireland followed on 18 June 1992, the Treaty securing a 67 per cent majority. In July, President Mitterand announced that the Treaty would also be submitted to a referendum in France, although there was no constitutional requirement to this effect. The referendum took place on 20 September and resulted in a tiny majority of only 51.05 per cent for the Treaty. In United Kingdom, the ratification also posed serious problems. British House of Commons delayed its final vote until Denmark approved ratification. The final vote on 24 July 1993 was won by a very narrow majority. Germany was the last to ratify the treaty due to a constitutional challenge. Anti-Maastricht campaigners had succeeded in referring the Treaty to the German Constitutional Court in Karlsruhe. The legal arguments

³⁵⁷ Zygmunt Bauman, **Life in Fragments: Essays in Postmodern Morality**, Okford UK and Cambridge USA: Blackwell, 1995, p.244

³⁵⁸ Anthony Pagden, “Europe: Conceptualizing a Continent” in Anthony Pagden (Ed.), **The Idea of Europe: From Antiquity to the European Union**, Woodrow Wilson Center, UK: Cambridge University Press, 2002, p.33.

were not resolved until a ruling in favour of ratification on 12 October 1993 allowing the Treaty to enter into force.”³⁵⁹

This shows unwillingness and hesitation of European public for “ever closer union among the peoples of Europe”. Until this time, it is mostly emphasized that European Community is primarily an economic organization. Consequently, economic consideration and interests were sufficient for people to support European integration. This cost-benefit oriented view was challenged with the Maastricht Treaty. Afterwards, the impacts of cultural influences, influential role of values, dispositions and beliefs on political behaviours and subjective evaluations of both personal and national economic conditions have been considered as the factors determining European integration by some political culturalists such as Harry Eckstein, Cleveland R. Fraser and Brent F.Nelsen, Sidney Verba.³⁶⁰

The significant cause of the hesitation about the Maastricht Treaty was about the concept of “European nationalism”. Ariane Chebel D’Appollonia claimed that this theme created a confusion between nationalism and the idea of nation, between nationalism and state sovereignty because during the 1950s, the European founding fathers presented the European Coal and Steel Community and then European Economic Community precisely as a means to suppress the oppressive and warlike nationalism that had plunged Europe into two internecine wars in less than a century. Nationalism, after all, is tied to the nation (and vice versa) and although Europe is composed of nation-states, the European Union is presented as being an antinational construction, sometimes even as supranational.³⁶¹ Consequently, supporters of Maastricht argued that consolidating European unification is a modern way of limiting the damaging propensity of nations to become nationalist and this is indispensable for European identity; on the other side, opponents of the Treaty named this as a threat to national identities and argued to protect national identities as the last barrier against a supranational European Union.³⁶² For this reason, although the Maastricht Treaty was approved, the hesitations lead to great debates in Member States about nationalism and

³⁵⁹ Timothy Bainbridge, **The Penguin Companion to European Union**, Penguin Books, England, Third Edition, 2002, p.366

³⁶⁰ Sara De Master and Michael K.Le Roy, Xenophobia and the European Union, *Comparative Politics*, Vol.32, No.4 (July 2000), passim.

³⁶¹ Ariane Chebel D’Appollonia, “European Nationalism and European Union” in Anthony Pagden (Ed.), **The Idea of Europe: From Antiquity to the European Union**, Woodrow Wilson Center, UK: Cambridge University Press, 2002, p.171.

³⁶² *ibid.*

related issues such as rise of nationalist parties, discussions about immigration and security matters and rise of xenophobia.

2) Reflections in Member States' Internal Politics

As told by Erik Von Kuehnelt-Leddihn, in his article “Xenophobia on the March”, in 1992, Western Europe is on the road to unity, the barriers between nations are breaking down, but at the same time, the entire “Old World” is in the grip of xenophobia.³⁶³ He stated that:

“Modern transportation has exacerbated the tendency to xenophobia by affording extreme mobility to a far greater range of people than in the past...This modern mobility has also facilitated the influx of “guest workers”, who have a tendency to settle permanently in their host countries. Since as a rule, they are poorer than the local population, leftist European parties have taken up their cause, going so far in some cases as to press for giving them the same social-welfare benefits that citizens would get. In turn, parties such as, in France, Jean-Marie Le Pen’s National Front have sprung up, campaigning on an anti-immigration platform.”³⁶⁴

In the years preceding Maastrich Treaty crisis, increasing support for nationalist parties across Europe has also been accompanied by the resurgence of anti-immigrant and anti-foreigner themes in the political arena. The populist policy of Euro-scepticism was associated with the parties representing this trend. Although they have not attracted the majority of the electorate in particular countries, they were capable of causing much confusion in international relations.³⁶⁵

De Master and Le Roy linked increasing number of nationalist parties to the increase in immigration which has already frightened many Europeans into a more nationalist stance. By the same token, they also saw the way individuals view foreigners in their society, as an orientation which may potentially influence attitudes towards European integration. They named it as xenophobia if this attitude represents extremely negative views. In their article called “Xenophobia and European Union”, they used statistical data from 12 EU member states of that times, for showing the negative correlation between xenophobia and support for European integration and claimed that

³⁶³ Erik Von Kuehnelt-Leddihn, “Xenophobia on the March”, *National Review*, January 22, 1990

³⁶⁴ *ibid.*

³⁶⁵ Maria Marczevska-Rytko, “The Problem of Xenophobia in the Context of Populism and European Enlargement” in Mojca Pajnik (Ed.), *Xenophobia and Post-Socialism*, Ljubljana: Mirovni InSTITUTE, 2002, p.73.

the potential for xenophobia will be greater in the movement to integrate further parts of the eastern and southern Europe.³⁶⁶

Since xenophobia is a concept which is mostly related to perceptions and prejudices, it permits politicians to use it many different ways in many different areas of the life such as in economical, political, social and cultural life. In this framework, the yearning for a community, the appeal to values and the discovery of one's own identity in order to fulfill the need for roots constitute the main points of reference of contemporary right-wing parties. They attach great importance to national values, the sense of national identity, and at the same time adopt a hostile attitude towards the "others". As already explained, "other" has basically been indispensable for constructing and defining identity. By the same token, "other" may also be used for economical and security reasons as a tool of manipulation especially in politics. In this context, Matt Perry drew attention to the connection between times of mass unemployment and sharp increases in hostility to foreigners and gave the example of France in 1930s. According to him:

"Xenophobia grew precipitously in France with the onset of the depression of the 1930s. Through an anti-immigrant discourse of unemployment, it spread through to the top and bottom of French society. At the summit, it received political legitimization and legislative incarnation: at the base, it menaced foreign workers with hostility and even violence. Discursive and economic factors entered into a bidding contest: as the crisis worsened, so xenophobic solutions and explanations grew louder"³⁶⁷

He mentioned about the France's open door policy after 1918 because of the France's demographic position and its need of cheap labour and he emphasized that at that times, restriction of immigration was not an issue at all. These immigrant workers had no legal rights, their situation depended on the bilateral treaties or conventions signed with France. However, with the onset of Depression, various social and political forces attributed the rise in unemployment to the large increase in immigrants over the previous decade. Perry explained this development by the prior existence of factors namely social and physical segregation; labour market competition; weak factors of integration the persistence of racist, chauvinist and pro-imperial ideas. According to him, these latent conditions for an anti-immigrant backlash found their catalyst in the

³⁶⁶ Sara De Master and Michael K. Le Roy, op.cit., pp.419-436.

³⁶⁷ Matt Perry, "Sans Distinction de Nationalité? The French Communist Party, Immigrants and Unemployment in the 1930s", *European History Quarterly*, Vol.34(3), London : Sage Publications, p.361.

Depression of the 1930s.³⁶⁸ Today, this kind of manipulations are still evident in France. In the May 2005 referendum when the French electorate rejected the proposed constitution of the European Union, the trade unionists, leftist leaders and newspaper headlines were warning about the threat of Polish plumbers who would take away jobs from French workers.³⁶⁹

In post-1990 period, anti-immigrant sentiments were used by radical right-wing populist parties in Western Europe, most important ones were French Front National, the Danish People's Party and Austrian Freedom Party. Many other parties in Europe such as the National Alliance in Italy, Freedom Party (Partij voor de Vrijheid) in Netherlands, Flemish Vlaams Blok in Belgium openly opposed any new immigration and they resolve to restrict even further the issuing of residence permit and family reunification.

William Brustein has compared new radical right (NRR) of late 1980s-1990s with the Nazi Party between 1925-1933 and found interesting similarities:

“[...]Both employ xenophobic appeals to build their core membership. The Nazi Party tempered its racist and xenophobic appeals between 1925 and 1933 because party leaders calculated that racism lacked sufficient allure for the electorate. The NRR highlights the racist and xenophobic elements of its program with the expectation that anxiety over the presence of foreign workers and the flood of immigrants and political refugees will benefit the extremist parties. Equally important, the NRR, like the Nazi Party, links racism and xenophobia to economic concerns. The Nazis used the Jews as a convenient target and played on the hatred among the old middle class of the department stores (“Jewish owned department stores”) and on workers’ hostility toward international high finance (Jewish international monopolies). Hostility toward the French and Belgians, among others, was frequently stirred up over oppressive reparations payments. The NRR blames high unemployment, inflation, and high taxes on the flood of political refugees and immigrants. In both cases, political opportunism shapes the use of racist themes. Also like the Nazi Party between 1925 and 1933, the NRR parties have embarked on an electoral strategy to win power.”³⁷⁰

He concludes that xenophobia could not have brought the Nazis to power. Besides, the party designed a series of programs that appealed to the material interest of

³⁶⁸ *ibid.*, p.341

³⁶⁹ Yvonne Yazbeck Haddad and Michael J. Balz, “The October Riots in France: A Failed Immigration Policy or the Empire Strikes Back?”, *International Migration Review*, Vol.44 (2), 2006, p.26.

³⁷⁰ William Brustein, *The Logic of Evil: The Social Origins of the Nazi Party, 1925-1933*, New Haven and London: Yale University Press, 1996, p.183.

a broad constituency overwhelmed by the Depression. By the same way, the shifting political economies of contemporary Europe (internationalization of capital and labour market) creates opportunities for NRR parties to exploit xenophobic sentiments. The extent to which these parties can successfully link public apprehension about the growing population of “cultural outsiders” to material interests such as jobs, taxes, crime may largely determine the size of that party’s popular constituency.³⁷¹

In the beginning, although the idea seems to be that illegal immigrants should be discouraged from coming, by the time, the approach implicitly goes further and challenges the legitimacy of the presence of foreigners residing legally in Europe. The immigration issue and the opposition to the multicultural society more generally which were politicized during the mid-1980s have been flourished in this period with the help of the security concerns and threat discourse of nationalism. Politicization of immigration issue is used to create niches in electoral arena and political parties use a political rhetoric that fit the available niches. Geoffrey Harris puts immigrants (rather than anti-Semitism) as the main theme of contemporary extreme-right because the immigrant is a more visible, convenient and effective target and the immigration issue produces a more substantial opportunity for mobilization.³⁷²

Similar frames have been used throughout Europe for the mobilization of right-wing votes. Rydgren gives the examples from Denmark and France in order to show that the radical right-wing populist parties used identical frames. Accordingly, Danish Progress Party was emerged in 1972 as a populist anti-tax protest party and propogated for a neo-liberal economic policy. However, since the mid 1980s, the discourse of the party focused on anti-immigration themes and in 1995, Danish People’s Party was founded as a breakaway faction of the Danish Progress Party which is a first pure radical right-wing party of the Denmark.³⁷³ In the party program, the Danish People Party states:

“Denmark is not a country of immigration and has never been one. We cannot therefore accept a multiethnic transformation of the country. Denmark is the country of the Danes and its citizens should be granted the opportunity to live in a safe community founded on the rule of law, which is evolving in line with Danish culture... The Danish

³⁷¹ *ibid.*, p.184.

³⁷² Geoffrey Harris, **The Dark Side of Europe: The Extreme Right Today**, Edinburg: Edinburg University Press, 1990, p.69.

³⁷³ Jens Rydgren, “Explaining the Emergence of Radical Right-Wing Populist Parties: The Case of Denmark”, **West European Politics**, Vol. 27, No.3, May 2004,p.480.

People's Party is in favour of cultural cooperation with other countries, but we are against giving other cultures, building on completely different values and norms than ours, leverage in Denmark. The way of life we have chosen in Denmark is outstanding. It is conditioned by our culture, and in a small country like ours it cannot survive if we permit mass immigration of foreign religions and foreign cultures. A multicultural society is a society without coherence and unity, and consequently, existing multicultural societies over the globe are characterised by a lack of solidarity and often by open conflict, as well. There are no good reasons to assume that Denmark would escape the destiny of other multicultural societies, if we let ourselves under the sway of foreign cultures.”³⁷⁴

In the national elections, the votes of the party have been steadily increased: in 1998 it won 7.4 % of the votes; in 2001 12% and in 2005 13.2%.³⁷⁵

Similarly in France, electoral breakthrough of the Front National in 1984 was a product of a strategy or master frame constructed in France during the 1970s and early 1980s. By the time , it became a protest movement against the influx of immigrants and economic problems.³⁷⁶ By associating “immigration” with North Africans, Muslims, and social problems, and at the same time appealing to deep-rooted colonial stereotypes, Le Pen revealed the dark side of the French discourse on immigration.³⁷⁷ In the national elections, in 1981, the party won only 0.2% of the vote; in 1986, electoral support rose to 9.7 %; in the election of 1993, it won 13.8 % of the vote; in 1997 14.95 % and in 2002 11.3%.³⁷⁸ In the presidential elections, in 1988, Party's leader Jean Marie Le Pen gained the support of 14.4% of voters. In 1995, his electoral support was much the same, 15%; in 2002 16.9 % and in 2007 10.4 %.³⁷⁹

The successful emergence of Le Pen's Front National has been based on its appeal to xenophobia as well as on the growth of racial violence since the early 1980s as Geoffrey Harris stating that:

“The Front National campaign used the immigrants as the classic scapegoat...the slogans used were a direct echo of those used in 1930s. The slogan that 2 million unemployed equals 2 million immigrants was by no means new, but it was the

³⁷⁴ *ibid.*, p.484

³⁷⁵ Danish People Party, Elections, <http://electionresources.org/dk> , (25.04.2007)

³⁷⁶ Maria Marczevska-Rytko, *op.cit.*, p.81

³⁷⁷ Leo Lucassen, *op.cit.*, p.180.

³⁷⁸ National Front, Elections, <http://electionresources.org/fr/> , (25.04.2007)

³⁷⁹ Election Resources on the Internet. Presidential Elections in France-Results Lookup. <http://www.electionresources.org/fr/president.php?election=2007> (25.04.2007).

circumstances of the mass unemployment in the 1980s which provided the occasion for it to be used again[...] The immigrant population in France increased steadily during the post-war period up to the mid-1970s. As in Western Europe generally, immigrant workers concentrated in areas where manual jobs are available, causing problems of political and social integration.

...In October 1982 the public was shocked by the murder of a young Arab in Nanterre transit center. In November 1984 two Turks were the victims of a senseless murder at Chateau Briant in Loire Atlantique. These murders, coupled with rising tension in inner cities and the successful exploitation of xenophobia by Le Pen, are further signs of a very unsatisfactory situation.³⁸⁰

In Austria, Austrian Freedom Party headed by Jörg Haider, began with 5% support in 1983 and steadily increased its influence among the electorate: 9.7% in 1986; 16.6% in 1990; 22.5% in 1994; 22 %, in early election of 1995; 26,9 % in 1999; 10 % in 2002; 11 % in 2006.³⁸¹ In 1995, the election success of the Freedom Party and its participation in the coalition government lead greatest confusion on the international political scene and EU member countries imposed political sanctions on Austria.

In Germany, the National Democratic Party has never won the minimum 5 % of votes in German federal elections that allow a party to send delegates to the German Parliament. However, it was represented in several state parliaments in the 1960s and has repeated this feat recently, winning 9.2 % of the vote in the 2004 state election in Saxony.³⁸² In 2005 federal election, two of Germany's small far-right parties, the National Democratic Party (NDP) and the German People's Union (DVU), announced that they would run on a common platform in this election, raising fears in the mainstream German political establishment that together they might succeed in gaining more than 5% of the national vote and thus entering the Bundestag. Since German electoral law does not permit common list of two or more parties, in practice the DVU did not enter the election, and members of that party appeared on the NDP list. Although failed to secure the 5% needed to attain seats in the Bundestag, NDP performed best, winning 1.6 % of the list vote.³⁸³

³⁸⁰ Geoffrey Harris, *op.cit.*, p.74.

³⁸¹ Freedom Party of Austria, Elections, <http://electionresources.org/at> , (25.04.2007)

³⁸² National Democratic Party of Germany, Election, <http://electionresources.org/de> , (25.04.2007)

³⁸³ *ibid.*

In the Netherlands, Freedom Party (PVV) has won 5.9% of the votes in 2006³⁸⁴; in Belgium Vlaams Blok has won 11.6 % in 2003 general election³⁸⁵; in Italy National Alliance was part off all three House of Freedom (Italian center-right party alliance led by Silvio Berlusconi) coalition governments and has won 12.3 % of votes in 2006 election.³⁸⁶

All these parties have used immigrant issue and have presented several reasons to stop immigration basically listed as :

- “1) immigrants are conceived of as a threat to the homogeneous and peaceful nation as well as national culture and norms.
- 2) immigration is believed to lead to increased criminality.
- 3) immigrants are seen as a threat against welfare state.
- 4) immigrants is believed to cause increased unemployment for native population.”³⁸⁷

During the late 1990s, this list has been used to mobilize votes on xenophobic and anti-immigration sentiments. Implementing stricter immigration policies and more law and order has become hegemonic in the political and media discourse. Some of the center parties have also joined the discourse. For example, The Social Democratic Party in Denmark, originally as a defender of refugee immigration and (some sort of) multiculturalism, drifted towards a more unsympathetic view of these matters as the Danish People’s Party gained ground in the opinion polls – to a large extent at the expense of Social Democrats – and as the party was attacked by not only the Danish People’s Party but also the Liberal Party for being too generous on immigration.³⁸⁸

On the other hand, the extreme right is not a purely national phenomenon without European and international aspects. In a Europe supposed to be in the process of political integration, mutual interests and influences among states are inevitable. In June 2004, 732 Members of the European Parliament (MEPs) were elected by 350 million voters. In these elections, 25 MEPs from ten neo-Nazi and extreme right-wing

³⁸⁴ Freedom Party, Election Results, <http://electionresources.org/nl> , (25.04.2007)

³⁸⁵ Belgian General Election 2003, Results, <http://electionresources.org/be> , (25.04.2007)

³⁸⁶ National Alliance (Italy), 2006 General Election, <http://electionresources.org/it> , (25.04.2007)

³⁸⁷ Jens Rydgren, op.cit., p.482.

³⁸⁸ *ibid.*, p.494

parties across seven member States, including three of the recent accession States, were elected to the European Parliament. Glyn Ford evaluated this situation as stating that:

“Before the election, the political and media climates were certainly in the new right’s favour. For example, the Belgian Vlaams Blok, France’s Front National, the Italian Alleanze Nazionale, and the British National Party had all performed well at recent local and regional elections, bettering political predictions and in some cases their own expectations. In Europe, the press enjoyed a feeding frenzy with supposed threat of a torrent of economic immigration as a result of the EU enlargement that in reality turned out to be barely a trickle. However, this factoid, - something believed but not actually true – had enabled the far right and the new right to stoke up the public fear and reap the benefits, while minority groups were libeled, assaulted and fearful”.³⁸⁹

The accession of Romania and Bulgaria to the EU on January 1, 2007 had an unexpected side effect: it allowed for the formation of a new, far-right European parliamentary group called “Identity, Tradition and Sovereignty (ITS)” which oppose immigration, Turkish accession to the EU, and the European Constitution and focus on defending Christian values, the family and the European civilization.³⁹⁰ ITS was formed on January 9, 2007 when it met parliamentary rules requiring formal grouping have a minimum of 20 MEPs from five EU member states. The membership includes seven members of the French National Front, including Le Pen and his daughter Marine Le Pen, three Belgian deputies from the Flemish nationalist Vlaams Blok, Austrian Andreas Molzer, British MEP Ashley Mote and Alessandra Mussolini, the granddaughter of Italian wartime dictator Benito Mussolini.³⁹¹ By then, the group has several rights including receiving official funding of around one million euros and certain speaking rights. As said by Hannes Swoboda, vice president of the European Parliament’s Socialist Group, this gives the group substantial financial, legal and logistical support for not only anti- European, but maybe even racist right-wing propaganda.³⁹²

It s not the first time that the far-right has had a bloc in the assembly. Le Pen led the Group of the European Right from 1984 to 1989, and the Technical Group of the

³⁸⁹ Glyn Ford, Racism and Xenophobia in Europe Stemming the Rising Tide, **UN Chronicle Online Edition**, <http://www.un.org./Pubs/chronicle/2004/issue4/0404p32.html> (18.01.2007)

³⁹⁰ Jennifer Abramsohn, “New Group of EU Leaders to Push a Far-Right Agenda”, http://www.dw-world.de/popups/popup_printcontent/0,,2307642,00.html (01.05.07)

³⁹¹ DW Staff / AFP, “Far-right Group Formed in European Parliament”, http://www.dw-world.de/popups/popup_princontent/0,,2311527,00.html (01.05.07)

³⁹² Jennifer Abramsohn, op.cit.

European Right from 1989 to 1994.³⁹³ If it is accepted that European Parliament is a political mirror, the presence of strong nationalist parties in a number of countries has been becoming apparent at the EU level in the current situation.³⁹⁴ However, on the other hand European Parliament has been quite prudent from the beginning of the formation of this group and MEPs have united to exclude representatives of the new far-right wing party from key committee posts. Again Swoboda has stated that:

“I hope the other political groups, respective of their orientation, will stick together and have a common front against these political attitudes. We should make it clear that their political activities have to be limited by the strong will of other political forces, to demonstrate that Europe is for freedom, is for racial equality, and democracy.”³⁹⁵

To sum up, the developments of the early 1990s have been decisive for evaluating the rise of xenophobia within the Union. These were firstly the signing of Maastricht Treaty and concerns relating to the European identity; secondly further restrictions from Member States for the entry of migrants due to the fear of an upsurge from the Eastern Europe and thirdly increasing votes of nationalist parties throughout the European Union. Integration policies have made no significant progress during those years when government’s prime concern has been to strengthen border checks. The whole feeling of insecurity, which goes beyond the more obvious issues of law and order, rising crime, terrorism and so on reflects a crisis of political culture. Furthermore, because of the fact that reducing unemployment and dealing with the problems of integration of immigrants are difficult to overcome in a short period of time, immigrants have been continued to be a tool in the hands of extreme right wing parties.

The serious concerns about immigration and xenophobia issues are not about to evaporate. On the contrary, it seems to have been changed form and content and also has been spread over the Union. Today, it is extremely important to note that in Europe, some mainstream parties have also embraced the anti-immigration rhetoric of the far right. For example, today’s president of France, leader of the ruling Union for a Popular Movement (UMP), Nicolas Sarkozy, frequently made controversial comments on immigrants during his presidential campaign. For example, he announced that non-French nationals who had participated in rioting (mainly by young Muslims of north or sub-Saharan African descent) across the country in October-November 2006, should be

³⁹³ DW Staff / AFP, op.cit.

³⁹⁴ *ibid.*

³⁹⁵ Jennifer Abramssohn, op.cit.

expelled from France.³⁹⁶ He has no hesitation in entering into areas belonging to the Nationalist Mouvement pour la France (MPF) and Front Nationale by saying that:

“If there is anybody who has a problem with being in France, we have no objection to their leaving the country if they don’t like it.”³⁹⁷

In his latest campaign, Sarkozy furtherly declared to create a Ministry of Immigration and National Identity. Upon this, Socialist Party head, François Hollande and newspaper editorials accused him to be racist and xenophobic and flirting with the far-right. They also argued that putting immigration and national identity together smacked of returning to the fascist policies of Vichy France.³⁹⁸

The decreasing ideological distance between center-right and far-right parties has recently become an important factor in breeding xenophobic attitudes towards immigrants. Furthermore, the anti-immigration rhetoric of the far right parties have always been included a religious tone which has been become more and more apparent in post September 11 period in which on the one hand, far right parties have been started to underline anti-islamic policies; and on the other, center-right parties have been started to use the rhetoric of the far right in a number of occasions.

II. ISLAMOPHOBIA IN THE EUROPEAN UNION

In relation to European Case, Maria Marczewska-Rytko argues that the fears evoked by the integration process and the ongoing processes of globalization offer a perfect opportunity to right-wing politicians to support paternalism of the state as well as return to religious values and the national tradition.³⁹⁹

Religion, namely Christianity has also had a significant value during the preceeding discussions of European Union’s first-ever Constitution on which the expanding bloc finally agreed at a summit on 18 June 2004, as well as today’s discussions about its revival. As generally acknowledged by many academicians working on European identity such as Anthony Pagden, J.G.A. Pocock, William Chester Jordan, Talal Asad, Thomas Risse and Daniela Engelmann-Martin that

³⁹⁶ France: Sarkozy’s presidential candidacy (pub. 22 Jan. 2007), http://www.keesings.com/breaking_history/europe/france_sarkozys_presidential_cand... (19.04.2007)

³⁹⁷ Mognis Abdallah, “La France: Love it or leave it”, Eurozine, pp.1-6, p.4, <http://www.eurozine.com/articles/2006-09-25-abdallah-en.html>, (24.04.2007)

³⁹⁸ Eleanor Beardsley, “Immigration Proposal Inflames French Campaign”, <http://www.npr.org/templates/story/story.php?storyId=7867313>, (24.04.2007)

³⁹⁹ Maria Marczewska-Rytko, op.cit., p.87.

Christianity is one of the unifying features of Europe. Europe continues to be considered by the bulk of Europeans as the place of and for Europeans historically conceived. And historically, this “Europeanization of Europe” presumes Europeans to be white and Christian.⁴⁰⁰

Members of the European Union have had a lot of difficulty in preparing a Constitution that every nation could accept. One of the sticking points has been a relatively minor matter: “Should Christianity be cited as a basis and source for European culture and values?”⁴⁰¹ Conservative and Catholic nations such as Italy, Poland, Lithuania, Malta, Portugal, the Czech Republic and Slovakia, have fought for its inclusion and the Vatican has also made clear that it wants a reference to Christianity in the document. On January 6, 2003, in a letter to the Convention of Christians for Europe, the president of the European Commission, Romano Prodi, says the future European Constitution should not exclude cultural and religious traditions, especially the Christian which forged the continent.⁴⁰² On the other hand, any attempt to mention Christianity, or simply God, in the text will be met by stiff resistance from secular France, Britain, which treads carefully in this area, and from northern Protestant countries such as Sweden and Denmark. In the end, the Constitution contains a general reference in the preamble to the cultural, religious and humanist heritage of Europe, but makes no specific reference to Christianity.⁴⁰³

On May 29, 2005, the French citizens, by voting “non”, decided the rejection of the proposed Constitution of the European Union. This results, together with the negative vote in the Netherlands a few days later (June 1, 2005) put a preliminary end to the European Constitutional Project. However, European commissioners and politicians have recently been talking about the revival of the treaty. A project called COMECE (Commission of the Bishops’ Conferences of the European Community) has been initiated by a group of European bishops with the aim of raising awareness of European values among the public as an attempt to spark off a debate on whether a reference to Christianity should be included in a new text. An expert group, consisting only of Roman Catholics, notably includes three members of the previous European Commission, Mario Monti, Franz Fischler and Loyola de Palacio, as well as Jacques

⁴⁰⁰ David Theo Goldberg, “Racial Europeanization”, *Ethnic and Racial Studies*, Vol.29, No.2, March 2006, p.352.

⁴⁰¹ Austin Cline, EU Constitution : Godless, **About.com**, <http://atheism.about.com/b/a/093746.htm> (05.06.2007)

⁴⁰² EC President Backs Inclusion of Christianity in a European Constitution, <http://www.zenit.org/english/visualizza.phtml> , (15.11.2006)

⁴⁰³ Preamble, http://www.europa.eu/constitution/en/ptocl_en.htm , (15.11.2006)

Santer, who led the EU executive from 1995 to 1999 and former European Parliament president Pat Cox. The group is intending to identify the values that drove the EU's founding fathers and which can be linked to Christian faith.⁴⁰⁴ In remarks which will reopen the debate on religion in the EU, Germany's Chancellor Angela Merkel threw her weight behind Pope Benedict's campaign to recognise Europe's Christian heritage. She said that:

“We spoke about freedom of religion. We spoke about the role of Europe and I emphasised the need for a constitution and that it should refer to our Christian values.”⁴⁰⁵

A. Background of Islamophobia in the European Union

Drawing upon a European identity where Christianity in Europe is an inherent feature, there was a very strong xenophobic theme which inferred that Islam presented a direct threat to the core of European religious values and identity. Especially in 2000s, xenophobic rhetoric in Europe seems to be constructed against Islam. Islamophobia may be conceived of as a very post-modern kind of fear. Werbner evaluates Islamophobia within the context of nation-state's homogenous cultural ideals, saying that Islam was seen as the Grand Inquisitor which must be expelled from the society, since they represent a threat to the very culture of the nation and its moral fabric. She states that:

“The tension within the nation-state between individual citizenship rights and the reproductions of the nation as a unified moral community requires that cultural pluralism within the nation state be grounded in shared ethical convictions about the validity of cultural differences. The globalized images of the Muslim religious fanatic seem to deny the possibility of such ethical commonalities...”⁴⁰⁶

Glyn Ford emphasized this deep rooted situation and today's appearance by stating that:

“Since 1984, the political disease has been the growth of neo-fascist and far-right parties; the two have fed off each other. Yet, to a degree, it has been held in check by the “historic memory” of the horrors of Hitler's Germany. However, this has begun to change, as recent events have triggered the perception that Christendom is at war with the Dar al

⁴⁰⁴ Catholics push to get Christianity into the EU Constitution, <http://pseud.wordpress.com/2006/09/13/> (15.11.2006)

⁴⁰⁵ Nicholas Watt, “Merkel backs more Christian EU constitution”, **The Guardian**, 29.08. 2006, <http://www.guardian.co.uk/eu/story> , (15.11.2006)

⁴⁰⁶ Pnina Werbner, “Islamophobia: Incitement to religious hatred – legislation for a new fear?”, **Anthropology Today**, Vol 21, No.1, February 2005, p.9

Islam, allowing far-right parties to claim a popular resonance and repackage themselves in a way that jettisons much of their historical baggage.”⁴⁰⁷

Italian Prime Minister Silvio Berlusconi’s statement in Berlin on September 26, 2001 concerning Western culture being superior to Islamic culture had a significant impact both within Italy and internationally and has been important in evaluating the development of Islamophobia within the Union. Speaking at a news conference after talks in Berlin with German Chancellor Gerhard Schroeder and Vladimir Putin, Mr. Berlusconi said:

“We must be aware of the superiority of our civilization, a system that has guaranteed well-being, respect for human rights and – in contrast with Islamic countries- respect for religious and political rights .”⁴⁰⁸

Although Berlusconi’s spokesman said later the words had been taken out of context and European politicians publicly disowned Mr. Berlusconi’s apparent prediction of a clash of civilizations, Arab world reacted with anger.⁴⁰⁹ As said by David Blunkett, the British Home Secretary, this statement has not only affected the consensus across the world in the face of terrorism, it has also culturally inaccurate.⁴¹⁰ As seen, this was the footsteps of islamophobia appearing as a new element for excluding “other” in the Union.

1) Islamophobia Before 2001

According to Golberg, reduction of the racial to the Jewish question gives way to evaporation and exteriorization of race issue (as apartheid in South Africa and American racism) in Europe and this denial leads to the failure to acknowledge its own racist implication. With reference to islamophobia, as the “newly arisen” reflection of racism, Goldberg states that:

⁴⁰⁷ Glyn Ford, Racism and Xenophobia in Europe Stemming the Rising Tide, **UN Chronicle Online Edition**, <http://www.un.org/Pubs/chronicle/2004/issue4/0404p32.html> (18.01.2007)

⁴⁰⁸ Associated Press, “Storm over Berlusconi ‘inferior Muslims’ remarks”, **The Independent**, 27.09.2001, <http://news.independent.co.uk/europe/article21810.ece> (17.04.07)

⁴⁰⁹ Stephen Castle, “Europe disowns Berlusconi for attack on Islam”, **The Independent**, 28.09.2001, <http://news.independent.co.uk/europe/article218181.ece> (17.04.2007)

⁴¹⁰ Paul Waugh, “Blunkett attacks Berlusconi over ‘offensive’ tirade”, **The Independent**, 29.9.2001, <http://news.independent.co.uk/europe/article218496.ece> (17.04.2007)

“[..].This then expanded into conceiving race as the force of prejudice exercised against newcomers, race still being an irrational excess tethered to the historical exemplification of the anti-Semitic.

Ethnicity is comprehensible, religious tension understandable if regrettable, migration and refugeedom unfortunate but perhaps unavoidable. With apartheid institutionally a thing of history, more than a decade ago now, race is only America’s problem, racism its legacy. Religious distinction is a European concern or more precisely the tension between a growing Christian secularism on the one hand, and a surging Islamicism on the part of newcomers with their politically radicalizing islamist networks on the other. Racism, so the dominant claim goes, is not.”⁴¹¹

Leo Lucassen has taken back the traces of Islamophobia in late 1970s and 1980s and stated that:

“The emergence of religion and culture as principal markers over color and race was stimulated by the Islamic Revolution under Ayatollah Khomeini in Iran in 1979 and culminated in the Rushdie Affair in 1989 and the First Gulf War against Iraq a few years later....This shift in attention, which occurred throughout western Europe, coincided with a substantial inflow into western Europe of migrants from Muslim countries such as Turkey, Morocco, Algeria and Tunisia, most of whom were family members who joined the initially much smaller group of predominantly male guest workers from these regions. Thus the Turkish population in the Netherlands has increased from some thirty thousand around 1970 to more than three hundred thousand at the beginning of the twenty-first century. This confluence of changes in the international political climate and the actual settlement of newcomers from Muslim countries, who became highly visible through the establishment of mosques and Islamic dress codes (such as headscarves for women) led to the widespread view that Islamic migrants are problematic.”⁴¹²

In his work, he compares Irish immigrants in England in 1850s with today’s Muslim immigrants in Western Europe. He argues that all elements taken together such as low social status, the discourse on primitive races, “deviant” religion, and extreme nationalism, make Irish case quite similar to that of more recent groups like the Turks and North Africans in western Europe. He claims that at that times, anti-Catholicism coincided with anti-Irish (anti-immigrant) feelings and this highly negative image of the Irish partly served to sharpen English nationalism that, in the eighteenth century, was increasingly articulated in anti-Catholic terms.⁴¹³ Similarly, today’s anti-Muslim

⁴¹¹ David Theo Goldberg, *op.cit.*, p.343.

⁴¹² Leo Lucassen, *op.cit.*, p.3.

⁴¹³ *ibid.*, p.27-49.

feelings may be evaluated as having close links with the construction of “Europeanness”.

In relation to the construction of West vs. Other dichotomy through religious lines, “September 11, 2001”, the date of the occurrence of terrorist attack in the USA, is particularly a special date and turning point which even more fuel to the conviction that the culture of Islam and that of the West are irreconcilable. Islamic communities and other vulnerable groups have become targets of increased hostility since 11 September. Immigrants from Muslim countries were equated with Muslim fundamentalists in many of the European countries. According to Lucassen, Islamic threat is now on many people’s mind, especially since the terrorist attacks on the World Trade Center in New York and the Pentagon in Washington in September 2001.

He also emphasized that before those events, Islamic migrants from North Africa, the Middle East and Asia were already seen as an obstacle to integration because it was assumed that the core values of Islam, (Islam’s conflicting ideas about women’s emancipation and separation between church and states are perceived as important stumbling blocks) clash fundamentally with those of the Western world.⁴¹⁴ For example, in France, in October 1989, three teenage girls, two of Moroccan and one of Tunisian descent, were suspended from school because they refused to take off their headscarves. This event has discussed in the framework of 1906 French Code de Laicite and in those days, was used as a symbol of the non-assimilation of immigrants from developing countries especially North Africa. According to Lucassen:

“Muslim were felt to be an unprecedented threat, reaching much deeper than any of the conflicts French society may have experienced with immigrants in the past. In the years following this incident, discussions about the foulard (headscarf) continued to dominate the public debate in France and eventually led to a March 2004 law forbidding the wearing in schools – the secular space par excellence – of all signs or clothes that symbolize a particular religious adherence. Although this law aims deliberately at all religious symbols, it is clear that its prime target is the Islamic headscarf.”⁴¹⁵

As seen, from the 1980s onwards, Muslims have been used to be treated as inassimilable and as a threat to European culture and democracy. Lucassen underlines Islam as one of the two new focus of attention determining anti-foreigner storm of 1990s (other one is illegal migrants):

⁴¹⁴ *ibid.*, p.23.

⁴¹⁵ *ibid.*, pp.171-172.

“Throughout western Europe the institutionalization of Islam, visible in the building of mosques, fueled discussions about illiberal elements of Islam and the barriers such elements could pose to integration. This debate was further stimulated by the international aspirations of the Khomeini regime in Iran and the Rushdie Affair, reaching a climax in the terrorist attacks on the World Trade Center in New York in 2001. In Germany, France, England, Belgium, the Netherlands and Scandinavia, migrants from Islamic countries and their children were increasingly viewed as Muslims instead of Turks and Moroccans.”⁴¹⁶

Muslim population in Europe has been stereotyped and provocative attitudes and declarations have been seen throughout Europe. For example, one of the members of the Danish People’s Party, Mogens Camre who was also a member of the European Parliament, expressed the party’s view on Muslims by using quite inflammatory language and openly mobilised Islamophobic stereotypes to reinforce agendas that had already been a part of their political campaigning stating that:

“It is ... naive to think that you can integrate Muslims into the Danish society... Only a few of them have come here in order to be integrated. Most of them have come here in order to create a Muslim society...(Islam) is not only a religion but a fascist political ideology mixed with a religious fanaticism of the Middle Ages, an insult against the human rights and all other conditions necessary for creating a developed society. We cannot force another culture on the Muslim countries, we cannot prevent them from ruining their societies, but we ought to protect our own society. People wanting to fight a holy war should not be in Denmark.”⁴¹⁷

This kind of thinking leads that, “Muslims”, as the new focus of anti-foreigner sentiments, have been emerged as “a new sociological category” as called by Esra Özyürek, in daily social, economical and political life.⁴¹⁸ Consequently, this has brought new reflections, events and concerns in European society. Recognizing the presence of Muslim population, Europeans have been started to discuss living with them.

2) Islamophobia After 2001

Towards 2000, questions surrounding tolerance and multiculturalism as well as democracy and human rights have come to the forefront of contemporary debates in Europe. Europe has started to question, as said by Alain Touraine, “How can we live together?” or in other words “How can we reconcile equality and diversity?” The

⁴¹⁶ Ibid., p.156.

⁴¹⁷ Jens Rydgren, op.cit., p.485

⁴¹⁸ Yasemin Çongar, “Nostaljik Kemalizm, Devlet ve Din”, *Milliyet*, 08.04.2007, <http://www.milliyet.com.tr/2007/04/08/pazar/yazconggar.html> (10.04.2007)

definition of multiculturalism and the conceptualization of “Otherness” were the center of this process. Touraine, has questioned inferiorization of the “Other” with the misuse of universalism:

“No multi-cultural society is possible unless we can turn to a universalist principle that allows socially and culturally different individuals and groups to communicate with another. But neither is a multi-cultural society possible if that universalist principle defines one conception of social organization and personal life that is judged to be both normal and better than others.”⁴¹⁹

He has put this inferiorization as a barrier against intercultural communication and consequently on multiculturalism by saying that:

“Inter-cultural communication is possible only if the Subject* has already succeeded in escaping from its community. The Other can be recognized as such only if it is understood, accepted and loved as a Subject, or as an attempt to reconcile, within the unity of a life and a life project, an instrumental action and a cultural identity that must always be released from historically determined forms of social organization.”⁴²⁰

He defines multi-cultural society by stating that:

“Multi-cultural society is not characterized by the coexistence of different cultural practices and values; still less is it characterized by a generalized interbreeding. A multi-cultural society is one in which the greatest possible number of individual lives are constructed, and in which they succeed in reconciling, each in their own way, what makes them similar (instrumental rationality) with what makes them different (the life of the body and the mind, projects and memories). Multi-ethnic and multi-cultural empires have always collapsed. Conversely, a society that can recognize the diversity of individuals, social groups and cultures will be a strong society, provided that it can also allow them to communicate with one another by stimulating their desire to see that both they and the Other are involved in the same constructive task.”⁴²¹

This means that the contextual framework within which Us and Them are defined, has to be reconstructed in such a way that it gives priority to uniqueness of individual lives and not to include inferiorization in the form of differentiation. Despite of this challenging nature of the debate on multiculturalism, the practical situation in the

⁴¹⁹ Alain Touraine, **Can We Live Together?**, Cambridge: Polity Press, 2000, p.167

* According to Touraine: “the Subject is not to be confused with the individual, and that it is not a constantly changing aggregate of individual states of mind or social determinants. The Subject is an attempt, always under threat and never completed, to defend an actor who is being torn apart by the contradictory pressures of his instrumental life and his cultural identities.”, See Alain Touraine, **Can We Live Together?**, Cambridge: Polity Press, 2000, p.157.

⁴²⁰ibid., p.169.

⁴²¹ ibid., p.181.

EU has been shaping quite opposite direction. As implied by the research titled “Majorities’ Attitudes Towards Minorities”⁴²², in the EU 15, resistance to multicultural society, immigrants and diversity was obvious and support for repatriation of criminal migrants was widespread.⁴²³

Concerning Islamophobia, the intolerance is much more apparent. Islamophobic incidents exist in every country where there is a Muslim minority. Today, it is estimated that there are thirteen million muslims (around 3.5% of the total population) in the European Union.⁴²⁴ Islamophobia is fueled by stereotypical images of Muslims, right-wing, xenophobic politicians who reinforce those stereotypes and call for the expulsion of the Muslims.

Following the terrorist attack in the USA, EU’s concerned body, European Monitoring Center on Racism and Xenophobia (EUMC) was quick to realize that there might be a negative impact on attitudes to Islam and Muslims in the 15 Member States of the European Union and asked National Focal Points (NFPs) to provide a series of reports upon which the situation could be monitored till the end of the year 2001. There are two important findings arising from this monitoring which are relevant for the xenophobia against muslim immigrants issue:⁴²⁵

Firstly, the results of the evaluation show that across the entire spectrum of the EU member states, incidents were identified where a negative or discriminatory act was perpetrated against Muslims or an entity that was associated with Islam. Behind the vast majority of attacks, there was the fact that they were identified as Muslims, whether they in fact were or not. This means that visual identifiers such as hijab or headscarf of Muslim women, turbans, beards, and islamic buildings provided a stimulant that offered an outlet for anger and xenophobic sentiments. EUMC Country Reports⁴²⁶ produced in the wake of September 11 by each country’s NFPs showed that in countries such as Denmark, Nertherlands, France and Germany where physical and verbal threats to Muslims mostly being made, visual identifiers have significant impact. In those countries women wearing the hijab, sometimes bearded men, mosques, islamic schools

⁴²² European Union Monitoring Center on Racism and Xenophobia, “Majorities’ Attitudes Towards Minorities: Key Findings from the Eurobarometer and the European Social Survey”, Summary, March 2005, p.13

⁴²³ See Annex 6 for Graphics

⁴²⁴ European Union Monitoring Center on Racism and Xenophobia, **Muslims in the European Union: Discrimination and Islamophobia**, EUMC, 2006, p.27-28-29 or Annex 4 Tables

⁴²⁵ European Union Monitoring Center On Racism and Xenophobia, **Summary Report on Islamophobia in the EU after 11 September 2001**, European Communities, 2004, passim.

⁴²⁶ *ibid.*, pp.11-24

and commercial properties belonging to Muslims were attacked. On the other hand, in Luxembourg, only a few isolated instances of anti-muslim sentiment were expressed following the events of September 11 in the form of telephone calls and some insults in the school environment. The Luxembourg NFP acknowledged that the low incidence of such sentiments was due to the fact that there are very few visible identifiers of Islam to be seen: no mosque exists and women wearing the hijab are extremely rare and Muslim community were well integrated into the wider society. Similarly in Portugal, there were extremely low levels of hostility experienced following the attacks on the USA due to the “invisibility” of Portuguese Muslims which is the result of historical relationship between Portugal and Islam and relatedly well integration of Muslims into the wider society.

Second finding is that a greater sense of fear among the general population has exacerbated already existing prejudices and fuelled acts of aggression and harassment in many European Member States.⁴²⁷ For example, as noted by Spain NFP, most of the incidents and anti-Muslim sentiments were directed towards those of Moroccan descents, which drew upon a deeply embedded and pre – existent ethnic xenophobia that was in evidence long before September 11. By the same token, many far right groups capitalised on this using those prejudices already existent to locate new platforms from which their voices could be heard. Such groups used anti-Muslim and anti-Islamic rhetoric in various countries. For example in Belgium, literature was circulated showing Saint Mary’s Church in Schaerbeek being converted to a mosque . In the United Kingdom, British National Party distributed leaflets in London stating that local churches would shortly become mosques if immediate action was not taken. Furthermore, countries where the right wing of mainstream politics were more active in issuing and perpetuating negative messages, explicit stereotypes of Muslims became the integral part of their public discourse, incorporating issues regarding to asylum seekers and immigrants. In northern and central regions of Italy where mainstream political activity was much more xenophobic and where the far right were also much more vocal, it seems that public expressions of hate, Islamophobia and ethnic xenophobia became legitimised and more incidents were noted by NFP during post-September 11 period. A similar example was Denmark where a widespread feeling of xenophobia against asylum seekers and foreigners had already caused much public

⁴²⁷ *ibid.*,pp.30-40

debate. A number of opinion polls confirmed that the Danish majority believed that September 11 had made them become more negative towards Muslims, where the vast majority of the population felt that Muslims should be made to take lessons in Danish democratic values.

The results of EUMC's monitoring clearly shows the importance of the "perception of otherness" in building and breeding xenophobic attitudes. In this context, the relevance of the visual identifiers of Muslims and Islam cannot be underestimated. The results show that the target should be perceived to be Islamic whether it actually was or not. In other words, perception of Muslims became the target. Visual identifiers that are mentioned here will be the tools for identification. By the same token, the "them and us" scenario is therefore constructed through islamophobia where religionism and xenophobia become interwoven into the fabric of each other. Goldberg draws attention to the perception of Muslims as "the nightmare of our times" and states that:

"The Muslim in Europe, - not individual Muslims, not even Muslim communities, but the idea of the Muslim himself – has come to represent the threat of death. The fear of death on which Hobbes so heavily rested the motivation to (Euro) – modernity's social contract is embodied in the imagined figure of 'the Muslim'... The Muslim image in contemporary Europe is one of fanaticism, fundamentalism, female (women and girls') suppression, subjugation and repression. The Muslim, in this view, foments conflict: violence, war, militancy, terrorism, cultural dissension. " ⁴²⁸

It is a matter of fact that this study may be evaluated such a way that attitudes towards foreigners/immigrants remained basically the same in European society, but a new impetus was given to justify hostility towards them, because popular understanding of issues surrounding them became increasingly blurred by those of September 11. For example in Greece, the distinction between ethnicity and religion is blurred so that the rise in negative feelings towards Muslims further reaffirmed another much more localised pre-existent ethnic hostility, where xenophobic expression were recorded against Albanians, Bosnians, Turks and those from Former Yugoslav Republic of Macedonia. Similar circumstances were identifiable in Spain as well, where ethnic Maroccans were an identifiable target in this period. ⁴²⁹

⁴²⁸ David Theo Goldberg, op.cit.,pp.345-346

⁴²⁹ European Union Monitoring Center On Racism and Xenophobia, Summary Report on Islamophobia in the EU after 11 September 2001, European Communities, 2004, p. 32-33

The November 2005 riots in France suburbs, which are definitely the results of many other deep rooted phenomenon in French society such as unemployment, education problems, integration problems etc., are also attempted to be explained via Islamic fundamentalism by some right-wing philosophers and commentators. For example, Alain Finkielkraut, interviewed by the Israeli newspaper Haaretz about the uprising, is quoted as saying that:

“They tell us that these neighbourhoods are neglected and the people are in distress. What connection is there between poverty and despair, and wreaking destruction and setting fire to schools? I don’t think any Jew would ever do a thing like this”⁴³⁰

This kind of thinking has been exacerbated in recent years and it is witnessed a growing hostility against Muslim population throughout Europe. Below examples shows concretely the biased attitudes and hostility.

B. Reflections of Islamophobia

There is no doubt that especially after 2001, xenophobic attitudes towards Muslim population have been increased. “Visual identifiers” or “Islam as a religion” have significant roles in most of the events which have been taken place during the past 6 years. In the following section, considering the fact that the problem of Islamic fanaticism is largely distinct from the issue of Muslims’ integration, the events which are thought to most directly reflect Islamic fanaticism will be taken into consideration.

1) Significant Events

Basing on above mentioned argument, although sometimes it was used to be evaluated within the context of Islamophobia, here, the November 2005 riots in France suburbs, are excluded and the murder of Theo Van Gogh in 2004, London Bombing in 2005 and Denmark Cartoon Crisis in 2006 are analyzed in detail. Because the consequences of the integration problems and the effects of sociological realities in France have been more prominent in the developments of these riots. Paris ghetto of Clichy- sous- Bois where the events had been occurred, has a substantial immigrant population, a large share of public housing and a history of social problems and by the words of Nicolas Sarkozy, violence in French suburbs is a daily fact of life; since the

⁴³⁰ Dror Mishani and Aurelia Smotriez, “What sort of Frenchman are they?”, **Haaretz**, 22.12.2005, <http://www.haaretz.com/hasen/objects/pages/PrintArticleEn.jhtml?itemNo=646938> (05.06.2007)

start of the year, 9,000 police cars have been stoned and each night 20 to 40 cars are torched.⁴³¹ The situation in France has been explained by Stéphanie Giry as:

“The complexities of integration are on dramatic display in France, now home to 4-5 million Muslims, the largest Muslim population on the continent. A nation that prides itself on its egalitarianism and universal democratic culture, France is struggling to live up to its principles and fully integrate its Muslims into all sectors of national life. Some French and foreign observers have interpreted last November’s riots in poor, largely Muslim neighborhoods throughout the country as a skirmish in a broader clash of civilizations. Yet the strife had little to do with yearnings for a worldwide caliphate and much to do with domestic socioeconomic problems. Grasping what has sometimes gone wrong – and what has mostly gone right – with the integration of Muslims in France can thus offer clues to the challenges faced by Europe as a whole.”⁴³²

Murder of Theo Van Gogh

In the Netherland, on 2 November 2004, a film-maker called Theo Van Gogh was murdered on an Amsterdam street by a bearded men of dual Dutch and Moroccan citizenship because of his film entitled “Submission” which tells the story of a Muslim woman forced into an arranged marriage who is abused by her husband and raped by her uncle. In one scene an actress is shown in see-through garments with Koranic script written on her body. The film was made with Ayaan Hirsi Ali, a Somali refugee, Muslim and currently a member of the Dutch Parliament. Murderer, Mohammed Bouyeri, born March 8, 1978 in Amsterdam, pinned a letter to the dead body in which Ayaan Hirsi Ali, the People’s Party for Freedom and Democracy (VVD) and politicians in general are warned. At the time of his death, Van Gogh had just completed another film about outspoken anti-immigrant and anti-Muslim politician, Pim Fortuyn, murdered by an environmental activist in 2002.

Much of the Netherlands’ Muslim community of one million, or 5.5% of the population, took offense with the film.⁴³³ Social tensions have mounted in the Netherlands following the murder of the film director and journalist Theo Van Gogh. Politicians and journalists have called for an “end to tolerance” and have made the Muslim minority the scapegoats for increasingly explosive social tensions:

⁴³¹ The Associated Press, Agence France Press, “3 in rioting in suburb of Paris get jail terms”, 01.11.2005, <http://www.ihf.com/articles/2005/10/31/news/france.php> (19.04.2007)

⁴³² Stéphanie Giry, “France and Its Muslims”, (Article Preview), **Foreign Affairs**, Vol.85, Number 5, September/October 2006

⁴³³ Eric Olsen, “Anniversary of the Murder of Theo Van Gogh”, 03.11.2005, <http://blogcritics.org/archives/2005/11/03/081137.php> (17.04.2007)

“On November 5, three days after the assassination, Deputy Prime Minister Gerrit Zalm, a member of the right-wing People’s Party for Liberty and Democracy (VVD), “declared war” on Islamic fundamentalism in the name of the coalition government. His utterances did not garner any public criticism; rather, the coalition government of the CDA (Christian Democrat Appeal), the VVD and Democrats 66 was accused of not having been hard enough up to now.

Former VVD parliamentary deputy Geert Wilders demanded the passage of laws to remove any bureaucratic obstacles and allow the authorities to arrest and deport all Muslims that were under observation.”⁴³⁴

Media reports in the Netherlands play on the supposed inability of many Muslims to integrate. The writer Leon de Winter claims that these people are not “mature enough to live in Dutch society.”⁴³⁵ In the first two weeks, the murder was mentioned in almost 4,000 unique articles.⁴³⁶

Following the murder of Theo van Gogh, EUMC’s National Focal Point in the Netherlands recorded a significant number of racist incidents, the majority of which were against Muslims:

“2-30 November 2004, there were 174 violent racist incidents. Of these, 106 (61%) involved anti-Muslim violence. Mosques were the target of violence on 47 occasions.

According to NGOs and media reports, migrants were confronted with name-calling in the streets, on public transport and during sport events. Leaflets bearing anti-Muslim sentiments were distributed in Rotterdam, Den Bosch and in the northwest of the country, and were also seen in Amsterdam, and graffiti was targeted at mosques, Islamic schools and Muslim-owned shops.

In the five days following the murder (2-7 November), the Dutch Complaints Bureau for Discrimination on the Internet (MDI) received a disproportionate number of complaints about internet sites praising the murder and making death-threats against other people.

The KLDP (the National Dutch Police Service Agency) recorded in the period 23 November 2004 - 13 March 2005, 44 violent incidents against Muslim properties.”⁴³⁷

⁴³⁴ Jörg Victor, “The Netherlands: xenophobic campaign follows Theo van Gogh murder”, **World Socialist Web Site**, 23.11.2004, http://www.wsws.org/articles/2004/nov2004/gogh-n23_prn.shtml (17.0.2007)

⁴³⁵ *ibid.*

⁴³⁶ Pieter A. Gautier, Arjen Siegmans and Aico Van Vuuren, “The Effect of the Theo van Gogh murder on house prices in Amsterdam”, November 2006, <http://cep.lse.ac.uk/seminarpapers/24-11-06-GAU.pdf> (17.04.2007)

⁴³⁷ European Union Monitoring Center on Racism and Xenophobia, **Muslims in the European Union: Discrimination and Islamophobia**, EUMC, 2006, p. 78-79

Another opinion poll in Dutch journal *Algemeen Dagblad* in November 6, 2004 has indicated that:

“Over 80% of the interviewees stated that additional measures are needed to combat Islamic extremists. There was a strong call for increasing sentences for (contemplating) terrorist acts (62%), for deporting militant imams (60%), for holding parents accountable for behaviour of their under age children (59%), for better surveillance of what is practiced and preached in mosques (52%), for abolishing the right to hold multiple nationalities (48%) and for establishing institutes for re-education for young offenders.”⁴³⁸

The murder shocked the Dutch public, still reeling from the 2002 assassination of Pim Fortuyn, a flamboyant, populist anti-immigration politician. The killing proved to many that Holland’s multicultural society, based on tolerance and consensus, was in terminal crisis.⁴³⁹ This sharpened the deepening divide in The Netherlands over immigration, assimilation, national identity and multiculturalism as well as freedom of speech and democracy. Thousands of Dutch citizens gathered in Amsterdam’s city centre on the evening of the Van Gogh’s murder, to denounce the event which people are calling attack on free speech.⁴⁴⁰ Dutch Prime Minister Jan Peter Balkenende said that it is unacceptable if expressing your opinion would be the cause of this brutal murder.⁴⁴¹

Robert Spencer, mentioning about taboo of questioning Islam in Europe, raised concerns relating to the freedom of speech:

“Europe has for thirty years encouraged massive immigration from Muslim nations; Muslims now comprise five percent of Holland’s population, and that number is growing rapidly. Yet it is still largely taboo in Europe – as in America- to raise any questions about how ready that population is to accept the parameters of secularism. When Dutch politician Pim Fortuyn tried to raise some of those question in 2002, he has vilified as a racist – in line with the continuing tendency of the Western media to frame question regarding Islam in racial terms, despite the fact that the totalitarian intransigence of the ideology of radical Islam is found among all races. And Fortuyn himself, of course, was himself ultimately murdered by a Dutch assailant who, according to “The Guardian”, “did it for Dutch Muslims”.

⁴³⁸ *ibid.*, p. 37

⁴³⁹ David Rennie, “Contempt and defiance from Muslim accused of murdering film-maker”, *Telegraph* 12.07.2005, <http://www.telegraph.co.uk/core/Content/displayPrintable.jhtml;jsessionid=1YTURKJ...> (17.4.2007)

⁴⁴⁰ CBC Arts, Controversial filmmaker Theo van Gogh killed, 02.11.2004, <http://www.cbc.ca/arts/story/2004/11/02/filmvangogh041102.html> (17.04.2007)

⁴⁴¹ Gunman kills Dutch film director <http://www.newsvote.bbc.co.uk/mpapps/pagetools/print/news.bbc.co.uk/1/hi/world/europe/3..> (17.04.2007)

The deaths of Fortuyn and Van Gogh indicate that the costs of maintaining this taboo are growing. One prerequisite of the peaceful coexistence of ideologies in secular society is freedom of speech – particularly the freedom to question, to dissent, even to ridicule”⁴⁴²

Ayaan Hirsi Ali, has stated in her article in International Herald Tribune that:

“Theo and I discussed at length the possible consequences for both of us. He said, “As soon as such considerations dissuade you from expressing your opinion, isn’t that the end of free speech? That is grist to the mill of the Islamists.”⁴⁴³

Bouyeri was arrested on November 2, 2004, shortly after the murder of Theo van Gogh, following an exchange of gunfire with police during which he was shot in the leg. When arrested, he had on him a poem with the title “Immersed/baptised in blood) from which it appears he intended to die a martyr.⁴⁴⁴ At the trial, he confessed and vowed to do the same again if given the chance, saying that the law compels me to chop off the head of anyone who insults Allah and the prophet.⁴⁴⁵ Later, in a court appearance, he said that:

“The fact that you see me as the black standard-bearer of Islam in Europe fills me with honor, pride and joy.”⁴⁴⁶

On July 26, 2005, the murderer Bouyeri received a life sentence without parole which is the most severe punishment in the Netherlands. Bouyeri, is only the 28th person to receive this punishment since 1945, excluding war criminals. The new “terrorist crimes law”, in effect since August 10, 2004, here, is worth to mention. Accordingly:

“A life sentence is ordinarily seen only with multiple-homicide cases, but a new law introduced in 2004 also makes the sentence applicable for leaders of terrorist organisations. In addition, the “Wet Terroristische Misdrijven” (Terrorist Crimes Law, in effect since August 10, 2004), also states that, if there is a terrorist motive for a crime, the term can be increased by half. Imprisonments ordinarily in excess of 15 years can be upgraded to life imprisonment, as was the case with Bouyeri”⁴⁴⁷

⁴⁴² Robert Spencer, “Death of a ‘Blasphemer’ ”, **Frontpagemag.com**, 03.11.2004

<http://www.frontpagemagazine.com/Articles/ReadArticle.asp?ID=15800> , (14.05.2007)

⁴⁴³ Ayaan Hirsi Ali, “Victim of Islamists: Grief and anger over Theo’s murder”, **International Herald Tribune**, 11.11.2004, http://www.ihrt.com/bin/print_ipub.php?file=/articles/2004/11/11eddali_ed3_.php (17.04.2007)

⁴⁴⁴ Mohammed Bouyeri, http://en.wikipedia.org/wiki/Mohammed_Bouyeri (17.04.2007)

⁴⁴⁵ Eric Olsen, “Anniversary of the Murder of Theo Van Gogh”, 03.11.2005,

<http://blogcritics.org/archives/2005/11/03/081137.php> (17.04.2007)

⁴⁴⁶ Molly Moore and Faiza Saleh Ambah, Tension Rises Over Cartoons of Muhammad, **Washington Post Foreign Service**, 03.02. 2006 <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/02/AR20060202027> (06.03.2007)

⁴⁴⁷ Mohammed Bouyeri, http://en.wikipedia.org/wiki/Mohammed_Bouyeri (17.04.2007)

Presiding judge Udo Willem Bentinck said at the sentencing that life in prison was the only fitting punishment for a crime that sought to undermine Dutch democracy and freedom of expression.⁴⁴⁸

After this event, a bitter debate about multiculturalism, especially on the issue of immigration and Islam was raging in the Netherlands. Since the murder, the country has become increasingly polarised on racial and religious issues. In the Netherlands, policies associated with the nationalist fringe in 2002 have been co-opted by the center:

“holding asylum seekers in detention centers, more muscle for the police and intelligence services, and visa examinations that require would-be immigrants to watch videos of homosexuals kissing and topless women on the beach. Everyone must learn to speak Dutch, and Muslim clerics must mind what they say in their Friday sermons for fear of deportation.”⁴⁴⁹

Although in 2004, after France banned the wearing of headscarves in public schools, the Dutch government decided to leave that question up to individual schools. By the time its stance has been changed. In the election of November 2006, immigration and Islam were barely mentioned until the final days of the campaign, when Balkenende’s hard-line immigration minister, Rita Verdonk, said the government intended to outlaw burkas and other face-covering apparel (headgear like ski masks and full-faced helmets).⁴⁵⁰ Verdonk claimed that:

“From a security standpoint, people should always be recognizable and from the standpoint of integration, we think people should be able to communicate with one another.”⁴⁵¹

After the murder of Theo Van Gogh, the most important debates within Dutch society have been centered around the issue of freedom of speech and irreconcilable nature of Islam religion with western democracy and tolerance. This means that the consideration of the Van Gogh murder as an attack against freedom of speech further exacerbates the issue of difference and inferiority of the Islamic culture and most importantly, the incompatibility of the Muslim religion with Western democracy. The accustomed Dutch tolerance and adherence to multiculturalism have been questioned

⁴⁴⁸ Eric Olsen, op.cit.

⁴⁴⁹ Mike Corder, “Dutch government proposes ban on veils”, <http://abcnews.go.com/International/print?id=2661805> (17.04..2007)

⁴⁵⁰ International Herald Tribune, Reuters, The Associated Press, “Dutch Parties seek alliances after vote”, 23.11.2006, <http://www.ihf.com/articles/2006/11/23/news/dutch.php> , (17.04.2007)

⁴⁵¹ Mike Corder, op.cit.

after the event. This attitude has made the Muslim minority the scapegoats for rising social tension within the country and leads to the rise of racial incidents targeting Muslim minority. Inability of the Muslim population to integrate has emerged as an issue in political as well as in social arena. Anti-immigration sentiments shaped through mostly anti-Muslim feelings, still have been dominant in the political scene. Immigrants have been on the focus of many political parties' election campaign. In the 2006 election, a new far-right Party of Freedom, led by Gerrit Wilders, won nine seats on an anti-immigration platform. Following the event, rising security concerns in relation to the Muslims leads also to the inclination for stricter measures undermining sometimes human rights concerns.

London Bomb Attacks

On 7 July 2005, four bombs exploded in London, three in Underground stations and the fourth on a bus, in the morning rush hour. Over 50 people were killed in the attacks, including the 4 suspected bombers, with 700 injured. Two weeks later, on 21 July there were four more attempted attacks on London's public transport system. This time only the detonators of the bombs exploded and there were no fatalities.

After the bombing, the British Government reacted very quickly. British Prime Minister Tony Blair drew a clear distinction between the bombers and the Muslim Community and held a number of meetings with Muslim leaders in order to get their view of the events.⁴⁵² The police forces across the country have been alerted against any backlash. UK Government has also launched a number of initiatives which are not directly linked with the aftermath of the 7 July attacks but which can equally support the wider goals of countering islamophobia and strengthening cohesion.⁴⁵³ Cooperation between Government and Faith Communities, help and advice lines and monitoring centers were established to offer support to vulnerable groups. However, on the other hand, radical right wing party, British National Party, used in the leaflet an aerial photograph of the bombed bus in London on July 7, 2005, with the caption, "maybe it's time to start listening to the BNP".⁴⁵⁴

⁴⁵² <http://www.number-10.gov.uk/output/Page7858.asp>

⁴⁵³ Information also for other initiatives, see <http://press.homeoffice.gov.uk/speeches>

⁴⁵⁴ European Union Monitoring Center on Racism and Xenophobia, **The Impact of 7 July 2005 London Bomb Attacks on Muslim Communities in the EU**, November 2005, p.18

In the media, important newspapers such as Independent and Guardian, carried articles warning against a potential anti-Muslim backlash and tried to report events in a balanced and objective way. For example, the Independent of 9 July carried one of the Muslim victims on its front page and titled “Shahara Akther Islam was a lively 20 year old, a devout Muslim with all her life before her” and drew attention to the fact that there have been Muslims among the victims.⁴⁵⁵ By the same token, two days before, on July 7, the press reported the statement of the Mayor of London, Ken Livingstone saying that the attacks were aimed at ordinary, working-class Londoners, black and white, Muslim and Christian, Hindu and Jew, young and old.⁴⁵⁶

However, after it became clear that 7 July bombers were British-born Muslims, there was a distinct change in the kind of reporting. After the identification of bombers as British-born Muslims, the debate shifted to issues of integration and radicalization of the Muslim community in Britain and by the time broadened to issues of immigration, residency status and human rights legislation. Muslim groups condemned British Transport Police for suggesting that young men from ethnic minorities were more likely to be stopped and questioned in the wake of the London bombings. Home Office figures show that stop and searches of Asian people have risen steeply since the September 11 attacks.⁴⁵⁷ A legal battle to deport suspected Islamic extremists from Britain began as police detained 10 foreign nationals, including a radical preacher.⁴⁵⁸

The most serious debates have arisen upon the death of a Brazilian man, Jean Charles de Menezes, killed by police officers who thought that he was a suicide bomber at Stockwell station. This has brought about the critics of the changes introduced to the police shooting policy after 7 July bombings, with officers being told to aim for the head rather than the chest and go for a kill instead of incapacitation. In Mayor Ken Livingstone’s words:

⁴⁵⁵ Maxine Frith and Elizabeth Davies, “Shahara Akther Islam was a lively 20-year-old, a devout Muslim with all her life before her” , **The Independent** , 09.09.05, http://news.independent.co.uk/uk/this_britain/article297924.ece, (27.03.07)

⁴⁵⁶ Mayor condemns terrorist attack as cowardly – statement, 07.07.05, http://www.london.gov.uk/view_press_release.jsp?releaseid=5306 , (27.03.07)

⁴⁵⁷ Terry Kirby, “Muslim groups condemn stop-and-search policy”, **The Independent**, 02.08.2005, <http://www.news.independent.co.uk/uk/crime/article303173.ece> (30.03.2007)

⁴⁵⁸ Jason Bennetto, “Deportation fight looms as police arrest 10 Islamic extremists”, **The Independent**, 12.08.2005, <http://www.news.independent.co.uk/uk/crime/article305348.ece> (30.03.2007)

“ If you are dealing with someone who might be a suicide bomber, if they remain conscious they could trigger explosives and therefore overwhelmingly in these circumstances it going to be a shoot-to-kill policy.”⁴⁵⁹

Anger was fuelled by the reports that Mr. Menezes was in Britain on an out-of-date student visa. This has also brought the discussions whether acceptable that a man’s immigration status has any relevance at all to the value of his life.⁴⁶⁰ There has further discussions on the point of comparing the shot of suspected bomber in London with the preceding shot caused death of three IRA suspects in Gibraltar. Labour MP Bob Marshall-Andrews’ words are highly interesting in order to show the extent of the stereotyping and prejudices regarding to the Muslims which at the end leads even to the distinction of “our terrorist” vs. “their terrorist” :

“What happened on the Rock was an undiluted execution. The IRA didn’t blow themselves up together with people standing in front of them. If you believe someone is trapped up with bombs, the police have to shoot.”⁴⁶¹

Similarly, Gerald Howarth, the shadow Defence Minister, said:

“These people attach no value to their own lives, unlike the IRA...If a police officer sees somebody they believe has explosives attached to them – what do they do? It is an impossible situation.”⁴⁶²

In all Member States, during the first few days following the bombings there was extensive coverage of the events. In 2005, many National Focal Points of European Union Monitoring Center reported a number of specific incidents which had visible and direct impact on the Muslim Community. As summarized in the Reports:

“In Austria, a Turkish student reading an Arabic newspaper on a plane waiting for take-off at Vienna airport was denied transportation, because passengers feared that the student might be a terrorist . In Denmark, the police investigated an allegation that the Copenhagen radio station Radio Holger advocated killing Muslim immigrants. In Italy, the State Police carried out a nation-wide operation targeting “Islamic meeting places”: 7318 locations were visited (call centers, internet points, Halal meat shops and money transfer agents); 32703 people were identified, 141 arrested and expulsion procedures were initiated for 701 people who were charged with “unauthorised stay or failure to obey a previous

⁴⁵⁹ Kim Sengupta, Colin Brown and Jason Bennetto, “Muslims fear officers have adopted shoot-to-kill policy”, **The Independent**, 3.07.2005, <http://www.news.independent.co.uk/ukcrime/article300991.ece> (30.03.2007)

⁴⁶⁰ Nigel Morris, Jonathan Brown and Helen Lakey, “Shoot-to-kill victim was here legally, says Straw”, **The Independent**, 26.07.2005, <http://news.independent.co.uk/uk/crime/article301667.ece> (30.03.2007)

⁴⁶¹ Kim Sengupta, Colin Brown and Jason Bennetto, op.cit.

⁴⁶² *ibid.*

expulsion order or illegal use of the stay permit”. There were also smaller scale incidents in the Netherlands, Poland, Sweden, Ireland, Finland and Hungary.”⁴⁶³

In the political sphere, on the one hand, the discourse of the EU States’ governments has clearly underlined the importance of the integration of Muslims into mainstream society and condemned the bombings and distinguished between terrorism and the Muslim community as well as between radical Muslims and the ones respecting democratic values and law. However, on the other hand, especially radical right wing parties, demanded stricter measures such as tougher border controls and public surveillance:

“In Austria, FPÖ (Freedom Party) politicians demanded that mosques known to host radical preachers be closed down and that the preachers be expelled. In Denmark, the Danish People’s Party warned there was a large group of Muslim fanatics in Denmark and demanded more public surveillance and tougher border controls. In France, Phillippe de Villiers, President of the MFP (Mouvement pour la France), spoke against the “progressive Islamisation of French society” and urged for the re-establishment of border checks, control of the mosques and more investment in districts where Muslims live. In Germany, CSU called for stricter regulations concerning immigration of Muslims suggesting that it should become easier to deport Muslims who are active against the Constitution, and to withdraw their German citizenship if they have been naturalised. In Sweden, the Swedish Democrats, which are the largest party outside parliament, claimed that the terror attacks in London were a consequence of a “mass immigration policy”.”⁴⁶⁴

After the event, British government reacted very quickly and more importantly, both government and media have been acted very reasonably, being aware of an anti-Muslim backlash. However, even this attitude has not prevented xenophobic behaviour towards Muslim population to occur. In the wake of London bombings, increasing evidence of a backlash against Muslims emerged. Terrorist attacks awaken deep existential fears and poison the process of reasoning. Otherness of the foreigners and scapegoating became significantly apparent in daily life. Muslim immigrants’ status and integration problems have been highly underlined. Issues such as the deportation of the extremists and anti-terror legislation come to the fore. British public approved that rising security concerns urged for stricter measures. The concerns over preventing “Islamic terror” have undermined human rights concerns.

⁴⁶³ EUMC, **The Impact of 7 July 2005 London Bomb Attacks on Muslim Communities in the EU**, November 2005, pp.33-35.

⁴⁶⁴ *ibid.*, pp.36-38

Denmark Caricatur Crisis

On 30 September 2005, Jyllands-Posten, a Danish newspaper based in Aarhus, published an article entitled “Muhammeds ansigt” (“The Face of Muhammed”). The article also included twelve cartoons depicting Prophet Muhammad.⁴⁶⁵ In the accompanying text, it read:

“The modern, secular society is rejected by some Muslims. They demand a special position, insisting on special consideration of their own religious feelings. It is incompatible with contemporary democracy and freedom of speech, where you must be ready to put up with insults, mockery and ridicule. It is certainly not always attractive and nice to look at, and it does not mean that religious feelings should be made fun of at any price, but that is of minor importance in the present context. {...}we are on our way to a slippery slope where no-one can tell how the self-censorship will end. That is why Morgenavisen Jyllands-Posten has invited members of the Danish editorial cartoonists union to draw Muhammad as they see him[...].”⁴⁶⁶

These cartoons have stirred up Danish society as well as other countries. Muslims living both in Denmark and other countries protested the cartoons, sometimes violently through burning flags, rioting or peacefully by boycotting Danish goods. Danish embassies were set on fire in Syria and Lebanon and at least six people were killed during protests in Afghanistan and Somalia.⁴⁶⁷ Following this publication, the newspaper has received 104 registered threats, 10 people have been arrested, cartoonists have been forced into hiding because of threats against their lives and Jyllands-Posten’s headquarters have been evacuated several times due to bomb threats.⁴⁶⁸

Upon these events, eleven ambassadors from Muslim-majority countries (i.e, Turkey, Saudi Arabia, Iran, Pakistan, Egypt, Indonesia, Algeria, Bosnia and Herzegovina, Libya, Morocco, Palestine) asked for a meeting with Danish Prime Minister Anders Fogh Rasmussen in 12 October 2005. In the letter, the ambassadors mentioned not only the issue of the Muhammad cartoons, but also other recent examples of on-going smearing campaign in Danish public circles and concluded that:

⁴⁶⁵ For the cartoons see <http://www.aina.org/releases/2006021143237.htm> and Annex 7 for portrayal of BBC News.

⁴⁶⁶ Jyllands Posten Muhammad cartoons controversy, http://www.en.wikipedia.org/wiki/Jyllands-Posten_Muhammad_cartoons_controversy, p.3, (05.03.2007)

⁴⁶⁷ Arthur Bright, US, British media tread carefully in cartoon furor, <http://www.csmonitor.com/2006/0206/dailyUpdate.html>, (09.03.2007)

⁴⁶⁸ Flemming Rose, Why I Published Those Cartoons, Washington Post, 19.02.2006, <http://www.washingtonpst.com/wp-dyn/content/article/2006/02/17/AR20060217024> (06.03.2007)

“We deplore these statements and publications and urge Your Excellency’s government to take all those responsible to task under law of land in the interest of inter-faith harmony, better integration and Denmark’s overall relations with the Muslim world.”⁴⁶⁹

The government answered this request with a letter only:

“The freedom of expression has a wide scope and the Danish government has no means of influencing the press. However, Danish legislation prohibits acts or expressions of blasphemous or discriminatory nature. The offended party may bring such acts or expressions to court, and it is for the courts to decide in individual cases.”⁴⁷⁰

On October 27, 2005, a number of Muslim organizations filed a complaint with the Danish police claiming that Jyllands-Posten had committed an offence under section 140 and 266b of the Danish Criminal Code.⁴⁷¹ On 6 January 2006, the Regional Public Prosecutor in Viborg discontinued the investigation, because he founds no basis for concluding that the cartoons constituted a criminal offence. His judgement has been explained in a way that:

“His reason is based on his finding that the article concerns a subject of public interests and further, on Danish case law which extends editorial freedom to journalists when it comes to a subject of public interest. He stated that, in assessing what constitutes an offence, the right to freedom of speech must be taken into consideration. He stated that the right to freedom of speech must be exercised with the necessary respect for other human rights, including the right to protection against discrimination, insult and degradation, but no apparent violation of the law had occurred.”⁴⁷²

In reaction to this attitude, a group of Danish imams created a forty-three page document entitled “Dossier about championing the prophet Muhammad”. In this dossier, they compiled racist and culturally insensitive images circulating in the country and took them on an road show in the Arab World to raise awareness of discrimination they faced.⁴⁷³

At 6 December 2005 extraordinary session of summit of the Organisation of Islamic Conference, an official communiqué was issued, underlining the need to

⁴⁶⁹ Official letter from 12 ambassadors, http://www.filtrat.dk/grafik/Letterfrom_ambassadors.pdf (07.03.2007)

⁴⁷⁰ Official response to ambassadors from A.F.Rasmussen, <http://www.gfx-master.tv2.dk/images/Nyhederne/Pdf/side3.pdf> , (07.03.2007)

⁴⁷¹ See Annex 8 for Danish Criminal Code

⁴⁷² Jyllands-Posten Muhammad Cartoons Controversy, http://en.wikipedia.org/wiki/Jyllands-Posten_Muhammad_cartoons_controversy (05.03.2007)

⁴⁷³ Alienated Danish Muslims Sought Help from Arabs, www.spiegel.de/international/0,1518,398624,00.htm (08.03.2007)

collectively endeavor to reflect the noble Islamic values, counter Islamophobia, defamation of Islam and its values and desecration of Islamic holy sites, and to effectively coordinate with States as well as regional and international institutions and organizations to urge them to criminalize this phenomenon as a form of racism. The Conference expressed its concern at rising hatred against Islam and Muslims and condemned the recent incident of desecration of the image of the Holy Prophet Mohammad in the media of certain countries and stressed the responsibility of all governments to ensure full respect of all religions and religious symbols and the inapplicability of using the freedom of expression as a pretext to defame religions.⁴⁷⁴

On the other hand, between October 2005 and the end of January 2006, examples of cartoons were reprinted in major European newspapers from the Netherlands, Germany, Scandinavia, Belgium and France in order to show support for freedom of expression which is considered as sine qua non principle of European democratic tradition. As a gesture of solidarity, 150 newspapers in 60 countries reprinted the cartoons.⁴⁷⁵ However, several newspapers were closed and editors fired or arrested for their decision of intention to republish the cartoons, including the shutting down of a 60 year old Malaysian newspaper permanently.⁴⁷⁶ The Egyptian publisher of France Soir, which printed the controversial cartoons fired the paper's managing editor, Jacques LeFranc, saying that:

“We present our regrets to the Muslim community and to all people who have been shocked or made indignant by this publication.”⁴⁷⁷

Upon this, French satirical magazine Charlie Hebdo has republish them. It has also gone one step further and added its own cartoon on the cover, showing Muhammad in a state of exasperation. “It's though being loved by idiots,” he complains, face buried in hands – an allusion to suicide bombers who blow themselves up in the name of Allah and his prophet.⁴⁷⁸

⁴⁷⁴ Final Communiqué of the Third Extraordinary Session of the Islamic Summit Conference, “Meeting the Challenges of the 21st Century, Solidarity in Action”, 7-8 December 2005, www.oic-oci.org/ex-summit/english/fc-exsumm-en.htm, (08.03.2007)

⁴⁷⁵ Stefan Simons, Cartoons 1: Muhammad 0, <http://www.spiegel.de/international/spiegel/0,1518,druck-466403.00.htm>, (06.03.2007)

⁴⁷⁶ Jyllands-Posten Muhammad Cartoons Controversy, http://en.wikipedia.org/wiki/Jyllands-Posten_Muhammad_cartoons_controversy (05.03.2007)

⁴⁷⁷ Molly Moore and Faiza Saleh Ambah, Tension Rises Over Cartoons of Muhammad, **Washington Post Foreign Service**, 03.02.2006 <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/02/AR20060202027> (06.03.2007)

⁴⁷⁸ Stefan Simons, op.cit.

Charlie Hebdo's, average circulation 60,000, sold 400,000 copies of its Muhammad issue and it has become a focus of debate between satire and religion. Muslim Council, created in 2003 at the suggestion of Interior Minister Nicolas Sarkozy, began a legal procedure against the magazine. During the trials, Charlie Hebdo has been supported by various segments of French politics, i.e, in the name of "defense of freedom of opinion" by French Socialist Party or by François Bayrou, presidential candidate from the liberal UDF party, in order to stress his double identity as Christian and a French citizen, or by Sarkozy as a candidate for president from the conservative UMP party, who claims to be a critic of "every form of censorship".⁴⁷⁹ At the end, On February 2007, the prosecution requested Charlie Hebdo be cleared of all charges. Here, it is important to note that major newspapers of United Kingdom such as The Guardian and The Independent of London, covered story without including the cartoons.⁴⁸⁰

This event has sparked quite different concerns for European and Muslim society. The publication of these cartoons have had a huge impact around the world with both riots in many Muslim as well as European countries and serious critics from quite different point of views.

Muslims described the cartoons as Islamophobic or racist and argue that they are blasphemous to people of the Muslim faith, intended to humiliate Danish minority, or are a manifestation of ignorance about the history of western imperialism, from colonialism to the current conflicts in the Middle East.⁴⁸¹ They say that freedom of expression does not imply an endorsement of insulting people's religious feelings. Their argument is the fact that under Islamic teachings, any depiction of Muhammad is blasphemy, including depictions that are not negative. The cartoon violated that dictum and many of them also ridiculed the prophet. In one, he is depicted as a terrorist, with his turban holding a bomb with a burning fuse.⁴⁸² Minhaj Qidwai saw this as an eye – opener for the Muslims to face about how the West feels about Islam.⁴⁸³ The cartoon, depicting the Prophet with a bomb in his turban, has drawn the harshest criticism.

⁴⁷⁹ *ibid.*

⁴⁸⁰ See Annex 9 (1) for quotations from the Guardian and the Independent

⁴⁸¹ Jyllands-Posten Muhammad Cartoons Controversy, http://en.wikipedia.org/wiki/Jyllands-Posten_Muhammad_cartoons_controversy (05.03.2007)

⁴⁸² Molly Moore and Faiza Saleh Ambah, *op.cit.*

⁴⁸³ Minhaj Qidwai, Blasphemous Cartoons Trigger Muslim Fury, **Iran Daily**, 13.02.2006, <http://www.iran-daily.com/71384/2497/html/art.htm> (06.03.2007)

Angry voices claim the cartoon is saying that the prophet is a terrorist or that every Muslim is a terrorist.

Iran Daily evaluates the cartoons as insulting Islam under the veil of freedom of speech. It based this evaluation on the background of the Jyllands-Posten.⁴⁸⁴ Muslim authors and journalists, have usually found caricatures insulting and false and some have argued the need for a “censorship” in the sake of the preventing a clash of civilisation.⁴⁸⁵ The supporters of the Muslims’ position in Europe, such as famous writer Günter Grass, Gary Young from the Guardian and the editor of Muslim lifestyle magazine called Emel, Sarah Joseph, have criticized European press on the point that it has been forget the Nazism experience and no adequate importance has been given to Islamophobia issue compared to anti-Semitism.⁴⁸⁶ There are European laws against anti-Semitism but none against anti-Islamism.⁴⁸⁷

On the contrary, the issue has been seen by Europeans as an exercise of freedom of expression and freedom of press. In this context, the explanations of Flemming Rose, cultural editors of Jyllands-Posten, are worth to be mentioned. He has explained the reasons of the publication of these cartoons as:

“[...] I commissioned the cartoons in response to several incidents of self-censorship in Europe caused by widening fears and feelings of intimidation in dealing with issues related to Islam. And I still believe that this is a topic that we Europeans must confront, challenging moderate Muslims to speak out. {...} Our goal was simply to push back self-imposed limits on expression that seemed to be closing in tighter.”⁴⁸⁸

He has evaluated this event as the culmination of disturbing instances of self-censorship and he has given examples of self-censorship, in his words, pitting freedom of speech against the fear of confronting issues about Islam.⁴⁸⁹ According to Rose, this is a reaction to the fear arisen in Danish society toward Islam. Jyllands-Posten’s intention was to show this instead of telling and for this reason, it has chosen such a shocking, impulsive way. He has seen this publication as an example of treating Muslims as equals in Denmark, by the way of integrating them into the Danish tradition of satire because they are accepted as a part of Danish society, not strangers. In this

⁴⁸⁴ See Annex 9(2) for quotation from Iran Daily’s evaluation of Jyllands- Posten

⁴⁸⁵ See Annex 9, (3), (4), (5) for quotations and references.

⁴⁸⁶ See Annex 9 (6), (7), (8) for quotations and references.

⁴⁸⁷ Minhaj Qidwai, op.cit.

⁴⁸⁸ Flemming Rose, op.cit.

⁴⁸⁹ See Annex 9(9) for the examples of self-censorship in Denmark.

framework, he has drawn attention to the fact that these cartoons have also made fun of Jyllands-Posten, portraying its cultural editors as a bunch of reactionary provocateurs. Again similarly, it puts the head of the anti-immigration Danish People's Party in a lineup, as if she is a suspected criminal. Another suggests that the children's writer who could not find an illustrator for his book went public just to get cheap publicity. He acknowledges that some people have been offended by the publication of the cartoons and he claims that Jyllands-Posten didn't intend to insult and disrespect Islam. He also reads differently the cartoon depicting the Prophet with a bomb in his turban in such a way that:

“Some individuals have taken the religion of Islam hostage by committing terrorist acts in the name of the prophet. They are the ones who have given the religion a bad name. The cartoon also plays into the fairy tale about Aladdin and the orange that fell into his turban and made his fortune. This suggests that the bomb comes from the outside world and is not an inherent characteristic of the prophet.”⁴⁹⁰

However, he adds:

“[...]If a believer demands that I, as a nonbeliever, observe his taboos in the public domain, he is not asking for my respect, but for my submission. And that is incompatible with a secular democracy.”⁴⁹¹

A survey on the European press also shows clearly that Europeans have preferred to see this event primarily as an issue of freedom of expression which is sine qua non principle of European tradition of democracy.⁴⁹² In European press, the reaction of the Muslim population has been perceived as a threat to democracy and used as a proof of the incompatibility of the Islam with the European values.⁴⁹³ In most of the critics, Muslim population or Islam have explicitly or implicitly had an inferior status which has sharpened Us vs. Them dichotomy.⁴⁹⁴ At the same time, Europeans have evaluated this event as an opportunity to transform Islam and construct “European way of Islam”. Abdennour Bidar, a philosophy professor in Nice, shares in *Le Monde* his views on the profound democratic changes to Islam in Europe brought about “by the daily reality of Muslims” living there and similarly Ayaan Hirsi Ali mentioned about

⁴⁹⁰ Flemming Rose, op.cit.

⁴⁹¹ *ibid.*

⁴⁹² See Annex 9 (10), (11), (12), (13) for quotations and references

⁴⁹³ See Annex 9 (14), (15), (16), (17), (18) for quotations and references

⁴⁹⁴ See Annex 9 (19), (20), (21) for quotations and references

the opportunity brought with this conflict in the direction of the the progress of the Islam.⁴⁹⁵

This event was seen differently from two sides: as an act of freedom of expression and freedom of press from European side and as an act insulting Islam religion from Muslim side. By this concrete polarization, the argument of the irreconcilability of Islam with western democratic values has emerged within European society and this founded sizeable support throughout Europe. The Cartoon Crisis, is the summit of the tension which has been already existed in European society. On both sides, there are people with the intention to escalate the dispute and on the other hand, there are also sensible people to put an end to the overreactions. The Muslim side are used the conflict to demonstrate that Europe is against Islam. On the European side, there are people who wish to spread an image of Muslims as undermining freedom of expression and wanting to change Western society. The Cartoon Crisis brings unquestionably a pan-European public which acknowledges its commitment to common European values. The message given by Europe is that in Europe, God belongs in civil society. This isn't to say that people shouldn't be open about their religious affiliations. But they shouldn't try to force them on others or use them as a weapon against democratic society. Not all those who live in Europe share these values, but the vast majority do. In this circumstances, the fact that European public discuss and defend this system of values strengthens the opposition of 'us and them', of Christians against Muslims, of natives against immigrants, of West against East.

Above mentioned three events have been explained in detail in order to show the existence of Islamophobia in the European Union today. In all three events, already existed prejudices have come to the fore and stereotyping regarding to the Muslim population has been used to establish Us vs Them dichotomy through religious or cultural lines. The supremacy of Western culture and incompatibility of Islam with the “western values such as freedom of speech, democracy, respect for human rights , tolerance etc.” have used to be at the center of the all arguments with islamophobic connotations. After all of three events, rising security concerns have provided grounds for stricter legal measures and human rights have been sometimes undermined. However, on the other hand, the awareness on the “social threat” arising from this polarization, has urged Europeans to take initiatives for the prevention of the

⁴⁹⁵ See Annex 9 (22), (23) for quotations and references

Islamophobia. In this context, a number of specific initiatives and works have started to take place in both Europe Union's and Member States' level.

2) Measures Against Islamophobia

Immediately after September 11, 2001 and the following time period, EU has always been alerted against a danger of rising hostility towards Muslim population. For this reason, several initiatives have been started in both theoretical and practical frameworks. Initially, EU tries to establish a theoretical or legal framework within which the concept of islamophobia is defined.

Although there is currently no legally agreed definition of islamophobia, nor has social science developed a common definition, European Union has worked for the prevention of islamophobia on the bases of internationally agreed standards on racism which are universally accepted by Governments and international organizations, namely Council of Europe and United Nations.⁴⁹⁶

The Council of Europe's Commission, ECRI has published two relevant General Policy Recommendations: General Policy Recommendation No.5 and General Policy Recommendation No.7. The first recommendation recognises that Muslim communities are subject to prejudice, which may manifest itself in different guises, in particular through negative general attitudes but also to varying degrees, through discriminatory acts and through violence and harassment.⁴⁹⁷ The second one defines racism as well as direct and indirect racial discrimination, drawing inspiration from those contained in the Directive 2000/43/CE of the Council of the European Union implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and in the Directive 2000/78/CE of the Council of the European Union establishing a general framework for equal treatment in employment and occupation as well as on the case-law of the European Court of Human Rights.⁴⁹⁸

The reactions and counter-reactions sparked by the cartoons raised concerns about a possible negative impact on the integration of Muslims in the European Union. Especially after the Cartoon Crisis, the further initiatives have been developed in the

⁴⁹⁶ European Union Monitoring Center on Racism and Xenophobia, **Muslims in the European Union: Discrimination and Islamophobia**, EUMC, 2006, p. 13.

⁴⁹⁷ ECRI, CRI (2000) 21, **General Policy Recommendation no.5 combating intolerance and discrimination against Muslims**, Strasbourg, 27 April 2000.

⁴⁹⁸ ECRI, CRI (2003) 8, **General Policy Recommendation no.7 on national legislation to combat racism and racial discrimination**, Strasbourg, 13 December 2002.

direction of decreasing polarization between Us and Them, establishing a balanced approach between Europeans and Muslims and enacting legislative acts for this purpose.

For example, International Federation of Journalists was agreed on 15 February 2006 that all media, on all sides, must act professionally in dealing with religious and cultural issues and rights of minorities, and should not do anything that would create unnecessary tension by promoting hatred or inciting violence.⁴⁹⁹ Similarly, EUMC, tries to provide a balanced approach between the freedom of expression and prevention of xenophobic acts by stating that:

“The hard-won contest of freedom of expression is part of the principles and values that the EU is founded upon, and a fundamental cornerstone of European societies that is non negotiable. However, freedom of expression does not preclude the protection of people from racist and xenophobic language. Freedom of expression is not an absolute right; international law and legal order of EU Member States lay down certain limits that our democratic societies consider are justified in order to protect other fundamental rights. Freedom of expression and the protection against racist and xenophobic language can, and have to, go hand-in-hand, the two together make democracy meaningful.”⁵⁰⁰

Furthermore, in the UK, the Racial and Religious Hatred Act was acted in 2006, which applies to intentional acts of threatening words or behaviour and the display, publication, broadcaster distribution of threatening material that is likely to stir up religious or racial hatred.⁵⁰¹

In practical sphere, various surveys have been conducted and reports on Islamophobia have been prepared indicating European Muslims’ situation. EUMC is the most active and reliable organization in this area. Its latest report on Islamophobia includes important data regarding to the crucial issues of Muslims in the European Union Member States.⁵⁰² The report consisted 58 in-depth interviews conducted between August 2005 and January 2006, with members of Muslim communities in 10 EU countries with significant Muslim populations (Belgium, Denmark, Germany, Spain, France, Greece, Italy, Netherlands, Austria and the United Kingdom) highlights

⁴⁹⁹ See Press release by the International Federation of Journalists made on 17 February 2006, available at: <http://www.ifj.org/default.asp?index=3718&Language=EN>, (05.03.2007)

⁵⁰⁰ European Union Monitoring Center on Racism and Xenophobia, **Muslims in the European Union: Discrimination and Islamophobia**, EUMC, 2006, p. 43

⁵⁰¹ More information at <http://www.opsi.gov.uk/acts2006/20060001.htm> (05.03.2007)

⁵⁰² European Union Monitoring Center on Racism and Xenophobia, **Perceptions of Discrimination and Islamophobia: Voices From Members of Muslim Communities in the European Union**, 2006.

areas in which Muslims seriously experienced exclusion and hence perceived islamophobia. According to this report, the crucial problems of Muslim population are seen in the following areas: security, citizenship, integration, understanding regarding to Islam, the attitudes of media, daily discrimination and the effect of anti-discrimination laws.⁵⁰³

From the interviews, it is possible to identify clearly that Muslims have thought to be perceived as terrorist sympathizers, as a threat to European values, security, law, order and demographic structure and hence, they are negatively segregated in media and in daily life. Media presents largely a negative image of Muslims through selective reporting.⁵⁰⁴ Islam is presented as monolithic, authoritarian and oppressive towards women. Many Muslims feel excluded from economic, social and cultural life and they set exclusion from citizenship as a significant factor affecting their vulnerable status. Even when Muslims are citizens of a Member State, they can still feel a sense of exclusion. They feel that they are perceived as “foreigners” who are a threat to society and treated with suspicion. For Muslims, the issue of identity and belonging is complex and multifaceted. The interviews suggest that the right to citizenship is a critical issue for Muslims. For example, respondents estimated that of the three millions Muslims in Germany, only 600,000 have German citizenship. The interviewers suggest that Muslims who have citizenship feel their loyalty to the state is constantly under suspicion.⁵⁰⁵

Official policies such as the ban on women wearing the headscarf are perceived by Muslims to militate against integration. Although the ban can be framed by the authorities in terms of a general ban on religious symbols, many Muslims feel that such a ban is targeted at them. The ban of religious symbols, such as the headscarf in schools is felt by Muslims to be a signal that they cannot be part of society because of their religion. Muslim experienced verbal rather than physical violence, mostly happen when a person is visibly Muslim such as when wearing a headscarf. The report sets out respondents’ perceptions of and reactions to the various manifestations of Islamophobia that affect Muslim communities such as prejudiced attitudes experienced in everyday interactions, aggressive or discriminatory reactions to women wearing the headscarf ,

⁵⁰³ European Union Monitoring Center on Racism and Xenophobia, **Perceptions of Discrimination and Islamophobia: Voices From Members of Muslim Communities in the European Union**, 2006, passim.

⁵⁰⁴ See Annex10(1) for examples of respondent’s view.

⁵⁰⁵ See Annex 10(2) for examples of respondent’s view

insensitivity by the providers of local services, unfair treatment by the police or judicial system, incidents of discrimination in housing, education and employment.⁵⁰⁶

Although EU has already taken measures for the prevention of the discrimination, respondents believe that EU wide anti-discrimination legislation is not useful for religious discrimination.⁵⁰⁷ Muslims feel that complaints are unlikely to lead action. Existing equality bodies do not directly address issues of religious discrimination or islamophobia. Thus they felt that, as victims of discrimination, Muslims are left with legal rights but no realistic access to remedies.⁵⁰⁸

This report is highly important to see the situation from the Muslim side. Rising hostility towards them, which became evident especially in the post-September 11 period, has still widespread in Europe. Although several theoretical and practical regulations have been done, there is still no evidence showing a sizeable decrease in hostility.

To sum up, it can be claimed that immigrants have been used on both the EU level politics and member states' level politics. On the EU level, they are basically used as a tool in the formation of a common European identity. On the member states' level, they are the "primary scapegoats" especially for right-wing parties. All these also have direct link with the changed threat perceptions of the post-1990 period and hence rising xenophobia throughout the European Union. In this circumstances, today in the European Union, if racism, intolerance and a narrow nationalism have still continued to gain strenght in reaction to the present level of immigration (which has tended to be decreased in 2000s with the help of new measures on the asylum, border management and illegal migration), the new focus of the hostility has to be questioned. Muslim population in the European Union seems to be the "re-emerged other" after September 11.

DISCUSSION

Throughout many parts of the EU in the post-September 11 period, a rise in xenophobia against Muslims was identifiable. The impact of September 11 therefore seems to have a direct impact on the way that an increased sense of hostility and lack of

⁵⁰⁶ See Annex 10(3) for exmaples of respondent's view.

⁵⁰⁷ See Annex 10 (4) for examples respondent's view.

⁵⁰⁸ See Annex 10 (5) for examples respondent's view.

tolerance was exerted against pre-existent, usually historically perceived foes. The negative traits and stereotypes that were attributed to “those who were considered as other” were significantly reaffirmed. So, by creating a concept of “enemy within”, both old and new enemies became legitimate targets. Xenophobia has emerged as a common response to terrorist outrages and diversity in a population became a real menace with a developing scapegoating mentality.⁵⁰⁹

As previously said, the most prevalent group of people that seemed to be ever more vulnerable as victims of xenophobia were asylum seekers, political refugees and immigrants. “An evil ideology”, a nebulous, unspecified, dark force as named by Robert Fisk⁵¹⁰ has been developing in Europe today with the focus of Islam. Today, in Europe, as the Jewish acts between 1899-1939, the acts against Muslims have started to be enacted. For example, in the case of France, defence of laïcité is presented as grounds for setting limits to citizen’s expression of ‘difference’ and even to cultural and religious identification itself.⁵¹¹ Although this law’s aim is said to promote integration and bolster social consensus regarding the terms on which France’s ethnic and religious minorities of postwar immigrant origin are to be integrated, it runs also the risk of producing effects directly opposed to those intended.⁵¹² This kind of measures may easily be perceived as a proof of rising islamophobia within the society. In the similar vein, Germany, also with a large Muslim immigrant community has a law banning teachers in public schools from wearing headscarves; in Belgium, one mayor banned burqas, but there is no general ban in force across the country; former British Foreign Secretary Jack Straw caused a stir by saying he wants Muslim women to abandon the full-face veil a view endorsed by Prime Minister Tony Blair.⁵¹³

As a result, it can easily be said that the triggering effect of this “visual things” may be evaluated today, as a signal of the reflection of “a kind of hidden racism” in the European Union. The cautious attitude of the Union and relatedly, immediate actions taken after September 11 for the prevention of Islamophobia shows the awareness of the

⁵⁰⁹ Paul Valley, “The Psychology of Fear”, **The Independent**, 23.07.2005, <http://comment.independent.co.uk/commentators/article300916.ece>, (30.03.2007)

⁵¹⁰ Robert Fisk, “The Dangerous Dichotomy Between Some Muslims and the Society Around Them”, **The Independent**, 23.07.2005, <http://news.independent.co.uk/world/fisk/article300918.ece>, (30.03.2007)

⁵¹¹ Elaine R. Thomas, “Keeping identity at a distance: Explaining France’s new legal restrictions on the Islamic headscarf”, **Ethnic and Racial Studies**, Vol.29 No.2 March 2006, pp.241-242

⁵¹² *ibid.*, p.256

⁵¹³ Mike Corder, “Dutch government proposes ban on veils”, <http://abcnews.go.com/International/print?id=2661805> (17.04..2007)

Union. However, for the time being, “Muslim population” and “European population” have still suffered from each other.

CONCLUSION

International migration, in its various forms (labour migration, refugees, asylum seekers, displaced persons etc.) is the undeniable fact of the today's world. However, it is enormously diverse field of study and quite complex phenomenon on the point that firstly, there are great variety of migrants and secondly there exist various scientific disciplines which deals with migration phenomenon. Consequently, a multidisciplinary approach is extremely important in explaining contemporary migration movements and in establishing a general framework. Political science has long neglected international migration and states' roles in shaping international migration. Although migration theories do not take states' roles into consideration, today, states are extremely important in defining who is migrant or what are his/her rights. States, together with organizations and institutions in international and regional level play significant roles in structuring both perceptions of international migration and migrants' rights.

Evaluations of the related documents at international and at European level, show that it is still the case that migrants had limited legal protection. Although all international human rights documents have clauses for the protection of the migrants' rights, there are only limited success in relation to the ratification process. Many state has been ratified with reservations depending on its priorities such as sovereignty, nationality and security. Consequently, states' interests and priorities have determining impact on the migrants' rights issue. The protection of the migrants' human rights is seen something incompatible with either the exercise of sovereignty or practical implementation of national security policies. Some states have the view that migrants are somehow not entitled to the full protection of human rights law, because of the belief that there are some rights which only citizens are entitled to. Thus, citizenship, nationality and security appear as factors affecting exclusion or inclusion of a particular segment of the society, namely migrants, labelling them as "foreigners" or "others".

The reflection of this exclusion is obvious in xenophobia issue. Although there is not a theoretical framework in this issue, meaning that there is not a unique and unchanged definition of who can be considered as foreigner in a given community; migrants, easy to label as "foreigners" or "others", are always the primary target of xenophobia. The analysis of the European Union case shows that today, migrants are

the primary targets of the xenophobic attitudes. The use of the migrants as a tool both Member States' level and EU level politics, either for gathering extreme right votes or for constructing a European identity, leads to the politicization of the migration. The rise of nationalism and extreme right parties culminating with a Eurocentric discourse and security concerns make migrants the primary target of xenophobic attitudes.

Indeed, "other" has always been important constitutive element of European self-making. There are always an "other" in European history: Blacks or slaves during colonialism, Jews in pre-World War II period, Communists during the Cold War period and so on. This become both a base for the formation of national identity and national culture and the source for xenophobic attitudes towards "other". However, in European Union, some periods are obviously significant in analyzing the rise of xenophobia.

The first one is the post-Cold War period during which fear of the influx of the migrants from the East and rising security concerns leads to the fact that migrants and xenophobia relation is used to mobilize nationalist sentiments of the people on the one hand and on the other hand, to apply stricter measures in relation to the border management and to construct a Common Migration Policy in the European Union. Then, the dilemma between EU's single market freedoms and security concerns appears and this has always had serious impacts on migrants' issues in the Union. At the same time, it is again this period (particularly post Amsterdam period) which marks the beginning of a new era that migrants' rights and integration have been specifically emphasized. Several initiatives have begun on the basis of non-discrimination principle with the aim to prevent migrants' vulnerability in different areas of political, social and economical life. Especially in 2000s, the relation between migrants and xenophobia has been explicitly set through various communications, summit meeting, framework decisions and monitoring organizations stating migrants' integration as an urgent and primary concern in the struggle with xenophobia. However, although these dynamic political framework, EU has still not directly refer migrants' vulnerability in relation to the xenophobic attacks in its primary legislation. EU has taken minimal steps towards a common approach to the migrants issue such as integration or migrants' rights but defers to the Member States the crucial question of inclusion and exclusion which is conceptualized in the form of "citizenship" by the states.

Second significant period in the evaluation of migrants and xenophobia relation in the EU, is post - September 11 period. "The perception of otherness", the

basis upon which xenophobia is constructed, emerges in this period as the primary factor affecting migrants community such a way that Islamophobia appears as the new kind of hostility against “others”. This means that perception of the Muslims became the target. Incidents, taken place in some of the EU Member States, indicate a European perception of Muslim population as a threat to European culture of which democracy, human rights and “tolerance” are thought to be unseparable components.

Above mentioned two periods show that in European Union, firstly, “perception of a threat” is decisive in the construction of xenophobia against migrants. Secondly, “a concrete object of differentiation” has been always needed for the emergence as well as persistence of xenophobia. Today Islamophobia has being fuelled by conditions faced also by blacks and Jews, namely, the exclusion of non-Europeans. This signals something relatively new but also have very deep roots.

In this framework, it is evident that in Europe, today, race has not been defined anymore on the basis of visible biological determinants because of the Nazism experience, but rather on the basis of cultural differences. In this framework, the recent development of Islamophobia and various monitoring emphasizing the triggering effect of “visual identifiers” (turban, hijab, burka or beard) on the attacks on “foreigners” can be evaluated in a way, as the reflection of a kind of “hidden racism” or “new form of racism” in European culture.

On the other hand, the changing focus of xenophobia over time, (Jews prior to World War II; Muslims after September 11) reinforces the important point that this is not simply a matter of biology, skin colour or religion. It has to do more complexly with a set of views or perceptions. This may be evaluated a sign which shows that we may face the emergence of new forms of xenophobia in the future. If before “we” reacted against the “others” in the sense of the other’s ethnic origin, religious belief or race, today or in the future we may also react against all those “different” from us or all those to be perceived as a threat to us for whatever reason.

Today, international human rights discourse has claimed that xenophobia, racism, superiority and prejudice have to be eliminated, or at least to have their impact minimized. European Union has been totally aware of this, as also seen in its measures taken against xenophobia and for the preservation of migrants’ rights. However, the paradoxes and dualisms inherited both migration and xenophobia discourse brings here

another paradox implying that as long as migration exists, xenophobia will find fertile soils to flourish. Although the awareness rising initiatives and legal measures are undeniably important for the prevention of xenophobia, there are not lead to the overall solution of the problem. Besause it is a matter of “perception” culminating within the political and cultural frameworks, not easy to change but easy to manipulate. Today, migrants in general, Muslims in particular, are set as a threat for Europe. In this condition, it will be difficult to establish a dialogue between cultures. Because it is impossible to have a dialogue in an insecure condition. Consequently, establishment of a secure environment which is based on mutual trust and tolerance is sine qua non condition for the prevention of xenophobia in any society.

ANNEXES

ANNEX 1 Table 1. Types of Migrants

**Table 1.
Types of Migrants**

| ACCORDING TO NATIONALITY | | ACCORDING TO GROUNDS FOR ADMISSION | |
|---|--|---|--|
| CITIZEN | ALIEN | MIGRANTS WITH A VALID STAY/RESIDENCE PERMIT | MIGRANTS WITHOUT A VALID STAY/RESIDENCE PERMIT |
| <ul style="list-style-type: none"> a) Full Rights b) Partial Rights | <ul style="list-style-type: none"> a) Citizens of Member States of specific free movement area b) Third country nationals c) Former citizens /nationals and their descendents | <ul style="list-style-type: none"> a) Labour migrants b) Entrepreneur c) Follow-up migrants (Family reunification) d) Refugees / Asylum seekers e) Students f) Economically not active & post active persons g) Former citizens/nationals and their descendents. | |

Source: Philip J. Muus and Elsbeth W. Van Dam, Comparative Research on International Migration and International Migration Policy, European Commission, June 1996, p.4.

ANNEX 2 International Labour Organization's Documents

ILO Convention No. 97

Article 6 (1)(b) states that

“social security (that is to say, legal provisions in respect of employment injury, maternity, sickness, invalidity, old age, death, unemployment and family responsibilities and any other contingency which, according to national laws or regulations, is covered by a social security scheme) subject to the following limitations:

- (i) there may be appropriate arrangements for the maintenance of acquired rights and rights in course of acquisition;

national laws or regulations of immigration countries may prescribe special arrangements concerning benefits or portions of benefits which are payable wholly out of public funds, and concerning allowances paid to persons who do not fulfil the contribution conditions prescribed for the award of a normal pension.”

Article 8

1. A migrant for employment who has been admitted on a permanent basis and the members of his family who have been authorised to accompany or join him shall not be returned to their territory of origin or the territory from which they emigrated because the migrant is unable to follow his occupation by reason of illness contracted or injury sustained subsequent to entry, unless the person concerned so desires or an international agreement to which the Member is a party so provides.

2. When migrants for employment are admitted on a permanent basis upon arrival in the country of immigration the competent authority of that country may determine that the provisions of paragraph 1 of this Article shall take effect only after a reasonable period which shall in no case exceed five years from the date of admission of such migrants.

ILO Convention No.143

Article 8 (1) :

“On condition that he has resided legally in the territory for the purpose of employment, the migrant worker shall not be regarded as in an illegal or irregular situation by the mere fact of the loss of his employment, which shall not in itself imply the withdrawal of his authorisation of residence or, as the case may be, work permit.”

In the Article 9 (1):

“ Without prejudice to measures designed to control movements of migrants for employment by ensuring that migrant workers enter national territory are admitted to

employment in conformity with the relevant laws and regulations, the migrant worker shall, in cases in which these laws and regulations have not been respected and in which his position cannot be regularised, enjoy equality of treatment for himself and his family in respect of rights arising out of past employment as regards remuneration, social security and other benefits.”

ANNEX 3 United Nation's Documents

UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others

Article 17

“The Parties to the present convention undertake, in connection with immigration and emigration, to adopt or maintain such measures as are required, in terms of their obligations under the present Convention, to check the traffic in persons of either sex for the purpose of prostitution.

In particular they undertake:

- (1) To make such regulations as are necessary for the protection of immigrants or emigrants, and in particular, women and children, both at the place of arrival and departure and while en route;
- (2) To arrange for appropriate publicity warning the public of dangers of the aforesaid traffic;
- (3) To take appropriate measures to ensure supervision of railway stations, airports, seaports and en route , and of other public places, in order to prevent international traffic in persons for the purpose of prostitution;
- (4) To take appropriate measures in order that the appropriate authorities be informed of the arrival of persons who appear, prima facie, to be the principals and accomplices in or victims of such traffic.”

UN Convention relating to the Status of Refugees

Article 17

“1) The Contracting States shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage-earning employment.

2) In any case, restrictive measures imposed on aliens or the employment of aliens for the protection of the national labour market shall not be applied to refugee who was already exempt from them at the date of entry into force of this Convention for the Contracting State concerned , who fulfils one of the following conditions:

- a) He has completed three years's residence in the country.
- b) He has a spouse possessing the nationality of the country of residence. A refugee may not invoke the benefit of this provision if he has abandoned his spouse
- c) He has one or more children possessing the nationality of the country of residence.

3) The Contracting States shall give sympathetic consideration to assimilating the rights of all refugees with regards to wage-earning employment to those of nationals, and in particular of those refugees who have entered their territory pursuant to programmes of labour recruitment or under immigration schemes.”

UNESCO Convention Against Discrimination in Education

Article 2(b):

“the establishment or maintenance, for religious or linguistic reasons, of separate educational systems or institutions offering an education which is in keeping with the wishes of the pupil’s parents or legal guardians, if participation in such systems or attendance at such institutions is optional and if the education provided conforms to such standards as may be laid down or approved by the competent authorities, in particular for education of the same level, shall not be deemed to constitute discrimination with the meaning of article 1 of this Convention.”

UN Convention on the Reduction of Statelessness

Article 1:

A Contracting State shall not be deprived of a person of his nationality if such deprivation would render him stateless.

Article 8(3)

“ (3) Notwithstanding the provisions of Paragraph 1 of this Article, a Contracting State may retain the right to deprive a person of his nationality, if at a time of signature, ratification or accession it specifies its retention of such right one or more of the following grounds, being ground existing in its national law at that time:

- a) that, inconsistently with his duty of loyalty to the Contracting State, the person
 - (i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or
 - (ii) has conducted himself in a manner seriously prejudicial to vital interest of the State”

Article 11

“ The Contracting States shall promote the establishment within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority”

Article 14:

“Any dispute between Contracting States concerning the interpretation or application of this Convention which cannot be settled by other means shall be submitted to the International Court of Justice at the request of the parties to the dispute”

UN Convention on the Rights of the Child

Article 2(1):

“ States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.”

Article 7:

“1.The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and as far as possible, the right to know and be cared for by his or her parents.

2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.”

Article 9(1):

“States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedure, that such separation is necessary for the best interests of the child.....”

Article 10(1):

“In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family”

UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families

PART III

- to leave and enter the State of origin (Article 8)
- to life (Article 9)
- not to be subjected to inhumane or degrading treatment of punishment (Article 10)
- not to be subjected to slavery or servitude and forced and compulsory labour (Article 11)
- freedom of thought, conscience and religion (Article 12)
- to hold and express opinions (Article 13)
- not to be subjected to arbitrary or unlawful interference in his or her privacy, home, family or communications. (Article 14)

- not to have their property confiscated arbitrarily, and to receive adequate compensation for confiscated assets. (Article 15)
- to the protection of their liberty and security, including against any physical (and sexual) abuse and harassment (Articles 16 and 17)
- to have investigations, arrests and detentions carried out in accordance with established procedure. (Article 17)
- to equality with nationals of the State before the courts and tribunals (Article 18)
- to necessary legal assistance, interpreters and information in a language he or she understands (Article 18)
- humanitarian considerations regarding the person's migrant status should be taken into account during sentencing (Article 19)
- not to have identity documents, work and residence permit of migrant workers confiscated or destroyed by anyone (Article 21)
- to join or form trade unions and associations (Article 26)
- to equality with nationals in gaining access to education, including public pre-school education (Article 30)
- to transfer their earnings and savings as well as their personal effects and belongings at the end of their term of employment (Article 32)
- to be informed in a language they understand by the States concerned about their rights arising from the Convention as well as the conditions of their admission and their rights and obligations in those States (Article 33)
- to equal treatment with nationals of the host country in respect of remuneration and conditions of work (overtime, hours of work, weekly rest, holiays with pay, safety, health, termination of wor contract, minimum age, restrictions on home work, etc.) (Article 25) This is also extended to social security benefits (Article 27) and emergency medical care (Article 28)

PART IV

- right to be allowed to be temporarily absent, for reasons of family needs and obligations, without effect on their authorization to stay or work (Article 38)
- right to move freely in the territory of the State of employment and to choose where they wish to reside, subject to permissible restrictions. (Article 39)

- right to form associations and trade unions (Article 40)
- equality for migrant workers and members of their families with nationals of the State of employment in access to education, vocational guidance and placement services, vocational training, retraining, housing including social housing schemes, protection against exploitation in respect of rents, social and health services, cooperatives and self-managed enterprises, access to and participation in cultural life (Article 43 and 45)
- right to transfer their earnings and savings from the State of employment (Article 47)
- equality of treatment in respect of protection against dismissal, unemployment benefits, access to public work schemes intended to combat unemployment and access to alternative employment in the event of loss of work or termination of other remunerated activity (Article 54)
- right to address cases to competent authorities in the State of employment in relation to breaches of work contracts by the employer (Article 54)
- right to equal treatment in remunerated activities (Article 55)
- right not to be expelled, except for reasons defined in legislation and subject to human rights standards. (Article 56)

UN Convention on the Elimination of All Forms of Racial Discrimination

Article 14 (1):

A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.

ANNEX 4 Articles of the Treaty on European Union (TEU)

MAASTRICHT TREATY

Article 100c

1. The Council, acting unanimously on proposal from the Commission and after consulting the European Parliament, shall determine the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States.
2. However, in the event of an emergency situation in a third country posing a threat of a sudden inflow of nationals from that country into the Community, the Council, acting by a qualified majority on a recommendation from the Commission, may introduce, for a period not exceeding six months, a visa requirement for nationals from the country in question. The visa requirement established under this paragraph may be extended in accordance with the procedure referred to in paragraph 1.

Article K.1:

For the purpose of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest:

1. asylum policy;
2. rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon;
3. immigration policy and policy regarding nationals of third countries;
 - a) conditions of entry and movement by nationals of third countries on the territory of Member States;
 - b) conditions of residence by nationals of third countries on the territory of Member States including family reunion and access to employment;
 - c) combatting unauthorized immigration, residence and work by nationals of third countries on the territory of Member States;

AMSTERDAM TREATY

Title VI

PROVISIONS ON POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS

Article 29 (Article amended by the Treaty of Nice)

Without prejudice to the powers of the European Community, the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the

fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia.

That objective shall be achieved by preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud, through:

- closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol), in accordance with the provisions of Article 30 and 32.
- closer cooperation between judicial and other competent authorities of the Member States including cooperation through the European Judicial Cooperation Unit ('Eurojust'), in accordance with the provisions of Articles 31 and 32.
- approximation, where necessary, of rules on criminal matters in the Member States, in accordance with the provisions of Article 31(e).

Article 30

1. Common action in the field of police cooperation shall include:

- (a) operational cooperation between the competent authorities, including the police, customs and other specialised law enforcement services of the Member States in relation to the prevention, detection and investigation of criminal offences;
- (b) the collection, storage, processing, analysis and exchange of relevant information, including information held by law enforcement services on reports on suspicious financial transactions, in particular through Europol, subject to appropriate provisions on the protection of personal data;
- (c) cooperation and joint initiatives in training, the Exchange of liaison officers, secondments, the use of equipment, and forensic research;
- (d) the common evaluation of particular investigative techniques in relation to the detection of serious forms of organised crime.

2. The Council shall promote cooperation through Europol and shall in particular, within a period of five years after the date of entry into force of the Treaty of Amsterdam:

- (a) enable Europol to facilitate and support the preparation, and to encourage the coordination and carrying out, of specific investigative actions by the competent authorities of the Member States, including operational actions of joint teams comprising representatives of Europol in a support capacity;
- (b) adopt measures allowing Europol to ask the competent authorities of the Member States to conduct and coordinate their investigations in specific cases and to develop specific expertise which may be put at the disposal of Member States to assist them in investigating cases of organised crime;

- (c) promote liaison arrangements between prosecuting/investigating officials specialising in the fight against organised crime in close cooperation with Europol;
- (d) establish a research, documentation and statistical network on cross-border crime.

Article 31 (Article amended by the Treaty of Nice)

1. Common action on judicial cooperation in criminal matters shall include:

- (a) facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States, including, where appropriate, cooperation through Eurojust, in relation to proceedings and the enforcement of decisions;
- (b) facilitating extradition between Member States;
- (c) ensuring compatibility in rules applicable in the Member States, as may be necessary to improve such cooperation;
- (d) preventing conflicts of jurisdiction between Member States;
- (e) progressively adopting measures establishing minimum rules relating to the constituent elements of criminal acts and to penalties in the fields of organised crime, terrorism and illicit drug trafficking.

2. The Council shall encourage cooperation through Eurojust by:

- (a) enabling Eurojust to facilitate proper coordination between Member States' national prosecuting authorities;
- (b) promoting support by Eurojust for criminal investigations in cases of serious cross-border crime, particularly in the case of organised crime, taking account, in particular, of analyses carried out by Europol;
- (c) facilitating close cooperation between Eurojust and the European Judicial Network, particularly, in order to facilitate the execution of letters rogatory and implementation of extradition requests.

Article 32

The Council shall lay down the conditions and limitations under which the competent authorities referred to in Articles 30 and 31 may operate in the territory of another Member State in liaison and in agreement with the authorities of the State.

Article 33

This title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

Article 34

1. In the areas referred to in this title, Member States shall inform and consult one another within the Council with a view to coordinating their action. To that end, they shall establish collaboration between the relevant departments of their administrations.

2. The Council shall take measures and promote cooperation, using the appropriate form and procedures as set out in this title, contributing to the pursuit of the objectives of the Union. To that end, acting unanimously on the initiative of any Member State or the the Commission, the Council may:

- (a) adopt common positions defining the approach of the Union to a particular matter;
- (b) adopt framework decisions for the purpose of approximation of the laws and regulations of the Member States. Framework decisions shall be binding upon Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect;
- (c) adopt decisions for any other purpose consistent with the objectives of this title, excluding any approximation of the laws and regulations of the Member States. These decisions shall be binding and shall not entail direct effect; the Council acting by a qualified majority, shall adopt measures necessary to implement those decisions at the level of the Union;
- (d) establish conventions which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements. Member States shall begin the procedures applicable within a time limit to be set by the Council.

Unless they provide otherwise, conventions shall, once adopted by at least half of the Member States, enter into force for those Member States. Measures implementing v-conventions shall be adopted within the Council by a majority of two thirds of the Contracting Parties.

- 3. (*) Where the Council is required to act by a qualified majority, the votes of its members shall be weighted as laid down in Article 205(2) of the Treaty establishing the European Community, and for their adoption acts of the Council shall require at least 62 votes in favour, cast by at least 10 members.
- 4. For procedural questions, the Council shall act by a majority of its members.

Article 35

- 1. The Court of Justice of the European Communities shall have jurisdiction, subject to the conditions laid down in this article, to give preliminary rulings on the validity and interpretation of framework decisions and decisions, on the interpretation of conventions established under this title and on the validity and interpretation of the measures implementing them.
- 2. By a declaration made at the time of signature of the Treaty of Amsterdam or at any time thereafter, any Member State shall be able to accept the jurisdiction of the Court of Justice to give preliminary rulings as specified in paragraph 1.
- 3. A Member State making a declaration pursuant to paragraph 2 shall specify that either:

* This paragraph is amended on 1 January 2005, in accordance with the Protocol on the enlargement of the European Union.

- (a) any court or tribunal of that State against whose decision there is no judicial remedy under national law may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the validity or interpretation of an act referred to in paragraph 1 if that court or tribunal considers that a decision on the question is necessary to enable it to give judgement; or
- (b) any court or tribunal of that State may request the Court of Justice to give a preliminary ruling on a question raised in a case pending before it and concerning the validity or interpretation of an act referred to in paragraph 1 if that court or tribunal considers that a decision on the question is necessary to enable it to give judgement

4. Any Member State, whether or not it has made a declaration pursuant to paragraph 2, shall be entitled to submit statements of case or written observations to the Court in cases which arise under paragraph 1.

5. The Court of Justice shall have no jurisdiction to review the validity or proportionality of operations carried out by the police or other law enforcement services of a Member State or the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.

6. The Court of Justice shall have jurisdiction to review the legality of framework decisions and decisions in actions brought by a Member State or the Commission on grounds of lack of competence, infringement of an essential procedural requirement, infringement of this Treaty or of any rule of law relating to its application, or misuse of powers. The proceedings provided for in this paragraph shall be instituted within two months of the publication of the measure.

7. The Court of Justice shall have jurisdiction to rule on any dispute between Member States regarding the interpretation or the application of acts adopted under Article 34(2) whenever such dispute cannot be settled by the Council within six months of its being referred to the Council by one of its members. The Court shall also have jurisdiction to rule on any dispute between Member States and the Commission regarding the interpretation or the application of conventions established under Article 34(2)(d).

Article 36

1. A Coordinating Committee shall be set up consisting of senior officials. In addition to its coordinating role, it shall be the task of the Committee to:
 - give opinions for the attention of the Council, either at the Council's request or on its own initiative.
 - contribute, without prejudice to Article 207 of the Treaty establishing the European Community, to the preparation of the Council's discussions in the areas referred to in Article 29.
2. The Commission shall be fully associated with the work in the areas referred to in this title.

Article 37

Within international organisations and at international conferences in which they take part, Member States shall defend the common positions adopted under the provisions of this title.

Article 18 and 19 shall apply as appropriate to matters falling under this title.

Article 38

Agreements referred to in Article 24 may cover matters falling under this title.

Article 39

1. The Council shall consult the European Parliament before adopting any measure referred to in Article 34 (2)(b), (c) and (d). The European Parliament shall deliver its opinion within a time limit which the Council may lay down, which shall not be less than three months. In the absence of an opinion within that time limit, the Council may act.
2. The Presidency and the Commission shall regularly inform the European Parliament of discussions in the areas covered by this title.
3. The European Parliament may ask questions of the Council or make recommendations to it. Each year, it shall hold a debate on the progress made in the areas referred to in this title.

Article 40 (Article amended by the Treaty of Nice)

1. Enhanced cooperation in any of the areas referred to in this title shall have the aim of enabling the Union to develop more rapidly into an area of freedom, security and justice, while respecting the powers of the European Community and the objectives laid down in this title.
2. Articles 29 to 39 and Articles 40a to 41 shall apply to the enhanced cooperation provided for by this article, save as otherwise provided in Article 40a and in Articles 43 to 45.
3. The provisions of the Treaty establishing the European Community concerning the powers of the Court of Justice and the exercise of those powers shall apply to this article and to Articles 40a and 40b.

Article 40a (Article inserted by the Treaty of Nice)

1. Member States which intend to establish enhanced cooperation between themselves under Article 40 shall address a request to the Commission, which may submit a proposal to the Council to that effect. In the event of the Commission not submitting a proposal, it shall inform the Member States which may then submit an initiative to the Council designed to obtain authorisation for the enhanced cooperation concerned.
2. The authorisation referred to in paragraph 1 shall be granted, in compliance with Articles 43 to 45, by the Council, acting by a qualified majority, on a proposal from the Commission or on the initiative of at least eight Member States, and after consulting the European Parliament. The votes of the members of the Council shall

be weighted in accordance with Article 205(2) of the Treaty establishing the European Community.

A member of the Council may request that the matter be referred to the European Council. After that matter has been raised before the European Council, the Council may act in accordance with the first subparagraph of this paragraph.

Article 40b (Article inserted by the Treaty of Nice)

Any Member State which wishes to participate in enhanced cooperation established in accordance with Article 40a shall notify its intention to the Council and to the Commission, which shall give an opinion to the Council within three months of the date of receipt of that notification, possibly accompanied by a recommendation for such specific arrangements as it may deem necessary for that Member State to become a party to the cooperation in question. The Council shall take a decision on the request within four months of the date of receipt of that notification. The decision shall be deemed to be taken unless the Council, acting by a qualified majority within the same period, decides to hold it in abeyance ; in that case, the Council shall state the reasons for its decision and set a deadline for re-examining it.

For the purposes of this Article, the Council shall act under the conditions set out in Article 44(1).

Article 41

1. Articles 189,190, 195, 196 to 199, 203, 204, 205(3), 206 to 209, 213 to 219, 255 and 290 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this title.
2. Administrative expenditure which the provisions relating to the areas referred to in this title entail for the institutions shall be charged to the budget of the European Communities.
3. Operating expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except where the Council acting unanimously decides otherwise. In cases where expenditure is not charged to the budget of the European Communities, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise.
4. The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities.

Article 42

The Council, acting unanimously on the initiative of the Commission or a Member State, and after consulting the European Parliament, may decide that action in areas

referred to in Article 29 shall fall under Title IV of the Treaty establishing the European Community, and at the same time determine the relevant voting conditions relating to it. It shall recommend the Member States to adopt that decision in accordance with their respective constitutional requirements.

ANNEX 5 Articles of the Treaty on European Community (TEC)

Title IV

VISAS, ASYLUM, IMMIGRATION AND OTHER POLICIES RELATED TO FREE MOVEMENT OF PERSONS

In order to establish progressively an area of freedom, security and justice, the Council shall adopt:

Article 61

- (e) within a period of five years after the entry into force of the Treaty of Amsterdam, measures aimed at ensuring the free movement of persons in accordance with Article 14, in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration, in accordance with the provisions of Article 62(2) and (3) and Article 63(1)(a) and (2)(a), and measures to prevent and combat crime in accordance with the provisions of Article 31(e) of the Treaty on European Union;
- (f) other measures in the fields of asylum, immigration and safeguarding the rights of nationals of third countries, in accordance with the provisions of Article 63;
- (g) measures in the field of judicial cooperation in civil matters as provided for in Article 65;
- (h) appropriate measures to encourage and strengthen administrative cooperation, as provided for in Article 66;
- (i) measures in the field of police and judicial cooperation in criminal matters aimed at a high level of security by preventing and combating crime within the Union in accordance with the provisions of the Treaty on European Union.

Article 62

The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

- 3. measures with a view to ensuring, in compliance with Article 14, the absence of any controls on persons, be they citizens of the Union or nationals of third countries, when crossing internal borders;
- 4. measures on the crossing of the external borders of the Member States which shall establish:
 - (e) standards and procedures to be followed by Member States in carrying out checks on persons at such borders;
 - (f) rules on visas for intended stays of no more than three months, including:

- (i) the list of third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirements;
- (ii) the procedures and conditions for issuing visas by Member States;
- (iii) a uniform format for visas;
- (iv) rules on a uniform visa;

3. measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months.

Article 63

The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt:

1. measures on asylum, in accordance with the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and other relevant treaties, within the following areas:
 - (a) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States,
 - (b) minimum standards on the reception of asylum seekers in Member States,
 - (c) minimum standards with respect to the qualification of nationals of third countries as refugees,
 - (d) minimum standards on procedures in Member States for granting or withdrawing refugee status;
2. measures on refugees and displaced persons within the following areas:
 - (a) minimum standards for giving temporary protection to displaced persons from third countries who cannot return to their country of origin and persons who otherwise need international protection,
 - (b) promoting a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons;
3. measures on immigration policy within the following areas:
 - (a) 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.
 - (b) Illegal immigration and illegal residence, including repatriation of illegal residents;

4. measures defining the rights and conditions under which nationals of third countries who are legally resident in a Member State may reside in other Member States.

Measures adopted by the Council pursuant to points 3 and 4 shall not prevent any Member State from maintaining or introducing in the areas concerned national provisions which are compatible with this Treaty and with international agreements.

Measures to be adopted pursuant to points 2(b), 3(a) and 4 shall not be subject to the five-year period referred to above.

Article 64

1. This title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.
2. In the event of one or more Member States being confronted with an emergency situation characterised by a sudden inflow of nationals of third countries and without prejudice to paragraph 1, the Council may, acting by qualified majority on a proposal from the Commission, adopt provisional measures of a duration not exceeding six months for the benefit of the Member States concerned.

Article 65

Measures in the field of judicial cooperation in civil matters having cross-border implications, to be taken in accordance with Article 67 and in so far as necessary for the proper functioning of the internal market, shall include:

- (a) improving and simplifying:
 - the system for cross-border service of judicial and extrajudicial documents,
 - cooperation in the taking of evidence,
 - the recognition and enforcement of decisions in civil and commercial cases, including decisions in extrajudicial cases;
- (b) promoting the compatibility of the rules applicable in the Member States concerning the conflict of laws and of jurisdiction;
- (c) eliminating obstacles to the good functioning of civil proceedings, if necessary by promoting the compatibility of the rules on civil procedure applicable in the Member States.

Article 66

The Council, acting in accordance with the procedure referred to in Article 67, shall take measures to ensure cooperation between the relevant departments of the administrations of the Member States in the areas covered by this title, as well as between those departments and the Commission.

Article 67 (Article amended by thr Treaty of Nice)

1. During a transitional period of five years following the entry into force of the Treaty of Amsterdam, the Council shall act unanimously on a proposal from the Commission or on the initiative of a Member State and after consulting the European Parliament.
2. After this period of five years:
 - the Council shall act on proposals from the Commission; the Commission shall examine any request made by a Member State that it submit a proposal to the Council.
 - The Council, acting unanimously after consulting the European Parliament, shall take a decision with a view to providing for all or parts of the areas covered by this title to be governed by the procedure referred to in Article 251 and adapting the provisions relating to the powers of the Court of Justice.
3. By derogation from paragraphs 1 and 2, measures referred to in Article 62(2)(b)(i) and (iii) shall, from the entry into force of the Treaty of Amsterdam, be adopted by the Council acting by a qualified majority on a proposal from the Commission and after consulting the European Parliament.
4. By derogation from paragraph 2, measures referred to in Article 62(2)(b)(ii) and (iv) shall, after a period of five years following the entry into force of the Treaty of Amsterdam, be adopted by the Council acting , in accordance with the procedure referred to in Article 251.
5. By derogation from paragraph 1, the Council shall adopt, in accordance with the procedure referred to in Article 251:
 - the measures provided for in Article 63(1) and (2)(a) provided that the Council has previously adopted, in accordance with paragraph 1 of this article, Community legislation defining the common rules and basic principles governing these issues.
 - the measures provided for in Article 65 with the exception of aspects relating to family law.

Article 68

1. Article 234 shall apply to this title under the following circumstances and conditions: where a question on the interpretation of this title or on the validity or interpretation of acts of the institutions of the Community based on this title is raised in a case pending before a court or a tribunal of a Member State against whose decisions there is no judicial remedy under national law, that court or tribunal shall, if it considers that a decision on the question is necessary to enable it to give judgement, request the Court of Justice to give a ruling thereon.
2. In any event, the Court of Justice shall not have jurisdiction to rule on any measure or decision taken pursuant to Article 62(1) relating to the maintenance of law and order and the safeguarding of internal security.

3. The Council, the Commission or a Member State may request the Court of Justice to give a ruling on a question of interpretation of this title or of acts of the institutions of the Community based on this title. The ruling given by the Court of Justice in response to such a request shall not apply to judgements of courts or tribunals of the Member States which have become *res judicata*.

Article 69

The application of this title shall be subject to the provisions of the Protocol on the position of the United Kingdom and Ireland and to the Protocol on the position of Denmark and without prejudice to the Protocol on the application of certain aspects of Article 14 of the Treaty establishing the European Community to the United Kingdom and to Ireland.

Article 251 of TEC

1. Where reference is made in this Treaty to this Article for the adoption of an act, the following procedure shall apply.
2. The Commission shall submit a proposal to the European Parliament and the Council.

The Council, acting by a qualified majority after obtaining the opinion of the European Parliament:

- if it approves all the amendments contained in the European Parliament's opinion, may adopt the proposed act,
- if the European Parliament does not propose any amendments, may adopt the proposed act,
- shall otherwise adopt a common position and communicate it to the European Parliament. The Council shall inform the European Parliament fully of the reasons which led it to adopt its common position. The Commission shall inform the European Parliament fully of its position.

If, within three months of such communication, the European Parliament:

approves the common position or has not taken a decision, the act in question shall be deemed to have been adopted in accordance with that common position;

- (a) rejects, by an absolute majority of its component members, the common position, the proposed act shall be deemed not to have been adopted;
- (b) proposes amendments to the common position by an absolute majority of its component members, the amended text shall be forwarded to the Council and to the Commission, which shall deliver an opinion on those amendments.

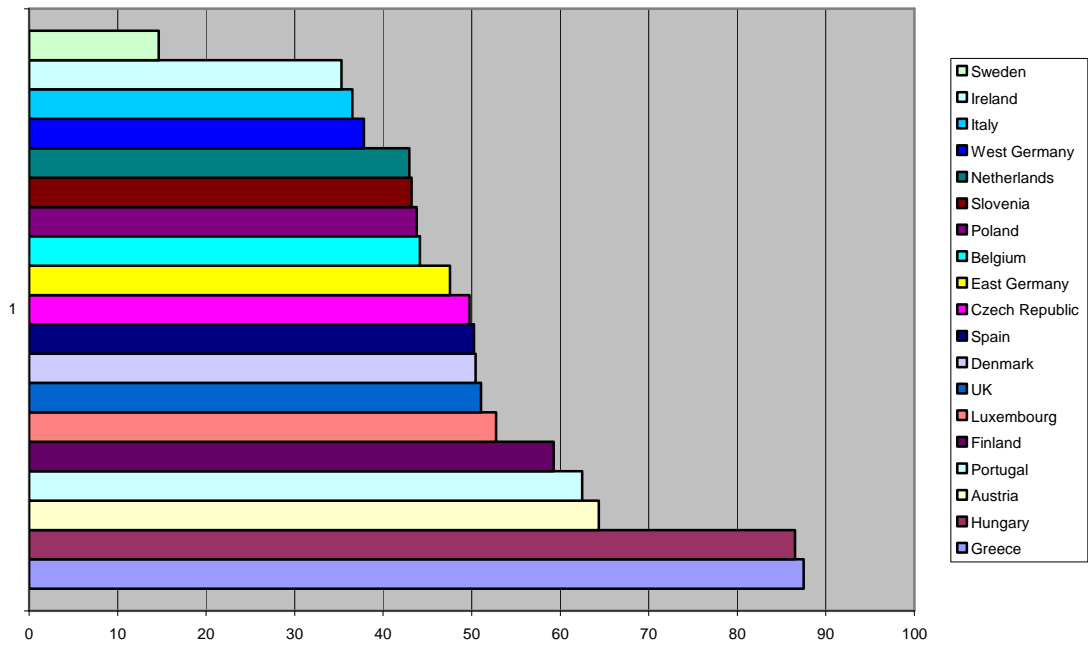
3. If, within three months of the matter being referred to it, the Council, acting by a qualified majority, approves all the amendments of the European Parliament, the act in question shall be deemed to have been adopted in the form of the common position thus amended; however, the Council shall act unanimously on the amendments on which the Commission has delivered a negative opinion. If the Council does not approve all the amendments, the President of the Council, in

agreement with the President of the European Parliament, shall within six weeks convene a meeting of the Conciliation Committee.

4. The Conciliation Committee, which shall be composed of the Members of the Council or their representatives and an equal number of representatives of the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the Members of the Council or their representatives and by a majority of the representatives of the European Parliament. The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council. In fulfilling this task, the Conciliation Committee shall address the common position on the basis of the amendments proposed by the European Parliament.
5. If, within six weeks of its being convened, the Conciliation Committee approves a joint text, the European Parliament, acting by an absolute majority of the votes cast, and the Council, acting by a qualified majority, shall each have a period of six weeks from that approval in which to adopt the act in question in accordance with the joint text, if either of the two institutions fails to approve the proposed act within that period, it shall be deemed not to have been adopted.
6. Where the Conciliation Committee does not approve a joint text, the proposed act shall be deemed not to have been adopted.
7. The periods of three months and six weeks referred to in this Article shall be extended by a maximum of one month and two weeks respectively at the initiative of the European Parliament or the Council.

ANNEX 6 Graphics

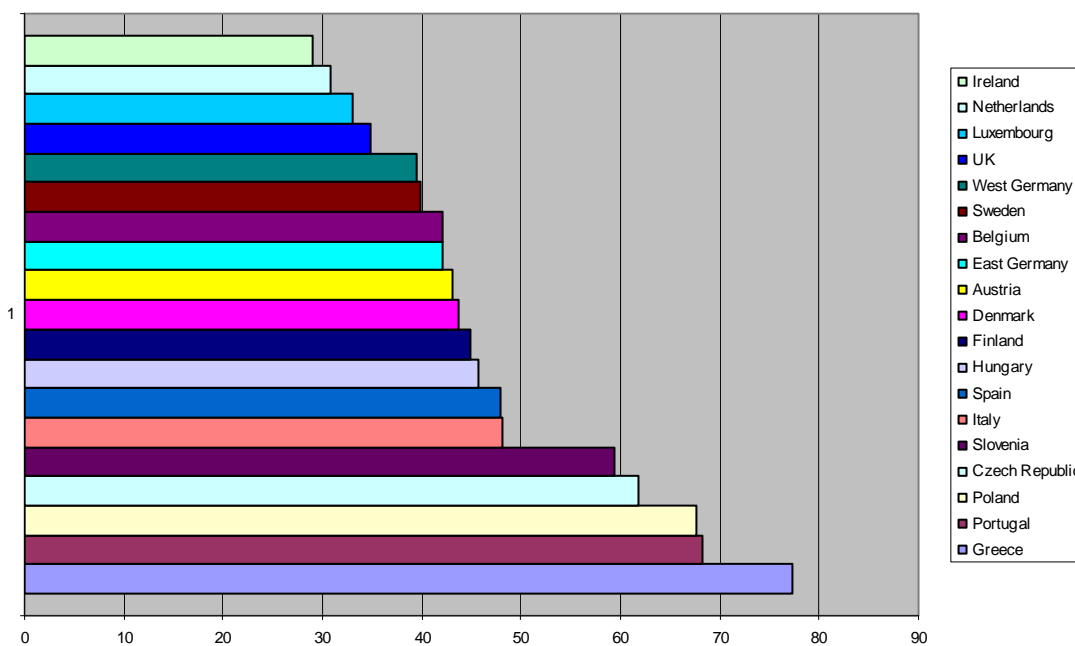
Resistance to Immigrants



Percentage respondents showing support

Source: EUMC, Majorities' Attitudes Towards Minorities: Key Findings from the Eurobarometer and the European Social Survey, March 2005, p.33.

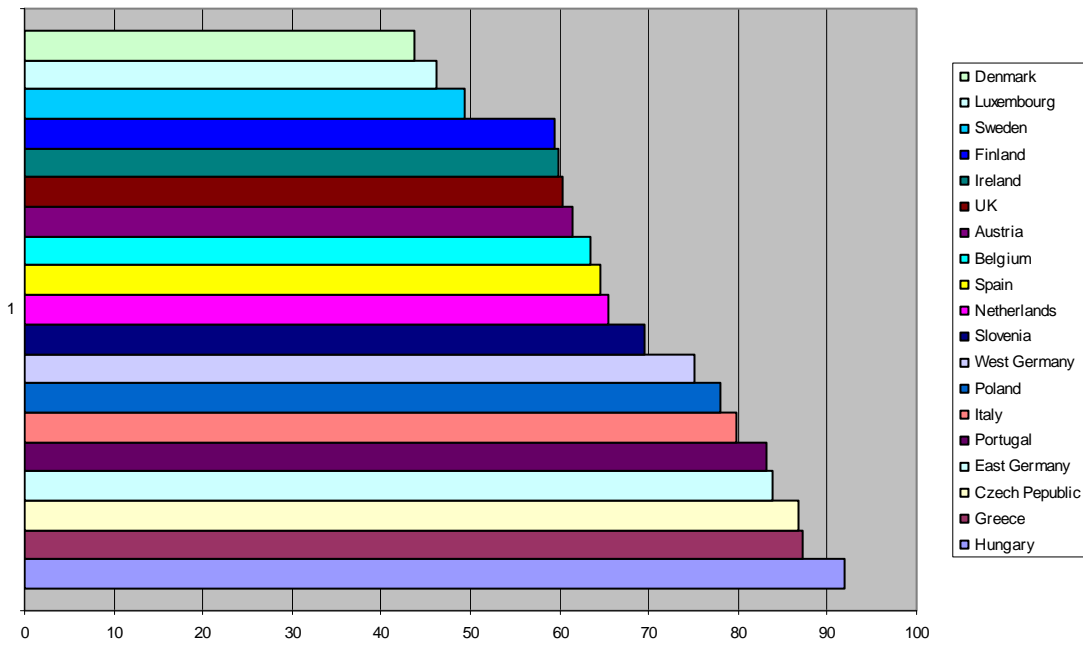
Resistance to Diversity



Percentage respondents showing support

Source: EUMC, Majorities' Attitudes Towards Minorities: Key Findings from the Eurobarometer and the European Social Survey, March 2005,p.35.

Favour Repatriation Policies for Criminal Migrants



Percentage respondents showing support

Source: EUMC, Majorities' Attitudes Towards Minorities: Key Findings from the Eurobarometer and the European Social Survey, March 2005,p.37.

ANNEX 7 Portrayal of the Cartoons

As portrayed by the BBC News, these cartoons have actually been as the following:

“The paper choose as its central image a visual joke about the Prophet among other turban-wearing figures in a police line-up and witness saying: “I don’t know which one he is.” The line-up also includes people like Jesus Christ, the far-right Danish politician Pia Kjaersgeerd and Mr. Bluitgen, Danish writer who complained that he was unable to find an illustrator for his children’s book about the Prophet. Other eleven cartoons are printed around the edge of the page showing the Prophet in a variety of supposedly humorous or satirical situations.

One seems to criticise Mr. Bluitgen for exploiting the issue for publicity to sell his book. He is portrayed holding a child’s drawing of the Prophet, while an orange inscribed with “PR stunt” drops into a turban he is wearing. (The expression “orange in the turban” connotes a “piece of luck” in Danish.)

One shows the Prophet wandering through the desert with the sun setting behind him.

In another his face merges with an Islamic star and crescent.

The most controversial image shows the Prophet Muhammad carrying a lit bomb in the shape of a turban on his head decorated with the Islamic creed.

Another shows Muhammad brandishing a sword ready for a fight. His eyes are blacked out while two women stand behind him with their Islamic dress leaving only their eyes uncovered.

One uses crescent moons and stars of David to form repeated abstract shapes, possibly showing women in Islamic dress. A poem accompanies the shapes, that one translator has rendered as: “Prophet, you crazy bloke! Keeping women under yoke.”

In the other, a schoolboy points to a blackboard on which it is written in Farsi: “The editorial team of Jyllands-Posten are a bunch of reactionary provocateurs.” The boy is labelled “Mohammad, Valby school, 7A”, suggesting he is a second-generation Iranian immigrant to Denmark. “The future” is written on his shirt.

One shows Muhammad standing on a cloud holding back a line of smouldering suicide bombers trying to get into heaven. “Stop, stop, we have run out of virgins,” he says. (There is reference to the supposed reward of 72 virgins in heaven for Muslim martyrs, although Islamic scholars often point out that there is no specific belief of this kind.)

Another drawing shows Muhammad looking at a sheet of paper, but holding back two sword-wielding assassins. “Relax guys, it’s just a drawing made some infidel South Jutlander (i.e, from the middle of nowhere)”, the figure says.

One cartoonist portrays Muhammad with a kind of halo around his head, but it could be a crescent moon, or a pair of devil’s horns.

The last one goes back to the theme of artistic freedom: a cartoonist draws an Arab face with headdress, inscribed “Mohammed”, but he crouches over the drawing and shields it with his hand.”⁵¹⁴

⁵¹⁴ Martin Asser, What the Muhammad Cartoons portray, BBC News, http://news.bbc.co.uk/1/hi/world/middle_east/4693292.stm (09.05.2007)

ANNEX 8 Danish Criminal Code

Section 140 and 266b of the Danish Criminal Code :

“Section 140 of the Criminal Code, known as the blasphemy law, prohibits disturbing public order by publicly ridiculing or insulting the dogmas of worship of any lawfully existing religious community in Denmark. Only one case has ever resulted in a sentence, a 1938 case involving an anti-Semitic group. The most recent case was in 1971 when a program director of Denmark's Radio was charged, but found not guilty. Section 266b criminalizes insult, threat or degradation of natural persons, by publicly and with malice attacking their race, color of skin, national or ethnical roots, faith or sexual orientation.”⁵¹⁵

⁵¹⁵ Jyllands-Posten Muhammad Cartoons Controversy, http://en.wikipedia.org/wiki/Jyllands-Posten_Muhammad_cartoons_controversy (05.03.2007)

ANNEX 9 Quotations about Denmark Cartoon Crisis

(1) The Guardian stated that:

“The Guardian believes uncompromisingly in freedom of expression, but not in any duty to gratuitously offend. It would be senseless provocative to reproduce a set of images, of no intrinsic value, which pander to the worst prejudices about Muslims. To directly associate the founder of one of the world’s three great monotheistic religions with terrorist violence – the unmistakable meaning of the most explicit of these cartoons – is wrong, even if the intention was satirical rather than blasphemous.”⁵¹⁶

The Independent of London similarly “has no wish to publish the Danish cartoons many Muslims find so offensive”, while noting that misunderstandings plagues both the Muslim community and the continental media in the furor over the cartoons:

“In common with almost all British national newspapers, The Independent on Sunday recognises that re-publication would be regarded as a deliberate insult. Muslims are wrong to take this view. The motive for re-publishing would be primarily to see what all the fuss is about, and to wonder at the deficiencies of Danish humour. But when the deeply held beliefs of so many people has been made so clear, it requires a particularly childish kind of discourtesy to cause offence knowingly. “Can’t take joke” is the taunt of the bully through the ages.”⁵¹⁷

(2) Iran Daily’s evaluation of the background of the Jylands-Posten:

“The paper is historically known for taking a clear rightwing line. In the 1920s-30s, the paper was infamous for its sympathy for fascism and German dictatorship. When Mussolini in 1922 became the leader of a fascist coalition government in Italy, the paper wrote: “The very strong man, that Mussolini absolutely is, is exactly what the misruled Italian people needs.” In 1933, the paper even argued for the introduction of dictatorship to Denmark.”⁵¹⁸

(3) Palestinian journalist Akram Musallam explains why he finds the caricatures insulting and false:

“Comparing terrorism with Islam and Islamic societies is superficial. Islam is a religion like any other.”⁵¹⁹

(4) Alexandre Adler, author of “Rendez-vous With Islam” criticized the newspapers by underlining the Iraq insurgency, the electoral victories of the radical Palestinian group Hamas and Iranian President Mahmoud Ahmadinejad and states that:

“We are at war. And sometimes war demands censorship. In this context, anything that might strengthen the hate of the West is irresponsible.”⁵²⁰

⁵¹⁶ Arthur Bright, US, British media tread carefully in cartoon furor, <http://www.csmonitor.com/2006/0206/dailyUpdate.html>, (09.03.2007)

⁵¹⁷ Arthur Bright, US, British media tread carefully in cartoon furor, <http://www.csmonitor.com/2006/0206/dailyUpdate.html>, (09.03.2007)

⁵¹⁸ Minhaj Qidwai, Blasphemous Cartoons Trigger Muslim Fury, <http://www.iran-daily.com/71384/2497/html/art.htm> (06.03.2007)

⁵¹⁹ signandsight.com, Let’s Talk European, <http://www.print.signandsight.com/features/590.html> (06.03.2007)

(5) Mahmoud Darwish, the best-known Palestinian poet, writes in *Nouvel Observateur* that:

“I am afraid that the famous “war of cultures” has in fact really flared up. The opponents are the fundamentalists in each camp.”⁵²¹

(6) German writer Günter Grass in an interview with *El Pais* on February 9, 2006 bemoans the arrogance of the West by saying that:

“We have lost the right to seek protection under the right to the freedom of expression. The days of lese-majeste are not so far behind us and we should not forget that there are places in the world where there is no of separation Church and State. Where does the West get this arrogance to want to decree what one can and can’t do? I recommend that everybody take a closer look at the caricatures:they are reminiscent of the famous newspaper of the Nazi era, the *Stürmer*, which published anti-Semitic cartoons of similar style.”⁵²²

(7) Gary Young asks in *Guardian* on February 4, 2006 that:

“why anti-Semitic statements and caricatures are almost never published in the press, while anti-Muslim cartoons apparently can be: The question has never been whether you draw a line under what is and what is not acceptable, but where you draw it. Rose (editor of *Jyllands-Posten*) and others clearly believe Muslims, by virtue of their religion, exist on the wrong side of the line. As a result they are vilified twice: once through the cartoon, and again for exercising their democratic right to protest. The inflammatory response to their protest reminds me of the quote from Steve Biko, the South African black nationalist: ‘Not only are whites kicking us; they are telling us how to react to being kicked.’”⁵²³

(8) Sarah Joseph, editor of the Muslim lifestyle magazine *Emel*, has reminded Nazism experience by stating that:

“Some countries that have reprinted the images - Spain, France, Italy and Germany - have a nasty history of fascism. Just last week we had Holocaust memorial day. The Holocaust did not occur overnight. It took time to establish a people as subhuman, and cartoons played their part. Does Europe not remember its past and the Nazi propaganda of *Der Stürmer*?”⁵²⁴

(9) Examples as the cases of self-censorship:

“At the end of September, a Danish standup comedian said in an interview with *Jyllands-Posten* that he had no problem urinating on the Bible in front of a camera, but he dared not do the same thing with the Koran.

⁵²⁰ Molly Moore and Faiza Saleh Ambah, Tension Rises Over Cartoons of Muhammad, *Washington Post Foreign Service*, Friday, February 3, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/02/AR20060202027> (06.03.2007)

⁵²¹ signandsight.com, Let’s Talk European, <http://www.print.signandsight.com/features/590.html> (06.03.2007)

⁵²² signandsight.com, Let’s Talk European, <http://www.print.signandsight.com/features/590.html> (06.03.2007)

⁵²³ Philip Hensher and Gary Younge, Does the right to freedom of speech justify printing the Danish Cartoons?, *The Guardian*, February 4, 2006, http://www.guardian.co.uk/religion/Story/0,,1701985,00.html#article_continue (09.03.2006)

⁵²⁴ Sarah Joseph, The Freedom That Hurts, *The Guardian*, February 3, 2006, http://www.guardian.co.uk/comment/story/0,,1701041,00.html#article_continue (13.03.2007)

[...] Last September, a Danish children's writer had trouble finding an illustrator for a book about the life of Muhammad. Three people turned down the job for fear of consequences. The person who finally accepted insisted on anonymity, which in my book is a form of self-censorship.[...]

Around the same time, the Tate Gallery in London withdrew an installation by the avant-garde artist John Latham depicting the Koran, Bible and Talmud torn to pieces. The museum explained that it did not want to stir things up after the London bombings. (A few months earlier, to avoid offending Muslims, a museum in Goteborg, Sweden, had removed a painting with a sexual motif and a quotation from the Koran.)

Finally, at the end of September, Danish Prime Minister Anders Fogh Rasmussen met with a group of imams, one of whom called on the prime minister to interfere with the press in order to get more positive coverage of Islam."⁵²⁵

(10) On February 24, 2006 Italian philosopher Paolo Flores d'Arcais has stated in

Le Monde that:

"The limits of the freedom of opinion may not be defined by religious feelings of any particular social group[...] if religious sensibility became the criteria for defining the limits to the freedom of expression, everyone would be encouraged to give free reign to their desire for power and let the natural displeasure at being criticised become first resentment, then rage, then fanaticism."⁵²⁶

(11) On February 14, 2006, Klaus Stuttmann, cartoonist in Der Tagesspiegel in Germany has been asked for the difficulties of drawing cartoon in such a delicate world. He has stated that:

"[...] Everybody has something they consider holy. And in the age of globalisation it's getting increasingly difficult. A few years ago I had a good sense for how far you could push things with people. Now a drawing is transported round the world in an instant and the different cultures all have a very different sense of humour. It's going to get really complicated."⁵²⁷

(12) On February 10, 2006, Le Figaro's lead editorial in France has stated that:

"We are the children of Montesquieu, who poked fun at the state religion in his 'Persian Letters'. We are the children of Voltaire, who fought for the freedom of expression not only of his followers, but also of his enemies. We are unconditionally bound to the freedom of the press, which we defend against all its foes. Like all freedoms of course, freedom of the press is subject to conditions. We all know: the freedom of the individual stops short of the freedom of others. Attacks on private life are punishable by the judiciary. And judges have no shortage of opportunities as regards the freedom of the press. But this must be the task of the judiciary, and not of the government."

⁵²⁵ Flemming Rose, Why I Published Those Cartoons, Sunday, February 19, 2006, <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/17/AR20060217024> (06.03.2007)

⁵²⁶ signandsight.com, Let's Talk European, <http://www.print.signandsight.com/features/590.html> (06.03.2007)

⁵²⁷ signandsight.com, Let's Talk European, <http://www.print.signandsight.com/features/590.html> (06.03.2007)

(13) On February 3, 2006, Ibn Warraq in Spiegel Online in Germany has stated that:

"A democracy cannot survive long without freedom of expression, the freedom to argue, to dissent, even to insult and offend. It is a freedom sorely lacking in the Islamic world, and without it Islam will remain unassailed in its dogmatic, fanatical, medieval fortress; ossified, totalitarian and intolerant. Without this fundamental freedom, Islam will continue to stifle thought, human rights, individuality; originality and truth. Unless, we show some solidarity, unashamed, noisy, public solidarity with the Danish cartoonists, then the forces that are trying to impose on the Free West a totalitarian ideology will have won; the Islamization of Europe will have begun in earnest. Do not apologize."⁵²⁸

(14) On February 10, 2006, Ivan Rioufol in Le Figaro, France has stated that:

"The 'moderates' are standing up in solidarity with their 'brothers' and 'sisters' to demand all-round respect for their religion. But this show of unity is the first victory for the Islamists, who have taken it upon themselves to test the determination of the West to defend its laicism and freedom of expression. Their second victory would be repentance of the democracies."⁵²⁹

(15) On February 16, 2006, Ayaan Hirsi Ali in Le Monde, France has stated that:

"I do not seek to offend religious sentiment, but I will not submit to tyranny. Demanding that people who do not accept Muhammad's teachings should refrain from drawing him is not a request for respect but a demand for submission."⁵³⁰

(16) On February 16, 2006, Denmark, Jyllands-Posten writes that:

"Only 22 of a total of 80 writers asked to sign a manifesto for freedom of speech have done so. Those who refused to sign explained either that they didn't want to add further fuel to the conflict, that they didn't want to be associated with the cartoons, or quite simply were afraid of the consequences. Jyllands-Posten expresses its shock: "Have the authors who refused to give their signatures still not understood living in a situation in which 12 Danish cartoonists have received death threats. A medieval Taliban warlord is offering a reward for their heads."

(17) A commentary in the Daily Telegraph, Great Britain (February 3, 2006):

"Our restraint is in keeping with British values of tolerance and respect for the feelings of others. However, we are equally in no doubt that a small minority of Muslims would be offended by such a publication to an extent where they would threaten, and perhaps even use, violence. This is a problem that the whole of the Western world needs to confront frankly, and not sidestep. The right to offend within the law remains crucial to our free speech. Muslims who choose to live in the West must accept that we, too, have a right to our values, and to live according to them. Muslims must accept the predominant mores of their adopted culture: and most do. One of these is the lack of censorship and the ready availability of material that some people find deeply offensive: anyone who wishes to see the cartoons can find them within a few clicks on the internet. Those Muslims who cannot tolerate the openness and robustness of intellectual debate in the West have perhaps chosen to live in the wrong culture. We cannot put it better than the editorial in an Arab paper in

⁵²⁸ Ibn Warraq, Democracy in Cartoon, February 3, 2006, Spiegel Online, <http://www.spiegel.de/international/0,1518,398853,00.html> (09.03.2006)

⁵²⁹ signandsight.com, Let's Talk European, <http://www.print.signandsight.com/features/590.html> (06.03.2007)

⁵³⁰ signandsight.com, Let's Talk European, <http://www.print.signandsight.com/features/590.html> (06.03.2007)

which the cartoons briefly appeared yesterday (before all copies were suddenly withdrawn): "Muslims of the world, be reasonable."⁵³¹

(18) In the Frankfurter Allgemeine Zeitung, Christian Geyer calls for the Muhammad caricatures to be published in as many European media as possible:

"Only Europe-wide solidarity can show: religious fundamentalists who do not respect the difference between satire and blasphemy have a problem not only with Denmark, but with the entire Western world."⁵³²

(19) On February 12-13, 2006, Régis Debray, philosopher, in *Nouvel Obs*, France has stated that:

*"We must be careful not to transfer our system of social perceptions and thought categories onto other cultures with a different history, where religious factors play the same structural role they did here 300 years ago."*⁵³³

(20) On February 6, 2006, Copenhagen newspaper Politiken, Denmark has written that:

"This weekend it became clear that the dispute is no longer about the cartoons in the Jyllands-Posten. The torching of diplomatic buildings has carried the conflict to another level. Now it's about an attack on free society as such. Although at first it was about the balance between the right to publish the cartoons and the need to respect those who have different beliefs, now the conflict is about the choice between civilised dialogue and armed confrontation."⁵³⁴

(21) On February 3, 2006, Jyllands-Posten editor-in-chief Carsten Juste in Denmark has asked: "Would we have published the Muhammad cartoons if we had known what the repercussions would be?" :

"Today, the answer would be 'no'. Had we known that it would result in death threats and put the lives of Danish citizens in danger, of course we wouldn't have published the cartoons. It's obvious that, in the light of what has happened, the price for this journalistic initiative is too high. But the point is that nobody could have foreseen the consequences, and that's why it's a moot question. We couldn't have known that a group of imams would travel to the Middle East to spread lies and disinformation about Jyllands-Posten and Danish society as a whole. We could handle a trade boycott and the Confederation of Danish Industries' selling out our principles, but genuine death threats mark the border between what can be accepted and what can't."⁵³⁵

(22) On February 7, 2006, *Le Monde*, Abdennour Bidar:

⁵³¹ Why We Will Defend The Right To Offend, Daily Telegraph, February 3, 2006 <http://www.telegraph.co.uk/opinion/main.jhtml?xml=/opinion/2006/02/03/dl0301.xml&sSheet=/opinion/2006/02/03/ixopinion.html> (13.03.2007)

⁵³² signandsight.com, Let's Talk European, <http://www.print.signandsight.com/features/590.html> (06.03.2007)

⁵³³ signandsight.com, Let's Talk European, <http://www.print.signandsight.com/features/590.html> (06.03.2007)

⁵³⁴ signandsight.com, Let's Talk European, <http://www.print.signandsight.com/features/590.html> (06.03.2007)

⁵³⁵ signandsight.com, Let's Talk European, <http://www.print.signandsight.com/features/590.html> (06.03.2007)

“The shift is characterised by what I call a ‘self-Islam’ that is to say, a culture of autonomy and personal choice, thus a culture based on diversity and differentiated identity – an Islam of individuals, and not of the community!.. ‘Self-Islam’ is, in fact, the expression of a culture that has radically mutated beyond its original authoritarian form, and which has become democratised via a process through which each European Muslim, looking to his conscience, has appropriated the question of his own identity. Let’s acknowledge this change and adjust our understanding of European Islam by working to deconstruct this ‘community’ fantasy.”⁵³⁶

(23) Ayaan Hirsi Ali in an interview with Jyllands-Posten on February 7, 2006
has said that:

“[...] even though it may sound cynical after the attacks on Western diplomatic buildings, the conflict still offers a great opportunity. Thanks to these cartoons, Islam could make the progress of centuries within just a few years. It’s high time there was an uprising. Had the cartoons not been published, the discussion about the Prophet Muhammad would never have arisen. It’s important to remember that Islam hasn’t undergone all the reforms and adjustments which Christianity and Judaism have undergone over the past thousand years. On the contrary, Islam is stagnating. Its laws are geared towards tribal society. Now all Muslims in Denmark and Europe are being forced to reflect on what their attitude should be towards Muslim taboos that are incompatible with modern democratic society.”⁵³⁷

⁵³⁶ Abdennour Bidar, *Vers la mutation démocratique de l’islam*”, Le Monde, 07.02.2006

⁵³⁷ signandsight.com, *Let’s Talk European*, <http://www.print.signandsight.com/features/590.html>
(06.03.2007)

ANNEX 10 Respondents' View on Islamophobia

1) A male respondent from Italy states that:

"Every time a Muslim does something negative it is the Muslim who did it. Whereas if something else happens, it is not the Christian who did it, the Jew who did it, the Hindu who did it, or the atheist who did it."⁵³⁸

A young male respondent from Netherlands:

"Normally [in reporting case] the media never give names but only initials but now they give the first name and just the initial of the last name. So... they are still not giving the full name but they say, for example, Hassan D or Mohammed E so everybody knows it is a Muslim. Before it was just initials but if it is a Muslim or a foreigner then they give the first name."⁵³⁹

2) A male respondents from Germany states that:

"There is famous case of Ferestha Ludin, who wanted to become a teacher in Germany. She was always described in the press as a teacher from Afghanistan, but she was a German citizen. She was for years a German citizen, but none of the newspapers took notice of that. She was always [described] as the teacher from Afghanistan who wants to practise in Germany. I mean you have to be a German [citizen] to practice in German schools, but nobody knows that. The problem was that she wore a headscarf"⁵⁴⁰

Similarly, a female respondent states that:

"It is nearly impossible to say 'I 'm German and I'm Muslim'. So if you are seen as a Muslim then they don't understand that you are German. They can't understand. How can she be German although she is Muslim?... They always think that you are far away, you are strange; you are something different."⁵⁴¹

A young male in Germany states that:

"I have been a German citizen since I was 18, I don't have Turkish citizenship. If you were to ask lots of Germans they would describe me as a 'Turk with a German passport'. That is an expression that you hear very often in Germany... Why is that? Because I don't have a typical German name and if they know that I am not a Christian, for a lot of Germans that is something that excludes you from being a real German... So it feels as if I am German but in reality, for a lot of people, I am not a full, real German."⁵⁴²

3) A male respondent from France:

"In France, the Government explain the ban on the veil, as a law banning all the religious symbols in the schools, but what did they forbid? They forbid wearing the hijab! They forbid wearing some big crosses, but there are no Christians who are wearing big crosses..."⁵⁴³

A male from Germany:

⁵³⁸ European Union Monitoring Center on Racism and Xenophobia, **Perceptions of Discrimination and Islamophobia: Voices From Members of Muslim Communities in the European Union**, 2006, p.37

⁵³⁹ *ibid.*

⁵⁴⁰ *ibid.*, p.24.

⁵⁴¹ *ibid.*

⁵⁴² *ibid.*, p.27.

⁵⁴³ *ibid.*, p.50

“Until this step there was not a great problem in the economy, for example, for a woman to get a job with headscarf. There were cases which made it clear that an employer can’t reject a Muslim woman because she is wearing a headscarf. He has to give her the work. He can’t fire her. After this law which doesn’t allow Muslim women with the headscarf to work in schools, the same problems started in businesses.”⁵⁴⁴

A female from Germany:

“The ban on the hijab an effect on all of us. It started at a state level, but now it is even on a private sector level. Female Muslims find it very, very difficult to get a job because people think “If the state does not want to employ these people why should I do this?”⁵⁴⁵

A young male from Belgium:

“Banning the hijab is a way to ‘clean’ your school; you get rid of them[Muslims]. Of course, the Muslims will still go but it cleans the image of your school...if you are a school with a good reputation, if there were too many hijab it would be too visible that there are young Muslims or young immigrants... And so you have some public schools which accept the hijab and then you have the majority of Muslims going there. For most of the schools that ban the hijab, I would say this is this reason.”⁵⁴⁶

A female from United Kingdom says that:

“All legislation that is coming out, like the immigration stuff and the citizenship stuff, it’s all targeted at Muslims. I’m sorry to say it but it is. No one goes on about how the Australians will have to take citizenship tests... I think a lot of the Islamophobia arises from the fact that Muslims are perceived to be ‘a problem’ in terms of public disorder and socio-economics, and not doing very well at school and are a ‘burden on the state’⁵⁴⁷

4) A male respondent from UK:

“The problems we find with our case work is that although now discrimination is made illegal because of the European law in the workplace, there is no infrastructure of support for victims. There is no legal aid for them. Very few lawyers are willing to do ‘no win, no fee’ on discrimination, so really although they have protection, in reality they have nowhere to turn.”⁵⁴⁸

5) A young male from Netherlands:

“For example, my wife went to the supermarket and someone said to her, ‘Go back to your country!’ This is a form of verbal molestation. But is she going to complain about this? Maybe if you had known about a Muslim anti-discrimination organisation, then she could call them to register the incident, which would be very positive. People...don’t have the confidence that something is going to happen”⁵⁴⁹

⁵⁴⁴ *ibid.*

⁵⁴⁵ *ibid.*

⁵⁴⁶ *ibid.*

⁵⁴⁷ *ibid.*, p.29

⁵⁴⁸ *ibid.*, p.52

⁵⁴⁹ *ibid.*, p.53

A male from United Kingdom:

“Often, change relies on structures within institutions and their relationship with the Government. So, we might be talking to people within institutions who are not only willing, but desperate, to change the way the internal culture of that organisation Works but actually can’t do so because they are constrained in what they do as well.”⁵⁵⁰

⁵⁵⁰ *ibid.*

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