

**LEBANESE AMERICAN UNIVERSITY**

**THE SECURITIZATION OF EUROPEAN UNION IMMIGRATION  
POLICY: A WARRANTED RESPONSE TO INTERNATIONAL  
TERRORISM?**

by

Veera Eleonoora Enlund

A thesis submitted in partial fulfillment of the requirements for the Degree of Master of  
Arts in International Affairs

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**Thesis Approval Form**

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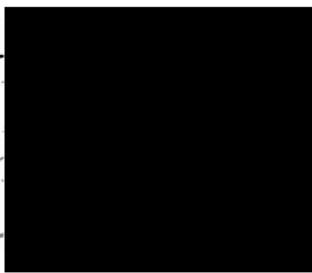
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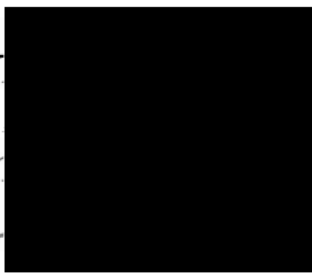
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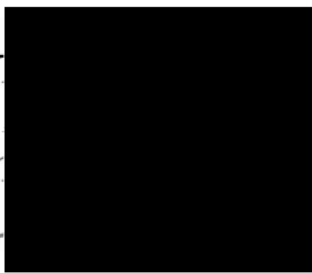
Department: Social Sciences

School: School of Arts and Sciences

Approved by: Dr. Jennifer Skulte-Ouais

Thesis Advisor: Dr. Jennifer Skulte-Ouais Signature: 

Member: Dr. Sami Baroudi Signature: 

Member: Dr. Bassel Salloukh Signature: 

Date: 4 October 2011

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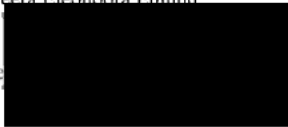
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# The Securitization of European Union Immigration Policy: A Warranted Response to International Terrorism?

Veera Eleonoora Enlund

## Abstract

This thesis examines the phenomenon of securitization in European Union immigration and asylum policy. It seeks to analyze the nature and origins of the externalization of threat in the context of safeguarding Europe's internal security. It explores the extent to which the rhetoric of securitization has been utilized in the development of migration policies since the attacks of 9/11. Through policy and discourse analysis, it explores the institutionalization of securitization within the main bodies of the European Union. The thesis shows that national security provisions in immigration legislation has enabled the near militarization of the external borders of the Union and compromised human rights obligations towards non-EU citizens. The research presented reveals however that securitization did not considerably accelerate after the infamous terrorist attacks on European soil. This leads to the conclusion that the trend of securitization is not entirely new but has roots in the wider objectives of the European Union. Nevertheless, the thesis concludes that securitization is apparent in both EU discourse and policy to questionable levels under the pretext of preserving internal security of the Union.

Keywords: Securitization, European Union, Immigration and Asylum Policy, Terrorism

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## **LIST OF ABBREVIATIONS**

API – Advance Passenger Information  
CEAS – Common European Asylum System  
CFSP - Common Foreign and Security Policy  
EEC - European Economic Community  
EC – European Community  
EU – European Union  
ECHR - European Convention on Human Rights  
ESTA - Electronic System of Travel Authorisation  
ETA - Euskadi Ta Askatasuna / Basque Homeland and Freedom  
EUROSUR – European external border surveillance system  
GMES – Global Monitoring for Environment and Security  
IR – International Relations  
IRA - Irish Republican Army  
JHA – Justice and Home Affairs  
PNR – Passenger Name Record  
RABIT - Rapid Border Intervention Team  
TCN – Third country national  
SIS - Schengen Information System  
VIS – Visa Information System  
QMV – Qualified Majority Voting



# CHAPTER ONE

## INTRODUCTION

### 1.1 - Overview of the thesis

After the terrorist attacks of September 11, 2001 in the United States, a first of its magnitude aimed against civilians in the West, a war was declared, not against a state, but the non-state phenomenon of terrorism. Fears of similar attacks on the European continent materialized most prominently with the 2004 Madrid and 2005 London attacks. Although terrorism is not by any means a new phenomenon in Europe, the attacks by Islamic fundamentalists escalated the debate on new forms of security threats post Cold War. It also illustrated, as Leiken (2004:206) points out, how obsolete the differentiation between the zone of stability and arc of conflict had become. For many, immigration was labeled as the channel via which instability was being imported to Europe. With a heightened terrorism alert throughout Europe, nationals from the Middle East and foreigners in general, were labeled as the source of this threat from the outside, on the freedoms, values and ultimately lives of people in Europe. Unfortunately, this atmosphere has continued to exist.

In light of such developments, this thesis will aim to assess whether such externalization of threat has had implications on the European Union's (EU) immigration and asylum policy towards third-country nationals (TCNs). More specifically, the aim is to examine the extent to which national security concerns dictate policy formation in the field of immigration and asylum. The precise focus of the research will be to analyze the phenomenon of securitization in the EU immigration and

asylum policy. Analysis will concentrate specifically on the time-period post 9/11, looking at the resultant discourse and policy implications on immigration policy concerning TCNs entry to the EU via legal and illegal channels. Hence, the objective of the thesis is to explore the use of security logic as a legitimating factor for tightening migration policies at the Union level.

## **1.2 - Research question and methodology**

In the context of the above introduction, this thesis will aim to tackle the following research question: To what extent has EU migration policy been securitized as a result of new forms of security threats? The importance of the research question stems from the need to explore the ramifications of the 21<sup>st</sup> century security threats from non-state actors on the ideals of the EU. The research question is hoped to highlight the paradox between the development of the internal liberalization of borders and the reinforcement of the external borders of Europe. Furthermore, the topic is of current interest amidst raising anti-immigration sentiments, arguably at the lead of growing right-wing political parties, on a continent in financial turmoil. Due to the topical nature of the immigration debate in Europe, this research aims to contribute to the field of study by examining the extent to which immigration is being discussed in the security context and the influence of non-state threats policy formation. In this context, the research also touches on the issue of externalizing or framing of a threat for the preservation of national identities.

The methodology of the research will focus on analyzing the framework, which determines the selection and admission of foreign nationals and the restrictions on

illegal entry into the EU. Hence the research is limited specifically to the admissions framework, the legal or illegal entry and involuntary or voluntary exit of TCNs from the EU, and will not cover issues post admission such as integration and participatory rights in host country.

Three main sections will form the foundation of the analysis. The first section provides an extensive literature review and theoretical context of the topic. This will entail a comprehensive analysis of the characteristics and features of securitization providing the necessary basis for the analysis for the following sections. Key words and themes identified in the theoretical framework will act as the reference points for the analysis of the primary data.

The second part of the study will focus analysis on the policy outputs by the EU. The subject of analysis will be secondary legislation adopted by the EU, more specifically, Directives, Regulations and Decisions. Although all three constitute secondary legislation, each performs a slightly different function. Regulations constitute law, which is directly applicable in each member state and fully binding. It is applied in each member state of the Union without any additional measures on the national level (European Union 2011a). Directives on the other hand are mainly designed to align national legislation. Although binding, they allow for variation in the practice and method used to apply the Directive within national legislation. Decisions act as rulings on particular issues to either enact obligations or award rights to member states or citizens (European Union 2011a). These three are chosen due to their function as the main *binding* instruments under Union treaties and international agreements, the primary legislation of the EU. Primary legislation is not seen applicable to the analysis as it provides the fundamentals for the overall functioning of the EU, rather than

specific instruments used for detailed policymaking. Non-binding instruments, namely Recommendations, will however be taken into consideration in the analysis of the amendments and recasts of individual policies. This is necessary in order to gain an exhaustive understanding of the rationale behind specific policy developments and to see the full evolution of the legislation.

The secondary legislation will be tackled in three broad categories: (1) asylum, (2) illegal entry and border reinforcement and (3) technology and data solutions. Although a variety of issues fall under migration policy, these subject areas have been chosen based on a comprehensive review on legislation as well as secondary literature. The categories cover the most central aspects of EU migration policy concerning TCNs and have undergone the highest amount of transformations within the time period in question. Whilst acknowledging that the standard legislative procedure within the EU involves the three main bodies, the European Parliament, the Council of the European Union and the European Commission, the focus of this chapter will be the European Commission as the executive body responsible for both the proposition and implementation of legislation.

The third section will be a discourse analysis focused on the Meeting Conclusions published by the Council of the European Union and Reports published by the European Parliament from September 2001 until September 2011. Within this time period a total of 56 Council Conclusions were issued out of which 24 were chosen for closer analysis based on the relevance of their content. This section will cover the discourse aspect of the concept of securitization. The methodology will involve examining Meeting Conclusions related to immigration and analyzing the content, paying special attention to the wording and approach of the Council to different matters

pertaining to migration. It will be examined whether the Council discourse on immigration is occurring in the context of national or internal security and the way in which migration issues are framed and presented to the public. The Council has been chosen, over the other bodies, due to its role in the EU to provide “...the Union with the necessary impetus for its development and defines the general political directions and priorities thereof” (European Union 2011b). Here the key is the emphasis on its role as the influence and the force, which shapes the development of the Union policies. This function ties in with speech aspect of the securitization concept developed later in the thesis. Furthermore, the Council does not retain any legislative functions hence separating the speech and policy aspects of analysis. In addition, the composition of the institution is seen most appropriate for the purpose of the analysis, as it is arguably the most politicized of the Union institutions due to its composition of the heads of states and key ministries of member states. It is hence believed that analyzing the Conclusions issued by the Council will be of most value for the aim of this thesis with regard to the discourse analysis.

The second part of the discourse analysis will involve analysis of European Parliament Reports. The European Parliament is chosen as a counterbalance to the analysis of the Council for its differing function within the Union. The parliament plays a crucial role in scrutinizing draft EU legislation and other documents (European Union 2011c). It checks Commission reports, gives its opinion on the topics on the agenda for European Council summits and reviews petitions from the citizens (European Union 2011c). Hence, in a sense the European Parliament acts as a watchdog over the Commission and the Council. By analyzing these reports, it is hoped to gain insight into whether the Parliament is critically evaluating the direction of Union policy on

immigration and asylum. And further, whether the rhetoric used by the Parliament illustrates full regard to human rights, or has in fact the securitized rhetoric reached the general rational of the Parliament.

The criteria for the selection of the Parliament reports was based on a document search on the European Parliament website under the public register for all Parliament Reports. The reports were filtered from 11 September 2001 to 16 September 2011, with a keyword search including the phrases “immigration” and “asylum”. This led to 358 published reports out of which based on subject headings and extracts, the analysis was narrowed down to 32 reports. Based on the content matching the discussion to the Council and Commission documents already analyzed in the previous chapters, eight reports were considered to be of most relevance and are analyzed in great detail in the chapter.

Hence, the overall time frame for the analysis is from September 2001 to the present day. Although Europe has a long history of terrorism, both from the inside, for instance the *Euskadi Ta Askatasuna* / Basque Homeland and Freedom (ETA) and the Irish Republican Army (IRA), and from the outside, numerous aircraft hijackings by Palestinian revolutionaries in the 1970s, 9/11 marks the intensification of terrorist attacks or perceived threats on western soil. It instigated a period of heightened threats from non-state actors hence showing the nature of new security challenges. Taking into account potential bureaucratic delays in legislative changes, the entire time-period between 2001 and 2011 will be looked at instead of specific points in time. This timeframe will also enable to reveal whether potential policy changes have been reactionary with short-term focus or a comprehensive long-term policy response.

### **1.3 - Map of the thesis**

The thesis is divided into five chapters, the first of which provides the contextual background for the analysis. It also outlines the research question and methodology framing the research. The second chapter of the thesis tackles the institutional background and theoretical framework of the topic. The concept of securitization is then analyzed in detail, both its theoretical origins and its relevance in the context of immigration. This is followed by an extensive literature review in order to map out the existing analysis on links between immigration, terrorism and national security threats.

Chapter three moves onto the policy analysis, aiming to find evidence of securitization in three main areas: asylum, illegal entry and border reinforcement and technology and data solutions. The chapter examines selected EU secondary legislation, chronologically analyzing trends and developments within the framework set in the literature review. The analysis looks for indications of the extent of securitization and whether such trend in legislation is new or an indication of a longstanding policy.

Chapter four provides a comprehensive account on the discourse of the Council of the European Union through examining Meeting Conclusions and European Parliament Reports. The analysis goes through the central themes present in the conclusions and reports pertaining to migration issues. It examines the conclusions and reports in parallel in chronological order, grouping the documents according to their proximity to incidences of terrorism in Europe, in order to view any change in discourse. The chapter aims to see the manner in which the Council and Parliament approach the issue of migration and which aspects are held at a higher priority over others.

Chapter five summarizes the main arguments made in the thesis and focuses analysis on the general findings. The chapter concludes that although the securitization phenomenon is evident in the policies from the time period under study, they are not inherently new. Trends toward securitization have developed in parallel to the development and enlargement of the European Union. Due to the checks and balances present in the process of policy formation, it is unlikely that securitization will be taken to the extent of what is being witnessed in the US. For the EU, the securitization of immigration policy appears to be a reaction to its own internal development as much as to those on the outside of its borders.



## **CHAPTER TWO**

### **THE THEORETICAL CONTEXT**

#### **2.1 - Introduction**

This chapter will set the contextual and theoretical framework for the thesis. It will first briefly outline the key historical developments in EU migration policy. This is essential for the understanding of the framework under which the policy developments are occurring. Secondly, the chapter will tackle the theoretical background of the subject by examining the origins and foundation of the concept of securitization by the Copenhagen School. This will highlight the characteristics of securitization both as a speech act and as an institutionalized process. The research will then focus on examining the existing literature on securitization in the context of the migration debate in Europe. This will shed light on the prevailing perceptions on the roots of securitization in EU's migration policy and the role, which the events of 9/11 played in its intensification.

#### **2.2. - An overview of EU migration policy**

Immigration has enormous political, economic as well as social implications on the society of the receiving state. Technological advances, expansion of trade and rapid but unequal development have led to large movements of people seeking a better life both through legal and illegal channels. Furthermore, the increase of intra-state conflict and general state transformations following the end of the Cold War have led to

worldwide mass movements of people, having the potential to alter national stability as well as international security (Loescher 1992 in Huysmans 2006:15).

The European Union, throughout its evolution, has highlighted the importance of bringing down barriers to international trade, restrictions on the mobility of labor being one of them. The Treaty of Rome of 1957, which established the European Economic Community (EEC), highlighted the importance of freedom of movement of labor (European Parliament 1975) and further on with the transformation of the EEC to the European Community (EC), the Maastricht Treaty of 1992 took the development of the Union further, realizing that open internal markets required the harmonization of other areas of policy making. This led to the three-pillar structure of the European Union: the EC, Common Foreign and Security Policy (CFSP) and the Justice and Home Affairs (JHA). With the widened scope of affairs, the Union reiterated the importance of “principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law” (European Council 1992:2). The 1997 Treaty of Amsterdam laid out foundations for immigration and asylum policy of the European Union, moving all aspects to do with the free movement of people to the EC pillar (European Communities 1997:28). Central immigration and asylum policy aspects such as issues of border crossing, visa requirements and rights of TCNs were outlined in the Treaty. In October 1999, another milestone in EU immigration policy, the Tampere meeting of the European Council concurred that “The separate but closely related issues of asylum and migration call for the development of a common EU policy” (European Parliament 1999:2). Tampere, pressing ahead with EU’s policy on JHA, put forward a five-year mandate for policy harmonization due to gap between policy statements and practice (Schain 2009:100). Tampere’s four main areas of emphasis were a) partnership

with countries of origin; b) a common European asylum system; c) fair treatment of third-country nationals; and d) management of migration flows (Balzacq and Carrera 2005:5). The human rights emphasis was also strong, stating that “[t]he European Union must ensure fair treatment of third country nationals who reside legally on the territory of its Member States. 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” (European Parliament 1999:3).

With the Treaty of Lisbon coming into force on 1<sup>st</sup> of December 2009, the Union experienced wide constitutional reform, also involving changes in the field of immigration and asylum. Issues of JHA previously under Title IV ‘Visas, asylum, immigration and other policies related to free movement of person’ were re-titled to ‘Area of freedom, security and justice’ and the earlier three-pillar structure became obsolete (European Union 2007:76). Most importantly, it introduced substantive changes to the legislative procedure. Prior to the Treaty, most JHA issues were under unanimity vote of the Council, with only consultative procedure with the European Parliament (General Secretariat of the Council of the EU 2009:2). The Treaty moved JHA issues under normal legislative procedure, expanding Qualified Majority Voting (QMV) procedure in the Council and full co-legislative powers with the European Parliament (General Secretariat of the Council of the EU 2009:2). However, key issues such as illegal immigration and asylum policy were already subject to QMV hence in terms of voting procedures there has already been a trend of increasing supranational power. One extensive change however is that all issues pertaining to migration, both EU and national level, are now subject to review by the European Court of Justice (General

Secretariat of the Council of the EU 2009:1). Hence, overall migration issues are subject to consultation by more parties than previously and in terms of voting, are easier to implement in the absence of unanimity vote.

Throughout, the supranationalization of immigration and asylum in Union affairs has been a highly contested issue with national governments attempting to retain as much sovereignty as possible. Most illustrative of this has been the tug of war concerning QMV, as it had been planned to take effect already five years after the implementation of the Treaty of Amsterdam (Balzacq and Carrera 2005:4-5). Hence national governments and influence groups continue to have a heavy weight on Union level policy-making. Bale (2008:316) also reiterates the importance of political parties on EU policy making over immigration as the nation-state is still seen to dominate over the field. Migration issues go to the core of issues of national sovereignty as well as identity making them highly controversial.

### **2.3 - The Copenhagen School and the concept of securitization**

As argued by Bigo (2000), the concept of security has dramatically changed over time. It is no longer solely something that involves the collective security of the state, but also the individual security of each person (Bigo 2000:328-329). Hence the emphasis has shifted from survival of the state as a collective entity in the international system of states, to also guaranteeing the security of the individual belonging to the state, regardless of their location in the world (Bigo 2000:329). This effectively has led to two transformations: the state taking responsibility for the security of the individual and widening the notion of security (Bigo 2000:329). Consequently, the security of the

individual has become has become a political issue. Issues previously concerning solely law enforcement have become matters of internal security and hence widely politicized (Bigo 2000:332). As a result, the expansion of the concept of security has led to the blurring of what constitutes international and what internal security.

Consequently, the field of security studies within IR has become a debated topic, mainly through Constructivist challenges in a field typically dominated by Realist approaches. Constructivist critique has been aimed at the prevailing narrow definition of security concerned solely with state survival and military security (Williams 2003:512-513). The debate in security studies, growing mainly between 1970s and 1980s, expected consideration for other actors such as sub-state groups and larger global concerns beyond that of the military (Williams 2003:513, Wæver 2004:7). The end of the Cold War, at the latest, marked the broadening of the notion of security (Den Boer 2003:3). It was within this context of a larger movement to study the social construction of security that the concept of securitization was first put forward by the Copenhagen school.

At the lead of Ole Wæver and Barry Buzan, the Copenhagen School in security studies began to formulate around three main ideas: 1) securitization, 2) sectors and 3) regional security complexes (Wæver 2004:7). The sectors, as described by Wæver, can be divided into five different categories of security: political, environmental, economic, military and societal. Although each one is unique they are all linked illustrating a move away from traditional security sectors (Stone 2009:4). In addition to sectors, the Copenhagen School attests that there are three levels central to the analysis: the individual, the state and the international system (Stone 2009:3). Both the sectors and levels form a basis for the understanding of the broader notion of security.

The Copenhagen School describes the concept of securitization as a process whereby an issue is declared through speech acts to be a security problem and accepted as such by an audience (Stone 2009:8). As Williams (2003:514) aptly defines the concept; securitization is “structured by the differential capacity of actors to make socially effective claims about threats, by the forms in which these claims can be made in order to be recognized and accepted as convincing by the relevant audience, and by the empirical factors or situations to which these actors can make reference”. Consequently, when an issue is securitized it is portrayed as a threat to existence of citizens of that state and hence extraordinary measures for safeguarding its survival are adopted moving above the realm of ‘normal politics’ (McDonald 2008:567). In other words, the way in which an issue is portrayed leads to justification for exceptional solutions to deal with the problem. This securitization aspect according to Wæver (2004:8) enables the state to use special powers, anti-democratic in nature, highlighting the Copenhagen School’s skepticism towards the concept of security. Illustrating the efficiency of securitization, Falah and Newman (1995:694) explain:

“Leaders are successful in uniting the people around security matters more than any other issue—essentially because the appeal to national security is related directly to the issue of protection against a dangerous enemy and involves the physical survival of one’s family, friends and nation. The national threat is translated to reality at the micrological level”.

The Copenhagen School is against such practice and believes that politics should be conducted according to normal procedures and in the long run strive for de-securitization (Wæver 2004:8).

In terms of the regional aspect of the analysis, Buzan led in developing the concept of the regional security complex in his book *People, States and Fear* (1981). According to Buzan, as security is a relational phenomenon “one cannot understand the

national security of any given state without understanding the international pattern of security interdependence in which it is embedded” (quoted in Stone 2007:6). This applies to the securitization of issues on the regional level also. The Copenhagen School states that within a regional setting, such as the EU, the processes of securitization are interlinked to the extent that the security issues must be analyzed and resolved collectively (Wæver 2004:17).

Hence, in the context of IR theory, the Copenhagen School does not accept the Realist concept of security but explores the social aspect of how threats are constructed (Stone 2009:2). In her analysis, Stone (2009:3) describes this approach to security as a combination of neoliberalism and constructivism. In contrast to Realism, the ‘struggle for power’ security setting is rejected as security is rather based on levels; individuals, states and international systems (Stone 2009:3). For Realism, security is dealt with from an objectivist approach, considering it to be something that is merely out there. The Copenhagen school considers security to exist from a moral choice and more importantly from human agency (Karyotis 2007:2-3).

Although the Copenhagen School explains securitization as occurring through speech acts, the discourse has the ability to translate into policy practices and institutional developments (Karyotis 2007:3). The Copenhagen School recognizes that over time the securitization of an issue can become institutionalized. This primarily happens when an issue is represented repeatedly as such and becomes normalized (Buzan et al. 1998:27-28). Hence if an idea from speech acts has been institutionalized the idea of it is taken for granted and it will remain a reoccurring theme in the way the issue is dealt with within institutional practices. Bigo (2008:349) highlights in his research that institutionalization of discourse leads to the homogenization of the issue.

This institutionalization in turn necessitates power and legitimacy, which according to Bigo is gained by dominating insecurity (2008:25). Actors such as politicians, public and private bureaucracies develop the power to define the 'legitimately recognized threats' in order to create a security orientated outlook with the public (Bigo 2008:25). The audience or the public is led to believe that experts in the bureaucratic field possess knowledge on the on the issue of insecurity, transpiring as power (Bigo 2008:25). The Copenhagen School tackles institutionalization by making a distinction between institutionalized securitization and ad hoc securitization (Buzan et al. 1998:27). Ad hoc securitization is not yet part of standard political discourse, only when it becomes normalized and accepted by the public it can become institutionalized (Buzan et al. 1998:28). Once institutionalized speech acts are less of importance and administrative and bureaucratic practices take over.

#### **2.4 - The securitization of immigration**

Traditionally, migration was not a significant issue in European affairs, nor portrayed as a threat in any way (Larrabee 1992). After the Second World War, immigrant labor assisted in the reconstructing of a war torn Europe. However, following economic changes in the 1970s, European states began to implement restrictions on immigration (Karyotis 2007:3). In contrast to terrorist threats, the traditional security debate revolving around migration issues has focused on social and economic security (Spencer 2008:2). However, amid the increasingly aging population and negative population growth in many European countries, the literature reveals that on the eve of 9/11 there was a trend towards liberalization of EU immigration policy due to



realization of pragmatic labor needs (Levy 2005:34, Karyotis 2007:1). This move towards a supportive stance on a more liberal immigration within the EU however was seemingly brought to a halt with the attacks of 9/11.

Post 9/11, there is strong evidence in Europe of the population equating combatting terrorism with combatting illegal immigration and a more specifically adoption of more restrictive asylum policies (McDonald 2008, Spencer 2008, van Houtum and Pijpers 2007, Buzan 2006). For many, such as Leiken (2004:206) immigration was the means by which “the resentments of the Third World have struck back at the West in a way unparalleled in the previous periods of colonialism, Cold War, nationalism, and communism”. Leiken, along with many other US based scholars, viewed migration as a means by which violence was being *exported* to the West, calling for a response by Western governments (2004:206). This represents a way of externalizing a threat, differentiating between the “us” and the “them”. When examining what has actually enabled such externalization of threat, Coleman (2007) offers an explanation in the context of the nature of terrorism. As the origins of the threat of terrorism are largely unknown or unpredictable in nature, it has allowed for a wider and more comprehensive preventative approach, especially in the area of immigration (Coleman 2007:50-51). As there continues to be a lack of information concerning where the terrorist threat can originate from, states and policy makers are able to portray the “terrorists” as using all possible channels and means of entry into the state. Baldaccini (2007:xiv) supports this view by stating that immigration and asylum issues are especially vulnerable to exceptional measures than other subject areas of law. They are easily modified in terms of government interests, prioritizing the security of the citizens over that of the foreigner. For instance, the association of internal security and

immigration issues is evident even in the 2011 EU Terrorism and Situation Report (Europol 2011). Describing the current threat from terrorism, it states that “[t]he current and future flow of immigrants originating from North Africa could have an influence on the EU’s security situation. Individuals with terrorism aims could easily enter Europe amongst the large numbers of immigrants” (Europol 2011:6).

For Bigo (2008:18-19), a widened concept of security in Europe has led to many unrelated issues to be placed in the same context. In the case of immigration and asylum, this is not often done directly but for instance administratively or in discourse linked to another traditional security issue, hence transferring the insecurity from one phenomena to another (Huysmans 2006:4). Such statements support arguments such as that of Guild (2003:4) who argues that constructing the foreigner as a threat has not only justified closure of borders and the expulsion of TCNs, but has also moved us away from commercial interests and human rights obligations. By portraying the TCN as a potential terrorist, xenophobia and arguably Islamophobia in Europe has visibly increased. According to Guild, this externalization post 9/11 has led to racial profiling of individuals as “the enemy” based on ethnicity and religious conviction rather than their nationality (Guild 2003:4). Correspondingly this has increased the cohesiveness of the European identity by reinforcing perceptions of the “other” (Karyotis 2007:9). The rising popularity of populist right-wing political parties using the anti-immigration platform has been captured in the analysis of many scholars (Van der Brug and Fennema 2009, Bale 2008). But more often, a direct link between immigration and terrorism is made by US based think tanks and scholars, Robert Leiken being the most prominent in labeling first and second generation immigrants being the source of terrorism in the West (Leiken 2005, Leiken 2004). This has also led to many scholars

highlighting the interdependence of European security and US security and conveying the message of US policymakers that a relaxed attitude towards immigration in Europe is a direct source of concern for global fight against terrorism (Kitfield 2010, Lugna 2006, Leiken 2005, Leiken 2004). The view of European immigration policy being the weak link of global security as a whole, is adopted by the US government to the extent that in 2009 the CIA allocated approximately 40 percent of its counterterrorism funds in investigating suspected terrorists originating from the United Kingdom (Kitfield 2010)

However, research has also developed around the argument that the trend of securitization of European migration policy was not brought on by 9/11 (Karyotis 2007, Boswell 2006). Karyotis argues in his article *European Migration Policy in the Aftermath of September 11: The security-migration nexus* (2007), that the trend of externalizing the security threat to the EU was already there prior to the attacks and rather the events of 9/11 and terrorist attacks on European soil merely reinforced an existing phenomenon. In other words, 9/11 did not initiate the trend of securitizing immigration; it was already rooted in the European security framework. Boswell, a prominent scholar in the field migration, also explicitly states similar views in her publication *Migration Control in Europe after 9/11: Explaining the Absence of Securitization* (2006). She states that the terror attacks of Madrid and London did not have a similar effect in Europe as 9/11 did in the US (Boswell 2006:19). According to her research, the securitization of immigration only gained momentum initially in speech acts in the political sphere but proved difficult to sustain on a policy level (Boswell 2006:19). The reasoning of this is said to stem from cognitive constraints as well as diverging political interests (Boswell 2006:19).

Other scholars however argue that 9/11 has provided a pretext for the execution of policies, which would have been deemed politically unfavorable pre 9/11 (Coleman 2007:51-52, Levy 2005:53). As Coleman (2007:51-52) explains this seemingly European phenomenon: “[e]ven before 9/11, policymakers throughout much of the E.U. viewed security through the lens of immigration, whereas policymakers in the U.S. tended not to until after the tragedy”. Levy (2005:54) makes a similar argument by illustrating that securitization was already firmly rooted in the 1970s concern over developments in the Middle East and Palestine and the growth of international left-wing and right-wing terrorism in Europe. The likes of middle-level officials and civil servants from ministries utilized supranational venues in order to avoid national opposition for their agenda (Levy 2005:54). For Levy, the security framework was reinforced in Europe with TREVI, which provided the structure for the illiberal practices rising in the political agenda of the 1980s. This security debate paved the way for restrictive practices differentiating between the Schengen citizen and the TCN (Levy 2005:54).

Karyotis (2007:6) also points out to two old trends of securitization in EU immigration and asylum policy, instrumental and institutional merging. Karyotis claims that at the EU level there has been institutional merging of intergovernmental bodies, which deal with immigration and terrorism, and instrumental merging of anti-terrorism and immigration tools, illustrating the blurring of the distinction between the two issues (Karyotis 2007:6). Den Boer (2003:11) supports this view by pointing out that it is evident in EU policy, that there has been “spillover from counter-terrorism legislation to legislation in the immigration and asylum area”. This is especially visible in matters of border control, mainly visa and identity issues, allowing the securitization phenomenon gain momentum.

Looking more specifically at how the literature supports the view that securitization has been evident in Europe before 9/11, issues such as strict border control and the externalization of immigration control are highlighted. Guild (2003:9) emphasizes that the main aspect in EU approach to immigration, which resembles securitization, is the portrayal of Schengen borders drawing a geographical line around terrorism, a physical border keeping the enemy on the outside. Hence for many, the border controls themselves highlight the securitized nature. For Gammeltoft-Hansen (2010:2-6) the most visible evidence of externalization is the interception of migrants by specialized forces before they reach Europe, done through Friendship Treaties with sending and receiving countries. Several other scholars offer similar analyses by pointing to the bilateral cooperation across the Mediterranean, for instance joint naval patrols between Spain and Morocco, Italy and Tunisia as well as Libya (Lavenax 2006:340). For Levy (2005:55), this tradition of externalization dates back to the Bosnian war with the prevention of refugees entering Europe through the creation of ‘safe third countries’ stipulated in the Schengen Implementation Agreement of 1990 and the Dublin Convention.

In terms of organizational interest and actors involved in securitization, it is evident that securitization has a wide impact on the Union level through national politics. Schain builds up on the research on the topic of “venue shopping” in his article *The State Strikes Back: Immigration Policy in the European Union* (2009) whereby state level actors, such as key ministries, utilize EU level actors to push forward national goals. Union level organizations allow for more freedom of action than what would have been possible on national level, avoiding national parliamentary scrutiny and judicial enquiry (Schain 2009:102). Schain cites the work of Guiraudon (2001),

which illustrates such in action during the Schengen accord in the late 1980s. National justice and ministry civil servants dominated the process by highlighting the importance of utilizing immigration control in fighting transnational crime (Schain 2009:103). Lavenex supports this view by pointing to an analysis on European cooperation in the field of immigration and asylum (2006:332). According to Lavenex, needs to circumvent obstacles to policy reform on national level were the primary driver of JHA officials toward transnational cooperation concerning immigration policy (Lavenex 2006:332). Hence restrictive policies at the EU level are a direct reflection of national ministries who have the ability to dominate institutional space (Schain 2009:102).

An alternative explanation is given by the colonizing thesis. Some literature argues that security agencies have interests in expanding their sphere of influence to other regions through transferring their technologies and processes to policy areas outside of security (Bigo 2002:69). In the field of migration, this is evident for instance in the exporting of surveillance equipment and other sophisticated technology for the policing of borders. According to Bigo (2002:71) this also illustrates the fact that the inclusion of security professionals, such as the police, has been essential for the securitization of immigration.

## **2.5 - Conclusion: The threat at the borders**

The literature review and the theoretical context have revealed some central issues for the contextualization of the chapters to follow. It has illustrated the theoretical underpinnings of the widened concept of security. The chapter showed how securitization takes form first by speech and over time becomes part of institutionalized

practices. In terms of securitization in the context of immigration policy, the prevailing literature has shown two broad arguments concerning the securitization of EU immigration policy. The first one claims that the fight against terror has led to policy responses linking TCNs are potential security threats. The alternative approach attested that such externalization of threat was present in the security framework of the Union long before 9/11 and attacks in Madrid and London. Rather, new forms of security threats have enabled policymakers to adopt a wider range of policy options and mobilized the public support which has been previously unattainable. The next chapter will analyze these developments in the context of selected EU immigration and asylum legislation.

## **CHAPTER THREE**

### **EU IMMIGRATION AND ASYLUM – POLICY ANALYSIS**

#### **3.1 - Introduction**

This chapter deals with the policy practice of securitization. It tackles the institutionalization of the securitization logic in the context of EU immigration and asylum policy. It will cover an extensive policy analysis of the binding legal instruments, Directives, Regulations and Decisions, adopted by the EU. The period examined (2001-2011) has been a decade of extensive initiation of new legislation as well as harmonization and development of existing policies. Due to its institutional setup, the legislative bodies are subject to scrutiny from various levels and are extremely receptive to policy re-evaluation. This translates to multiple amendments within the same legislation and proposals for supplementary action. This chapter will consider newly established legislation within the time-period as well as draft initiatives and recasts in order to analyze the general trend within EU level migration policy.

Albeit interlinked and overlapping in various ways, the chapter will divide the analysis into the following three categories: (1) asylum, (2) illegal entry and border reinforcement and (3) technology and data solutions. The analysis will focus on examining the nature of the policy development and indications of securitization through references to national / internal security as well as any overlap of policy arenas between migration and law enforcement.



### **3.2 - Asylum policy**

According to Eurostat, in 2009 the EU-27 member states received a total of 260,730 asylum applications (Eurostat 2010:2). For the European Union, asylum is a fundamental human right, granted to those who are in need of international protection, fleeing persecution or serious harm (European Commission 2011a). Internationally, the protection of rights of refugees and asylum seekers is based on the 1951 Convention relating to the Status of Refugees or as commonly known, the Geneva Convention (Office of the United Nations High Commissioner for Human Rights 1951). The protection of the asylum seeker against unlawful return is outlined in Article 33(1) prohibiting “refoulement” of persons who as a result of expulsion would face a threat on their life or freedom (Office of the United Nations High Commissioner for Human Rights 1951:9). However paragraph 2 also clearly states that the provision does not apply when the person seeking international protection is suspected based on reasonable grounds to constitute “...a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country” (Office of the United Nations High Commissioner for Human Rights 1951:9). Complementary to this on the EU level is Article 3 of the European Convention on Human Rights (ECHR) prohibiting the expulsion of individuals, which could face as a result of extradition torture or inhuman punishment (European Court of Human Rights 2010:4). However, with regard to exceptions based on national security, the European Court of Human Rights (ECtHR) has set of a precedent of interpreting the non-refoulement principle in an absolute manner irrespective of the threat on national security of the state, highlighting that

Article 3 leaves no provision for exceptions (Vedsted-Hansen 2011:47). Nevertheless the issue remains to be debated on the political and diplomatic fields.

The field of asylum has undergone extensive policy development since 2001. Due to limitations on the scope of the thesis, two comprehensive categories of asylum policy are considered to be of relevance to the research: Directives concerned with the qualification to refugee status and the examination of asylum applications. In terms of qualification of refugee status within the EU, *Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted* of 29 April 2004 (Official Journal of the European Union 2004b) is of central relevance. This Directive relates to the qualification for refugee status for applications received at EU borders or on EU territory. Adding to the Tampere Conclusions, it outlines a broad range of common criteria for member states on key issues of asylum applications concerning inclusion, exclusion and minimum rights each applicant should be provided on EU territory (Official Journal of the European Union 2004b).

The first indication of restrictive measures in the field of asylum and references to issues of internal security are visible in the definition of those who do not enjoy rights on EU territory. Immediately at the beginning of the Directive the terrorist threat amongst asylum seekers is highlighted by defining what constitutes a threat to national security: “The notion of national security and public order also covers cases in which a third country national belongs to an association which supports international terrorism or supports such an association” (Official Journal of the European Union 2004b:13). The issue of security emerges clearly in Article 14 under ‘Revocation, ending of or

refusal to renew refugee status' (Official Journal of the European Union 2004b:18). Essentially it gives member states the right for exclusion from the principle of non-refoulement if the person is considered to be a danger to the security of the state (Official Journal of the European Union 2004b:18). Entry can be refused or revoked if: "(a) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present; (b) he or she, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that Member State" (Official Journal of the European Union 2004b:18). However, the Article does also reaffirm the member states' responsibilities under the Geneva Convention. However, as it can be seen, the conditions for refoulement are left to a wide degree of interpretation. In total, the Directive makes eight distinct references allowing for exceptions from policy on the basis of national security and public order.

However, this aspect has not gone unnoticed and has been subject to much criticism. In 2009, three years after the deadline to entry into force, the Commission issued a proposal for amending the 2004 directive on the claims that "they are insufficient to secure full compatibility with the evolving human rights and refugee law standards, they have not achieved a sufficient level of harmonisation and they impact negatively on the quality and efficiency of decision-making" (Commission of the European Communities 2009:3). However, none of these addressed the multiple references to national security. Similar notions are visible in the June 2010 report by the Commission, which highlights with regard to Article 14, that the wide interpretation has led to some member states implementing broad or additional grounds for exclusion and cessation of refugee status with insufficient regard to the Geneva Convention (European

Commission 2010:9-10). Despite of the general concerns over the human rights standards, Article 14 of Clause IV remains unchanged.

In 2005, the Council issued a Directive further clarifying the minimum standards member states should adhere to when issuing and withdrawing refugee status titled *2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status* (Official Journal of the European Union 2005). This Directive, again building on Tampere conclusions, highlights a wide range of rights to be ensured to asylum applicants ranging from procedural formalities, to representative rights and judicial review. However, when examining the Directive it is also apparent that it leaves a great deal to ambiguity and hence to interpretation of the member state. Firstly, this Directive reveals worrying developments under the pretext of national security, most visibly by the increased freedom for the actions of officials involved directly or indirectly with asylum applications. Under Article 4 (1) ‘Responsible Authorities’ it is stipulated that member states must designate an authority, which is responsible for the correct examination of the applications (Official Journal of the European Union 2005:17). However, member states are given the option to allow other administrative bodies to undertake decisions over important application procedures such as transfer of persons and rejection of cases in instances concerning national security provisions (Official Journal of the European Union 2005:17). Although Article 4 (3) vaguely stipulates that the relevant authority should have “...the appropriate knowledge or receive the necessary training to fulfill their obligations when implementing this Directive” (Official Journal of the European Union 2005:17), this entails the risk of persons not being granted a fair assessment of their case in the hands of inexperienced personnel of the member state in question. ‘Appropriate knowledge’ is

clearly a subjective concept, which can entail different levels of training and regard in different member states.

Furthermore, national security concerns present another exception within the same Directive under Article 16 (1) concerning the ‘Scope of legal assistance and representation’ (Official Journal of the European Union 2005:21). Member states are entitled to withhold information from representatives of applicants in a broad set of circumstances defined in the Directive as which:

“jeopardise national security, the security of the organisations or person(s) providing the information or the security of the person(s) to whom the information relates or where the investigative interests relating to the examination of applications of asylum by the competent authorities of the Member States or the international relations of the Member States would be compromised” (Official Journal of the European Union 2005:21).

Extending the range of circumstances to the degree of the international relations of member states can lead to arbitrary application of the Article and hence clearly puts the applicant and his/her representative in an imbalanced setting in processing the application. This clearly illustrates the characteristic of securitization, which under the pretext of national security allows for excessive measures, which in any other context would be deemed undemocratic.

However, based on a report produced by the Commission, proposals for the amendment of the Directive have been discussed in light of criticism concerning the ambiguity of certain Article provisions. In 2009 the Council produced a proposal for amendment by the Commission to modify certain Directive provisions (Commission of the European Communities 2009). Various clauses of the Directive have since been suggested to be modified, particularly Article 4 on ‘Responsible Authorities’ (Commission of the European Communities 2009:24). The authorities are outlined a

detailed training, specifying international human rights provisions concerning non-refoulement and non-discrimination (Commission of the European Communities 2009:24). Most strikingly, the national security clause has been suggested to be removed from the Article. Although the national security reference remains under ‘Scope of legal assistance and representation’, an additional clause has been added for ensuring applicant rights by guaranteeing that access is given to “the information or sources in question at least to a legal advisor or counsellor who has undergone a security check, insofar as the information is relevant to the examination of the application or taking a decision to withdraw international protection” (Commission of the European Union 2009:41).

However the amendment proposal adopted by the Commission has not been accepted and further changes are currently being discussed. The renewed 2011 proposal goes further in presenting better addressing of potential abuse (European Commission 2011b). However the long requirements of trainings outlined in Article 4 of the 2009 recast have been removed again, lessening the requirements on the member states (European Commission 2011b:26). Furthermore, all references to exceptions based on national security remain in the proposed amendment (European Commission 2011b). Hence it is evident that despite pressure on strengthening rights of asylum seekers there is a desire to retain leverage of action by the member states and not be excessively constrained by rigid human rights considerations.

Staying within the field of asylum, a complementary Directive, *2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*, was issued in 2003 by the Council aimed at harmonizing reception conditions in member states to prevent secondary movement within the EU (Official Journal of the European

Union 2003). Overall the Directive is clearly aimed at improving the quality of conditions and rights of asylum seekers once an asylum claim is made. Only one reference to public or national security is made in reference to confinement of applicants. If deemed necessary by the member state, Article 7 allows for legal and / or security reasons to confine the applicant in accordance to national law (Official Journal of the European Union 2003:20). Again, research showed that a draft proposal for the Directives' amendment has been issued in 2008 (Commission of the European Communities 2008c). However, when analyzing the details of the draft amendment the changes appear to be more towards improving the protection of asylum seekers and further guaranteeing of certain reception conditions in member states. Human rights concerns are clearly being taken account of as amendments proposed increase in the scope of opportunities for protection and justice, especially concerning detention periods (Commission of the European Communities 2008c:21). Detention is proposed to be allowed only in exceptional circumstances and even then the applicant is offered judicial remedy before a national court (Commission of the European Communities 2008c:12). In terms of references to national or internal security, Article 8 on detention outlines that detaining is allowed when 'protecting of national security and public order so requires' (Commission of the European Communities 2008c:20). This is the only explicit reference to issues of national security. Hence to claim that human rights concerns are fully disregarded under the pretext of security considerations is somewhat excessive.

Interestingly however, with the draft amendments on asylum Directives, all references to the terms "refugee" and "asylum seeker" have been removed and have been replaced with "applicants" or "beneficiaries of international protection".

Consequently, references in the same context to the Geneva Convention are removed. This could indicate a move towards the Union distancing itself from international norms of protection in order to maintain the primacy of its own regional framework.

Within the field of asylum, for such tug of war to take place through various draft amendments, there has obviously been dialogue and consideration for different subject areas the Directives touch upon. It clearly illustrates that policy making on the Union level is responsive to criticism from various levels and is not formulated in isolation. The characteristics of securitization are arguably more visible in the first drafts of the Directives in the first half of the decade. This prompts to consider the possibility that changes in asylum policy in response to 9/11 could have an element of a being reflexing policies or a ‘knee-jerk’ reaction and in the long term have potential to be moderated in consideration to strong international human rights obligations, as witnessed in the proposed recasts of the Directives towards the end of the decade.

The literature review in the previous chapter has highlighted that the aftermath of 9/11 was most visibly seen in asylum policy (Spencer 2007:36, Guild 2003, Geddes 2003:153). However, when looking at the overall development of asylum policy, dating back to pre 2001, an alternative explanation can also be found in terms of harmonization goals of the EU. In 1999 the Treaty of Amsterdam called for the establishment of a Common European Asylum System (CEAS). The first phase of it, taking place between 1999 and 2005 was aimed at the harmonization of the legal framework, governing asylum in the EU (European Commission Home Affairs 2011). As the objectives were not satisfactorily met, the harmonization and amendment of asylum policies continued past 2005. Hence an intensified drive towards harmonization



at a regional level could explain both the content and sheer quantity of the changes visible within the field of asylum.

Furthermore, it should be noted that despite increase in measures in asylum policy, which can be seen to limit the rights of asylum seekers, other measures have also developed in tandem which aim to safeguard human rights of third-country nationals. For instance, the Council of Europe issued ‘Guidelines on Human Rights and the Fight against Terrorism’ on 11 July 2002, which addresses the issue of asylum and refoulement under section 12 (Council of Europe 2002:33-34). Hence changes in EU legislation concerning asylum should not be overestimated. Coleman (2007) references the work of Brouwer, Catz and Guild (2003) who have established that key areas which uphold asylum standards and rights have not been modified in the face of terrorism threat in Europe (Coleman 2007:59). However, it can be seen that overall legislative changes in the post 9/11 environment have lead to refugee status, at the very least, being harder to achieve and maintain.

### **3.3 - Illegal entry and border reinforcement**

Understandably, the relaxing of internal borders has security implications at the external borders of the EU. This section will aim to analyze the extent and proportionality of the security reinforcements, which aim to keep TCNs outside EU territory. Since 2001, there has been a clear trend of enforcing the legal framework, which defines sanctions concerning entry and facilitation of entry into the EU. For instance, *COUNCIL FRAMEWORK DECISION of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry,*

*transit and residence (2002/946/JHA)* outlines explicitly sanctions, penalties and extradition procedures for illegal entries to the Union (Official Journal of the European Communities 2002a). This is further strengthened by *COUNCIL DIRECTIVE 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence*, which leaves no room for interpretation with meanings behind facilitation of entry (Official Journal of the European Communities 2002b). In general the Directives present a tradeoff between the perceived protection of internal security and opportunities for international protection and human rights.

In 2008 a Directive was issued by the Council focusing solely on measures for returning illegally staying TCNs with '*DIRECTIVE 2008/115/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals*' (Official Journal of the European Union 2008c). As the name suggests, the Directive focuses exclusively on harmonizing the measures to be undertaken by all EU member states concerning persons who are illegally residing in any EU member state. This Directive outlines the removal and return procedures, including measures such as detention and entry bans. This in itself implies a very securitized nature of the way the Union deals with its immigration and asylum policy, as to form a coordinated approach for the removal of TCNs. Again, what is visible when examining the Directive is the exclusion from the same rights or treatment of people which are thought to constitute a danger to public and national security. This is evident in Article 2, which defines the scope of the Directive. Article 2, paragraph 2(a) allows for member states not to apply the Directive to TCNs who: "are subject to a refusal of entry in accordance with Article 13 of the Schengen Borders Code, or who are apprehended or intercepted by the

competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State” (Official Journal of the European Union 2008c:101). Hence in the broadest sense, member states can decide not to apply the rights outlined in this Directive to any person detained near the borders.

Chapter II of the Directive outlines specific rules concerning the termination of illegal stay. Here it is visible that constituting a threat to public or national security limits the rights stipulated within the Directive. For instance, the time period allowed for voluntary departure (up to 30 days) is removed under Article 7 as follows “...or if the person concerned poses a risk to public policy, public security or national security, Member States may refrain from granting a period of voluntary departure, or may grant a period shorter than seven days” (Official Journal of the European Union 2008c:103). Article 11 concerning entry bans is another clear indication of the securitization trend. Bans are overtly enforced to accompany both return decisions without an option of voluntary departure and instances of non-compliance to return decision (Official Journal of the European Union 2008c:103). Entry bans are to be determined by the member state on a case-by-case basis but in principle are recommended to be five years in length. In cases of national security and public order bans are proposed to be longer than five years (Official Journal of the European Union 2008c:103). Some obvious human rights concerns can be raised as only victims of human trafficking who cooperate with authorities and do not constitute a danger to public or national security can be pardoned from the ban (Official Journal of the European Union 2008c:104). Furthermore, an obvious inconsistency is in the fact that whether the person decides to

leave voluntarily or involuntarily does not make a difference to the enforcement of the ban.

To ensure the enforcement of such legislations, the EU has already developed a practice of its own, the supranational security force Europol. Although not solely a border control agency, Europol's policies overlap with the field of immigration in that it is central in combatting illegal smuggling of immigrants (Official Journal of the European Union 2009:65). The establishment of Europol obviously dates pre-2001, to 1992, however a noteworthy fact concerning its evolution is its restructuring initiated in January 2010. Europol became an actual entity of the European Union and gained independent funding from the Union's general budget as stipulated in *Council Decision 2009/371/JHA* (Official Journal of the European Union 2009:37). This restructuring or 're-establishment' as presented in the Decision, widens the scope of possibilities of assisting and supporting member state law enforcement officials. Although issuing a new Decision for the establishment of Europol to a large extent appears to be an administrative necessity, it also indicates the centrality and increased importance of the entity within EU's security objectives today.

More importantly, the Union has also developed a specialized security agency for the management of external borders. *Council Regulation No. 2007/2004* in October 2004 outlined the establishment of an *European Agency for the management of operational cooperation at the external borders of the member states*, making Frontex operational 1 May 2005 (Official Journal of the European Union 2004c:11). The agency was established in order to improve integrated border management, especially in view of being able to organize joint return operations for the purpose of removing TCNs from member state territory (Official Journal of the European Union 2004c:2). By

establishing an agency solely dedicated for a coordinated EU wide method for the removal and deterrence of TCNs, the trend of reinforcing external borders is clearly taking great lengths. As the agency has full legal, administrative and financial autonomy its influence on immigration policy is evident (Official Journal of the European Union 2004c:2). Moreover, the emphasis placed on the agency's importance is visible in the timeframe recommended for its formation. The Regulation calling for its establishment was issued in October 2004. Whereas it called for the agency to be active from 1 May 2005 (Official Journal of the European Union 2004c:11). Making a border agency operational in less than eight months illustrates the significance placed on it by the Union.

With reference to the content of the Regulation establishing Frontex, the scope and the mandate of the agency is revealing. It highlights under Article 2 the tasks of the agency to expand beyond the member states to third-countries surrounding EU external borders (Official Journal of the European Union 2004c:4). Such cooperation, although in some instances beneficial for both sides, has the potential by effectively moving the borders even further and enforcing them on both sides, to act as a substitute to protection needed by numerous TCNs. Hence, it is essential that the nature of the cooperation with third-countries is complementary to other *legal* entry methods available to TCNs. Article 14 follows a similar policy by mandating the "facilitation of operational cooperation with third countries and cooperation with competent authorities of third countries" (Official Journal of the European Union 2004c:5). The nature of this cooperation is not further elaborated on and is left open to the agency's discretion. Clearly, extra-territorial patrolling and policing of borders has the potential to lead to fewer opportunities for asylum claims. Stopping migrants at sea before reaching EU

territory removes their chances of claiming asylum within the EU, not to mention the increased danger for the asylum seeker attempting to cross marine borders. Further controversial aspects are visible in Article 9 which deals with return operations which Frontex can organize utilizing the funds of the Union (Official Journal of the European Union 2004c:5). It is left solely to the agency to identify best practices on the removal of illegal TCNs (Official Journal of the European Union 2004c:5). Clearly the agency enjoys rather wide-ranging rights in terms of dealing with immigrants at the borders of the EU.

The operation of Frontex has been further strengthened with the establishment of Rapid Border Intervention Teams (RABIT) with *Regulation No 863/2007* in July 2007 (Official Journal of the European Union 2007). RABIT is aimed at the management of external borders to combat mainly illegal immigration and preventing threats to internal security (Official Journal of the European Union 2007:30). Its purpose is for a limited period in exceptional cases, for instance, in events of mass influx of TCNs. Strikingly, RABIT is allowed to use extensive force. It includes service weapons, ammunition and equipment in self-defense and in defense of team members and other people (Official Journal of the European Union 2007:33). Unmistakably the creation of such an armed force illustrates the emphasis placed on securing the external borders. The Regulation does also however highlight in Article 2 that the creation of RABIT does not impact the rights of refugees or persons seeking international protection (Official Journal of the European Union 2007:32). Hence the securitization aspect on the expense of human rights should not be exaggerated. Furthermore, Article 6 pertaining to the powers of the team members reiterates the importance of human rights considerations with respect to the conduct of the RABIT team (Official Journal of

the European Union 2007:33). Furthermore, it is important to note that the team does not have rights to refuse incoming people entry unless directed by the border guards of the member state in question (Official Journal of the European Union 2007:34). All these measure do however illustrate one of the central features of securitization highlighted in the literature, the blurring between law enforcement and migration practices.

### **3.4 - Technology and data solutions**

Another aspect that plays an important role in immigration policy is technological developments in information sharing and document sophistication. This affects all policy aspects of legal and illegal entry and most importantly, asylum policy. Whilst acknowledging that extensive development has occurred in technological sophistication related to immigration control, this section will limit its analysis to the central tools, which support identification of individuals at border crossings.

The development of Schengen Information System (SIS) has paved the way for information sharing for immigration and security purposes in the EU, dating back to the 1990s (Official Journal of the European Communities 2001:4). It has developed in tandem with the expansion of the EU and is a vital component for allowing free movement of people within the Schengen area. The development of the second generation SIS II has been a necessity from the expansion of the EU due to limitations on capacity (Official Journal of the European Communities 2001:4). Mainly it is used for public and national security within the Schengen area through a centralized

information system with national interfaces to issue alerts for instance concerning people wanted for extradition (Official Journal of the European Communities 2001).

At the center of EU issued visas for TCNs is the Visa Information System (VIS) established with *Council Decision of 8 June 2004, 2004/512/EC* (Official Journal of the European Union 2004d). The importance of such a comprehensive system, which allows member states to monitor and exchange data, was emphasized early on in 2002 by the European Commission (Official Journal of the European Union 2004d:5). The development of a central VIS linked with national interfaces enables entering, viewing and sharing of electronic visa data by member state officials (Official Journal of the European Union 2004d:6). This Decision, in Article 4, also introduced the development of new security requirements such as biometric information: fingerprints and facial recognition (Official Journal of the European Union 2004d:6). Evidently, this has contributed to identity and entry documents issued by the EU being of a higher level of sophistication over many national documents of third-countries.

*REGULATION (EC) No 767/2008 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation)* further clarified the purpose and scope of the system (Official Journal of the European Union 2008b). Its purpose in facilitating Union immigration and asylum policy is manifold. Not only does it assist in the implementation of a common visa policy but also holds a pivotal role in preventing visa shopping between member states, combatting fraud and facilitates external border checks (Official Journal of the European Union 2008b:60). The VIS stores extensive application history, allowing for tracking of previous applications, ongoing applications and rejected applications



(Official Journal of the European Union 2008b:65). If a visa application is refused on the grounds of the person constituting a threat to public policy or internal security it is added to the visa application file on the VIS (Official Journal of the European Union 2008b:67).

The securitized character of the use of VIS becomes obvious in Article 3 by the use of data for “the prevention, detection and investigation of terrorist offences and other serious criminal offences” (Official Journal of the European Union 2008b:63). This Article allows for member state authorities to access the data if they believe that it will contribute substantially to the prevention of terrorist or other serious crimes. Moreover, Europol is also granted access to the data in instances vaguely described as “necessary for the performance of its tasks” (Official Journal of the European Union 2008b:63). Moreover, even though Article 3, Paragraph 4 states that VIS data cannot be transferred to third-countries or international organizations it allows for sharing of the data in exceptional cases of urgency if it will contribute to the prevention of serious criminal offences (Official Journal of the European Union 2008a:63-64). Hence the VIS, a database for visa applications, is used explicitly for law enforcement purposes and allows for, under the pretext of national security, transfer of information on TCNs to other member states, third countries, international organizations and the European police force.

The rationale of giving Europol access to VIS is separately outlined in *COUNCIL DECISION 2008/633/JHA of 23 June 2008 concerning access for consultation of the Visa Information System (VIS) by designated authorities of Member States and by Europol for the purposes of the prevention, detection and investigation of terrorist offences and of other serious criminal offences* (Official Journal of the

European Union 2008a). The Council believes that VIS data is essential in Europol's tasks in combatting terrorism and guaranteeing the internal security of the EU (Official Journal of the European Union 2008a:129). On the grounds of urgency, Europol is also granted relatively unrestricted grounds for action. Article 4 allows for requests for data to be initiated, either electronically or orally, prior to providing any verification and the justification required by the Council Decision for the request can be provided ex-post facto (Official Journal of the European Union 2008a:132).

Concerning the actual implementation of the VIS requirements, a Decision was issued in 2009 outlining the regions where VIS should be implemented first based on the risk the regions pose to the EU. *COMMISSION DECISION of 30 November 2009 determining the first regions for the start of operations of the Visa Information System (VIS)* singles out countries which present the most threat to the member states' internal security or pose the greatest risk of illegal immigration (Official Journal of the European Union 2010:62). Such risk estimation is based on statistics on visa and entry refusals (Official Journal of the European Union 2010:62). North Africa is outlined as the most urgent region, the Near East second and the Gulf Region the third (Official Journal of the European Union 2010:62). Drawing such a simple correlation between visa refusals and threats to internal security is highly questionable. This also illustrates how the issues of immigration and security are tied together and presented as two issues, which cannot be dealt with separately from each other.

The monitoring of TCNs has support on the Union level to be developed even further. There are ongoing discussions that TCNs who are not subject to visas would be subject to additional border checks of some kind (Commission of the European Communities 2008b:5). Currently, TCNs either require a visa or not, which has raised

security concerns over TCNs which enjoy extra liberties over other TCNs. It has been suggested that TCNs not subject to visa requirements should have to use an Electronic System of Travel Authorisation (ESTA), which in practice means a form of pre-registration of travel or alternatively a system of registration of entry and exit into the EU (Commission of the European Communities 2008b:5).

Obligation to transmit data on TCNs entering the EU has also been widened to apply to aviation officers. *COUNCIL DIRECTIVE 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data* (also known as the API, Advance Passenger Information, Directive) has been adopted for the improvement of border controls through the advance transfer of passenger data from airline carriers to national officers (Official Journal of the European Union 2004a:25). The information that is required to be provided is only readable data from the passport, hence name, date and place of birth, passport number and expiry date. Failure by the carrier to do so is a punishable offence under Article 4 (Official Journal of the European Union 2004a:26).

There is indication of information collection and transfer being taken even further. The European Commission has put forward a proposal in February 2011 for a Directive on the use of Passenger Name Record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime (European Commission 2011c). Already initiated in 2007, PNR data is essentially a law enforcement tool rather than a border control method but nevertheless it has implications on the field of immigration also. If implemented, it would oblige additional information concerning TCN passengers to be transmitted prior to commencement of the travel. This information would include data initially given for reservation and departure purposes, such as travel agent used, payment method for travel or baggage

information (European Commission 2011c:3). It is hoped to contribute in identifying security threats by using advance commercial data prior to the travel actually taking place. It differs largely from the VIS, SIS and API as those can be used only when the identity of a suspect is known (European Commission 2011c:3). PNR data however would profile the potential threats to the member states by flagging suspicious information. Hence, if adopted it makes persons entering the EU vulnerable to arbitrary investigation and raises questions on data protection. It also clearly illustrates the general trend on where information transfer on travellers crossing EU borders is heading and yet again illustrates the excessive measures adopted under the pretext of security.

Taking the surveillance aspect even further, another tool still in the planning phases is EUROSUR, an external border surveillance system put forward in 2008 by the Commission (Commission of the European Communities 2008a). It is a direct security tool aimed at securing the Southern and Eastern maritime borders of the Union (the Mediterranean Sea, the Southern Atlantic Ocean and the Black Sea) especially against illegal immigration (Commission of the European Communities 2008a). It is solely aimed at ensuring internal security of the EU through the development of a shared surveillance system and shared monitoring and controlling of borders (Commission of the European Communities 2008a). It proposed the introduction of use of satellites for border monitoring through GMES (Global Monitoring for Environment and Security) and cooperation with Frontex (Commission of the European Communities 2008a:9). The purpose of EUROSUR is to increase member states' awareness of their border situation and also their reaction capabilities (Commission of the European Communities 2008a:4). The proposal for EUROSUR makes a direct link between migration and

security by stating that “[d]ue to the complexity of developing such a "system of systems", and taking into account the current migratory pressure, in a first step the integrated network should be limited to the areas mentioned above and focus on internal security, linking border control authorities, and other European and national authorities with security interests and responsibilities in the maritime domain together” (Commission of the European Communities 2008a:9).

However to claim that such securitization through reinforcement of data transfer obligations is completely new is erroneous. Evidence of such monitoring and forming of databases also pre-dates 9/11 and is not necessarily an indication of a new trend in migration policy. Specifically concerning asylum applicants, the Union has recognized the need to register and monitor TCNs entering the Union. The creation of EURODAC paved the way in this, mandated in the Dublin Convention to function as a large fingerprint database of all asylum applicants as well as illegal migrants apprehended within the EU (Official Journal of the European Communities 2000:1).

### **3.5 - Conclusion: Fortress Europe**

This chapter sought to examine the trends in immigration and asylum policy by looking at the character of EU secondary legislation since 2001. It is evident that a wide degree of policy harmonization is required within an expanding Union to preserve a borderless EU. However, the scale of the transformation is revealing. Overall, when looking at the features of securitization outlined in chapter two, the policy analysis has revealed that such characteristics are present in the legislation adopted. Linking migration to issues of law enforcement and adopting exceptional and anti-democratic measures indicates a move away from global human rights norms under the pretext of

safeguarding the security of the citizens of the member states. Through stricter asylum standards, reinforcement of external borders and more sophisticated monitoring of TCNs, the EU has effectively highlighted the primacy of migration policy in maintaining internal security. Especially within asylum policy, securitization has caused a tradeoff between unconditional guaranteeing on human rights for all and the safeguarding the lives of EU citizens only. Moreover, there is a clear inconsistency in the linking of asylum and national security threats. Many scholars have highlighted that such association between asylum seekers and terrorism does not work (Coleman 2007, Spencer 2007, Cesari 2006, Guild 2003). As asylum procedures are often the lengthiest and involve the most bureaucracy, documented cases of asylum being used for terrorist entry are uncommon (Coleman 2007:51). Furthermore, scholars have shown that the primary terrorist threat in Europe is homegrown, mainly resulting from failed immigrant integration (Sendagorta 2005:64). Hence there is clearly a mismatch in the social profile of the terrorist in Europe and its ramifications on immigration and asylum policy. Therefore, the next chapter will aim to shed light on the securitization phenomenon by examining the discourse aspect pertaining to EU migration policy.

## **CHAPTER FOUR**

### **EU IMMIGRATION AND ASYLUM – DISCOURSE ANALYSIS**

#### **4.1 - Introduction**

This chapter seeks to examine how national security rhetoric has been incorporated into the discourse of the EU on immigration policy. It will do so by looking at Meeting Conclusions published by the European Council on immigration and Reports issued by the European Parliament pertaining to the actions of the Council and the Commission. The Conclusions and Reports will be analyzed in parallel in chronological order covering a ten-year time starting from September 2001.

The methodology will consist of several aspects. Firstly the general approach to the topic and language used is considered. Secondly, it will be analyzed whether the issue of immigration is debated in the security context, by looking for references to public order, internal security or the threat of terrorism. Looking specifically at the characteristics of securitization outlined by the extensive literature on the topic, the analysis in the chapter will look out for recommendations for adoption of extraordinary solutions in dealing with immigration. General trends in the discourse will be identified within immigration issues itself as well as looking whether references to migration are made in different policy arenas within the meeting conclusions issued. In terms of looking at the influence of incidences of terrorism in Europe on the discourse of the Council, the analysis will pay attention to specific time periods, namely 2004 post Madrid attacks and 2005 post London bombings. This will enable to understand

whether the heightened security situation in Europe has influenced the discourse on immigration.

Overall, it will be analyzed which aspects of migration policy the Council and the Parliament place specific emphasis on and whether the securitized aspect of discourse is balanced with human rights and development considerations. As the Parliament is often described as the watchdog of the Commission and the Council, this chapter will aim to examine whether the Parliament continues to act as the “moral guide” of the Union, or whether the securitization logic is visible in the Parliament discourse as well.

#### **4.2 – 2001 - 2006: The period of terrorism**

Following the events of 9/11, the Council of the European Union arranged for an extraordinary meeting to discuss the plan of action in the face of the changed security environment. Although, the Council called for the urgent implementation of measures agreed upon at the Tampere meeting (including migration policies), no clear parallels were immediately drawn concerning migration objectives and the securing of Europe’s external borders (European Council 2001a:2).

By the end of 2001, following the Laeken meeting conclusions the Council formed its discussion around the events of 9/11 and the new challenges from globalization (European Council 2001b). Within this context, the Council stated that the public has called for a greater role of the EU in managing security through controlling of migration flows and cross-border crime (European Council 2001b:20). Hence, it legitimized its actions within the context of an increased threat to internal security.



Revealing of this meeting is the fact that the discussion of immigration emerges in the context of anti-terrorism measures, and not an agenda on its own. By highlighting the importance of developing efficient border control and a comprehensive visa identification system in the context of anti-terrorism, the Council drew a clear correlation between fighting illegal immigration and fighting terrorism (European Council 2001b:12). Furthermore, the Council stated at Leiken that management of migration flows is something that should be integrated into EU foreign policy (European Council 2001b:11). Hence by highlighting the centrality of cooperation with third-countries in the field of migration, the Council is implying that issues of immigration in the EU are not seen as the sole responsibility of the Union.

Following the June 2002 meeting in Seville, the Council reiterated the urgency of speeding up advances agreed upon at Tampere (European Council 2002:7). The migration issue is singled out as something to which upcoming presidencies should dedicate special focus and time (European Council 2002:7). The general focus of the Council discussion on immigration remains on combatting illegal immigration and enforcing barriers at the external borders. With reference to the content of immigration issues prioritized, the Council reaffirmed the importance of including countries of origin and transit in EU migration policy (European Council 2002:7). Here again, the Council view of externalizing its migration policy by engaging third-countries and sharing the responsibility is visible. This can be seen as a positive development in the sense that it is an acknowledgement on the part of the Council that the border control measures adopted by the EU are not sufficient alone to address the problem of illegal immigration. The Council considers that by engaging in trade and overall development with TCNs, migration flows will lessen, hence acknowledging the root causes of

migration. The primacy of migration policy in EU foreign policy is explicit in the Council's statement on conditionality of relations with third-countries: "The European Council urges that any future cooperation, association or equivalent agreement which the European Union or the European Community concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the vent of illegal immigration" (European Council 2002:10). The Council clearly considers that the states of origin and transit should particularly bear responsibility in terms of readmission and border control, to which the Union is allocating special funds (European Council 2002:11). However, what the Council calls "an integrated, comprehensive and balanced approach to tackling the roots causes of illegal immigration" has significantly less emphasis in the Conclusion in comparison to the law enforcement measures outlined to combat illegal immigration. For instance, a common visa system is reiterated to have top priority and the development of a European police force (European Council 2002:9). Furthermore, it gives a clear prioritized schedule for actions that should take place in 2002 and 2003: joint operations at borders organized by end of December 2002 and by June 2003 joint border guard training (European Council 2002:10). Hence, although there is clearly consideration of both sides, it is not well balanced allowing the securitization aspect to dominate.

Furthermore, the Council illustrates its firm stance on immigration by highlighting the consequences of not cooperating with the Union:

"The European Council considers it necessary to carry out a systematic assessment of relations with third-countries which do not cooperate in combatting illegal immigration. That assessment will be taken into account in relations between the European Union and its Member States and the countries concerned, *in all relevant areas*. Insufficient cooperation by a country could hamper the establishment of closer relations between that country and the Union" (European Council 2002:11, emphasis added).

The Council does also acknowledge that there should be a balance between combatting illegal immigration and integrating legally residing immigrants (European Council 2002:7). In terms of legal entry, it is highlighted by the Council that the intake of immigrants should only occur taking into consideration the reception capacity of the Union and the member states (European Council 2002:8). Hence, it is apparent that the influence of the Union is more applicable in terms of entry restrictions than initiatives for legal entry. This is an area where Member States have retained their sovereignty.

A similar trend continues in 2003 in the discourse at the Thessaloniki Conclusions, by the Council emphasizing that managing illegal immigration is a two-way process involving third-countries (European Council 2003a:3). Hence combatting illegal immigration has been equated with the foreign policy of the EU. In terms of cooperating with third-countries, the Council emphasizes that each country should be evaluated individually. This would entail undertaking an evaluation mechanism to monitor countries, which fail to cooperate with the EU in illegal immigration (European Council 2003a:5). This clearly illustrates the weight placed on migration on the foreign relations of the EU and more so foreign relations on the terms of the Union.

A new trend in the November 2003 Brussels Conclusions is evident as the Council makes an obvious connection between the enlargement of the European Union and the safety of member states' citizens. (European Council 2003b:9). By stating that the Union is committed to guaranteeing the security of its citizens in the context of migration and expansion of borders towards the East, the Council illustrates that the threat is being framed as not solely originating from its Southern borders but from the Eastern borders also. The weight placed on border management is illustrative in the Council's declaration of allocating 140 million euros for management of external

borders and especially for the implementation of a return policy programme and the VIS (European Council 2003b:9). Cooperation with third-countries is again highlighted as being of importance in relation to combatting illegal immigration (European Council 2003b:10). The Council also highlights the importance of Euro-Mediterranean Partnerships (European Council 2003b:13). This ties in with the inclusion of migration policy into EU foreign policy. The conclusion calls for a report from the Council and the Commission on identifying priorities concerning a common return policy. The return policy is stated as being “a key element” of EU’s overall immigration policy (European Council 2003b:10). Hence the securitized element, through the use of exceptional measures, is evident throughout the Meeting Conclusions. However, the Council does also call upon the member states to cooperate with the Commission concerning a study investigating the links between legal and illegal immigration (European Council 2003b:11). Hence there are signals toward an alternative logic to that of securitization.

In March 2004, the Council convened in the aftermath of the Madrid bombings, issuing a ‘*Declaration on Combatting Terrorism*’ (European Council 2004a). Looking for any correlations drawn between the incident and the rhetoric used by the Council concerning migration issues, the publication reveals that the Council called for simplifying the exchange of information and intelligence from any field, which could be relevant to combatting terrorism, as well as maximizing the effectiveness of all information systems utilized by the Union agencies (European Council 2004a:5,7). Hence in this context, migration tools of VIS, SIS II and EURODAC are singled out and the importance of their development and interoperability. They are of high value in the fight against terrorism (European Council 2004a:7). Furthermore, the Council

proposed taking information databases further by bringing forward a system which allows for the exchange of information such as DNA and fingerprints to which law enforcement agencies will have access to (European Council 2004a:7). Moreover the Council points out to the urgent use of immigration measures such as passenger data communication, customs cooperation and biometric visas and passports in fighting terrorism. Urgent implementation of Frontex, by January 2005, is also called for (European Council 2004a:9). The urgency placed on the agency is evident in the fact that according to the Regulation Frontex was intended to be operational by 1 May 2005, as shown in the previous chapter. Calling for a border agency to be operational in less than 3 months illustrates the significance the Council placed on Frontex.

The Council also pushed for the Commission to put forward a proposal on the use of passenger data for law enforcement and aviation security (European Council 2004a:8). It is clear that the securitization aspect is visible here in the heavy emphasis placed on restricting and monitoring entry into the EU, involving means, which arguably are anti-democratic but are justified in the context of security. By overtly outlining migration tools in the context of anti-terrorism, the issue of migration and internal security is tied together, exemplifying a clear securitization trend.

The November 2004 meeting conclusions continue to emphasize the changed realities after 9/11 and the Madrid attacks, and the role of the Union in guaranteeing security (European Council 2004b:12). The centrality of security in the principles of the EU becomes evident in the following statement:

“The security of the European Union and its Member States has acquired a new urgency, especially in the light of the terrorist attacks in the United States on 11 September 2001 and in Madrid on 11 March 2004. The citizens of Europe rightly expect the European Union, while guaranteeing respect for fundamental freedoms and rights, to take a more effective, joint approach to cross-border problems such as illegal migration, trafficking in and smuggling of human

beings, terrorism and organized crime, as well as the prevention thereof. Notably in the field of security, the coordination and coherence between the internal and the external dimension has been growing in importance and needs to continue to be vigorously pursued” (European Council 2004b:12).

This clearly illustrates the centrality of security and further its connection to illegal immigration in the Council discourse, as illegal immigration is highlighted as one of the major problems facing Europe’s security (European Council 2004b:12). The importance of the external dimension of migration control through partnerships with third-countries is yet again reiterated. The Council is implying that asylum and migration are not solely the problem of the EU but an international issue, which should be dealt with multilaterally. Return and re-admission policy is again singled out by stating that “[t]he European Council calls for the establishment of an effective removal and repatriation policy based on common standards for persons to be returned in a humane manner and with full respect for their human rights and dignity” (European Council 2004b:22).

In terms of a balanced discussion concerning legal entry options into the EU, the Council states that legal migration has importance within the Union but the estimation of numbers is left to the competency of the member state (European Council 2004b:19). Hence, discussion on combatting illegal immigration is bound to dominate the Council agenda as issues of legal entry appear to a large extent to be something outside the scope of the Union affairs.

The blurring of boundaries between law enforcement and migration is visible in the speech of the Council by yet again placing strong emphasis on information and data gathering and its use for both immigration and law enforcement. The Council calls for “reciprocal access to or interoperability of national databases, or direct (on-line) access, including for Europol, to existing central EU databases such as the SIS” (European

Council 2004b:28). Only in December 2004 conclusions, immigration is mentioned in the context of radicalization of youth (European Council 2004c:13). This appears to be the first indication from the Council speech that the threat to the security of the Union can originate from the inside too.

In 2006 there are no significant changes in the approach of the Council to the issue of migration. In the June Conclusions the emphasis continues to be on focusing efforts with third-countries and cooperation at the Southern borders, especially the Mediterranean region (European Council 2006a:4). The Council illustrates efforts to utilize dialogue with African countries through a variety of means, regional organizations, African Union and pan-African conferences, in order to increase the accountability to African states to the problem of illegal immigration the Union faces (European Council 2006a:4).

The Conclusions of the meeting held by the Council in December 2006 however illustrate recognition by the Council that solely coercing third-countries into agreements on repatriation will not bring results (European Council 2006b:8). The Council discussed the integration of migration issues into aid policies and recommendations on national development strategies. The Council declares that the new approach of the Union will fully incorporate the connection between migration and development in to Union wide policy, taking the initiative also to the international arena (European Council 2006b:8). This illustrates a balance to the securitized approach, which has appeared to dominate the discourse over other considerations.

The centrality of Frontex in securing the EU is given again extensive emphasis. The Council calls for enhancing its abilities, personnel and finance (European Council 2006b:10). Surveillance measures and formation of a permanent Coastal Patrol Network

for the Southern maritime borders are said to be instrumental in developing a coherent migration policy to deter illegal immigration (European Council 2006b:10). Moreover, the necessary means to make RABIT operational are requested to be rushed by the Council (European Council 2006b:11). Hence, instruments policing and securing the external borders of the EU are again given priority in the migration discussion.

The Council engaged in some discussion on legal migration, noting that it is the responsibility of each member state to assess its own needs for migrant labor. Hence, this could rationalize the lack of development of legal migration in parallel to stricter immigration control on the Union level. Illegal immigration is dealt with on the Union level, but legal immigration is at the discretion of member states.

Reports issued by the European Parliament for the same time period offer a stark contrast. In July 2002 the Parliament issued a report '*on asylum: common procedure and internal security*'. This report is largely a response to the Council Laeken Summit of December 2001, which stressed the importance of the common asylum policy and also a reaction to the concerns over security in Europe following 9/11 and the subsequent extraordinary Council meeting in September 2001 (European Parliament 2002:10). The Report sends a clear message to the Commission and the Council in defense of human rights amidst increased concerns over internal security. In its explanatory statement the Report stresses that "[w]hilst measures to tighten security and protect EU citizens are welcome, the EU must ensure it avoids inadvertently curbing the very human rights and freedoms it seeks to protect" (European Parliament 2002:10). This view is strongly present throughout the Report. It takes on the task of emphasizing the need to guarantee rights of asylum seekers and refugees in the face of the upcoming harmonization process for the common asylum policy. Differing largely from the tone



of the Council, the Parliament asserts that the co-ordination efforts in the field of asylum should serve the purpose of strengthening rather than substituting existing legislative measures, and further should fully respect the Geneva Convention (European Parliament 2002:6). With reference to the content of the proposed asylum policies, the European Parliament touches on key issues highlighted as contentious within the legislative analysis. It highlights the need for adequate training of staff involved in asylum applications to ensure that human rights standards are being followed (European Parliament 2002:7). Furthermore, an issue highlighted in prior discussion, the blurring of law enforcement and asylum tools is a matter the Parliament raises concern over. The Parliament views the proposals concerning the use of biometric data such as DNA from asylum applications for criminal investigation purposes as worrying (European Parliament 2002:7). This issue is further reiterated in the context of Eurodac data, followed by Parliament encouragement for the development of legislation on the privacy of biometric data on asylum seekers (European Parliament 2002:9). This is clear in the following statement: “The Eurodac system was set up as a database of asylum seekers' fingerprints, with a view to guarding against asylum seekers making multiple applications across the EU. This information cannot be used for criminal investigation purposes under current data protection rules.” (European Parliament 2002:14).

The excessive emphasis the Council has given to measures to combat illegal immigration as opposed to the protection of TCNs, also visible in the previous section of the analysis, is also addressed by the Parliament. The Parliament states that “arrangements for the protection of refugees and asylum seekers must be given the same importance as policy designed to control migratory flows and combat the

activities of organised criminals seeking to exploit would-be migrants and asylum-seekers” (European Parliament 2002:7).

Concerning internal security, the Parliament explicitly states the motivation for the report as a reminder on member state responsibilities concerning human rights and the Geneva Convention after the Council Conclusion on terrorism issued post 9/11. The appropriate concerns over anti-terrorism measures spilling over to immigration policy in the rhetoric of the Council are aptly crystallized in the following Parliament statement:

“Whilst welcoming the need to tighten EU security, it is crucial that measures introduced to deal with the threat to internal security are proportionate, effective and, above all, safeguard human rights. Such measures must only therefore be considered as a part of the war against terrorism and not the solution, especially as it seems unlikely that a terrorist would subject him or herself to the scrutiny of the asylum procedure.” (European Parliament 2002:12).

This is a complete contrast to the securitized rhetoric visible in the Council conclusions in the immediate aftermath of the events of 9/11. Measures highlighted as essential for the safeguarding of European security by the Council, are by the Parliament labelled as issues of concern and as such requiring careful adherence to human rights obligations.

However, the November 2003 Parliament Report offers a remarkably different outlook on the connection between immigration and security issues. The Report is a response to the Thessaloniki Council meeting and communication between the Council and the Commission concerning *‘development of a common policy on illegal immigration, smuggling and trafficking of human beings, external borders and the return of illegal residents’* (European Parliament 2003). The report places similar emphasis on the securing of external borders and combatting illegal immigration in defense of internal security as the Council: “The ongoing threat to the internal security

of the EU posed by cross-border terrorism, organised crime, illegal immigration and trafficking in human beings and drugs has already prompted Parliament to draw up a report which sets out various priorities concerning measures to improve the protection of external borders” (European Union 2003:12). This statement is in addition to the correlation the Parliament drew between the enlargement of the EU and increased security concerns: “[The Parliament t]akes the view that the vital need for uniform security standards at all the external borders of the enlarged EU calls for both responsibility sharing in connection with the task of securing sections of those borders which are particularly at risk and improvements in the effectiveness of measures by means of joint action or coordination” (European Union 2003:7). These statements, along with the emphasis based on measures of border control and return policies, mimic the securitized nature of the rhetoric used by the Council.

An interesting feature of the Report is also the emphasis placed on the sovereignty of member states and the autonomy they should retain over their borders. This is explicit in the following statements: “... it must be made clear once again that the protection of external borders is a fundamentally national matter and must therefore remain a Member State competence... [a]ccordingly, some tasks could be carried out at EU level with a view to supporting, complementing or coordinating the work of national authorities” (European Parliament 2003:12). This was somewhat a different emphasis from that of the Council.

The Parliament does however acknowledge the link between legal and illegal migration and the importance of increasing opportunities for legal entry. It highlights several areas concerning legal immigration member states should pay attention to as

well as a speeded response in the field of legal immigration and integration of TCNs (European Parliament 2003:8).

In September 2004 the European Parliament issued a Report titled *‘including a proposal for a recommendation of the European Parliament to the Council and to the European Council on the future of the area of freedom, security and justice as well as on the measures required to enhance the legitimacy and effectiveness thereof’*. This Report dealt with a broad range of issues related to the area of freedom, security and justice, especially asylum. The role of the Parliament in defending asylum rights is again visible in the Report. The now consistent Council trend of an unbalanced immigration policy is regretted by the Parliament as the “progress in the field of asylum and immigration has been mainly devoted thus far to action to counter illegal immigration and has not been accompanied by sufficient efforts to promote the integration of legally resident aliens” (European Parliament 2004:5). It again emphasizes the need to develop legal routes for immigration in the hope of reducing illegal immigration (European Parliament 2004:9). The Parliament is also very critical of the Council for failing to respect the co-decision applicable from 1 May 2004 concerning some immigration and asylum matters (European Parliament 2004:16). The following statement is very illustrative of the battle over authority between the European Parliament and the Council:

“Here, the Council is not only politically and morally at fault: in legal terms, it has failed to act. We are, in fact, witnessing a curious case of legislative schizophrenia, as the Council is unwilling to extend the area of codecision, despite the possibilities and, indeed, requirements of the Treaty of Nice, and although the governments recognise the justification of such an extension in that they are preparing to sign a treaty that constitutionalises it.” (European Parliament 2004:16).

Hence, such defense of jurisdiction makes it evident that the Council and Parliament do not follow similar policy objectives and the Council would rather limit the Parliament's influence over the direction immigration policy takes.

In May 2005 the Parliament issued a Report concerning the link between legal and illegal migration. This Report is very illustrative of the Parliament's defense for rights of TCNs. In the Report, the Parliament "[s]tresses that any measures to combat illegal immigration and step up external border controls, even where in cooperation with third countries, must be compatible with the guarantees and the fundamental rights of the individual laid down in the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights, notably the right to asylum and the right of non-refoulement" (European Parliament 2005:7). With reference to the detaining of asylum seekers, the Parliament severely criticizes the proposal that asylum seekers or TCNs without documentation would be detained outside the EU (European Parliament 2005:8). Hence the human rights emphasis continues to be strong even in the long run, and despite of the opposite discourse developing amongst the Council.

#### **4.3 – 2007 - 2011: Long-term trends emerging**

Looking at a time period further from the terrorist attacks the research into meeting conclusions from 2007 to 2011 attempts to establish any changes in the rhetoric of the Council and Parliament in its migration policy.

However June 2007 meeting conclusions suggest no changes in the content or manner in which the Council approaches the issue. It continues to emphasize the need to speed up the process of developing a comprehensive migration policy and building

“genuine” partnerships with third-countries (European Council 2007:4). Hence close cooperation with third-countries remains high on the agenda of the Council. Frontex is again highlighted again as the key to border management and the development of Coastal Patrol Network and RABIT are requested to be developed with the utmost urgency (European Council 2007:5). Reference to the security of the people in the EU is again made by stating that the development of a comprehensive VIS is essential for the security of the Union (European Council 2007:5). Suggestions for further securitization by the Council are evident in calls for the extension of Europol’s operational capabilities and welcoming of the transformation of the mandate of Europol (European Council 2007:6).

The stance or agenda of the Council does not shift in 2008 in any form or manner. In June 2008, the Council continued to emphasize the importance of dialogue and partnerships with third-countries (European Council 2008:3). This trend has been evident since 2001 and appears to be the longstanding perspective of the Council.

In June 2009 the security approach to migration is evident by its emphasis on combatting illegal immigration. The Council stated the European response should be based on *firmness* and to continue all of its activities in the Western Mediterranean region and at the eastern and southeastern borders (European Council 2009a:14). Furthermore it called for the rapid establishment of the European Asylum Support Office, which assists in the relocation of asylum seekers. Correspondingly, strengthened border control coordinated by Frontex was yet again stressed (European Council 2009a:14). The securitized nature of the Council’s approach to migration is very expressive in the following October 2009 statement: “A determined European response based on firmness, solidarity and shared responsibility remains essential” (European

Council 2009b:11). Here the central themes are evident; a hard stance on an external threat and action by all states affected. The Council also discusses the launching of reallocation on a voluntary basis of beneficiaries of international protection present in Malta and urges more of the member states to participate (European Council 2009b:11). Clearly the Council emphasis is on repatriation and deterrence of entry. The mandate of Frontex is deemed worthy of being enhanced by increasing its operational capabilities and putting Frontex at the center of cooperation between origin and transit countries. The Council also wishes the Commission to explore the possibility of financing Frontex to organize regular joint return flights (European Council 2009b:12). For instance, Libya is highlighted as a country that should engage in more dialogue and cooperation in terms of illegal immigration and readmission agreements with the Union (European Council 2009b:12).

The Council does pay some regard to asylum rights, and in its December meeting highlights the importance of establishing a common system of asylum by 2012 (European Council 2009c:11). However, in the same vein, the Council reiterates that combatting illegal immigration remains a priority. Overall the migration dilemma is framed as a dimension of EU foreign affairs in the context of new challenges from globalization and the unique role the Union can play through integration (European Council 2009:11)

Towards 2010 and 2011, immigration issues do not appear to be strongly visible in the conclusions of the Council. The sheer quantity of references to imperatives within the field of migration is less in comparison to the beginning of the decade. In June 2011 however, with increased migration pressure from North Africa, the Council understandably called for the implementation of extraordinary measures (European

Council 2011:8). It called for the implementation of, as a last resort, a safeguard clause for allowing the exceptional reintroduction of internal border controls in critical situations “where a Member State is no longer able to comply with its obligations under the Schengen rules” (European Council 2011a:8). The EU Neighbourhood Policies are also brought up as a means to enhance cooperation in the Southern and Eastern neighborhood. (European Council 2011a:10). More strikingly, the Council has proposed for a new tool in affairs with third-countries concerning migration. Named “Mobility Partnerships”, the Union will assess partner countries individually in terms of their progress and efforts in all areas of migration, and rewards, or funding, granted to the states will be conditional on merits earned in the field of migration (European Council 2011b:10).

The European Parliament in turn continued its emphasis on justice and human rights in EU migration policy. In June 2007 the European Parliament issued a Report titled *‘on an area of freedom, security and justice: Strategy on the external dimension, Action Plan implementing the Hague programme’*. This report follows the strong human rights emphasis and scrutiny of the Council and Commission visible throughout the Parliament discourse. The Parliament is again stressing the need for a balanced consideration between preservation of internal security and human rights as well as justice (European Parliament 2007a:4). Reiterating on the weaknesses of the European asylum policy, it questions the use of readmission agreements as a tool in combatting illegal immigration. The agreements do not clearly exclude asylum seekers from the scope of the agreements and may lead to the principle of non-refoulement being compromised (European Parliament 2007a:12). Again the Parliament criticises the



Council and Commission for failing to honour the co-decision procedure by not consulting the Parliament on matters of JHA (European Parliament 2007a:4).

The Parliament also touches on an important issue of data protection. This is especially controversial with reference to US-EU relations, as the scope of the US government exceeds that of the EU, and places less regard on citizen rights (European Parliament 2007a:8). The Parliament conveyed a clear view on the matter:

“Expresses its deep concern at the inadequate legal safeguards for EU citizens in cases of personal data being made available to third countries, notably in cases such as PNR, SWIFT and the collection of telecommunication records by the FBI; reiterates its request to the Commission to carry out an inquiry into which categories of personal data of European citizens are being accessed and used by third countries in their own jurisdictions; stresses that data-sharing must take place on a proper legal basis, with clear rules and criteria, in line with European legislation on the adequate protection of privacy and civil liberties; believes that data sharing with the US must take place in the proper legal context for transatlantic cooperation, and on the basis of EU-US agreements, while bilateral agreements are not acceptable” (European Parliament 2007a:8)

Cooperation with third-countries was a continuous topic in Council Conclusions in terms of contributing to the problems faced by the Union from illegal immigration. The Parliament also addresses the topic but from a slightly different angle. The Parliament urges the Commission to include human rights considerations to third-country dialogue and stress issues of good governance and democracy (European Parliament 2007a:15).

In September 2007, the Parliament issued a report focusing *on policy priorities in the fight against illegal immigration of third-country nationals*. Even though the report is on illegal immigration, the Parliament takes a wholly different approach to the topic. Rather than emphasising border reinforcements and law enforcement measures, the Parliament stressed the need to study the root causes of migration (European

Parliament 2007b:7). Within this context, the Parliament applauds some member states on linking immigration with development agreements with various African countries (European Parliament 2007b:9). Such practise is encouraged to be expanded through out the Union. The Parliament also repeated its opposition to forming detention centres for illegal migrants and asylum seekers outside EU's borders (European Parliament 2007b:8). There are obvious human rights concerns if such practise would be formalized. Moreover, the Committee on Civil Liberties of the Parliament has observed on the ground the conditions of detention centres within the EU and stated being "shocked by the inhumane conditions" (European Parliament 2007b:8). Hence the role of the Parliament as keeping the Council and the Commission "in-check" is very clear.

From the Council Conclusions the portrayal of illegal immigration as a threat on the security of EU citizens was evident. The language used when describing illegal immigration is something that the Parliament also intervenes in. It rightly states that the way in which illegal immigration is presented to the people influences the perceptions of the society, and it is especially the role of the EU to transmit vales of solidarity and tolerance to the public, rather than those of discrimination and xenophobia (European Parliament 2007b:8).

With reference to the development of Frontex and EUROSUR, the Parliament issued a report in November 2008 and is seemingly positive concerning its mandate on monitoring the external borders of Europe. It considers the agency to be an "essential instrument in the Union's global strategy on immigration and calls on the Commission to present proposals to review the mandate of the Agency in order to strengthen its role and make it more effective" (European Parliament 2008:6). It is not critical nor does it highlight any questionable aspects of its operation. Quite the opposite, it calls for

permanent operational surveillance to be established in high –risk areas (European Parliament 2008:6). In this sense, the Parliament most likely views Frontex as a tool saving lives at sea rather than deterring asylum seekers from claiming for international protection. Similar to the Council, the Parliament emphasizes the need for a higher cooperation with third-countries through negotiating readmission agreements and “considers that immigration should be an intrinsic part of any negotiations of agreements with third countries which are countries of origin or countries of transit” (European Parliament 2008:7). However a stark contrast to the Council opinion, the Parliament does not view making cooperation with third-countries conditional as justified.

In terms of counter-terrorism measures the Parliament issued a report in July 2011 titled ‘*on the EU Counter-Terrorism Policy: main achievements and future challenges*’. In contrast to the approach of the Council and the Commission, the Parliament does not make any reference to immigration or asylum in the context of anti-terrorism. As a matter of fact it states that the Commission should clearly outline, “which measures have objectives other than counter-terrorism, or where further objectives were added to the initial purpose of counter-terrorism (mission creep and function creep), such as law enforcement, immigration policies, public health or public order” (European Parliament 2011:12). Hence the Parliament is addressing here the obvious blurring between migration and anti-terrorism policies.

#### **4.4 - Conclusion: The Council vs. The Parliament – An internal power struggle**

Overall, in the discussions of the Council the same themes appear to be repeating irrespective of the time period. Erecting barriers to entry and policing the borders of the Union are reoccurring themes in the content of the Meeting Conclusions. Persistent emphasis is given to the external dimension or externalization of Union immigration control. Migration issues are clearly incorporated into the foreign policy of the EU to the extent that cooperation on matters of migration and asylum are conditional for other development and commercial objectives. There is an evident merging of foreign policy objectives and migration objectives of the EU.

Corresponding with the definitions of securitization, immigration issues are brought up in the context of internal security and more specifically anti-terrorism issues. It appears that discussions on the security of the people of the EU must involve discussions on migration policy objectives of the Council also. Surprisingly, asylum issues and human rights concerns are given relatively little focus in comparison to the quantity of discussion involving illegal immigration imperatives. The focus of the Council is clearly on issues of internal security, which is directly dependent on an efficient and joint EU effort in the field of migration. Essentially, immigration is portrayed as a threat rather than an opportunity, the economic benefits of which are left to be discussed by member states themselves.

The European Parliament however has overall adopted a different outlook to immigration. Rather than viewing it as an obvious problem for the Union, it reminds the Council and the Commission on the opportunities and responsibilities. Especially in terms of asylum policy, the Parliament consistently reminds the Council of the trade-off between excessive focus on internal security and human rights considerations. Furthermore, the Parliament places far more emphasis on development objective and

addressing the roots causes of migration. This does not however mean that the Parliament intends the development to exist independently without security measures at the external borders. More so, it enforces the two to be developed in parallel, as neither can be effective on their own.

The content of the Reports do however show some indication that the securitized rhetoric has reached the Parliament also. References to the enlargement of the Union constituting a threat at the borders and the role of curbing illegal immigration in keeping the citizens of the EU safe imply that securitization has been normalized in immigration policy to the extent that it is firmly rooted in the institutions of the EU.

# CHAPTER FIVE

## CONCLUSION

### 5.1 - The institutionalization of securitization

This thesis has aimed to examine the extent of securitization in EU immigration and asylum policy, and more specifically how the concept of securitization is apparent in both the policy and discourse of the EU. By examining the existing literature on securitization, the research illustrated how politicians through speech acts portray a policy area as one related to the security of the state and hence survival. By framing a direct relationship between the two, the issue is processed only within the context of security hence justifying more extreme and often anti-democratic measures in defense of the security of the state and its citizens. As illustrated, securitization is established through speech. However, overtime the security association, if successfully acted, can lead to securitization being institutionalized into administrative and procedural routines. This is a result of the securitization aspect already being taken for granted and no longer questioned by the public. Such successful securitization implies power on the part of the political actors and bureaucracies, leading to the unquestioned application of the securitized mindset.

Within the field of immigration such securitization has long roots in framing TCNs as a threat to the security of the citizens of Europe. However, as the literature illustrates, the justification for such securitization has slightly shifted from emphasis on socio-economic problems to terrorist threats. With the events of 9/11 and attacks in Europe a few years later, the EU was faced with new realities from threats unpredictable and volatile in nature. For some authors, this marked a new era in EU immigration

policies, one of building the walls of fortress Europe and deterring by all means the entry of the foreigner threatening the very liberties defended by the EU. For others, these new realities brought little new in terms of policy responses. The securitization of immigration is claimed to have roots in the very rational behind the formation of the Schengen Agreement and as such is a longstanding objective of the Union. In fact, it is the best means to increase the unity within Europe, by focusing attention on the threat from the outside. In terms of such externalization of threat, the link between TCNs and terrorists is more explicitly made in US migration policy. This logic is followed to the extent that a seemingly relaxed attitude towards immigration in Europe is in US government policy a probable threat to US security.

In view of this, the research aimed to examine the extent of securitization within the institutional framework of immigration and asylum policy in the EU. The policy analysis took on the task of scrutinizing the policy practice of securitization by looking at the development of EU secondary legislation pertaining to immigration. According to the majority of literature assessed, asylum was a policy area that suffered the most from the anti-terrorism hype. Analysis on the developments following 2001 concerning qualification for international protection and safeguarding basic rights of asylum seekers reveals that there is an increasing trend of attempting to erode the rights of TCNs under exclusionary clauses, in most cases relating to national security and public order. References to national security are frequent and present loopholes for member states to apply Directives at their discretion. Law enforcement officers are given wider scope and authority in dealing with asylum applications with little regard or knowledge of central rights of the asylum seekers. However there is evidence of a healthy evaluation and a responsive system in the formulation of the policies as well. Due to the

institutional setting of the Union bodies, no one institution has monopoly over the formation of legislation hence appropriate checks and balances are present to oversee the legislative procedure.

The reinforcement of the external borders of the Union presented another area of scrutiny. The scope of measures taken at the external borders of the EU to deter illegal entries is immense. Harmonized policies have been developed to form a united response and more specifically a clear legal framework for the expulsion of TCNs on EU soil. Detention, expulsion and entry bans are standard operating procedures for getting rid of TCNs. Moreover, the Union has created special forces such as Europol, Frontex and RABIT at the borders to patrol and prevent TCNs entry. The financial and legislative freedom granted to these organs is telling. What is more striking is the pushing of borders of the EU even further by engaging in cooperation with third-countries to prevent TCNs even reaching the shores of Europe. Third-countries are coerced into cooperation with Europe with incentives and pressure in other fields besides immigration. Migration clauses are negotiated into all types of agreements with neighboring third-countries for easier repatriation and lesser responsibility on the part of the EU.

Another field, which illustrated considerable development, is technological solutions and the formation of various databases for storing and monitoring of TCNs. The previous decade has witnessed sophisticated information gathering in visas, asylum applications and the collection of biometric data and masses of information concerning would-be entries to the EU. The development of such tools is clearly justifiable as an administrative necessity but what is more questionable is the obvious instrumental blurring in their use for both immigration and law enforcement purposes. National law



enforcement personnel as well as the above mentioned security forces of the Union have near unrestricted access to these databases, especially under the pretext of national security, hence leading to the labeling of TCNs and jeopardizing of basic human rights. VIS and Eurodac data are used interchangeably for immigration and law enforcement purposes with little regard to data protection. More strikingly, these systems are developed with specific regions and nationalities in mind as posing the greatest threat to internal security. The legislative analysis showed that there is political will in pushing the collecting even further by taking DNA samples and gathering behavioral data from commercial transactions related to air ticket purchases. Albeit not yet approved in the EU, the worrying trend is already visible in the US, which in terms of overseas travel already has ramifications for EU citizens.

However, is this all new or an expected development going along side EU enlargement? SIS and Eurodac both pre date 2001 as does the establishment of Europol. The will and need has obviously been there for their establishment, and understandably once the territory of the EU expands, so does the need to protect it. However, to take it to such an extreme where human rights obligations are being neglected is highly questionable, as is the apparent prevailing logic that a TCN equals a threat. As stated, the most unlikely means of entry to the Union for a menace to the security is an asylum seeker who subjects himself/herself to such a lengthy and bureaucratic procedure when entering the EU.

## **5.2 - Discourse: Is securitization prevailing?**

The research then focused on the rhetoric used by two main bodies of the Union, the Parliament and the Council in search of the roots for the securitization apparent in the policy. The Council and Parliament offered two remarkably different approaches to the topic. Throughout, the Council focused its immigration discourse around the threat from illegal immigration and the security of citizen of the EU. Measures of border reinforcement, development of databases and empowering border agencies were central themes throughout the decade. The Parliament on the other hand, offered a firm defense for rights of persons in need of international protection. It reiterated concerns from the use of data on TCNs for law enforcement purposes and the overall blurring of anti-terrorism and immigration tools. Whereas both strongly supported cooperation with transit and origin countries, the Parliament had a developmental perspective whilst the Council insisted cooperation in the field of migration to be conditional for all other forms of assistance.

A surprising finding however was that the terrorist attacks on both Madrid and London did not appear to influence the tone of discourse for either body. Whereas the Council did mention issues of immigration to considerations under the European response to terrorism, the Parliament merely warned of crossing the line of ensuring internal security on the expense of justice and human rights. But neither showed a marked change in policy or language or way in which immigration issues were framed. The Council kept its relatively securitized rhetoric and perception that immigration is best combatted through an impenetrable border with minimal human rights obligations. Although showing some signs of externalizing the threat, the Parliament remained

defending the rights of TCNs, acted as a check against excessive measures and remained a watchdog on the actions of the Council in general.

### **5.3 - Securitization: A political choice or a necessity for survival?**

Hence, when looking at the extent of securitization in the European Union immigration and asylum policy, it is fair to say that the rhetoric of externalizing the threat has penetrated the institutional framework and has been normalized into policy practice. There is a clear push towards a “race to the bottom” on obligations towards non-EU citizens. Loyalties toward the people residing in Europe are prioritized over those needing international protection, or at least this is the pretext given. Is the safety of EU nationals at risk to such extent that the Union shows clear signs of backing out of being the shining example of human rights and democratic practices everywhere? This is what the political force behind the EU would like us to believe. As long as the source and means of entry of terrorists and other menaces to the security of Europe remains vague and difficult to identify, there appears to be little option but to trust those at the highest bureaucratic level of the EU. And this exactly manifests the workings of securitization in practice; an idea presented to us, the audience, by those possessing the knowledge and the power to frame an issue in a manner which suites their objectives.

However, such policy development appears logical looking at the growth of the EU. The harmonization of policies may have started from trade and economics but the leaps made since require extensive harmonization across all fields, including that of immigration, for the realization of economic prosperity and freedoms protected by the

EU. Indeed, the securitization aspect witnessed especially in the field of asylum can be explained, according to some, as a result of the goals announced at the Tampere Conclusions. However, harmonization needn't be synonymous with securitization. A clear blurring of boundaries between immigration control and crime control is highly controversial. Constant parallels are drawn between the removal of TCNs and issues of national security. Is such a simple conclusion warranted that national security concerns are able to dictate policy formation in the field of immigration and asylum? Unmistakably, the world today is not what it was 10 years ago, and even less what it was when the Treaty of Rome was signed. One cannot blame the EU for responding to the challenges brought by globalization. However, one can blame it for going too far.

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