

EU ASYLUM POLICY: THE EMERGENCE OF SUPRANATIONAL POLICY ENTREPRENEURS?

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Dr. Christian Kaunert
Lecturer in EU and International Relations
European Studies Research Institute
University of Salford, Manchester
ESPaCH, Crescent House
Salford, Manchester
M5 4WT
United Kingdom

c.kaunert@salford.ac.uk

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Abstract:

The 'Area of Freedom, Security and Justice' in the EU has experienced significant developments during the Tampere programme (1999 – 2004). This paper makes the point that European integration is possible in areas of 'high politics', such as asylum policy. Significantly, the European Commission can (though not always does) play a significant role in this process - the role of a supranational policy entrepreneur that enables the normative construction of a policy. The paper analyses the high-profile case of the European Asylum Policy, particularly the four main directives, its legal and political construction, and demonstrates the significance of the Commission in the political and normative process.

Keywords: Area of Freedom, Security and Justice; European Commission; European Asylum Policy; European Integration; Intergovernmentalism; Supranational Policy Entrepreneurship.

An EU asylum policy:

In recent years, migration and asylum issues have become increasingly contentious in Western Europe - at the core of electoral campaigns in several EU member states: France, The Netherlands, Denmark and the UK. Amongst academic scholars in the field of immigration and asylum, the argument has advanced that EU governments decided to 'venue shop'; they decided to circumvent domestic pressures and obstacles, and therefore 'escaped' to legislate at the EU level where they were protected from these issues (Joppke, 1998, 2001; Freeman, 1998; Guiraudon, 2000; Thielemann, 2001a, 2001b). EU member states, in this argument, have thus decided to enhance their co-operation in the field of asylum and migration (ibid) in a process driven by national bureaucracies. These state-centred accounts (esp. Joppke, 1998; Freeman, 1998) stress the resilience of nation states, their ability to control 'unwanted immigration' and the use of the EU by its member states as a device for attaining immigration and asylum (see Thielemann, 2001a, 2001b) policy objectives that are unlikely to be achieved at the domestic level alone.

On the other hand, some Eurosceptics in Britain suspect the European Commission to be responsible. On 15 October 2004 (BBC News, 15.10.04), the European scrutiny committee decided to debate the implications of the European Constitution on the policy of the Area of Freedom, Security and Justice (AFSJ). In this debate, it emerged that the decision-making

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

rules in the asylum field had already changed from unanimity to qualified majority vote (QMV) in the Council of Ministers with The Hague Programme. The then Tory shadow home secretary, David Davies, claimed that *'the British veto would be given up on asylum, immigration, and visa matters.'* *'That is not co-operation - that is decisions effectively driven out of Brussels'* (ibid). Factually, the European Commission cannot legislate even under QMV, but rather the Council using the co-decision procedure with the European Parliament. Formally, the European Commission only proposes legislation under such a procedure. However, this could still indicate a major success for the European Commission in the field of the EU asylum policy. In essence, this means that the asylum area is then fully communitarised, and national sovereignty has been pooled at the EU level. The focus of the following paper will be on the role of the Commission in the EU asylum policy. Did the Tampere programme from 1999 to 2004 represent a major success for the European Commission acting as a Supranational Policy Entrepreneur (SPE)?

Why select the EU asylum policy as a case study?

There are several strong reasons why the EU asylum policy is used as a case study in this research. It can be underlined by focusing on two main arguments: (i) the distinctiveness and difficult nature of its institutional architecture, and (ii) the contentiousness, empirically and theoretically.

(a) The distinctiveness and difficult nature of the EU asylum architecture

Firstly, it is important to analyse the EU asylum policy due to its distinctive institutional architecture and nature (Noll, 2000). Institutionally, the asylum policy is a very difficult field with complex decision-making rules. Only when the Treaty of Amsterdam came into force in 1999, the Commission gained the shared right of legal initiative with each member state. The legal instruments available to the EU used to be very weak with little legal effect - mainly conventions, which had to be ratified by each member state individually – but the EU was given new instruments (directives) in 1999. The latter are enacted in the so-called 'consultation procedure' of the European Parliament by the Council of Ministers, which votes by unanimity rule. The EU asylum policy is consequently more communitarian than criminal justice, for instance, - but far less so than the single market.

Moreover, the EU asylum policy is embedded in a long-standing international regime of refugee protection (Loescher, 1989, 1993; and Marrus, 1985, 1988; Noll, 2000)), which

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

complicates and certainly influences any EU legislation. It was established on 14 December 1949, when a Resolution of the United Nations General Assembly created the office of the United Nations High Commissioner for Refugees (UNHCR). The first instrument was created in 1951, when the Geneva Convention Relating to the Status of Refugees was adopted for Western Europe. Ever since, it has been the cornerstone of contemporary international refugee law, only supplemented by the 1967 New York Protocol, which extended the Geneva provisions to the rest of the world.

Signatories to the convention, which include all EU member states, are required (according to Art. 1A (1) of the Geneva Convention) to offer refuge to a person who:

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

Despite being the cornerstone of international refugee protection, not all member states interpret and apply the Geneva Convention in the same way. According to one NGO (interview NGO8), ‘some EU states’ interpretation of the law has no basis in the wording of the 1951 Geneva Convention, is not in the spirit of that convention and is in contradiction to United Nations High Commissioner for Refugees’ official advice.’ Differing definitions of ‘refugee’ create different levels of protection and an uneven sharing of the responsibility. Most member states have a range of statuses to confer on refugees, with varying socio-economic and judicial rights. They differ sharply on whether to award refugee status (which confers full legal protection and access to social security and the labour market) in cases of persecution by non-state agents, such as war lords, paramilitary groups or mafia organisations. This gap in interpretation provides clear opportunities for an EU asylum policy.

Yet, the Geneva Convention protects and cements the principle of national sovereignty, thus complicating EU legislation. One of the most relevant examples is the fact that people need to be outside their country of origin to be able to apply for asylum. This prevents states from

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

interfering in the internal affairs of other states, but it also means that internally displaced people are outside the scope of the Geneva Convention (Hathaway, 1991, p.10). This ingrained norm of national sovereignty makes the policy area consequently more complicated for the European Union.

(b) The contentiousness of the EU asylum policy, empirically and theoretically

The EU asylum policy is contentious empirically and theoretically, which underlines its importance as a case study. In short, it has been viewed increasingly as a contentious empirical area. Historically, the issue of refugees is a modern phenomenon and emerged over the course of the 19th and 20th centuries (Marrus, 1988). For the first two decades after the Second World War, nearly all the refugees were fleeing communist political persecution and sought asylum in Western Europe. They appeared unproblematic at the time, as the period of economic expansion made it easier to absorb them into the labour markets and into society (Loescher, 1989, pp.620-625). The situation changed in the late 1970s and early 1980s. This has been portrayed as the asylum crisis in Western Europe. Xenophobic and racist attitudes became increasingly prevalent, and Europeans responded to this problem with deterrence and restriction. Asylum policy became very salient on the political agenda on the national level of member states – an important reason to examine it as a case study.

This ‘asylum crisis’ led some member states to increasingly perceive the Geneva Convention on refugees to be out of date. In the recent UK election campaign, the opposition leader Michael Howard (BBC, 22.04.05) called for the UK’s withdrawal from the Geneva Convention on numerous occasions. This only reflected statements by David Blunkett, the then Home Secretary, in 2003 (BBC, 05.02.2003). Consequently, it is reasonable to suspect some EU governments - especially the UK - to think that the EU framework provides an opportunity to create measures that replace, amend or supplement the Geneva Convention. Prima facie evidence would therefore suggest that the EU could conceivably be attempting to reduce the rights of refugees as demanded by the Geneva Convention.

Academic scholars have also become concerned about the EU asylum policy. There has been an active debate on the ‘securitization’ of the EU asylum and migration policy (Huysmans, 2000; Bigo, 1996, 1998, 2001, 2002; Boswell, 2003; Geddes, 2000, 2001; Guild, 1999, 2002; Guiraudon, 2000, 2001). In this context, ‘securitization’ refers to the theoretical suggestion

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

that asylum and migration are presented as security threats, based on the framework by the so-called 'Copenhagen school' (Buzan, 1991, 1998; Waever, 1993, 1995).

Yet, national elites are suspected to have actively taken up this issue in order to 'securitize' it. Didier Bigo's (1996) empirical study of France suggests that increased competition for budgets forced national bureaucracies to develop strategies for the expansion of their jurisdiction by appealing to EU networks, both as a source of legitimacy and efficiency. However, it is noteworthy that none of the aforementioned 'securitization studies' have ever attempted to evaluate the role of the European Commission as an actor in the EU asylum policy, despite its clear impact on other policy areas. This makes it all the more important to analyse the political role of the Commission for the asylum area. As a consequence of the aforementioned arguments, this area can legitimately be described as one of the hardest cases for the Commission to demonstrate its potential to act as a supranational policy entrepreneur. It has clearly been dominated by nation states in the past, creating international regimes, and potentially securitising the field. Can the Commission act as an SPE?

1. The European Commission as a Supranational Policy Entrepreneur (SPE)?

It is important to evaluate the role of agency in this significant process of European integration in an area so close to the very essence of the nation state. The debate over agency in European integration (and thereby regarding the EAW) falls within the dispute between intergovernmentalists (Hoffman, 1966; Moravcsik, 1993), supranationalists (Haas, 1958; Stone Sweet and Sandholtz, 1997, 1998; Stone Sweet et al., 2001), and institutionalists 'somewhere in between' (Pollack, 1997; Pollack, 2003; Beach, 2005a) concerning the role of supranational institutions in the process of European integration.

This paper suggests a reconceptualisation of the framework of supranational policy entrepreneurs (SPE), which is often referred to by the academic literature that discusses the role of agency in European integration (Moravcsik, 1999a; Pollack, 2003; Beach, 2005a; Stone Sweet and Sandholtz, 1997, 1998; Stone Sweet et al., 2001) when analysing the political role of the European Commission. The concept of a political entrepreneur is grounded in the works of Kingdon within the context of US politics. Kingdon (1984, p.173) suggests a policy-making model starting with the identification of a problem (first stream), which is then followed by a search for alternative solutions (second stream) and a decision

among these alternatives (third stream). On some occasions, a 'policy window' opens for the adoption of certain policies. Policy entrepreneurs, 'advocates [...] willing to invest their resources – time, reputation, money' (ibid, p.188), stand at this window in order to propose, lobby for and sell a policy proposal. However, this conceptualisation needs to be extended by using constructivist insights of norm construction and entrepreneurship (Kaunert, 2006).

Why is this important? At the political bargaining stage (the politics stream), where decisions amongst different alternatives are taken, the EU is dominated by member states preferences and interests; especially the third pillar decision-making through the Council of Ministers. In principle, this would indicate the benefits of a liberal intergovernmental analysis for the policy area. In this view, European integration can best be explained as a series of rational choices made by national leaders and dominated by national interests (Moravcsik 1991, 1993, 1998, 1999a, 1999b). Thus, EU integration occurs due to: (1) a change in interests within the member states; or (2) the result of a grand political bargain. International institutions are merely there to bolster the credibility of interstate commitments (Moravcsik, 1998, p.18) by ensuring that member states keep their promises and thus dare to agree to a mutually favourable solution without the fear of 'free-riders'.

But where do member states' national interests and preferences come from? Moravcsik (1998) assumes national interests to be exogenous of the EU process. The interests of the member states are stable before they come to the bargaining table. However, it does not seem reasonable to assert that preferences are exogenous. The EU has created a system whereby member states continuously interact at different levels. The claim that this would not change preferences over time appears doubtful. Even within the context of the international system with less social interaction amongst states, Katzenstein (1996) has demonstrated convincingly how norms and values shape national interests. Constructivist literature clearly showed how these norms change over time (Finnemore, 1996a, 1996b; Finnemore and Sikkink, 1998).

Yet, if national interests and preferences are shaped by different norms and values, as argued in this paper, this implies that a fourth stream – the norm stream - is underlying the three other streams. Norms consequently influence the definition of political problems, the search for policy alternatives, and finally the national preferences in the politics stream where decisions are taken. How can norms be constructed and how can they be observed? Firstly, actors provide reasons for action. The SPE constantly pushes for his reasons for action to become

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

accepted as a norm, albeit in competition with other actors. This is the first stage of norm creation in the norm life cycle as described by Finnemore and Sikkink (1998), and is followed by the norm socialisation stage. Eventually, a norm becomes the dominant norm. Consequently, SPEs are important in the social construction and reconstruction of norms that steer the political movement of the other streams.

Kaunert (2006) describes the ways in which political entrepreneurs can achieve this:

- (1) First mover advantage: SPEs need to come in faster with their proposals than their rivals.
- (2) Persuasion strategy: As suggested above, in order to achieve acceptance, other actors need to be convinced by the reasons for the action suggested.
- (3) Alliances: It is vital for the SPE to form initial alliances with other powerful actors to create a bandwagon effect, whereby more actors will join the 'winning team'.

The following paper will assess to what extent the European Commission has been able to play the role of an SPE with regard to the area of the EU asylum policy. Firstly, this paper will deal with the main advances of the Tampere programme with the four aforementioned directives standing out as the 'jewels in the crown'. Secondly, the role of the Commission and other actors will be examined with regards to the normative construction of the EAP. Fourthly and finally, this will lead to an overall evaluation.

2. The Tampere programme in the EU Asylum Policy

What were the aims and objectives of Tampere in 1999?

The aims of a common EU asylum and migration policy have frequently been described in policy guidelines of the Council and the Commission. The Tampere Presidency conclusions of October 1999 identified a number of aims, including the necessity of partnerships with countries of origin and the development of a common European asylum system. Paragraph 14 of the conclusions emphasises:

'This system should include, in the short term, a clear and workable determination of the State responsible for the examination of an asylum application, common standards for a fair and efficient asylum procedure, common minimum conditions of reception of asylum seekers, and the approximation of rules on the recognition and content of the

refugee status. It should also be complemented with measures on subsidiary forms of protection offering an appropriate status to any person in need of such protection. [...] In the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union.'

In essence, this is the work programme for the European Union from 1999 to 2004. The expectations of NGOs raised by the Tampere programme were hugely positive just after the summit (interviews NGO1 to NGO11). Yet, by the end of the process in May 2004, NGOs were very negative about the outcomes. They all took the ambitions literally and expected a monumental increase in refugee rights from it. They expected harmonised procedures, increased benefits and, most importantly, a higher level of European burden-sharing. Without exception, NGOs were very disappointed with the results of the negotiations, claiming almost universally that the rights for refugees had been lowered from what existed prior to Tampere, and were even in breach of the Geneva Convention (interviews NGO1 to NGO11; ECRE et al., 28 April 2004).

However, this is perceived very differently within the institutions of the European Union (interviews COM2, COM5, COM7, COM10, COM16, COM23, COM25, CON1 and CON2). Thus, it is unsurprising that this is reflected in the communication from the Commission to the Council and the European Parliament, which assesses the Tampere programme (Commission, 2004). *'Compared to 1999, progress to date has been undeniable and tangible'* (p.3). Consequently, it is very important to be clear about the achievements during the Tampere process.

What are the advances of the EU asylum policy?

This section will analyse the legal advances of the EU asylum policy (EAP) in more detail. The emphasis is only on the adopted legislative instruments - the four directives. The directives discussed below are: (i) the 'temporary protection directive', (ii) the 'reception conditions directive', (iii) the 'asylum qualification directive', and (iv) the 'asylum procedures directive'.

(a) The 'Temporary Protection Directive'

The temporary protection directive (Council Directive, 20.07.2001, 2001/55/EC), was the first legal instrument in asylum law in the legislative programme since Tampere. In the literature,

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

it is often suggested that its content was influenced by the experience of the reception of displaced persons from Yugoslavia in the 1990s (Hailbronner, 2004, p.68). Thus it is intended as an effective instrument of temporary protection in the context of mass refugee movements for people not falling under the remit of the Geneva Convention.

This directive is the first step towards a European system of burden-sharing among member states in the event of a mass influx (*ibid*). Indeed, the first step ever taken in that direction for the EU. How does it work? The Commission first proposes the existence of a situation of mass influx, which is then adopted by the Council by qualified majority and which is binding on all member states. However, the number of persons to be admitted is not specified as mandatory. The time limit of the duration of this scheme is one year with the extension possibilities of six months or one year by the Council. Member states admit according to the information provided by them on their reception capacity.

There are a number of rights given to persons in need of protection through this scheme, which are: residence rights, employment rights, and family reunification rights. In addition, all admitted persons are not prejudiced in their rights to apply for refugee status under the Geneva Convention. In this regard, their status determination can be delayed for the period of their temporary protection (Peers, 2002, p.89).

In essence, this directive has been criticised for window-dressing by Guild (2004, p.211). She criticises the very fact that this directive represents an alternative for protection under the Geneva Convention. Either a person is a refugee, in which case they would need the protection of the Geneva Convention, or the person is not. In the former case, she demonstrates very succinctly that the person would receive higher benefits under the Geneva Convention than under this temporary protection directive. This echoes Peers (2002, pp.89-90), who also warns of the danger of this instrument replacing the refugee rights under the Geneva Convention.

Yet, Guild's argument has one important flaw. Firstly, as suggested by Hailbronner, temporary protection is a complementary right which does not prejudice an application for refugee status as the person can still apply for it after two years (Hailbronner, 2004). As it is a complementary right, the person receiving this protection would probably not fall under the Geneva Convention as a refugee – a case which Guild does not consider. In the end, it is a

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

question of emphasis: Does one consider it normatively worse that some potential refugees may wait for up to two years to have their case considered while being employed (which may not be possible as an asylum seeker for the first 12 months), or is it worse that people in need of protection will not gain protection if they are not under the remit of the Geneva Convention?

In conclusion, the temporary protection directive is a clear advance for people in need of protection compared to the situation prior to the legislation. It is the first legislation of the European Union in the area (Monar, 2002). Yet, as demonstrated above, it confers a number of important rights which are novel. Nonetheless, it is only a stepping stone towards EU legislation in substantive areas of asylum policy.

(b) The 'Reception Conditions Directive'

The reception conditions directive (Council Directive, 27.01.2003, 2003/9/EC) of 27 January 2003 lays down minimum standards for the reception of asylum seekers across member states. Monar (2004, p.118) describes this directive as an important new legal element of the common asylum system. It is the first element of three closely linked legislative initiatives, and thus is different to the previous directives: the asylum qualification directive, the reception conditions directive, and the asylum procedures directive.

Hailbronner (2004, p.78) explains the reasons why the reception conditions directive is such an important one. Firstly, the substantial differences in reception conditions in the various EU member states can be a factor for migratory movement of refugees within the EU. Logically, based on the Dublin convention, asylum seekers can only apply for asylum once in the EU, and thus the conditions in which they are being received matter significantly in their choice. In 2001, the Commission initiated this legislation, which was subsequently passed by the Council in January 2003. It defines certain key terms of the Geneva Convention, such as applicants for asylum, family members, unaccompanied minors, reception conditions, and detention.

The directive only applies to applicants for asylum, which has been criticised (Guild, 2004, p.213), especially as it does not apply to the previous temporary protection directive. The question of which basic rights and benefits asylum seekers deserve should be based on their needs rather than on the grounds on which the claims are based, according to this argument.

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

This is a valid argument, but as the competent authorities in member states always have to presume an application for asylum, this should address the issue.

The directive generally accords freedom of movement to asylum seekers within the territory of the host state or within an area assigned to them by that state. This addresses more restrictive regulations of some EU member states (Hailbronner, 2004, p.79). Detention will only be allowed in order to check the identity of the applicant for asylum. Refugee organisations have rightly criticised the practice of restricting the freedom of movement as being contrary to human rights provisions. Yet, as Hailbronner (*ibid*, p.80) demonstrates, some member states' practices (for instance Germany) tended to be even more restrictive.

Member States must guarantee several reception conditions:

- Material reception conditions, such as accommodation, food and clothing.
- Family unity.
- Medical and psychological care.
- Access to the education system for minor children and language courses.
- Lodgings in a house, accommodation centre or hotel.
- In all cases, applicants must have the possibility of communicating with legal advisers, NGOs and the UNHCR.
- Access to employment.

The most heavily disputed provision concerns the access to employment - criticised for the delay in access to it (Guild, 2004). At the same time, member states have been generally reluctant to grant access to the labour market in the field of migration. In this directive, they are at least obliged to open access to the labour market and vocational training to applicants for asylum 12 months after they have lodged their application. Thus, despite the criticisms related to its complicated procedure (*ibid*, p.215), and the UNHCR argument that a six months delay would have been preferable, it is already significant that throughout 25 EU member states this was possible at all. In addition, as with all reception conditions, member states will be free to apply more favourable conditions of reception.

In conclusion, this directive rectified one particular problem within the member states - the wide variance of reception conditions. It is clear from the evidence presented that this is an advance in those conditions across the EU 25. For most member states, they will need to be

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

higher than before the directive. Equally, there is no obligation to lower any favourable conditions. Consequently, the directive is a success for the European Union.

(c) The 'Asylum Qualification Directive'

The asylum qualification directive (Council Directive, 29.04.2004, 2004/83/EC) addresses three important elements of asylum: (1) the recognition of refugees, (2) the content of refugee status, and (3) the approximation of rules. In addition, the directive highlights the grounds for qualification for subsidiary protection.

In order to make the distinction between subsidiary protection and refugee status clear, the directive provides definitions of both concepts. A refugee is defined exactly as in article 1A of the Geneva Convention. On the other hand, a person eligible for subsidiary protection is a:

'third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm'.

As Hailbronner (2004, p.58) demonstrates, both protection as a refugee within the terms of the Geneva Convention, and subsidiary protection – for those who fall outside the convention - are included in this legislation.

The directive addresses many of the issues in substantive asylum law which have had forced divergences in national practices before, and it increases protection. Firstly, the established grounds for persecution are the same as in the Geneva Convention, thereby solidifying the group of people qualifying for refugee status. In addition to the generally accepted forms of persecution, the directive sets out three principles, which have not been applied by member states prior to it (ibid, p.60). For the first time, *'persecution can stem from non-state actors'* where the state is unable or unwilling to provide protection. Given the increase in people fleeing on such grounds, this is a significant widening of the concept. Secondly, the directive also includes child specific and gender specific forms of persecution, not in existence prior to the legislation (Monar, 2005, p.132). Finally, persecution may take place even though all persons in a particular country face generalised oppression. In essence, the effect of all these

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

legal changes means that the directive goes beyond existing refugee rights enshrined in the Geneva Convention.

Balzacq and Carrera (2005, pp.48-49), however, are concerned why refugees and persons under subsidiary protection are not treated equally. They demonstrate that some rights accorded to persons granted subsidiary protection are below the rights of refugee protection. Consequently, they wonder whether this is a '*double standard consistent with the general philosophy of equality of treatment for people in need of and who qualify for international protection*'. Yet, persons who are granted subsidiary protection do not qualify for international protection under the Geneva Convention (Hailbronner, 2004, p.62). The provisions in this directive represent the first concrete European initiative to protect those who fall outside the refugee definition.

In an ideal world, one could conceive of rewriting the Geneva Convention to broaden the concept of asylum. However, this has not happened to date, and the alternative to this directive is only the member states' discretion as to how much they want to help. Under this directive, there is no discretion anymore, and subsidiary protection rights are codified. Consequently, this is a substantial success in expanding rights for people in need of protection.

(d) The 'Asylum Procedures Directive'

On 9 November 2004, the Council agreed politically on the directive on minimum standards for procedures - the Asylum Procedures Directive (Balzacq and Carrera, 2005, p.50). The Commission had first presented its proposal for the directive in September 2000, and submitted an amended version by June 2002. After intense negotiations, a 'general approach' was agreed in April 2004, and politically confirmed in November 2004. The directive had not formally been adopted by the end of 2004 due to the lack of agreement on a list of 'safe country of origin'. Yet, on 1 December 2005 it was finally formally adopted.

The harmonisation of asylum procedures is of vital importance for a common asylum system together with the reception conditions directive. Firstly, it contributes to the prevention of secondary movements of asylum seekers. Secondly, it is vital for the asylum seekers themselves as they are no longer able to freely choose their country of application under the Dublin Convention. As they cannot choose their country anymore, it is vital to harmonise

procedures in order maintain fairness towards people in need of protection. Thirdly, this legislation will enable follow-up legislations in the area in the longer term (Hailbronner, 2004, p.70).

Monar (2005, p.133) describes how both the Treaty of Amsterdam and the Tampere programme demanded the adoption of policy instruments within the transitional period of five years ending on 30 April 2004. This put considerable pressure on the Council for the adoption of the directives in time, which was managed in a meeting on 29-30 April. The Asylum Procedures Directive defines minimum standards for procedures, which include:

- access to the asylum process
- the right to interview
- access to interpretation and legal assistance
- detention circumstances
- the appeals procedure

In addition, it defines controversial concepts, such as:

- ‘First country of asylum’: this allows applications to be rejected where applicants have been recognised as refugees in another country with sufficient protection in that country.
- ‘Safe country of origin’: this allows considering a group of applications of nationals of one country to be unfounded, thereby entering into an accelerated procedure. The failure to agree on a specific list of countries in this category has delayed its formal adoption.
- ‘Safe third country’: this allows the transfer of responsibility for the processing of an asylum application to countries of transit to the EU.

This directive has been more severely criticised by NGOs (ECRE et al., 2004) and academics than the other three. The main arguments relate to a supposed incompatibility with international obligations (ibid, p.51). Costello (2005) criticises the three controversial concepts: (1) first country of asylum, (2) safe country of origin, and (3) safe third country. In her view, these provisions threaten to undermine many of the other laudable features during the Tampere process, in particular the Asylum Qualification Directive (ibid, p.36). Yet, according to Costello, these three provisions will undermine access to and the integrity of asylum procedures in the European Union.

Doede Ackers (2005), negotiating the Asylum Procedures Directive on behalf of the Commission, disagrees. He explains the rationale for adopting it and the different stages in the negotiations. Firstly, Ackers disputes that the politically agreed general approach breaches international human rights obligations (ibid, p.32). It is argued that for each of the safe third country provisions, certain safeguards should be laid down to ensure that if member states properly implement these rules, no breaches of international law occur.

Secondly, as it stands the approach adds value to the soft-law standards already agreed, including the procedures according to the UNHCR Handbook (ibid). On the question of appeals procedures, the general approach even introduces the obligation to ensure an effective remedy before a court or tribunal, which goes beyond the standards in the Handbook. It is vital to note at this point that the Handbook is only soft-law in international law, and thus left to the individual interpretation of domestic courts, which can vary significantly across the EU.

Finally, Ackers (ibid) argues that several member states will have to raise their standards to comply with the provisions in the general approach. Thus, a framework which requires higher standards than the previous practice of member states can hardly be described as a breach of international law – certainly not of customary international law. Fullerton (2005) fully agrees with this view. In her article, she analyses the asylum situation in Spain and Portugal. Although the Iberian peninsula is closer to regions of conflict and migratory routes than most European Union states, the numbers of asylum seekers registered in Spain and Portugal are far lower than in other member states of comparable size and economic development (ibid, p.659). While multiple factors deter refugees from seeking asylum in Spain and Portugal, their inadmissibility procedures are the most important. Both states employ an inadmissibility procedure which results in the rejection of a substantial majority of applicants for asylum prior to any hearing on the merits.

The Asylum Procedures Directive limits the grounds for rejecting a claim as inadmissible, whereas the Spanish and Portuguese procedures dismiss asylum applications on far broader grounds. Consequently, they will contravene the Procedures Directive. As a consequence, an asylum procedures directive that increases the number of asylum seekers who will be able to apply for refugee status in a number of member states - such as Spain and Portugal - is a clear legal advance for refugee rights.

(e) Assessment

In conclusion, the EU asylum policy (EAP) advances are very significant. The very first binding legal instrument was the Directive on Temporary Protection in 2001, where the advantages have been demonstrated. In addition, member states' experience of receiving asylum claims demonstrates the fact that refugees are starting to flee for new reasons, which are not always covered by the Geneva Convention, e.g. persecution by non-state actors. The EU has also created forms of subsidiary protection in order to give applicants temporary or provisional protection even if their demands do not fit within the criteria of the Geneva Convention. Furthermore, the reception conditions and the asylum qualification directives do not support the theory of a 'lowest common denominator' harmonisation either.

According to Hailbronner (2004), comparative surveys demonstrate that the prospect of a common European asylum system has already produced harmonising effects in national legislations. With agreed common minimum standards in the significant areas, this will prevent a 'race to the bottom' between national legislators. They are not competing with each other anymore for more restrictiveness, and thus do not need to lower their standards below their neighbours in order to reduce the numbers.

Moreover, Ackers (*ibid*, p.33) also points to the most fundamental aspect of any defence of the EAP. The adoption of the four directives is of historical importance for the EU as it opens up the road to a new period in decision-making on the EAP. The area becomes communitarised, which signifies transfer of national sovereignty to the EU level. National sovereignty has been a cornerstone of international relations for a long time, at least since the treaties of Westphalia in 1648, which put an end to Europe's Thirty Years War and created its modern state system. This system has now changed with regards to the EU asylum policy. Consequently, asylum policy is now in the EU order - very different from international law (Shaw, 2000).

Therefore, the Geneva Convention is now cemented in EU law, and the legal value is much stronger than it was before the Tampere programme. This is due to the distinction between international law and EU law - and the principle of national sovereignty compared to an EU pooling of sovereignty (Kaczorowska, 2003; Shaw, 2000). This has been established in a series of judgements by the European Court of Justice. It declared EU laws to be binding, but

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

also internalised, often without national implementation necessary. In contrast, the effect of international law is still determined in accordance with national constitutional requirements.

Thus, the legal doctrines of the direct effect of EU law and its supremacy will apply to the area for the first time. This creates enforceable legal obligations not only in vertical relations between public authority and individuals, but also in horizontal relations between individuals *inter se* (Weiler, 1991; Weiler 1999). Community principles with direct effect can be invoked before domestic courts, which must provide adequate legal remedies. This is crucial as it alters the public international law assumption that legal obligations are addressed to states only, and thus do not create direct effects for nationals of that state. It is the state itself that determines the scope and reach to which international obligations may produce direct effects for individuals.

This has changed with the EU directives in the area of asylum. These laws are now directly enforceable in domestic courts with little discretion. Individual asylum seekers can take states and individuals to court in domestic courts. Thus, in addition to the EU supremacy of law, this provides a certain force to asylum rights which was previously missing under international law. One example is the frequent discussion on whether the UK may leave the Geneva Convention, as mentioned at the beginning of this paper. While the withdrawal from the Geneva Convention would be possible under international law prior to EU legislation, this is not possible anymore under the current rules. As the UK opted into all of the EU asylum rules, these are now fully binding and enforceable in UK courts. This hypothetical scenario makes it much clearer how the legal value of the Geneva Convention refugee protection has increased with the EU legislation.

Moreover, decision-making procedures have now changed with the Hague programme. Future legislation in the area will include the co-decision procedure between the Council and the European Parliament, which was previously only consulted on the matter. In the Council, the voting procedure will be qualified majority voting (Peers, 08.11.04). This then removes any blocking possibilities by any of the 25 member states. This is a major success for the area of asylum, for the European Union, and for the European Commission in the driving seat of this process.

3. Evaluating the normative construction of the European Asylum Policy by Commission: To what extent was it an SPE?

The following section will analyse the normative construction of the EU asylum policy (EAP). In the preceding section, it had become clearer that the EAP is an area of ‘normative construction’. How has the analysis of this normative construction of the EU asylum policy been operationalised? Firstly, norms are defined as: *‘written and non-written rules which are reasons for action of different orders. They enable, restrain, or constitute different actions by providing a standard of appropriate behaviour for a particular reference group.’* Secondly, it is essential to examine the complimentary underlying normative question of the rule around which the political ‘grand debates’ are structured, i.e. the official and unofficial political discourses between actors in the policy-making environment.

How far can one attribute changes in the norm stream, if any, to the supranational policy entrepreneurship of the European Commission? This section will demonstrate how the European Commission has acted to initiate and push this process of normative change, which is part of its role as a supranational policy entrepreneur, and enables a political adoption process. It constructs the political environment in which a policy is adopted – and sets the agenda.

The Commission as a strategic first mover: EU asylum becomes connected with the Internal Market and international humanitarian norms

The Commission’s strategy was two-fold: firstly, ‘a persuasion strategy’ as a ‘first mover’ in order to get the foot in the door. It socially constructed the functional link between a ‘moving policy train’ - the single market - and EU action in asylum matters. It pushed for this starting in the 1970s, throughout the late 80s and early 90s. It published communications that became the reference points for later legislation in the EAP. Secondly, the Commission also constructed EU asylum action into the international prevailing norms on refugee protection - the Geneva Convention - which gave it more legitimacy as an actor. Norms only develop gradually, and therefore the Commission would have to act pragmatically in the meantime. The following section will demonstrate both of these aspects.

The Commissioner in charge of Justice and Home Affairs (JHA) until 1999 was Anita Gradin from Sweden, before being replaced by Antonio Vitorino from Portugal. At the end of her term in 1999, she acknowledged the persuasion strategy of the Commission (Gradin, 1999) –

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

i.e. the publishing of different communications. These created opportunities to convince member states of the reasons for action, and hence provided the basis for EU policy during the coming years. In essence, the Commission had set the agenda as a first-mover. The Tampere agenda can be traced back to these communications, which in turn build on some earlier efforts.

The first examples of Commission activism can be traced back to 1976. Geddes (2000, p.55) cites the Commission's 1976 proposal for a directive against clandestine immigration as the first attempt to move into the broader area of immigration and asylum. Yet, even though it found support with the European Parliament, it was blocked by the Council.

The first serious attempt to shape the EU asylum agenda was the Commission's famous 'White Paper' (COM (84) 310 final) on the completion of the Internal Market in 1984 (Mitsilegas et al., 2003, p.28; Geddes, 2000, p.70). It is significant for this research as it represents the origins of the Commission's attempts to gain competences for the EU in asylum policy. The document proposed the abolition of all internal border controls, but also provided a link between the former and economic growth, as well as a whole range of compensatory measures – such as immigration, asylum, external border controls, and policies on visas and drugs, and crime. Yet, none of the asylum proposals made succeeded due to the gradual nature in which norms often develop (Geddes, 2000, p.71; Geddes, 2001, p.24). Yet, member states accepted the link between the internal market and the EU asylum policy – and in time the success of the single market would drag along the EU asylum policy - as long as the European Commission kept pushing.

One of the defining characteristics of political entrepreneurs in Kingdon's (1984) definition is persistence. It is beyond reasonable doubt that the Commission was persistent in its efforts. The norms of decision-makers at the time were still very tied to the internationally prevailing norms of national sovereignty, despite all the efforts in the single market. Thus, it was vital for the Commission to attempt to change this.

In 1991, the Commission took the next steps in its persuasion strategy - constructing the link to both the single market and international refugee norms. The communication (Commission, 1991, SEC(91) 1857 final) acknowledged the fact that the political and social importance of the right of asylum had increased in Western Europe. It was claimed that, as a consequence,

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

individual states were less able to deal with the problem caused by the increased influx of asylum seekers. However, the Commission insisted that humanitarian standards would need to be maintained, and took the 1951 Geneva Convention as a starting point. The communication also underlined the humanitarian objectives of the Convention.

The following common actions were envisaged in the short term in order to cope with the increase in asylum seekers (ibid):

- speeding up administrative and judicial decision procedures
- harmonisation of the conditions under which people can be turned down at the external borders
- effective return policy of the rejected asylum applicants
- exchange information procedure

The following actions were envisaged with regards to the harmonisation of asylum law in the internal market (ibid):

- harmonising the national criteria and practices regarding the determination of refugee status
- harmonising the rules with regards to the stay of “de facto” refugees (those who do not qualify for Convention refugee status)
- harmonisation of the reception conditions for asylum seekers

These suggestions are already exceptionally close to the objectives of the Tampere programme of 1999. The communication in 1991 even includes its outcomes in 2004 - the directives on asylum qualification, asylum procedures and reception conditions. The suggestions by the Commission had no clear legal basis in the Treaty of Maastricht in 1992 and certainly not before Maastricht in 1991, and were extremely ambitious. While not being pursued in policy terms, they clearly did affect the norm environment of decision-makers. The issues never slipped off the agenda from the day of this communication – which the Commission ensured with future communications.

The communication in 1994 (COM (94) 23 final) represented another important step in the persuasion strategy. With a view to stimulate discussion and debate, it followed on from the earlier document of 1991 (also referred to in COM (94) 23 final; pp.23-27). It built on the suggestions made in 1991. The communication called for the following measures:

- a harmonised application of the definition of a refugee in accordance with article 1 a of the Geneva Convention
- the development of minimum standards for fair and efficient asylum procedures
- the elaboration of a convention on manifestly unfounded asylum applications
- the harmonisation of policies concerning those who can be admitted as refugees, but may be in need of help
- a measure harmonising schemes of temporary protection
- a European fund for refugees

These measures all represent the basic foundation of what became the Tampere programme in 1999, and, finally, the outcomes of it in 2004 - the directives on temporary protection, asylum qualification, asylum procedures, and reception conditions, and even other adopted instruments, such as the European Fund for Refugees. Indeed, all of the aforementioned communications display the determination of the Commission to drive forward the process of EU integration in EU asylum matters. Yet, an efficient EU asylum policy would only be possible with a major treaty change (Gradin, 1999). Therefore, it was implicit in the strategy of the Commission that it could compromise as long as the goal of full communitarisation was reached.

In conclusion, the Commission managed to achieve two important successes. Firstly, as part of the persuasion strategy, it socially constructed the functional link between the single market and EU action in asylum matters. It started in the 1970s, pushed continuously, and published communications which became reference points for policy in the area. Secondly, it managed to link this to the internationally prevailing norms on refugee protection - the Geneva Convention - which increased its own legitimacy in the process. Yet, the Commission was forced to adopt a strategy of gradualism and pragmatism. Gradually, norms would develop and, pragmatically, the Commission would take part in the negotiations.

Connecting the asylum policy to International Human Rights norms in the face of the ‘war on terror’

In the previous section, it was demonstrated how the European Commission managed to connect the EU asylum policy to the single market. Acceptance of this fact led to increasing dynamics in the area. Yet, it was equally important for the Commission to link asylum policy

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

to the Geneva Convention. This was particularly important after 11th September 2001 - the terrorist attacks on New York and Washington. The following section will demonstrate the strategy used in this endeavour - divided into two parts: (1) the anchoring of EU asylum policy before Tampere 1999 by relying on civil society and NGOs, and (2) the continued insistence on international human rights standards after 11 September 2001, despite shifts in rhetoric to accommodate the 'war on terror'. This is in contrast to the area of criminal justice, where the 'war on terror' was pushed strongly as a reason for action.

Firstly, when the Commission started to construct the EU into national asylum policy, it had decided to link it to both the single market - to push the project - and the internationally prevailing refugee protection norms - to gain legitimacy. The latter is particularly important as the Commission has been frequently attacked for not being democratic since the 1990s. The essence of its legitimacy problem is that the 'unelected' Commission is widely perceived as detached from the concerns of EU citizens. This problem was exacerbated in March 1999 when managerial incompetence and allegations of fraud against some Commissioners provoked the resignation of the whole College.

Thus, its own legitimacy needed to be increased through the legitimacy of other actors in the field - the UNHCR, NGOs, and the European Parliament. The literature has established that the Commission often aims to use NGOs to improve its own legitimacy (Greenwood, 2003). Both Hix (1999) and Geddes (2000) have pointed out their importance for the Commission, particularly in the areas of asylum and migration.

Yet, European integration always remains the most important objective above all for the Commission. Geddes (2000, p.134) suggests the success of this strategy. While NGOs criticise current EU policy, the answer to the problem tends to be more, not less, 'Europe'. This was confirmed throughout the interviews (interviews NGO1 to NGO11). There was widespread support for a communitarisation of asylum matters in particular. As described by Geddes, the mood of NGOs was one of frustration because of the lack of what they perceived to be progress in the asylum policy. At the same time, they did not attribute the blame on the European Commission, which was perceived as an ally. The blame was usually attributed to the Council of Ministers and member states.

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

Some NGOs were under no illusion of their own ability to influence the Commission, asserting that they were mostly utilised by the Commission when it was useful to do so (interview NGO2) - to gain information and legitimacy. Despite this realisation, they represented an important ally for the Commission, being useful on two fronts (Geddes, p.136): (1) they push for asylum solutions based on the Geneva Convention, and (2) they implicitly support European integration by operating at the EU level, thus making the political issues de facto 'problems of Europe'.

It is important to note at this point that the Commission partially created this useful ally (Geddes, 2000, p.143). A significant number of NGOs (interviews NGO1 to NGO11) indicated that the Commission was actively involved in the creation of their EU structures or their organisation in general, and continues to finance the majority of them. These findings also confirm Geddes' suggestion of some 'top-down' influence of the Commission on pro-migrant groups (Geddes, 2000, p.143).

Geddes describes a number of examples of such funding (ibid). Between 1991 and 1993, 560 projects were funded. One of the most important projects was the funding of the European Union's Migrants Forum (EUMF) in 1991 as an umbrella organisation for migrant organisations in each member state. It receives funding from the Commission, while at the same time it seeks to influence it. Yet, it has not been very successful, having been thrown into turmoil in 1996 and 2000 (interview NGO10) after allegations of financial mismanagement and police investigations. Its successor network is the European Network against Racism, also funded by the European Commission. Other NGOs include Brussels-based groups such as the European Council of Refugees and Exiles (ECRE), the Churches' Commission for Migrants in Europe, Migration Policy Group, Amnesty International, and Caritas.

Secondly, the anchoring of the EU asylum policy within the international prevailing refugee rights norms became vital after 11 September 2001. At this point, norms could have easily shifted towards a securitisation of asylum - the construction of asylum as a security threat. Yet, from the documentary and interview evidence presented below, it is clear that the Commission took the political decision at that time to not link the asylum issue to the 'war on terror' (interviews COM10 and COM16).

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

Van Selm (2003, p.143) describes it as remarkable that the Commission's proposal for a Framework Decision on combating terrorism made no mention of refugees, asylum, or the exclusion of any person seeking refugee status. In her view, this was particularly remarkable as the Geneva Convention did provide grounds for exclusion from refugee status for terrorists. Yet, the Commission decided not to link the issues of asylum and terrorism.

Nonetheless, in agreement with the NGOs' (interviews NGO1 to NGO11) views, the war on terror did influence the policy area. The conclusion of the 20 September 2001 meeting reflected mainly judicial and criminal co-operation, but also asylum matters (Van Selm, 2003, p.145). The conclusions, amongst others, invited the Commission to examine the relationship between safeguarding internal security and complying with international protection obligations and instruments. This is of particular importance. It appears as an attempt by member states to put internal security above international protection norms, and thus effectively to securitize asylum.

Yet, in the end the Commission managed to keep the policy anchored within international norms, and thereby prevented a shift into security (COM (2001) 743 final). Consequently, in the working document entitled '*the relationship between safeguarding internal security and complying with international protection obligations*', the Commission did not advocate any change in international refugee protection, and bases the Geneva Convention at the heart of any response. This was written in response to the Council conclusion mentioned above.

There are two main premises of the Commission working document: (1) bona fide refugees and asylum seekers should not become victims of the recent events, and (2) no avenues should exist for the supporting of terrorist acts. The document made it clear that a scrupulous application of the exceptions to refugee protection available under the current laws is the appropriate response. It was therefore an outright rejection of placing security in contradiction to existing refugee protection instruments. This was confirmed in an interview with the author of this document (interview COM16). Moreover, while the Commission acknowledged that terrorists might use asylum channels, it considered this as not likely, as other channels would be more discreet and more suitable for criminal practices.

It was suggested for the member states to use existing legal instruments (COM (2001) 743 final) - based on the Geneva Convention – such as:

- Article 1 (f), the exclusion clause, should be used within the asylum procedure in order to avoid refoulement
- if sufficient grounds are known for exclusion, an accelerated procedure should start

There were suggestions for the following policy alterations (ibid):

- the creation of EU level guidelines on the use of exclusion clauses
- the proposal on minimum standards for asylum procedures should include provisions for the cancellation of status on the grounds of information coming to light after processing of claims

In essence, this document followed up on the somewhat harsher language of the 20 September 2001 conclusions of the European Council. Yet, contrary to the initial demand which seemed to indicate an attempt to present asylum as a security threat in the war on terror, the working document did not deviate from accepted international norms. In fact, it demonstrated the legal value of the Geneva Convention, and thereby strengthened it. It resisted the temptation to move an issue into the security area when it was perceived as a human rights issue. In fact, the Commission rescued this political perception by trying to reconcile the demands for greater security with the international refugee protection norms.

It would have been difficult for the Commission to do otherwise, as it had consistently anchored the EU asylum policy in international refugee norms. Consequently, it could have been perceived as inconsistent and thus less credible. It would have lost legitimacy in the eyes of the NGOs, who have been supporting the Commission in its efforts to create an EU asylum policy. Any deviation from this established position would have damaged the Commission politically. Yet, the demands by member states seemed to go into that direction - attempting to place security above refugee protection. In the end, the Commission managed to please both by presenting harsher rhetoric using the language of security, while maintaining the Geneva Convention as the bedrock of the EU asylum policy.

In conclusion, the achievements are remarkable. Throughout the norm-building process, the Commission had acted as a 'strategic first mover' in a persuasion strategy that was two-fold: (a) the creation of an EU asylum policy leading to the full communitarisation of the area and thus the pooling of national sovereignty, and (b) the anchoring of the policy in the

international refugee norms - the Geneva Convention. In the end, the strategy worked and both goals were reached.

Which way should the EU go? – Communitarising the EU asylum policy as the main strategic goal

Kaunert (2005) demonstrated that norms up until Tampere had evolved in two dimensions. Firstly, on the axis of whether the EU should be legislating at all in the AFSJ, where the normative debate had been structured between those wishing to preserve national sovereignty and those wishing to pool sovereignty at the EU level. Secondly, on the axis of what the aims and the purpose of such legislation would be. For the area of asylum policy, it is precisely this second dimension that was at the heart of the change during the Tampere programme.

Sandra Lavenex (2001, p.852) describes how a normative paradox exists among two dimensions: the tension between state sovereignty and supranational governance, as mentioned above, and the tension between internal security and human rights institutionalised in refugee rights. Emek Uçarer (2001b) echoes the normative description by Lavenex and analyses how the global refugee protection regime was characterised by two principles, i.e. humanitarianism and state sovereignty. Indeed, these two axes provide a lucid analytical point of reference for the development of norms in the area.

Table 1: The EU at a normative crossroads –developments in the EU asylum policy

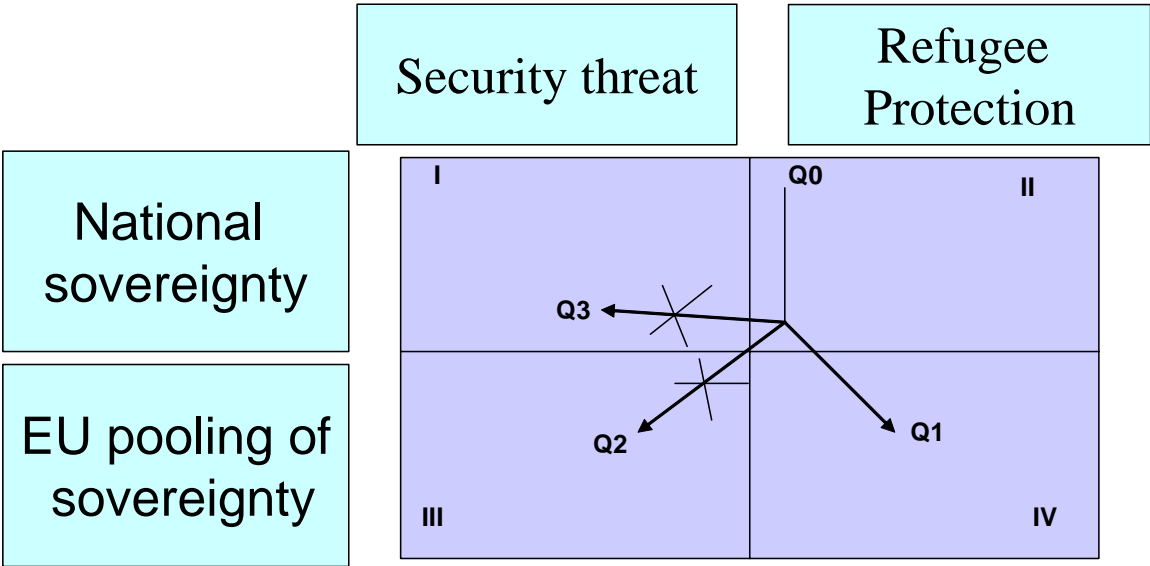


Table 1 provides a map for the development of norms in the area of asylum during the Tampere programme, summarising the main developments of the two previous sections.

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

Initially, EU co-operation on asylum before the Tampere programme had been mainly in quadrant II of the matrix. It was characterised by an anchoring in the internationally prevailing norm on national sovereignty and the refugee protection norm - the Geneva Convention. At this point, there were three different possibilities for norms to develop if there was any change at all.

Firstly, the policy could develop from Q(0) to Q(3). This change would imply that national sovereignty would remain the bedrock of asylum policies in Europe, and thus there would be no movement on the axis of whether the EU should be legislating in the area of asylum. In fact, this would imply that no EU legislation would be possible, or indeed the legislation efforts would be meaningless.

The second alternative would have been a development from Q(0) to Q(2). This change would imply that a Supranational Policy Entrepreneur had managed to persuade the European member states to pool national sovereignty in the area. However, the implications of 11 September 2001 would have been used in such a way as to construct asylum as a security threat in order to achieve this goal. In some sense, this is the most likely scenario, as it is similar to the area of criminal justice where European integration was pushed forward in the wake of the terrorist attacks on New York.

Nonetheless, it is the third alternative that the Commission managed to achieve, which involved movement from Q(0) to Q(1). This implies that the Commission managed to persuade member states of the pooling of national sovereignty at the EU level. At the same time, this pooling is firmly anchored in international refugee protection norms – especially the Geneva Convention.

Norms changed very significantly during the Tampere programme - and the Commission was clearly significant, as the aforementioned evidence suggests. It played the role of a strategic first mover in order to shape the debate in a way that placed the EU at the centre of the policy. Yet, this process had been quite different to the area of criminal justice. There, the timing mattered significantly, and the Commission acted with significant speed. In the area of asylum, these norms developed incrementally. In fact, the Commission had started to push in the 1980s, and managed to construct the area into the single market. At the same time, the Commission had constructed it into the internationally prevailing norm of refugee protection -

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

the Geneva Convention. While there had been a certain acceptance of the role of the EU in the area, it had been far from finished. The norm of national sovereignty still remained very sticky and difficult to change.

In fact, this had changed by the end of the Tampere programme, and the EU asylum policy has been established. It was a significant success and the main goal of the Commission - the full communitarisation - had been achieved. Nonetheless, contrary to expectations, this had not been achieved by going from Q(0) to Q(2), but rather to Q(1). In fact, the Commission had never attempted to construct an EU asylum policy based on the perception that it was a security threat. Even after 11 September 2001, it pushed for the fulfilment of international obligations under the Geneva Convention. In the end, it was successful, as the analysis of the EU directives demonstrated. This meant that the EU asylum policy remained firmly anchored in the internationally prevailing refugee protection norms.

This also implied the fact that the EU asylum policy had been cemented in this norm more strongly than it had before. As explained, the legal value of EU law is much harder than international law, which means that it has actually given the Geneva Convention 'extra teeth'. In fact, this implies a double victory for the Commission. Not only is there a full communitarisation of the EU asylum policy, but it remains anchored in refugee protection norms. Despite the fact that the incremental legal successes of the Commission do not appear as shiny 'diamonds', they are still significant 'jewels in the crown'. In conclusion, it has been demonstrated how the Commission has acted to initiate and push for this normative change, which is part of its role as an Supranational Policy Entrepreneur, and it behaved in a way significantly consistent with the model - as a persistent and pushy actor with significant political capital. Thus, the Commission managed to set the agenda in very significant ways – unexpectedly in such a convincing way.

4. The Commission - an SPE with regards to the EU asylum policy in the AFSJ during the Tampere programme?

The purpose of this section is to evaluate to what extent the Commission has played the role of a supranational policy entrepreneur. A political entrepreneur stands at the policy window in order to propose, lobby for and sell a policy proposal (Kingdon, 1984). However, as argued in this paper, an SPE is also present in the norm stream, where issues are constructed as linked.

Dr. Christian Kaunert, Lecturer in EU and International Relations, University of Salford, Manchester, UK

In order for decision-makers to accept that issues are linked, one actor needs to push for this acceptance and construct the respective norm change. The political entrepreneur is crucial in this process.

A close examination of the results examined in this paper substantiates the degree of success of the European Commission acting as a Supranational Policy Entrepreneur in the area of EU asylum policy. In order to qualify as an SPE, the actor has to contribute to change in the norm stream of decision-makers as well as push policy proposals. The Commission clearly qualifies for this category in the light of the above achievements. This echoes Commissioner Antonio Vitorino's own assessment (Vitorino, 04.10.2004):

'I must confess that I am proud of what has been achieved at EU level and in so short a time. The foundations of a new – European – approach to immigration, asylum and border management have been laid. But I am sufficiently humble as well to realize that it will be for my successor, the Vice President designate, and in whom I am fully confident, to continue the construction so as to achieve a true single European area of justice, security and freedom for all the residents of the Union. That is what our citizens demand, that is what third country nationals living in the EU demand and this is what our conscience demands.'

Indeed, the above analysis corroborates the points raised by Vitorino. A European approach to asylum has been established, which is one reason why the Commission qualifies as an SPE in asylum policy matters.

Even under difficult circumstances, such as September 11, it pushed to include refugee rights under the Geneva Convention, and opposed the perception of asylum seekers as a security threat. In the end, this strategy paid political dividends. In fact, all four asylum directives actually increased the legal value of the Geneva Convention. At the same time, the Commission managed to maintain the support of the UNHCR, the NGOs and the European Parliament, and thus increased its own legitimacy in the process. This makes its success all the more remarkable.