Interstate

Interstate is an exclusively undergraduate-run academic journal, organised under the auspices of the prestigious Department of International Politics at Aberystwyth University. It focuses on issues of international and current affairs, and it aims to allow undergraduates an opportunity to comment on and analyse world affairs.

Interstate provides a space in which students can apply their new skills and pursue their academic interests, while achieving tangible results on paper and online. Our writers and editors work without the pressure of marking, but with the support and critical input of their peers, and the professional oversight of the Department.

Interstate's work can be traced through several decades, sporting the earliest works of some of the Department's current lecturers. Today, *Interstate* publishes online twice a year. A link to the former issues can be found on the departmental website.

From the beginning of the current academic year, *Interstate* has also operated a blog, *Interstate in an Instant*. Articles on the blog are published bi-weekly and offer an up-to-date reflection on current affairs, while being written in a freer form and less academic style. The blog also welcomes contributions from guest writers.

Department of International Politics

The Department of International Politics is the oldest of its kind in the world. It was founded in 1919 (in the immediate aftermath of World War I) in an attempt to help humanity better understand the reasons for war, conflict and suffering. The Department continues to be centrally concerned with the major questions in global politics: power, conflict, ethics, security and political participation. Widely recognised as the home of the discipline, the Department has evolved into the best centre for the study of international politics in the United Kingdom and its staff are committed to excellence in teaching and research to offer an outstanding and dynamic learning environment.

COMMENTS FROM THE MANAGING EDITOR
Yvonne K .Rinkart

2012 is exciting.

Politically speaking, the last months have given us the opportunity to observe a wide range of developments: The on-going financial crisis has caused significant changes in our immediate environment, and this is reflected in two pieces on the political economy of the European Union. Meanwhile, somewhat further away, the so-called Arab Spring continues, in a manner which we might or might not find promising, and a piece is this issue asks "Who is ruling Libya?" in an examination of the political forces in contention there. However, questions which are ostensibly concerned with "Islam" and "democracy" are also brought home in the phenomenon of Islamophobia, here discussed with reference to Norway's 2011 attacks and more widely. Eventually, these threads will be brought together in a special contribution at the end of the issue. Going beyond the usual scope of *Interstate* pieces, the article reviews the treatment of migrants by the regulations of the European Union. This goes to show that, in 2012, politics is diverse, fast-moving, multifaceted and fascinating.

The same can be said for *Interstate* itself. Our *Journal of International Affairs* continues to grow: our contributions are no longer limited to the discipline of International Politics, but we also expanding to subjects as diverse as English, Law, and Economics. Furthermore, our publications have diversified. Pieces from previous issues have been quoted, reproduced and even translated on academic websites. Our own blog, *Interstate in an Instant*, went online this year, publishing short academic pieces twice a month. And, of course, *Interstate* continues to publish two issues per year, and we also aim to republish two previous issues and we are also looking forward to a special issue, which is being developed in cooperation with the Centre of European Studies (CES).

These developments would not have been possible without the support from many different sources, the most important of which are listed on the side. I would like to thank our departmental advisors, Dr. Carl Death and Elaine Lowe, for their on-going support and enthusiasm. Furthermore, all assistant editors and especially the current Senior Editors, deserve much gratefulness for their continuous commitment. First and foremost, I would like to thank all of *Interstate's* writers, past and present.

I believe that all this excitement about Politics and about *Interstate – Journal of International Affairs* shines through this issue, and I wish you a pleasant read.

Yvonne K. Rinkart
Managing Editor 2011/2012

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WHO DROVE THE LIBYAN UPRISING?   Alex Serafimov

During the armed conflict to topple Muammar Gaddafi in Libya, a common question for observers was "who are the Libyan opposition?" Indeed, for one scholar this was the 'billion dollar question',[1] and, in the United States, it was a common concern.[2] Conspicuously absent from most media discourse, and rarely discussed in narratives of the conflict, is *who* the armed militants and Libya's new leadership are. Technocratic, neoliberal, exile and Islamist elements mingle under the moniker of "anti-Gaddafi forces" and the National Transitional Council (NTC), which is the acting government of Libya until elections are held in 2012. With this in mind, it is impossible to speak of these groups as one cohesive entity, with militant groups jostling for position, often violently, disagreements flourishing in the heights of the NTC leadership and overlapping and contested authorities. Moreover, with some militant groups engaging in torture and other atrocities,[3] and with a complex and important role for Western powers in the conflict, this study becomes even more imperative.

Therefore, to investigate who is ruling Libya, this study will review the groups who participated in the initial February 2011 protests whose crackdown by the Gaddafi regime prompted the start of the violent conflict. It will then examine the various groups that make up the militancy in Libya, looking at its main components. Next, it will analyse the interim NTC regime and its most prominent members tracing it through two distinct periods. Finally, this study will examine the role of Libyan exiles in the conflict, pointing to avenues for further study. Examining demography, class, ideology, legitimacy, the role of Islam and the West, we see that what began as small scale protests mainly in the eastern region of Libya quickly turned violent. We see that the leadership of Libya, essentially self-appointed, is taking the country in a direction towards more close partnership with the West and liberalised economic policy, while Libyan exile groups and Western aid have played a crucial role in the conflict. Furthermore, investigating these groups is crucial in understanding where the new Libya is heading.

PROTESTERS

On February 15th, 2011, protests calling for the end of Muammar Gaddafi's regime began in Libya's second city, Benghazi, in the east of the country, after the arrest of human rights lawyer Fathi Terbil.[4] Coming within days of the largely non-violent toppling of Tunisia and Egypt's dictators, it seemed that Libya was joining the fold of the Arab Spring movement.[5] The numbers of protesters were small, with various media outlets reporting at the time that 'hundreds' attended rallies in cities around the country.[6] Protests in the city of Bayda in the east, for example, began with 300 and numbers rose to thousands as a response to mounting government repression.[7] Grievances, too, were similar to those that characterised the movements in Tunisia and Egypt. These were a combination of anger at pervasive government repression, corruption, widespread dissatisfaction with growing economic inequality and the relative lack of economic development. Many in Libya think that given its small population and large oil reserves, Libya's quality of life should be comparable to the Gulf States. Combined with this was the perception that Libya's 'impressive' social welfare programmes of the 1970s had been underperforming, with low wages, unemployment and housing shortages.[8] Grievances unique to Libya included dissatisfaction with the personality cult of the "Brother Leader" Gaddafi and his 'idiosyncratic'

ideology.[9]

Again, as in Tunisia and Egypt, most protesters in Libya were from the working and middle classes, and it being a country with a very young population,[10] there was a 'strong youth component',[11] mainly males. Ideologically, these individuals were united in their common desire to oust Gaddafi and end his regime.[12] Protests began in the east before spreading, likely because of Benghazi's history of tense relations with the central government in Tripoli. One example of activism in Benghazi was in 2006 when protests against the Danish cartoon portrayals of the Prophet Mohammed turned into anti-Gaddafi protests.[13] In addition, the east of Libya in general feels, although this perception may not necessarily be accurate, that it has been left without public investment.[14] The east is also well known for its Islamism (the role of which will be discussed later) and conservative social outlook,[15] which may explain its ambivalence to Gaddafi's ostensibly radical ideology.

A crucial difference between the events in Tunisia and Egypt, on one hand, and Libya, on the other, has been the speed and consistency with which the movement turned to violence, only four days after protests began.[16] A 2008 US embassy cable from Tripoli released by Wikileaks offers a fascinating insight into the reasons for this. It claims that the 'reportedly deliberate' policy of keeping the east of Libya poor had helped to give many young men in the region the impression that they 'have nothing to lose by participating in extremist violence'.[17] Furthermore, the International Crisis Group (ICG) argues that the reason behind the conflict taking on the 'logic of civil war' was the nexus between the state and Gaddafi. The state's inability to "exist" without him gave the conflict the character of a 'violent life-or-death struggle'.[18] So, who were these individuals and groups that took up arms against the Gaddafi regime?

Militants

The first point that becomes apparent is the sheer number of armed groups existing in Libya. Various sources point to there being between 100 to 300 militant groups, with around 150,000 armed Libyans.[19] Many militants are 'autonomous, self-armed and self-trained', especially in the west of the country where defections from the armed forces were riskier.[20] Demographically, the militants share most characteristics with the original protesters, who, it is probably safe to say, made up their ranks early in the conflict. Coming from the working and middle classes, the ICG described the militants as 'accountants, lawyers, students and labourers'.[21] Again, it appears that most militants were young and male, although women were involved in roles such as smuggling weapons and ammunition during the conflict.[22]

Although some militants have a military background, the majority are civilians who gained experience through engagement.[23] As one commentator in the *Financial Times* colourfully put it, most were 'young volunteers in looted uniforms who careered into battle in pick-up trucks with virtually no training'.[24] Organisationally, most militant groups are decentralised and do not see themselves as working for a central authority such as the NTC.[25] One militant unit leader explained that '[t]here's no commander above us except God. We choose when we go and fight' or, according to a Misratan commander, decisions are reached by discussion and consensus amongst members.[26] This can be explained by the fact that most groups were organised on an ad-hoc 'street by street' basis.[27] Indeed, what binds militants are individual solidarities based around their neighbourhoods, towns or cities.[28] Ideologically, some militants do share political and religious affiliations,[29] but the overriding drive seemed to be the common goal of ousting Gaddafi and the defence of their localities.

Looking at several of the main militant and army groupings engaged in the conflict, the first is the National Liberation Army, also known as the Free Libya Army, which is under the authority of the NTC. Largely operating in the east, this group of eight thousand[30] was composed of 'small numbers' of army defectors and much larger contingents of civilian volunteers during the conflict. It was armed from looted weapons depots and was also supplied with arms by the French, Egyptian and Qatari armed forces.[31] Although described as a "national" army, it was in fact a largely eastern operation and this caused resentment amongst civilian militants whom it tried, unsuccessfully, to control.[32]

Other groups are, as already noted, based around cities. The Tripoli Military Council, for example, led by Abdul Hakim Belhaj 'oversees' eleven brigades around the Tripoli area.[33] Described as an 'Islamist militia' by French officials, its mandate and legitimacy is questioned within Libya, especially due to accusations of foreign (Qatari) funding.[34] Another is the Western Military Council established in the western mountains of Libya, which coordinates militants in the area and is mostly based around the city of Zintan. Its leadership is dominated by defectors from the "old" National Army and several of the groups under its umbrella have acquired a reputation for 'unruly behaviour, violence and theft'.[35] A third group is the Misratan Military Council that 'grew out of small cells formed by Misratan youth to resist the regime forces'.[36] It is a largely decentralised force which was formed around 'loose coalitions', and lacked training or any former military contingents.[37] A final group is the Libyan Islamic Movement for Change (LIMC) (formerly the Libyan Islamic Fighting Group (LIFG)) founded by

the aforementioned Abdel Hakim Belhaj. This group emerged in the 1970s and '80s in Libya and was involved in fighting the Soviet Union in Afghanistan. On top of this, some of its members were, and still are, high profile al-Qaeda figures.[38] Under its new aegis and name, the LIMC and its members were placed under NTC command.[39]

Belhaj, as one of the key militant figures, has been described as 'arguably the most powerful military man' in Tripoli,[40] and 'is seen as the leader of the country's Islamist camp'.[41] Relatively unknown early on in the conflict, he made his name by participating in the storming of Tripoli and the taking of Gaddafi's compound.[42] Before that, he has had alleged links to prominent Islamist leaders such as Taliban chief Mullah Omar through the LIFG.[43] He was captured by the CIA whilst on the run in Thailand and returned to Gaddafi's Libya to face torture in its infamous Abu Salim prison.[44] Now, however, Belhaj claims to have renounced terrorism and violence against civilians.[45] He also argues that Islamic groups in Libya 'will not allow' themselves to be excluded from the post-conflict Libya.[46] More generally, the ICG shows that Islamist groups 'feel confident that they represent the majority of public opinion'[47] with Ali Sallabi, a prominent cleric close to Belhaj, claiming that 'Islam was the fuel of this revolution, it motivated people. Many, if not most of the frontline fighters, are actually Islamists by background. Just as they have been a fundamental part of the revolution, they will play a fundamental role in the building of the new Libya.'[48] According to Indiana University Maurer School of Law Professor, David Williams, Islamist parties are 'by far' the best organised and are confident of major gains when elections take place in Libya.[49] Indeed, the prominent role of Islamists is not surprising, as Gaddafi's regime infamously repressed Islamic groups.[50]

There is a perception in Libya that while militant fighters should be shown, in the words of Abdurrahim al-Keib, the NTC's current Prime Minister, 'the gratitude and respect they deserve', the prevalence of arms is widely perceived as harmful.[51] At a December 2011 protest in Libya, some declared that now that the armed conflict is over, the armed men should 'either go home, join the army or lay down their guns', with the latter two being official state policy.[52] This, alongside rivalries and deadly clashes between militant groups,[53] is creating serious problems. The ICG, for example, has judged the measured and careful 'disarmament, demobilisation and reintegration' of militant groups as *the* key issue of the post-Gaddafi Libya.[54]

Lastly, the role of foreign military forces in the armed conflict is also worth examining. In examples of the role of foreign military aid, *CNN* reported how British, French, Jordanian and Qatari Special Forces gave aid to the militants, which proved 'critical' in conducting operations. This support came in the form of improving militant tactics, providing targeting information for NATO warplanes conducting airstrikes, communications, and arms (provided by the Qatari and French armed forces).[55] In some cases, foreign forces accompanied militants from around Libya all the way to Tripoli. In one incident, *The Week* reported how 'Qatari special forces, trained by Britain, could be seen clearly directing the final assault on the [Gaddafi] compound'.[56] In another, one commentator described how British Special Forces 'played a key role in coordinating the fall of Tripoli',[57] as did France and Qatar by funnelling weapons and supplies, and NATO generally, as it escalated a bombing campaign over the city.[58] Lastly, NATO was crucial in the capture of Gaddafi himself when his attempt to flee the city of Sirte in a convoy was interdicted by air strikes from a US Predator drone and a French warplane. The strikes forced Gaddafi to flee on foot, making it possible that he was captured and seemingly executed by militants.[59] The crucial role of foreign forces at the three climactic events of the conflict, the storming of Gaddafi's infamous compound, the Battle of Tripoli and the capture and murder of Gaddafi, brings up serious questions as to the militancy's capabilities, begging the question of whether these eventual "successes" would ever have been possible without foreign involvement.

National Transitional Council

The NTC has been described as the "main body" to have emerged during the conflict, although it is a troubled one. An unelected council, the NTC convened and held its first meeting on March 5th, 2011, in the city of Benghazi, which would become its stronghold. On May 5th, 2011, it created its executive board.[60] To examine the NTC, we can speak of two periods. The first period from March to November 2011 (with a cabinet reshuffle in October) covered its operation during the conflict, and the second period from November 22nd, 2011, to the present, where the NTC functions - since moving operations to Tripoli - as the interim government of Libya.[61]

In the first period, one commentator described the council as 'largely drawn from upper middle-class professionals, lawyers, doctors, professors, and some wealthy businessmen'; others include Gaddafi regime defectors and prominent Libyan families.[62] One analyst described them as 'scions of the aristocratic and bourgeois families who had dominated Libya during the monarchy (1951-69)', exiled 'members of the non-aristocratic Libyan intelligentsia and business community' and 'representatives of the educated elite, such as lawyers and university professors'.[63] The ICG described them as 'technocrats'.[64] They were self-appointed, ostensibly on

the basis of 'experience'.[65] However, in the second period, unlike the first cabinet, the interim government of the NTC seems to have put 'regional affiliation ahead of experience or a track record',[66] aiming instead to represent all the localities of Libya. However, the new cabinet has not placed Islamists in any "strategic" positions in the government, in what some have called a move to 'please western backers'[67] but has distanced Islamic figures and support.

The NTC's main ideological and political statements have been made through several documents. On March 29th, 2011, the NTC released a document called *Vision of a Democratic Libya* which took a broadly liberal view of the post-Gaddafi Libya. It envisages a 'modern, free and united state' based on the 'religious beliefs in peace, truth, justice and equality'.[68] It professes the value of 'social justice' and using the economy to 'eradicate poverty and unemployment'. It talks about partnering a 'strong and productive public sector' with a 'free private sector'.[69] However, the NTC's more recent and comprehensive *Constitutional Declaration*, the working document of the interim period, released on August 3rd, 2011, appears more moderate. It removes all references to 'social justice', although it talks about 'guarantee[ing] the fair distribution of national wealth among citizens' while making private property inviolable.[70] In this document, the NTC names itself as the 'supreme power in the State of Libya' holding 'supreme sovereignty' through sole legislative powers and controlling the 'general policy of the State'. It claims its legitimacy derives from the 'Revolution of February 17th'.[71] However, this is challenged by militant groups who claim that *they* have revolutionary legitimacy, which can only be derived from a combat role in the conflict.[72] The legitimacy and authority of the NTC is largely a "moral" one; not necessarily arising from its representativeness or participation in the conflict. It has authority mainly in the sense that it 'acted early, spoke with authority and swiftly achieved broad international recognition'.[73]

A final document, the NTC's Electoral Law has drawn criticism. These laws, under which a 200 member constituent assembly (General National Congress) is to be elected in June 2012, contain several controversial points. The law, which was adopted on January 28th, 2012, stipulates that Libyans with ties to Gaddafi or the old regime, or academics who wrote about Gaddafi's *Green Book*, which elucidated his ideology,[74] will be banned from running for office.[75] Linked to this, reports have arisen showing the desire of the NTC to recall and purge its foreign embassies of their Gaddafi era officials.[76] This is despite the fact that, as Jeff Bridoux, postdoctoral fellow at Aberystwyth University has claimed, an 'Iraqi-like purge' of Gaddafi officials would be disastrous for Libya due to the loss of expertise and the alienation of

supporters of the old regime.[77] Furthermore, in another echo of wide-ranging Western involvement, discussion about the creation of a constitution and electoral procedure was carried out with a 'U.K.-based group' that included the previously mentioned Professor David Williams.[78] As Professor Williams explained, '[d]ifferent electoral laws will have radically different political consequences', even if on the 'face of things' this is not evident.[79] This stresses the importance of these laws and demonstrates the significance of Western involvement at this level. Lastly, with supreme irony, this electoral law, drafted under a body led by prominent members of the Gaddafi regime, prohibits anyone connected to that regime to run for a government position. Furthermore, it appears that the NTC has relaxed previous promises to ban its own members from running for office[80] and some of its prominent former members have pledged to contest elections.[81] This possibly heralds a long-term role for the NTC and its members.

The most prominent individual in the NTC is Mustafa Abdul Jalil, who, as its chairman, is currently serving as the de facto President of Libya. Having served as Minister of Justice under the Gaddafi regime, he resigned on February 21st, 2011, in protest over the use of violence against demonstrators.[82] Before that, he studied both secular and Sharia law, and was a lawyer and judge notable for what some have called conservative but fair rulings, sometimes against the regime.[83] He belonged to the 'reformist current' in the old regime under Gaddafi's most prominent son, Saif al-Islam,[84] which sought political and economic liberalisation in Libya. Abdul Jalil has portrayed himself as an Islamic moderate[85] but has sought to appease Islamists in Libya. In what the ICG called 'rhetorical concessions to Islamism', Abdul Jalil claimed that Sharia, Islamic jurisprudence, would be the basis of legislation in the post-Gaddafi Libya and that interest on bank loans should be removed, and more importantly, laws banning polygamy should be repealed.[86] Although the NTC's Electoral Law guarantees seats for women in the constituent assembly[87] one commentator described this as 'a sizable step backward for women' in a country where polygamy was 'limited and rare for decades' and has embarrassed the NTC's foreign supporters.[88] The interim NTC regime is itself overwhelmingly male, with only two women, Minister of Health, Dr. Fatimah al-Hamrush and Minister of Social Affairs, Mabrukah Sharif Jibril, holding office out of 28 government positions.[89]

A 2010 US embassy cable from Tripoli released by Wikileaks offers further insight into Abdul Jalil's ideology and goals.[90] The cable shows how Abdul Jalil sought 'international assistance in developing [Libya's] private sector and strengthening its commercial legal

environment'.[91] Abdul Jalil also praised trips to the US by Libyan judicial officials, ostensibly to learn about the US system of government. An earlier cable noted that such Libya-US "cooperation" 'offers the opportunity to influence Libya's reform efforts at local, grassroots levels'.[92] The 2010 cable reports that Abdul Jalil went on to claim that 'less talk and more action is best' in moving the relationship with the US forward.[93] Seemingly, he put this maxim into practice during the conflict. Furthermore, the cable noted, based on a Human Rights Watch report, that Abdul Jalil's 'drive to change the system is driven more by his conservative point of view rather than a reformist agenda'.[94] Finally, the cable showed how the US embassy committed itself to providing Abdul Jalil with 'U.S. laws and explanations showing how [the U.S.] handled the issues of free association and free speech balanced against the security needs of the nation'.[95] When taken together, this shows that Abdul Jalil is interested in free market reform and greater ties with the US, having been in contact with US officials for several years before the conflict. His fascination with the US system of government and laws, provided by the US embassy, could signal his desire to emulate the US.

The current Prime Minister of Libya is Abdurrahim al-Keib. He replaced Mahmoud Jibril in the post (a member of the same reformist current in the old regime as Abdul Jalil) as Jibril had promised to step down when the country was declared "liberated".[96] Al-Keib has been described as an 'academic and business man who has spent much of his life outside Libya' and is not well known in the country.[97] He earned a doctorate in electrical engineering from North Carolina State University and was a professor in the US,[98] holding a teaching post at Alabama University for twenty years.[99] Although a technocrat like many in the interim government, al-Keib never worked under the Gaddafi regime but instead funded the opposition and the NTC during the conflict.[100] He was elected as Prime Minister by a narrow margin within the NTC, with 26 out of 51 votes.[101] Coming from one of the most prominent 'nationalist' families in Libya,[102] some argue that he was chosen because he is originally from Tripoli and will balance the Benghazi-dominated NTC, thus demonstrating its inclusiveness.[103] Politically, al-Keib has spoken favourably about the "Turkish model"[104] of a moderate Islam, close and friendly relations with the West and a liberalised economy.

Criticism from previous NTC officials provides an interesting insight into the makeup and motivations of the NTC. Ali Tarhouni, who served as Oil and Finance Minister in the NTC and led a raid to rob Benghazi's central bank to raise funds for the body,[105] refused to join the interim government and made scathing criticisms of the NTC. Tarhouni, who left his post as an economics

professor at the University of Washington to return to Libya, described the NTC as an unrepresentative 'elite'.[106] Continuing, he made allegations that the NTC was 'supported from the outside by money, arms and PR' and added that '[i]t is about time that we hear the true voices of the masses'.[107] Although polemical, these criticisms expose a class-based break between the elite NTC and the primarily working and middle class Libyans over whom it claims authority.

In a possible example of these issues, the NTC faced protests in January 2012 due to 'increasing frustration with the pace and direction of reforms in the country'.[108] This culminated in the storming by hundreds of protesters of the NTC's headquarters in its stronghold of Benghazi on January 21st, 2012. Protesters were angry at the draft of the Electoral Law discussed above, which they thought was drafted without public consultation and did not live up to 'democratic ideals'. Protesters demanded more transparency on the part of the NTC leadership and are frustrated with the slow pace of reform.[109] Above all, they called for the resignation of the NTC.[110] These protests caused the resignation of Abdul Hafiz Ghoga, second-in-command of the NTC,[111] after he was accused of opportunism in switching allegiances from Gaddafi belatedly.[112]

The importance of this event in the region where NTC influence is greatest, and where the conflict began, cannot be understated. Indeed, these protests have added to previous criticism of the NTC. As one Zintani brigade commander had previously proclaimed, '[t]he NTC performed well in terms of building international recognition for us and in terms of acquiring funds. But it was never a government for us here in Libya'.[113] Indeed, this seems to be a feeling shared by many others. Several civilian militias began to 'openly criticise' the NTC for its 'unrepresentativeness', the absence of its military forces from much of the fighting[114] and the prevalence of old regime officials and defectors in its ranks.[115] Indeed, because the NTC focused on gaining international support, it finds it difficult to lay claim to 'fully' leading the conflict, and it was never able to establish a 'physical presence' in the country outside of its eastern stronghold.[116]

Exiles

The Libyan diaspora's actions against the Gaddafi regime go back to the early 1980s. Operating most commonly from the US and Europe, it has launched 'both military and media campaigns against the regime of Muammar Gaddafi'.[117] One prominent exile organisation, the National Front for the Salvation of Libya (NFSL), had even attempted to assassinate Gaddafi in 1984 only to be foiled by security forces.[118] During the civil war, the

son of the NFSL's Secretary General Ibrahim Sahad was important in helping set up the NTC's communications early on in the conflict,[119] something no doubt crucial for the body to spread its message. Alongside this, 'wired' Libyans abroad helped spread news about events to western media.[120] Moreover, as already discussed, the NTC appointed a wealthy exile, al-Keib, as the Prime Minister of Libya. Most importantly, the ICG writes, contrary to Western media coverage that presented the anti-Gaddafi movement as being organised solely in the east of Libya, the calls for protest actually originated from Libyans living abroad, mainly in Switzerland and the UK.[121] In addition, it was the violent NFSL that, in conjunction with the NTC, met with the US government to lobby for a no-fly zone,[122] arguably the key factor in the Libyan militancy's overall success. Tellingly, the NFSL will participate in elections in Libya, hoping to 'institute a [political] model similar to the American one' with a free market economy, but with a role for Islam.[123] Indeed, the model of Islam and the free market is shared by most new political forces in Libya.[124]

A two-part *Al Jazeera* documentary further outlines some of the roles of the Libyan diaspora in the conflict. For example, it discusses a wealthy exile, Abduladim El Mayat, who funnelled aid and supplies to militants in the Western Mountains of Libya. 'Gaddafi, he took my house, he took it by force… I want to go back to my house', he explains.[125] This telling comment comes alongside a growing property reclamation movement in Libya. Dozens of contentious claims over property expropriated by Gaddafi have been made, with it on occasion being reclaimed by militants using force.[126] There has also been pressure on the NTC by a 400 member 'property owners' advocacy' group to repeal the law under which properties were confiscated in the Gaddafi period, and limited Libyans to one property each.[127] This group is headed by Shakr Mohamed Dakhil, son of one of Libya's most important businessmen during the 1970s, who has said that '[p]roperties were confiscated overnight, and this is how they should be returned' with their current residents evicted in some cases.[128] This is very much akin to what happened in post-1989 Eastern Europe, where contentious (and ongoing) property reclamation led to increasing inequality and a high concentration of property ownership.[129] Interestingly, it was Abdul Jalil, current Libyan head of state, who was charged with heading up claims to property in the late "reformist" stage of the Gaddafi regime[130] showing that he is likely to be very sympathetic to this movement.

Elsewhere, the *Al Jazeera* documentary discusses exiled Libyans who joined in the armed conflict[131] something that the NFSL also did, where it even lost some militants in battle.[132] Overall, the Libyan diaspora proved 'crucial'

for the survival of the anti-Gaddafi movement[133] and all of this may suggest a dynamic of "restoration" as opposed to revolution in Libya, comprising a possible attempt to return to a lost pre-Gaddafi past.

CONCLUSION

Looking at the types of people who participated in the initial protests, the militancy, the state leadership through the NTC, and Libyan exiles, we can draw several conclusions as to "who drove the Libyan revolution". To summarise, the early protesters were driven onto the streets by the repressiveness of the ruling regime and by socio-economic grievances, a dynamic that has coloured the movements in the region generally. The young, mostly male, and working and middle class individuals were largely united in the shared grievances at the personalised rule of Muammar Gaddafi and originally only numbered in the hundreds. Quickly turning to violence after government repression, these initial demonstrations soon gave way to an armed militancy, possibly due to the perception of having "nothing to lose". Like the protesters, the militants were mostly composed of working, middle class and professional men, with a peripheral role for women. The militancy was largely informal, untrained and formed by area, district or street. This is demonstrated by the prominent Tripoli Military Council, Western Military Council (Zintan) and Misratan Military Council, all based around major Libyan cities. Foreign military aid was also crucial, being key in the storming of Gaddafi's compound, the taking of Tripoli and the capture and execution of Gaddafi himself, the three critical events of the armed conflict. A key individual in the militancy is Abdel Hakim Belhaj, leader of the Tripoli Military Council, founder of the Libyan Islamic Fighting Group (LIFG), now the Libyan Islamic Movement for Change (LIMC), and important Islamic figure. Islam plays a major role, as Islamists and former Jihadists form large portions of the militants, who often couched their struggle in Islamic terms. Holding a tenuous moral authority in Libya is the National Transitional Council. It is characterised by its self-appointed nature and the prevalence of high-level regime defectors, businessmen and exiles who take a broadly pro-Western and free market approach. Prominent individuals include Libyan head of state Mustafa Abdul Jalil, who was Minister of Justice under Gaddafi and has demonstrated conservative, pro-Western and pro-market tendencies. Others include current Prime Minister Abdurrahim al-Keib, an academic, technocrat and businessman who hails from one of the elite families of Libya and holds largely similar views. The critiques by former members of the NTC demonstrate a palpable gulf between the largely working and middle class militancy

and the elite composition of the NTC, despite its efforts to be geographically inclusive. Finally, we see the important and underreported role of Libyan exiles who proved crucial in initiating, funding and participating in the conflict.

Between these groups we see many overlapping and contested authorities. While the NTC's authority and legitimacy is questioned by some, it dominates the official policy of state and has an important role for exiles in its ranks. Militant groups dominate in their localities and in the provision of security throughout Libya, and have shown disdain for the NTC while frequently clashing amongst themselves. Finally, protesters have also made an impact, such as forcing a high level resignation within the NTC. As for the future of Libya, several issues require further attention. The role of foreign and exile actors hints at the possibility of a "restoration" as opposed to a revolutionary dynamic in Libya, especially if we look at their links to elite Libyan families exiled by Gaddafi and reclamation of expropriated property. The widely reported existence of torture, illegal detention and human rights abuses, especially of black Libyans,[134] by some militant groups and under the watch of the NTC,[135] raises serious questions as to their legitimacy and the ethics of Western aid and support for these groups. Also, it seems that Libya is already taking steps towards ever closer ties with the West and the liberalisation of its economy, a process under way since the last decade of the Gaddafi regime. Finally, the return of prominent Gaddafi-era and NTC officials to the political stage in Libya under their own political parties, such as Jibril and Tarhouni,[136] raises the spectre of unwelcome continuity in the "new" Libya.[137]

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THE PROTOCOLS OF THE ELDERS OF MECCA　　　　Erik Eriksen

'An ethno-religious group has a plan to take control over Europe. The nation is stabbed in the back by one group of people.'

This could be referring to Nazi propaganda from the 1930s. However, it is, in fact, an ideology that is gaining influence in contemporary Europe. This time, allegedly, it is not Jews that have a plan to take control over Europe; it is Muslims. The nation is not perceived as being stabbed in the back by Marxists and "cultural Bolsheviks", but, allegedly, by multiculturalists and "cultural Marxists". This is the "Eurabia" conspiracy theory, supported by influential European politicians, some of which are holding the balance of power in parliament, such as the Netherlands' Geert Wilders, as well as historians, self-professed "experts on Islam" and bloggers that are said to be read by millions. This was the ideology that drove the Norwegian terrorist and spree killer Anders Behring Breivik to murder 77 people in the terrorist attacks on the Government quarter and the Labour Party's youth camp on the island of Utøya in Norway on 22 July 2011. This ideology is, in other words, much more influential than most realise, and is on the rise.

To date, this ideology, Islamophobia has largely been overlooked in Europe, despite the great influence and grave consequences it has. This article will examine how Muslims are perceived as taking control of Europe, either through a conscious policy in cooperation with national elites or by exploiting the "ignorance" of governments throughout Europe. It will argue that this extreme Islamophobic discourse is inherently violent with its images of occupation and treachery. Firstly, the article will examine the conspiracy theory that Muslims are planning to take control of Europe, discussing its most important aspects. It will show how most of its arguments are falsifications or are based on conspiratorial readings

of real events. Following this will be a discussion of the role European politicians, who are seen as "traitors" or "collaborators". Thirdly, it will examine the possible "solutions" that members of this Islamophobic community are proposing. It will argue that whether they actually advocate violence is not crucial, as violence is following naturally from their narrative. Lastly, it will be argued that more violence in the aftermath of the attacks in Norway is probable.

Islamophobia is hard to define, as it is not clear whether it is hatred or fear of Muslims or Islam; or of the way Islam is practiced. Chris Allen, recognised as one of the most experienced researchers on Islamophobia,[2] defines Islamophobia as 'an ideology, similar ... to racism ..., that sustains and perpetuates negatively evaluated meaning about Muslims and Islam ... inform[ing] and construct[ing] thinking about Muslims and Islam as Other'.[3] "Islamophobia" will thus in this article be synonymous with what Fred Halliday calls "anti-Muslimism".[4]

The Muslim "Conspiracy"

'This [multiculti-government] is enthusiastically co-operating with the Islamization of [this country] ... [It] views bowing to the horrors of Allah as its most important task'.[5] This could have been written by Breivik, however, it is Wilders of the Party for Freedom, kingmaker of the Dutch parliament,[6] who expressed this view. It is, in other words, not only "crazy conspirators" who believe that there is a plot to "Islamise" Europe. This view is also held by significant European parties, such as the aforementioned Party for Freedom, as well as the Sweden Democrats and *Vlaams Belang* ("Flemish Interest").[7] Others holding similar opinions include influential "experts on Islam", historians and bloggers; which are all intertwined.[8] The conspiracy theories that

will be presented in this section can, thus, be found not merely at the fringe of the extreme right.

Those who support the "Eurabia" conspiracy theory share the belief that Muslims are trying to take control of Europe, and that European elites are assisting them, either through conscious policies or through their own ignorance: Europe is in this view being "Islamised". Bat Ye'or, whose real name is Gisèle Littman,[9] is undoubtedly an influential writer within the "Eurabia literature". In her view, Europe is no longer Europe, but "Eurabia", 'a cultural and political appendage of the Arab/Muslim world'.[10] She describes a perception of reality in which Europe has become a 'dhimmi civilization',[11] which in her opinion means being in a condition of "dhimmitude". She sees this as a 'condition of "subjection with protection" ...',[12] where 'non-Muslim individuals or people [in their own country] ... [must] accept the restrictive and humiliating subordination to an ascendant Islamic power to avoid enslavement or death'.[13] In this world, Europeans have surrendered to Islam and in allowing it to flourish they have left themselves with limited rights and no choice but to accept discrimination by Muslims.[14] According to Ye'or, the worst thing about this state of existence is that Europeans should be 'grateful for being tolerated'.[15]

In Ye'or's opinion, Muslims will undertake *jihad*, continuous and universal religious war, against the "world of infidels" until the rest of the world is under Islamic rule.[16] "Arab Islamism", which in her vocabulary is another term for Islam, is imposed upon Europe by immigrants who still are, and will always be, 'politically and culturally attached to [their] countries of origin'.[17] The Caliphate is already to be found in European cities, which is proven by the 'facts' that basic freedoms are extinct, that *sharia*, Islamic jurisprudence, subverts 'democratic laws'; that thought, opinion and culture are being controlled by the Caliphate; and that people are having to resort to self-censorship and are fearful of Muslims.[18] In other words, Ye'or's twisted interpretation of the situation is itself proof of it being true, creating a reality in which people fear Muslims. This circular theory, that is central to all conspiracy theories,[19] is necessary for her conspiracy theory to function.

Robert Spencer is one of the so-called "experts" on Islam. He has held seminars for the American intelligence and counter-terrorism communities and the Federal Bureau of Investigation, as well as having written a *New York Times* bestseller on the topic.[20] He is also the "principal leader" of what Robert Crane calls 'the new academic field of Islam bashing'.[21] In Spencer's view, Islam can never be moderate or peaceful, as '[i]t is the *only* major world religion with a developed doctrine and tradition of warfare against unbelievers,[22] which in itself is debatable, given the "Christian" tradition of the

Crusades. In other words, Spencer sees violent extremism as key to traditional Islam, which seems to mean that all "true" Muslims are *jihadists*. A great issue with Spencer is that he has no education in Islamic studies, being entirely self-taught. He also reads the Koran literally and selectively to support his claim that Islam cannot be peaceful.[23] Further, he has attended conferences with Islamophobic politicians, as well as extreme bloggers, such as "Fjordman",[24] who will be discussed later in this article, and is the co-founder of *Stop Islamization of America*, with Pamela Geller.[25]

Central to the belief in the "Eurabian" threat is demographics. Mark Steyn, political commentator and a *New York Times* bestselling author,[26] argues, with regards to the perceived Muslim take-over that 'demography is the most basic root [cause] of all'.[27] In this view, the reduced number of children per "European" woman, combined with the *allegedly* much higher fertility rate among European Muslims (some arguing as high as 8.1 children per woman, compared to the 1.6 for the European Union (EU) overall[28]), will lead to an increased number of Muslims in Europe, all plotting to make Europe into what Ye'or called '[an] appendage of the Arab/Muslim world'.[29] Using projections of future demographics, it has been argued that, in Bernard Lewis' words, 'Europe will have Muslim majorities in the population by the end of the twenty-first century at the latest,'[30] while some, including Steyn, argue that Europe will be close to a Muslim majority in just 30 years' time.[31] In this way, it is not merely living Muslims that are threats, but the unborn alike.

Implicit in this argument is the view that European Muslim women will continue to give birth at exactly the same rate in the future. This would also be the case for fifth-generation European Muslim women. However, the fertility rate of Muslim women in both Europe and the Arab world is declining quicker than that of non-Muslim Europeans.[32] If this theory had been correct, the number of Muslims in Europe would increase quickly. However, the number of Muslims in Europe, both born on the continent and immigrants, is merely projected to grow from the 44.1 million Muslims that lived in Europe in 2010 to 58.2 million in 2030, an increase from six to eight per cent of the total European population.[33] Demographics are a difficult subject, but it is clear that Europe will not have a Muslim majority at any point in the conceivable future.[34] Even if the demographic argument was correct, it would require that all Europeans of Muslim heritage would identify themselves as Muslims only, pleading allegiance to the Caliphate and to *jihad* rather than to the community in which they are born and live. This in itself is highly unrealistic.

Some of the most significant inventions of this ideology

lie in the connections its supporters draw. The founding myth for much of the Islamophobic community is the 1683 Siege of Vienna, where Ottoman forces were stopped by the Holy Roman Empire.[35] To use the motto of the blog *Gates of Vienna*, whose bloggers are said to be read by millions,[36] '[a]t the siege of Vienna in 1683 Islam seemed poised to overrun Christian Europe. We are in a new phase of a very old war'.[37] Instead of seeing it as a war between Ottoman forces and the Holy Roman Empire, it is argued to be a struggle between Islamist *jihad* and a culturally "Christian Europe". In other words, everything that is done by someone who happens to be a Muslim is seen as Islamic warfare against "unbelievers". This is an absurd idea.

No discussion of Islamophobia and the "Eurabian" conspiracy theory can avoid the role important European politicians are playing. Belief in these theories is not confined to just the individuals mentioned so far, but can also be found among politicians. To Wilders, the "Islamisation" of Europe is taking place today through a "stealth invasion".[38] He sees Islam as a "fascist ideology"[39] intending to control, subdue and eliminate Western civilisation.[40] The result of this conception of Islam is that it is perceived as a dangerous ideology, comparable to Nazism, and its followers (approximately a quarter of the world's population)[41] are made into imperialistic combatants, comparable to soldiers of any historical war-mongering empire. These are dangerous arguments by a politician who greatly influences the immigration and integration policies of a government that is relying on his support in parliament.[42] This ideology, where Muslims are seen as taking over Europe, is what guides politicians such as Wilders, as well people like the terrorist Breivik. In this view, Muslims in Europe are "fifth-columnists", working on behalf of the worldwide Muslim community, to continue from where the Ottoman Empire failed in 1683, in taking control over Europe. Islam is not a religion, but a "fascist ideology", and the followers of this religion are "stealth" *jihadists*, "Islamising" Europe from within. Before going on to discuss what the "Eurabian" conspiracy theorists suggests as "solutions" to this alleged problem, the issue of collaborationists or traitors within European governments will have to be faced.

The "Traitors": European Elites

Another important part of this conspiracy theory is the extent to which influential politicians, the "multiculturalists"[43] or "cultural Marxists",[44] are to blame. In this view, key politicians are responsible for "letting in" Muslims, and allowing their "needs" to dictate what society should look like. This may either be a conscious policy or due to naïveté, with the different interpretations held by different members of this wider Islamophobic

community. In her book *Eurabia: the Euro-Arab Axis*, Ye'or "exposes" – in a way that would make Dan Brown jealous - how the Muslim take-over of Europe is a policy designed by the EU in cooperation with Arab states.[45]

Ye'or's starting point is that Europe's political elite is appeasing "jihadist driving forces".[46] In her view, the little-known organisation *the Euro-Arab Dialogue* is the driving force behind the "Islamisation" of Europe, being a forum for cooperation between the EU and the states of the Arab League. Under this interpretation, the EU has chosen not to resist "dhimmitude", "giving away" its independence, for integration with 'the Islamic world of North Africa and the Middle East'.[47] The so-called "Eurabians", European politicians of all political colours, the media and academia are agents of "Islamic political ambitions". The trigger was the 1973 oil embargo, where the then European Economic Community abandoned its freedom for access to oil and economic benefits.[48] In other words, Europe is seen as being controlled by the "Arab/Muslim world" through the Euro-Arab Dialogue, doing whatever its Arab "overlords" tells it to. In reality, her book is flawed due to her extremely conspiratorial reading of events, records and opinions, at times an extreme lack of referencing, reliance on meetings that have taken place behind closed doors (where minutes were not taken and which she has not attended), and false statistics and information. Her extraction of information from these "sources" is based upon her own twisted interpretations.

A view that is held by more Islamophobic people is that European governments simply are "serving Allah" without taking part in a bigger plot. Here there are at least two distinct views; one, that the government is naïve and has no will to oppose the alleged "Islamisation"; and the other, where politicians are traitors. The first is supported by Wilders, who saw the cabinet of Prime Minister Balkenende as 'enthusiastically co-operating with the Islamization of the Netherlands', and as having no will to oppose the "Islamisation" of the country.[49] His motivation for arguing this is not crucial, as the arguments are greatly influencing the general public and contributing to Islamophobia in the Netherlands, as well as Europe in general.

The second view, that is especially popular online, is that politicians are simply traitors. In Norway, as in other European countries, one does not have to look far to find hateful messages declaring that politicians are traitors. They can even be found on the websites of mainstream media. One example is a discussion at the forum of *Hegnar Online*, a Norwegian mainstream financial newspaper. One year before the attack on the Labour Youth summer camp at the island of Utøya, the very youths who were killed there were called 'the

vermin at Utøya', and were said to be 'trained in hailing treachery' by several debaters, while the Norwegian Prime Minister, Jens Stoltenberg, was seen to be the greatest Quisling of all time.[50] In other words, it was not only Breivik, the mass murderer, who thought of them as being traitors of a culturally "Christian Norway"; those views are also easily found in the comments section of mainstream media. There is, in other words, a common view that Muslims are invading "our" countries, and that "our" politicians are actively or inactively helping "them" in "their" plot to take control of Europe, resulting in the Christian population being reduced to a state of "dhimmitude". There is a war going on, and the leaders are traitors, assisting the enemy. What the natural consequences of this may be will be discussed in the next section.

The "Solutions" to the "Muslim Question"

Although those discussed in this article deny ever having called for violence, violence is a natural outcome of their belief in the "Eurabia" conspiracy theory. In a world where Muslims are "conquerors" and governments are "traitors" collaborating with the "enemy", violence is a logical consequence. This section will discuss the "solutions" to this perceived problem. The highly influential blogger "Fjordman", also known as Peder Nøstvold Jensen,[51] is allegedly being read by millions online[52] and is Breivik's great "idol".[53] "Fjordman's" thinking is based on Ye'or's conspiracy theory, and in an essay called "A European Declaration of Independence", he demands an end to the 'evil [multiculturalist] ideology' and an immediate halt to all Muslim immigration. To "Fjordman", if these demands are not met, 'we, the peoples of Europe are left with no other choice than to conclude that our authorities have abandoned us ... We will stop paying taxes and take *the appropriate measures* to protect our own security and ensure our national survival'.[54] He does not explain what the "appropriate measures" are.[55] However, he has called for Islam to be physically removed from the West, and that could be interpreted as ethnic cleansing.[56] But, as long as he argues that national governments are collaborators – at least as great traitors as those of the Second World War – aiding foreign Muslim colonisation of an entire continent in a European civil war, the implied threat of violence is clear. As an example, '[e]very single' of "Fjordman's" central ideas was repeated by Breivik in his own manifesto.[57]

"Fjordman's" arguments are good examples of those held by this extreme community. Others with similar arguments include Steyn and Alan Lake, whose real name is Alan Ayling,[58] the financier and strategist of the English Defence League (EDL),[59] which is an English right-wing Islamophobic social movement.[60] In his *New York Times* bestseller, *America Alone*, Steyn considers copying the Bosnian Serb genocide of Bosnian Muslims to save America from "Islamisation", arguing that 'if you can't outbreed the enemy, cull 'em'.[61] However, he considers it as 'unlikely to accomplish much' and that it 'would change America beyond recognition'.[62] In other words, the reason for not mass murdering Muslims is not that it is morally wrong, but that it would not 'accomplish much'. This is not the ramblings of a mass murderer; it is a *New York Times* bestseller.

Lake has probably got the most extreme "solution" of this Islamophobic community. He has predicted that the United Kingdom will fragment into Islamic enclaves, suggesting that Prime Minister David Cameron, Deputy Prime Minister Nick Clegg and the Archbishop of Canterbury, Rowan Williams, should be moved to the enclaves, 'sending them to their death at worst ... [or] subjected to all the depredations, persecutions and abuse that non-Muslims worldwide currently "enjoy" ... [at best]'.[63] Lake is highly relevant, not only as a financier of the EDL, but also for bringing together anti-Muslim organisations from a number of countries, like *Stop Islamization of America*, as well as for his close links to the Sweden Democrats.[64] "Fjordman" is, then, neither alone in his argument, nor the most extreme.

In a world where Europe is perceived as being under attack from Muslims, aided by national elites, the resort to violence would be unsurprising. To quote Marc Sageman, a former CIA officer and consultant on terrorism, these writers, as well as Wilders, 'are the infrastructure from which Breivik emerged', and '[t]his rhetoric ... is not cost-free'.[65] For example, "Fjordman" argued in May 2011, that '[w]e need to make sure ... that those who have championed the toxic ideas of Multiculturalism and mass immigration of alien tribes disappear with it'.[66] That was exactly what Breivik attempted to do 81 days later, on 22 July 2011, when he murdered children and youths who were members of the Norwegian Labour Party's youth division, a party of "traitors" "letting Muslims into the country". Norway experienced on *22/7* that this kind of rhetoric was not cost-free. The next section will discuss the likelihood of these kinds of action being repeated elsewhere.

A Violent Ideology

Breivik is typical of the ideology discussed in this article. The aim of his acts of terrorism was to 'save Norway and Western Europe from, among other things, cultural Marxism [*which is the same as multiculturalism*] and Muslim take-over'. He saw the Labour Party as betraying Norway, 'deconstructing Norwegian culture and mass-importing Muslims'. In his interpretation of the world,

he felt he had to prevent Norway from being 'colonised by Muslims'.[67] We can recognise this rhetoric from that of the self-professed "experts" and politicians mentioned in this article. The question that we cannot avoid is whether others may resort to violence in the same way as Breivik did, in order to "save" their countries from multiculturalism and the perceived Muslim invasion.

In a discussion of whether the Islamophobic community is capable of violence, we must discuss whether these actions take place in this wider community, or whether actions, such as those of Breivik, are merely those of "lone wolves". Three days after the terrorist attacks in Norway, the then director of the Norwegian Police Security Service, Janne Kristiansen, declared that Breivik was not a "solo terrorist", but a "lone wolf".[68] There is a crucial distinction between "lone wolves" and "solo terrorists"; while the former are isolated individuals,[69] a "solo terrorist", which Breivik more correctly may be called, is *someone acting alone but on behalf of a wider community*.[70] Mark Juergensmeyer has argued that terrorists are almost always supported by wider cultures of extremism sustaining their ideology, believing that their actions are for the benefit of this community.[71] Breivik's physical contact with this Islamophobic community seems to be limited,[72] but the contact with this community of support can also be vicarious, for example over the Internet, as Gerry Gable, founder of *Searchlight* magazine, has pointed out.[73] Those acting, like Breivik, 'are often supported by others, either tacitly through the creation of a wider supportive community promoting violence, or explicitly ...'.[74] As this article has argued, this wider Islamophobic community, although perhaps not directly calling for violence, glorifies it through their use of terms and their argument that the "occupation" must be stopped. Gable argues that 'any far-right violence carried out by solo actor terrorists is an extreme product of the wider cultural milieu of far-right activism'.[75] Breivik is, in other words, an "extreme product" of the rhetoric of this Islamophobic community. He has support, although perhaps not explicitly, from this community.

An important question is whether we can expect more violence and terror from this Islamophobic community. There have been a number of terrorist attacks from other right-wing communities in the past,[76] and it is naïve to deny that this community is capable of doing the same again. This section will discuss two more groups: online debaters, using Norwegian debaters as an example, and groups on the ground, with the EDL as an example. As discussed earlier, hate speech portraying Muslims as occupiers and the government as traitors is normal in the comments section of news articles in the Norwegian online media. This discourse is so filled with 'hate, harassment and attacks on individuals',[77] that, in the eyes

of Øyvind Strømmen, expert on right-wing politics and extremism, there are as many as one hundred Norwegian online debaters that are willing to use violence. According to Strømmen, more bomb attacks are possible.[78]

A more organised group is the English Defence League, of which many members want violent confrontation.[79] There have, in fact, been arrests at most of its demonstrations,[80] and its leader, Tommy Robinson, whose real name is Stephen Yaxley-Lennon, has been convicted several times for assault.[81] A lecturer in History at the University of Northampton and specialist in far-right politics, Paul Jackson,[82] *Searchlight* magazine[83] and the organisation, Community Security Trust,[84] all agree that the EDL may function as a "gateway" to terrorism and extremism. The vast number of pictures of EDL members posing with weapons, some of which are heavy weapons, is astonishing[85] – and only supports this argument. In fact, their posing is strikingly similar to that of Breivik, whose photo of posing with a gun has become widely known.[86] Further, right-wing groups attract members from less privileged socio-economic backgrounds, with the economic crisis and increasing unemployment likely to increase the number of possible recruits for these groups.[87] For example, the unemployment rate among EDL members aged 24 to 65 is almost five times higher than the United Kingdom as a whole for the same age group.[88] They are likely to be taking part in its demonstrations as a way of identifying an "Other" as responsible for their problems. Islamophobia can, in other words, for some, function as a method of scapegoating. This is an aspect that cannot be ignored, and should be addressed.

In the words of Andreas Malm, author of a book on how Islamophobia has become accepted in Europe,[89] Breivik 'is the crusader that so many demagogues and learned people have sought after for the last decade.'[90] In an ideology where many influential personalities are implicitly calling for the use of violence, more violence seems unavoidable. With a significant proportion of Breivik's 1500-page manifesto being a guide in terrorism, explaining how to make bombs and deceive those around you,[91] it would not be difficult to replicate what he did. Breivik proved that this community is capable of perpetrating acts of terrorism. He is not a "lone wolf", totally isolated from any community, like the director of the Norwegian Police Security Service argued that he was. We cannot rule out more violence and terrorism, and security services will need to focus more on the Islamophobic right-wing after the acts of terrorism in Norway.

Conclusion

This article has examined contemporary radical and extreme Islamophobia, with a special focus on "Eurabia" theorists, who are arguing that Muslims are plotting to take control of Europe. It has also explored arguments that European elites are taking part in this plot. However, this article has expressed the opinion that their arguments are contrary to the facts and are based on conspiratorial readings of events. In the third and fourth sections, it has argued that more violence is likely as a result of these arguments, and that the discourse of extreme Islamophobia is filled with images of occupation and treachery. This article has argued that there is nothing to support the view that Breivik was merely a "lone wolf", and that he is, rather, a part of the wider Islamophobic community.

This article has warned against the risk for more violence from this extremist community, pointing out that there are significant groups capable of using violence in their fight against the perceived Muslim take-over.

We must therefore be careful not to view Breivik, who alone was responsible for the attacks in Norway, as merely an insane individual, completely detached from the rest of society, while, at the same time, viewing extreme Islamism as a "natural" result of a violent religion that is full of hate. This is, however, the characteristics of the debate after the terrorist attacks in Norway: what Elizabeth Humphrys calls a 'dichotomy of "your terrorists and our lone wolves"' has emerged after the attacks.[92] In contrast, this article has argued that the idea of Breivik as a "lone wolf" is contrary to evidence, instead pointing out that Breivik has been supported by a wider culture of extremism. It is the community sustaining this culture that we must pay attention to, in order to avoid actions similar to those of Breivik.

Islamophobia has much in common with extreme Islamism, which it claims to combat. They both emphasise their own difference to the perceived "Other", they are both "culturally racist" and focus on the perceived "clash of civilisations".[93] For instance, Hamas bases its view of Jews partly on the fraudulent "Protocols of the Elders of Zion",[94] in similar ways to how many Islamophobic individuals base their views of Muslims. As Johann Hari argues, 'Europe cannot defeat the far-right poison of Islamic fundamentalism by turning to a parallel far-right mythology of its own'.[95] By focusing exclusively on Islamic extremism,[96] one misses the response to it, namely Islamophobic extremism. However, direct violence may not be the only threat. There are also advocates of Islamophobia within parliaments; it is not only direct violence that is a threat, but also arguments and policies creating "suspect communities", leading to suspicion, fear and hate in society. It also creates the context in which those who employ violence operate in.

Islamophobia

The question that must therefore be asked at the end of this article is as straightforward as it is important: how can we prevent more violence and terror from the Islamophobic community? The possible measures are too many to be all mentioned here. However, there are a few that we cannot avoid. Firstly, more research on Islamophobia has to be undertaken. In the period before the attack in Norway, there was a severe lack of understanding of the dangers the Islamophobic community presents. Secondly, and just as important, is education: the Islamophobic views discussed in this article are based on falsehoods and misunderstandings. As long as these are not countered, through, for example, education and the media (the latter has unfortunately been bordering on Islamophobia after 9/11[97]), these views will continue to live on, and are likely to influence even more people. There must also be a focus on preventing individuals being attracted to this ideology through positive measures in the first instance. One of the most important measures is to ensure employment, as unemployed individuals are disproportionately likely to get involved in right-wing groups. Austerity measures are, in other words, not the correct solution if reducing Islamophobia and xenophobia is an aim.[98] The popularity of the arguments of the Islamophobic community shows us that we must take these views seriously.

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HOW WILL THE CRISIS IN THE EUROPEAN SINGLE CURRENCY CHANGE THE DIRECTION OF INTEGRATION IN EUROPE?   Samuel Clark

This essay will analyse the on-going events in the Eurozone single currency area. It will look at the current sovereign debt crisis, most obviously manifested in Greece, Portugal and Ireland, and try to envisage how it will change the future course of integration in the European Union. The European Union has evolved through time: the European debt crisis is just the latest in a string of challenges, which will leave its mark on the European Union. The question is what kind of European Union we will be left with when the crisis is resolved.

I will do this by briefly looking at two established theories of integration: the intergovernmental approach[1] and the supranational approach.[2] I will use these two integration theories as a basis for analysing the Eurozone crisis and the potential effects on European governance.

My analysis of the composition of European institutions will then be viewed in this context. Finally, I will look at national figures concerning the debt crisis and draw some conclusions on the direction I believe Europe[3] will move in as a consequence of it.

The Eurozone Crisis in Context

The events currently engulfing the Eurozone are yet another hurdle which will profoundly affect the course that Europe will take in the years that follow. As with all organisations, the European Union and Eurozone are affected by global events, and the subsequent measures they take to combat these difficulties.

The European Integration Project envisaged by Jean Monnet of '*ever closer union between the states of Europe*' was dreamed out of a desire to see that Europe did not return to war again. Europe had, at that time, experienced two hugely destructive wars within a generation of each other. From the 1950s until the collapse of the Soviet Union and reunification of Germany, in 1990, the propellant for integration was a fear of the influence of Communism or invasion from the Warsaw Pact. With

America's financial and military resources increasingly stretched - due to the Korean and Vietnam wars - it became obvious that Europe was going to have to take a proactive move to integrate economically.

Monnet – widely regarded, along with Robert Schuman, as one of the pioneers of European integration – had repeatedly stressed that:

> 'economic development and prosperity could best be achieved at a European rather than a national level, and that therefore the route to political integration was a long road that inevitably lay in economics.'[4]

In many respects, the expectancy of the United States that Europe should increasingly run its own affairs supports this view in the context of 1950s and 1960s Europe. Therefore, in retrospect, and considering Monnet's views on integration, it seems only logical that Europe has found itself moving along a path towards greater and greater unity. During the winter of 2011 the German Chancellor, Angela Merkel, discussed forging ahead with a new treaty for European Union which would have seen an even closer bond between the states of Europe.[5] She had even suggested that she was willing to give up more sovereignty to achieve this aim[6].

Merkel's view of how Europe should develop conflicted, however, with how other European countries perceive the European Union's trajectory. This is precisely because different states view the European project from different angles. Britain, for example, takes a more "hands off" approach to integration, often pressing for the lowest common denominator in European negotiations, the option which retains the most influence for state actors. Britain maintains an intergovernmental approach in its dealing with the European Union.

Europe is once again torn between an intergovernmental approach evident in the summit meetings between Nicolas Sarkozy and the German Chancellor, or further

supranational integration, which could effectively lead to the creation of a United Federated States of Europe. At the moment, Europe is neither, which fuels confusion as to the direction that integration in Europe should take. The Maastricht Treaty tried to be everything to everyone, with both supranational and intergovernmental functions attached – leading to the creation of the pillar system of both intergovernmental and supranational elements. The treaty led to a less coherent structure for the European Union. The Lisbon Treaty, which came into effect in late 2009, has attempted to correct the deficiencies of Maastricht and push integration forward after the failure of the Constitutional Treaty.

Functionalism and Spillover

The difficulties of the European Union, and thus also of the Eurozone, difficulties stem from a central problem: they are neither fully integrated nor completely intergovernmental organisations. The countries are in so much difficulty not because they are similar in economic structure, as federalists would hope, but exactly because they are profoundly dissimilar: some member states – mainly in Northern Europe – have been much better equipped to deal with the on-going difficulties with debt; others less so equipped, such as many Southern states of Europe overwhelmed by a toxic concoction of rising expenditure, negative or low growth and rising, unsustainable debt levels.

The Eurozone crisis has highlighted that having a single currency, in other words uniting the currencies of Europe under a single monetary policy, should have been accompanied by greater coordination of fiscal policy. The idea of having a single monetary area devoid of any kind of fiscal coordination simply does not work. The coordination of fiscal policy should have been seen as a natural progression from monetary union.

The situation we find ourselves in at the moment is one where some states in Europe have been able to borrow greater funds than they could manage over the long term. States like Portugal, Ireland and Greece are finding themselves in toxic situations where global and especially European growth has fallen and remained stagnant and, therefore, their debt to GDP ratios have increased to unstable levels. The Maastricht Treaty created the foundations for the introduction of a currency union but not a fiscal union. If these states had not entered the single currency, the solution would have been relatively straightforward. They would have had monetary independence. They could have simply reduced their interest rates, deleveraged their currencies and cooled down their economies long before debt levels became unsustainable. They could have cut their way back to competitiveness on the international stage. The fact that monetary union moves this element of integration to the supranational level takes away the member states' control over their own economies.

However – as David Mitrany and functionalists have suggested – there is a spillover effect from monetary policy onto other policies. Mitrany pointed out that a functionalist approach would mean that '*as more and more areas of control were surrendered, states would become less capable of independent action*'.[7] When states handed over control of interest rates to the European Central Bank (ECB), they surrendered their capability to control their own monetary policy. However, in handing over this power to a higher authority, the states should have also surrendered parts of their fiscal policy: the two policies are inextricably linked. It seems that leaders, in their rush to introduce the currency and to get a consensus on the Maastricht Treaty, did not create the necessary solid common fiscal groundwork, and chose instead to set up a weaker system of fiscal criteria. It is now apparent that these criteria failed comprehensively to bind the states involved to create a true single economic zone needed for a single currency to function properly. States within the Eurozone decided not to create a supranational organisation to govern fiscal policy at the inception of the single currency in 1999. There is now little choice but to integrate fiscally. If the Eurozone fails to draw up a plan to at least begin the process of tax harmonisation and Eurozone-wide government bond insurance, the consequences could be enormous - potentially including the collapse of the Euro and European integration.

The Future of the Eurozone and the European Union

There is now a very real possibility that we will end up with a two-track Europe, with the Eurozone member countries integrating faster than the wider European Union. It is evident that not all of the wider European Union member states are willing to integrate at the same pace as those in the Eurozone. The Eurozone member states will be forced together by the circumstances of the debt crisis: the argument for integration of non-European single currency states, whilst perhaps desirable, is not so pressing.

It has always been an aim of the central European states to move towards "ever closer union": it is a founding concept of the integration process. The difficulty for integration arises because different states interpret Europe differently. Germany, for historical reasons, has generally been more willing to move along a more supranational path to integration and its views are shared by the other members that originally founded the European Community and European Atomic Energy Community (EURATOM). However, countries like the United Kingdom and

Denmark view European integration from a much more intergovernmental perspective, as a collection of European states coming together to form an economic free trade zone.

The Amsterdam Treaty correctly analysed that the European Union, to move forward, was going to need flexible integration. This means that some states in Europe will integrate faster than others. The Schengen Area and the Euro currency are two very obvious manifestations of this new way of going about integration. It seems that whilst useful to allow states to choose which areas of European integration they want to sign up to and want to develop further permits a less rigid approach, it creates greater incoherence as to the general direction of integration, and can cause confusion amongst member state citizens. It has created a multi-speed integration project.

A Federal Europe or the Collapse of the European Project?

Since the 1986 signing of the Single European Act at Fontainebleau in France, it has been evident that Europe has been given a one way ticket towards further integration. The realisation that debt difficulties in one European country can have a knock on all the others is a vindication of just how far Europe has come on its long journey towards becoming a federal entity.

Some cynics would argue that a federal state has always been the end goal, and that we are already there in all but name with the establishment of the European External Action Service (EAS)[8] under the command of the High Representative for Foreign Affairs and Security Policy – a position currently held by Baroness Catherine Ashton of the United Kingdom. External Relations was one of the last areas that Europe lacked any real competence in before Lisbon, but now finds itself as a key actor. Passerelle clauses, which were introduced in the Lisbon Treaty and allow member states to vote upon policies using qualified majority voting rather than unanimity, could also lead us to expect an erosion of sovereignty in the arena of foreign affairs.[9]The economic interdependence of European states – and the realisation of a truly interconnected and global capitalist system in the wider context – has been made glaringly obvious by the on-going debt crisis. In terms of indebtedness, 'fourteen out of 27 countries in the European Union had public debt exceeding 60% of their gross domestic product at the end of 2010'.[10] Out of these countries, some of the worst offenders were those that share the Eurozone currency including Greece at '166%'[11], Portugal at '106%'[12] and Ireland at '109%'[13] of their GDPs respectively. The financial crisis has completely distorted Eurozone member states budget deficits and for the worst-affected countries their budget deficits will likely not return to the 3% budget deficit needed for

initial entry into the Euro zone for many years to come.

The Lisbon Treaty has tried to wrestle even more powers from member states to create a more coherent Europe: in doing so they have moved further towards Monnet's original aim to cement '*the development of supranational institutions as the basis for building a genuine economic community that would adopt common economic policies and rational planning procedures*'.[14] The most recent Euro barometer polls have been suggesting that, despite Europe's limbo about how it should respond to the crisis, Europeans still believe that it is at a Eurozone and European level that the debt crisis can best be managed, and not at the level of member states: '23%'[15] of respondents felt that the European Union was best placed to deal with the current difficulties compared with '20%' of people who felt that national governments should take the lead.

Conclusion

Greater integration is now no longer an option but rather something that cannot be escaped: countries that have the single currency will have to align their economies – or treat the Eurozone as one large economy and give their ability to raise taxes to a central supranational organisation.

Many countries in Europe have been swamped by the financial crisis. If Europe fails to achieve further integration, perhaps with the creation of Euro bonds or by giving the European Central Bank (ECB) the power to act as a supranational lender of last resort, and continues with the European Union that existed before the financial crisis then there is the real possibility that the entire integration project could be pulled down. As this essay has highlighted, the Eurozone crisis puts European Integration at yet another crossroads and there is no reason to suggest that Europe will make it to the other side. The European Union is being presented with another hurdle to jump: just as the Soviet threat and global political environment during the mid-twentieth century pushed Western European states together, and then the collapse of the Soviet Union prompted the adaptation and eventual eastern expansion, Europe has to change and acknowledge the global political and economic environment post-credit crunch. The Lisbon Treaty was a compromise agreement to replace the failed Constitutional Treaty. However, it failed to foresee and get the necessary reforms through that will be needed for the institutions of the European Union to deal adequately with the continuing fallout of the financial crisis. A new treaty will be needed to prepare Europe for the challenges that lie ahead, but increasing scepticism about Europe – especially from countries like the United Kingdom – will make this difficult. Yet, failure to do more and make radical changes – perhaps greater than

those proposed by Nicolas Sarkozy and Angela Merkel at their many summits in the winter of 2011 – could put the whole project for European integration in jeopardy. It will take bold leadership to make sure Europe comes out of this crisis prepared to face the international political environment stronger than before. This essay predicts that we may well see a break-away group comprising of Euro currency member states. Passerelle clauses introduced by the Treaty of Lisbon[16] will serve their intended purpose and be used to get around domestic opposition to further integration amongst Eurozone member states. The further integration required will be unacceptable for non-Eurozone member states. We may even see two European Unions appearing: a supranational quasi-Federal Europe of single currency member states; and a "Europe of the rest", an organisation orientated along intergovernmental lines resembling a gathering of states related in much the same way as Switzerland and Norway's current relationship with the European Union.

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"WE NEED TO TALK ABOUT LISBON": THE CAPACITY OF THE EUROPEAN UNION AS A GLOBAL TRADE ACTOR

Rob May

"Trade first; foreign policy last."

Traditional EU Adage

'[Trade] was one of only two among the more than two dozen Commission posts with responsibilities and powers… [but the Lisbon Treaty] was leading to a weakening of the EU as a whole.'

Peter Mandelson[1]

In spite of the above-described traditional sentiment that the European Union (EU) was primarily an economic actor, with all other priorities seconded to that fact, trade policy has been inextricably linked with the EU's international presence since the inception of the Common Commercial Policy (CCP) from the Treaty Establishing the European Community (TEC, 1957).[2]

The European Commission's (EC) Directorate-General Trade is one of several that have been subsumed into the remit of 'external relations' by the Lisbon Treaty. The effect of the construction of the European Single Market on trade throughout the latter half of the twentieth century has helped define the EU as a significant actor in international relations;[3] but to what extent has the Lisbon Treaty, which came into effect in 2009, strengthened or weakened the "actorness" of the EU? This question is particularly difficult to answer with any brevity or parsimony; with that in mind, this article describes merely the changes to the CCP that the Lisbon Treaty amendments have made, and categorises the effect on the capacity of the EU to act according to Bretherton and Vogler's four-part model.[4] In doing this, a foundation is laid for further analysis of the impact of the EU's newly-amended capacities to capitalise upon its international presence, and take advantage of structural opportunities in international trade relations.

This article is split into two sections. The first outlines Bretherton and Vogler's model of a global actor, with brief examples of the EU's pre-Lisbon "actorness" as an illustration. The second details the changes made to the capacity of the EU to take action under the CCP, along with any rationales and commentary upon each of these changes.

Section 1: Developing Actorness

In Bretherton and Vogler's model, there are three elements necessary to construct 'actorness':[5]

- Presence
- Capability
- Opportunity

This section describes each of these functional elements and provides an illustrative example from the development of the EU as a global trade actor; this should construct a foundation from which to describe and comment upon the amendments made to the CCP by the Lisbon Treaty.

Presence

The "presence" of an actor is an indication of its structural power[6] with regard to the consequences of internal priorities and policies upon the wider external context in which it exists.[7] By virtue of an actor simply existing, it shapes the perceptions, expectations and behaviour of other actors.[8] The pursuit of international common economic relations played a significant role in developing the EU as an actor[9] with development of the Single Market and Economic and Monetary Union (EMU) being key developments which transformed Europe's presence in the world. Figures 1 and 2 highlight the considerable presence of the European Union in international trade. After the completion of the Single Market, trade between EU partners massively increased to outweigh trade with non-EU countries.[10]

In the Single Market, most obstacles to inter-state trade are significantly weaker than when the EU integration
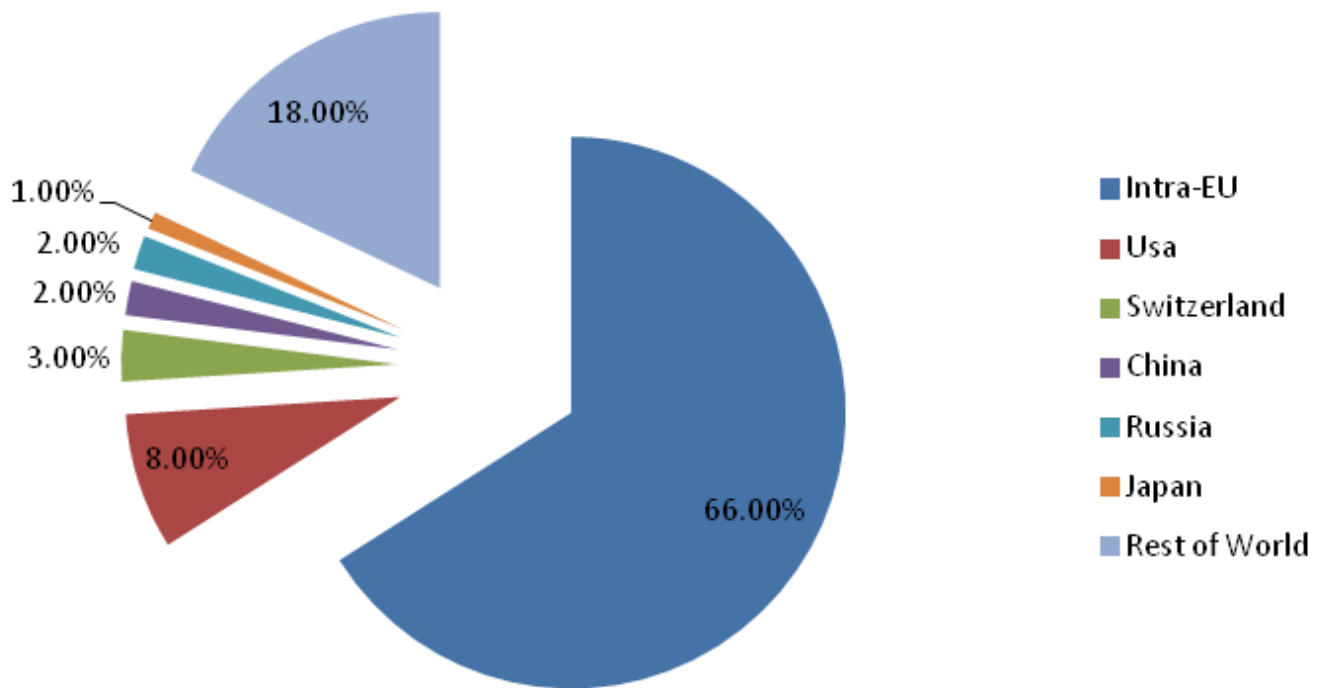
Figure 1: Member State Export Partners as % Share of EU Total 2004 (Young 2007, p. 389)

project commenced, and those which continue to exist between non-EU nation states.[11] The presence of the Single Market has the effect of both attracting the outside world[12] and inducing apprehension in other actors over their exclusion from the lucrative European markets.[13] Instruments used to preserve the Single Market also bolstered the EU's presence in the world. The Common Commercial tariff, which levied a single tariff on externally-imported goods, had significant trade diversionary effects[14] (bringing EU partners closer together) while the Common Competition Policy confirmed that overseas corporations would be subject to EU antitrust laws, and not the laws of their home state.[15] Newer policy areas within the single market contributed to the EU's presence; the Common Agricultural Policy developed and exported further trade distortions in international agricultural markets by applying protectionist countermeasures to intra- and inter-European agricultural trade.[16]

EMU, developed to "complete" the Single Market by isolating its members from damaging intra-EU currency fluctuations,[17] also served to strengthen the EU's economic presence in the world;[18] the Euro was used in 37 per cent of all extra-Eurozone transactions by 2004, with it also being hailed as an alternative reserve to the US Dollar. In fact, the Euro is second only to the US Dollar as a reserve currency and accounts for over 20 per cent of foreign exchange reserves.[19]

"Actorness" was induced as a result of the Union's significant economic presence as other actors sought to negotiate upon the effects the European Union Customs Union (EUCU) would have upon their own economies.[20]

Capability

"Capability" referred to the internal context of EU action;[21] by which is meant the ability for the EU to capitalise upon its presence and take advantage of opportunities presented to it by the wider context of international relations. There are four key features which define the capability of an actor:[22]

1. A shared commitment to overarching values in external actions;
2. Domestic legitimation of decision-making processes and priorities relating to external action;
3. Ability to identify priorities and formulate policy proposals with consistency and coherency;[23]
4. The availability of policy instruments to implement policy proposals.[24]

A commitment to overarching values was set out in the common provisions of the 1992 Treaty on European Union (TEU, also called the *Maastricht Treaty*),[25] albeit vaguely. However, the institutional setup undermined the shared commitment to specific EU values: a decentralised set of budgetary and fiscal policies limited EU "actorness" in international financial institutions; while the EU's position was further weakened by the disastrous results brought about by the eventual adoption of a single currency (the Euro) without rectifying the lack of fiscal accountability in the stability pact.[26]

Nevertheless, the EU's external action with regard to trade was often directly linked to normative ideals. An EU commitment to multilateralism[27] was adopted so as to expand regulatory practices and European values and
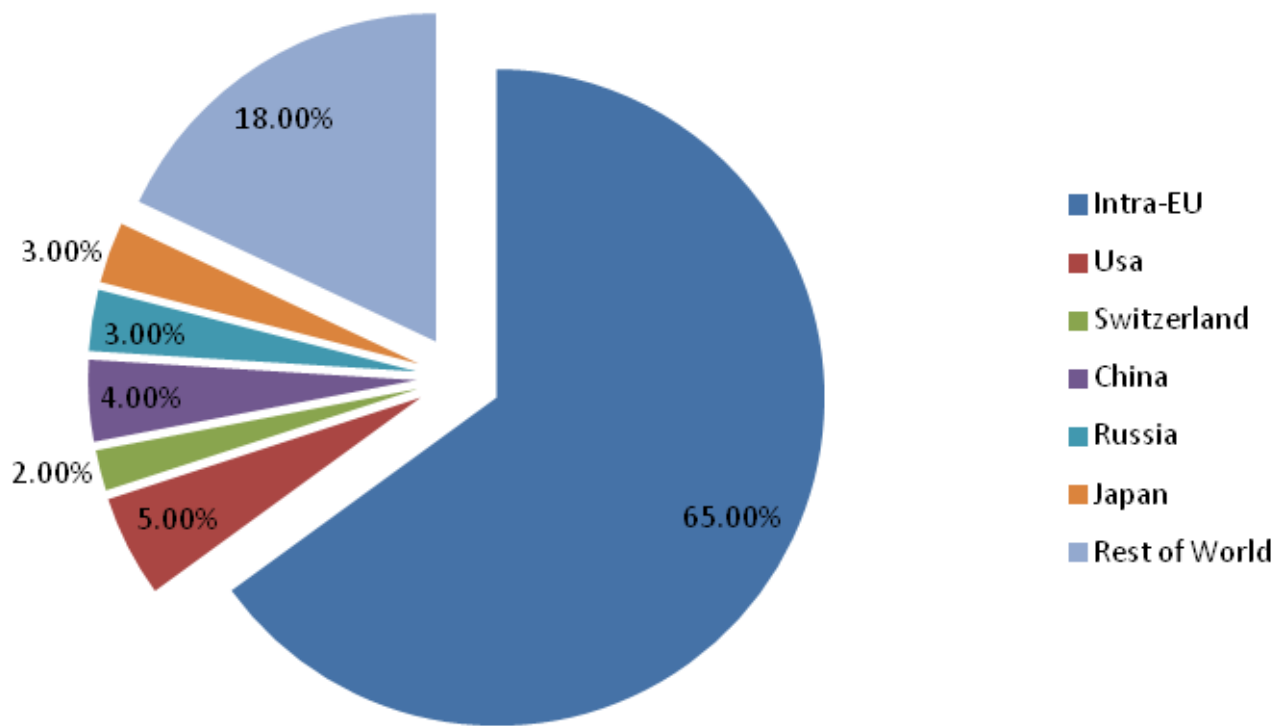
Figure 2: Member State Imports as % Share of EU Total 2004 (Young 2007, p. 389)

benefit the EU member states in international trade.[28] This was crystallised further by the mutual structuration of CCP developments, understandings and practices with General Agreement on Tariffs & Trade (GATT)/World Trade Organisation (WTO) structures,[29] with both the EU and GATT/WTO moulding their practices around one another. This process was so apparent that it was remarked that the '*rules that run the global economy are largely Brussels' rules*'.[30]

More linkages between the CCP and the normative values of the EU exist, such as the promotion of the "Singapore Issues" in the WTO by the EU.[31] The EU sought to promote several features it felt beneficial for the global economy, such as:

- Minimum competition policy standards
- Common investment frameworks
- Common rules of transparency in government procurement
- "New" trade facilitation

Adoption of these issues by the EU was largely a result of new developments in global trade, and a shift in sectoral trade growth of EU member states, as we shall discuss later.

Regarding the domestic legitimation of the CCP, this occurred via ratification of outcomes in the Council (in consultation with the European Parliament, or EP) and national parliaments, with some consultation of civil society to engender further legitimacy of CCP outcomes. The Council ratified CCP negotiating outcomes through

the use of qualified majority voting (QMV),[32] though in practice votes often passed through unanimity, with the Luxembourg Accord providing a veto for issues of national interest; this served to construct a strong consensus around CCP outcomes.[33] National parliaments were the final hurdle for CCP agreements, and could ratify or refuse outcomes with impunity, further preserving the power of member states over the CCP.[34]

The role of the European Parliament was relatively limited before the passage of the Lisbon Treaty, with it having no major, formalised role in the policy area.[35] However, extensive informal practices existed, such as consultation with related committees during CCP negotiations. In a similar vein, while the EU sought to involve civil society in CCP policy formation, it also had no formalised role. However, the EU was keen to increase its input, especially after the anti-globalisation protests that struck the various international trade negotiations in the early 21st century.[36]

Having the ability to identify priorities and formulate policies meant that the EU had to be both consistent and coherent, as the successful formation of common priorities and policies varied across the policy areas of the EU as a result of tension generated by divergent understandings of national interest between member states.[37] To deal with the consistency of EU priorities and policies between the EU and its member states, a "principal-agent" structure was adopted.[38] The member states, as the source of political authority, delegated CCP negotiating functions to the European Commission DG Trade officials

who act quasi-autonomously depending on the nature of their mandate and the external negotiating context. Negotiations were conducted with the member states retaining control via the Article 133 Committee (renamed the Trade Policy Committee (TPC) since the passage of the Lisbon Treaty). Control was maintained in three ways: *ex ante* control, *at locum* control and *ex post* control. *Ex ante* control was manifested through the granting of a mandate for the Commission to act, along with any negotiating directives necessary.[39] *At locum* control occurred through the construction of common positions to pressure the Commission towards specific outcomes during negotiations, and through the monitoring of negotiations via the TPC.[40] *Ex post* control was conducted via ratification; the Commission would have to keep in mind that any outcomes it creates must pass ratification, ensuring that any proposals remained within the limits of member states' desires.[41] As long as the Commission remained within set or perceived limits, they could act with relative impunity in CCP negotiations.[42]

The coherency of the EU's "actorness" related to the ability for the EU to formulate coherent policies across discrete areas of competence. The CCP was limited in this respect with regard to the opening quote of this article. While it was ostensibly a part of EU external relations, it was broadly a *sui generis* policy which usurped much of the EU's foreign policy priorities. There was often tension between DGs Trade and Relex (now merged into the External Action Service, or EAS) over specific functions and remits,[43] further compounded by the disparate fiscal policies of member states[44] and the lack of a specific Council configuration.[45] The obtuse intergovernmental nature of the EU's internal policy-making also served to weaken their negotiating partners' ability to discuss and negotiate issues effectively.[46]

With regard to the availability of policy instruments for the EU to use to implement policies, the Treaty establishing the European Communities in 1957 granted exclusive competence to the then EC over trade in goods, with the European Commission gaining the exclusive right to policy proposal.[47] A similar development in the capacity to regulate on trade in services never developed over the lifetime of the EU, though there were limited provisions under the Treaty of Amsterdam (1999).[48] A European Court of Justice (ECJ) ruling underlined this fact by supporting the mixed competence over trade in services in the aftermath of the Amsterdam Treaty.[49]

There were multiple instruments available for the EU under the terms of the CCP:[50]

- Sanctions and Inducements[51]
- Countervailing Duties[52]
- Emergency Protection of Industries via Quantitative Import Restrictions[53]
- Anti-Dumping Measures
- Regulatory Action over Hazardous Materials Import
- Trade Defence via Retaliatory Duties
- Preferential Access[54]

Opportunities

The presence of the EU in the global economy had a clear effect on the structural context in which the EU resided. The reassessment of the value of a state's foreign currency reserves, prompted by EMU and the Euro, is one way in which new opportunities for the EU to act materialised;[55] so, also, was the replication of institutional values from the EU to the WTO.[56] The power status of the EU also served to affect the structural context in which it acted. The EU was regarded as being one corner of a "trilateral" perception of global economic power, with the USA/NAFTA and Asia forming the other two corners,[57] together with a "web" of bilateral links with other states.[58]Enlargement of the EU brought with it new opportunities through the importation of the new member states' international trade presences and preferences.[59] For example, the close links between the UK and its Commonwealth led to a greater impetus for liberalisation-based stances in CCP negotiations[60] as they lobbied for particular policy outcomes during EC-conducted trade negotiations.

By far the greatest transformative effect on the structural context of EU action occurred through the changing nature of trade in the final decades of the twentieth century and the first decade of the twenty-first. The primary locus of EU economic production shifted from the manufacturing sector to the services sector,[61] having the effect of shifting EU priorities in CCP negotiations towards greater liberal market access for EU services in its partners' markets. The emergence of new sectors also challenged the exclusive competence of member states over such issues – such as aviation and product standards.[62]

As a result of the changed structural context of international trade, the EU formulated the Lisbon Agenda.[63] The Lisbon Agenda sought to establish the EU as a competitive, dynamic, knowledge-based economy capable of sustainable growth and more, "better" jobs, and provided a partial rationale for the development of the Treaty of Lisbon in 2007.

Section 2: *Talking About Lisbon*: The Capacity of the CCP after Lisbon

The Treaty of Lisbon is a list of amendments to be made to the founding treaties of the European Union (the Treaty of Maastricht, and Treaty establishing the Europe-

an Communities) with the effect of updating them into two replacement treaties: the Treaty on European Union (*TEU*), and Treaty on the Functioning of the European Union (*TFEU*) respectively. Policies and functions of the EU were modified and updated in several areas to fulfil the provisions set out in the amendments, and there was a specific focus to develop the EU's "actorness" in relation to the wider world.[64] This section details the changes that the Lisbon Treaty made with reference to the CCP, and categorises them according to the amendments they make to the capacity of the EU to act.

Shared Commitment to Overarching Values

Article 1(4) and Article 1(24) of the Lisbon Treaty directly give the values that the EU is to uphold, and specify that the EU's external action must conform to these values:

> 'In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.'[65]

> 'The Union's action on the international scene shall be guided by principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.'[66]

Further in the Treaty, the CCP is explicitly confirmed as a policy which must conform to the values set out above:

> 'The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.'[67]

Domestic Legitimation of Decision-Making Processes, Priorities and Outcomes

A greater avenue for the input of the European Parliament was developed as a core tenet of the Lisbon Treaty in all policy areas, with the CCP as no exception.[68]

> 'The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defin-

ing the framework for implementing the common commercial policy'[69]

This was further bolstered by another amendment in the Treaty, requiring the Council to adopt either after obtaining the consent of, or consulting, the EP.[70] However, despite greater involvement of the EP in an attempt to strengthen the democratic credentials of the EU, there was a hitch in achieving the amendment's aims in practice. The German Constitutional Court ruled that extending EP decision-making over all policy areas would achieve little more than a duplication of member state democratic procedures, and so the EU could never take over the democratic functions of states in certain policy areas regardless of the Lisbon amendments. In particular, the areas:

> 'which shape the citizens' living conditions… the private sphere of their own responsibility and of political and social security… as well as to political decisions that rely especially on cultural, historical and linguistic perceptions and which develop within public discourse in the party political and parliamentary sphere of public politics.'[71]

This ensured that national parliaments must still be retained and in fact are required to be involved in any decision-making procedure affecting the above-listed areas. This fact is dealt with in the Lisbon Treaty itself through the inclusion of a protocol on parliamentary involvement.[72]

Ability to Identify Priorities and Formulate Policies

A greater role for the European Parliament in the CCP, while strengthening the democratic credentials of the EU, was believed by the then Trade Commissioner, Peter Mandelson, to undermine the consistency, dedicated focus and strength of the policy.[73] EU officials working in DG Trade, though, believed that the greater role for the Parliament would strengthen the Commission's hand in international trade relations by further complicating the internal workings of the CCP as perceived by outsiders.[74]

In the Treaty itself, however, the EU's role in the CCP, and the consistency of the policy, was strengthened by the wholesale transfer of exclusive competence over the CCP.[75]

> 'The Union shall have exclusive competence in the following areas:
> * Customs Union;
> * The establishing of competition rules necessary for the functioning of the internal market;
> * Monetary policy for the member states whose currency is the Euro;

- The conservation of marine biological resources under the Common Fisheries Policy;
- Common Commercial Policy.'[76]

The EU was also granted full legal personality[77] to act on par with member states in international relations under areas of exclusive competence. This allowed the EU to act unilaterally and multilaterally on behalf of its member states rather than in conjunction with them.[78]

The Lisbon Treaty also addressed the issues of coherency over which areas of trade it could and could not regulate by effectively supranationalising the voting procedures (i.e. formalising the use of QMV) in all areas, except those which could jeopardise the cultural and linguistic diversity of Europe.[79] The CCP was also crystallised as a function of the EU's external relations by specific amendments of the Treaty of Lisbon.[80]

Availability of Policy Instruments

Several amendments strengthen the EU's capacity to use CCP instruments in bilateral relations[81] and multilateral relations.[82] The extension of the CCP's remit to unambiguously cover trade in goods, services and foreign direct investment also served to increase the capacity to use already existing policy instruments in these new areas.[83]

Conclusion

The Treaty of Lisbon has strengthened the EU's Common Commercial Policy in some key ways. The previously vague values of the EU were clearly codified, while the structures for democratic legitimation were bolstered by greater inclusion in decision-making procedures, contributing directly to the development of the EU as a legitimate democratic body.[84] Protocols for the inclusion of national parliaments into decision-making further strengthened this particular area of the EU's capacity to act. The extension of exclusive competences over all trade sectors served to strengthen the coherence and consistency of the EU's ability to identify priorities, formulate policies and use available policy instruments to achieve its CCP aims, while legal personality was granted to the EU serving to further strengthen its coherence as an actor.

However, the effect that these new developments in the EU's capacity to act have had upon both its presence in the global economy, and the structural context in which it resides, has not yet been measured. The next logical step in analysing the "actorness" of the EU after the ratification of the Treaty of Lisbon is to measure its presence and its context to assess whether the capabilities of the EU are still strong enough to enable it to act effectively.

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33. Young, External Economic Relations, p. 397.
34. Meunier, EU as a Trade Power, p. 286.
35. Bretherton and Vogler, EU as a Global Actor, p. 69.
36. Ibid.; Meunier, EU as a Trade Power, p. 279.
37. Bretherton and Vogler, EU as a Global Actor, p. 31.
38. Kerremans, B. 'Proactive Policy Entrepreneur or Risk Mini-

mizer? A Principal-Agent Interpretation of the EU's Role in the WTO', in The European Union's Roles in International Politics, edited by Ole Elgström and Michael Smith (Oxon, Routledge, 2006), p. 173; Meunier, EU as a Trade Power, p. 278.

39. Kerremans, Proactive Policy Entrepreneur or Risk Minimizer? p. 177.

40. Ibid., p. 178.

41. Ibid., p. 179.

42. Meunier, EU as a Trade Power, p. 286.

43. Bretherton & Vogler, EU as a Global Actor, p. 67.

44. Ibid., p. 74.

45. Ibid., p. 68.

46. Ibid., pp. 79-80.

47. Ibid., p. 67.

48. Ibid., p. 62.

49. Meunier, EU as a Trade Power, p. 279.

50. Bretherton and Vogler, EU as a Global Actor, pp. 74-5.

51. Ibid., pp. 34, 75.

52. Ibid., pp. 74-5.

53. Young, External Economic Relations, p. 392.

54. Bretherton and Vogler, EU as a Global Actor, pp. 34, 76-78.

55. Ibid., p. 73.

56. Ibid., p. 66.

57. Ibid., pp. 80-1.

58. Ibid., p. 81.

59. Ibid., p. 63.

60. Meunier, EU as a Trade Power, p. 287.

61. Ibid., p. 279; Bretherton and Vogler, EU as a Global Actor, p. 72.

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65. European Union, 'Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community', C 306, (Brussels, Official Journal of the European Union, 2009), Article 1, Clause 4.

66. Ibid., Article 1, Clause 24.

67. Ibid., Article 2, Clause 158

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69. EU, 'Lisbon Treaty', Article 2, Clause 158.

70. EU, 'Lisbon Treaty', Article 2, Clause 173.

71. Bundesverfassungsgericht Deutschland, 'Gauweiler v Treaty of Lisbon', 2 BvE 2/08 Judgement of 30 June 2009.

72. EU, 'Lisbon Treaty', Protocol on the role of national Parliaments in the European Union.

73. Mandelson, The Third Man, p. 395.

74. Meunier, EU as a Trade Power, p. 281.

75. Ibid., p. 281.

76. EU, 'Lisbon Treaty', Article 2, Clause 12.

77. Ibid., Article 1, Clause 35.

78. Chalmers, Davies & Monti, EU Law, pp. 632-633.

79. Meunier, EU as a Trade Power, p. 281 ; EU, 'Lisbon Treaty', Article 2, Clause 158.

80. EU, 'Lisbon Treaty', Article 2, Clause 112.

81. Ibid., Article 2, Clauses 166-167.

82. Ibid., Article 2, Clause 171.

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STATES' INTERESTS & MIGRANT RIGHTS - A LEGAL DILEMMA?
Stephanie Fitzgerald

The strict regulations for immigration fuels the smuggling of irregular migrants, however, amongst the irregular migrants are genuine asylum seekers in search of protection. If party to the Convention Relating to the Status of Refugees,[1] States are obliged to abide by certain requirements that grant asylum and enforce the principle of non-refoulement.[2] Yet, these obligations are ambiguous, open to interpretation and can sometimes be overlooked when irregular migrants are involved, due to State attitude towards migrant smuggling and its impact on State security. The balance between a robust and acceptable migration policy against the States internal security is a constant dilemma for governments. Failure to get this balance right jeopardises both the safety of the migrant and the State. Security threats, as well as social issues, have led States to cooperate with each other in regards to tightening up border controls, applying strict restrictions to visa applications and issuing severe fines and punishment for those contributing to the illicit transportation of migrants. Various States, geographically unfortunately placed, receive inequitable amounts of irregular migrants, a large proportion of whom seek asylum. These States struggle to cope with the masses of migrants and have sought help from the international community to help address this problem. A practice of burden sharing has developed in order to help combat migration pressure for States through various pieces of international legislation, but most notably through the international obligation to cooperate. One identified method that enables States to share the burden of migration is the physical burden sharing of migrants between States. A further method is the provision of financial aid to States struggling with migration flows. However, this burden sharing scheme has evolved into a process of burden shifting. Agreements have been made to shift the burden of irregular migration and the processing of asylum applications onto other States, whether they are willing participants, or have simply been refused help and forced to bear the burden alone. States are reluctant to assess asylum claims by irregular migrants, consequently seeking alternative ways to detach themselves from this burden. The reluctance to assist irregular migrants is problematic for genuine asylum seekers, who have used illicit migrant smuggling to escape a place of persecution. The genuine asylum seeker can suffer from the states willingness to transfer asylum seekers to further States who are not party to the Refugee Convention, or various other human rights conventions. This act seems to breach international obligations to ensure protection for genuine asylum seekers, as non-party States not bound by the international conventions could in turn send the asylum seekers back to their country of origin, a further country of persecution or itself be a country of persecution. Despite reluctance to deal with irregular migrants and asylum claims, there is evidence of cooperation to share the burden in situations of emergency. However, the emergency only comes about when States refuse to accept the burden alone. Surrounding States, then have a moral rather than legal obligation to assist its neighbours and take a share of the responsibility, otherwise the lives of refugees would be in jeopardy. This eventual result illustrates an understanding of the true extent of cooperation. The concept of burden sharing is present in legislation, although the obligatory nature of such a practice is uncertain, however, the consequences of State actions, brings about a moral obligation to share the burden of migration. Such a repetitive practice, if not interweaved into a binding convention through the establishment of a common asylum policy, may well over time become a part of customary law.

The provocation of migration and its extent

People are 'prompted to migrate irregularly ... for a variety of reasons',[3] a common cause being poverty,[4] however other reasons may include, 'civil strife, ethnic conflicts and violations of human rights' as well as, environmental factors.[5] Natural disasters have become frequent "push factors"[6] for migration, with more and more being affected.[7] Environmental degradation is another factor increasingly effecting migration. This will also increase with the advance of global warming which may potentially leave millions victims of coastal flooding, droughts and disrupted rain falls.[8] It has also been noted that biological disasters, destroying various food resources, as well as industrial accidents may also have an effect on migration,[9] showing that where consequences are so grave, despite usual internal migration, external migration can occur.[10] The demand for migrant labour can be seen as an additional push factor.[11] However, due to security interests, national legislation has now been enacted in many States to prevent employers seeking such labour. This is carried out by increasing fines for industries employing irregular migrants at a reduced pay rate.[12]

A further reason for irregular migration could be 'family reunification', 'should migration policies impede such reunification…there will be a natural tendency for the migrants and their families to look for reunification possibilities through irregular channels'. [13,14] A final factor many describe as economic want, 'the urge to escape from economic distress and search for better opportunities'.[15] However, to leave everything behind to take up the status of an irregular person is not something looked at lightly, often economic migrants are pushed to do so because of one of the above factors, 'people flee, primarily, not to wealth, but from poverty'.[16] One Nigerian man stated that, 'We seek freedom and opportunity to look after ourselves…if we cannot find that in our own country, then we must look somewhere else'.[17] With these factors in mind, it has been suggested that an 'effective strategy' needs to address both the push and pull factors concurrently.[18] The current border and employment controls only address the immediate threat of smuggling and not the root causes of migration.[19] 'The criminal justice, immigration and refugee policies must be embedded in a national strategy', that address the realities of irregular migration.[20] Until such causes are addressed, migrant smuggling will persist as an organised crime for both irregular migrants and genuine asylum seekers. It is important to note that often irregular migrants and genuine asylum seekers flee countries together creating the 'asylum-migration nexus', where refugees and irregular migrants, through using the same routes, are often confused with one another and not always met with kindness by States.[21] Asylum seekers are 'forced to flee… because of war, violence or persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group'.[22] Asylum seekers often use illegal means of escaping their country of origin due to fear of being found. Despite their legitimate nature, by using illegal means of transportation and fraudulent documents to bypass States' border checks, they are initially met with hostility as States are reluctant to allow irregular migrants on to their territory, even to assess their asylum claims.

Difficulty arises when attempting to quantify the migrants who travel illicitly, as the migrants act clandestinely due to the criminal nature of smuggling. The United Nations Office on Drugs and Crime[23] estimated 'that each year, about 55,000 migrants are smuggled from Africa to Europe and that about 3 million people enter the USA illegally on the southern border with Mexico'.[24] Reports on migrant smuggling indicate that those smuggled include political refugees, those fleeing persecution,[25] as well as economic migrants.[26] Widgren estimated that at its lowest, approximately 70,000 asylum seekers have been smuggled out of a total of 106,000 migrants.[27] The United Nations High Commissioner for Refugees (UNHCR) has illustrated that, 'at the end of 2010, some 43.7 million people worldwide were forcibly displaced due to conflict and persecution, the highest number in more than 15 years'.[28] This number includes 15.4 million refugees, 27.5 million internally displaced persons and more than 837,500 awaiting their asylum application to be processed.[29] This highlights that current tactics have been unsuccessful, despite the cooperation to control borders. In order to reduce irregular migration, cooperation to the fullest extent is required. The UNHCR document advises that countries with strong economies should share in the burden of migration to a larger extent, as they are in better financial positions to host refugees.[30] The report illustrates that developed countries are not taking their fair share of refugees. Pakistan in 2010 had the highest number of refugees, the Democratic Republic of the Congo had the second highest, whereas the first developed country to have the highest number of refugees was Germany, 25 places below Pakistan.[31] In order for successful migration figures, equal distribution among all States is needed, cooperation through the practice of burden sharing.

International cooperation and State obligations

'International cooperation', grounded in the preamble and article 1 of the United Nations Charter,[32] has a generally accepted meaning of 'cooperation among States', as well as 'the sharing of burden and responsibilities …

and neighbourliness'.[33] In other words cooperation establishes an obligation to assist surrounding States when in need. This is significantly true within the 'refugee regime',[34] due to the fact that 'refugee challenges are inherently transnational and cannot be addressed by any one State alone'.[35] Often States are unable to cope with mass inflows of refugees, due to security, environmental or social reasons. This can be seen with the Yugoslavia conflict which led to over 850,000 refugees migrating from Kosovo to Albania, FYR Macedonia and Montenegro. Albania ultimately requested a system of international burden sharing, agreeing to only allow refugees into their State if they were to be evacuated to third States.[36] In such cases if there is no international cooperation, 'to ensure adequate assistance, protection and solutions to refugee[s]', there may be an increased risk of refugees seeking irregular migration, through means of smuggling, to reach States of destination.[37]

Cooperation can take many forms such as burden sharing the distribution of migrants, financial aid, as well as social, environmental and political assistance to solve the root causes of migration. However, problems have arisen with regards to the physical sharing of migrants, as States, although engaged in cooperative agreements, are passing the burden of assessing asylum claims onto third States which may have lower standards of care for such migrants. This could be for a variety of reasons, however, State security seems to be the most significant. Despite the international obligations to cooperate and participate in burden sharing, many States are fearful of security risks. Milner emphasises that although burden sharing in migration and refugee protection is of high priority, the UN cannot forget about the serious security implications it brings. He gives the example of Tanzania, who as a State sharing in the burden of refugee protection, granted protection for the migrants fleeing the Rwanda civil war[38]. However, amongst the genuine asylum seekers were those responsible for the genocide, causing high security threats.[39] This led to the closing down of refugee camps and reluctance to share in the burden of refugee protection. Similarly in the Balkans, specifically Macedonia, decisions were made to restrict asylum for Kosovar Albanians. This suggests that the granting of asylum[40] may 'become increasingly scarce in countries where hosting refugees is perceived to be a threat to State security'.[41] This response to ensure security, most notably through increased border checks and visa policies, has become more prominent in recent times due to the increasing terrorist attacks and threats, such as the 9/11 terrorist attacks in New York City[42] and the 7/7 bombings in London bombings.[43] Nevertheless States have an international obligation towards refugees[44] that, despite threats to security, should not be neglected. As well as security policies, 'cooperative arrangements should not be considered a means for States to divest themselves of responsibility'.[45] The increased flow of migration develops conflicts between obligations to cooperate and obligations towards refugees in two ways; the first is that due to increased smuggling of irregular migrants, States are working together to tighten border controls. However, this in turn has negative effects on genuine asylum seekers who are then forced to use illegal means of entering other States for protection. The second point of conflict between the two obligations is that instead of burden sharing, States are burden shifting,[46] thus moving migration flows on to other States willing to accept them, whether for benefit, political means, or simply allowing other States to suffer the burden alone.[47] This is a precarious path as, in certain cases, States willing to accept the burden are not party to international legislation conferring certain rights on the asylum seeker, leaving genuine asylum seekers amongst the migration flow at risk of persecution and human rights violations. 'To ensure that 'burden sharing' does not evolve into this type of 'burden shifting'', the international community needs to establish cooperative arrangements to control the redistribution of migrants between the States deemed safe under international law.

States' cooperation regarding border control

Human smuggling is a 'global phenomenon, no one country is unaffected'.[48] Many irregular migrants seek help from organised groups to enter various States, whether the State of destination or a State of transit. These groups have the ability to pass through border controls undetected, undermining the State's ability to protect its borders whilst weakening its integrity.[49] This has had a great effect on security tactics, especially after the 9/11 terrorist attacks,[50] as unauthorised people can enter States with objectives of causing harm to that State. This fear of threat against national security activates the doctrine of sovereignty, also enshrined in the UN Charter,[51] which enables States to tighten restrictions and border controls. However, a balance must be struck between 'the sovereignty and security interests of the nation State against the rights of individuals'.[52] Many migration movements consist of a mixture of migrants 'including asylum-seekers and refugees, victims of trafficking … and migrants in an irregular situation'.[53] The security measures in place to protect borders from irregular migrants may in turn adversely affect genuine asylum seekers gaining protection,[54] making asylum claims seem 'somewhat illusionary'.[55] It seems that the 'biggest threat posed by migration does not come from the smuggled migrant [the "potential terrorist"], or the large numbers of such migrants, but rather from the strengthening of organised crime syn-

dicates and their ability to circumvent governance systems'.[56] However, State restrictions on immigration have been increased to such an extent that instead of curbing the illicit crime of smuggling, which was the original intent, it has had severe effects on potential refugees.

Migrant smuggling is considered a serious crime among States, with severe punishments. In the UK, two new offences were introduced for facilitating illegal entry into the UK, incurring a maximum sentence of 14 years imprisonment,[57] under the Nationality, Immigration and Asylum Act.[58] However, 'those who have little choice but to engage the services of smugglers as a result of restrictive immigration and asylum policies, are subject to further exclusion from…measures put in place to prevent smuggling'.[59] Asylum seekers have no choice but to flee their country of origin illegally as they fear being caught, yet they are restricted by legislation aimed at preventing smuggling. If there were less restrictive measures, including border checks and punishment legislation, there would be no need for migrants to seek smuggling services. The increasing constriction of security measures, only feeds the smugglers what their illicit business needs to survive. Grewcock suggests that the tightening of border controls is not the answer, not only will it give smugglers more customers, the tighter the restrictions the more dangerous the smuggling becomes and the migrants are more likely to be at risk of exploitation.[60] This is corroborated by Nadig, who describes this as a 'vicious circle',[61] with smugglers thriving off the restrictive approach; more restriction means more customers, bringing smugglers more money to use more sophisticated measures to undermine State security. However, 'an increase in irregular migration will, in turn, be the incentive for receiving States to further tighten their immigration procedures'.[62] The restrictive immigration policies employed by States have negative effects on asylum seekers,[63] denying 'refugees the right of ever leaving their country of origin', leaving them exposed to persecution or in the hands of smugglers.[64] Although it has been recognised that States have a sovereign right to control their borders,[65] when asylum seekers are concerned, this seems an inappropriate right to enforce as refusing protection violates international obligations.[66] Nadig notes that international principles of human rights, refugee protection as well as State sovereignty, when considered in the sphere of migrant smuggling, all clash.[67] It seems that currently in the sphere of migration, State sovereignty prevails over international cooperation requirements.[68] There seems to be two victims with regards to migration; the country of destination and the potential refugees fleeing from danger.[69] When considering the State as a victim two areas are concerned. The first is social rights along with the constitution. This is illustrated by a 'civil servant in the Netherlands Ministry of Justice':[70]

> 'These people come here for false reasons and misuse our social security system at our expense…This is bad for our society. We have a certain standard of living and we want to keep it that way. Misuse undermines our constitutional State'.[71]

Irregular migration 'has been seen as a threat to the living standards and the cultures of the citizens of the rich, predominantly white, First World States'.[72] This is illustrated by the EU Public opinion polls in 2001, which gave 'race relations and immigration as the fourth most important problem facing both the UK and other States'.[73] Initial citizen and irregular migrant rivalry was due to the belief that the migrants were 'getting more than they were' in areas such as accommodation, benefits and jobs.[74] However, Barbara Roche, the British Home Office minister dealing with immigration in 2000 seems to recognise the benefits of migration:

> 'Economic driven migrants can bring sustainable benefits both for growth and economy [due to the]…labour shortages in key areas'.[75]

However, despite what seems to be recognition of the advantages of migration, the 'border checks and internal controls reflect States' fears of the potential ill effects of irregular migration'.[76] This conflicting approach towards migration can also be seen in a letter by, George Washington to John Adams:[77]

> 'By an intermixture with our people [immigrants], or their descendants, gets assimilated to our customs, measure and laws: in one word, soon become one people'.[78]

However, in the same letter he cautioned that immigration should be limited,[79] illustrating the recognition of the importance of migration, however, noting the fear present in States to allow such recognition to become an accepted reality.

The second victim to consider is the asylum seeker, who suffers greatly from restrictive immigration policies. Regardless of whether they are fleeing from harm or not, 'valid travel and identification documents' are needed, although difficult to obtain, ultimately forcing those in desperation to resort to the use of false documentation condemned by the States of destination. However, 'it is ironic…that such requirements are imposed on precisely those countries producing refugees'.[80] In certain cases, often 'being smuggled is a reasonable alternative to bureaucratic; time consuming, and therefore life endangering legal migration'.[81] A better approach to migrant smuggling may be to remove it from the security agenda and attach it to normal State policy; allowing better protection for refugees. Although as noted earlier, States are sceptical about this idea due to security issues that have

arisen from terrorism.[82] However, if member States 're-move irregular migration and human smuggling from their national security agendas', embracing pluralism, this would facilitate the development of a common asylum policy based on the principle of burden sharing through cooperation, thereby reducing the need for smugglers by providing more entry points.[83] The relaxation of sovereignty, with regards to other international matters such as business trade, suggests that governments are using 'migration control measures to demonstrate their sovereign control', when in reality States need to accept that sovereignty is slowly being replaced with international cooperation.[84]

States' legal and moral obligation towards burden sharing

'An early proposal for global sharing was promoted by legal scholars in the late 1970s'; the idea that by assigning refugees to States in accordance with the wealth and population density of that State, protection would be enhanced and inequalities amongst States would begin to disappear.[85] 'Sharing proposals authored by States have typically come from governments trying to relieve what they perceive as a disproportionate influx on their own territory'.[86] Within the EU the countries that suffer are those located at the 'external borders', rather than those positioned inland.[87] 'Sharing has been promoted as a means of reducing inequities among regions', as without it the weaker States, who have high proportions of refugees, will begin restricting asylum allowances if left to suffer the burden alone. Stronger States must abide by their 'moral duty and obligation under international law' and take their share of this burden by either 'relaxing asylum procedures or increasing resettlement'.[88] This is what effectively happened with the Kosovo crisis, where Macedonia refused entrance onto its territory unless other States shared the burden.[89] 'Once it is accepted that a host country is too vulnerable to accept a mass influx of refugees, the options available ... seem to rely on international burden sharing arrangements as provided for in the Refugee Convention's preamble'.[90] However, it was established that access to asylum cannot depend on burden sharing agreements alone.[91] It is an international obligation to grant protection to refugees and so Macedonia had a legal obligation to grant protection for all refugees coming to their territory, although it was suggested that in refugee situations protection 'is best achieved through effective cooperation between all States and [the] UN-HCR'.[92] In situations of mass inflows of refugees and where the, 'first asylum State credibly threatens to deny asylum with reference to recognised national vulnerabilities',[93] if States are alone in such an international crisis, they will suffer greatly, whether in their security or so-cial stability. Some States may physically, 'lack capacity to address all [the] protection and humanitarian needs'[94] of the refugees. Due to State inability to cope with mass inflows of migration, it is hard to believe that the refugee regime is struggling within the cooperation area. However, where States face enemies 'they want to co-operate to enhance national security and international order; they also want to minimize the cost assigned to them as individual members'.[95] The issues are the same for all States in both areas of war and migration, yet States seem reluctant to apply cooperation to one of the few remaining areas it may still apply sovereignty.

In emergency situations, burden sharing seems to be a recurring practise within international law.[96] This suggests the presence of a general obligation amongst States to cooperate with each other during an international crisis. It must first be noted that the policy of cooperation is enshrined in the United Nations Charter, as seen above,[97] as well as various other international conventions such as the Convention on the Law of the Sea.[98] Cooperation could be interpreted as to include the need to share burdens with other States, to assist them in areas where they are struggling. If this was accepted it could be said that due to the specific wording of the Refugee Convention, with the requirement for 'international cooperation',[99] it followed that there is therefore an implied requirement for international burden sharing. Regardless of this interpretation there is specific reference to burden sharing within the preamble of the Refugee Convention[100] itself, as well as within various other international agreements such as the United Nations Framework Convention on Climate Change[101] and the United Nations Convention on the Law of the Sea.[102] They all specify in one way or another that 'unduly heavy burdens [are placed] on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognised the international scope and nature cannot therefore be achieved without international co-operation'.[103] The Organization of African Unity Convention[104] also recognises the need for, 'international cooperation, [to] take appropriate measure[s] to lighten the burden of the Member State granting asylum'. The binding presence of burden sharing in the legislation above illustrates recognition that for an international community to succeed, burden sharing practises are needed. Although, the above conventions do not impose a legal obligation on States to develop such measures with regards to refugees, it seems States are uncertain as to what the appropriate tactic is to combat migration, therefore they have avoided the creation of a binding condition of burden sharing. This is evident with the Refugee Convention which recommends burden sharing tactics in the preamble, rather than specifying the practice in a binding article.[105] Although burden

sharing is only in the preamble of the Refugee Convention[106] and not binding in nature, its binding presence within other pieces of international legislation, as well as its persistent use to assist States suffering with large inflows of refugees, suggests the concept of burden sharing is becoming part of customary law.[107] States are also recognising the need of its use with regards to migration emergencies, as demonstrated above with the case study of Kosovo. However, the way in which States interpret the obligation to burden share will continue to differ unless a common asylum policy is created that is binding in nature, to which States are all party to.

In addition to the legal obligations, the existence of special obligations to protect refugees also needs consideration.[108] 'The moral basis of these special duties … is responsibility, at least in some measure, for having caused the situation'[109] of those seeking protection. Take for example the Afghanistan conflict, the US' military involvement, among other influences, led to hundreds of civilians seeking refuge in other States, many looking to the US for help,[110] with more than 1,100 remaining in the US.[111] Although this is due to the inability of States to force the return of refugees to their State of origin under international law,[112] the US continues to routinely accept more refugees for resettlement than other countries,[113] many from Afghanistan.[114] Although the US has initiated various encouragement tactics for the return of refugees,[115] the vast amount of refugees the US accepts for resettlement suggests that the US recognises a moral obligation towards victims of war, persecution and human rights abuses. To allow one country to suffer alone suggests 'every State for themselves'; this however would contradict the intentions of the UN Charter, which stipulate a moral code of what is right and wrong. One of the fundamental rules within the code is that cooperation is vital for an international community to prosper. With no moral code, States would let States suffer on the grounds of sovereignty, wealth and greed.

The recurring presence of burden sharing within international law, despite its non-binding nature with regards to migration, is likely to have created a customary legal principle of burden sharing in the general realm of international law. Despite the legal obligation towards burden sharing, there is also the recognition of a general duty to share the burden in times of crisis. Through State practice, burden sharing seems legally binding; however a more specific asylum policy would ensure consistency amongst all States party to it.

BURDEN SHARING; OR BURDEN SHIFTING?

'Burden-sharing debates…are becoming increasingly important in areas such as…refugee protection'.[116]

Certain States find themselves suffering an inequitable amount with regards to asylum seekers and refugees, not forgetting the mass amount of irregular migrants. These States have encouraged the international community to help reduce this burden and equally distribute the protection needed amongst all States. Sharing the burden can take various forms, Noll states three ways in which States need to address the unequal distribution of protection,[117] as mentioned above. Firstly by using a financial burden sharing technique; secondly by maintaining a physical burden sharing policy and finally by concluding an international sharing policy to deal with these issues.[118] Financial aid is given in the form of compensation to the States in need, through funds such as the European Refugee Fund, supporting Member States who bear high burdens of refugees and displaced persons.[119] The redistribution of asylum seekers from one State to another is a further method, but the most controversial.[120] 'There has been increasing dissatisfaction with the system of international refugee protection which, in the eyes of some, suffers from substantial burden-sharing problems', as certain States are bearing an, 'inequitable share of the burden…with some countries granting protection to a disproportionately large number of displaced persons in relation to other States'.[121] This can be seen from the general reduction of asylum applications from 346,700 in 2003 to 282,480 in 2004,[122] yet, for islands such as Cyprus and Malta, as well as States at the border of the EU like Finland, high numbers of applications were recorded.[123] The UNHCR research has also concluded that between 1994-2002 a disproportionate asylum and refugee burden is borne by smaller States,[124] this may be due to the amounts of resources each State has, including space. In addition to the burden sharing debate, there have been threats made by States, to opt out of the 1951 Geneva Convention for the Protection of Refugees,[125] emphasising the need to alleviate certain States from this burden.

However, despite many efforts to maintain burden sharing, it is becoming standard practice to instead of sharing the burden, shift the burden to a third country. This can be seen through the use of the 'third safe country' policy recognised in the Dublin Protocol,[126] as well as the Canada and US 'Safe Third Country Agreement'.[127] These measures are used to shift the burden back to the first country of asylum, usually the States requesting a system of burden sharing in the first place due to their geographic disadvantage, resulting in them being the first State where asylum is claimed. Other means of shifting arise through agreements between willing States, in exchange for financial aid or political benefit, or simply ignorance to recognise the need for help, allowing other States to suffer the burden alone. These practices have led to a general acceptance of shifting the burden to other States

instead of taking an active role in sharing the burden of migration. This is not only a complete misinterpretation of burden sharing, but can also become a problem for either the stability of the State that is geographically susceptible to asylum seekers, as well as when agreements have been made with unsafe "third States". The ignorance to the potential problems these agreements may cause, suggests States are only looking to shift their responsibility, disregarding their potential protection obligations. The game of burden shifting is where, 'one State defects from a protection demand on the presumption that another State will deliver protection'.[128] If this became the generally accepted approach, asylum seekers and refugees may end up being shifted back to their States of origin, ultimately not being protected by the principle of non-refoulement.[129]

Shifting the Burden

The Dublin Protocol contains a "Safe Third Country" provision under Article 3(3),[130] allowing Member States, in accordance with national laws, to send an asylum seeker to a third State, a State of transit where the asylum seeker was originally recognised, in compliance with the Geneva Convention.[131] This provision ensures refugees do not flee to further States of safety, they must seek protection in the first safe State they reach. A "safe third country" was defined in the 'Host Third Country Resolution'[132] as a State that does not present any risks of the applicant being exposed to torture or inhuman or degrading treatment.[133] Protection must have been granted by the third country, or there must be evidence of admissibility to the "safe third country", who offers effective protection against refoulement, as stipulated by Article 33.1 of the 1951 Refugee Convention.[134] This in effect allows member States to shift the burden of processing asylum applications to a 'safe State' of transit. This can also be seen in various other agreements such as the Canada and US agreement[135] which stated that asylum seekers, 'must make their claim in the first country in which they arrive',[136] the United States or Canada. They are not permitted to travel to the other State to pursue an application there. This, however, is placing an unfair burden upon the States of transit, such as Malta and Italy, who are usually the first States encountered by the migrants on their voyage to Europe. Although it has been noted above that only in emergencies will States take an initiative to share the burden of migration, if the practice of shifting asylum seekers back to the countries of initial entry continues, a gradual emergency will arise. These States are already feeling the pressures of the migration burden through the fear of security breaches[137] and the decreasing ability to sufficiently maintain its own nationals as well as refugees.[138] To allow this misconception, or

abuse,[139] of burden sharing to continue would be neglecting the fundamental principle that the international community is based upon, cooperation, meaning to assist others.[140] A further way in which States have begun to shift the burden is through agreements to transfer migrants to other States in exchange for some form of benefit. A famous example of this type of burden shifting is the Tampa case.[141] The State of Nauru accepted funding from the Australian Government in exchange for housing a detention centre that held and assessed the refugee claims of asylum seekers who had arrived, unauthorised, in Australia.[142] Australia has instead of sharing the burden of migration, shifted the burden to its surrounding islands.

The actions carried out by Australia in this case seem at first contrary to the Convention on the Law of the Sea[143] which obliges, 'all shipmasters to render assistance to people in distress at sea regardless of the nationality or status or the circumstances in which the persons are found'. However, the legislation does not stipulate that the disembarkation has to be on the territory of the State whose shores the rescue took place,[144] and despite the DISERO and RASRO schemes,[145] States have to be willing to allow disembarkation, regardless of the state of the rescue vessel and irregular migrants. Australia's actions could lead to ship masters becoming ignorant to distressed vessels, due to the lack of willingness to allow disembarkation by the surrounding States. They may be unwilling to continue the voyage with the burden of the rescued, especially if it jeopardises the crew's health and safety on the basis of a lack of resources on board. Such an attitude can already be seen to be evolving from various case studies of irregular migrants, who explain how they have been ignored by passing ships. A specific example is the case study of Justice Amin, who states that a Maltese ship refused to offer irregular migrants assistance even though they claimed their boat was sinking.[146] Pushing the disembarkation onto Nauru and various other States, illustrates burden shifting to its fullest extent. If such an attitude were to spread, ship masters may be unwilling to recue those in distress at sea[147] and would be justified in doing so under Article 98 of the Convention on the Law of the Sea.[148] This article stipulates that the shipmaster must render assistance to those at sea, 'in so far as he can do so without serious danger to the ship, the crew or the passengers'. If Australia's attitude toward irregular smuggling spread, the underlying principle of international cooperation, embedded in almost every international instrument, would be in dispute.

Another significant issue in relation to the Tampa case concerned the rights of the refugees. The agreement between Australia and Nauru contained a non-refoulement condition, as a means for Australia to uphold obligations

towards the Refugee Convention's non-refoulement clause. However, Nauru has only recently become a party to the Refugee Convention[149] and was not, at the time of the agreement, legally bound by this condition. Ultimately Australia, through the agreement with Nauru, transferred asylum seekers to a country that could violate the non-refoulement clause in the agreement with Australia. However, the fact that Nauru could carry out refoulement is not a direct breach of Australia's international obligation, as Australia has not directly violated the principle of non-refoulement. Nauru may also have certain customary obligations to respect the principle of non-refoulement. However, Nauru's intentions towards the rights of migrants should be judged by their actual practice.[150] As Nauru has yet to ratify various conventions that confer basic human rights to its own citizens such as the Convention against torture and other cruel, inhuman or degrading treatment or punishment,[151] or the International Covenant on Civil and Political Rights,[152] it is difficult to ascertain what their actual treatment towards irregular migrants seeking asylum would be.[153] Australia's point was that the irregular migrants' asylum claims were to be assessed outside its territory to demonstrate their lack of tolerance towards migrant smuggling.[154] However, by allowing other third States to become "dumping grounds" for asylum seekers, who have lower protection standards for migrants is not only shifting responsibility for the migrants, but also jeopardising the rights of migrants. This can also be seen in various other agreements, such as the 2008 Italy and Libya agreement. Here Libya agreed that any migrants intercepted at sea would be returned to Libya, without having their asylum applications assessed.[155] This burden shift from Italy to Libya disregarded the rights of the migrants, as Libya is also not party to the refugee convention[156] and various other conventions conferring basic rights to its own citizens. This would mean that when the migrants reach the shores of Libya they are more than likely to face human rights abuses.

Another example of this unjustified approach to burden sharing is the recent Malaysia and Australia agreement. The agreement was to allow Australia to send 800 asylum seekers to Malaysia to be processed and in return Australia would take, '4,000 refugees from Malaysia over the next four years'.[157] This again was to stipulate that migrant smuggling will not be accepted, but obligations to established refugees will be respected. However, it was argued that Malaysia is not one of the signatories of the 1951 Refugee Convention and they do not distinguish between asylum seekers and irregular migrants.[158] 'Malaysia's proven hostility toward refugees means that the 800 asylum seekers to be transferred there under the agreement [would have faced] grave risks, including possible long-term detention, caning, and other serious rights violations'.[159] This agreement does not put the rights of the asylum seekers first, but rather the security objectives of discouraging migrant smuggling to Australia. As stated by the director of Human Rights Watch, '[r]esettlement of refugees is an excellent solution ... but no prize is worth sacrificing the rights of hundreds of asylum seekers'.[160] The Australian High Court agreed and ruled this agreement illegal.[161] The country to which asylum seekers can be taken for processing has to be 'legally bound by international law or its own domestic law',[162] to have protection procedures in place for the asylum seekers'.[163] Although the agreement was invalid, the fact that States are persistently attempting to shift the burden of processing asylum applications, regardless of whether their human rights would be adhered to, suggests that the whole concept of burden sharing has been lost. Australia has only received two per cent of the 385,000 asylum claims made to the forty four countries of the industrialised world, ranking fifteenth,[164] suggesting reluctance to participating in sharing the burden of migration, showing a lack of cooperation.[165] Its strict border controls are disadvantageous towards asylum seekers; however, many of them, due to their fear of persecution cannot use the legal means of escaping their country and so are mixed among the irregular migrants through the process of smuggling. This emphasises the dangers of burden shifting, because if States become too absorbed with shifting as a tactic of curbing irregular migration and maintaining security, potential refugees may feel the severity of its effects.

States should not perceive their obligations to be for refugees only, as recognised refugees are not the only victims of strict security measures, asylum seekers, who may well be genuine refugees, are also affected. Yet, this seems to be the case with Australia, that accepts its refugee obligation, as can be seen through its planned humanitarian migration programme annual quota, as well as its ranking in the top three resettlement countries for many years,[166] though shows reluctance to process irregular migrants' asylum claims. With an annual quota of how many refugees States are willing to accept, it seems burden sharing may be becoming a welcomed practice. 'By making the system more transparent and increasing the number of people … States would be prepared to take, the Commission says illegal entry would become less attractive',[167] satisfying both the burden sharing requests along with combating migrant smuggling. To transfer asylum seekers to places where there is a higher tolerance of human rights abuses, in order to send a daunting message to smugglers should be a crime in itself, as 'every refugee is initially an asylum seeker'.[168] States need to understand that shifting the burden in this manner, 'is

not an effective way to stop people smuggling',[169] neither is it evidence of cooperation.

The idea of cooperation is not about creating agreements to transfer migrants to any State regardless of its human rights history, but sharing the burden of migration with "safe third States". Where one State is suffering from high numbers of refugees another State, party to the international instruments relevant in this area, should assist them. The fact that States are shifting migrants to countries, who do not uphold human rights at an internationally accepted level, is an obvious violation of their own international obligations. Parties to the Refugee Convention are obliged not to send a refugee back to a place of persecution. A State not party to the conventions may well be a further State of persecution or, they may in turn send the refugees onto further States where maltreatment occurs or potentially back to their country of origin. This is not saying that burden shifting is unjust, 'efforts to increase the number of refugees resettled in third countries should be encouraged',[170] however, the third country must be a 'safe' country.

Third countries not bound by the clause of non-refoulement in the refugee convention[171] should not be considered "safe third countries". However, 'non-compliance with international treaty obligations for refugees is becoming something of a global norm',[172] with States persistently trying to preserve sovereignty and shift responsibility. This can again be seen with the incidents earlier this year when 'more than 220 Somali, Eritrean and Ivorian refugees drowned' in an attempt to flee the conflicts in Libya.[173] The UNHCR called for the 'European Union to urgently put into place more reliable and effective mechanisms for rescue-at-sea' and burden sharing.[174] The Maltese MEP Dr Simon Bushtit said 'it is high time Europe shared the pain'.[175] However, in the UK 'Theresa May, the Home Secretary, has already warned her European counterparts that the UK is not prepared to join in any "burden sharing" and will not take in migrants who have arrived in other EU countries'.[176] This position for the UK was upheld when Theresa May was supported in her decision to not, 'open Britain's borders to migrants fleeing the turmoil in Libya and North Africa', instead only offering financial assistance to manage the situation.[177] This demonstrates the reluctance of States to help its neighbours by refusing to participate in sharing the burden of refugee protection, despite the emergency of masses fleeing from persecution. This seems contrary to the internationally accepted practice for refugee protection in cases of emergencies, as noted above. From the Kosovo crisis it seemed generally accepted that in emergencies States should accept a share in the burden, physically relieving States of refugees. Although in that situation countries such as Macedonia refused to accept any more refugees until there was a burden sharing scheme in place, such as the Humanitarian transfer programme.[178] Does this mean that despite there being an emergency, States will not relieve other States of the burden unless they refuse to protect refugees? If this is the case, then refugees would have to suffer before States would be willing to share in the burden of their protection. This seems contrary to both principles of cooperation and refugee protection.

Due to the mass influx of refugees as a result of conflicts, States are beginning to suffer. In situations such as these, with the EXCOM conclusion recommendation[179] and Council decisions[180] in place on emergency protection, all States should be devising emergency plans to assist their neighbours in order to share the burden of mass refugee protection, at least on a temporary basis. However, this is still not the case, with States such as the UK refusing to share 'the responsibility for a crisis in migration', resulting in Italy and Greece, 'seeking a suspension of the EU's so-called Dublin system – under which Britain deports hundreds of immigrants to southern Europe ... the country in Europe in which they first arrived'.[181] However, being at an unfortunate disadvantage geographically, Italy and Greece are primary bases where refuge is sought and are becoming flooded by migrants fleeing from Arab State conflicts. 'The Italian immigration minister, Sonia Viale, told the Guardian that Europe had failed to give her country enough support ... it is a duty of all EU member States to support the countries under a strong migration pressure'.[182] To allow countries to suffer with migration burdens is evidence of a complete lack of cooperation and an act that will lead to human rights abuses for the refugees affected. This can be seen from the many deported from Britain, under the Dublin Protocol, who have ended up destitute on the streets of Rome,[183] or even subject to abuse.[184] If incidents such as the above occur, States are acting contrary to Article 25 of the Universal Declaration of Human Rights: 'Everyone has the right to a standard of living adequate for the health and well-being of himself and his family',[185] as well as the right to freedom from torture, inhuman or degrading treatment, Article 5.[186]The above suggests that not only will a lack of burden sharing bring a State suffering the burden alone to ruin, but also may in turn gravely affect the rights of refugees. This attitude may also make other States take up the attitude of ignorance, leaving suffering States no other choice but to deal with the migration emergency alone. This attitude can be seen to have been taken by Malta in the case earlier this year, where their ignorance to an emergency meant Italy had to provide safety for the migrants.[187] If States allow this to occur, then they may be acting contrary to their international obligations.

In order to achieve a coherent system of burden sharing the creation of a 'common policy' has been suggested.[188] The harmonising of domestic refugee legislation, to which the 1951 Geneva Convention and the 1967 UN declaration on Territorial Asylum are evidence of, needs to be altered as to include a more concrete approach towards burden sharing, asylum seekers and refugee protection, with specific reference to 'international solidarity'.[189] As burden sharing only appears in the preamble of the Refugee Convention and not in the actual convention articles its legal obligatory nature is confused, burden sharing is thus left to drift throughout international law as simply an unqualified concept. Despite the various approaches to avoid the burden sharing principle, '[i]n order to smooth the asylum process a true system of burden-sharing that includes a fair movement of persons needs to be established'.[190]Aspiration to have a far more comprehensive burden sharing system in the refugee regime can initially be seen in the EU's Amsterdam Treaty of October 1997, Article 63, which promotes, 'a balance of effort between Member States in receiving and bearing the consequences of receiving refugees and displaced persons'.[191]The European Charter of Fundamental Rights,[192] the United Nations Charter[193] and the Universal Declaration of Human Rights[194] give only a broad set of freedoms and protections for asylum seekers. There must be a developed structure for a 'Common Asylum Policy' as well as working together with neighbouring countries to 'improve conditions and alleviate the need for individuals to seek asylum' at all.[195]

COOPERATION REGARDING MIGRATION

Despite the above illustrations of a lack of cooperation amongst States, there are many examples of a genuine intention to cooperate in matters of migration. An example of this can be seen with the thousands of recognised refugees who fled from Bhutan to Nepal in the 1990s, who were then resettled in eight different countries.[196]

A further example would be the Spanish trawler that rescued 51 migrants in distress at Sea between the Maltese and Libyan search and rescue zones. A burden sharing agreement developed allowing the disembarkation in a few States, but the resettlement of the rescued in several other countries.[197] There are also the developments of arrangements between the States of origin, transit and destination, which use cooperation tactics to inform citizens of the illegalities of migrant smuggling and offering other forms of coming forward as refugees, as seen in the Vietnam and Laos Comprehensive Plan of Action to protect refugees' rights, whilst discouraging irregular migration.[198]

Recent activities also show hope for international cooperation with the thousands of people fleeing Libya this year, a State that has for many years 'been a transit and destination country for thousands of refugees and people otherwise in need of international protection from third countries'.[199] Many are now leaving Libya and seeking refuge in States such as, 'Egypt and Tunisia, but there are also departures by land, air and increasingly by sea to other countries'.[200] Libya is a place of violence, where excessive force is being used towards its civilians, 'specifically targeted towards the large groups of foreigners in the country, including refugees and asylum-seekers'.[201] The UN has expressed its gratitude towards countries like Egypt who have pledged "to allow entry to Libyan nationals". This shows that States, regardless of the lack of legal obligation to share the burden of refugee protection, are looking at their duty as a member in the international community to assist its neighbour when an international crisis arises. A further example of burden sharing tactics can be seen in the Kosovo conflict, where various States helped Macedonia, offering, 'economic assistance and a programme to share refugees', the US initially suggesting a figure around 20,000.[202] The support offered suggests that the idea of burden sharing is very much present in the international arena for refugee protection.

CONCLUSION

The various causes of migration have had a damaging effect on the principle of cooperation amongst the international community, with regards to the protection given to asylum seekers and refugees. With State internal conflicts and human rights abuse, many people flee their country of origin in search for protection. This protection, which has been guaranteed by international instruments, is being jeopardised by State interpretation of the concept of burden sharing within the cooperative arena. Many geographically disadvantaged States suffer with mass inflows of migration and refugees have to remain with the first State where asylum was claimed, usually the suffering States. This has caused many debates among States, as those who suffer are struggling with security, social and economic problems. The States who suffer to a great extent in respect of refugee inflows, have appealed to neighbouring States to take their fair share in the burden of migration. Neighbouring States have great reservations over the issue, especially with regards to their own security matters. This has become a more prominent refusal ground, due to recent terrorist attacks and the fear for safety of nationals. It thus becomes a question of sovereignty over border control and security systems or assistance to fellow States.

There are three recognisable ways to share the burden: financial contribution to those in need, the redistribution of migrants amongst States, and a final proposal is the creation of a common asylum policy. The financial

aid given to States with regards to emergency immigration flows takes the form of Refugee Funds, contributed to by the international community. When concerning the distribution of migrants as a solution there has been great reluctance to contribute. Many States have turned this idea of sharing the burden into a shifting exercise which expels them of duty. Although in certain cases the shifting of the asylum burden is a method of sharing the burden, States have taken the idea too far, jeopardising asylum seekers rights. The persistence of States to rid themselves of duty towards asylum seekers can be seen in their agreements with States, who are not obliged to abide by various fundamental legal conventions regarding refugee rights, as well as basic human rights. The international community, however, does seem to recognise that at times of emergency neighbouring States need to assist those suffering with the burden of migration. Although only when the suffering State refuses to accept any more refugees, will the other States share the burden of the mass influx, putting the refugees' rights at risk. The States suffering a constant inflow of refugees, due to their geographical position, are calling this inequitable burden an emergency. However, with regards to the above, that State would have to refuse protection to the refugees before the international community would help relieve the burden.

Burden sharing is only present in the preamble of the Refugee Convention, having no legally binding effect, yet its presence within other international instruments suggests it is an accepted practice within international law. Regardless of its legal nature, the fact that it is part of international practice for refugee emergencies suggests that it has in fact become a general practice of States. If this is the case then burden sharing may well become part of customary international law. However, if not legally binding then there may be a moral obligation to assist. The conflicts the asylum seekers are fleeing from are usually within States where intervention has taken place by westernised countries, who have contributed in some way towards the conflict. Where such situations occur, it is felt there is a moral duty to ensure protection for those refugees by the States involved. However, a moral duty also arises when States require international assistance, due to the code laid down by the UN Charter, conferring on states an obligation to cooperate with each other.

If there is no moral or legal duty, the concept of burden sharing should still be the solution to the emergency that is migration. This can further be achieved by the creation of an annual quota of refugees States are willing to accept; as well as a common asylum policy. A definite figure stating the amount of refugees a country would be willing to accept annually would hopefully help alleviate the migration burden on States who are finding it dif-ficult to respond to the needs of the migrants. For the international obligation of cooperation to take full effect there must be a fair share of refugees distributed among each of the States. The second proposal is that the international community needs to come together to create a convention including protection for refugees as well as asylum seekers, as States, although grant refugee protection to already established refugees, they seem reluctant to process asylum claims. Such a law would clarify the extent of burden sharing and the extent of the international communities' obligations.

The practice of burden sharing is cooperation to the fullest extent. To ensure all States have an equal share in the burden of granting refuge, whilst maintaining asylum seekers rights, would mean the international community has understood the essence of international cooperation. Although not obligatory, burden sharing is a persistent principle carrying with it a fair duty for every State, which in the future may well become customary in nature, if not conventionally binding.

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