EUs Immigration Policy

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# Introduction

The EU today is a rising political actor both within Europe and in relation to the European neighbourhood to the East and to South. Through Europeanization and European integration the EU has come to have an increasing influence on every area of policy which formerly belonged to the individual member states, also security policy and the foreign sphere of the union has progressively grown during the last decade. Moreover, the EU has become an increasingly important player on the global scene, and its common external action is constantly enlarging to new domains; immigration is one of these.

Immigration as a phenomenon has always been a part of the European reality, however as the push factors of the southern neighbour states in Africa intensifies due to civil wars, insecurity and wide-stretched famines, the immigration from this area has gained a large portion of the focus in the EU, and has been predicted to become ever more challenging as climate factors induce climate refugees. Immigration as a phenomenon is important for us as researchers due to the observations that can be made with regard to the intensification of focus on the area both nationally, at the EU level and with the partners of EU such as Morocco, Libya and Tunisia. The following common immigration policy in the EU is of course especially interesting because this faces immense difficulty in obtaining their goal of being effective in handling the challenge of especially illegal immigrants. This is due to the complicated nature of this area which overlap into security policy, police cooperation, border management and of course immigration policy. Furthermore as the European integration has completed the borderless union of the Schengen acquis an increasing focus has been put upon the external borders, both to the east and to the south. These developments coupled with increasing national fears towards immigrants threatening the social security all over Europe has really pushed the issue on illegal immigration to the top of both internal and external security debates. Finally the, perhaps biggest challenge of them all is that liberal democracies has a long list of judiciary and human rights they must fulfil on their territory also when dealing with the ‘unwanted’ migrants, thereby making good sense to move the process of asylum claims and immigration process to other states where the same obligations doesn’t count.

Subsequently policies towards obtaining the goal of controlling the inflow of unwanted migrants has sought in different directions, however two types of policies seem to have penetrated general tendencies; a comprehensive approach and a control approach. These tendencies unfold in an environment which has increasingly been focused on the cooperation with third countries, such as the Mediterranean ENP countries, to in a process which has been named an externalisation process of immigration policy.

Immigration as a policy area therefore intertwines the internal with the external, especially through the status of illegal or irregular migrants as a security threat. This is why policies towards the illegal immigrant is interesting to this thesis as the authors primary interest is in how the EU protect itself, thereby securing its territory in a state-like manner. The EU as an actor in its own right is, if anything a beginner, especially within these areas of competence which comes very close to the core of the nation states finest duty, to protect its citizens. Therefore there is constantly new initiatives being tested, and especially the ENP has been discussed as such a space where immigration could be linked with development.

Especially in the light of recent ‘Arab spring revolutions’ of the northern Africa and the Middle East, the impact of the nexus between security, migration and the development aid has been brought back on the agenda. Therefore the area of migration, and the possible connection with development aid, which has been discussed in the council links the objectives of securing the EU through a ring of well-governed states in the form of the EU neighbourhood to the South. Egypt, Tunisia, Morocco and Libya shares their borders with the EU, and is therefore all within the before mentioned third countries which specific immigration policies of the EU are targeted towards. The EU Commission has through the European Security Strategy (ESS) and the European Neighbourhood Policy (ENP) placed importance on the EU to extend peace, stability and prosperity within and beyond the borders of the European Union. While simultaneously the EU has to a high degree made their effective immigration policy dependent on the cooperation with these third countries.

The thought in this thesis is that through pursuing the high priority goal of combating illegal immigration, the EUs strategy of combating poverty migration and terrorism by addressing “root causes” such as a repressive government, illegal and unfair conviction, lack of freedoms etc, has been challenged in a political bargain situation where immigration control and energy has been more important today than the long term goals of political reform and the EU will to comment on the lack of this in the middle east.

The EU has placed focus both on ‘here and now’ security measures such as the FRONTEX agency, investing in border infrastructure, funding off-shore detention centres, stepping up border patrols, but also on more long-term security measures towards borders such as, development aid, political reform, legal migration schemes and visa deals. Neighbourhood states are an important part of all these measures and their incentive for cooperation is aid and access to the markets of the EU. In return it seems the EU will through their external focus on immigration policy; seek to secure the cooperation on the immigration policies related to border protection, and hindrance of illegal immigration. This has been visible several places, such as in Libya and Morocco where large detention centres has been much criticised both by Human rights organisations and the UN. Stricter border controls and the detention of ‘would-be’ illegal immigrants heading for the EU has been the outcome, and slowly the borders of the EU are being pushed further south.

It is clear that the EU policy and measures towards illegal immigration has a great significance, infiltrating several areas of policies, other states, the international relations etc. As illegal immigration policy is so highly debated and influential on other EU areas, the area of Illegal immigration is of great importance to the EU and its future as an external and internal security actor and protector.

Therefore this thesis seeks to research further on the subject through the research question of

## Problem fomulation:

**Why did the EU develop the common policy towards illegal immigration it did?**

## Limitation

Due to the relative short physical length of this thesis, there has been made some rather brutal cuts with regard to the subjects which will be dealt with in this paper.

The immigration policy of the EU is the primary focus here, the secondary debate on external policies on e.g. democracy in the external sphere, serves to inform the direction applied to this thesis in its work with EUs immigration policy.

The way immigration policy has been given meaning within the framework of the EU is therefore of central importance, as it must be understood why certain choices between competing focuses has been made, a ‘comprehensive approach’ or a “control-focused” approach, in order to clearly understand the main question. There will be no proof with regard to these being oppositional instead these categories serve to expose the competing actors and policies both at the EU level and outside the EU. Thereby showing why the illegal immigration policy of the EU is of the nature it is, and where this tendency tells us that immigration policy might be headed. Furthermore the challenging actors and their motivations must be identified; therefore the approach of looking into actors at the EU level is given priority. This means that this paper does not have the focus of member states and their (considerable) influence, they will be dealt with in the perspective of their influence towards EU policy and not the other way around. Finally we will not look further into the interesting areas of how legal immigration in itself has developed within the EU, as this is a story of a focus which is much more focused on the internal cohesiveness of EU nation state societies.

The actors which this paper places most attention towards are the European Commission (EC), The European Council and especially Italy relationship towards the developments of immigration policy in the EU, with a special focus on illegal immigration. And Italy has been selected due to a good amount of direct and indirect sources focused on this country, while it is a good representative for a member state with a wide-streched border.

# Methodological considerations

However most important is to this thesis to try and look into how the common policies of the illegal immigration and the common immigration policy as such has come to be, and how this informs the increasing security dilemmas connected to the challenges of immigration. These challenges are both internal and external in nature, as immigrants is moving from the one sphere into the other, and it is the assumption of this thesis that this helps also to give meaning to understanding the phenomenon of immigration as one of a security threat both external and internal. Therefore we will look into these through applying a multi-dimensional theoretic framework, where we establish federal theory’s advantages related to why common policy can be created by a common threat, and also threaten the structure simultaneously. Further we will seek to try and understand threat as a social construction in order to better understand what the basis of security policy is responding to, however not engaging in a larger national interest analysis, but simply assuming that the core threat being territorial protection and security.

## General approach

The structure indicates a general tendency throughout our work that all the parts of the analysis are bound together by the relation to the how the immigration policy of the EU can be understood. This report will therefore reflect the theoretic apparatus in as much that the work will consist of a number of individual parts, linked together by a contemporary event. Though each significant, it is expected that when joined together the parts will be able to give a stronger argumentation than they would apart, as each represent a part of the complex field of immigration in relation to security and EU. Therefore our choice of hypothesis is reflecting the complexity of our problem area, illegal immigration policy. I therefore do not focus on the examination of the practical making of the immigration law; rather this paper is focused on the tendencies visible when trying to look at the development of immigration policy in relation to EU security. As I identify the actors of the making of law, I recognize the diversity of actors involved all which cannot be given the space for investigation that they might be in their right to. Instead this paper has predominantly focused on the EU as an coherent actor, the member states with especially Italy as the representative of a member state with a wide stretched external border, and finally the Institutional actors of the European Parliament, The European Commission and the European Council.

## Hypothesis

Therefore I want to look into some general issues, which I perceive to be central, they are the ones that are reflected in the hypotheses.

Three hypotheses are formulated on the basis of this theoretical framework.

1: The general European integration into the European Union is meaningful to look into as common immigration process can be seen as a tightly connected to this development.

The first hypothesis is therefore built on assumption that I expect the Commission and the communitarisation of the EU’s immigration policy to enforce an immigration policy which promotes both security and civil rights.

2. The norms which are established through policy and measures are reproduces in policy accordingly; therefore the framework of structural realism can show how these structures might affect common immigration policy development.

The second hypothesis expects that constructed views on immigrants determine policy through the invoked norms and rules.

3. The externalisation of immigration policy is a tendency produced from the internal integration process as actors seek autonomy.

The third hypothesis expects member states to wanting to seek as much autonomy as possible; therefore ‘escaping’ to the external in the immigration is as this is too close to the liberal core.

The hypotheses condition the structure in dividing the theoretical chapters, and in the analysis the external governance and realist federalism is employed to challenge explanatory power while constructivism is deployed in order to look at a more abstracted and generalized view of the EU’s immigration policy. This is further debated in the proceeding.

## Theoretical and analytic structure

As abovementioned, we work with two different hypotheses which are reflected in the structure of the paper. To create overview we divide the theoretical chapters, and the analytical chapters.

In order to explain the institutional impetus to develop common policy in general, I realized that federalism might hold answers as to why common policy is developed. I have therefore used William Riker's theory on Realist Federalism as it is presented in David McKay (1999), Riker being based in the realist world view in particular has a focus on security, and how threats to this security influence supranational state building. This theory has a number of criteria’s with regard to what makes a union survive, but also discusses how a union is based. Riker argue that a common threat must be present to create unions. I expect this theory to guide the analysis as a structural framework as the focus on common policy in the EU’s integration process will say something about immigration policy simultaneously.

After defining the role of European integration process, in relation to the building of unions I realize however those in order to proper understand the tendencies described in immigration policy today another additional theory must be added to this analysis. This is because of the externalization process of immigration policy. As immigration policy is sought negotiated in the foreign policy areas then federalism is perhaps not the ideal theoretic angle, therefore the application of external governance is also used. I use the external governance as it is described in Sandra Lavenex’ articles from 2004 and 2006. It is expected that external governance is able to say in more detail concerning why a tendency of externalization is apparent in today’s immigration policy.

Since these analysis is interest oriented and therefore rejects the analysis of rules and norms. I am aware that we will also need to look into these parameters; this is done in the last section.

The constructivist part is a part which represents a more metaphoric view on the developments of immigration policy in the EU. The focus of theory is on constructivism’s take on identifying others as a threat to society, and how constructivism’s logic of appropriateness is linked to human rights and security in a European reality coping with the challenges of immigration. Thereby we aim at constructing a theoretic model consisting of tools to indicate patterns of internality and externality. In the analysis we expect this framework to enable us to look into the European self, and unravel what this self encompasses, especially whether a civilized identity towards the foreign and towards the internal is being negotiated in the field of immigration, thereby also creating immigration policy by norms diffusion.

## Sources

The political scientist William Riker’s framework of realist federalism is used in the theoretical chapter. He comes from a realist tradition in the USA. Riker is very focused on how federal union survive and why they sometimes do not.

Sandra Lavenex represents the external governance theory, which also has some contributions with regard to hoe externalization of immigration control can be understood more specifically. Sandra Lavenex is highly recognized researcher in JHA, and is especially working with EUs externalization and security relations. She is professor for International Politics at the University of Lucerne in Switzerland and visiting professor at the College of Europe, Natolin Campus as well as the European Institute of the University of Basel.

To debate Constructivism we have a few researchers represented. Anastassia Tsoukala is focused on internal security policies and human rights in Europe, and on the social construction of threat. She is a Greek national, and we acknowledge that her research springs from conflicts of immigration. She is especially focused on discourse towards immigration, which is mainly focused on societal threat, and how immigration is alienated. Further representing the theoretical direction of discourse and otherness production is Jeff Huysmans, who is an established critic and researcher of how immigrant and security is linked together in Europe. In order to look into what logic and basic assumptions constructivism is based on we use Johan Olsen and James March, who is structural constructivists as well as Barnett in Baylis who provide an overview of the commonalities between the different strings of constructivism. Further to enlighten the chapter with security informed positions we use Buzan and Weaver, the founders of what is called the Copenhagen school, which opened the security field into the spheres of e.g. societal threat and were one of the first to discuss securitisation.

In the next chapter I will present the theoretical framework to guide the paper theoretically.

# Theoretical framework

The theories which I will present in this chapter are all chosen due to their abilities to understand the reasons for why policy is developed in certain manners, both the development of policy, why certain meaning can be created, and how immigration policy can be reflected upon as a type of security strategy which has been chained together with both terrorism, organised crime and trafficking. For this purpose I have chosen Federalism as a theory which can explain why countries choose to pool their autonomy in pursuit of more efficient responses to common threats. Further I shall discuss structural constructivism and internationalisation as theories which are interested in simultaneous processes of autonomy production as well as rules and norms concerning a policy area as immigration policy.

**Why even discuss immigration?**

The immigration into Europe can both be seen as a blessing and a curse to member states and politicians. On the one side Europe need many skilled workers from outside the union due to a growing demographic deficit. On the other side the immigrant, and perhaps especially the illegal immigrant is a burdon on welfare societies due to the amount of money, paper work etc. when the stated goal of many member states is to avoid illegal immigration all together. As Sandra Lavenex put it then

“the conception of uncontrolled immigration as a societal and cultural threat and its linkage with other security issues such as organised crime, terrorism or Islamic fundamentalism blurs the distinction between internal and external security” (Lavenex 2006).

This explanation is part of the answer why it has any justification discussing the EU as a security actor within the area of immigration control or prevention of today.

## Federalism and the EU

Federalism theory is concentrated on the motives for federalising, therefore the cooperation that happens in the EU. This paper expects that federalist theory provides a frame of understanding from which we will be able to understand immigration policy’ way into common policy of the EU. When the EU agreed on the Maastricht treaty they embarked on a federal way of proceeding, therefore the EU as an international actor benefits from the theoretic explanatory power of federal theory which attempts to synthesize the common (rather than the dividing) motivations of politicians concerning why states form political unions and common policy. David McKay presents the theoretical framework of William Riker, who is of a realist school. His framework for understanding the development of union and policy is from the offset of responding to perceived common threat. As explained earlier then one of the assumptions in this thesis is that if a perceived threat gains exposure and is treated as a potential threat to both security and territorial integrity of an international actor as a state or union, then this actor will take steps to counter this threat according to the most efficient and logical way. This development of policy and measures is therefore closely tied to how unions survive.

Riker argue that the survival of the union is dependent on the a) the original conditions for which the bargain of union was made remain valid and b) that that the same conditions are not removed or disappear soon after the emergence of union, however the threat creating these conditions could change and perhaps create other common policies besides monetary union and customs which were at the heart of McKay’s focus in 1999. The federalism we look into here is to be seen as a framework for understanding the EU’s deeper integration and especially how security concerns transcend from the nation state to the EU due to common integration such as common borders.

### Rational bargain Federalism

The proposition that security threats can drive states to pool their sovereignty has been around for some time. The existence of these threats, according to William Riker, is a necessary condition for political unification.  David Mckay argues for Riker's theory as his opinion

McKay argued in 1999, the focus of federalists had been too focused on economic theory and how the common interests and ideological factors influenced the early developments of the EU, instead he proposed a federal theory with the offset in realism. This realist offset put national security and preservation to the centre of the debate on developing common policy through further integration towards federal like institutions. Therefore I find this theory suited to be operationalised in order to understand how security policy might have been initiated through a perceived threat of immigration, and how this threat has also transferred into common immigration policy in the EU.

Rational bargain and the pursuit of relative gains opposed to absolute gains, is at the centre of the debate between the neorealist and neoliberal debate in international relations theory. The theories of federalism is not elevated from this debate, as federalism is centrally concerned with the cooperation of international actors, and has posed a puzzle to realists through the years, because why does state engage in the EU when no apparent external or internal threat exists? Well what McKay argue through modifying the theoretical framework of William Riker, is that the threats may evolve so that other threats come to be seem as existential to the survival of the state, but the only solution to the solution is found at the federal level.

One of the central arguments to why unions develop according to David McKay is that the benefits will outweigh the costs when political actors engage in federalisation. The realist federal theory therefore builds on the assumption that cooperation is only possible when the parties gain more than they lose through engaging in this cooperation. Therefore McKay argue that

countries come together to form unions because the security benefits of so doing outweigh the costs, not because of the influence of those who champion what they believe are the inherent moral or economic advantages of a federal form of government (McKay 1999, 33).

The discussion that McKay is referring to is one who is central in understanding federalism as a collection of theories, that of the goals and motifs for federalising action to happen from the nation states. McKay describes three main lines in federal theory, ideological federalism, common interest federalism and Rational Bargain federalism. While McKay remains weary on the first two, ideology and common interest federalism exists today, where he criticises the goal of political integration as an end in itself, then neo-functionalists today hold that unions will continue to spill-over and create more and more integration deeper and wider in a ‘natural’ way. Here I will argue that the factor of a rational bargain and the need for the political interests is at the heart of any process of federalisation of security and immigration policies, therefore we shall focus on this level of federal theory, which I find is well discussed and augmented by McKay 1999. It is McKay that presents one of the primary voices of the rational bargain federalism who is William Riker. William Riker argued in his book ‘Federalism: Origin, Operation, and Significance’ in 1964 that the federal bargain is dependent on the politicians, who are “above all concerned with *the integrity of their states* [own emphasis]”.

The motives for comprising and developing a union may therefore build on different national interests which lead to unions if a collection of states can form political arrangements which comprise these. However, as Riker explains then this federalisation of states is not always the case, and the unions may not be *successful* unions. Instead Riker argue that two conditions must always be present

First, there must be a desire on the part of politicians who offer *the bargain* in order to *expand their territorial control* by peaceful means, either to meet an *external military or diplomatic threat* or to prepare for diplomatic aggrandizement. (...) Hence if they are to satisfy the desire to expand, they must *offer concessions* to the rulers of constituent units, which is the essence of the federal bargain. The predisposition of those who offer the bargain is, then, that federalism is the only feasible means to accomplish a desired expansion without the use of force.

Second, the politicians who accept the bargain, giving up some independence for the sake of the union, must be *willing to do so*, because of some external military/diplomatic *threat or opportunity*. Either they *desire protection from an external threat or they desire to participate in the potential aggression* of the federation. Furthermore the desire for either protection or participation outweighs any desire they may have for independence. The predisposition is the cognizance of the pressing need for the military strength or diplomatic manoeuvrability that comes with a larger and presumably stronger government. (It is not of course, necessary that their assessment of the military-diplomatic circumstance be objectively correct) [own emphasis] (Riker 1964 cited in McKay 1999, 29).

Riker establishes that there must be a threat in order to create a political desire necessary to give sovereignty to a federal constellation. The motivations are the gain of a perceived stronger government, who can channel the interests of the state and make them more powerful. McKay adds to these conditions by arguing that Riker’s logic of threat is not necessarily confined to being military or diplomatic instead he argues it could be from some other source such as political, economical or social. This thesis accepts this argument as the loosely defined threat of Riker in fact may correspond well with 21st century array of ‘new security areas’, given that the threat is still perceived to be sufficiently grave for the politicians to make the political bargain and give up sovereignty to a federal entity.

What this realist federal theory provides to this theoretic framework, is that it establishes some ground rules for why common action can be taken by the EU, and thereby why the production of common legislation, which is a product that surrenders national sovereignty to the EU, both in the area of security policies but also on immigration policies. Being informed from this starting point the common policy towards illegal immigration will be looked upon though some federal developments, combined with national wishes in the process of securing the EUs border, both from terrorism through the before-mentioned initiative of democracy for security and the immigration policy targeting illegal immigrants seeking to enter the territory of the EU.

According to Riker, then the territorial integrity is one of the central reasons to why states act, and one of the main reasons for why they might give up some sovereignty in order to protect this integrity in the face of a threat.

This thesis is interested in if immigration might be conceived by policy makers in the member states as well as in the Commission as a threat which threatens to destabilize the territorial integrity of the common territory of the EU of the Schengen area. If it is so that this threat is visible during the establishment of common immigration policy, then the common immigration policy in itself is to some extent a security policy which aims a preserving the order of the system.

Simultaneously then the development of a common foreign policy and the ENP which guides the relations with nearby neighbours are policies furthering the federal state of the EU, and therefore the success of these policies will speak to the legitimacy of the union. The legitimacy is important according to McKay due to the survival of the federal bargain because national governments risk punishment for federal policies and as the federal system of the EU is still lacking a direct political influence, civilisation is bound to react regionally and nationally through state elections.

This theoretical framework will be deployed in the analytical chapter in order to create meaning concerning the EU’s integration process in the perspective of immigration policies.

## Securitisation

One may be tempted to reduce the securitization of migration to the critical action of a few agencies, such as extreme right parties in some European countries. However, the process has included multiple actors such as national governments, grass roots, European transnational police networks, the media etc. HoweverHjjowijeo< (Huysmans 2000)

Securitisation in international relations is a concept connected with the Copenhagen School and the researcher Ole Waever, and is an understanding of security threats based both on constructivist and political realism, when it addresses international security. While classical approaches of security focus on the materialisation of the threat including distribution of power, military capabilities, and polarity, securitization examines how a certain issue is transformed by an actor into a matter of security. Securitization is an extreme version of politicization that enables the use of extraordinary means in the name of security. Securitization studies aims to understand “who securitizes, on what issues (threats), for whom (referent object), why, with what results, and not least, under what conditions”.

Ole weaver et al. Argue therefore that when something is securitized, it doesn’t necessarily mean that the subject is of objective essence for the survival of a given state, but means that someone with success has constructed something as an existential problem. If a subject is successfully securitized, then it is possible to legitimize extraordinary means to solve a perceived problem, thereby legitimate an extraordinary response.

Securitisation is one of the key processes in understanding how a soft threat like immigration can be regarded as a security issue to European actors. Thereby legitimating extraordinary policy responses.

## Constructivism, Norms and Rules

Constructivism build on an entirely different meaning system than the realist founded Realist Federalism presented above. Constructivism in itself does not assume that the world is made up of an anarchic system of states, or assumes that politicians and power structures is what matters to international relations and foreign policy. Constructivism and especially structural constructivism carries the explanatory power as to why some threats might be elevated in comparison to others under the same area such as e.g. border security. It is a theory which explain how discourses is related to the world of norms and rules connected to how society constructs threats, and thereby how it is fair to treat others as immigrants. Instead constructivism assumes that the political system and the perceived threats are constructed. These constructions are organized through rules and norms, which continuously reproduces, what could be called creating experience.

Constructivism sees the political reality as a product of social interactions, and the repetition of these interactions it calls norms, rules and patterns. Reality is constructed, and it is from this reality that actors is produced and created through a cultural environment . It is within this cultural environment that knowledge (symbols, rituals, concepts and norms) enables the individual to make sense of the world (ibid). Constructivism operates with a phenomenon they call social facts. Social facts are dependent on human agreement on their existence, and are taken for granted. Social facts are human rights, refugees, money, security, sovereignty etc. and even though we construct these objective facts through common agreement they do put constraints on action and thereby influence the way in which actors act . Structure creates limits to actors’ freedom in this way; structure in our case represented both on the institutions of the EU as well as the member states. Accordingly, these institutions have the effect that they help define the correct or 'appropriate behaviour in relation to different subjects. This essentially means that constructivism sees political action as a process of actors looking into what the relevant norms and rules are, constructing these norms and then following these. In this way the rules “construct their [actors] interests and define what counts as appropriate behavior” . This logic is called the “logic of appropriateness”, and constitutes that actors are rule following. In the context of this part this is relevant due to the fact that the norms and identities from the actors not only will be part of these rules, they will also constitute these. Logic of Appropriateness has to do with accepted behaviour, and this means that the rules constituted around a situation which is circled around immigrants is agreed upon in its own right. Meaning that the rules is set up by the structures and norms created by the actors, which can be argued to therefore provide a causal linkage between the way a situation is appropriately treated and the consequences of this treatment (as a strengthening of border control measures due to a perceived threat of immigrants). Constructivism “explain[s] behavior by determining the identities that are evoked and the meaning given to a situation”.

### Perceived threats

The argument for being able to look into threat and the importance of immigration is connected to the Schengen border. In the Schengen construction the thesis is that the breaking down of internal borders has created a feeling of increased obligation towards other EU states as well as an increased feeling of others controlling who is allowed to enter the national sphere (due to the abolition of internal borders). It is the idea here that these common beliefs could lead to a stronger opposition to illegal immigration than earlier, and thereby be a contributing factor to the perception of increasing threat.

Otherness is here used as a symbol for how negative sentiment can be transferred to illegal immigrants through the construction of an “us” or “we”. This means that it is useful to look into the logic of Anastassia Tsoukala (2005), whose observations including the claim that transforming immigration into a threat is working also as a part of a collective process. Therefore “the fact of turning migrants into social enemies enables the community to be defined and to recognize itself as such, by simple opposition to the figure of the foreigner ”. Also this construction of the immigrant into the social enemy has become associated to that of the refugee , as we argue that refugee and illegal immigrant is increasingly intertwined in the way they are constructed as an overwhelming threat to the European self. Thereby the creation of immigrant as the other will lead to a perception of this other as a threat. Buzan and Weaver (2003) also comments on this phenomenon; however they attribute further to this complex, as the immigration challenge is linked with general political challenges of globalization. Therefore, in this light globalization and the immigrant are connected to the external.

Even though immigrants and security threat is connected, it only becomes a norm for action and policy in the sense that it is agreed upon between actors, thereby the perceived threat is central to political action to structural constructivism. As March and Olsen (1998) argue then the logic of appropriateness can be interpreted in this way as the

actors enter into new relationships for instrumental reasons, but develop identities and rules as a result of their experience, thus shifting increasingly toward rule-based action, which they then pass on to subsequent actors (March and Olsen 1998, 953)

Rule based action, or action led by a logic of appropriateness is therefore self-reinforcing, and in relation to our subject we expects actors to through experience constitute what the appropriate logic is regarding different objects of special threat potential e.g. the threat of authoritarian systems at the borders of the threat of illegal immigration in larger numbers. Barnett (2005, p. 264-68) argues that in situations of insecurity, states are likely to adopt existing models that are perceived as legitimate or successful. This means that in a globalised debate of immigration a state should be more likely to choose a frame of rules and norms that is attributed to be legitimate, or successful.

Constructivists argue that institutional isomorphism and the diffusion of norms is a central part of why states and actors adhere to certain models of conducts on the international level . This is due to the assumption that actors and institutions that are subjected to the same environment will frequently acquire identical forms. These convergences can origin in several explanations as: the winning model or coercion or because of the symbolic nature of them or through the availability of similar techniques and technology . According to Barnett(2005) formal and informal pressures can make states adopt certain values and norms as these symbolizes legitimacy, and will therefore help in attracting resources to the acting state.

### The European Self

A part of this thesis is that the logic of the protection and integration of the internality of the EU is seen as the legitimating logic increasingly compared to the legitimating logic of “being civilized”. We could call this competing logic “law and order” focused and responds perhaps well to the tendency to favour language such as ‘effective’ policies.

The European self offer some explanations towards the development of immigration policy in the EU. I define the 'being civilized' self of the EU, thereby presenting an identity which is related to our problem formulation as we present the importance of acting civilised to the European identity. My thesis is that the civilized identity in Europe is increasingly linked together with the more protectionist logic of ‘law and order’ or ‘control’. Thereby securing a certain way of thinking regarding immigrants, which will in accordance with constructivism, start to be visible in the norms and rules in which policy makers will prefer to handle the challenges. I will argue how this connection is likely to legitimate norms which are not as sensitive to human rights or an all-inclusive approach as they reflect protection of identity; induce urgency, and the immigration policy of controlling the external as an outcome.

European principles as they are established in documents as the Copenhagen criteria and the Lisbon treaty is here meant to inform us with a notion of the intertwined nature of European conditions for states to act within. We wish to show that these are connected to the respect for diversity, freedoms and respect for law and order as well as democracy, and thereby present an image of ‘the civilized self’ which we here call a set of norms that has been diffused within the EU. This means that the rules constituted in relation to handling immigrants is agreed upon in its own right. Meaning that the rules is set up by the structures and norms created by the actors, which can be argued to therefore provide a causal linkage between the way a subject is agreed upon to be one thing (a security risk) and the subsequent nature of policy that will follow this.

The symbolic nature of ‘being a member of the club’ which to some extent characterizes one of the motivations for following the rules and norms of ‘being civilized’ is a priority of not only the member states but for the EU as an emerging international actor. This is founded in the scope that in order to portray it as civilized, thereby connecting norms and rules to the sense of self; it must obey the institutionalized social facts of the international reality. The argument is not only that norms constrain behaviour because the actors is worried about the cost to breaching them, but because they are connected to an understanding of the self, as e.g. a civilized state is not expected to act in a violent way that would make the state seem less civilized (ibid). One of these expectations is the respect of human rights, and especially the rule of law, which is highly connected to the sense of civilization, modernity and responsibility of the state. This is the point of departure for what can be logic in the sense of being accountable to others which they wish to associate themselves with, as we theorize is the case with the EU and the norm of human rights protection.

We try to look into what indicators builds on this assumption of a prioritization which places protection of borders and the prevention of immigration over the logic over “being civil” and conforming to the expectations of the international community as to be in compliance with Human rights and seem civil. Which will lead us to a discussion about how “being civil” perhaps increasingly is sliding towards an understanding that is less focused on human rights and more focused on the adherence of law and order, thereby exemplifying new rules and norms to a developing policy area such as the common migration policy as well as the foreign policy and common security strategy of the EU, which all has been initiated after 2001.

## External governance as supportive framework

As an additional frame for understanding externalisation of immigration policy, I add the thought of internationalisation through Sandra Lavanex’s framework of external governance .

Lavenex especially argue that a third movement is essential in immigration policy, this is externalisation. She operates especially with how the national – supranational tendencies create a newfound venue of the internal in which EU cooperation can thrive. It is argued that shifts in the territorial scope of EU governance and the choice of policies which develop an external dimension are. She argues that after enlargement, the EU faces the unprecedented challenge of defining its relations with neighbouring countries which will not, at least in the foreseeable future, receive the prospect of EU membership, but which play a crucial role in the maintenance of security and stability in Europe . In this context, ‘soft security’ risks constitute the background of the enlarged EU’s enhanced engagement to the east and to the south. Three such ‘soft security’ ﬁeld are highlighted: justice and home affairs (JHA), environmental and energy policy (ibid).

She argues that the EU is gradually expanding its governance beyond the circle of member states. But this is done in a rather unconventional way. Conventionally, international cooperation is associated with a loss of state autonomy and transfers of sovereignty, as the federal bargain. Yet she argues that internationalisation may also fulfil the opposite role of strengthening the autonomy of national governments. This means that simultaneously as federalisation can be going on, she argue that government representatives will also gain autonomy because their action at the intergovernmental level is shielded from competition in the domestic arena, “where they compete with other actors on the ‘right’ interpretation of social problems and possible policy solutions” .

Furthermore the argument is that “the autonomy-generating effects of internationalisation are especially strong for democratic states, and may be particularly important in fields that are close to their liberal core, such as migration policies”. She argue that even though the desire to reject unwanted migrants is strong within the EU then “the existence of heterogeneous (organised) interests in liberal democracies and the legal rights conferred to different classes of migrants impose strict limits on the scope for domestic policy“.

By acting jointly at the intergovernmental level, national executives gain an information advantage over their domestic counterparts and act in the capacity of gatekeeper. Usually gathering representatives from the same ministries, intergovernmental cooperation frameworks are often relatively homogeneous, and thus favour particular policy options over others. According to this logic, the purpose of international cooperation hence is not necessarily the search for functionally superior collective policy solutions, as conventional cooperation theory would predict. The ‘escape to Europe’ rather results from a ‘new raison d’état’ which consists in the strengthening of particular governmental actors and their preferred policy agenda over other parts of the domestic constituency.

She argue that  the externalisation of e.g. immigration policy is a general shift towards foreign policy cooperation, and looks into how trans-govern mentalist currents compete with the federalisation processes which puts constraints on policy makers. She argue therefore that the externalisation of immigration policy is a “strategy [for politicians] to maximise the gains from Europeanization while minimising the constraints resulting from deepening supra-nationalism in these matters”.

### Hypothesis based on theories

Three hypotheses are formulated on the basis of this theoretical framework.

1: The general European integration into the European Union is meaningful to look into as common immigration process can be seen as a tightly connected to this development.

2. The norms which are established through policy and measures are reproduces in policy accordingly; therefore the framework of structural realism can show how these structures might affect common immigration policy development.

3. The externalisation of immigration policy is a tendency produced from the internal integration process as actors seek autonomy.

One of the assumptions in this thesis is that if a perceived threat gains exposure and is treated as a potential threat to both security and territorial integrity of an international actor as a state or union, then this actor will take steps to counter this threat according to the most efficient and logical way. Therefore this paper expects the EU, and not least its member states to take action towards the challenges which the immigration can be to a country. This action is interesting because it says something about the general common policy towards illegal immigration and the EU as a security actor. This paper is therefore equally looking into how the European Union project is developing, and how this process might meet some compromises on the way.

In the next chapter I will present the central empirical findings within immigration policy in the EU.

# EU immigration Policy development

The development of the EUs Immigration and Asylum policies has an intriguing story, one which sheds light on the developments and tendencies seen in today’s immigration practices. Therefore we will in this rather elaborate section debate and account for the genesis of the EU immigration and asylum laws, their relations to the treaties, common practices and the positions of the involved parties. The focus is primarily on the EU treaties and law development and on the communications published from the commission as well as council conclusions. This empirical overview presents the material which I will later analyse with the theories presented earlier.

The EU as an actor in itself has during the last decade developed an internal security policy. This internal security policy has recently, in 2010, been presented by the Council in the Internal Security Strategy (ISS). This document focuses in particular on how the EU must rise to meet the external based challenges to European security such as illegal immigration, terrorism, drugs trafficking, while not as such discussing the fact of internal security risks. As such it draws to a great extent on the earlier European Security Strategy (ESS) which is focused on external security, and additionally identified the external threats as failed states, organised crime and also a very firm focus upon the neighbourhood states, which is today categorised through the ENP system. The security policy of the EU has, like the two strategies of internal and external security suggests been focused on the external neighbourhood of the EU. This coming chapter will focus on how the common security policy has developed in concert with the common immigration policy, with a special emphasis on the mentioning and strategies towards illegal immigration especially.

The member states of the EU has since the early organisation through the TREVI groupings of the 1970s, been engaging in a more and more intertwined and complex sharing and harmonisation of domestic issues traditionally the domain of the sovereign state. In this way the EU development of a security policy and the subsequent development of an EU immigration policy are tightly connected to the developments of the area of Justice and home Affairs (JHA) and the process of EU integration. This area has had its challenges with reluctant member states, conflicts and war in the neighbourhoods of the EU, while simultaneously member states has shown a great desire to collaborate with the neighbourhood states to the south on specific JHA areas such as immigration. This overview is chronologically presented with the developments found especially important to this papers main question.

## Early beginning-Intergovernmentalism

The European Union began as a collection of the Inner Six[[1]](#footnote-1), who founded the European Coal and Steel Community (the EU's predecessor) in 1952. The security issues of the early years were to create a mutual dependence between the EU member states in order to maintain a peaceful Europe, after two world wars. Slowly this economic collection of states started cooperating on other issues such as internal security issues in the JHA area. The initiating TREVI group was set up in 1976 by the 12 EC states to counter terrorism and to coordinate policing in the EC. The group's work was based on intergovernmental cooperation between the 12 states, a process which excluded all EC institutions, the European Commission (CEC) and the European Parliament (EP). They organised the initial communication between the EU member states and launched working groups that would later become Europol, Justice and Home Affairs, Terrorist protection, police cooperation networks etc. the groups worked ad hoc, and held closed meetings and had little transparency and were kept strictly intergovernmental (Bunyun 1993).

Simultaneously work was being done to agree on initiating the single market, which was a project that had been underway since 1957 treaty of the European Economic Community, until in 1985 where the President of the EC Jacques Delors, published a White Paper seeking to abolish, within seven years, all physical, technical and tax-related barriers to free movement within the Community (Europa, The single Market 2009). The enabling instrument for the single market became the Single European Act**,** which came into force in July 1987. The Single European Act builds on the idea of extension of community powers in social policy, research and environment and the goal of a single market in 1992 and the object of making majority voting more used in the Council of ministers (Europa, The single Market 2009).

### Schengen agreement

The single market aimed to set up an area of four freedoms, which ensured the free movement of people, goods, services and capital within the union. Between them the free movement of people was a challenge for the member states of the new single market as borders were planned to be abolished internally. In 1985 the Schengen agreement was signed by a first group of EU countries and later extended to others (Italy, Spain, Greece and Portugal joined later due to concerns over their ability to enforce their external borders). During the negotiations of Schengen the measures targeted at irregular immigration included debates on higher standards regarding control and surveillance of common external borders, harmonization of national visa policies and the introduction of carrier sanctions in all member states (Dinan 2010, 531). Carrier sanctions meaning that every ferry, airplane company and foreign airport could now be made accountable for the transportation of e.g. illegal immigrants or travellers with drugs etc. Another main instrument which was established was early coordination of visas policies and in the second half of the 1990s national liaison officers from the home ministries of member states, was placed at airports in countries of origin in order to check that documentation was thoroughly examined before entering the EU (Lavenex 2006). As these tendencies show then early in the cooperation on internal security issues there was a focus on the countries of origin with regard to control measures. This focus has been called externalisation, extra-territorialisation, remote control etc. here I will call it externalisation. However other measures were also established which were more focused on the internal such as the SIS.

The SIS (Schengen Information System) was set up in connection with the Shengen convention, and served as a sharing tool for national police, border controls and customs personnel etc. Thereby linking relevant databases together with national missing persons, false passports, stolen vehicles etc. . The SIS became a necessary part of the Schengen participation; however the demise of privacy and liberty of surveillance was alarming to those fearing the loss of sovereignty to a supranational entity as well as those fearing the breaches of civil liberties of EU citizens (Dinan 2010, 532). The fear of the national in relation to the supranational is a reoccurring issue in this area so close to the core of the nation state. It seems that the balance between harmonisation of policy and the autonomy of the free will of national politicians is under a reoccurring negotiation. But Schengen came to be remembered and cherished as one of the most important feats of EU’s integration.

### Maastricht treaty

With the creation of the European Union through the Maastricht’s treaty or the Treaty on European Union (EU treaty) in 1992, the EU’s integration was advanced further. Through Maastricht a platform for EC cooperation was created to discuss these more and more focused issues of illegal immigrants and the issues over borders and sovereignty within the EU. Because of Schengen, especially the JHA area became a central part of the discussions in the EU leading up to the Maastricht treaty, which was a large factor in making the cooperation intergovernmental in nature (Dinan 2010, 533). The intergovernmental third pillar came to encompass the collected issues of immigration and police cooperation as well as judicial cooperation. The Maastricht treaty mainly meant an inclusion of asylum and immigration into the third pillar due to a public pressure and political awareness on JHA issues, but its birth was a complicated system of groups operating on issues individually and the third pillar was highly critiqued for its lack of transparency (Lavanex 2001, 126). The Maastricht treaty institutionally founded the issue of immigration as intergovernmental ultimately under the control of the Council, and veto right for governments made further cooperation in the area difficult. Even though majority voting had been encouraged it remained problematic and further development in both immigration policy and security policy was slow and complicated by the many different groups and committees which originated back from the TREVI group.

The Schengen agreement and the Dublin convention both shared a certain amount of mobilisation of third countries such as the southern neighbours, thereby adding to an external tendency (Lavenex 2006). This makes the Dublin Convention interesting in terms of burdon sharing and illegal immigration as it is often connected with people seeking political asylum.

### Dublin Convention

The Dublin convention of 1990 (reaffirmed in Art. 3(3) of the Council Regulation no. 343/2003 of 18 February 2003 which replaced the 1990 Dublin Convention) allows the member states to deny examination of an asylum claim and to send back the applicant to a third country where he or she would have had the possibility to apply for asylum, provided that the state is party to basic international refugee treaties (Lavenex 2006).

The Dublin convention particularly determined that

Where the asylum seeker has irregularly crossed the border into a Member State, that Member State will be responsible for examining the asylum application. This responsibility ceases 12 months after the date on which the border has been illegally crossed (Europa, Dublin II Regulation 2009)

Therefore it further determines the member state which receives irregular immigrants/asylum seekers such as Italy, Greece, France and Spain has the primary burden of processing those requests too. In comparison with other member states of the EU, which share the same external border these countries have been, in their perspective unfairly burdened with the paperwork and the immigration and border controls. The system is there in order to ”prevent ‘asylum shopping’ and, at the same time, to ensure that each asylum applicant's case is processed by only one Member State” (Europa, Dublin II Regulation 2009).

The Dublin II Regulation has recently been highly criticised as Greece’s asylum system broke down, while other member states continued to send asylum applicant back to Greece according to the regulation on first country entry responsibility, thus leaving asylum seekers on the streets without a chance to have their case investigated. As Thomas HAMMARBERG, Commissioner for Human Rights of the Council of Europe argued in 2010 then countries such as “Greece and Malta have, during recent years, been unable to provide adequate protection because the numbers of asylum-seekers have exceeded their capacity” (Council of Europe Commissioner for Human Rights Thomas Hammarberg 2010).  “The gravely dysfunctional asylum procedures in Greece have brought the Dublin system to a genuine collapse” (ibid). As it is criticised that the border countries shoulder each other, but the EU as a unity undermines each other’s responsibilities, which causes the asylum seekers to suffer, according to Hammerberg 2010.

The Dublin two regulation and the Schengen agreement added to a further externalisation of the cooperation through the control of migration flows into Europe was sought moved away, mainly through the application of ‘safe third country' rule (Lavenex 2006).

The use of a ‘safe third country’ rule results in the asylum seeker is refused entry, in expulsion during the asylum procedure or in refusal of the asylum application. However, the principle only works if the asylum seekers or refugees can actually be sent back to third countries (Achermann og Gattiker 1995).

#### Readmission agreements

Readmission agreements came as a follow up to the Dublin convention, as the return to ‘safe countries’ depended on the cooperation of the receiving state. In this way the readmission agreements was one of the first steps towards mobilisation of third countries into the slowly emerging EU-wide cooperation on the immigrant area (Lavenex 2006). The first such agreement was concluded in 1991 between the Schengen states and Poland (Lavenex 2006). The engagement of third countries into immigration control was officially embraced in the Declaration of the Edinburgh European Council, which recommended that member states “work for bilateral or multilateral agreements with countries of origin or transit to ensure that illegal immigrants can be returned to their home countries” (European Council 1992 , 23). Originally, the determination of a third country as safe and the conclusion of readmission agreements focused on countries neighbouring the Union, later, it was extended well beyond Europe. There were limits, however, to the expulsion of asylum seekers to safe third countries. In particular, the 1951 Convention and the European Charter of Human Rights, which demand that a certain minimum standard be met (Achermann og Gattiker 1995).

### EMP

Other interesting developments at this time were the initiation of the European Mediterranean Partnership (EMP) (or the Barcelona Process) which was formulated in 1995 with the Barcelona Euro-Mediterranean Conference. The European Union stated the intention of this partnership is to strengthen its relations with the countries in the Mashriq and Maghreb regions. In the Euro-Mediterranean Partnership (EMP), JHA and, in particular, illegal migration controls have occupied a central position from the onset. This for example expressed in the Commission Communication accompanying the launch of the so-called Barcelona process which states that

if migration pressures are not adequately managed through a careful co-operation with the countries concerned, it is easy to predict the risk of friction to the detriment of international relations and the immigrant population itself (European Commission 1994, 6).

The EMP builds on frameworks which is important as they build on a fundament of intergovernmentalism. This fundament is the Association agreements, which is under the jurisdiction of a

Association Council, organised *at ministerial level*, takes decisions and makes recommendations so that fixed objectives can be attained, while an Association Committee manages the agreement and settles differences regarding its application and interpretation [own emphasis] (Europa, Euro-Mediterranean Association Agreements 2007)

The European Union concluded seven Euro-Mediterranean Association Agreements between 1998 and 2005 with the Arab Republic of Egypt, the State of Israel, the Hashemite Kingdom of Jordan, the Republic of Lebanon, the Kingdom of Morocco, the Republic of Tunisia and the People's Democratic Republic of Algeria. These agreements provided a framework for political dialogue with these countries.

To return to the treaties again then the Maastricht treaty, which meant an inclusion of asylum and immigration into the third, the following treaty, the Amsterdam treaty tried to remedy those complicated institutional configurations which were a part of the cooperation (Lavanex 2001, 126).

## Moving migration policies into EC territory

Immigration policy acquired an unprecedented prominence after the Amsterdam treaty in 1999, which transferred the areas of asylum, immigration and judicial cooperation in civil matters from JHA to the European Community pillar, which was a part of the new Area of Freedom Security and Justice (AFSJ) (Phinnemore 2007, 37). The Amsterdam Treaty changed the structure, moving immigration officially into the 1st community pillar, which seemed to increase the focus on immigration policy as this was now moved away from the intergovernmental pillar, which national states had core influence over. Amsterdam was the treaty that introduced the area of Freedom, Security and justice (AFSJ), which was stated to be secured with the reinforcement of “appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime” (European Union 1997, art. 1, 5). Furthermore Amsterdam addresses the ques­tion of undocumented immigration in a more comprehensive manner, and a new policy towards an externalisation focus was initiated.

The Amsterdam treaty was signed in 1997 as this treaty introduced the Area of Freedom, Security and Justice (henceforth AFSJ). The decisions and new directions of the Amsterdam treaty have been underway in a transitional period of five years from 1999 and full effect was seen in 2004. As the Amsterdam Treaty opened for more flexibility in the closer collaboration on JHA issues there was no longer a need to have the Schengen convention as a separate existence. Schengen was therefore incorporated into the EU framework.

Unfortunately the treaty doesn’t address the rigidity of the unanimous voting in the intergovernmental sphere; this meant that still a fear of the loss of sovereignty in the areas of JHA remained in spite of the inherent difficulty in cooperating without the lowest common denominator logic (Lavanex 2001).

Not only did the Amsterdam treaty lead up to the 2004 enlargement, the developments in border and immigration created a policy reality which was trying to deal with some of the challenges that had been prominent to the immigration and asylum area earlier. Enlargement moved fast forward with the accession of Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Enlargement served not only to reunite Europe as stated, but also served to stabilize countries on the EU’s neighbourhood, thereby making a move towards controlling immigration also. As especially Germany and Italy had experienced a massive inflow of refugees from the Yugoslavian conflict and the Kosovo refugee crisis in 1999 was still in fresh remembrance.

### Further externalisation tendencies

During the 90s the Yugoslavian wars made many displaced person and refugees head for the security of European member states. The pressure of refugees on Italy rose through the years of the wars and especially in 1999 during the Kosovo Crisis the numbers reached a total of 228.000 refugees received in Europe, according to the UNCHR (UNHCR, Kosovo Crisis Update 06 April 1999 1999).

Simultaneously new objectives was formulated in the Tampere programme, agreed in 1999 and the discussions were especially concerned with ”tackling immigration at *its source* [authors emphasis]” (Samers 2004, 31). The issue of more cooperation was debated and once again it was confirmed that new Member States had to accept the Schengen acquis as integrated within the Treaty of Amsterdam. It can be argued that the objec­tives toward the countries of origin and the transit countries were further established here. The Tampere Programme was agreed to follow from 1999-2004, thereby initiating the form of a new multi-annual (five year plans) framework for the development of the AFSJ.

And when the European Council met in Laeken in December 2001 the Council initiated an action plan on illegal immigration. The pre-Laeken document (CEC, 2001[[2]](#footnote-2)) was formulated consisting of 8 points: visa policy, information exchange and analysis, pre-frontier measures, financial support of actions in third countries, border management, improvement of co-operation and co-ordination at the operational level, the advanced role of EUROPOL, aliens law and criminal law (including illegal employment) and readmission and return policy, which all were to deal with illegal immigrations. On February 28, 2002, the Council adopted the ‘Comprehensive plan to combat illegal immigration and trafficking of human beings in the European Union’ (otherwise known as the ‘Santiago Action Plan’).

### Santiago action plan

The Santiago Action Plan identified a similar set of domains where action was deemed necessary either within one year (short-term measures) or within three years (medium-term measures): these were visa policy, the exchange and analysis of information, readmission and repatriation policies, pre-frontier measures, measures relating to border management, EUROPOL and penalties of such illegal activities. Worth especially noticing is the increasing position of third country actions (initiated in Laeken) and the new focus on readmission and return policies (in the Santiago Action Plan), which meant that a plan towards ‘illegal’ or irregular migrants was initiated. These principal lines for the policy on visas, the exchange and analysis of information relating to undocumented immigration, economic sup­port for actions that non-member countries should carry out, and the development of a shared policy on matters of admission and deporta­tion, were to become guiding in the area (Samers, 2004).

The Seville European Council in 2002 continued the line towards migra­tion issues with a focus on readmission and engagement of third countries. The Seville conclusion initiated a policy line that was more aggressive for those countries that did not cooperate in combating undocumented migration. The intention was to increase security along the borders, harmonizing the measures to combat undocumented immigration (visa requirements, readmission, deportation, and repatriation) and promote integrated border control and coordi­nated actions along the borders (European Commission; European Parliament 2002). This integrated management of the border, did not focus on legal immigration and was therefore more integrated with respect to the illegal immigration area, than the entire area of border, the Seville European Council of June 2002 supported the ﬁndings of this Communication.

These decisions were shortly translated into concrete European policy acts in the Commission Communication on Common Policies to Stop Illegal Immigration, and the Council adoption of the Action Plan to Combat Irregular Immigration, in 2001 and 2002 respectively. In these, the need to further strengthen European outer borders was made the main priority of the EU’s policy on irregular immigration and enacted through several common initiatives that followed. These included the strengthening of the Spanish, an electronic surveillance system covering the entire Mediterranean Sea as well as several European common projects.

### Wider Europe initiative

The commission further initiated the “wider Europe“ initiative in 2003. The “wider Europe” initiative was first discussed at the European Council meeting in Copenhagen in December 2002, where the EU Heads of State and Government decided that the Union should enhance relations with its neighbours. Sandra Lavenex argues that this initiative sprung out of an environment based on the logic penetrating enlargement complexities (Lavenex, EU external governance in wider Europe 2004). The discussions were conducted within the framework of new security challenges to the enlarging Europe. The new vulnerability of the enlarging Union is confirmed in the Commission’s Communication on ‘wider Europe’ which states that:

interdependence [political and economic] with the Union’s neighbourhood is already a reality (...). Closer geographical proximity means the enlarged EU and the new neighbourhood will have an equal stake in furthering efforts to promote transnational flows of trade and investment as well as even more important shared interests in working together to tackle transboundary threats - from terrorism to air-born pollution (European Commission 2003, 3)

This interpretation was subsequently confirmed by the European Council meeting in Thessaloniki in June 2003, in which the EU Heads of State or Government declared their will to “reinforce (...) shared values and promote (...) common interests (...) [by] developing new policies toward wider Europe” (European Council 2003, 13).

The Wider Europe initiative opened the perspective of the possibilities for neighbourhood countries not able to enter through membership as

all the neighbouring countries should be offered the prospect of a stake in the EU’s Internal Market and further integration and liberalization to promote the free movement of persons, goods, services and capital (European Commission 2003, 3).

At the same time, the EU expects these countries to line up with its own structures that are “demonstrating shared values and effective implementation of political, economic and institutional reforms, including aligning legislation with the acquis” (European Commission 2003, 10).

Beyond the general aim to alleviate economic inequalities, such an alignment is described to be in particularly expected in those issues identified as “threats to mutual security” (European Commission 2003, 6). The Commission detects these mutual threats to security to be:

the transborder dimension of environmental and nuclear hazards, communicable diseases, illegal immigration, trafficking, organized crime or terrorist networks (European Commission 2003, 6).

This is one of the ways which political conditionality was intertwined in the way EU sought to cooperate with third countries. This cooperation was further extended through the ENP.

### ENP

The European Neighbourhood Policy (the ENP), linking it to European programs connecting migration and development — such as TACIS, MEDA, EUROMED, CARDS, PHARE, ASEM and INTERREG[[3]](#footnote-3) — which can be seen as a way to realise this focus towards the origin countries in order to create a platform for the new policy towards illegal immigration.

The ENP, initiated in 2004 and founded on the COM(2004) 373 final, is as such a foreign policy instrument, which is supporting of the idea set forth in the European Security Strategy in 2003 that

Our [the EU’s] task [in order to secure EU borders] is to promote a ring of well governed countries to the East of the European Union and on the borders of the Mediterranean with whom we can enjoy close and cooperative relations. (ESS, 2003, p.8)

The ENP is structured as a system of bilateral agreements between the EU and countries to the East and the south of the EU. I will not comment further on the programs which have to do with the Eastern neighbourhood, instead we focus on those countries that are part of the ENP to the South (Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, the Palestinian Authority, Syria, Tunisia). The ENP is interesting if reflected through the 2002 Seville council meeting, where it was decided that

any future cooperation, association or equivalent agreement which the European Union or the European Community concludes with any country should include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration” (European Council 2002, 10)

ENP deals were to become a very important part of illegal immigration protection towards countries of origin and transit in the neighbourhood. The ENP action plans were another avenue for member state to address control on border issues and readmission agreements as well as connecting this debate with development.

This was confirmed also in the Wider Europe initiative of the Commission in 2003 as it was valued that “Concluding readmission agreement with all the neighbours, starting with Morocco, Russia, Algeria, Ukraine, Belarus and Moldova, will be an essential element in joint efforts to curb illegal migration. (European Commission 2003, 11)”. The readmission programmes and third country approach was no limited to foreign dealings, it was also a part of the new framework programme replacing the Tampere Programme, the Hague programme.

### The Hague Programme 2004

The Hague Programme was the first multiannual programme with regard to an area of freedom, security and justice. The Hague Programme marked the end of a cycle (Tampere) and the beginning of a new one. In order to carry out the Hague Programme, the European Council invited the Commission to present an Action Plan to the Council in which the aims and priorities of the Programme are to be translated into concrete actions, including a timetable for the adoption and implementation of all actions. The Hague Programme especially articulated the link between immigration control and security which argues that

The management of migration flows, including the fight against illegal immigration should be strengthened by establishing a *continuum of security measures* that effectively links visa application procedures and entry and exit procedures at external border crossings[emphasis added] (European Union 2005, § 1.7.2)

The timetable came to run from 2005 – 2010, where the commission sat out 10 specific priorities whereof especially central here is:

Fundamental rights and citizenship, The fight against terrorism: working toward a global response, A common asylum area: establish an effective harmonized procedure in accordance with the Union’ values and humanitarian tradition, Migration management; defining a balanced approach, Internal borders, external borders and visas: developing an integrated management of external borders for a safer union, Privacy and security in sharing information: striking the right balance, Freedom, security and justice: sharing responsibility and solidarity (European Commission 2005)

In order to be able to support the development of a secure external border the EU agency Frontex was established. Frontex (Frontières extérieures; legally: European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union) was set up to strengthen the EU’s territorial external borders. Frontex can be seen as a tool for defending the emerged common security identity in the EU; but its main task is to assist EU Member States implement EU rules on external border controls and to coordinate operational cooperation between Member States in the field of external border management (FRONTEX 2011)

#### The idea of Migration management in the Hague Programme

Relating to the subject of illegal immigration, the Communication from the Commission of 19 July 2006 on policy priorities in the fight against illegal immigration of third-country nationals is important as it sets out more detailed what the objectives of this priority area are (European Commission 2006). In order to support the objectives of The Hague programme the communication was set up, but as visible here then the success of this programme was tightly connected to the general success of the common immigration policy, as

illegal entry, transit and stay of third-country nationals who are not in need of international protection undermine the credibility of the common immigration policy. Without reinforced Community action, the crisis as already seen and perceived today would increase both in qualitative and quantitative terms (European Commission 2006).

The communication here explicitly relates the ‘fight’ against illegal immigration as a fight for the credibility of the common project of a common immigration policy. The crisis referred to is seen countered with a focus on combating ‘root causes’ in origin countries, combating illegal employment in the EU as well as further working to create an integrated management of external Borders. It further states that

where appropriate and by mutual agreement, the EU will help partners in the developing world to enhance their capacity to better manage migration flows and fight against human trafficking (European Commission 2006, 4-5).

Furthermore a European Border Fund (2007-2013) with resources totalling €1820 million was set up in order to support those with a high pressure of visa and border expenses as well as 10 million per year towards Frontex missions (European Commission Home affairs 2011). Furthermore the Commission in its communication considers ”creating a generalised and automated entry-exit system, complementing existing databases, to facilitate checks on the status of third country nationals entering and exiting EU territory” (European Commission 2006, 6). With regard to readmission it is here stated that ”FRONTEX is to undertake work on identifying best practice on the acquisition of travel documents and the return of third country nationals” (European Commission 2006, 10).

### Schengen Border Code (SBC)

The Schengen border code, which came into effect 13 October 2006, has the status of a regulation. The SBC stipulates some very precise demands on border controls, which due to the regulation status has a direct legal effect in the EU countries. The SBC has, on the insistence of the EU parliament been made very detailed, and if put in comparison then the original member states’ national rules provided a” much higher degree of discretionary action for officials than the SBC” (Guild, Carrera and Balzacq 2010, 43). The SBC sets out rights in a quite direct way for immigrants to be met with at the borders of the EU, e.g. it is stated that

persons refused entry [into the EU] shall have the right to appeal. Appeals shall be conducted in accordance with national law. A written indication of contact points able to provide information on representatives competent to act on behalf of the third-country national in accordance with national law shall also be given to the third-country national (European Paliament; European Council 2006, art. 13).

Thereby the SBC further extends the obligations of the receiving states from being giving asylum seekers a right of appeal upon refusal to enlarging this to all who seeks entrance, as well as ensuring them with contact to “representatives competent to act on behalf of the third-country national” (European Paliament; European Council 2006, art. 13), which refers to legal aid, thereby ensuring rule of law in the border controls practical execution. This has however not been the case at the borders of the EU to the south, as many human rights organisations and other scholars and groups has argued that exactly the screening of boat people (migrants arriving in poorly equipped boats from the African coast) has been unsatisfactory at several instances as the border guards has pursued various strategies keeping migrants from entering EU territory. We shall look further into this issue in the next section which analyses this finding.

### Italy/ Libya 2007-2009

The number of irregular boat migrants arriving in Italy from North Africa rose from 22,000 in 2007 to 36,000 in 2008, an 64 percentage increase (UNCHR 2011). Italy also received 31,164 new asylum applications in 2008, an increase of 122 percent from the 14,053 asylum applicants in 2007 (UNHCR 2009). In 2008, Italy ranked as the fourth highest asylum host country in the industrialized world, trailing only the United States, Canada, and France (ibid p. 6). There can be established that there was a considerable pressure of illegal immigrants to Italy, and the European area in this time period. For comparison Greece’s irregular immigrants rose from 9,050 in 2006 to 19,900 in 2007 which arrived through Turkey. These irregular immigrants pushed the national authorities of Border States into protecting their borders with more and more forceful methods.

One of the ways in which the prevention of entrance has been pursued has been the Interdiction at sea policy. The practice of interdiction at sea means prohibiting the sea-borne migrants from reaching their intended destination by irregular means. However a change seemed to happen in 2009, as the coast guard in Italy had previously permitted migrants to land and processed resulting asylum requests, this changed through the initiation of a far more aggressive interdiction policy where Italian coast guards began returning the migrants to Libya (Ryan 2010, 32). This policy has been named the ‘push-back’ policy, and was made possible because of an Italian/Libyan Friendship Treaty drawn up in 2008, entailing the distribution of 5 billion EUR during 25 years in investments to Libya as reparations for colonial times (Reuters 2008). While Libya should receive funds to patrol the land border for illegal immigrants and to implement an expensive electronic surveillance system from the EU and Italy these were to be operated by Libyan officials. The report Pushed Back, Pushed Around published by Human Rights Watch (HRW), describes in detail how Italy intercepts migrants and deports them to Libya without the required screening for asylum seekers (Human Rights Watch 2009). A further issue in this practise is the lack of a non-refoulement responsibility of Libya, as they have not ratified the Geneva Convention and does therefore hardly serve as a ‘safe third country’ for Italian coast guards to return possible asylum seekers and other illegal immigrants to.

## Abolition of the pillars – a new beginning 2010

### Lisbon treaty

The Lisbon treaty ends the 3 pillar structure of the union, now the immigration area is to be completely within the realm of the EU community sphere. Furthermore a “foreign minister” of the EU has been established, and in 2010 Catherine Ashton was appointed as High Representative of the European Union for Foreign Affairs and Security Policy. The Lisbon treaty represents a further amendment of the two founding treaties of Rome and Maastricht, and is therefore not (as initially predicted) not a new constitutional treaty. However the Lisbon treaty does foresee a great deal of further transparency and openness with the EU procedures and working method, and it is a goal to have one form of legislation procedure, which will make the use of QM voting more used as well as including the parliament further into the process.

### Stockholm Programme

Furthermore the Stockholm programme which was agreed on by the European Council in 2010 presents a new focus upon the burdon sharing between member states. As it is formulated that

Effective solidarity with the Member States facing particular pressures should be promoted. This should be achieved through a broad and balanced approach. Mechanisms for the voluntary and coordinated sharing of responsibility between the Member States should therefore be further analyzed and developed. In particular as one of the keys to a credible and sustainable CEAS [Common European Asylum System] is for Member States to build sufficient capacity in the national asylum systems, the European Council urges the Member States to support each other in building sufficient capacity in their national asylum systems. The EASO [European Asylum Support Office] should have a central role in coordinating these capacity- building measures. (European Council 2010, 32)

This formulation of solidarity in a work programme is a significant change towards a more common approach to the common borders, and the subsequent challenges that their management put on the peripheral member states such as Italy, Greece and Spain.

### After the 2011 spring revolutions

As described in a new communication from the commission regarding how the EU can reach its goals in the neighbourhood then

(...) rising to the challenge requires that EU and Member States policies be much more closely aligned than in the past, in order to deliver the common message and the coherence that will make our actions effective. EU instruments and policies will be effective only if properly backed by Member States policies. Business as usual is no longer an option if we want to make our neighbourhood a safer place and protect our interests. (European Commission 2011, may)

Thereby perhaps indicating a renewed strength in the community following the Stockholm framework, this has put renewed focus on the burdon sharing between member states and the further development of relation with third countries.

This short presentation of EU immigration policy, security policy and general treaties and membership measures and pressures in illegal immigration serves as the fundament for looking into the question “Why did EU common policy on illegal immigration develop the way it did?”. This I will do in the following chapters through the theoretical framework presented earlier.

**Initiating considerations prior to analysis**

The area of JHAs development and enlargement is intimately connected to the European integration project, as the enlargement and European integration has meant new security challenges and risks for the union. The development of the JHA area has been connected to the evolution from transgovernmental coordination to supranational communitarisation, as shown in the previous chapter. This evolution has however not been entirely uncontroversial, member states ministers of the council has often been reluctant in pooling authority in these core aspects of national sovereignty and identity (Lavenex 2006). It seems that a strong contrast is apparent between the internal blockades and the external dimension of European asylum and immigration policies, which has in comparison rapidly developed into a key focus of cooperation. Therefore when we take into account the international dimension of the migration phenomenon, this cooperation seeks to engage countries of origin and transit in the control of migration flows as an increasingly central focus. The result is a growing emphasis on extraterritorial control, and dependence on third countries to perform effective migration control, which is a crucial security objective of the EU. (Lavenex 2006)

The challenges in incorporating issues of immigration and asylum within the EU’s external policy, especially cooperation and development programmes is a rather recent affair originating at Tampere, and accelerated by the Laeken Council, Seville and Thessaloniki Summits, as shown above. The European Council meetings have as shown introduced and implemented a range of programmes under the general rubric of the EU’s ‘external policy’. It seems that the idea is that international coordination will be enhanced both at the preventive level (e.g. exchanges of information) and the reactive level (e.g. joint investigations against smuggling and repatriation of illegal immigrants), which is something that Samers predicted in 2004 also (Samers 2004). Furthermore there seems to have been a clear connection between visa regulation and readmission policy towards the different third countries, and that this connection has been determining the cooperation in the illegal immigration area.

If we are to look into the development of immigration policy through the understanding of realist federalism, it is expected that the actors (the politician) will act both on behalf of a national territorial threat but also on a threat to his own political power. This power can in the liberal democracies of the EU be taken away in an election; therefore national sentiments place constraints on national politicians. The federalist theory predicts that if a common threat is perceived by the federalising actors, then they will further federalise, or in the European case, engage in further communitarisation in general and specific policy areas.

Italian foreign ministers as well as prime ministers of France, Spain and Italy continuously have complained with regard to the immigration area, understandable as these are the border countries that is most strained by the burdens of visa-processing, patrolling borders as well as integrating the immigrants arriving and combating illegal employment. Therefore the system of the EU is put under an enormous pressure by the fact of illegal immigration, which creates differences between member states concerning burden sharing and responsibility sharing. This is true while simultaneously, one of the great EU projects is to eradicate all internal borders, and this goal is unlikely to be changed in fact this is to be enlarged, and the progressing European integration will continue ahead from what we are seeing today. All this might offer some indicators as to why it may be beneficial to move the actual burden of illegal migration away from the EU territory. As Valsamis Mitsilegas describes it the

main aim of extraterritorial immigration control is for the State to *evade* responsibility by shielding its domestic legal system from claims by third country nationals wishing to access its territory (Mitsilegas 2010, 58).

Thus indicating that the policies that the EU has been making towards externalisation though third countries can be seen as a conscious policy towards evading the ‘trouble’ of committing to different treaties and international laws of human and refugee rights. Riker’s federalist theory may not be the best suited to understand this development, but it can explain the increased communitarisation, which externalisation to some extent is a symbol of. With this it is not argued that the move towards externalisation in immigration measures itself creates a stronger federationalisation process, but it does create a room of manoeuvre which can be seen as preparatory before the externalisation can be fully incorporated under the new community structure after Lisbon. As mentioned then Stockholm 2010 hints that real burdonsharing is now more than ever debated in the Council, this development is in part a step created from the challenges member states have had with the processing of refugee claims etc, which has been connected with the entrance of large groups of irregular migrants.

**Analysis of the development of EU’s common immigration policy**

There are two areas of analysis I will apply to try and understand the internal complexities of the development of immigration policy, the first area I will pursue is focused more on the political actors, and why they chose to react in a certain way, the theories of external governance and realist federalism will be used in order to clarify why governments shift sovereignty to the community and what the motives for this might be. The second area is a constructivist informed analysis focusing on securitisation of immigration discourses and the subsequent norm and rules-set developed to ‘appropriately’ deal with the public pressures for effective action.

***Federalism and the EU’s Integration process***

This analysis seeks to elaborate on the questions already asked concerning whether the internal disposition and development of the European Union is connected to the ‘common threat’ which Riker discussed as the reason for common policy threatened by the phenomenon of immigration. This analysis is in itself relevant, but even more so in order to be able to understand why EU immigration policy has become more and more externalized, which will be addressed in the next chapter. Here we will begin by looking into how the EU as an entity determines what is a common threat, how immigration is placed through discourse and how these tendencies relate to a collective picture of a perceived threat within the EU.

McKay states that the survival of the union is dependent on the a) the original conditions for which the bargain of union was made remain valid and b) that that the same conditions are not removed or disappear soon after the emergence of union, however the threat creating these conditions could change, as discussed in the theoretical chapter. This means that threats faced by the governments in the lead up to the Maastricht treaty, which was the beginning of European integration process are important. This is due to the federal theory which describes that the survival of the road towards a union must be supported by a continued threat which foresees a common response only when political actors see more benefits from pooling sovereignty than dealing with the threats on their own.

Especially Lavenex and others has put this idea forth that the development of the externally focused migration policy of today is a by-product of enlargement policy making. The logic being that political conditionality towards other countries came automatically as the rewards were access to internal markets and a liberalisation in relations. This explanation would not account for immigration policy as a singular policy, but does account for the development of common immigration policy following political bargains on several issues, thereby leading to general common responses. The arguments for this are the fact that immigration policy has been tightly connected to the structure it was connected to within the EU. By this I mean that Maastricht and especially Amsterdam came to be changing for the perceptions of immigration policies.

The road towards a common immigration policy was initially intergovernmental, first outside the EU, later inside the third pillar but in both instances within the Schengen collaboration. As Schengen is a part of the EU’s policy from the beginning of common immigration development, and further developed up until today, Schengen is a starting point for this analysis. Schengen is the focus point for an initiation of not only an EU immigration policy, but the common challenge which a borderless union was. This paper argues that the challenges the Schengen Acquis presented could have been perceived as a threat to the political bargain towards federalism. This is due to the challenges which the borderless union places on the member states; thereby the cooperation in the common union is challenged. And this is what is essential concerning Schengen, it created a vacuum for the governments in respect of the protection of their territorial integrity, and thereby a vital security objective of the EU member states. Therefore the Schengen cooperation both became the incentive for creating more common policy on the areas which formerly lay under the national borders, the area of internal security. Lavenex argue that Schengen was a compensatory measure, one which was born out of the single market.

With the established goal of eradicating the internal borders and becoming a borderless union internal security would inevitably become even more in focus within the EU. The reason for an increased focus on JHA is connected to Schengen not by the Schengen agreement in itself but due to the de-facto common territories. This common territory therefore made the individual member states dependent on the other member states’ immigration laws, resident permits etc. because one within the union a person could move freely. This naturally posed a significant challenge to the member states as the lack of control possibly challenged all member states legitimacy in protecting their part of the external borders. The federalist theory would therefore argue that a common threat had been established out of other integration measures. The fear of not having an influence on its own territories was therefore what drove governments to give up sovereignty on this area. This seems like a contradiction however unwilling to change the initial outset of a deep economic union of free passage, the immigration and border policy became subsequently equally important. During the negotiations of Schengen the measures targeted at irregular immigration included debates on higher standards regarding control and surveillance of common external borders, harmonization of national visa policies and the introduction of carrier sanctions in all member states (Dinan 2010, 531). It was expected that irregular migrants, organised crime related individuals would exploit the borderless EU (Dinan 2010, 532); this must have created a sense of urgency to create a solution. The fear of losing sovereignty in this intimately important national area of territory is still debated today from time to time, even though to many the abolishment of the internal borders of the EU is seen as the greatest feat of all in the Union. In retrospect it seems appropriate to conclude that this was a political bargain which the governments engaged in because the benefits of having a free trade area was outweighing the cost of giving up a part of the territorial integrities of member states. The trade-off making member states loose autonomy in the immigration area to the EU, while keeping the issue of handling immigrants at the member state level however created many frustrations. This gradual development of immigration policy and border issues from transgovernmental coordination to supranational communitarisation has, however, not been uncontroversial, as “protracted negotiations in the Council of Ministers and last-minute compromises on minimum standards show” (Lavenex 2006). As the gradual strengthening of supranational procedures was widening and deepening within the fields of domestic politics, security and immigration a genuine move towards harmonisation of immigration policy is seen in Amsterdam, where the entire immigration field is moved to the community pillar.

Specifically challenging was the war in Kosovo which intensified asylum seekers and immigrants into the European territory through the 90s, which brought immigration on the topic. Further the instability in the Balkan fostered more drug trafficking, human trafficking and other illegal activities crossing the borders into the EU, especially thousands of illegal immigrants arrived at the Italian borders. The attacks of 9/11 2001, the Madrid bombings in 2004 and the London bus bombings in 2005 had also the effect that the fear of terrorists, some which was originated or had connections to northern Africa and the middle east, thereby linking the threat of terrorism to immigration.

All these surrounding insecurities arguably made immigration and other ASFJ issues increasingly important at the beginning of the new millennia; it seemed that national governments were taking an increasing restrictive position towards JHA (Dinan 2010, 538). As Lavenex argue, then the venue of internationalisation also offer a possible area for the national to discuss issues related to the liberal core, in a setting where domestic restraints are absent. Therefore externalisation of immigration policy is a way for politicians to circumvent the jurisdictional and moral norms of liberal democracies in the EU.

Furthermore complicating the search for some autonomy in the immigration area was challenged as the parliament had more to say in 2006, as the Schengen Border Code (SBC), in 2006 came into. These very strict demands on member states protocols on the ground towards immigrants on the border made the pressure of illegal immigration even harder to address in a way which made member states effective. Thereby the SBC further extends the obligations of the receiving states from being giving asylum seekers a right of appeal upon refusal to enlarging this to all who seeks entrance, as well as ensuring legal aid, thereby ensuring rule of law in the border controls practical execution. This has however not been the case at the borders of the EU to the south, as many human rights organisations and other scholars and groups has argued that exactly the screening of boat people (migrants arriving in poorly equipped boats from the African coast) has been unsatisfactory at several instances as the border guards has pursued various strategies keeping migrants from entering EU territory. However dangerous this line of pursuit against community regulation is it is to be seen in the bigger picture of a contradiction between where the union is and where the member states are. This the SBC is therefore a part of immigration policy, but the reactions towards it indicates more externalisation as in 2006 was the year where the illegal immigration plan was published in a communication from the Commission. This commission not only reaffirms the focus on third countries, but addresses it with an urgency connecting it with the survival of the community: “illegal entry, transit and stay of third-country nationals who are not in need of international protection undermine the credibility of the common immigration policy” (European Commission 2006).

However as federalism would argue then the political solution to the common threat will only ensure the survival of the federation if the benefits are outweighed by the benefits. During this period it is my theory that the EU was slowly becoming pressured with the thousands of immigrants and the lack of political will to share the burdon inside the EU. This could have put the federal project in jeopardy, which required a change. The externalisation and focus on third countries in immigration policy might represent such a common response to both a threat to the EU integration and towards immigration.

***Externalisation – autonomy search***

In strong contrast with these internal blockades, the external dimension of European asylum and immigration policies has rapidly developed into a key focus of cooperation. Taking into account the international dimension of the migration phenomenon, this cooperation seeks to engage countries of origin and transit in the control of migration flows. The result is a growing emphasis on extraterritorial control in EU’s common immigration process, what Lavenex 2006 has called ‘shifting up and out’.

There remains no doubt that the development of illegal immigration policy has exploded in new initiatives and measures with regard to what can be done externally. The many initiatives, agencies and policies are all relatively new, but seem to be the beginning of an even further integrated policy which effectively moves the borders of the EU further south by making the neighbourhood states prevent immigration into their borders. The fact that an agreement was concluded with Libya which includes, apart from modern border control equipment, also joint patrols, and the establishment of reception centres to intercept would-be immigrants and asylum seekers prior to the (perilous) crossing of the sea. The fact that Libya is neither party to the UN Geneva Convention nor has any asylum procedures in place has done little to discourage this cooperation. Conversely, the case of Morocco shows that the country's ratification of the Convention and its 1967 Protocol are no guarantee against inhuman return practices. This cooperation relieves the EU temporarily from the many judicial rights and costly accommodations that Member states must take to accommodate asylum applications, shelter, food, water and right to a lawyer id the immigrant had landed on their shores. The externalisation process is therefore essential to create a benefit for the member states if they are expected to federalise further. Realist federal theory will predict then actors will only seek to cooperate if the benefits are greater than the costs, here the benefits are both social rest at the national level and help to curb illegal immigration very effectively on the union level.

Furthermore Lavenex’s theory on external governance predicts that the behaviour of politicians seeking to externalise policy areas does this in order to create autonomy in an increasingly constrained system of federalisation and QMV. This possible argumentation resonates well with many of the empirical findings, as it was visible that both externalisation and deeper harmonisation has been two parallel developments in immigration policy. This indicates that one of the possible answers to the problem formulation is that politicians search for autonomy increasingly in the international sphere of immigration policy following the European integration process.

**A change after Lisbon?**

Will the community win the area back as the EU’s external sphere is developing through the Lisbon treaty? The Lisbon treaty ends the 3 pillar structure of the union, now the immigration area is to be completely within the realm of the EU community sphere. Furthermore a “foreign minister” of the EU has been established, and in 2010 Catherine Ashton was appointed as High Representative of the European Union for Foreign Affairs and Security Policy. The Lisbon treaty represents a further amendment of the two founding treaties of Rome and Maastricht, and is therefore not (as initially predicted) not a new constitutional treaty. However the Lisbon treaty does foresee a great deal of further transparency and openness with the EU procedures and working method, and it is a goal to have one form of legislation procedure, which will make the use of QM voting more used as well as including the parliament further into the process. Simultaneously it is expected that the new coherent foreign policy of the union will be used even more progressively to pursue political conditionality in the neighbourhood. This political conditionality is addressed in a new commission from the Commission; thereby the commission set a political ambition for the future development of the union. It specifically states that “business as usual is no longer an option if we want to make our neighbourhood a safer place and protect our interests” (European Commission 2011, may).

Thereby securing a democratic development and control more of the areas which the member states have been in charge of directly, such as the Libya/Italy deal, or indirectly through the intergovernmental structures of the association agreements which the ENP builds on. This promise for the future from the commission’s side would suggest that a more balanced approach to immigration policy might be under development. By balanced I here mean that the political conditionality which member states operate under within the EU might be on the move towards being conditional also towards third countries. This could possibly mean that the ‘escape to the external’ will in the long run in itself not become an policy direction, rather it suggests that in order to have decision on immigration affairs member states will have to federalise more efficiently.

Thereby perhaps indicating a renewed strength in the community, which is further strengthened by the Stockholm framework, which has put renewed focus on the burdon sharing between member states and the further development of relation with third countries.

***Sub conclusion***

As shown in this chapter federalism does offer some good explanations with regard to how European integration is reflected in a desire or success in working towards the federal union. However when the evidence of federalisation is not so successful, as when member states is reluctant to give up sovereignty it does only suggest that the political bargain was unfruitful due to costs that was perceived to be higher than the gain. Therefore federalism supports the thesis that common immigration policy is largely born out of the positive federalisation through European Integration. This means that federalism as a theoretical framework is able to place an answer towards why the immigration policy has developed as it has. The best explanation it offers is that immigration policy is as complicated and de-linear as European integration is. As this paper has shown then there have been several developments which have pushed immigration policy into new areas such as foreign policy, and into bilateral agreements with unaccountable partners such as Libya. Federalism large explains this as a part of a process; a process towards a federalised and efficient immigration policy, in which both member states and the federal government find a sufficient amount of autonomy, which then leads to deeper harmonisation. What the current immigration policy suggests is that a deeper harmonisation will address the illegal immigration issue with more rigour internally.

With regard to external intergovernmentalism it seems that this theoretical viewpoint does explain the policy choices which are oriented at escaping to the external, externalising immigration policy in the EU. To that end the externalisation of immigration policy can be partially answered through political actors search for autonomy in this area which lies close to the liberal core of European democracies. Externalisation is therefore in this paper not just an outcome of European integration; it is also a reaction towards it, and other factors stemming from the outside of the EU such as refugee flows of conflicts in the European neighbourhood.

**Norms and Rules within EU’s immigration policy**

This chapter looks into the logic with which immigration is constructed in a way that creates a greater pattern of logic for actors, which then in turn influences policy makers in the process of agreeing on immigration policy.

The EU indicates a European logic of appropriateness, for an example in the Copenhagen criteria, which regulates enlargement of the union or in the new Chapter of Fundamental rights from 2010. The values referred to in these criteria are strongly emphasized, mainly in the so-called political criteria, where namely the respect for and protection of minorities and the rule of law is deemed important. The establishment and promotion of these core principles is put forth in the relations the EU cooperate in, this is also the case in the ENP (European Neighbourhood Policy). One of the cores for the ENP is that

within the ENP the EU offers our neighbours a privileged relationship, building upon a mutual commitment to common values (democracy and human rights, rule of law, good governance, market economy principles and sustainable development) (Europa, ENP 2010).

March and Olsen (1998) emphasizes that these common values referred to here is a part that “international cooperation, civilized conflict resolution and political order” seems to describe a constructed European identity, they even argue that this identity is constructed deliberately. To our problem orientation this indicate norms which is agreed upon between actors as the political, the media and the identity of the European self is to some extent anchored in these politically correct characteristics. These can be seen as aspirations, or norms for which MS are to be guided in their actions, as the European self is evolving around this positive and neutral definition in its own account therefore both influencing national norms but also institutions within EU. However, there is an important connection for us between the civilized and the integration of the internal in the EU case. This is because our argument is that the civilized self is increasingly evidently internally focused, which in part can be explained by the logic of integration and the mechanisms that have been contributing to a common self image of the EU. This paper is interested in the self-image as it looks into how norms of the EU can influence its immigration policy.

Constructivist theories might focus on how the European self-image is to some degree dependent on a securitised threat in order to create further internal harmonisation, which strengthens the European common market and the borderless union. This means that the integration project of the EU can be seen as closely connected to the basic principles, and constitutes a distinct “being civilized” norm diffusion model, as the EU not only is legitimising itself towards the internal member states but also towards the external as an actor in its own right. This norm becomes interconnected with the strengthening of the internality between the MS, adding to the integration as it is seen in relation to enlargement and the constitutive treaties as well. This means that the internal collectivity of the EU has been mobilized in relation with creating an area of freedom and mutual integration.

Buzan and Waever sees the EU as a security community, who has threats pushing towards it, immigration is one of these (Buzan and Wæver, Regions and powers 2003). Illegal immigration is the praxis of crossing the border into a states territory without permission. The protection of border is linked together with the upholding of law and order, as the upholding of law and order is perceived as a integrated part of the “being civilized” identity therefore the argument is that immigration threaten civilization and the EU as a bearer of these norms. By definition immigrants break this law and order, this is due to the fact that they disregard the border and cross it without permission. As Tsoukala (2005) also argue then this is exactly what happened in Italy as a collective feeling of self contrasted by the immigrant other evolved into a “*law and order* culture in Italy, practically nonexistent before the 90s”, which exemplifies this “transgression of the law by foreigners justifying therefore ipso facto their exclusion from the community” (Tsoukala 2005, p. 168). Otherness is in this way constituted through the way we think about the European self, about law and order as an element of the identity to legitimise action towards the public, which in return demands more law and order focused policy. I argue that the law and order element of immigration policy is the one focused on immediate control, border patrolling etc.. These elements as shown in the empirical chapter make up a large proportion of immigration policy, and these solutions allow the EU to react to threats. It is in this view a predominantly reactive immigration policy, which is drafted out of a need to legitimize the EU as an actor, both in immigration policy but more-so towards the neighbourhood. The idea of norms diffusion presented earlier would demand for the norms of civilization to be upheld by civilized states.

The otherness production is able to create a certain type of rules and norms which will be there to guide the actors who deal with a concrete situation of immigration handling, and will through the structures of the EU institutions be diffused into all sectors of immigration policy, ENP, common policy etc. Therefore with the idea of what is regarded as appropriate logic in which immigration should be handled with, it is likely to lead to protectionist logic. The protectionist logic would place security from this threat is in the centre, thereby perhaps furthering the wish to keep migrants away from the borders, and letting third countries handle the challenge of illegal immigrants. This chapter has argued that the strengthening of an immigration policy and the movement of detention centres to Libya, the externalisation, the control focused policies can be seen as by-products of a process towards further internal collectivity, as this process has created a logic which expects externalization of immigration and thereby to some extent alienation and separation.

***National identity and security***

This proposition, made above, is further supported from a different angle which represents how the weakening of national identities and of security identities on the MS level, as the case of Italy, will lead to a need for further re-focus on inclusiveness and internalized identity processes. The argument here is attached to the implicit logic of Schengen, which is researched by Helene Jorry who is connected to the CHALLENGE program in the European think tank CEPS. Jorry argue that Schengen created an internal security community, which

contributed to blur external and internal security identities as well as to disseminate threats, due to the fact that crossing of external borders therefore provided access to the rest of the EU territory as a whole. (Jorry 2007, 4)

The creation of the immigrant “other” is therefore to some extent linked together with the move towards a further internalization which not only created a focus on this process but in reality blurred the security identities as well.

The view of constructivism explains this reality by arguing that the EU is in the middle of this process of establishing rule and norms. This type of argumentation suggests that it is the new and untested nature of the framework concerning joint ventures against immigrants that cause human rights to be incidentally violated. It could be argued that this is due to a lack of experience on the internal security zone for the EU. However it might also be used in the way that it is a glimpse of how MS assert their norms in cooperation with Frontex about border security.

This argument suggests that a weighing of the appropriate measures is made by the actors, as this new reality is approached through an agency as Frontex, but also through the government in Italy and through what is seen as a civilized identity in the EU today. A part of the answer this chapter offers is therefore attributing the in-experience of the actors in this situation. This perspective is one of dynamic proportions, as inexperience may influence process of norms construction. As proposed earlier, actors will times of insecurity rely on frameworks which are seen as the legitimate and the successful in the immigration area. Here we have sought to show that the course of constructing the immigrant as an enemy actually supports actors in choosing policies on territorial and administrative exclusion (Huysmans 2006, xii). Thereby possibly placing an unbalanced focus on ‘control’ measures which serve to keep illegal immigrants away here and now, which can be obtained through further externalisation. This is because externalisation of policies, moving them into areas such as foreign policy will mean that they will not have to follow the stated immigration policy of the commission of a ‘comprehensive’ approach.

**Sub conclusion**

The object of the analysis of Norms and rules through the European identity was meant to offer explanations which relates to the rules and norms entangled in EU’s immigration policy.

I have showed how the norms surrounding immigration can be influential on immigration measures and policy. This is due to norms diffusion as well as the way we explained how lack of experience leads to the following of the already present norms and rules, thus not encouraging actors to re-invent rules instantly. Rather we have found that norms production and the effect they have on the ground is an ongoing process of actors. We have shown that the following of the construction of external enemies of the European self can possibly lead to a lesser regard for the immigrant. These images of enemies influence the established norm of the “civilized self” and are therefore operationalised in order to act in accordance with expectations of a civilized EU member state, as this is seen as legitimate or appropriate. However we have shown how this identity not necessarily secures the respect for human rights as the civilized identity of Europe is possibly increasingly connected to an identity focused on law and order. The development of EUs immigration policy it has been shown can have been affected by this preference as a security focused approach has been favoured. Furthermore then the externalization in itself may also be an argument towards how the norms of understanding law and order as an identity has moved away from securing human rights to securing only civil rights of ones own populations. To that end the norms production which is happening in the member states is important as this is likely to be reproduced in union settings. Therefore even though the EU is in itself not acting as a nation, then due to norms diffusion new identities might be invoked, especially towards the external sphere.

**Conclusions and a discussion of these**

During this paper I have pursued to look into immigration policy through the guiding question of: Why did the EU develop the common policy towards illegal immigration the way it did? Through a framework of theories and a great empirical foundation dating back till the 1970s I have found that the answer to this question is diverse both with regard to the understanding of what common policy area it is characterised in as well as the institutional outspread structure. I have throughout this thesis tried to argue that the development of the EUs common policy is not only connected to the development of common immigration policy, but connected to the development of the union and its goals as such. Therefore the security actor ambitions of the EU, the EUs dealings with third countries and especially the way readmission and visa policy has been managed has been equally the focus of this thesis.

The answers to the problem were pursued through the theoretical information contained in Realist Federalism, External Governance and Securitization and Constructivism. This theoretical framework is a little unconventional, and possibly other theories would have contributed to other answers, more diverse conclusions could perhaps have been done. But summing up I do have the opinion that the contributions the three different theoretical approaches has supported each other to answer the problem in a satisfyingly coherent manner. The analysis parts in this thesis is a little meddled together, and especially federalism and external governance was in the end used to complement each other, and not as I originally imagined contrasting each other in as high a degree. Still I am able to conclude a few general things toward the questions asked.

The conclusions drawn from my analytical contribution to this paper supports the empirical findings of explaining externalisation of policy measures, comprehensive policy and control focused policy and also the findings related to recent developments since the Lisbon treaty. I conclude that even though federalism may have short comings with regard to describing how interests to form common policy are initiated it has provided useful insight with regard to immigration policy in relation to EU’s integration. On the basis of the findings made, I can conclude that from the perspective of this thesis the European integration process is what has pushed common migration forward. European politicians has reacted towards economic instability, created the Schengen acquis which then in turn created further need for common policy on the free movement of people. To that end I acknowledge also that the theoretical position of functionalism might hold further answers to the influence of EU integration in relation to illegal immigration.

Furthermore the theoretical standpoint of external governance has proved to be able to describe development lying outside the direct policy towards federalisation. External governance has especially proven useful in placing externalisation of immigration control as the theory predicts that the constraints of liberal democracies is to a high degree in compatible with the wish to keep ‘unwanted’ or illegal migrants out. Therefore this analysis argues that immigration policy has been gradually externalised as member states has increasingly given up sovereignty to the union in this area. This argues that these two processes are simultaneous and does not exclude each other, but however does make the immigration policy less transparent as it is not only communitarised it is also integrated in the Unions foreign policy and networks such as the ENP. An issue of the EUs norms and rules is connected to this as the dealings with illegal immigrants of the EU is no longer done on EU territory or by European personnel instead it has meant a move of the EUs external borders further south.

The final theoretical framework of norms and rules as they are assumed to be through the perspective of structural constructivism showed that the norms surrounding immigration can also be influential on immigration measures and policy. I have shown how the European norm of abiding human rights and rule of law not necessarily secures the respect for human rights as the civilized identity of Europe is possibly increasingly connected to an identity focused on law and order. The development of EUs immigration policy it has been shown can have been affected by this preference as a security focused approach has been favoured. Furthermore then the externalization in itself may also be an argument towards how the norms of understanding law and order as an identity has moved away from securing human rights to securing only civil rights of one’s own populations. To that end the norms production which is happening in the member states is important as this is likely to be reproduced in union settings. Therefore even though the EU is in itself not acting as a nation, then due to norms diffusion new identities might be invoked, especially towards the external sphere.

*Future developments*

I have further shown that the recent developments in EU integration, through the Lisbon treaty, are expected to produce a more coherent foreign policy. The commission has as shown, a strong desire for this new foreign policy to be more based on real political conditionality that the case has been earlier. It specifically states that “business as usual is no longer an option if we want to make our neighbourhood a safer place and protect our interests” (European Commission 2011, may). It will be interesting to see if this firmer direction will survive and make it into the way the union deal with third countries in the challenges concerning illegal immigration. At least this promise for the future from the commission’s side would suggest that a more balanced approach to immigration policy might be under development. By balanced I here mean that the political conditionality which member states operate under within the EU might be on the move towards being conditional also towards third countries. This could possibly mean that the ‘escape to the external’ will in the long run in itself not become an policy direction, rather it suggests that in order to have decision on immigration affairs member states will have to federalise more efficiently. Thereby indicating that the development of immigration policy has developed the way it has due to many different actors and actions, and that it will continue to do so in the following years within the new Stockholm programme.

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3. TACIS: Technical Assistance to the Commonwealth of Independent States. MEDA: Mesures d’accompagnement (principal tool of the EU in relation Mediterranean countries); (EUROMED PACTE: Partnership, Action, Cooperation, and Transfer of Experience for the Development of the Mediterranean and Europe; CARDS: Community Assistance for Reconstruction, Development and Stabilization; PHARE: Poland and Hungary Assistance for the Restructuring of the Economy; ASEM: Asia-Europe Meeting; and INTERREG: Interregional cooperation (a com­munity initiative, which aims to stimulate interregional coopera­tion). [↑](#footnote-ref-3)