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essays

The EU and migration: A call for action

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ABOUT THE AUTHOR

Charles Clarke was a member of parliament for Norwich South between 1997 and 2010. In 1998 he was appointed as a minister in the Department for Education and Skills, afterwards serving as chair of Britain's Labour Party and Secretary of State for Education and Skills. He was British Home Secretary between 2004 and 2006, having previously spent time at the Home Office as a junior minister with responsibility for policing.

He is visiting professor in politics at the University of East Anglia, and of politics and faith at the University of Lancaster. He is a member of the European Council for Foreign Relations and of the international advisory board of the Schengen White List Project, which is run by the European Stability Initiative. He has recently joined the Transatlantic Council on Migration.

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1 Introduction

Migration – the movement of people and populations across countries and continents – is a fact of life and will become ever more so in the future. Today, the inter-governmental International Organisation for Migration estimates that there are more than 200 million migrants worldwide, with numbers predicted to rise further as global travel becomes cheaper and easier. Across the European Union governments and public authorities have been slow to face up to the significance of this challenge. This essay is an appeal for urgent action. Without such action both the free movement of people around Europe, and the Schengen area of passport-free travel, will become increasingly difficult to sustain.[1]

[1] *All EU countries share a common border and visa policy as members of the Schengen area except Britain and Ireland, which maintain their own passport controls; Bulgaria and Romania, which are expected to join soon; and Cyprus, which remains outside because of its internal border dispute.*

In part, the need for action is urgent because of recent developments. In late 2010, the Greek authorities effectively lost control of their – and therefore the EU's – north-eastern frontier with Turkey. At that time, Frontex, the EU border agency, estimated that more than 90 per cent of illegal entries into the Union were taking place through this point, making it the most vulnerable part of a common land border nearly 8,000 kilometres long. Consequently, some other EU countries began to re-impose security checks on travellers from Greece, and Frontex had to deploy a special mission to shore up the border.

In early 2011 political revolutions in North Africa led to an increase in erratic, unauthorised migration across the Mediterranean. The EU's rhetorical support for the 'Arab spring' was marred by strident internal disagreement over the rights and responsibilities of member-

states when maintaining the southern border in such circumstances. After an over-hyped diplomatic stand-off between France and Italy over responsibility for newly-arrived Tunisian migrants, EU leaders agreed that, in exceptional cases, limited restrictions to borderless travel in the Schengen area would be allowed in future.

But the most urgent reason why action on immigration is required lies in the rise of nationalist, populist, anti-immigrant, anti-EU parties. So far the most successful is Geert Wilders' Freedom Party (PVV) in the Netherlands, which has garnered enough electoral support to force the Dutch coalition government to implement parts of its agenda. One result is that the Dutch interior ministry has proposed strict amendments to most European legislation related to migration, including the so-called free movement directive and EU rules on the reunification of immigrant families.[2]

[2] *EU citizens do not need residency or work permits to travel to or live in each others' countries, subject to some initial restrictions for new member-states. This legal right is often referred to simply as 'free movement'.*

This development is not confined to the Netherlands. In Sweden, Finland, Denmark, Belgium and Austria, among others, 'far-right' parties scored significant electoral gains over the past decade. In Britain, the anti-immigrant British National Party won two seats in the European Parliament in May 2009, and immigration was certainly a major issue in Britain's 2010 general election. In the 2012 French presidential election, Marine Le Pen could conceivably become a serious rival to Nicolas Sarkozy, whose strong anti-immigrant rhetoric has failed to insulate him from the challenge from the far-right National Front. If anything, Sarkozy has given his right-wing challengers more respectability.

The negative political impact of migration is spreading across Europe in ways which threaten both the traditional right and the centre-left. Mainstream politicians are having great difficulty in navigating this new politics of immigration, which everywhere seems to go hand in hand with a rise in inward-looking, anti-EU

sentiment. Both trends will ultimately make Europe weaker politically and economically.

This new environment means that the bureaucratic 'business as usual' approach to immigration issues, which has hitherto been the norm in the EU, will no longer suffice. Yet attempts to roll back free movement of labour within Europe and impose 'zero immigration' policies across the continent are equally unrealistic. Neither complacency nor gesture politics will work in relation to fears about immigration. Populist political stunts such as the former UK Prime Minister Gordon Brown's announcement of "British jobs for British workers" in 2009, or more recent moves to 'ban the burkha' in Belgium and France, serve only to set communities against each other and fail to address the difficult issues at hand.

Public opinion

Voters are sincerely concerned about the impact of migration on society. This concern derives from the sense that immigration is somehow uncontrolled; that new immigrants do not share the same values and commitment to society as the indigenous population; and that migration has introduced unfairness into the allocation of jobs, housing and social services by giving priority to new immigrants. These concerns exist whether or not they are based on fact. It is no good dismissing them, as some mainstream politicians do, merely as symptoms of bigotry, or harbingers of racist behaviour.

It is reasonable for the public to want to understand why people are migrating to our communities and what changes this implies. Voters want to have confidence that governments are controlling migration effectively.

In general, people are prepared to live side by side with those of other races and cultures as long as everyone accepts the same broad rules of society. Explicitly racist parties are generally excoriated and the populist ultra-right parties have had to find 'softer', less

openly xenophobic means of presenting themselves even where they hold directly racist attitudes, or oppose immigration of any kind. These organisations draw strength from the apparent indifference or ineffectiveness of public authorities on immigration questions. That is why it is important for political leaders to tackle issues arising from increased immigration openly and honestly.

This essay does not cover in any detail the challenge of integrating new immigrants, nor does it attempt to tackle the rhetorical arguments about 'multiculturalism' which have sprung up in countries such as Britain, France and Germany. Governments do need to give priority to finding the best ways to form more harmonious societies from different communities, but the EU's direct role in helping member-states to confront this difficult challenge is limited.

What is to be done?

The fact of migration is not in itself the problem. It is the illegality and the ineffective systems of governance and control that accompany it – which exist across much of Europe – that create the real difficulties. The most pertinent questions are: what immigration controls does Europe have in place? How are they to be enforced? Do they command the confidence of communities? And can they promote the balanced society with liberal values which we rightly desire?

This essay attempts to address some of these questions. Chapter two discusses the criteria used to permit migrants into Europe. Here, governments need to agree more restrictive rules for allowing long-term migrants to bring their families to Europe and get serious about fixing the EU's broken asylum system, an essential complement to any common border policy. More needs to be done to create a genuine European labour market and to work with emerging economies on identifying supply and demand for skilled labour and mutual recognition of qualifications and diplomas.

Chapter three focuses on measures necessary to consolidate the Schengen border now and in the longer term. The most important steps will be to create far stronger relationships with neighbouring countries immediately outside the EU, and to have a more dynamic system of support for those member-states which maintain Schengen's land and sea borders. If a border state consistently fails to protect the external border, it should be expelled from the Schengen area.

Migration issues play an increasingly central role in the EU's foreign policy and vice versa. Chapter four maintains that migration, along with police and security co-operation, trade and aid, should be integrated more effectively into the EU's foreign policy machinery. One priority should be to use the EU's collective weight to achieve an effective and enforceable range of repatriation (also known as readmissions) agreements to assist in the return of illegal entrants to their home countries. Another is to press for reform of the UN Refugee Convention and the workings of the European Court of Human Rights.

The penultimate chapter outlines how immigration and security policy might be more closely aligned between the Schengen area and the common travel area operated by Britain and Ireland, with a view to one day ending the distinction between the two altogether. Freedom of movement within Europe, which is required by membership of the EU, makes it absurd and impractical for any modern European country to claim that it can, on its own, successfully control migration at its own borders. Those in the UK who seem to believe that Britain's island geography alone offers insulation from the problems of migration are wrong. In modern times the 'white cliffs of Dover' are no defence. Nor is British withdrawal from the EU – and the obligation to uphold free movement – the answer. Rather, the best defence for the UK is to commit to EU efforts to create a coherent migration policy and to help Schengen countries strengthen controls at their shared external borders.

Immigration is now the biggest area of public concern in Europe after the economy and has to be addressed in very practical ways by the leaderships of governments and political parties across the continent. During my time as UK Home Secretary, I tried to identify these trends and encourage closer collaboration on migration issues. During the UK's 2005 EU presidency, in a speech to the European Parliament, I warned:

> The European Union does not appear to give sufficient priority to offering practical solutions which make a difference to some of the issues of greatest concern [to voters]. I refer specifically to serious and organised crime, including drug-dealing and people trafficking; to illegal migration and false seeking of asylum; and to countering terrorism whatever its origins. These issues top the political agenda across Europe, and they are often the most potent in mobilising political activity, often in a reactionary and even dangerous way. They can even be used by poisonous demagogues to undermine the very democracy which has in some cases so recently been created.

> It is not difficult to see why these threats motivate anger amongst our peoples. I therefore believe that the whole European Union needs to give real priority to tackling these issues in a practical and systematic way.

[3] *Established in 2005, Frontex is the EU agency with responsibility for co-ordinating multi-national missions of European border guards in the Schengen area when national authorities cannot cope.*

There has been some good progress since then, for example in the establishment and effective operation of Frontex in co-ordinating missions in troubled areas along the Schengen border.[3] But the work done since then in Brussels and elsewhere has failed to get ahead of events on the ground. Therefore, it was no surprise when EU leaders were forced to meet in June 2011 to debate a so-called crisis in the Schengen area. At the summit, they declared themselves ready to take action

to shore up public confidence and modernise the workings of the passport-free travel zone. However, some of the proposed solutions that the European Commission and others have put forward since then do not go far enough. This essay suggests a practical and determined approach.

2 How Europe can manage legal migration better

Hundreds of thousands of people want to migrate to Europe to seek a better life for themselves and their families. They hope that life within the borders of the EU, even at a standard of living well below the average, will represent a significant improvement in their own family's circumstances. Disparities in global income and living standards drive migration and the EU boasts an enviable quality of life. However, the claim that immigration is rising uncontrollably is wrong. The number of migrants coming into Europe has in fact decreased in recent years and immigrants form a very small proportion of the 500 million inhabitants of the 27 EU member-states. In 2008 about 3.8 million people immigrated legally into one of the EU member-states, from outside the Union, and at least 2.3 million emigrants are reported to have emigrated out of the Union. Compared with 2007, immigration to EU member-states is estimated to have decreased by 6 per cent and emigration to have increased by 13 per cent.[4] There is no sign of a dramatic reversal of this trend, linked as it is to Europe's current economic circumstances.

[4] 'Immigration to EU member-states down by 6 per cent and emigration up by 13 per cent in 2008'. Eurostat, January 2011, http://epp.ec.eurostat.eu.

In reality, the key issue is not numbers but ensuring that migration is managed in a fair and sustainable way, that is to say on the basis of criteria which are transparent and accepted and enforced rigorously by the relevant public authorities. At the moment, millions of Europeans believe that the entry criteria used by immigration officials are confused, or even dishonest, and that they are being regularly evaded in any case. It is essential to agree a common set of EU criteria to assess potential immigrants to the Union and to demonstrate that these criteria are being applied fairly

and consistently. Many governments are a long way from winning the confidence of their citizens on this issue.

There are four main legitimate reasons why people migrate into the EU: to work, to study, to unite with family members, and to seek political asylum after having escaped oppression. The right to migrate to work or study is a reality of our globalised economy. In the longer term, numbers will increase rather than decrease, given Europe's demographic trends. Family reunification is a natural extension of this, as the right to family life has long been established in international law as a fundamental human right. The right to flee oppression is upheld in international agreements and all EU states accept that they have a moral and legal duty to offer asylum to those who need it. This will continue. Each of these forms of migration needs a clear set of rules, transparently and correctly administered right across the EU.

★ Migration to work

Estimates vary widely about the scale of labour migration needed by the EU. In May 2010, a reflection group led by Felipe Gonzalez, a former Spanish prime minister, estimated that the European labour force would, without immigration, decline by 68 million people by 2050. The Gonzalez report suggested that this gap would need to be filled by the immigration of about 100 million people, including dependents. These figures are contested but future demographic trends are clear. Across Europe ageing populations and persistently low birth rates will transform labour markets, test health care systems and social services, and put greater financial pressure upon those in work.

EU countries have varying policy approaches to addressing these issues, including immigration, and there is certainly no common unified European labour market. There are very many practical and bureaucratic barriers which prevent workers of all origins from moving between European countries to new jobs. But EU countries

should communicate clearly to their electorates that their preference is to fill labour shortages from within the Union's current population, as part of a concerted strategy to calm public anxiety over immigration. That said, European skills gaps cannot always be filled by Europeans. To stay ahead in what is fast becoming a global competition for talent, the EU needs to move towards a single labour market for highly skilled foreign workers.

In 2009 the EU introduced a voluntary 'blue card' system, to encourage workers with certain qualifications to come to the EU by offering them better mobility between the member-states. There are also proposals for a directive that would make it easier for employees of multinational corporations – so-called intra-corporate transferees – to work in different parts of the EU without being unduly fettered by migration restrictions. Similarly, a directive has been proposed to improve the conditions of entry and residence of an estimated 100,000 non-European seasonal workers who work in the EU each year. Such basic legislation is welcome and should be implemented fully. But EU leaders need to go further by making a common assessment of Europe's foreign labour needs when they meet to discuss the EU's 2020 strategy for growth and jobs. Currently, the strategy does not address migration issues at all. Such an assessment could form the basis of future schemes to entice talented workers to the EU.

EU governments also need stronger links with non-EU countries to help find foreign workers with the relevant skills, while helping to improve education and training in these countries. EU schemes for reducing illegal immigration already exist in the modest form of 'mobility partnerships' with countries such as Georgia, Cape Verde and Moldova. The basic idea is to get foreign governments to co-operate more closely with EU countries on preventing illegal immigration, in return for the more generous allocation of work visas to EU member-states. These partnerships should be expanded to cover areas like educational reform, mutual recognition of qualifications and diplomas, and better targeting of development aid to fund IT skills and language training.

★ Migration to study

In 2004 EU governments agreed on a directive that sets the conditions under which third-country nationals are admitted to the Union for the purposes of studies, pupil exchange, unremunerated training or voluntary service.[5] This law permits students to move from one member-state to another in order to pursue their studies, provided the additional course of study is adequately related to the studies already completed. Britain, which does not apply the EU directive, has recently taken measures to curb abuses in its own system for admitting foreign students. But other EU governments have had a more positive experience and see little need for substantial changes to the directive, although minor alterations may be proposed after the Commission completes a review of how the directive is applied in practice.

★ Migration for family reunification

After a period of legal residence, immigrants have the right to be joined by members of their family. About a third of all authorised immigration to the EU is for this purpose The area is legally complicated, as there are many difficult criteria relating to the definitions of 'family', and is the subject of much populist and dishonest propaganda. The main EU law in this area is the 2003 directive on the right to family reunification. From the outset the directive was controversial, upsetting both pro- and anti-immigration lobbies alike. MEPs have challenged it in the European Court of Justice, on human rights grounds.

The directive sets the criteria by which family members can join migrants in the EU. It grants the right for the sponsor's spouse and the couple's unmarried children, including adopted children, to enter

the member-state concerned, provided that the children are below the legal age of majority in the member-state concerned.[6] The directive is simply a set of minimum standards: governments are free to be more generous in granting family reunification, if they choose. For example, individual member-states may allow family reunification of parents and grandparents, unmarried children above the age of majority and unmarried partners. In practice, member-states have different ideas about what constitutes a 'family', and this, coupled with the flexibility offered by the directive itself, means that EU policy on family reunification is far from robust.

For instance, the definition of a 'spouse' varies across the EU (some countries will not recognise spouses they consider too young), as does marital status (some countries give rights to divorced spouses or even to those merely 'in an emotional relationship'), and length of marriage (some will accept spouses only after several years of marriage). Needless to say, the approach to recognising civil partnerships varies as do minimum language requirements for new arrivals, and the procedures for children, step-children and dependent parents.

Moreover, it is often extremely difficult to come to clear decisions when dealing with family reunification cases. Account must be taken of the case law on the 'right to family life' established under the European Convention on Human Rights, which can provide the opportunity for legal challenge. This uncertainty provides a key platform for far-right political attacks. The Dutch PVV, in their agreement to support the Netherlands' governing coalition, committed the government to seek numerous changes to the directive. These include a new clause that raises the minimum age of a spouse from 21 to 24 years, admitting only one partner per ten years (this relates to divorce and remarrying), requiring the sponsor to provide a financial warranty before his or her family members are admitted, ceasing to recognise cousins as 'spouses', and introducing a test that the ties with the Netherlands prevail over ties with other countries.

The EU needs to bring clarity into the current arrangements, to avoid giving the far-right a powerful political weapon. In late 2011, the Commission is due to publish a green paper to canvass possible amendments to the directive, following a review of member-state implementation of these rules completed in late 2008. (The lag time between the completion of the review and the appearance of the green paper shows the extreme political sensitivity of this matter.) Governments should recast the current directive as a regulation (a more specific form of EU legislation that applies directly in member-states), and provide a tighter definition of 'family' for immigration purposes, including the conditions under which children and dependents will be accepted, and a higher minimum age for spouses. There is no merit in differentiated policies between member-states on this matter. The UK, Ireland and Denmark should also be able to opt in, given that these countries have policies on family reunification that are similarly restrictive.

★ Seeking political asylum or fleeing from oppression

Asylum, although a highly emotive issue, is in reality a small part of overall immigration. At the beginning of 2011, the number of refugees of concern to the UN Refugee Agency (UNHCR) was 10.4 million worldwide, down slightly from a year earlier. EU countries offer asylum to about 2.5 per cent of these, with ten West European countries accepting the vast majority.[7] Over the last 20 years, the overall numbers of asylum-seekers applying for protection in the EU has fallen sharply. In 1992, there were 670,000 asylum applications in the EU-15. By 2001, this had fallen to 424,500. The number declined again to some 257,800 asylum applications in the (now enlarged) EU in 2010. For example, Britain in 2010 was the sixth largest recipient of new asylum-seekers in the EU with 22,100 claims. This was the lowest level since 1989 and represents a 28 per cent drop compared with 2009.

[7] Of the EU member-states, Belgium, Britain, France, Germany the Netherlands and, Sweden accept the highest numbers of asylum-seekers. Austria, Cyprus, Greece and Malta have significant numbers in proportion to their overall population.

Asylum-seekers range from those desperately seeking refuge from appalling circumstances in their home country, to economic migrants who cannot obtain a legal residency, to those engaged in significant criminality, perhaps employing people-smugglers – now a burgeoning industry on the fringes of Europe – to enter the EU illegally.

This variation of circumstances explains why refugees are often perceived as unwelcome guests in some European countries. Just a small proportion of those claiming asylum in the EU end up being accepted as bona fide refugees: in 2009, only 29 per cent of applicants received protection at the first attempt. But claimants must be housed and looked after at public expense, often for long periods, while their stories are being checked. Those migrants not granted asylum have a strong motive to appeal against such decisions before the courts, precipitating a costly and time-consuming process. Even then it is often very difficult to return the failed asylum claimant to his or her country of origin. Many are eventually allowed to stay.

For the asylum-seekers themselves, the claims process is arduous and debilitating. Very many are effectively in limbo as they wait for their case to be reviewed. For example, following a process I initiated as Home Secretary, the UK finally announced in May 2011 that it had finally dealt with a dreadful legacy of asylum claims made before 2005 which were left unexamined for years, often in roomfuls of files which were never opened. (Sadly, a new backlog of unresolved claims made since then has built up in the meantime.) While waiting for their claims to be heard, the asylum-seeker is usually unable to work legally, has few rights and may even be detained. Asylum-seekers are easily labeled 'scroungers', as they often do not have the right to work and have difficulty finding somewhere to live.

The very concept of asylum has changed greatly since the Geneva Convention was adopted more than six decades ago, in the

[8] *The UN Convention relating to the status of refugees, agreed in 1951 and greatly expanded in scope in 1967 under the so-called New York protocol.*

aftermath of the Second World War.[8] Originally it served to establish a universally respected right to flee oppression and tyranny. Over time, however, it has become difficult to differentiate between those seeking refuge from persecution in their home country and people who are simply economically destitute or who have fallen prey to people smugglers. The main solution is to take rapid decisions on each individual asylum claim and to give immediate effect to the decisions, removing to the country of origin all unsuccessful claimants. When this is not done (and in general it is not, because many national asylum systems work too slowly and ineffectively), the public can lose faith in the asylum process altogether, with serious consequences.

Since its Amsterdam treaty of 1999, the EU has been trying to establish an effective common asylum system, which would improve decision-making and the speed at which decisions are made. The EU's so-called Dublin regulation is intended to "determine rapidly the member-state responsible for an asylum claim" and provides for the transfer of an asylum-seeker to that member-state. Usually, the responsible country is the first member-state through which the asylum-seeker entered the EU. Several European directives set out minimum standards for how asylum claims should be assessed and how asylum-seekers should be treated, including in cases where their claim is rejected and they have to be returned to their country of origin. In May 2010, governments agreed to open a European Asylum Support Office, which is designed to improve the working of asylum systems throughout the EU.

The fact that EU countries treat asylum applications differently erodes mutual trust between them. The member-states need to agree a common set of procedural and substantive rights, which could be relied on across the EU. These need to include:

★ fair treatment of asylum-seekers;

★ proper and rapid assessment of asylum claims;

★ clear procedures for dealing with ambiguous claims where it may not be clear whether protection should be granted (such cases often provoke lengthy, expensive legal proceedings);

★ convergence of rights enjoyed by those granted refugee status (in order to limit 'asylum shopping' between countries);

★ improved efficiency of the 'Dublin system' for allocating national responsibility for claims;

★ new means to address exceptional situations such as refugee crises; and

★ the further development of the EU's common database of asylum applicants (known as EURODAC) in order to prevent fraud.

Across Europe, legal challenges involving asylum standards are increasingly common. A series of judicial precedents is developing, based on the rulings of the European Court of Human Rights. The Court's interpretations are reducing divergences between different countries, and changing national practices and procedures. This 'case law' could well provide a good basis for the essential elements of a common European asylum system.

Partly because differences among national policies are narrowing, EU governments have agreed to complete proposals for a common European asylum system by 2012. These will then need to be turned into legislation, which will modify the original 2003 directives. For the changes to make a real difference, the Commission will also need to be more willing to take member-states to the EU's Court of Justice if they fail to implement the new rules. The Commission needs to enforce rigorously the rules and standards of a common asylum regime. Legally, the Commission already has the power to

do so, but it has been reluctant to use it, given the political sensitivity of refugee policy.

Currently, there are efforts afoot to reform the Dublin regulation to allow more 'burden sharing' for those countries which cannot deal with a large increase in asylum claims. This issue has divided the EU's northern and southern member-states for the past 20 years. The southern members are most exposed to spontaneous arrivals by land and sea and hence feel unfairly disadvantaged by the first-country-of-arrival rule laid down by the Dublin regulation. Northern members counter that they grant asylum to greater numbers of claimants and have more generous systems for receiving and settling refugees. For the northerners, the Dublin rule merely ensures that southerners keep to their responsibilities instead of simply allowing asylum-seekers to pass through their territory. Some observers have suggested doing away with the Dublin system altogether and moving instead to a system where asylum-seekers apply first to an international body, say the Council of Europe or an EU agency, and not to an individual country. In this scenario, no ultimate destination could be specified by the asylum-seeker and bona fide refugees would be internationally distributed on a quota basis.

But such a radical idea could only work after a European common asylum system had been functioning well for some time, and sufficient levels of trust built up between EU countries. Whatever the final shape of Dublin regulation reform, it is imperative that clear legal responsibility for an asylum-seeker should remain with one government. Voluntary arrangements could be made for other EU countries to take more asylum-seekers, as Sweden has done in the case of Iraqi refugees. And ad hoc arrangements could be co-ordinated by the European Commission in extraordinary circumstances.

3   Securing the Schengen border

The EU's external borders need to be sustainable in the long term, and properly enforced so that they are only crossed by agreement and in accordance with the law. This is not the case at the moment, even if the problem of illegal immigration is routinely exaggerated in certain quarters. If the EU is to achieve proper border security, three key elements need to be in place. First, the EU needs to decide how far it will enlarge in the medium term; second, the EU needs proper agreements with its immediate neighbours on issues related to migration and border management; and third, it must be clear which body has responsibility for effective enforcement.

The boundaries of the existing 27 member-states are mostly set.[9] However there is constant discussion, and therefore uncertainty, about which countries might join the EU in the future. For example, the EU's approach to Turkey's application is uncertain and faltering. Potential EU membership is often brandished as a 'carrot' to induce changes in behaviour by countries which are not currently members but might one day wish to be.

[9] *Some anomalies do exist, such as the unratified frontier between Estonia and Russia and some issues concerning the Romania-Ukraine border in the Black Sea.*

The issues around EU enlargement are varied and complex and a thorough consideration of these is beyond the scope of this publication. However, from the point of view of migration, the EU should make its ambitions for enlargement clear and transparent. The explicit priority should be to complete the process of enlargement to existing candidates, rather than contemplating further expansion. This would mean:

★ Croatia acceding to full EU membership in 2013;

★ the countries of the Western Balkans (Former Yugoslav Republic of Macedonia, Serbia, Montenegro, Kosovo, Bosnia-Herzegovina and Albania) completing their accession procedures as soon as possible, as was agreed in principle in 2003, nearly ten years ago. Each of these outstanding membership applications requires the resolution of difficult practical and political questions, perhaps most of all the international status of Kosovo;

★ re-starting of Turkey's accession process: although the accession cannot be driven by border security issues alone, close co-operation with the Turkish authorities on border control, migration and security issues would be a huge boon to the EU. The candidate country is located in the most vulnerable region for drug smuggling and illegal immigration into the EU. A crucial EU-Turkey accord on the repatriation of illegal immigrants continues to be held up due to disagreements over visa access to the Schengen area for Turkish citizens. Such blockages would be far less likely to occur if Turkey's accession talks were back on track.

These three steps would consolidate the borders of the EU as all the countries involved would be obliged to implement and apply EU rules on border controls, immigration and asylum. In addition, the EU should welcome into membership any of the three non-member-states which are already Schengen and European Economic Area members (Iceland, Norway and Switzerland) if they wish to join the EU. In the case of Iceland this process began in 2010.

The EU has not decided to open accession negotiations with any other country. The EU should make it clear that no new negotiations will be opened for the foreseeable future, and that it would prefer to establish strong co-operation agreements, including in immigration- and security-related policy areas with neighbouring countries.

Relations with the EU's immediate neighbours

Strong relationships with the EU's immediate neighbours especially those of North Africa, have not been high on the EU's priority list. This is changing both because of revolutions in the Arab world, and because strong and positive relations between the EU and its southern neighbours are crucial to secure a vast European sea border.

The main channels of unauthorised immigration into the EU are from West Africa to Spain, Libya to Malta and Italy, and from Turkey to Greece. Most of the illegal migrants to the EU are not citizens of these neighbouring countries, which are simply transit zones for would-be immigrants coming from farther afield, often abetted by criminal organisations. According to Frontex, more than 38,000 undocumented persons were detected crossing the Greek-Turkish land border between June 2010 and January 2011, a favourite doorway into the EU for people smugglers and human traffickers. The largest group of these migrants (44 per cent) came from Afghanistan, while the other numerous nationalities were Algerian (16 per cent), Pakistani (9 per cent), Somali (6 per cent) and Iraqi (4 per cent).

Few migrants to the EU are from countries on the immediate borders of the Union. A key indicator of this fact is that, other than West Balkan countries, only Turkish and Russian nationals are amongst the top 40 nationalities (with over 100 applications per month) that apply for asylum in the EU. Governments have a strong shared interest in working closely with neighbours to prevent migrants from using their territories to enter the EU. A 'good neighbour' EU strategy would seek to join together trade and aid, migration and visas, and defence and foreign relations into a coherent and consistent approach to neighbour countries.

On its eastern border the EU should engage in a comprehensive dialogue with Russia on migration, visas, return of illegal immigrants and police and judicial co-operation. Closer co-operation is vital to

tackle illegal immigration and organised crime. Simultaneously, the EU should establish better relations with Ukraine and Belarus on migration and security issues, including co-operation to combat criminal organisations. Its efforts in Ukraine have been moderately successful: the EU has funded security improvements at Ukraine's borders and signed a readmission agreement with the country. As a result, the number of illegal migrants from Ukraine has been steadily decreasing. The EU has sought a readmission agreement with Belarus too, but the Minsk government blocks closer co-operation on migration amidst generally poor relations with the EU. In contrast, the government of Moldova has participated willingly and actively in schemes aimed at expanding legal travel while curbing illegal migration and improving border security. More work remains to curb organised crime syndicates which funnel migrants into the EU, but on current trends Moldova may well qualify within a few years for visa-free access to the EU.

Before the Arab spring, the EU lacked a clear and effective strategy towards North Africa, despite its obvious importance to the Union in many policy areas, including secure borders, migration, organised crime and terrorism. As the recent uprisings demonstrate, long-term stability can only be sustained on the basis of respect for fundamental rights, the rule of law and significant economic development. The EU must offer its southern neighbours a long-term strategic partnership to promote these goals. For North Africa – Morocco, Algeria, Tunisia, Libya and Egypt – such an EU strategy must combine policies on trade, aid, migration, returns and visas. The Common Agricultural Policy must be reformed to open European markets to North African and Middle East producers. The EU's development aid in the region should no longer be considered independent of the other aspects of our relationship.[10] The EU's overall goal must be to make the countries of North Africa more democratic, stable and prosperous, for the region itself and also to give its people fewer reasons to want to emigrate to the EU.

[10] See Charles Grant, 'A new neighbourhood policy for the EU', CER policy brief, March 2011.

Responsibility for enforcing the border

The formal responsibility for enforcing the Schengen border lies with the member-states. If an individual border state fails at this task, then the whole EU is vulnerable. That governments take this vulnerability seriously was clearly illustrated in December 2010: France and the Netherlands asked the EU to tighten controls on the frontier with the Western Balkans, because they were concerned about the implications of visa-free travel from that region. In 2010, Greece failed to enforce its external border with Turkey effectively, resulting in a surge in illegal entrants to the passport-free zone. The resulting 'security checks' enforced on travellers from Greece by other member-states were effectively a suspension of the Schengen area, though the event received less public attention than the Franco-Italian row over Tunisian migrants less than a year later.

Countries that have a long sea-border facing south – Spain, Italy, Malta and Greece – have the most difficult border management tasks. A good working partnership with the neighbouring states can make a crucial difference. For example, since 2005 close co-operation between Spain, Senegal and Mauritania has reduced the annual number of illegal migrants to the Canary Islands from 30,000 to a few hundred. Similarly, partnership between Italy and Libya between 2007 and 2010 reduced the number of illegal migrants from 31,000 to around a thousand.

The EU can assist in a variety of ways. It can offer the services of Frontex, visa facilitation or financial assistance, if necessary. Special EU funds to help member-states cope with migration pressures are a relatively new development and are under-resourced. At a DemosEUROPA seminar in Warsaw in January 2011, Ilkka Laitinen, director of Frontex, made an argument for effective co-operation between countries on both sides of the Schengen border: "The European Union needs smart borders, not Fortress Europe." Full border security cannot be achieved without external partnerships, which ideally involve practical co-operation

at the border, joint patrol operations and technical measures, like data-sharing and surveillance of people smuggling rings.

Co-operation of this type can be controversial for it requires the politicians to strike agreements with foreign colleagues in very sensitive areas such as intelligence-sharing and deportation. But there are few better ways to help secure the EU's borders. By contrast, the Greek government's opposition to co-operation between the EU and Turkey has made it more difficult to stop the flow of illegal migrants across the Greek-Turkish land and sea borders. One example of good neighbour relations is co-operation to 'export' the EU border to the airport in the country of departure. This means checking every passenger's passport and visa before they board the plane, in order to ensure that they have the legal authority to enter the EU at their destination. The development of biometric passports and identity cards can dramatically help such controls and also make them more efficient and less time-consuming for the traveller and the airline. The successful operation of such arrangements requires formal agreements with both the government of the country of departure and the relevant airlines. The EU should demonstrate its determination to have and enforce such arrangements as a condition for better relations with key countries.

EU action to strengthen the border

Schengen countries have their borders inspected once every five years by teams of officials from the EU's Council of Ministers and other member-states. In November 2010, the Commission announced measures to strengthen this process, including unannounced visits if necessary. EU member-states should continue to make available more resources to Schengen border states under pressure, including support for training of staff, better administration of documentation, improved technical controls, enhanced intelligence collection techniques and, where necessary, military support, including sea and air patrols. Airports in the Schengen area need modern, high-quality equipment. Frontex

should be free to audit the EU's external border independently and stipulate what effective technical support is required to raise standards to the highest possible level.

Frontex has already achieved a great deal since it was established in 2005. It currently has missions deployed at several key points in the Mediterranean. The EU has already decided to increase its operational effectiveness by giving the agency more resources, and greater powers to allow it to lease or own equipment and work more easily with third countries. Governments should now allow it to carry out surveillance using new technologies and to incorporate the use of military helicopters and patrol boats into its missions.

In 2008 the Commission proposed a 'European border surveillance system' (EUROSUR) which would rely partly on the use of satellite technology to monitor the border and allow member-states to share operational information with each other and with Frontex. The Schengen area governments should support this scheme. The EU currently has a designated 'border fund' from which member-states can draw money to provide training for border guards, build border facilities and purchase equipment. But this fund – even when added to similar pots of money earmarked for supporting the care of refugees, return of illegal entrants and integration of new arrivals – accounts for less than 1 per cent of overall EU spending, at a time when strengthened borders are essential for the credibility of the EU.

A significant increase in such funds is the best way to address the demand for burden sharing that is often made by member-states with vulnerable land and sea borders. These countries may bear the high cost of looking after illegal migrants who have arrived in their country and, under current EU rules on asylum, cannot travel on to other member-states. Some financial support in relation to these costs may also be appropriate. This could help address concerns that Greek asylum standards are so far below those of other European countries that Greece can no longer remain part of the EU's common asylum system. According to a judgement of the European Court of

Human Rights in January 2011, some asylum-seekers in Greece have received "inhuman or degrading treatment" at the hands of authorities there.

The call for a European border guard

Greece remains the most acute challenge for the Schengen area, with its hugely challenging frontier and poor record of border management and immigration control. In October 2010, Frontex had to lead a 'rapid border intervention team' (RABIT) to tackle the major problems around a 100 kilometre stretch of the Evros river, the most sensitive part of the Greek-Turkish border. The RABIT operation comprised approximately 200 guest officers and interpreters from 24 EU member-states, operating under an EU flag but under the command and control of the Greek authorities. Their main role was to patrol the border and collect information about the people-smuggling networks which organise the illegal flows of migrants in that region. Over a period of three months, the operation led to a 60 per cent reduction in the number of people using the services of such criminal gangs to cross the border illegally.

However, Frontex is a modestly-sized EU agency with limited resources and a mandate that is restricted to assisting national border services at their own request. It cannot tackle the continuing challenge to secure Greece's frontiers over the longer term. This is one reason why some have urged the establishment of a fully-fledged EU border guard. Yet, despite its superficial attractions, this vague idea should be resisted. It is a slogan and not a policy. The genuine security of the Schengen border depends upon effective control in every EU member-state, the existence of proper support structures between member-states, and effective practical partnerships between the Union's institutions and the relevant authorities on the ground. An EU border force could never remove the need for real national commitment to border control. Indeed, there is a danger that the concept of such a force might lead local police and security

organisations to abdicate their own responsibilities for the management of frontiers. Existing tools like Frontex can certainly be strengthened. But the EU should conduct a special review that confronts the issue of whether the Greek authorities can fulfil their responsibilities under the Schengen agreement. If such a review finds that Greece does not satisfy the criteria now being applied to would-be Schengen entrants Bulgaria and Romania, consideration should be given to expelling Greece from the passport-free zone until it is in a position to carry out its responsibilities properly.

Rethinking the Schengen rulebook

Under the Schengen agreement, governments can establish temporary internal border controls with other member-states, to safeguard public order and national security. This procedure has been used only sparingly, for example during the 2006 football World Cup in Germany, and then only for short periods. But in May 2011, political controversy broke out over the Schengen rulebook when France re-imposed internal border controls with Italy following the arrival in Southern Europe of several thousand Tunisian migrants. The Italian interior ministry had encouraged the unwanted Tunisians to move to France by issuing them with permits to travel throughout the Schengen area, and this prompted the French authorities to re-impose border controls.

Neither country was found by the European Commission to have broken the Schengen 'border code' during this incident. But the surrounding political controversy caused EU leaders to agree to alter Schengen's rules to make it easier to re-introduce national frontiers. At the time of writing, the precise details of how the border code will be revised remain unclear, but the new procedures will be used only as a last resort, while other emergency measures, such as the deployment of Frontex, attempt to deal with the problem. A key point will be how member-states decide on a collective decision to re-impose border checks on travellers from a fellow member-state.

Shortly after the Franco-Italian confrontation, the Danish government announced it would re-impose customs controls at its border with Sweden and Germany. The decision by the then Liberal-Conservative coalition government was a purely political one, in response to the demands of the right-wing nationalist Danish People's Party. It had nothing to do with any substantive problems of illegal migration. The EU Commissioner for Home Affairs, Cecilia Malmström, took a strong line with the Danes over the re-introduced checks and Denmark's new Social Democratic-led government reversed the decision as soon as it took office.

The main conclusion to be drawn from these often confusing developments is that, in the current political climate, weaknesses in the enforcement of controls at the Schengen border inevitably lead to challenges to free movement across the EU's internal borders. However, this does not automatically herald the end of passport-port free travel. Prior to acceding to Schengen, the Nordic passport union permitted random controls on about 1.5 per cent of those travelling across interior borders, mainly to crack down on crime. The UK and Ireland have also introduced some travel restrictions in their separate common travel area in recent years, in response to crime and illegal immigration.

In the Schengen area, national immigration authorities should be permitted, subject to a majority vote of member-states, to introduce random security checks on travellers from those parts of the passport-free zone where controls are found wanting. That would formalise what has in practice happened with regard to Greece. However, it is clear that unless robust reforms are carried out in the longer term at the external frontier, the EU will find it increasingly difficult to maintain full free movement of people within its borders.

4   Migration and EU foreign policy

The flow of people between any two countries is self-evidently one of the central aspects of their relationship. This is all the more true if such movement causes social tensions or affects economic development in one or both of them. However, the EU and its individual member-states rarely integrate foreign and defence policy, trade and aid, and migration and internal security policies. The result is that policy objectives are frequently contradictory and are often hampered by bureaucratic in-fighting between different players competing for influence and resources. One reason for this is that each policy area represents a different discipline, siloed in a separate government department or European institution, with its own set of rules, professional ethics, personnel and traditions. These give little consideration to the big picture or the linkages between policy areas.

Some think that conflict between bureaucracies is a regrettable but perpetual reality of government. Others argue that it is wrong to tailor, say, development policy, to support the priorities of immigration control or security because this introduces elements of conditionality into what should be a quasi-altruistic exercise. However, the EU can only properly address issues of border control and immigration through co-operation with outside partners, often developing countries. Given the importance of effective migration controls to the maintenance of free movement within the Union, the EU's foreign policy needs to give greater emphasis to repatriation (also called 'readmission') agreements; police co-operation against people-trafficking; trade and aid as tools to help control migration levels; and better care for refugees in other parts of the world.

Return of illegal immigrants

All EU governments face great difficulty in returning illegal migrants to their country of origin. Many people attempt the difficult and hazardous journey to the EU specifically because they feel reasonably confident that they have a good chance of staying even if they fail to obtain the legal right to stay or asylum status. Deportation orders face constant legal challenges and can be resisted by the relevant foreign authorities. Many migrants have succeeded in attaining some form of permanent legal residence by simply holding on and gambling on the ineffectiveness of the system. This undermines the credibility of any migration control policy, weakens public confidence in governments' ability to control the border and reduces tolerance of those immigrants who arrive legitimately.

There are of course some good reasons to delay the return of an illegal entrant. There may be health concerns or worries about the treatment that a returnee may receive in a particular country (though by rights these fears should have been taken into account during an application for asylum). Some migrants destroy their identity papers to prevent discovery of their country of origin, making it impossible to identify a 'home' to send them back to. Moreover, foreign countries often either ignore requests to take back their nationals or refuse co-operation on the grounds that the issue is simply not serious enough. One big offender in this respect is China.

The EU should exert diplomatic pressure on such countries by co-ordinating its foreign policy to ensure that closer relations, including in the area of trade, depend partly on the establishment of proper repatriation arrangements. The EU has for many years attempted to negotiate such agreements on behalf of its member-states but often received little support from them. Repatriation arrangements with third countries require the putting in place of an agreed procedure and set of conditions for sending illegal entrants home. And while the EU has had those in

the form of the 'returns' directive since 2008, the Commission believes that this law has not yet been implemented properly.[11]

To date, the EU has reached readmission agreements in the Western Balkans with Albania (2006), Macedonia (2008), Bosnia and Herzegovina (2008), Montenegro (2008) and Serbia (2008), and on the eastern border with Russia (2007), Ukraine (2008), Moldova (2008) and Georgia (2011). Agreements also exist with Macao (2004), Sri Lanka (2005) and Pakistan (2010). Negotiations are under way with Morocco, Turkey and Cape Verde. No agreements have yet been concluded with North African countries.

Each agreement raises concerns about human rights and how the different member-states go about ensuring that illegal entrants return home. Furthermore, some EU countries do not apply the agreements fully. The Commission intends to make further proposals in 2012, for example to promote schemes that encourage migrants to return home voluntarily, to create a European wide expulsion order so that illegal entrants do not travel on to another member-state, and to legislate for the situations when repatriations cannot be carried out for health or other reasons.

EU member-states should fully implement those repatriation agreements already negotiated, and then enact a coherent European returns policy. The Commission should seek the authority to negotiate agreements with those countries which immediately border the EU or which are the greatest sources of illegal immigration, such as Nigeria and China.

One important element of repatriation agreements is the means by which a judgement is made about the safety of those who are repatriated, for example if the destination is a conflict zone. A common EU returns policy and repatriation agreements would be more effective if member-states agreed a common list of 'safe' and

'unsafe' regions of the world. The EU has tried and for years failed to create such a list because national perspectives on what constitutes 'safe' differ. The member-states need to try harder. Without such an agreement it will be difficult to create a working European asylum system. All EU countries share broadly liberal democratic values, and are bound by the European Convention on Human Rights, so should be able to come to a common view on which third countries observe human rights and which ones do not.

The fight against human trafficking

A major, often underestimated, factor driving much illegal immigration is profit and criminality. Human trafficking and people smuggling are evil, pernicious and highly lucrative international crimes which often involve bonded servitude and modern slavery. Frontex, for example, has been working to break up well-organised groups of human traffickers operating from West Africa, Afghanistan and the Middle East. When such groups are successfully destroyed, the most dangerous and abusive forms of illicit immigration in to Europe are significantly reduced. To do this, co-operation and intelligence-sharing between the police and security organisations in many countries is essential – yet it is often poor. For example, regulation to ensure proper government checks on employers who may benefit from undocumented labour is patchy across the EU.

Europol, the EU's police agency, already focuses some of its efforts on human trafficking and people smuggling (for example through its so-called Phoenix intelligence file on individual traffickers). But the EU's resources for such efforts need to be increased and national authorities need to agree on a priority set of groups to be targeted in joint police operations. Police and security forces should be permitted to use the EURODAC asylum database to compile intelligence for such operations. And the EU needs to agree on better co-operation with the countries outside the Union where much of

the trafficking and smuggling originates or transits: China, Turkey and Russia are key examples.

Linking migration policy with trade and aid

Migration itself plays a major role in economic development and social progress. In many countries the income returned home by citizens working abroad gives a significant boost to the national economy. But the downside of emigration is that talented citizens leave home to make their fortunes abroad, which can inhibit domestic economic development.

Some worthwhile projects, like those established by the International Organisation for Migration (IoM), seek to promote 'circular migration', ways of allowing workers to move between host and home country without the fear of being denied re-entry later on.[12] Such mutual partnerships provide work, income and skill development for the exporting country, whilst filling skills gaps in the receiving country. They reduce the drain of skills from developing countries.

12 The IoM, established in 1951, has 132 member-states and offices in over 100 countries. Its mission is to promote humane and orderly migration between states.

The impact of such managed migration programmes, valuable though they are, has so far been fairly small in comparison with the overall numbers of people migrating. Such an approach seems relevant for seasonal workers but it is not always clear where else it can be usefully employed, given income disparities between developed and developing countries. One idea is to integrate international development aid programmes with migration accords. Multi-entry visas could be made available to the nationals of a country that agrees to work with the EU on repatriation of its nationals, economic, judicial and public administrative reforms, and the promotion of human rights. The benefits of such schemes would largely accrue to the peoples of the participating countries. In recent years, the EU has started bringing all these elements together in the

form of 'mobility partnerships' with Georgia and Moldova (as well as Cape Verde), based on the voluntary participation of member-states willing to offer visas in exchange for more help from third countries on repatriation of illegal immigrants. But it has yet to find a way of making such agreements attractive or ambitious enough to interest any North African or Asian country, where the EU's real migration priorities lie.

Visa policy

Most countries want to be granted visa-free travel to the EU. They wish their citizens to travel easily to the EU to do business, see friends and family and sight-see. Though most of these travellers do not wish to migrate, EU countries are reluctant to offer visa-free travel because many illegal immigrants are those who have over-stayed a tourist visa without detection.

Since December 2010, Western Balkan countries have enjoyed visa-free access to the Schengen area, with only Kosovo remaining subject to restrictions. In return, the EU was able to require these countries to carry out dramatic improvements in their border control and visa systems. Specifically, partner countries are required to issue internationally recognisable travel documents and maintain effective administrative systems which can track the movements of people. By these means, the capacity of the West Balkan governments to control their borders has been greatly increased, and almost anarchic conditions have been transformed. This process is an instructive example in how EU visa policy can be a driver of greater overall security for the region as a whole, and it should be applied in Eastern Europe and North Africa as well.

The current framework of international law

Under the Lisbon treaty, the EU is set to sign up to the European Convention of Human Rights (ECHR) as its first non-state

signatory, a step which will ensure that the Union's own legal relationships fully comply with human rights protections under the Convention. For European nations, the two principal instruments of international law governing migration are the ECHR and the UN (or Geneva) Convention on the status of refugees, together with their associated case law and practices built up over 50 years. These agreements have understandably been treated as sacrosanct and immutable by governments, immigration and asylum lawyers, migrants and human rights organisations.

These legal frameworks were established in the immediate aftermath of the Second World War. The experience of totalitarian governments in Western Europe was a constant presence and required a response that would offer legal protections for the most vulnerable, including refugees attempting to return home after being displaced by conflict. Yet both these commendable and essential charters are beginning to show their age in a world that is very different from the one in which they were created, most notably because of the advent of mass air travel and the rise of international terrorism.

In the UK, many senior politicians and lawyers believe that Europe's human rights regime is facing a 'car crash' as the European Court of Human Rights accumulates power and authority beyond what was originally intended, while lacking popular legitimacy. In 2011 Britain's political establishment and media engaged in a fierce debate about whether the country should withdraw from the ECHR altogether, following a demand from the Strasbourg court that British prisoners be given the right to vote. The current British prime minister, David Cameron, has vowed to replace the Human Rights Act (a law guaranteeing that the ECHR applies to all policy-making) with a 'British Bill of Rights', an idea which remains more a public relations exercise than a serious policy proposal. But this is not just a Conservative obsession: outrage over perceived judicial silliness emanating from the continent has become a regular feature of British public life over the past decade.

The Council of Europe is an international organisation committed to the promotion of the rule of law and human rights. It is the political body through which the ECHR was established in 1959. The Council has taken seriously recent shifts of political opinion and seems to believe that they are representative of concerns amongst other signatories too.[13] On April 27th 2011, ministers in the Council of Europe called for the Strasbourg-based court to hear appeals against national governments only in 'the most exceptional circumstances', a move designed to limit judicial activism or 'government by judges'. Ministers in the Council also took steps to help reduce the workload of the over-burdened court, including the possibility of simplifying procedures to amend the convention itself.[14]

[13] *The Council of Europe has 47 member countries and was founded in 1949. It is not an EU body though the two have close links and over-lapping memberships.*

[14] *For full details, see: The Izmir Declaration on the future of the European Court of Human Rights, April 2011.*

The EU too should press for changes in the operation of the ECHR, in order to address the growing rift between public concerns and judicial activism. This may require the ECHR to review previous decisions, such as the 1996 Chahal judgement, which restricts the ability of member-states to deport individuals suspected of terrorist activities – an issue that has greatly increased in importance to the national governments in recent years. Without reform, the authority of the European Court of Human Rights will decline, and individual countries will seek methods like national bills of rights to evade its authority, or even withdraw completely.

Similarly, the UN Refugee Convention also needs amendments to recognise and codify new categories of those needing protection, such as homosexuals, and to clarify the circumstances in which asylum is appropriate in the modern era. The convention currently states that anyone is entitled to asylum if they are being persecuted on grounds of "race, religion, nationality, membership of a particular social group or political opinion". These are wide-ranging categories which, depending on your definition of persecution,

probably cover hundreds of millions, if not billions, of people living in a world where international communications means that more and more people are aware of their 'rights' and seek to take them up.

Many asylum-seekers in the EU are bona fide refugees fleeing from oppression or torture which would be recognised as persecution by anyone. But, gradually, case law is widening these definitions beyond the circumstances imagined in 1951, when the gulags were a contemporary reality and the concentration camps a recent memory. These abominations could reappear, even on the continent of Europe as we saw in the 1990s in former Yugoslavia. And the principal concern of the EU should be to offer refuge to those fleeing immediate danger.

Voters will be more likely to welcome refugees in their own countries if they are clear that the asylum is being reserved for those escaping extreme distress. As with the ECHR, the consequence of failing to produce clear guidelines is that the current international system for protecting human rights will increasingly fall into disrepute. A clear-eyed common EU position on amending the UN Refugee Convention would help to safeguard the right of asylum worldwide.

For completeness it is also worth addressing one other, probably less important, area of law where reform is needed. This is the UN Convention on the Law of the Sea. Piracy, and the sea transportation by people-traffickers of potentially illegal migrants, is an increasing reality. It sometimes leads to appalling tragedies, as we have seen around the Horn of Africa.

However, the current application of the Law of the Sea sometimes complicates law enforcement. For example, in 2008 the British Foreign Office apparently advised the Royal Navy not to detain pirates of certain nationalities as they might be able to claim asylum in Britain under the ECHR if their national laws included execution, or mutilation as a judicial punishment for crimes committed as pirates. Here again, a co-ordinated, EU-led review of the Law of the Sea would be beneficial.

5 Towards a single European travel area

The Schengen agreement, first signed in 1985 between five member-states, now extends to nearly all EU countries and also includes Iceland, Liechtenstein, Norway and Switzerland. Of the five EU members that are not in the Schengen area, it is expected that Bulgaria, Romania and Cyprus will join when they have fully satisfied the conditions of membership, while the UK and Ireland have no plans to become part of the passport-free zone.

Members of Schengen commit to strengthening the common external border and to the gradual abolition of the internal borders. Membership implies issuing uniform visas, co-operating with law enforcement activities already authorised in other Schengen countries, maintaining a high level of security and using the Schengen Information System (SIS), a common database of wanted persons and goods reported stolen in the passport-free zone. The latter is used to request the arrest and extradition of suspected criminals and illegal migrants, as well as to register stolen vehicles, illicit firearms, missing identity documents and forged banknotes. Provisions in the Schengen agreement permit police and security forces to follow and pursue individuals suspected of serious crimes across internal borders. In 2004 EU countries agreed to establish a Visa Information System (VIS) to allow countries to register and exchange details of the short-stay (defined as a period of three months) visas issued by European consulates around the world.

Britain, Ireland and the Schengen area

Currently, the UK and Ireland are not interested in joining the passport-free travel area, although both participate in the enhanced

police co-operation allowed under the Schengen agreement. In Britain, in particular, the mainstream view is that the English Channel provides greater security from illegal migration and other criminal threats than more effective co-operation with fellow EU member-states.

The evidence for this belief is dubious. Every year, more than 90 million people arrive in the UK by air, nine million by land (through the Channel Tunnel) and ten million by sea. Illegal migration to the UK most certainly exists, despite the sea. The real issue to be considered is not sovereignty but whether participation in the Schengen system would make it easier or more difficult for Britain and Ireland to protect their borders and improve their security. That is the only basis upon which UK and Irish participation in Schengen should be considered.

Decision time for Britain

Today's serious and organised crime, including terrorism, is as international in nature as the legitimate economy. This makes effective international police co-operation imperative and Europe's law enforcement authorities have responded by stepping up cross-border co-operation in recent years. Several examples stand out. One is the operation of the European arrest warrant (EAW) – a piece of EU legislation that has significantly speeded up the process of extradition between member-states.

The EAW has prevented UK criminals fleeing to the continent to escape justice. One case is the convicted terrorist Hussein Osman, who in 2005 boarded a Eurostar train to Paris shortly after attempting to blow up a London tube station. Another example is 'Operation Captura', led by Britain's Serious and Organised Crime Agency, which helped bring to justice 44 of the 60 most wanted criminals living on Spain's Mediterranean coast (the so-called Costa del Crime). British police say that the EAW was essential to the success of such efforts.

Police and judicial co-operation within the Schengen area will increase in the coming years. Partly, this is because of the entry into force of the EU's Lisbon treaty in 2009, which brought radical changes to justice and home affairs policy-making, including increased powers for the EU's highest court, the European Court of Justice (ECJ) in criminal justice matters. The latter development is of real concern to some in Britain, where fears of activist European judges are rife. Hence the UK sought special concessions in this area in return for ratifying the treaty. In 2014, EU decisions on crime and policing will come under the purview of judges at the ECJ. Under the Lisbon treaty, the UK must decide before then whether to accept this or opt-out of the bulk of existing legislation that makes EU police and justice co-operation possible.

If the UK opted out, it would cease to apply around 90 existing EU agreements covering terrorism, organised crime and illegal immigration, including the European arrest warrant. UK police and prosecutors would lose access to vitally important tools to fight international crime. Moreover, Britain would lose much of the authority it currently has to influence border and security standards in other EU countries.

As it stands, the UK government's new European Union Act will make co-operation on migration and security matters more difficult in future. This new law is intended to trigger a national referendum in the event that any new European treaty transfers any power from the UK to the EU. One side effect of this wrong-headed legislation is to inhibit serious discussion of better ways to contest crime by sharing power with other European police and security agencies. The UK should work with the EU to increase our capacity to fight crime, rather than moving in the opposite direction.

New information systems

Britain's full membership of the Schengen system would strengthen the fight against international crime organisations

and illegal immigration. The British authorities already have some access to the SIS database but proper participation in Schengen would give them access to additional intelligence that is needed to help guard the UK's borders. One example is data on people who have been denied access to the Schengen area for security reasons: Britain is currently prevented from accessing this information because it does not share the common border. The SIS is currently being upgraded to a more advanced system (SIS II). Although the process has been badly delayed and somewhat mismanaged, Britain would benefit considerably from full access to SIS II when it is introduced.

The UK is also legally prevented from participating in the Visa Information System (VIS) because it does not participate in EU visa policy. Amongst other things, the VIS is intended to help detect bogus visa applications by using biometric technology. When fully operational, it will be the largest such database in the world. Participation by both Britain and Ireland in the VIS would strengthen the UK's capacity to ensure that visa applicants are bona fide and have not been previously denied a visa to another European country. However, other Schengen members are unlikely to permit either country to use VIS unless they join the passport-free travel area and lower their border checks with other members.

Finally, there are new EU-wide rules mandating the linking of national police databases containing DNA, fingerprint and vehicle registration records. These are the result of the Prüm convention, a successful agreement on fighting crime and terrorism, originally signed in 2005 by the Benelux countries, Austria, France, Germany and Spain. The IT networks needed to link these databases for the use of enforcement authorities throughout the EU are now mostly established. But the ability of the British police to benefit from them depends on whether the UK decides to opt out from EU police and judicial co-operation altogether in 2013.

Visas

The visa requirements of the UK and Ireland and the Schengen area are now almost identical except in relation to a number of small countries. Whereas Schengen area interior ministers have agreed to grant visa-free access to travellers from the Western Balkan states. Britain and Ireland maintain visa restrictions for these countries.

Conversely, Britain allows visa-free access for a number of former colonies from the Commonwealth.[15] However, no large country is treated differently by the two areas. Most of the differences stem from historical circumstance rather than current conditions. The UK and Ireland derive no significant benefit from maintaining a separate visa system from that of the Schengen area, and indeed may well be doing significant harm to some areas of the economy, such as tourism.[16]

[15] These are in the West Indies (Belize, Dominica, Granada, St Lucia, St Vincent and the Grenadines and Trinidad and Tobago), Oceania (Kiribati, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu), Botswana and the Maldives.

[16] See Michael Emerson, 'Britain, Ireland and Schengen: Time for a smarter bargain on visas', CER policy brief, July 2011.

The harmonisation of visa requirements between the Schengen area and the UK and Ireland, including the standards and procedures for issuing visas, would help reduce fraud, as well as inconvenience and costs for travellers and governments. Such a move would require a number of steps. First, Britain and Ireland should permit visa-free travel from the Western Balkan countries. Second, the UK should request that the Schengen countries agree to visa-free access for all countries to which it also extends this privilege. Lastly, Ireland should consider harmonising its requirements with both those of the UK and the Schengen zone.

Under the Lisbon treaty, the UK and Ireland may choose to opt out of EU legislation on justice, security and migration and, in practice, often do so. Denmark also opts out but has a slightly different arrangement which makes it very difficult for it to participate in

police and justice co-operation at all. The latter issue is somewhat neutralised by Denmark's membership of the Schengen area.

Britain's attitude in particular seems to be hardening in the area of asylum. Before a meeting of EU interior ministers in May 2010, the British Home Secretary, Theresa May, made it clear that the UK would not be participating in new European asylum legislation, almost irrespective of what it concerned. Yet it is doubtful that the UK will derive much benefit from having criteria for dealing with refugees that differ from those of other EU countries. Furthermore, the case for shared criteria is very strong since all EU member-states remain subject to European Convention on Human Rights and the Geneva Convention on the Status of Refugees.

During my period as British Home Secretary, I reached the conclusion that the reasons for the UK remaining outside the Schengen Area had no basis in national security but sprang from entirely political considerations. Inside the Schengen area, and able to work in full co-operation with our European partners, the UK would be better able to address illegal immigration by being able to access EU databases such as the VIS; carry out more effective joint police operations against serious and organised crime; maintain better European border controls overall; and be more efficient in issuing visas to travellers wishing to visit Britain and the rest of Europe. Those who favour a 'Fortress Britain' approach are harking back to an era which no longer exists. The UK's principal security threats are international in nature, whether from terrorism, serious and organised crime or illegal migration. They will best be met through international collaboration, particularly with our immediate neighbours in the European Union, and not by a 21st century version of 'splendid isolation'.

Any independent evaluation of the costs and benefits to Britain of excluding itself from the Schengen area as well as EU legislation on justice, migration and security, would demonstrate that isolation from the continent decreases the UK's security. And a British

rapprochement with the Schengen area would be made far more feasible by the introduction of a biometric ID card system of the type recently scrapped by the UK government.

These questions may appear legalistic at the moment but will become more pressing as we approach 2014, when the UK government's final decision to opt out, or not, will be taken. That choice needs to be based upon an objective and factual assessment of the pros and cons, rather than inaccurate and politically partisan ideology. Furthermore, the uncertainty surrounding this issue has made it difficult for the UK to retain the considerable influence in the EU's Justice and Home Affairs Council that it has hitherto enjoyed, despite being outside Schengen and having an opt-out on individual pieces of legislation. Britain should remain committed to EU policing and justice co-operation before and after 2014, and the UK government would do well to make that clear as soon as possible.

6 Conclusion and summary of recommendations

Policy-making on migration in the EU is politically and technically very difficult. The issues involved can mobilise dangerous political forces because they have a unique power to arouse public fears and insecurities. The process of globalisation – freer trade, greater international mobility and more cross-cultural communication – has an undoubted impact on the economic and social self-confidence of many communities, as their traditional employment and ways of life are challenged and even destroyed.

Many political actors, some from the left and some from the right, gain popularity with the spurious claim that globalisation can be stopped and even reversed in a 'stop the world I want to get off' sentiment. The media has a tendency to encourage this attitude on the basis that populist fears, particularly if they have a kernel of truth, sell newspapers. But this view is completely mistaken. Governments can and should try to control and contest aspects of globalisation, and prepare for them. But the idea that these great world trends, of which migration is one element, can be halted is wrong, dishonest and misleading.

The EU is often presented as the cause of globalising pressure, as foreign companies and workers move between member-states. That is one reason why anti-immigration sentiment is also fuelling euroscepticism across the continent. I do not share the pessimistic view that little can be done to contest this trend. But the EU has to be seen as a major part of the solution on migration matters, rather than a cause of them. That means that governments need to reassert the virtues of pan-European co-operation and collaboration on the practical issues of migration management, as the best method to

address the insecurities and social unrest that unauthorised immigration can cause. These are the challenges for European leaders and institutions.

The Commission has become increasingly pro-active and is taking a positive stance in making proposals and applying pressure for change in the right direction. For its part, the European Parliament should acknowledge that its responsibility in this area is not only to protect civil liberties, important though that most certainly is, but also to help create an EU system for governing migration which maintains the confidence of the citizens who elected the parliament. Most importantly, the member-states must seize the initiative by settling on a genuine migration policy and resisting the pull of populism and electoral cycles. Failure to act on the recommendations outlined here will simply have the effect of fuelling insularity and euroscepticism, and could prove fatal to maintaining free movement.

★ The EU's priority should be to develop a genuine common labour market which prioritises the employment of Europeans but offers a clear route to legal migration for those with the skills and talents that Europe lacks. In the case of family reunification, member-states need to agree a new regulation establishing a common definition of 'family' as well as clear criteria for the eligibility of children and dependents.

★ A common European asylum system should be established as soon as possible. Rulings by the European Court of Human Rights could well provide a useful initial basis for defining the essential elements of this common system. Simultaneously, EU member-states should consider what changes are needed to modernise the UN Refugee Convention and support efforts to reform the workings of the ECHR.

★ The EU needs strong and functioning partnerships with all its neighbour states to establish a strong common border. This should include the possibility of extending visa-free travel to partner countries that have strong border control systems. The EU's High Representative should give priority to establishing a 'good neighbour' EU strategy. This should include strong, coherent and consistent co-operation agreements joining together trade and aid, migration and visas, and defence and foreign relations. Part of this approach should be a long-term strategic partnership, based upon respect for fundamental rights, the rule of law and economic development, with the countries of North Africa. Migration and security co-operation should be central elements of EU foreign policy. Aid and trade should reinforce the promotion of human rights and the rule of law.

★ Frontex should be strengthened and better resourced, with better technical means such as surveillance, intelligence-gathering, and military assets, to reinforce and modernise the EU border, including airports. All EU governments should support those member-states which are most vulnerable to migration over their land and sea borders, including, if necessary, with military assistance. And the EU should conduct a special review of Greece's border controls. If the Greek authorities refuse to take the necessary steps arising from such a review, Greece should be expelled from the Schengen area.

★ Member-states should energetically pursue and implement repatriation (readmission) agreements with countries from which illegal migrants come to the EU. Particular priority should be given to the immediate neighbours and those countries whose nationals represent the greatest sources of illegal immigration to the EU. The EU also needs to agree on a procedure and criteria for identifying a common list of those countries and regions to which it would not be safe to return illegal migrants or failed asylum-seekers.

★ The UK and Ireland should seek to harmonise visa policy with the Schengen area. This would include permitting visa-free

travel to and from the Western Balkan countries; encouraging the Schengen zone to do likewise for those countries which enjoy visa-free access to Britain and Ireland; and agreeing on common arrangements for issuing EU visas throughout the world. The UK should not opt out of its existing EU justice and home affairs commitments in 2013.

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CENTRE FOR EUROPEAN REFORM

The EU and migration:
A call for action

Charles Clarke

All across the EU, governments face pressure to show that they can control flows of migrants. But EU rules on the free movement of people have reduced national discretion over immigration policy. Charles Clarke argues for the EU to respond to the problem by acting to strengthen the Schengen area of passport-free travel, clarify the criteria for the reunification of immigrant families and strengthen co-operation with neighbouring countries on the return of illegal entrants. Member-states should also agree on a common line to reform the UN Refugee Convention and the European Court of Human Rights. Clarke concludes that Britain should forge stronger links with the Schengen area rather than distancing itself from EU co-operation on policing and justice.

Charles Clarke was Britain's Home Secretary from 2004 to 2006.