

Centring on the Margins

Migration Control in Malta, Cyprus, and the European
Union

Ćetta Mainwaring
Wadham College
University of Oxford

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This work is dedicated to the migrants whose voices appear on its pages and whose courage in crossing the seas and deserts of the world is so often answered with violence and oppression.

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Abstract

Why does the European Union focus on controlling irregular immigration at the external border? The emphasis presents a paradox as most irregular migrants in the EU arrive through legal channels and subsequently overstay or violate the conditions of their visa. In order to explore this paradox, the thesis examines two case studies, Malta and Cyprus. As small island states on the Union's southern periphery, the two are ostensibly unable to resist the transfer of migration controls and asylum responsibility to the EU's external borders. Yet, employing nonmaterial power, namely by highlighting the perceived migration pressures they are under, the two states have successfully attracted significant financial and practical support from other member states. In doing so, they have influenced policymaking within EU migration governance, but have ultimately reinforced the emphasis on controlling irregular immigration at the external border by portraying the phenomenon as a crisis.

This thesis not only sheds light on the interaction between the EU and the two states under investigation, but combines three levels of analysis – the regional, national, and local. The crisis narrative detrimentally affects the migrant and refugee populations as it encourages the adoption of restrictive and deterrent measures rather than ensuring access to rights and long-term integration. Nevertheless, this population is not without agency. It is their individual decisions to move across national borders without state authorisation that in the aggregate both compels states into dialogue about the issue and provides the basis for the dynamic between the EU and these two member states.

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Abbreviations

AFM	Armed Forces of Malta
AVR	Assisted Voluntary Return
AWAS	Agency for the Welfare of Asylum Seekers (in Malta, previously OIWAS)
DG JFS	Directorate General for Justice, Freedom and Security
DG RELEX	Directorate General for External Relations
EASO	European Asylum Support Office
ECRE	European Council on Refugees and Exiles
EDPS	European Data Protection Supervisor
EEC	European Economic Community
EU	European Union
EURODAC	European dactylographic system
GDP	Gross domestic product
IMF	International Monetary Fund
IOM	International Organization for Migration
IR	International Relations
JHA	Justice and Home Affairs
JRS	Jesuit Refugee Service
KISA	Action for Equality, Support, Antiracism (Cypriot NGO)
KTIHV	Turkish Cypriot Human Rights Foundation
LIBE	Civil Liberties, Justice and Home Affairs
MEP	Member of the European Parliament
MFA	Ministry of Foreign Affairs
MJHA	Ministry for Justice and Home Affairs
MOI	Ministry of Interior
MSF	Médecins Sans Frontières
NGO	Non-governmental organization
OIWAS	Organisation for the Integration and Welfare of Asylum Seekers (now AWAS)
RoC	Republic of Cyprus
SAR	Search and rescue
SBA	Sovereign Base Area
SIS	Schengen Information System
TRNC	Turkish Republic of Northern Cyprus
UNHCR	United Nations High Commissioner for Refugees
VIS	Visa Information System

I

Introduction

In May 2007, twenty-seven men from Sub-Saharan Africa departed from the Libyan port city of Zuwarah on a small, fibreglass boat. Being overcrowded and unseaworthy, the boat remained adrift in the Mediterranean for six days. Two fishing boats had already failed to rescue the migrants when, in desperation, the men deserted their sinking vessel and clambered onto the 18-inch walkway of a tuna pen being towed by a Maltese trawler, the Budafel.¹ The Maltese captain informed the Maltese authorities, but refused to allow the migrants aboard his boat, citing the security concerns of the four-man crew, as well as the risk of being burdened with the responsibility for the migrants for an extended period of time.² The captain likewise refused to tow the migrants back to Malta, maintaining that he would lose millions of Euros in tuna profit by doing so (Popham 2007; Italian Refugee Council 2007).

Having been informed, the Maltese authorities also refused to dispatch a rescue boat, claiming responsibility lay with either Libya, in whose search and rescue area the migrants and trawler were found, or with Italy because the boat was in fact closer to Lampedusa than to Malta (European Union 2007a). Political wrangling ensued, with the 27 men left clinging to the tuna pen in rough seas for three days, according to their own reports. Eventually, an Italian navy vessel arrived on the scene and transferred the migrants to the island of Lampedusa.

Although it captured the imagination of journalists and their audiences, this was not an isolated incident, but rather one of many where government inaction on both sides of the Mediterranean proved calamitous (e.g. UNHCR 2007b). The incident illustrates the issues that kindled the initial flames of this thesis. It prompted me to consider how policies had developed in Malta to a point where transferring responsibility for 27 migrants and

¹ The account of one of the migrants on the boat, Justice, is recounted in *I am Justice* by Paul Kenyon (2009).

² A similar incident occurred the previous summer when a Spanish trawler rescued 51 migrants, who remained stranded on board for five days while Spain, Malta, and Libya negotiated responsibility for their disembarkation (UNHCR 2006b).

refugees to another country took priority over saving their lives. How had migrants become dehumanised to such an extent that their lives were considered less valuable than tuna? The interaction between these various actors at sea further raised the question of how interstate relations shape and become shaped by such migration patterns.

Research Question and Framework

From these initial thoughts, a puzzle emerged which framed these events in the Mediterranean Sea. The migrants clinging to the tuna pen had attempted to cross the EU's external border without authorisation from a state. Considering the small number of migrants involved, the reaction by the states involved appeared at the very least disproportionate, if not morally perverse. It also suggested that the states' actions were not based on real threats and that other dynamics were at play. The incident thus reflected the manner in which EU migration policies have concentrated on the Mediterranean, along with the EU's eastern periphery, as primary sites for the control of clandestine entry into the bloc.

The emphasis on controlling migration at the southern external border of Europe presents a paradox, as most irregular migrants in the EU arrive through legal channels and subsequently overstay or violate the conditions of their visa. For example, in 2002, only 10 percent of the unauthorised immigrants in Italy had entered the country illegally by sea, with 15 percent entering illegally by land and 75 percent overstaying their visas (Cutitta 2006, 2-3). The Clandestino project has also reported similar findings for other countries across Europe (Clandestino Project 2009; Düvell 2011a; Düvell and Vollmer 2009).³ The paradox becomes starker because the states in question, those on the EU's southern

³ The Clandestino Project provides data and estimates on irregular immigration stocks and flows in selected EU countries. For more information, see <http://clandestino.eliamep.gr/>

periphery, are both small and new member states with fewer resources and capabilities to control irregular migration flows relative to other EU member states.

The trend towards the exclusion of irregular migrants at the external borders of Europe is clear, but it merits our attention nonetheless on three interrelated counts. First, it highlights the inconsistency between the reality of irregular migration comprised primarily of those having arrived legally, and the policy response, which has largely focused on the control of clandestine entry at the external border. Second, it points to the rise of regional blocs around the world and the contradictions involved with a relaxation of controls for the movement of goods and capital, while not extending the privilege to people. Even in the case of the EU, where there has been an increase in the freedom of movement within the Union, this has been accompanied by stricter controls for non-EU citizens, particularly along the external border. And third, the increase in supranational governance that accompanies regional integration involves the negotiation of different actors' interests. There continue to be calls for a more coordinated and managed approach to migration policies, both within the EU and globally (Düvell 2011b; Ghosh 2000). In light of these calls, it is important to assess the power dynamics and interests behind such processes, what benefits can be reaped, and what consequences might be suffered. Moreover, unlike the coordination efforts to govern other cross-boundary issues, such as climate change or international finance, migration governance involves attempts to control the movements of people with their own agency (c.f. Boswell 2011). Indeed, other scholars have already demonstrated that the agency of migrants, along with other factors, results in a policy gap in intended and actual outcomes of state migration policies (Castles 2004; Cornelius, Martin, and Hollifield 1994; Hollifield 1986).

Within the EU, the policies and politics of migration are already subject to more supranational harmonisation across member states than in other regional arrangements,

albeit not without national resistance. This thesis clarifies the role that small member states on the EU's periphery play in the creation of these policies, what relative power they hold, and the effects of these power dynamics on migration policies at the geographic and political fringes of the EU. In particular, I focus on two countries on the EU's southern periphery – Malta and Cyprus – that are relatively new accession states (2004) with limited political clout within the Union.⁴ As member states, they have been required to take on new roles as gatekeepers in order to create the impression, if not the reality, of an impenetrable external border. Their small size would suggest that their influence within the EU is limited and they are thus unlikely to resist the new responsibilities placed on them as migration gatekeepers. However, this thesis demonstrates that, unexpectedly, Malta and the Republic of Cyprus (RoC) have resisted these new responsibilities and had some influence at the regional level on EU asylum and migration policies.

Taking a critical constructivist approach, my research explores the patterns and agents of exclusion on the southern flank of the EU, analysing power relationships and how these affect migration policies in the Mediterranean region. Using Malta and Cyprus as case studies, I examine the following primary research question:

- Why does the European Union focus on controlling irregular immigration at the external borders when the number of clandestine entries at this border is relatively small?

In order to do so, three levels of analysis are considered: the regional, the national and the local. At the EU level, this work traces the evolution of supranational migration and asylum policies, with a particular focus on the role of southern member states. At the national level, the effects of Malta and Cyprus' new gate-keeping roles on both supranational and national migration policies are taken into account. And lastly, this thesis

⁴ This research's primary focus is the Republic of Cyprus (RoC), rather than the unrecognised Turkish Republic of Northern Cyprus (TRNC). When a distinction needs to be made between the two sides of the island, they are distinguished with references to the TRNC and the RoC, or more simply the north and south of the island.

incorporates a local dimension, examining not only how these supranational and national dynamics shape the experiences and patterns of migration, but also how migrants and refugees themselves shape international relations as they move.

The inclusion of ethnographic material, drawn from interviews and participant and non-participant observation with migrants and refugees in Malta and Cyprus, is a marked departure from the orthodoxy within International Relations (IR) scholarship of focusing on elite policy levels within the most powerful states in the international system. The methodology section below is dedicated in large part to exploring the methodological grounds for and strengths of incorporating this type of data. Here, a brief illustration drawn from the tuna pen incident described above will suffice.

The 27 individuals braved the Mediterranean crossing in search of a better life. They were likely making their way to Italy, perhaps to continue further north into Europe, perhaps to reunite with family or friends. It was state policies – real and perceived, in Libya and across the Mediterranean – that provided, at least in part, the impetus for their voyage; it was likewise interstate relations and agreements that shaped their journey and their rescue. This is a dynamic with which many migration and IR scholars are familiar: the ways in which interstate relations influence political, economic, and social landscapes is at the heart of much IR scholarship.

What is less frequently considered is the role of individuals, especially vulnerable individuals such as the irregular migrants in this case, in shaping state behaviour and interstate relations. The case above makes clear that the individual choices of these 27 men compelled the three states involved (Libya, Italy, and Malta) into relations and negotiations in which they would have otherwise not engaged. The choices of these 27 men further prompted new dynamics within the European Union. Indeed, the power of seemingly disempowered people to affect state relations was reaffirmed in 2011. During the early

months of the year, the arrivals of migrants and refugees in Malta and Italy, who fled the violence in North Africa, produced significant diplomatic standoffs. For example, along the French-Italian border, train carriages carrying Tunisian migrants prompted France to reinstate border controls, discarding the Schengen Agreement that had been in place since 1995 (Campesi 2011; Mainwaring 2012a).

In this way, migration is conceived as a constitutive variable in international relations, rather than solely an exogenous variable that states manage. My interests lie in how international relations affect migration patterns, but equally in how migration patterns affect international relations. The individual decisions to move across state boundaries instigate a particular relationship between the states and regional bodies involved. Those relationships (and corresponding policy responses) in turn shape both the migration patterns concerned and the migrant experience in the transit or receiving state. The migrants' experiences within the state, especially in the context of human rights abuses, may also have feedback effects on the national and regional level. Migrants themselves engage in acts of resistance, such as carrying out protests in detention centres, which may influence a state's relationship with other states or regional bodies. In these instances, international organisations and nongovernmental organisations (NGOs) often play an intermediary role in highlighting the plight of irregular migrants, exerting pressure on national and regional governmental bodies.⁵

My interest is in irregular immigration, broadly defined. Franck Düvell (2011a) illustrates the multiple pathways into irregularity, due to both particular decisions made by migrants but also to the legal and political construction of irregular immigration. What has been emphasised by states in Europe is clandestine entry, which is in fact the path least frequently taken. A much larger population is made up of those who enter states on a visa

⁵ For an illustration of these dynamics, see image in Conclusion on page 287.

and then either overstay or work in breach of the visa's regulations. People who are refused asylum may also fall into an irregular status due to not returning to their country of origin, not being removed by the state, and/or being de facto non-removable. Düvell highlights how in southern Europe, between the 1980s and 2000s, migrants often remained 'irregular' not due to violations of immigration policies but rather the absence of such policies. Indeed, these different pathways are reflected in the patterns of irregular immigration in Malta and Cyprus, and will be discussed further in the 'Case Studies' section below.

The work is constructivist in orientation on various counts. First, it includes a multitude of actors and three levels of analysis. Second, my interest is in the nonmaterial, in how ideas and perceptions influence policies and state relations. I have thus investigated the nonmaterial power small states may rely on, in the absence of material power, in order to counter unequal power relations. In particular, my interest is in how the construction of threats or crises, especially through certain discourses, shapes migration policies at the national and regional levels. Third, the thesis further conceptualises notions of power as not only causal but also constitutive. And finally, it moves beyond the methodology of independent and dependent variables to consider the mutual constitution of actors and structures. The thesis is critical in its explicit interest in change; that is in investigating the roots of developments within migration governance in Europe generally and in Malta and Cyprus specifically, while also examining alternatives (Hopf 1998; Wendt 1998).

Theoretically, the thesis explores the role of small states within regional migration governance, examining how unequal power relationships affect the policymaking process. The research highlights how small and politically weak states, like Malta and Cyprus, deal with their impotence in the face of larger, more powerful states or blocs of states, and whether the resulting policies always favour the powerful or whether supranational institutions help redress the balance.

These case studies endeavour to shed light on migration issues in an under-researched area and contribute to the discipline, empirically and theoretically. Small states, such as Malta and Cyprus, are underrepresented in the migration literature and, to a much larger extent, the IR discipline, which concentrates on the dynamics between great powers (c.f. Ingebritsen et al. 2006). Even within European studies, research tends to focus on larger, more powerful states, despite the significant increase in the number of small states during the 2004 accession round, which undoubtedly has implications for the nature and function of the Union.⁶ This thesis therefore adds depth to the debate over migration and migration controls by providing sound empirical findings from the two case studies. Theoretically, it contributes to the IR literature on power and small states by exploring the way in which small states attempt to counter unequal power relations. Innovatively, the analysis also includes the role of individual migrants in shaping these relations.

Thus, the thesis centres on the margins: it focuses on Europe's periphery, examining power relations from a small state perspective. It also moves the experiences of migrants and refugees to the centre of the analysis, drawing on ethnographic material from these marginalised populations. The research was instigated by an empirical puzzle occurring on the fringes of Europe, where migration controls have concentrated despite the relatively low numbers of clandestine entries; indeed, explaining this puzzle is the primary research question. However, in doing so, the research also considers broader questions of how migrant agency shapes and is shaped by interstate relations, and how power dynamics between states influence migration policies and patterns.

⁶ If one takes 1.5 million as the maximum population of a small state, then the 2004 accession round increased the number in the EU from one out of 15 (Luxembourg) to four out of 25 (Luxembourg, Malta, Cyprus and Estonia) at that time. Romania and Bulgaria subsequently joined the EU in 2007, increasing the total number of states to 27. Neill Nugent (2006) argues that 12 million is a more informative cut-off point, which increases the current number to 19 out of 27. There are of course some notable exceptions to the trend within European studies literature to focus on larger states (e.g. Goetschel 1998; Nugent 2006; Pace 2006; 2002; Panke 2010; Steinmetz and Wivel 2010; Thorhallsson 2000).

The research confines itself primarily, although not strictly, to the decade between 2000 and 2010. The two case studies, Malta and Cyprus, joined the EU in 2004 and thus the contemporary developments of migration patterns and policies, both nationally and regionally, are of interest. However, it is necessary to occasionally delve deeper into history in order to fully appreciate current events. For instance, the discussion of the evolution of EU migration policies in Chapter Three spans a considerably longer time period, starting in the 1980s. The interesting and significant political events that occurred in 2011 in North Africa and the Middle East are largely outside the scope of this thesis. However, the Libyan civil war and its impact on migration patterns and responses within the EU (and especially southern Europe) are discussed briefly in the concluding chapter.

Controlling Migration in the European Union

Academics and commentators have pointed to the externalisation of EU migration controls. These accounts focus on the ways in which migration controls are being exported to countries outside the EU's territory, both to countries of transit on the EU's southern and eastern periphery, but also further afield to migrants' countries of origin. The origins of this development are often said to lie in the UK's 2003 proposal to establish 'regional processing areas' and 'transit processing centres' outside the European Union. While purporting to strengthen the reception capacity of regions experiencing large refugee flows, the proposal, which was ultimately unsuccessful, also allowed for migrants and asylum seekers who arrived in the EU to be returned to these centres (Noll 2003).

Despite the proposal's failure, externalisation has been achieved through two methods. First, the EU has encouraged countries of transit to develop traditional instruments of migration control (i.e. border patrols and other measures to combat 'illegal' immigration, smuggling, and trafficking) and to improve their asylum systems. For those

migrants who have nevertheless arrived in Europe, there has been a second line of defence involving provisions for the return of irregular migrants and asylum seekers to third countries by way of readmission agreements and the introduction of the principle of ‘safe third countries’ (Boswell 2003a; Lavenex 2006; Lavenex 1999; Lavenex and Uçarer 2002).⁷

The process of externalisation has also been associated with the enlargement of the European Union. Pre-accession conditionality included the incorporation of the Schengen acquis into a candidate country’s national framework, which introduced stricter border controls and EU standards for immigration and asylum policies. This aspect of externalisation can be seen as the logical extension of the Europeanisation of migration policies, which began in the 1980s and has included the transfer of migration controls towards the external borders of Europe as internal controls have been relaxed. Indeed, in the case of new member states, the externalisation process culminated in their accession into the Union, and thus the locus of migration control being at the EU’s external border.

What is given less attention in discussions of externalisation, and what this thesis examines, is the initial process of the transfer of migration controls within EU territory, from the core to the southern and eastern peripheries.⁸ To distinguish this process from that of externalisation, I refer to it as the distalisation of migration controls (within the EU). The term ‘distal’, as opposed to proximal, comes from anatomy and describes the state of being situated away from the centre of the body.

Although migration controls exist to varying degrees across all member states, at arrival points such as airports and through bureaucratic mechanisms which allow, for example, formal access to labour markets, emphasis has been laid on excluding migrants at

⁷ This is also referred to as the internationalisation of migration controls (Guiraudon 2000; Oxfam 2005).

⁸ This aspect is not however completely disregarded (e.g. Oxfam 2005, 33–39).

the southern and eastern external borders.⁹ The militarisation of the Mediterranean for the purposes of migration control exemplifies this dynamic (Cuttitta 2006; Lutterbeck 2006).

The thesis adds to the scholarship on EU migration controls by examining how the relationship between southern island states and the EU affects the dynamic at play. I posit that the outward movement of migration controls towards the external borders of the EU has not solely been a top-down process, with powerful states at the EU's core displacing responsibility for migration controls towards less powerful states at the EU's southern and eastern periphery. EU membership has heard the voices of small states, such as Malta and Cyprus, amplified within the EU migration regime especially due to their geographic positions, which place them in the path of current irregular immigration flows. However, this power also comes with an increased responsibility for the control of the EU's external borders. Moreover, the power of these states to change the system within which they find themselves is limited: they now operate within an EU framework, their interests being influenced by their new status of belonging to the Union.

At the national level, their new positions within the EU, as small states and gatekeepers, has prompted governments to portray the islands as overwhelmed by irregular migration, exploiting their image as small and vulnerable as a strategy in order to garner more support and more funds from the EU. Operating in this crisis mode allows the governments to continue to make their case at regional forums. The new roles have therefore contributed to the social and political construction of a threat posed by the flows of irregular immigration. This perceived threat distorts the national discourse and adds to the marginalisation of the migrant and refugee population, while also fuelling racism and

⁹ Virginie Guiraudon and Gallya Lahav (2000) have explored how states have transferred the responsibility for migration policies upwards to the supranational level, downwards to local authorities, and outwards to non-state actors such as private airline carriers.

xenophobia within the host population.¹⁰ Moreover, this portrayal facilitates and generates resistance within the Maltese and Cypriot societies against accepting the new realities they are facing as countries of immigration and transit migration. Migration has become an easy scapegoat for the uncertainties and difficulties associated with changes in societies traditionally perceived as homogenous – changes due to economic development, EU accession, and globalisation processes more generally.

Migration and International Relations Scholarship

Considering its transnational character, it is perhaps surprising that international migration has not received more attention within International Relations scholarship. Rather, it has been left largely to political scientists, sociologists, anthropologists, and economists to investigate the causes and effects of migration, an analysis that has understandably focused within the state, whether a receiving, sending or transit country. There have, however, been some exceptions. Notably, in the 1980s, scholars began to explore the relationship between international migration and the foreign policies of states, often in relation to the United States in the wake of large migration flows from Cuba and Haiti (Miller and Papademetriou 1983; Teitelbaum 1984; Zolberg 1984; c.f. C. Mitchell 1989). More recently this has led to an interest in examining migration through the lens of diplomacy (Mahler 2000; Thiollet 2011).

Others began to examine the relationship between international relations and international migration more broadly (e.g. Hollifield 1992; Weiner 1985; Zolberg, Suhrke, and Aguayo 1986; Zolberg 1981). However, migration has remained on the fringes of

¹⁰ This discussion is related to that on the securitisation of migration in Europe (e.g. Huysmans 2000; Waever et al. 1993; c.f. Boswell 2007). However, here, I examine the role of state relations in encouraging the interpretation of migration as a security issue.

international relations scholarship.¹¹ As multilateral institutions see their remit extend over an increasing number of transnational activities, this may in future provide an impetus for IR scholars to engage with migration. The recent work of Alexander Betts does just this in examining the different forms of the global governance of migration, while Rey Koslowski similarly looks at the interaction between international migration regimes and the role that borders play in immigration controls (Betts 2008; 2011; Koslowski 2008; 2011).

Here, however, I wish to move beyond just examining migration as an exogenous variable that states respond to in their foreign policies or international relations, to one that is constitutive of international relations. This is a rare undertaking in the discipline, as it attempts to bridge the micro and the macro. In his article on migration in northeast Asia, Tsuneo Akaha (2004) does consider these issues, but focuses on how the (legal) migration of nationals from a state to another affect the bilateral relations between these two states. For example, he explores the dynamics involved in Chinese migration to the Russian Far East, including demographic discrepancies and other push factors, as well as effects on trade. My research goes further in examining how third-country nationals not only affect the relations between states as they move across borders, but also produce these relations.¹²

The Case Studies: Malta and Cyprus

This study explores these dynamics by examining the category of small outpost island states in the European Union. In particular, the thesis considers the case studies of Malta and Cyprus, which exhaust this category, being the only two small outpost island states

¹¹ There are of course academics from other disciplines who continue to examine international migration, for example within an EU context (e.g. Geddes 2005; 2003; Guiraudon 2003; 2000; Guiraudon and Lahav 2000; Lavenex 2006; 2004; 2001).

¹² This has been done in other disciplines. For example, Sarah Mahler (2000), an anthropologist, has examined how non-state actors, such as migrants and tourists, constitute diplomatic relations.

within the Union.¹³ Simultaneously sites of mobility and immobility, islands are an interesting vantage point from which to examine patterns of migration. Napoleon's banishment to the island of Elba, the construction of a federal prison on Alcatraz, and the erection of an Australian immigration detention centre on the island of Nauru are examples of islands playing a function based primarily on their insular and isolated character.¹⁴ However, the size and location of islands around the world have also prompted mobility: emigration has often followed economic and natural disaster, while immigration has taken the forms of military conquest, retirement migration, tourism, and return migration (King 2009; King and Connell 1999).

On the EU's southern periphery, Cyprus and Malta historically have been countries of emigration with economic and social traditions of openness as strategic military and transport hubs in the Mediterranean, and with populations traditionally known for the hospitality associated with their major tourist industries. Due to their EU accession, however, they are now European outposts acting as migration gatekeepers. Indeed, despite the number of migrants and refugees crossing the Mediterranean Sea being relatively small compared to the numbers of irregular migrants in Europe as a whole, Mediterranean states find themselves literally in the middle of migration debates. As dead bodies wash up on beaches and people continue to make perilous voyages, the Sea has been characterised as Europe's 'Rio Grande' (Montanari and Cortese 1993), an allusion to the stark discrepancies in standards of living on the two sides of the Sea, and also as the 'soft,

¹³ Although the United Kingdom is an island that could be considered an outpost due to the Channel that separates it from the European continent, it is excluded here on two counts. First, it is not an island that can be classified as 'small' being the third most populous country in the EU (after France and Germany), and the eighth largest in terms of area. Second, for the purposes of this project, its geographic location, although placing it apart from the European continent, does not place it in the path of the initial irregular immigration flows into the Union.

¹⁴ Alison Mountz (2011) provides an interesting discussion on the critical role islands play in migration control.

vulnerable underbelly of Fortress Europe'.¹⁵ In this context, then, Malta and Cyprus' geographic locations allow them to increase their relative power through EU membership. However, they must also bear the consequences of their permeable blue borders being redefined as external EU borders in need of fortification and control.¹⁶

The capacity of Malta and Cyprus to receive irregular immigration flows is conditioned by the fact that they are two of the smallest countries in the Union in terms of population and land area, and the only autonomous states on the southern periphery separated from the European mainland. Indeed, these states are of particular interest to this research because they provide a category of states whose geopolitical positions, at first glance, appear to put them in a structurally weak arrangement within the European Union.

This structural vulnerability can be attributed to two dimensions: their small state status and their borders. First, as islands, Malta and Cyprus have blue borders that cannot be delineated or controlled in the same manner as land borders. Having limited control of the multiple borders within the Mediterranean Sea thus exposes these islands to flows of irregular immigration. The island outposts are also autonomous states, having no mainland, as do other outpost islands such as the Canary Islands, Lampedusa, and Sicily.¹⁷ The Maltese and Cypriot governments must therefore take sole responsibility for the migrants and refugees arriving on the islands. Moreover, a high degree of immobility exists for migrants and refugees, who describe being 'stuck' on the islands without the opportunity to move on to other EU countries, opportunities more easily available between member states

¹⁵ Winston Churchill first used the term in World War II during the invasion of Sicily to note where the Axis forces were most vulnerable. It has now been adopted within the EU's discourse on migration (Haynes 1999, 19; Katrougalos and Lazaridis 2003, 169).

¹⁶ The term 'blue borders' is used to indicate maritime borders, while 'green borders' designates land borders.

¹⁷ Ceuta and Melilla have also been described as 'outposts' of the European Union (e.g. Driessen 2010), but like the islands noted above differ from Malta and Cyprus in being part of a state with a large European mainland.

making up the European mainland. In Cyprus, the division of the island and the fact that the Republic does not control the island's northern borders also complicate this picture.

The second dimension that adds to their structural weakness is their size. Malta and Cyprus are small in terms of their landmasses, populations, and economies. In terms of landmass and population, Malta is the smallest state in the EU, with Cyprus ranking third after Luxembourg. However, Luxembourg has a significantly higher gross domestic product (at purchasing power parity, per capita) than Cyprus and Malta: \$81,466, \$28,960, and \$24,833, respectively.¹⁸ As small states, Malta and Cyprus not only have more limited resources and space to receive migrants, but also have limited power within the EU to influence policy. For example, both countries elect the minimum of six members to the European Parliament, while Germany holds the maximum of 96 seats. Moreover, the two countries have limited administrative capacities that inevitably hinder their effectiveness within EU forums.

Following the pre-accession changes in national migration policies, Malta experienced a significant increase in the number of migrant arrivals and related asylum applications. While only 57 irregular immigrants arrived in 2001, the number increased dramatically to 1,699 in 2002 and peaked at 2,775 in 2008 (NSO, Malta 2011). Although the number of arrivals is not large in absolute terms, the government argues that it is more telling if one takes Malta's small population (411,950) into account. For example, the 1,272 asylum applications that were lodged in Malta in 2006 are equivalent to nearly 200,000 arrivals in France and the UK if compared per capita. The actual asylum claims made in France and the UK were 26,300 and 27,850, respectively.¹⁹ The government has

¹⁸ As of 2010 according to the International Monetary Fund, World Economic Outlook Database, September 2011.

¹⁹ The population figure given is for 2008, as estimated by the World Bank's World Development Indicators. Asylum figures were calculated using the following sources: Malta's National Statistics Office; the UK's Office for National Statistics; and the French National Institute of Statistics and Economic Studies. For

also repeatedly pointed to the fact that Malta's population density (1,200 per square kilometre) is one of the highest in the world, which amplifies the effects of these arrivals.²⁰ The Maltese government therefore continues to call upon the EU to share the responsibility for the migration 'burden' (Crosbie 2007).

As the EU's third smallest member, the Republic of Cyprus also experienced an increase in irregular immigration and asylum applications. Between 2002 and 2003, the number of asylum claims increased by 363 percent, while in Europe as a whole it fell by 20 percent (Strovalidou and Colville 2005). Moreover, there was an indication that irregular immigration increased at this time, although estimates of the number range between 6,000 and 45,000 (Thomson 2006). There are also similarities with Malta in the reception of these migrants and the prevalent racism, xenophobia, and feelings of invasion expressed in both countries.²¹

Although I have treated the two countries together thus far, there are important divergences in their migration histories, which are crucial to understanding current migration patterns and policies on the two islands. These divergences can be attributed in large part to different labour market and economic conditions.²² Over the last two decades, Cyprus received and encouraged economic migrants in order to fill shortages in the labour market, which have not existed to such a degree in Malta.²³ As a result, there were 128,200 non-Cypriot residents on the island in 2009, making up approximately 16.1 percent of the population (796,875). Across the EU, the proportion of resident non-EU nationals as a

political statements to this effect, see, for example, an article written by the current Prime Minister (Gonzi 2007).

²⁰ Within the EU, the closest population density is that of the Netherlands at 393. Spain, Italy and Greece have population densities of 90, 193, and 84 per square kilometre, respectively.

²¹ Other academics observe these dynamics in new, eastern member states, further illustrating the shift of the responsibility for migration from the core of Europe to new, peripheral member states (Lavenex 1999; Vachudová 2000).

²² A more detailed account of these migration trends is given in Chapters Four and Five (c.f. Mainwaring 2008).

²³ It is important to note, however, that there seems to be a shift occurring even in Malta, where migrants are beginning to fill gaps in the labour market (Interviews: government officials, NGO representatives, and migrants, 2006).

percentage of the total population was 6.4 percent (31.9 million) that year, while in Malta it was 4.4 percent (18,100) (Eurostat 2009).

The types of migration the two islands receive are also distinct. In Malta, clandestine entry occurs by sea and thus irregular migrants travel in larger groups on boats. In the Republic of Cyprus, on the other hand, clandestine entry occurs over land, across the Green Line, with migrants generally travelling in small groups of a handful of people. Moreover, in the RoC, the more significant presence of labour migrants results in a larger percentage of migrants overstaying their visas than in Malta.

Since independence, Cyprus also struggled to address tensions between Greek and Turkish Cypriots, who make up 82 percent and 18 percent of the population, respectively. This tension culminated in the forced division of the island in 1974. Subsequently, the Turkish government exacerbated the ethnic tensions by encouraging the settlement of its nationals in northern Cyprus. This historical legacy has allowed the RoC government to explicitly associate migration to the island with national security issues, exploiting concerns about the demographic makeup of the island and its sovereignty (Diez 2002, 142–143; Trimikliniotis and Demetriou 2007, 56; 2005, 15–19). Although both islands are small, size and density play a much more prominent role in Maltese migration discourse and the country is generally more vocal in calling for further support from the EU. On the other hand, Cypriot politics and discourses are dominated by the fact that the island remains divided despite its admission into the EU, a fact that distorts and overshadows the migration discussion.

Although the literature on other southern EU countries, such as Spain, Italy, and Greece is plentiful and may provide fruitful comparisons (e.g. González-Enríquez and Triandafyllidou 2009; King and Black 1997; Solé 2004; Triandafyllidou 2001), the

relevant political and academic discussions have neglected Malta and Cyprus.²⁴ There are a number of reasons to question this prioritisation and include Malta and Cyprus in the discussion on the southern periphery. First, the policy response to irregular migration on the two islands indicates a puzzle: the volume is small in absolute terms, but has received considerable political attention within the EU. The reasons for this, discussed more thoroughly in the following chapters, concern issues of power, especially the nonmaterial leverage available to small states. Second, the two states lie on a political, economic, and demographic cusp, separating Europe with its ageing and dwindling population from poorer Africa with its young burgeoning one. Here on the EU's external border, the negotiations over immigration expose the effects of exclusionary logics at play within the Union that are often less obvious at the core of Europe. Third, Malta and Cyprus' accession into the EU has significantly changed their positions vis-à-vis migration policies, practices, and realities. As outposts of the EU they now assume a much higher responsibility for migration matters than any other equally small but landlocked EU member state. Malta and Cyprus thus provide exemplary lenses through which to freshly examine the migration policies and realities of weaker states positioned in a supranational institution.

The Approach: Methodology and Methods

This work employs a qualitative methodology. The research has been conducted through an inductive epistemology, aiming to provide a 'thick description' of the evolution of migration policies and practices in Cyprus and Malta within the EU context in order to better understand the relations between unequal actors (Geertz 1973). Hence, contrary to mainstream IR scholarship, this work employs a more ethnographic approach: the data

²⁴ There are some notable exceptions on Malta (e.g. Amore 2005; Lutterbeck 2009; Mainwaring 2008; Thomson 2006) and Cyprus (Mainwaring 2008; Trimikliniotis and Demetriou 2005; Trimikliniotis and Pantelides 2003).

analysed is drawn from extensive semi-structured interviews, official documents from national governments, the EU, and NGOs, and limited participant and non-participant observation. A thematic analysis has then been conducted on this data in order to trace the evolution of migration policies in Malta and Cyprus since EU accession in 2004, and to highlight how different actors and relationships have impacted upon this process. In addition, there is a particular emphasis on the language used at the (national and supranational) governmental level in order to uncover the ways in which power relations manifest themselves in the interpretation of migration at the EU's southern border.

Malta and Cyprus can be understood as actors on the EU's geographic and political periphery. Although obviously similar, they also display important nuances. I will compare the two cases in order to illustrate the effects of their new responsibilities and roles within the EU. This comparative framework is limited to two case studies, but these cases are examined in depth and across different levels of analysis: supranational governance, national government, and individuals.²⁵

This multi-level analysis is rare for IR scholarship, which is often limited to investigating the relationship between two variables. My analysis at the national level is intended to uncover how historical and contemporary political, social, and economic contexts influence the construction of migration policies. The multi-level analysis also reflects the current globalised political landscape where different actors within the state increasingly engage in and influence activities beyond their national borders (Slaughter 2004). Indeed, the chosen methodology followed from the types of questions I was asking: my interest in the ways in which migrant behaviour and NGO action influence state relations encouraged the decision to adopt a more ethnographic methodology.

²⁵ Others have written extensively on employing case studies and on comparative research (e.g. Ragin 2007; Yin 2008); see Eward Schatz (2009) for a discussion on 'political ethnography'.

Even rarer is the inclusion of the perspectives of a marginalised group of individuals. The experiences of migrants and refugees on the islands are included on three grounds: methodological, normative, and constitutive.²⁶ As a method of triangulation, the gathered data is analysed in part in order to assess the data provided by NGOs and government officials. It is also crucial in investigating how a particular portrayal of irregular immigration is constructed, by pointing to government assumptions and claims that are disputed by the data gathered from migrants and refugees and to policies that exacerbate tensions rather than alleviate them. Moreover, the construction of irregular immigration as a threat or crisis is an indication of the governments' reliance on nonmaterial power in their negotiations with the EU over migration politics and policies, which is at the heart of the argument made in this thesis.

With the normative assumption that these policies should take into account their effects on migrants and refugees, this level of analysis also explores the implementation of national and regional migration policies and their (un)intended consequences. The ethnographic data reveals the conditions produced and experienced at the intersection of global, national, and local processes, and thus adds to our understanding of the world by not divorcing policy from reality.²⁷

Finally, the thesis posits that migration is a constitutive factor of international relations and, therefore, understanding how migrants engage with the state enhances our understanding of international relations. It is invaluable in researching how, for example, border controls operate when negotiated between a coast guard official and a migrant, and in understanding why people migrate despite the huge apparatus that is designed and deployed in order to stop this form of mobility. Furthermore, these local dynamics shape

²⁶ See Alexander Wendt (1998) for a valuable discussion on the difference between constitution and causation.

²⁷ Anthropologists have used a critical phenomenological approach in order to examine how the combined result of processes on these three levels are experienced by 'illegal' migrants (e.g. Willen 2007), as well as other vulnerable groups (e.g. Desjarlais 1997).

interstate relations. For example, the treatment of migrants and refugees on the edges of Europe, exposed through the work of NGOs and migrants' strategies of resistance, has consequences for the relations of the states involved at the regional level.

It is, I believe, valuable to include both the perspectives of those exerting power and those who appear to lack it to understand the processes of inclusion and exclusion within migration policies. This perspective is adopted with the awareness that those seemingly less powerful can and do devise successful strategies in attaining objectives and that their efficacy is not to be neglected. Indeed, one of the aims of this work is to explore the strategies that less powerful actors, whether small states or migrants and refugees, develop and deploy. The research thus incorporates different forms of power: not only the power of states, but also the agency of migrants operating within and between states.²⁸

As a discipline, International Relations focuses on macro-level processes and powerful, northern states, with associated methods that involve, for example, interviewing elites in Washington, D.C., New York, and Brussels. My work attempts to move beyond this research agenda through the incorporation of the macro and the micro, as well as analysing the relationships between the two. This creates complexity, especially in terms of challenging theoretical parsimony. Nevertheless, the effort in understanding states' attempts to control irregular migration in particular, and the relationship between policies and people more generally seems worthwhile.

Moreover, ethnographic methods have of late been employed to explore more mainstream IR topics from new angles, making up what Wanda Vrsti (2008) optimistically refers to as the 'ethnographic turn' within the discipline. For example, Séverine Autessere (2006) examines the local, national and regional in order to assess dynamics of violence in the transition from war to peace in the Democratic Republic of

²⁸ This speaks to Foucault's subjective power in various forms of resistance (Foucault 1982).

Congo between 2003 and 2006; Michael Barnett (2002) uses his own experiences in a US mission to the UN to understand how genocide was permitted in Rwanda in 1994; and Catherine Weaver (2008, 13) employs her own insider knowledge and extensive fieldwork in order to carry out a 'sociological study or ethnography' on the organisational culture of the World Bank.

Although only (currently) employed at the fringes of International Relations, ethnographic inquiry appears especially suited to uncovering aspects of micro-politics involving the less powerful in unequal relations, where official information is biased towards the powerful (c.f. Schatz 2009, 300–318). It is thus useful in exploring what Sarah J. Mahler describes as 'the agency of underrepresented and misrepresented groups within a broader geography of power' (2000, 199). Accordingly, within the International Relations discipline, feminist scholars have most frequently adopted such methods (e.g. Chin 1998; Cohn 2006; 1987; Enloe 1990; Moon 1997; Reinharz and Davidman 1992; Tickner 2005), followed by social constructivists (e.g. Neumann 2005; Pouliot 2007a; Zabusky 1995; c.f. Pouliot 2007b) and postcolonial theorists (e.g. Beier 2005; Franklin 2005). For example, the feminist scholar Christine Chin (1998) examines the macro issues of development and international political economy through the experiences of female domestic workers in Malaysia and the state policies that regulate their lives. Similarly, constructivists Vincent Pouliot (2007a) and Stacia Zabusky (1995) employ ethnographic methods in order to question the necessity of a collective identity in the creation of a Russian-Atlantic security community and in the cooperation involved in the European Space Agency, respectively. By focusing on a marginalised population – namely, irregular migrants in Europe - I adopt a methodology that looks to uncover often-unexplored aspects of power. As J. Ann Tickner (2005, 10) concludes in her feminist IR research, such an emphasis can lead to 'more robust objectivity', and uncover realities obscured by orthodox approaches.

Methods

The thesis uses complementary methods. An interpretive thematic analysis was carried out on policy documents and interviews were conducted with migrants and refugees, NGO representatives, and government officials in Malta and the RoC, and EU bureaucrats in Brussels. In total, 129 people were interviewed.

Interviews: Sampling and Access

A large portion of the data found in the study comes from these interviews. The interviews were all in-depth and semi-structured in format, generally one-on-one with a few exceptions where I interviewed up to five people together. The open-ended nature of semi-structured interviews allowed flexibility in prompting and responding to the diverse interviewees. The format also permitted interviewees to voice their opinions without being confined to rigid predetermined questions. It also provided the space to broach sensitive issues surrounding the irregular migration situation on the two islands and to access specific attitudes, understandings, and interpretations of the research matter.

In Malta and Cyprus, I conducted a similar number of interviews with three groups of people: (1) government officials, (2) advocacy and activist organisations working with and for the migrant and refugee communities, and (3) migrants and refugees. At the government level, I conducted interviews across the different ministries and departments involved with migration policymaking and its implementation (Cyprus: 14 people; Malta: 15 people).²⁹ These interviews were conducted in order to understand the logic at work behind policy decisions, the language used to understand and to justify these policies, and the perceived effects of EU membership.

²⁹ Although I conducted the vast majority of interviews with one person at a time, there were a few occasions when it was more appropriate to interview multiple people together. In this introduction, I have noted the number of people interviewed, rather than the number of interviews. In Cyprus, the majority of interviews were done in the Republic. However, a small number were conducted with migrants and NGO representatives in the TRNC.

At the national level, the second category of interviews conducted was with people from non-governmental and international organisations working with and for the migrant and refugee communities (Cyprus: 13; Malta: 13). The interviews brought to light the representatives' views on contemporary refugee and migration policies and the impact of these policies on their work and on the migrant and refugee population. These organisations generally act as the only formal liaison between the migrant communities and the governments and therefore provided useful triangulation for the often-divergent data obtained from the two other groups. Moreover, the data was used in order to assess how local experiences impacted on the national and regional level through NGO intermediaries. The limited number of these organisations working on the two islands made it feasible to interview the large majority of them.

At the local level, interviewees included migrants and refugees (Cyprus: 32; Malta: 27). The interviewees were not intended to be representative, but instead sufficient to obtain an overview of the challenges and opportunities of being an irregular migrant on these islands. Sampling continued until the point of 'theoretical saturation', (Strauss and Corbin 1998, 212) where no further relevant information would likely be obtained by conducting additional interviews. The familiarity of interviewees' responses towards the end of my fieldwork confirmed the validity and reliability of the data gathered as well as revealing clear patterns. Care was also taken to access these interviewees from at least two different entry points in order to minimise bias in the data collected (Jane Ritchie, Lewis, and Elam 2003). Migrants and refugees were therefore approached through open centres, NGOs, and in public spaces such as parks, where many socialised.

The interviews explored the experiences of migrants and refugees, both during their journeys to Malta and Cyprus, as well as during their time on the islands. They were employed in order to explore how migrants engaged with the state and their perspective on

challenges and opportunities they faced, for instance either in attempting to integrate or to move on to other EU countries. Along with migrant strategies, these interviews also highlighted the consequences, whether intended or unintended, of government policies, and often revealed the misguided assumptions that underpin some of these policies.

Because I was interested in people who had either travelled into the country in an irregular manner or had become undocumented at some point, I interviewed migrants and refugees with a range of backgrounds, rather than focusing, for example, on a single nationality. This was done in order to reduce the bias of a single group's experience. Thus, the sample of interviewees was homogenous in comprising people who had at one point been unauthorised by the state to be in the country, but included both male and female participants, people with a range of different asylum statuses, people from different countries and of different ages (although the majority were between 20 and 40), and people who had travelled to the islands in different ways (c.f. Jane Ritchie, Lewis, and Elam 2003).

I also gathered a limited amount of data through participant and non-participant observation opportunities. These included spending extended amounts of time at migrant open centres and NGOs, and aiding in the production of materials to inform migrants and refugees of their rights and responsibilities within these institutions, as well as within the broader host country context.

Along with these interviews at the national level, I conducted an additional 16 with bureaucrats and politicians in Brussels. The interviewees included officials within the European Commission as well as permanent representatives in the Council from various member states. Within the Commission, the majority of interviews conducted were with

officials in the Directorate General (DG) for Justice, Freedom and Security (JFS),³⁰ but also within the DG for External Relations. Here, the aim was to explore the evolution of EU migration and asylum policies and investigate the rationale behind such policy developments. These interviewees also provided different points of view on the effects Malta and Cyprus have had at the EU level.

Within the Council, I interviewed representatives from Malta and Cyprus, but also from Poland, France, and Germany in order to gain an appreciation for the multiple opinions and interests influencing negotiations on migration and asylum at the EU level. I did not intend this exercise to be exhaustive, as is demonstrated by the limited number of other member states interviewed. However, I chose the three countries for their particular interests in migration and asylum, which contrast to those of Malta and Cyprus.

Although I established a detailed list of interviewees prior to conducting this fieldwork through my own desk research as well as the advice of other academics, snowball sampling was also employed (Bryman 2001, 100–102). The small size of Malta and Cyprus, as well as the relatively small circles in Brussels that deal with migration and asylum, allowed me to exploit contacts I already had in order to establish contact with other relevant groups and people. Indeed, snowball sampling was a strategy employed across the three groups of interviewees at the national level in Malta and Cyprus.

Analysis

A qualitative thematic analysis was carried out on interviews and official documents in order to develop a narrative reflecting the evolution of migration policies in Malta and Cyprus, and to a more limited extent at the EU level (Tonkiss 2004, 368–373; Seale 2004,

³⁰ While I was conducting interviews in June-July 2010, the DG JFS was split into two and is now the DG for Justice (made up of three units: Civil Justice, Criminal Justice, and Fundamental Rights and Citizenship) and the DG for Home Affairs (also made up of three units: Internal Security, Immigration and Asylum, and Migration and Borders).

313–314).³¹ This analysis was also applied to the interview data obtained from organisations and migrants in order to trace how migration policies were implemented, as well as migrant interactions with the state.

In order to investigate Malta and Cyprus' influence at the EU level, three steps were taken. First, I analysed EU policy documents to identify instances where regional policies reflected the interests of these states. Second, I used a process of self-assessment through the interviews carried out with national policymakers in Malta and the Republic of Cyprus, as well as their permanent representatives in Brussels. Finally, I triangulated this data with the assessment of other EU bureaucrats both within the Commission and the Council.

On the national level, a comparative analysis was employed in order to compare the historical and contemporary migration patterns in the two states and contextualise current immigration flows. The responses of the two states to flows of irregular immigration during the past decade were then compared, both on the national and regional level. Throughout this analysis, I drew upon the experiences of migrants and refugees in both countries. By using the anthropological approach of 'studying through', advocated by Cris Shore and Susan Wright, this study followed the source of policies to those affected by it in order to 'trac[e] ways in which power creates webs and relations between actors, institutions and discourses across time and space' (1997, 14; c.f. Tsianos and Karakayali 2010; Wedel et al. 2005).

Indeed, throughout the analysis, the importance of language in interpreting and constructing particular scenarios became apparent, especially within the data collected from government officials and EU bureaucrats. With regard to the power relations involved in such constructions, these issues were investigated by examining the language employed to explain migration to the islands, as well as the governments' responses to the

³¹ This is also known as interpretive content analysis (Spencer, Ritchie, and O'Connor 2003, 200–206).

new patterns. There are, of course, many scholars, from Michel Foucault (2002) to Judith Butler (1990), who analyse discourse in their work. The aim here is neither to comprehensively review this literature nor to discuss discourse in great detail. Rather, from Vivien Schmidt and Claudio Radaelli, I take a simple working definition of discourse as ‘a set of policy ideas and values’ in terms of content, and in terms of practice, a process of creating policy and conveying it to the public (2004, 184; c.f. Chadwick 2000, 289). Similarly, Shore and Wright define discourse as ‘configurations of ideas which provide the threads from which ideologies are woven’ (1997, 18).

The thesis focuses on discourse as a means of highlighting the ways in which it shapes social categories, knowledge, and relations. How does discourse influence states’ interests and how do those interests shape discourse? My intention is not to argue for the primacy of ideas in producing change in policies and politics; material conditions certainly also shape interests and create change. Indeed, the thesis is interested in how a lack of material power pushes states to resort to nonmaterial power, such as the construction of a particular discourse to interpret migration patterns. Discourse, I would argue, frames perceptions and legitimises action, which can effect change. However, this change is also dependent on the structural context (e.g. of being a member state in the EU, of operating within a neoliberal economic system or a democratic political one), which, with its power to change discourse, should be given due attention. In this work, discourse can in fact be seen as a bridge between structure and agency (c.f. Schmidt and Radaelli 2004, 192–193). That is to say that the governments’ discourses on migration are affected by both the structural context of the EU, as well as their own agency within this structure. The relationship between structure and agency in the context of power is explored further in the following, theoretical chapter (Giddens 1984; 1979; Wendt 1987).

Ethical Considerations

International Relations scholars have traditionally concerned themselves with political elites. Consequently, when qualitative research is undertaken these IR scholars rarely come into contact with vulnerable groups. The particular ethical challenges faced by political scientists engaging in more ethnographic research arise from what could be called ‘intrusive empiricism’,³² that is to say relatively short research trips, where interviewees are generally only met with once, and where the reality of these vulnerable groups is thus only a short-term reality for the researcher.

Regardless of the temporal or other circumstances, researching a vulnerable population such as irregular migrants and refugees is an undertaking that requires the utmost sensitivity to ethical considerations. Interviewing political elites and NGOs comes with its own ethical nuances and complications. Political elites are public officials with some responsibility for transparency and accountability. Moreover, the information provided by political elites and NGOs was not of a personal nature, as was the case with migrants and refugees. Accordingly, the ethical concerns I encountered were most salient with regard to interviewing migrants and refugees.

Nevertheless, with all interviewees, gaining informed consent was a primary priority. I was as explicit as possible in explaining why I was conducting the interview, how it would be disseminated, what I could give in return, that the interviewees’ participation was completely voluntary and that they were free at any point to not answer particular questions or terminate the interview. Although I did not acquire written consent from the migrant population, due to the potential risks involved and the mistrust that may arise, I

³² Les Back uses this term especially in relation to journalistic exposés and reality TV ethnography and argues that it ‘claims to know and judge the very soul of its subjects.... Intrusive empiricism is defined by revelation, occlusive detail, fast turnaround and an excess of “data”’ (2007, 16).

went to great lengths to acquire their verbal, informed consent (c.f. Düvell, Triandafyllidou, and Vollmer 2010).

Along with informed consent, there were a number of other ethical concerns and questions that surfaced during my fieldwork, including access, reciprocity, handling sensitive information and respect for confidentiality and privacy. These concerns entailed a high degree of reflexivity and flexibility throughout the research process (Finlay and Gough 2003). Here, I would like to address in more detail the two of the most difficult issues that arose: reciprocity and representation.³³ I raise these issues not because I have found definitive answers to them, but rather because I believe it is crucial to continue to discuss ethical reflections in order to embark upon research projects with sensitivity to and awareness of their impact and consequences, and ultimately to become better researchers (c.f. Van Liempt and Bilger 2009).

The first concern is that of reciprocity. Although it is a dense issue with many facets, here I distinguish two different, albeit interrelated, components: the practical considerations one faces in the field, on the one hand, and the broader ethical implications of researching vulnerable groups, on the other. During my fieldwork in Malta and Cyprus, I interviewed a number of migrants and refugees. The vast majority of them were struggling to survive and I was faced with the economic inequality between these interviewees and myself. During the course of these interviews, where people spent hours sharing their often-traumatic migration experiences, it became obvious that I had an obligation to give back in a more concrete manner than just providing advice. In some cases, this unequal exchange was obvious. For instance, towards the end of long interview, a young Nigerian man, who had been unsuccessful in his first asylum claim, legitimately inquired, ‘What kind of help do you have for us?’ My instinct and intuitive barometer of

³³ Others have provided more more comprehensive discussions of the ethical issues involved when research irregular immigration (e.g. Düvell, Triandafyllidou, and Vollmer 2010).

fairness led to an overwhelming wish to pay these interviewees for the time they spent with me – just as I would be paid if I participated in research in Oxford.

However, concerns about how such a financial exchange would bias the research stopped me from doing so. Although I cannot remember who first planted this seed, it appeared to have sprouted and become ingrained into my academic thinking. In further discussions, colleagues echoed the concerns of a bias caused by remuneration, and reminded me that it was cathartic for those I interviewed to tell their stories and that my work would have positive consequences for future irregular migrants. However, after some reflection, I came to the conclusion that this was not necessarily the case: some, although not all, of my interviewees seemed to gain very little from sharing their experiences with me, with the occasional, though not insignificant, few appearing to be re-traumatised by the interview (c.f. Rogers, Leydesdorff, and Dawson 1999); furthermore, although it is certainly my hope that this research will improve the lot of future irregular migrants and one motivation for the research is an interest in social justice, this is not a foregone conclusion or an outcome I can guarantee.

So I did what seemed more appropriate – paid travel expenses, gave practical advice where I could, baked cakes, and offered meals, tea and coffee – which ultimately felt inadequate in exchange for the hours these people spent sharing their experiences, experiences that would become the basis of my research and perhaps the basis of my career. So why was I unwilling at the time to pay my interviewees for their time, as researchers would compensate me for my time in Oxford? Was it merely a question of not wanting to bias the research? If so, the underlying assumption is that people give neutral or unbiased information when no financial or material assistance is required or exchanged. This, I would argue, is a gross simplification of the complex relationship between researcher and research subject, if not a complete falsehood. So why is it such an academic

taboo to pay research subjects for their time? Is it more to do with the insecurities I felt as a privileged white woman confronted by the reality of global inequalities that I read about in books but with which I am so rarely faced? Is it due to a naive wish not to highlight the material power dynamics in the relationship, which are surely evident to both sides? And even if payment does bias research, when do ethical considerations, such as helping someone in need, override the role of a researcher?

Characterising the relationships that form in the field as a one-dimensional power dynamic between a wealthy, powerful researcher and a poor, vulnerable (and so powerless) research subject is inevitably superficial. This characterisation disregards the complexity of all relationships and the different power dynamics that evolve based on a multitude of factors beyond wealth and status (c.f. Lammers 2007). The assumption that payment or other forms of giving bias respondents' answers and thus the research also assumes a superficial, one-dimensional relationship between the researcher and the research subject. Moreover, it disregards the autonomy and power of the research subject to decide what information to divulge and how to divulge it – factors that are certainly dependent on the levels of trust established. Indeed, a mutually agreed price or exchange might in fact allow for more trust and honesty. More generally, I would argue that as social scientists, we are not research machines, driven solely by a quest to obtaining *the* truth. We are human beings engaging in complex relationships with our research subjects and should remain mindful of the many layers involved in our interactions and of their consequences.

The second ethical and methodological issue I encountered while carrying out research for this thesis is that of representation. Specifically, how does a researcher move from forming relationships, however short-lived, with people in the field, to using their words as a basis for research findings? This is also a complex and multifaceted issue that I can only treat briefly here. However, I would start with an illustrative difficulty I faced

while I was still in the field. During my interviews, I began by informing the interviewee about my research and my role as a researcher. Although it was not immediately obvious, after a few interviews I suspected that my role as a doctoral researcher was not entirely clear to my interviewees and that they conflated it primarily with that of an NGO representative who would be engaged in more advocacy or activist activities. Although a researcher can certainly attempt to be more transparent about one's role during fieldwork, such misunderstandings necessarily indicate a degree of uninformed consent. In this case, I was concerned about the ethics of cutting, dissecting and using research subjects' words in ways that they did not completely understand.

Ultimately, I have tried to be as transparent as possible, while also upholding the dictum of doing no harm by adhering to a strict code of confidentiality and remaining as aware as possible of any unintended consequences or audiences. Thus, extensive quotes from migrants and refugees are employed when possible within the thesis in order to avoid taking their words out of context. I also returned to the original interview transcripts on several occasions in order to counter the distorting effects of cutting and pasting interview quotes from one piece of work into another. Nevertheless, this is a thin line to tread as my role as a researcher is not merely to give voice to the voiceless but to also analyse in an unbiased manner. To this end, transparency is essential. Accordingly it should be made clear that the interviews conducted for this thesis – although extensive in comparison to other studies in the field of political science, and sufficient for this qualitative study – are not representative of the entire migrant and refugee populations in Malta and Cyprus. I also quantify statements where appropriate, by alerting the reader to how many respondents voiced similar opinions.

Confidentiality has been maintained in order to avoid doing harm to my research participants. I reference my interviews with migrants and refugees with a number assigned

to each interviewee, and the date during which the interview was conducted. Any specific information that may be used to identify somebody has been omitted. Similarly, I have been careful to omit or limit any information that may be detrimental to the migrant and refugee population collectively. I reference interviews with government officials and NGO staff more transparently, as agreed with each interviewee. However, names are also omitted in favour of position titles.

Terminology

The term ‘irregular immigration’ is used in this thesis to denote a broad category of people who either enter a state without authorisation, for example with false documents, or who fall foul of the conditions of their stay in a country, for example by working or by remaining in a country after their visa has expired. The term is employed with the awareness that migrant status can be fluid and is created by state regulations, rather than being a neutral assessment of a person’s character or behaviour. In distinguishing between the two forms of irregular immigration addressed in this thesis, I refer to those who have entered a state without authorisation or in a clandestine manner, on the one hand, and to those who have breached the conditions of their visas, on the other.

A short note is warranted as to why I have not employed other terms. ‘Illegal immigration’ is not used because of the negative connotations associated with the term, as well the reality that entering a country without authorisation or breaching the conditions of one’s stay is not always a criminal offence. Indeed, in Malta it remains an administrative offence. This is not meant to detract from the difficulties associated with having an irregular status. The term ‘illegal immigrant’, moreover, goes further in criminalising an individual rather than a specific aspect of their behaviour. I also do not employ the term

‘undocumented’ for obvious reasons: many of the migrants and refugees I interviewed arrived with documents.

Outlining the Thesis

The following chapter sets out the conceptual building blocks for the thesis. It starts with a brief discussion of what it means to be a small state before delving into the issues of migration governance and power. The argument put forth is that power dynamics are an important, and often neglected, element of governance processes. To examine this in more detail the discussion considers the issue of power in the context of the regional governance of migration. In order to better understand the role small states have played, a theoretical framework is proposed which characterises state power in terms of its material and nonmaterial components, as well as taking into account the broader effects of structure. The chapter also examines the role of migrant agency within power relationships involved in migration governance.

Chapter Three surveys the trends in migration and asylum policies in the European Union. In order to assess the limited influence of Malta and Cyprus, the evolution of policies and politics making up the migration governance landscape at the regional level is traced, with a particular focus on those policies that specifically affect the southern EU border. The chapter argues that there has been a distalisation process whereby responsibility for migration controls and asylum has been moved towards the EU’s external borders. It also argues that although before 2004 there was limited resistance to this transfer of responsibility, Cyprus, and especially Malta, have more overtly resisted these dynamics despite their small size. Broadly divided into the evolution of migration and asylum policies before and after 2004, this chapter thus sets the historical and regional

context before I turn, in the following chapters, to the response of the two small member states on the southern periphery.

The fourth and fifth chapters make up the bulk of the empirical research and examine Malta and Cyprus, respectively. I begin with a review of the history of migration, as well as the current migration situation in both states. These chapters seek to explain the effect of negotiating as a small member state at an EU level on state interests. Malta and Cyprus' limited bargaining power caused them to be susceptible to being co-opted into EU logics and frameworks, such as the discourse of 'illegal migration'. The influence of this framework on their interests is evident, for example, in the states' limited resistance to EU requests for increased border controls, which has, moreover, been based on rhetoric of EU solidarity and 'burden sharing'. The response has been to emphasise the weakness and vulnerability of the islands in the face of irregular migration, albeit in different contexts which will be nuanced in these empirical chapters.

By incorporating ethnographic material from participant and non-participant observation and interviews with migrants and refugees, my aim in these chapters is to uncover the inaccurate assumptions held by policymakers through the analysis of unauthorised migrants' experiences in Malta and Cyprus. The inclusion of the migrant perspective also reveals how the migration crisis is politically constructed on the two islands, as well as its severe consequences, such as the focus on restrictive policies rather than integration measures in these two member states. Finally, the inclusion of this material is used in order to illustrate the effects of migrant agency on the state and on its relations with other states.

Chapter Six provides a comparative analysis of the new migration realities and the resulting roles the states play in the EU. The tactics employed by Malta and the Republic of Cyprus in order to pursue their interests at the EU level are examined and compared.

And finally, these strategies are assessed in terms of their success and limits. The concluding chapter then returns to the original query into migration governance and the strategies of small states on the periphery of Europe. This chapter revisits the theoretical basis of the thesis and elaborates on the innovative approach of this work. It also briefly discusses the events seen in North Africa, particularly in Libya, in 2011.

II

The Power to Exclude: Small States in Migration Governance

Introducing Small States

This chapter introduces the theoretical framework for the thesis by disentangling the main concepts: small statehood, power, migration governance and migrant agency. The argument put forward is twofold: first, that power dynamics ought to be reconsidered as a fundamental aspect of governance; and second, that supranational or transnational mechanisms used to address transborder issues are not politically neutral, but are determined by the power dynamics between, within and across states. In order to examine these dynamics throughout the remainder of the thesis, I propose a conceptual framework that distinguishes between the material and nonmaterial power of a state. However, the chapter first turns to the concept of governance more broadly and the ways in which power has been neglected in this discussion. Then the issue of migration governance is considered, before analysing the power dynamics at play within the specific context of the European Union.

Malta and Cyprus find themselves geographically and politically on the periphery of the EU, experiencing new influxes of migration, and having to comply with new directives and regulations from Brussels. The limited personnel, resources and material power of the islands affect both their capacity to absorb migrants, and the way they negotiate power relations within the structures of the EU and in the creation of EU migration governance. Indeed, these two consequences are embedded in the two governments' rhetoric surrounding immigration, which stresses the limited capacity of the islands in order to attract more support from other EU member states. These two islands are thus excluded and excluders: their small size means they may be marginalised in EU political negotiations and decision-making processes; simultaneously, and in part as a reaction to their own political exclusion, they have excluded migrants arriving clandestinely on the

islands, attempting to deter them from arriving and marginalising them when they nevertheless cross the islands' national borders without state authorisation.

There is a limited literature on how being a small state in the international system shapes a state's outlook and behaviour, as well as the behaviour of other actors towards it.¹ The dearth of interest in the subject is due in part to small states often being classified as a residual category, in contrast to great or middle powers, lacking even an undisputed definition of what it means to be small. The evolution of the definition of a small state traces historical contexts where quantity or quality was the basis for distinctions. As Iver Neumann and Sieglinde Gstöhl (2006) explain, academics and politicians have long juxtaposed great powers and small powers based on their relative strength in the international system, with the category of great powers being codified in law as early as 1814 at the Congress of Vienna. This juxtaposition continues to be used through proxies such as population, gross domestic product, or land mass (e.g. Crowards 2002; Vital 1967).

However, such distinctions, based on rigid classifications, can be contested on the grounds of being arbitrary. The category of small states easily merges into the category of middle powers on the one hand, and into the equally contentious category of microstates on the other.² These rigid classifications are also problematic in that they include states facing very different political, economic, and social contexts, which shape their power capabilities and their relations with other states. Moreover, the same category may include small and weak states, and thus result in a methodological conflation of the two. For example, if we take a reasonable population limit of ten million to define a small state, the category will include economically strong states with little political clout or little inclination towards power projection such as Luxembourg, regional powers such as

¹ There are, however, some noteworthy exceptions (e.g. Cooper and Shaw 2009; Fox 1959; Ingebritsen et al. 2006; Keohane 1969; Steinmetz and Wivel 2010; Vital 1967).

² Microstates are usually defined as having a population of either less than 100,000 or less than one million (Harden 1985; Dommen and Hein 1985).

Singapore, and third world countries with very limited economic and political prospects such as Bhutan.

Although Malta and Cyprus are small enough to be undisputed small states and are sometimes categorised as microstates (e.g. Harden 1985), for the purposes of the study, it suffices and is more appropriate to conceive of small states as the weak actor in an asymmetrical power relationship. This highlights the relational aspects of the definition, as well as the importance of the spatio-temporal context when using concepts such as small states (Steinmetz and Wivel 2010; c.f. Mouritzen and Wivel 2005). The focus is thus on small states that are members of the European Union. Moreover, since the purpose of the study is to investigate the relationship between the EU, on the one hand, and Malta and the Republic of Cyprus (RoC), on the other, the former institution is conceptualized here as the more powerful actor in the asymmetrical relationship.

Despite the generally accepted view that small states have limited political power and scope for negotiation, some have argued that smallness can have its benefits. In terms of foreign policy, the limited, mostly bilateral relations of small states, as compared to the multilateral forums in which large states engage, result in small states being able to home in on relatively few issues (Andrew 1970; Bjøl 1968; S. Hoffmann 1978; Jönsson 1984; Keohane 1971). Baldur Thorhallsson (2000) points out that in negotiations small states may have more flexibility and manoeuvrability than larger states, giving them an advantage. Christer Jönsson also highlights that the limited choices of a small state contribute to its power in underlining its unambiguous commitment to a particular choice:

It could even be argued that the apparently weaker actor frequently has the greater bargaining power, because its range of choice is - and is perceived to be - so limited that there is hardly any will involved and therefore no doubt about the nature of the commitment (1981, 254).

Others have also written about the tension between small and large states within the EU, as well as small states' scope for influence in the bloc (Magnette and Nicolaïdis 2005; Panke 2011; 2010; Steinmetz and Wivel 2010). Paul Magnette and Kalypso Nicolaïdis map how the EU has mediated this tension by balancing the principle of equality between member states and proportional democratic representation. In this vein, the founding treaty established a system of weighted votes in the Council, the role of the Commission and the rotating presidency. However, with the increase in the number of small states in the Union, these mechanisms were seen as giving unfair advantage to smaller states. Thus there has been a shift towards more proportional voting in the Council, while the Commission retained the equality principle (Magnette and Nicolaïdis 2005).

In this context, Robert Steinmetz and Anders Wivel argue that the institutional changes whereby small states no longer profit from overrepresentation may be less important than they appear. They posit that small member states still benefit from opportunities within the EU especially if they are able to narrowly define their specific foreign policy goals. Building expertise in policy niches where material power is of secondary importance allows them to act as 'smart' states. Nevertheless, challenges remain especially in the tendency for large states to hold negotiations amongst themselves outside formal EU institutions. Wivel and Steinmetz conclude that in their approaches to cooperation with larger EU powers, and in their attempt to balance preserving national autonomy and seeking to influence European affairs, small states have fallen along a continuum from reactive, intergovernmental relations to proactive relations, encouraging full integration (Steinmetz and Wivel 2010; c.f. Thorhallsson and Wivel 2006; Wivel 2005). In her study on the influence of small states in the European Union, Diana Panke similarly concludes that although larger states tend to be more influential than smaller states, this trend is not consistent. States can surmount their size-related disadvantage,

especially through the accumulation of expertise. Thus, states that have been EU members longer and who have previously held the Presidency are more active in negotiations (Panke 2011; 2010).

With regard to Malta, Roderick Pace points to the opportunities provided by the EU and the tools available to small states in negotiating membership. He argues that EU membership has helped to strengthen economic security, while also providing Malta a security community made up of democratic states committed to international norms that in theory create a safer international environment for Malta (and other small states). Moreover, by having a good understanding of EU policies, the *acquis*, and the national implications of the matters being negotiated, Malta turned its size handicap into an advantage. During the pre-accession negotiations, Malta secured 72 transitional arrangements and derogations, more than any other of the nine new accession states in 2004. Malta, as well as the EU, justified these concessions by referring to the country's small size (Pace 2006).

Similarly, Neill Nugent suggests that Cyprus' diminutive size affected its decision to apply for EU membership, as well as its behaviour, interests, and influence as a member within the Union. He outlines two main ways in which Cyprus has utilised its political resources as a small state, namely by increasing its permanent representation in Brussels and prioritising particular policies, such as the Cyprus problem, maritime transport, and neighbourhood issues related to its geographic proximity to the Middle East and North Africa (Nugent 2006).

Nevertheless, the economic and security incentives of joining the Union have been interlaced with political and social adjustments. The redefinition of borders from national to external regional borders, along with the incorporation of the Dublin II Regulation, illustrates how migration policies and realities in these states are influenced by EU

membership. As small states, Cyprus and Malta may have increased their relative political power by joining the EU, but they are still relegated to limited positions within the Union. This double positionality impacts their roles and abilities to influence EU policy developments. For example, the two states have not yet been able to negotiate an exemption to the Dublin II Regulation or to bring about a permanent intra-European relocation scheme.³

Small member states on the periphery of Europe have contributed to the creation of migration governance in the EU. However, this role is circumscribed by the small states' position in asymmetrical power relations. Small states are left unable to change the broader framework of migration governance, and thus are restricted to manoeuvring within it. Nevertheless, the perspectives of small and politically weaker states on the Union's periphery can inform the discussion of the power and strategies available to them, as well as the broader discussion of mixed flows of migrants attempting to enter the EU. In the next section, I introduce the basic categories of power used in this work, those of material and nonmaterial power. The following section then examines the question of how governance structures are imbued with power relations, a feature often disregarded by the governance literature. The discussion moves beyond how states can deploy material and nonmaterial power to how social structures and broader relationships shape the constraints on and opportunities for the use of power. In examining the effects of asymmetrical power relations within EU migration governance, I turn first to migration governance broadly, before turning to the specificities of migration governance with the EU and how it is operationalised through the control of the bloc's southern border. Finally, it is argued that the role of migrant agency is important in the discussion of power and migration

³ Although they have had limited success in, for example, realising the inclusion of a reference to states facing 'disproportionate pressures' in the European Pact on Immigration and Asylum (2008). This success among others is discussed in Chapter Three in more detail.

governance as it constitutes aspects of state power and allows us to deconstruct state discourses of migration control.

Material and Nonmaterial Power

In order to illuminate the potential power of small states within these structures, I make a distinction between material and nonmaterial power.⁴ A state derives material power from resources such as its military, economy, territory, or population; whereas nonmaterial power is based on resources such as knowledge, networks, moral authority, or symbolic capital. Nonmaterial power is thus often employed through discursive practices, including persuasion and argument (c.f. Holzscheiter 2005). Moral authority is exercised by a state when it makes an argument of what is morally right or wrong, often based on a notion of fairness or equality. Scandinavian states are a good example: in her book, Christine Ingebritsen argues that Scandinavia has emerged as a ‘moral superpower’ by ‘continuously and consistently advocating compliance with global standards of conduct and by work to develop, refine and maintain principles of mutual understanding in world politics’ (2006, 2). Of course, states may exercise moral authority on a smaller scale, deploying an argument based on a notion of fairness or equality within a particular context. Here, the term morality is used in its broad sense of an association with ideas of right and wrong, rather than a judgement of a state’s behaviour as principled or virtuous. Indeed, as shall be demonstrated in this thesis, states can and do deploy moral arguments in order to further their own interests, sometimes with negative consequences.

Moral authority is closely related to symbolic capital, although the two are not identical concepts. Pierre Bourdieu defines symbolic capital as ‘prestige, reputation, [or] renown’ (1985, 724). This concept is used, for instance, in Michael Barnett’s (1998) study

⁴ For a discussion of the strategies employed by small states see Cooper and Shaw, 2009; Keohane, 1969; Ingebritsen *et al.*, 2006.

on Arab states, where he demonstrates how these countries deploy symbols of ‘Arabism’ in order to alter the behaviour of other Arab states. As such, moral authority can be understood as a particular aspect of a state’s symbolic capital. However, this power does not necessarily rest on moral authority. For example, a government may have a reputation for advocating hawkish policies, as did George W. Bush’s administration. This in turn endows the state with a particular type of power in the short term, where other states may be more likely to comply with its demands due to fear of military consequences. Similarly, a leader with a penchant for erratic behaviour, such as Libya’s former leader, Muammar Gaddafi, will accrue a certain amount of power as other leaders and diplomats will tread more carefully in negotiating with this state.

Two points are important to note. First, these forms of power do not always have the desired effects. Indeed, the example of Gaddafi is one that illustrates how his reputation for engaging in erratic behaviour ultimately encouraged states to intervene during the civil war in 2011. And second, within these conceptualisations of material and nonmaterial, what is most significant is the relational aspect – even ‘hard’ forms of material power such as economies and militaries only make sense within a tempo-spatial context in relation to other states and their environment.

The distinction between material and nonmaterial may be compared to Joseph Nye’s discussion of soft power, which he defines as the ability to obtain what one wants through co-option and attraction as opposed to through coercion or payment, which would be considered hard power (Nye 2004; 1990). Although this concept has certainly captured the imagination of academics and policymakers alike, the basis of ‘attraction’ remains under theorised within the literature. In order to unpick this concept, I instead draw the distinction between material and nonmaterial power, where nonmaterial power is based on the resources listed above. This distinction also serves as a critique of the notion of soft

power as purely non-coercive (c.f. Mattern 2005). Indeed, although my typology is useful in highlighting the material limitations faced by small states, this is not to suggest that the two categories are distinct or unrelated. On the contrary, states with a large amount of material power may be more adept at deploying nonmaterial power. The absence of a verbalised threat may also reflect the perceived power of a state, rather than an absence of coercion.

Governance: Bringing Power and Politics Back In

By its very nature, international migration transcends national boundaries and has prompted varying degrees of cooperation between states and other actors in order to address it, whether to facilitate, prevent, or ‘manage’. In recent history, states have established global institutions to manage such transnational issues, as seen, for example, in the proliferation of global mechanisms and agreements before and after World War II. The United Nations and its agencies were established with the intention of facilitating cooperation in international peace and security, economic and social development, and human rights, in part by developing international law. States established other multilateral institutions such as the World Bank and the International Monetary Fund (IMF) to coordinate global economic and financial activity.

Forms of regional governance have also become increasingly common, the most advanced example being the EU (Fawcett and Hurrell 1995). Within these arrangements there is a delegation of power from the bottom up, from states to international organisations and regional institutions, and also a delegation of power from the top down, as being part of a regional bloc can endow a country with more power. Moreover, states are no longer the only actors on the international stage. Increasingly, private actors, such as non-governmental organisations and transnational corporations, engage in the process of

governance. Indeed, the role of these actors in supranational governance distinguishes it from international cooperation.⁵

Although both academics and practitioners are fond of governance as a catchall term, it is a notoriously ill-defined and slippery concept and should be clarified for the purposes of this study. Definitions of governance and global governance are usually very general and involve some notion of steering, building on the etymological origins of the word. A much-quoted definition is that used by the Commission on Global Governance, established in 1992 by the United Nations. The Commission defines governance as:

the sum of the many ways individuals and institutions, public and private, manage their common affairs. It is a continuing process through which conflicting or diverse interests may be accommodated and co-operative action may be taken. It includes formal institutions and regimes empowered to enforce compliance, as well as informal arrangements that people and institutions either have agreed to or perceive to be in their interests (1995, 2).

Elsewhere, governance is defined as ‘the process and institutions, both formal and informal, that guide and restrain the collective actions of a group’ (Keohane and Nye 2000, 12). Much of the literature takes a state-centric approach in its treatment of governance, looking at how the emergence of new actors within governance forums affects states’ capacity to steer (e.g. Scharpf 1999). Less frequently, a society-centred perspective is taken, which focuses on co-ordination and different types of networks and partnerships (e.g. Rhodes 1997; Scholte 2002). For the purpose of this thesis, it suffices to make a simpler distinction between regulation at the national level (government) and regulation which takes place above the state level (governance) within a system, whether regional or international, characterised, in contrast to the confines of the state, by its lack of a single source of authority (Finkelstein 1995, 369; c.f. Betts 2008).

⁵ Scholte (2000) describes this phenomenon as ‘polycentric governance’, whereby sub-state, supra-state, and non-state actors each play a role (c.f. Held et al. 1999).

The establishment of different types of regional and global governance is seen as resulting from collective action problems, whereby the collective good is compromised if actors pursue their own interests in isolation (Olson 1971). In economic terms, this is regarded as an example of market failure, where negative externalities impinge beyond the producer of such externalities. In the case of public goods, there is also the possibility of free riders. The classic example is that of pollution and climate change, the effects of which are trans-boundary, not confined to any particular state, and result in polluter states producing negative externalities on other actors. From a neoclassical economic viewpoint, a state is thus thought to have little incentive to cut its greenhouse gas emissions if acting in isolation and would continue to pollute, creating externalities while free riding on other countries' reductions.

Hence, the discussion of governance is frequently couched in economic terminology, which imbues it with a neutral tone. Moreover, in this age of globalisation, a normative assumption is often made that the more global and regional governance is developed the better off the world will be because this process results in positive-sum outcomes. The definition used by the Commission on Global Governance above illustrates this logic (c.f. Gordenker and Weiss 1995, 357; Young 1994, 53). Such a claim is usually based on efficiency or equity, or a combination of both. The encouragement of institutionalised international cooperation based on an efficiency rationale invokes the argument that externalities or global public goods are sources of economic inefficiency that must be managed through regulated cooperation. The second type of argument made in support of governance is based on equity or justice: in the international system, governance in the form of norms and institutions is seen as a method to counteract the dominance of great powers, and bring order to the anarchy (Keohane 1984; c.f. Betts 2008).

A weakness of both arguments, however, is the common tendency to disregard the politics involved in such institutions and how they may sustain, entrench, or counteract power relationships (c.f. Barnett and Duvall 2005a; Hurrell 2005). For example, Robert Cox and Michael Schechter maintain that the fictions of sovereign equality between states and the anarchy of the international system ‘obscure the perception that the actual relationships among the constituent units are hierarchical or clusters of hierarchically arranged units’ (2002, 32).

Current forms of governance seen in global institutions such as the IMF and the World Bank, not to mention more exclusive groups such as the G8, have indeed been criticised for their lack of transparency and accountability, as well as for the dominance of rich, northern countries, particularly the United States (e.g. Stiglitz 2002; c.f. Gerster 1994). By wielding power over the decisions of the IMF’s Executive Board on terms of conditionality, countries like the US have continued to promote their own economic and foreign policies through a guise of multilateral governance (Momani 2004). At the IMF’s inception the United States, as the major post-war economic power, already dominated the discussions; its overriding power in the institution, which continues to be criticised, was apparent and perhaps inevitable even in 1944. John Maynard Keynes, the head of the British delegation, publicly worried that the Fund (as well as the World Bank) would evolve into an institution dominated by politics instead of the politically neutral economic organisation he envisaged. After the first IMF board meeting in Georgia he recounted, ‘I went to Savannah to meet the world, and all I met was a tyrant’ (Pauly 1999, 414).

International institutions and regional arrangements continue to be criticised for being marred by a democratic deficit: first world countries are overrepresented in terms of numbers and power, while third world countries have limited scope for influencing their

procedures and mandates.⁶ Evidently, this type of governance does little to counteract the strength of powerful nations. Nevertheless, there are issues, such as climate change and the AIDS crisis, where a coordinated international response seems appropriate, even necessary. Although international migration is one of these areas, the global response has been far from comprehensive or coherent (Betts 2011). Within the EU, the response has similarly been far from satisfactory in promoting equity and including the significant participation of the less powerful, be it transit countries or sending countries.

We must therefore proceed cautiously, especially in considering the tacit assumption that more governance is better, an assumption which disregards the notion of power and how it affects and is employed within structures and processes of governance. One reason for the omission can be traced in the historical roots of International Relations scholarship. Principally, it has been English school and constructivist scholars who have developed the governance literature, while power has traditionally been associated with realist scholars. These realists have defined power as the capacity of a state, derived primarily from material resources in the form of military and economic capabilities.

This traditional approach to power has been criticised by other scholars, both within realism and other schools of thought. For example, realists from Morgenthau to Mearsheimer have highlighted the neglect of the psychological, the different ways in which actors deploy material resources based on intellectual capabilities (Mearsheimer 2001; Morgenthau 1948).⁷ In a similar vein, David Baldwin (1979) highlights the relative infungibility of power and thus the importance of contextual analyses when studying power in international relations. Liberal and Gramscian theorists, on the other hand, recognise that power is inherently a relational concept, dependent upon collaboration as

⁶ Joseph Nye (2003; 2001) provides a critical perspective very much in favour of globalization. Within the EU literature there has been a debate between on the one hand, Andrew Moravcsik (2002) and Giandomenico Majone (1998), who argue that the EU does not suffer from a 'democratic deficit', and on the other hand, Simon Hix and Andreas Follesdal (2006), who argue that it does.

⁷ Robert Keohane and Joseph Nye (1989) have also criticised equating power resources with outcomes.

well as coercion (e.g. Cox 1994; Gill 1993; Keohane 1984). Nye (2004; 1990), in his development of the idea of soft power includes the role of ideas. Other neoliberal institutionalists have also developed the power debates by emphasising the role of non-state actors, such as NGOs and transnational corporations (e.g. Fuchs 2005; Holzscheiter 2005; Keohane 1989; Simmons and Martin 2002).

Despite these advances, the literature on power within International Relations, still dominated by realism, remains primarily concerned with an actor-oriented approach to power, to the detriment of an understanding of the social and productive forces that shape the power relations and the behaviour and interests of particular actors. Indeed, my own distinction between the material and nonmaterial capacities of an actor also suffers from this shortcoming. Here, Steven Lukes' (1974) analysis of the three dimensions of power is instructive. Lukes examines what he calls the three definitions of power: the one-dimensional, the two-dimensional and his own, radical, three-dimensional view of power. The pluralist or one-dimensional approach focuses on overt behaviour, decision making, observable conflicts, and equates policy preferences revealed through political participation with interests (Dahl 1961; Merelman 1968; Polsby 1963; Wolfinger 1971). The two-dimensional response, articulated most notably by Peter Bachrach and Morton Baratz (1962), critiques the pluralist approach for its emphasis on overt conflict. Bachrach and Baratz do so by incorporating a second face of power, whereby actor A limits the scope of the political process to issues that are comparatively harmless to its interests through the reinforcement of particular social and political values, as well as institutional practices. In doing so they incorporate the concept of a 'mobilization of bias', citing Schattschneider's famous words:

All forms of political organisation have a bias in favour of the exploitation of some kind of conflict and the suppression of others, because organisation is the mobilisation of bias. Some issues are organised into politics while others are

organised out (Schattschneider 1960, 71; quoted in Bachrach and Baratz 1962, 949).

Lukes goes further in criticising this view on three counts: (1) for continuing to be too committed to behaviourism, seeing power as individuals realising their will, rather than a function of collective forces and social arrangements; (2) for associating power with actual, observable conflicts, and thereby neglecting forms of power such as manipulation, as well as other instances where interests can be influenced, shaped and even determined; and (3) for asserting that non-decision-making power only exists where grievances are denied entry into a policy process in the form of issues. On this third count, Lukes questions the limits of what could be considered a grievance, from a political demand to a sense of unease, and remarks:

Is it not the supreme and most insidious exercise of power to prevent people, to whatever degree, from having grievances by shaping their perceptions, cognitions and preferences in such a way that they accept their role in the existing order of things either because they can see or imagine no alternative to it, or because they see it as natural and unchangeable, or because they value it as divinely ordained and beneficial? (1974, 24)

Lukes thus emphasises how the structures within which actors operate influence, condition, and even determine interests.

Michael Barnett and Raymond Duvall include Lukes' analysis in their own attempts to build on the different traditions within the International Relations literature in order to create a taxonomy of power that incorporates different theoretical perspectives. They also apply their taxonomy directly to the issue of governance and therefore merit some attention here. If we employ their definition, power is 'the production, in and through social relations, of effects that shape the capacities of actors to determine their own circumstances and fate' (2005a, 39). This definition is useful in identifying the relational nature of power, while underscoring how the effects of power benefit some and disadvantage others. Their taxonomy of power divides the concept into four categories: compulsory, institutional,

structural, and productive. It also highlights both the kinds of relationships through which power operates (interaction or constitution) and the specificity of those social relationships (direct or diffuse). Although some categories align with certain theoretical perspectives of power within International Relations, as compulsory power does with a realist perspective, the taxonomy, whose categories are not intended to be mutually exclusive, allows for the overlapping of categories and hence the ability to transcend the theoretical divides within the discipline and the concern with the effects of power (Barnett and Duvall 2005a; Barnett and Duvall 2005b).

Indeed, power is still habitually regarded from the perspective of the powerful. Despite the recognition of the fundamental roles that weaker actors play in sustaining a system of power, scholars have neglected the ways these actors experience power relationships. For the purposes of this study and its interest in mixed immigration flows to small states within the EU, what is significant is the ability for Barnett and Duvall's taxonomy to incorporate 'power over' and 'power to'. It can therefore reflect the power of the relatively weak, for instance in the form of a state refusing to collaborate with aspects of a migration regime, or migrants crossing fortified and patrolled borders irregularly. It also allows for the consideration of power in terms of both structure and agency, providing an alternative to the actor-oriented approach seen, for example, in the influential work of Baldwin (2002). Moreover, exploring the use of productive power within the governance of migration in Europe is also useful. For example, the pervasive use of the term 'illegal migrant' within EU policy circles and documents indicates a reliance on migrant hierarchies within migration governance and reveals the power that is held by those who frame the discourse.

Thus, within this study, although the distinction between material and nonmaterial power is valuable in examining how Malta and Cyprus as small, weak states attempt to

deploy their power resources in order to further their interests within the migration governance structures in Europe, this is only part of the story. The ways their interests are conditioned by the structures and relationships within which they are engaged is another important element. Here, Barnett and Duvall's structural and productive forms of power can be employed: structural power, which is 'the constitution of subjects' capacities in direct structural relation to one another', and productive power, which is 'the socially diffuse production of subjectivity in systems of meaning and significance' (2005a, 43).

For the case studies of Malta and Cyprus, these forms of power, also emphasised by Lukes' third dimension, are significant, albeit more subtle, in conditioning the behaviour of actors. Despite the difficulty in researching such instances of power, the more elusive manipulation of interests should not be ignored. They point to the question, which is examined empirically in the following chapters, of how EU membership shapes Malta and Cyprus' interests, especially in light of their new roles as gatekeepers on the EU's southern periphery. This emphasis is not intended to diminish the ability of people and states to resist restrictive power structures and exert their own autonomy in various ways. On the contrary, the strategies of small states and of irregular migrants make up a significant part of the study. The next section turns to examine such power relationships first broadly within migration governance and then locates EU migration governance at the external borders of Europe. It also considers the role of migrant agency within these dynamics.

Migration Governance

Migration governance processes have thus far developed most significantly at the regional level, in the absence of an international normative or institutional framework. Franck Düvell (2011b) notes, however, that such regional processes have expanded and a trend can be identified towards inter-regional, and thus more global approaches. At the

international level, Alexander Betts (2011; 2008) identifies three levels where migration governance does occur, albeit in a fragmented manner: (1) traditional multilateral governance, as seen within the mandates of the United Nations High Commissioner for Refugees and the International Organization for Migration (IOM); (2) embedded governance, whereby migratory movements are governed indirectly by international institutions such as the International Labour Organization, along with a host of human rights documents such as the Universal Declaration of Human Rights; and (3) multi-level governance seen in bilateral and regional arrangements, such as the Budapest and Söderköping processes, some of which are also embedded within, for example, the EU. The lack of a cohesive regulatory framework allows powerful states to forum shop, choosing the regulatory frameworks and institutions that serve their interests best, while excluding actors who are relatively weak, such as sending countries in the third world. Moreover, the trend towards this ad hoc governance, seen with the increasing reliance upon multi-level governance, has allowed for the continued exclusion of the global South from meaningful involvement.⁸

One problem with pursuing global migration governance may be the difficulty in overcoming divergent interests *between* sending and receiving countries,⁹ divergent interests *within* states, and divergent interests regarding different types of migration that are divided into politically-constructed categories, such as low and high skilled labour migrants, asylum seekers and refugees, international students, and retirees. With increasing calls for ‘managed migration’ that imply some degree of international governance, it is important not only to examine the politics of current forms of migration governance, but to

⁸ What Mark Duffield refers to as a continued ‘stratified system of engagement’ (2001, 8).

⁹ Although, increasingly, countries are experiencing emigration and immigration simultaneously. This distinction is thus insufficient. More fundamental are the types of migration taking place (e.g. retirees, asylum seekers, low-skilled labourers, high-skilled labourers) and how government and business respond to different types of migration.

anticipate the emergence of future forms of migration governance in the EU, as well as pointing to alternative courses of action.

At the core of the notion of governing or managing migration, is a fundamental concern with determining who is permitted to enter a country or region under what circumstances, and who must be barred from entry. These processes involve elements of material and nonmaterial power. Developed states most often initiate processes that attempt to stop particular forms of migration while facilitating others, and wield more power than less developed countries. This North-South dynamic shapes not only institutional arrangements that define migration, but also bilateral and regional agreements that directly affect people's mobility across national borders. As is illustrated by the recent financial crisis, other structural factors, such as economic well-being and human rights values, also condition state relationships and classifications of migration.¹⁰

One constituent of power within migration governance is based on material capabilities: the ability to pay for certain programmes, such as those run by the IOM, the ability to operate asylum systems, and the ability to access expertise and new technologies in order to implement controls. The power to deter, detain, and deport is operationalised through such programmes, expertise, and technologies. Deterrence is conducted in part by the strict control of the border, which is based both on financial investment and the nature of the borders. Detention and deportation, which can also be understood as deterrence measures, are costly endeavours for states. They are also subject to normative restrictions and considerations.

These normative elements guiding migration governance concern the application of human rights law and the power of definition, the power to create categories of people which frame the governance of migration. International human rights norms and laws

¹⁰ Franck Düvell (2011b) has written more extensively on the governance of irregular immigration, with a particular focus on Europe and the US.

directly and indirectly determine how states may treat non-nationals, as well as their own nationals.¹¹ What is significant is the power to define who can access the right to movement and settlement, and hence who is considered a ‘legal’ migrant. Acknowledging the power and politics involved in these processes necessarily excludes the idea that these categories reflect fundamental characteristics of individual migrants.

Issues of class intersect with the material and normative considerations discussed above. High-skilled workers, tourists, students, and migrant retirees can move with relative ease due in part to the highly-regulated nature of this type of movement, while less-skilled workers, refugees, and asylum seekers face more restrictions, especially those unable to access regulated or legal channels of movement. While states often encourage low-skilled migration in order to fill labour market shortages, the immigration controls that govern their mobility help to produce ‘precarious workers’ who lack recourse to legal remedies, and thus remain susceptible to exploitation (B. Anderson 2010).

Although governance is often seen as a less hierarchical form of steering, based on horizontal partnerships, the two case studies examined in this thesis and the control of borders and migration more generally reveal this to be untrue. The power to exclude is evident in the creation of policies of control within migration governance, where at the regional and international levels more powerful and rich northern states are dominant, while sending states within the global South are less represented. The relative power of first world countries within migration governance processes allows for their interests to become codified within institutions.

The EU core-periphery dynamic also highlights the issue of relative power. The EU’s emphasis on exclusion at the external border, coupled with the Dublin II Regulation, has resulted in peripheral member states sometimes experiencing large numbers of irregular

¹¹ For instance, all people have a right to be free from torture and other forms of inhuman and degrading treatment; and the right to protection should be afforded to all who fall within the UNHCR’s definition of a refugee.

migrant arrivals and, more importantly, bearing the brunt of the responsibility to shore up the borders. Indeed, in order to access more financial resources within the EU to fulfil these responsibilities, Malta and the Republic of Cyprus have stressed their vulnerability to immigration flows, emphasising their limited resources and their smallness. They are still rule takers within the EU, but their status as member states presents a new opportunity to voice demands at the supranational level.

Locating Power and Migrant Agency at the EU's External Borders

Although processes of inclusion and exclusion are conducted over an array of spaces and time, borders continue to act as particularly salient locations of and means for these processes.¹² Around the world, states build walls, raise barbed wire, and lay landmines as clear demarcations of who is inside and a member and who remains outside, subject to the political contingencies that will determine whether they are desirable or undesirable migrants (Bigo 2004). Fundamentally then, borders are a means of control: a means of demarcating ownership over territory, of enclosing a population within a given geographic area and of restricting or facilitating movement into and out of that territory.¹³ Borders divide the world into states, regions, alliances, and systems; divisions that separate relatively equal states, as within the EU, or unequal ones, as along the EU's southern rim or the US-Mexico border. While also reifying power relationships, borders simplify complex relationships and issues of control by creating symbolic divisions between states and people. Although this function has its advantages, it also distorts reality through oversimplification and the creation of a zero-sum game (J. Anderson, O'Dowd, and Wilson 2003, 6–7).

¹² William Walters (2002; 2006) and Sergio Carrera (2007) demonstrate how new surveillance technologies multiply and disperse EU borders, both spatially and temporally (c.f. Vaughan-Williams 2008).

¹³ In a similar vein, Liam O'Dowd (2002) has written about borders as barriers, bridges, resources, and symbols of identity.

More importantly, borders are placed where those with power decide they should erect walls, mount barbed wire and dispatch sea patrols. Current geographic divisions into states are the result of power struggles and the exercise of coercion throughout history; something which maps of the Middle East or divided islands such as Cyprus or Ireland make immediately obvious. As Mike Haynes suggests, we must ‘reject the idea that there is an objective geographical, cultural, linguistic, economic, ethnic or any other component that distinguishes not only national groups from one another but the European from anyone else’ (1999, 22).

Moreover, borders have throughout history changed their symbolic, geopolitical, and functional meaning (Ferrer-Gallardo 2008; Lucassen 1998; Torpey 2000). For example, Michel Foucault (1991) observed that in the mid-eighteenth century governments shifted their emphasis from controlling territory to controlling population, reflected in the current use of population as a measure for state size (c.f. Shore and Wright 1997, 30). Similarly, drawing on Foucault’s concept of biopower, William Walters (2002) discusses the rise of importance in the bio-political function of borders that focuses on the control and filtering of populations (c.f. Foucault 1990).

With the rise of more globalised economic activity, and improvements in communication and transportation technologies, one might expect the inevitable demise or at least weakening of the nation-state and the movement towards a new ‘borderless world’.¹⁴ Indeed, the fraying, though still dominant, neo-liberal economic ideology promotes a free market logic that views borders as negative barriers to economic flows. An exception, however, is the insistence that cross-border flows of labour remain ‘managed’ (J. Anderson, O’Dowd, and Wilson 2003, 9).¹⁵ As states facilitate economic activity across

¹⁴ Saskia Sassen (1996) does identify the regulation of movement of people as an anomaly within this trend (c.f. Joppke 1998; Ohmae 1994).

¹⁵ The Trilateral Commission and the Organisation for Economic Co-operation and Development view borders as economically useful in establishing wage boundaries. In their reports, they favour moving capital

borders in the form of goods, capital, information, privileged people, multinational corporations, and foreign direct investment, we are simultaneously seeing a reaffirmation of national and regional borders through migration controls both within the state and at its border.¹⁶

Peter Andreas concludes that rather than the erosion of borders, there has been a shift in emphasis: we are witnessing the economic liberalisation and demilitarisation of borders, while simultaneously seeing an increase in border law enforcement. He states, ‘Transnational law evaders rather than interstate military invaders increasingly drive state border security priorities. Geopolitics is alive and well, but is increasingly based on policing matters’ (2003, 82; c.f. Balibar 1998). While such re-bordering processes have practical ramifications, it is important to keep in mind that power lies also in their symbolic significance. A national border exerts the image and power of the state, while also functioning as a barrier in order to ‘manage’ migration and intercept flows of irregular migrants in particular. During the Cold War, for example, political leaders evoked the Iron Curtain for ideological and geopolitical reasons; however, it was also a reality faced by those on both sides of the conflict. Thus, borders reflect how the power to exclude and include lies on the one hand with material power, but also with nonmaterial symbolic power.

Within the EU, this dual utility of borders is evidenced in the dichotomy between internal and external borders. Such a dichotomy reinforces the image of stark inclusion and exclusion propagated in migration policy rhetoric, while allowing for a more complex process of selective inclusion and exclusion. This more ambiguous world of governance stands in contrast to the representation of rigidly organised, Westphalian hierarchies, so

to cheap sources of labour rather than allowing more freedom of movement across national boundaries (Dreher 2001).

¹⁶ Examples of the former include restrictions on asylum, while those of the latter are the US-Mexico frontier wall and the increased number of Frontex patrols in the Mediterranean.

often evoked. In the EU context, where internal borders have ostensibly been relaxed, there has been an increase in different types of borders (external, internal, Schengen, non-Schengen, EEC, etc.) and in the differentiation between these types of borders. In this sense, the redefinition of borders redefines power relationship between states and provides an interesting perspective, especially as the EU's borders have been compared to a neo-medieval empire with frontiers and overlapping circles of authority and allegiance (Zielonka 2006).¹⁷

Largely due to its project of European integration, the hardening of external borders became a major priority for the EU institution, a priority that has been necessary to accept as part of the accession process. The Palma Document of 1989 first highlighted the need to compensate for the relaxation of internal borders in order to combat terrorism, international crime, and drug trafficking. This was to be done through the coordination of police, intelligence, and security services, as well as the strengthening of external controls and immigration and asylum policies (Bunyan 1993). The subsequent Convention Implementing the Schengen Agreement (1990) adhered to this logic and resulted in increasing visa restrictions, the tightening of immigration controls that also restricted the entry of asylum seekers, conflating crime with migration, especially in the aftermath of September 11th 2001, and widening the scope of data collection with the implementation of systems such as the Schengen Information System.

The increase in immigration controls along the external borders has a number of consequences. First, it irregularises migrants without access to legal channels into Europe, the majority of which are reserved for the highly skilled and wealthy. Second, with the intensification of border controls, migrants as well as refugees are taking greater risks in order to reach Europe, increasing their vulnerability. As bodies wash up along the shores of

¹⁷ Hedley Bull (1977, 264–276) first developed the idea of 'neo-medievalism'.

the Mediterranean, they are an indication of the consequences of a hard external border, and of the continuation of migration flows despite it.¹⁸ Third, the European Union's reliance on fortified borders curbs access to its asylum and refugee protection regimes. This creates tension with the ethical and legal obligations of the state to provide protection to those who qualify as refugees. In response, destination countries have attempted to alter the moral parameters of the discussion by arguing that 'genuine' refugees would arrive legally (Schuster 2000; 1998; Uçarer 2001).

Borders also construct divisions and hierarchies between states, potentially destabilising regions both politically and economically. For example, the external border of the EU that runs through the Mediterranean divides the region along an economic, demographic and political fissure. This division reifies differences and power inequalities, increasing the likelihood of distrust between states on either side of the political division. Indeed, the demarcation has altered relationships between some countries that now fall on opposite sides of the line. On the eastern edge of the Mediterranean lies the Middle East, which along with North Africa is made up of less economically developed states (with the exception of Israel) than the EU member states they border. These discrepancies and the power hierarchies involved resonate through bilateral relationships across the divide, through the relationship between peripheral and core members of the EU, and through migration policies in the region.¹⁹

Situated in the Mediterranean Sea, Malta and Cyprus find themselves in between and on the edge of different regions, affected by the new demarcation of the EU's southern external border. For example, Malta and Libya have a history of close social and economic links and relative freedom of movement; but had to implement visa requirements due to

¹⁸ For example, the UNHCR reported that 2011 was the deadliest year for migrants crossing the Mediterranean, with 1,500 reported drowned or missing (Frenzen 2012).

¹⁹ For an interesting parallel, see Philip Robins' (2006) article on the competing influences of Europe and the Middle East on Turkish foreign policy.

Malta's accession into the EU. Such tension is increased with attempts to create buffer zones of tiered allegiances and to push the responsibility for migration control further outwards in order to ease migration pressures.²⁰

In Malta and Cyprus, the blue borders of the two island states, along with the Green Line in Cyprus, condition the implications of the newly incorporated restrictive migration controls, as part of the redefinition and shoring up of these states' national borders. This has consequences for migrants and refugees, as well as the state. Blue borders result in migrants and refugees being less able to move to other EU member states. Even though Malta is part of the Schengen system, as it is an island, leaving the territory requires passing through customs. This is also the case in the RoC, although its exclusion from the Schengen system would necessitate border controls even if it were part of continental Europe. In both countries, the Dublin II Regulation's authorisation of surveillance and tracking measures exacerbates this immobility and results in the return of asylum seekers and irregular migrants to the first country of arrival within the EU.

From a state perspective, blue borders require different means and methods of control, being multiple and involving layers of different types of inclusion and exclusion. Territorial waters, contiguous zones, exclusive economic zones, and search and rescue regions encompass progressively more area in the Mediterranean. Maltese and Cypriot SAR regions are thus much larger than the islands' territorial waters, which extend 22 kilometres (12 nautical miles) out to sea.²¹ For instance, Malta's territorial waters comprise of 3,800 square kilometres, while its SAR region spans over 250,000 square kilometres. Moreover, when boats are intercepted within these waters, it is impossible to return migrants without cooperation from bordering states like Libya. As such, the 2007 Frontex

²⁰ This has been well documented in Central and Eastern Europe, notably by Sandra Lavenex (1999).

²¹ For maps of Cyprus and Malta's SAR areas, see [www.mcw.gov.cy/mcw/dms/dms.nsf/0/.../6-02%20\(01-03-02\).pdf](http://www.mcw.gov.cy/mcw/dms/dms.nsf/0/.../6-02%20(01-03-02).pdf) and http://www.sarmalta.gov.mt/sar_in_Malta.htm, respectively (c.f. Malta's SAR region reproduced in Chapter 4).

mission, Nautilus II, operated largely as a rescue team, helping boats in distress and taking those on board to the nearest member state, Malta or Italy, rather than stemming the flow of migrants trying to enter Europe, its professed aim.²²

Cyprus also has a much larger SAR area than its territory, spanning 173,000 square kilometres while its territory comprises of 9,251 square kilometres (Anon 2011h). However, what is more significant in terms of migration is the division of the island and the fact that the Republic of Cyprus does not control the northern coastline of the island. Indeed, irregular migrants have not arrived directly by sea to the Republic during the past decade. It appears that the RoC has effectively controlled its southern sea borders. This raises the question of whether the difficulty seen in Malta reflects a fundamental difference in patrolling blue borders as compared to green borders, or whether the reasons lie elsewhere.

On this matter, Jørgen Carling (2007) argues that blue borders are more difficult to control than land borders as they cannot be demarcated in the same fashion, by building a wall or establishing guard towers, and require patrolling areas rather than a line.²³ On the other hand, Dirk Godenau (2011) provides a persuasive argument that the image of blue borders as more difficult to control can be questioned on four counts. First, Godenau argues that blue borders can also be demarcated in a linear fashion, and indeed may be relatively easy to control due to their flat nature. Second, these lines may not require any control measure on the part of the state during parts of the year where inclement weather makes travel impossible. Third, travelling on the high seas generally requires travelling in groups, which makes detection easier. Fourth, the costs of control will vary due to multiple factors, not only due to the length of the border. For example, in externalising control,

²² Italy initially refused to cooperate, claiming the Nautilus II is futile without Libyan support. Frontex reports verify that Spain, on the other, succeeded in turning back migrants due to their agreement with Senegal and Mauritania (Frontex 2009b; c.f. Anon 2007).

²³ Carling (2007, 324) argues this in the context of the Spanish-African borders.

states may profit from relatively inexpensive 'remote control'. Technology used for control, such as radar, may also have parallel applications, such as the detection of drug trafficking. The empirical chapters that follow will assess further the arguments made by Carling and Godenau in order to consider the impact of blue borders on controlling migration in Malta and the RoC.

What is not in doubt is that blue borders have resulted in moral and legal ambiguity as to responsibility for those at sea, especially in the central Mediterranean. Despite this ambiguity, blue borders do result in states' obligations applying in much larger areas than their territories. Indeed, both island states of Malta and the RoC employ this aspect of their geographies in protesting that EU policies cause them to incur a disproportionate amount of the migration 'burden'.

Malta and the Republic Cyprus' perceived lack of control over their blue borders, as well as the Green Line in the RoC, has encouraged them to emphasise the responsibility of third countries outside the EU to control their shores in order to prevent onward migration to the islands. With limited success in externalising migration control at the multilateral level, member states along the EU's periphery have turned to signing bilateral agreements with neighbouring states in order to return migrants who have transited these countries. Greece, for example, signed readmission agreements with Albania, Bulgaria, and Turkey. In 2008, Italy signed a Treaty of Friendship with Libya that informally acted as a readmission agreement (Cuttitta 2010). The power to shift the responsibility of reception and protection by signing these agreements rests on the ability to offer funds to the non-member state involved to improve their own border controls. The EU, as an institution, has also adopted the use of safe third countries, whereby irregular migrants who travel through these countries, whether they are nationals or not, may be deported upon arrival in the EU. Development aid and trade or technical cooperation agreements negotiated by the bloc

have also been frequently linked to the implementation of migration controls in countries of origin and transit (Düvell 2011b; Lavenex and Kunz 2008; Lindstrøm 2005). Countries along the eastern and southern rim of the EU are thus being co-opted to varying degrees into becoming what is effectively a migration buffer for Europe (M. Anderson 2000).

The Role of Migrant Agency

The critical migration and critical border literatures also include a conceptualisation of the border as an experience, by incorporating the perspective of those who cross borders. For example, in *The Contested Politics of Mobility*, Vicki Squire conceptualises borders as ‘disperse, multi-dimensional and contested sites of political struggle’ (2011, 6). Such a conceptualisation necessarily involves an appreciation of the agency of migrants. Although the role of non-state actors has been established in the governance and power scholarships within International Relations, they have rarely taken into account individuals beyond powerful policymakers. Indeed, even in the literature on migration governance, the agency of migrants is ignored (c.f. Tsianos and Karakayali 2010). Nevertheless, individual migrants and refugees lie at the heart of the policies that result from migration governance, with its inevitable power dynamics, discussed above. Although such individuals are often omitted from International Relations scholarship, I argue that, for a number of reasons, they are an important element to studies such as this one.

The agency of migrants has been more central to the migration scholarship within the disciplines of sociology and anthropology (e.g. B. Anderson and Ruhs 2010; Bakewell 2010; Mutersbaugh 2002; Rogaly 2009; Sigona 2012; Van Liempt and Doomernik 2006). For instance, Nando Sigona (2012) discusses the agency of irregular migrants as part of their everyday lives, rather than within specific instances of resistance or transgression. His focus is on how irregular migrants adapt daily routines and social interactions in the face of

‘illegality’ and thus deportability (c.f. Das 2006). Migrant agency has also been explored in more explicit instances of resistance. Peter Nyers (2006; 2003) examines the political agency of Algerians living in Montreal, Quebec, ‘non-status refugees’ who called into question the standard account of the state as a protector and the secure citizen as political. More broadly, migrant agency has also been taken into account in examining how migration is a process of social change (e.g. Van Hear 2010).

Here, I explore the relationship between migrant agency at the micro level and changes in governance and state relations at the macro level. Initially, by making the choice to move across national boundaries with and without authorisation, migrants prompt policymakers to engage with other states and to enact migration policies. Their movements can also endow a state with a form of power, or restrict that power. For example, states producing large flows of highly-skilled emigrants may benefit from their nationals providing crucial labour within the economies of other countries. As a diaspora becomes more permanent, they may also accrue political power by becoming citizens and voters.²⁴ States can also deploy the threat of irregular migration as a form of symbolic power in order to gain leverage, as was notably seen in Gaddafi’s relationship with Europe and especially Italy (e.g. Paoletti 2008).

Furthermore, as Vassilis Tsianos and Serhat Karakayali have argued in their own work, ‘it is migrants who, by crossing borders and overstaying, put government and administration into question on a daily basis.’ (2010, 377). It is only by looking to people who defy state controls by overstaying or by entering a state without authorisation that we begin to deconstruct the state discourse of migration control and to appreciate the permeability of ‘Fortress Europe’. Despite the political machine that is mobilised to limit irregular immigration, migrants and refugees continue to employ various strategies to resist

²⁴ Their political power may also extend to their homelands (Shain and Barth 2003).

migration controls, such as using false documents or destroying their documents in order to conceal their nationalities and obstruct deportation. Additionally, by including these migrants in an analysis, one can begin to draw connections between border control and the creation of illegality.

Migrants and refugees are actors with agency to exercise in pursuit of their own interests, albeit an agency limited by structural conditions.²⁵ Having arrived in a transit or destination country, they may rely on social networks in order to facilitate onward travel or integration. They resist detention through protests and escape strategies, and resist marginalisation in the host community through acts of political organisation and demands for more rights (Chimienti 2011). Such actions within a state have feedback effects not only on state policies, but also on the relations between the states in question. In these instances, NGOs may act as intermediaries, championing migrant causes at the regional and international level. For example, the plight of migrants and refugees in Greece prompted the European Court of Justice to rule in December 2012 against returning an Afghan migrant to the country under the Dublin Convention (ECJ 2011a; 2011b). Similarly, the lobbying successes of NGOs in Brussels are based on their first-hand knowledge of the situation ‘on the ground’, with migrant testimonials often forming a substantial part of their arguments (e.g. U. Hoffmann 2012).

Finally, the policies implemented by a state impact migrants and refugees profoundly, pointing to a normative imperative for their inclusion in such studies. The context and contemporary power structures condition the interests and agency of migrants. In countries where policies are more restrictive, for example, access to the labour market is limited and marginalisation is the norm. Those with the means to do so will be more inclined to attempt to move on to other countries where they perceive they will encounter

²⁵ In his article, Oliver Bakewell (2010) provides a compelling overview of the structure-agency debate within migration studies.

fewer difficulties. Factors such as the presence or absence of family and friends, as well as access to financial resources, also influence any decision taken. As Bridget Anderson and Martin Ruhs remind us, migrant agency is not simply about ‘choice’ as it is often portrayed in policy debates, but rather about ‘understanding decision making, the room for manoeuvre, opportunity structures and migration trajectories’ within the contexts of modern nation states and the global economy (2010, 178).

Conclusion

Malta and the RoC’s new gate-keeping roles provide examples of how power hierarchies are characteristic of migration governance, and point to the need to reassess calls for more managed migration. The concept of power within governance structures can illuminate the new predicaments of small, weaker states as the dynamic within EU migration governance reflects the interests of more powerful states at the core of Europe. However, it is more than just a simple unidirectional power dynamic. Power is also a useful concept in understanding how and to what extent smaller, less powerful states might be co-opted not just by another more powerful actor or institution, but by the structure of that institution, and how this affects the interests of the former.

In terms of migration governance, the functional and symbolic use of borders reflects power hierarchies and provides an example of the interaction between material and nonmaterial power. Within the EU, the ability to transform borders from national to regional ones and then to place responsibility for border controls at those peripheries lies largely with more powerful states at the core of Europe. Interestingly, small states on the periphery of Europe have embraced their new identities as gatekeepers and attempted to exploit these manufactured roles for their own benefit in the course of regional negotiation processes.

The power of the individual also shapes the border and the relations of states complicit in constructing it. Within the structures of a global capitalist economy and a world made up of states with particular power configurations, migrants are subjects of and subjected to the political contingencies that define them as wanted or unwanted. However, they also possess the agency to resist, to sabotage, and to carry out their own plans despite these structures. Indeed, the very presence of irregular migrants in European countries can be interpreted as the successful deployment of migrant agency.

In the next chapter, the themes of state power and inequality within migration governance structure are considered more empirically. The chapter turns to the processes and agreements within the EU that shape the current form of migration governance. The focus is on initiatives that have affected the Mediterranean in particular. Using the lens of small states on the periphery, the chapter explores trends, including the harmonisation and distalisation of migration and asylum policies.

III

Bordering Europe: The Evolution of EU Migration Policies and Border Politics

Introduction

Since the Trevi group was established in 1976, governments within Europe have come together to cooperate on immigration matters, albeit with varying degrees of success. Until the Treaty of Amsterdam came into force in 1999, this cooperation was characterised by its informality and the ad hoc intergovernmental manner in which it was conducted. The Treaty marked an important change in bringing immigration and asylum policies into the community pillar, as well as incorporating the Schengen Agreement (1985) into the *acquis communautaire*.¹ That same year, during the Tampere European Council meeting in October, EU heads of state articulated the desire to establish a common immigration policy and to harmonise existing legislation in order ‘to regulate migration flows in line with the needs of the economy and the ability of the EU to absorb and integrate new immigrants’ (European Commission [hereafter Commission] 2004b; Council of the EU [hereafter Council] 1999a). The harmonisation of policies at the supranational level initially revolved around the goal of decreasing the number of asylum claims in Europe during the ‘asylum panic’ that swept the continent in the 1990s. Thus the tendency among EU states was to introduce restrictive measures, such as extended visa requirements, carrier sanctions, restrictions on freedom of movement, and limitations on the right to work and access to social services, designed to control migration flows and dissuade refugees and migrants from turning up on their doorsteps (Crisp 2003, 8).²

¹ The Treaty of Maastricht (1992) organised the legal structure of the EU into three pillars: the European Communities pillar, (2) the Common Foreign and Security Policy pillar; and (3) the pillar on Police and Judicial Co-operation in Criminal Matters. Only the first pillar had a legal personality and followed supranationalist principles, rather than intergovernmental ones. In 2009, the Treaty of Lisbon abandoned the pillar system, and consolidated the EU’s legal personality. In 1999, the Treaty of Amsterdam created a new title (IV) in the first community pillar to deal with ‘visas, asylum, immigration and other policies related to free movement of persons’. For a very detailed and comprehensive account of the evolution of cooperation on immigration policies within the EU, see Thomas Faist and Andreas Ette (2007).

² More recently, this focus has been paired with another, a ‘global approach’, which establishes a nexus between the development of third countries and migration, situating the debate outside of Europe’s borders (Council 2005; c.f. Carrera 2007).

This chapter examines the trends in migration and asylum policies in the European Union. The evolution of policies and politics making up the migration governance landscape at the regional level is studied, with a particular focus on the distalisation of migration policies away from the core of Europe and towards the southern (and eastern) periphery. Policies that specifically place more responsibility for asylum and migration controls on states along the southern EU border are explored. This is done in order to investigate how the small states of Malta and Cyprus have responded at the regional level to the obligation of shoring up their borders, and how this response differs compared to other, larger southern European states. It also sets the regional context before examining in more detail in the subsequent chapters the responses of these two small member states.

Immigration and asylum reflect a sensitive area in the EU where the tension between state sovereignty and regional initiatives is palpable. For instance, there has been a transfer of migration controls towards and beyond the external borders, placing more responsibility on member states along the external border and producing the militarisation of the Mediterranean and other external border regions (Boswell 2003b; Guiraudon 2000; Hansen 2010; Lavenex 2006; 1999; Lavenex and Uçarer 2002; Lutterbeck 2006; Oxfam 2005). Moreover, despite the calls for and claims of harmonisation, critics remain sceptical that such developments have taken place, highlighting the conflicting interests of member states. They have posited that rather than broad harmonisation of migration and asylum policies, most EU legislation has focused on irregular immigration, especially border controls, visa measures and return policies (Boswell 2005; Carrera and Merlino 2010, 2–5; Düvell and Vollmer 2011, 8–12; Guiraudon 2000).

The discussion in this chapter is not intended to be an exhaustive account of migration and asylum policies in the EU. Others have tackled this important and challenging task (e.g. Boswell 2003a; Brouwer 2008; Geddes 2000; Peers and Rogers

2006). While drawing on their work, the chapter provides an account from the perspective of two small member states on the southern periphery, Malta and Cyprus. The chapter is divided broadly into two parts: the first considers the evolution of EU migration policies before 2004 and the second those after the so-called big bang enlargement in 2004. Throughout, the focus is on policies that have caused the distalisation of migration controls and responsibility. The argument made is that distalisation initially occurred without significant resistance from southern EU member states. However, after the big bang enlargement round in 2004, the two small states of Malta and Cyprus more overtly resisted the responsibility placed on the periphery for irregular migrants and asylum seekers. Malta, in particular, has been instrumental in championing the case of these small states and in successfully expanding the notion of solidarity among EU member states to include the relocation of refugees from peripheral to core states.

Before the Big Bang: Borders and Burdens

This section begins with the migration and asylum policy developments that were most significant in producing the distalisation of migration controls and asylum responsibilities before 2004. First, I examine the compensatory measures adopted in order to relax internal border controls, before turning to the establishment of the Dublin Convention, which saw asylum responsibilities placed on the first country of entry. Throughout this section, I highlight how the relaxation of internal border controls resulted in an endorsement of the function and necessity of the (external) border in the name of security.

(Re)Defining and Controlling the External Borders

Before the passing of the Amsterdam Treaty in 1997, which gave the community power over immigration and asylum policies, these issues were largely left to the discretion of

national governments. When immigration and asylum matters were deliberated at the regional level, they were discussed through ad hoc intergovernmental negotiations and mechanisms. Indeed, cooperation on immigration and asylum matters was initially tangential to the market-oriented project of establishing the European Economic Community (EEC). For example, the Treaty of Rome (1957), which founded the EEC and was signed by Germany, France, Italy, and the Benelux countries (Belgium, the Netherlands, and Luxembourg), includes in its principles the ‘abolition, as between Member States, of obstacles to freedom of movement for persons, services and capital’ (Article 2c). However, within the Treaty, freedom of movement is limited to EEC nationals conducting economic activities in other member states (e.g. Article 48).

As national governments were disinclined to eliminate controls along their common borders, the European Council persisted in maintaining this link between freedom of movement and economic activities. In 1975, the Belgian Prime Minister, Leo Tindemans, reintroduced the issue and argued that in the face of economic crisis and the possibility of the disintegration of the Community there was a need for mechanisms that would reinvigorate European integration and create more solidarity amongst EEC governments and nationals. In this vein, he advocated for the removal of internal border controls, as a corollary to the proposed passport union (Tindemans 1976). However, Tindemans’ suggestions received a lukewarm response from member states. Another decade would pass before the idea re-emerged in the Commission’s 1985 white paper, which proposed that the abolition of internal border controls should be addressed within the EEC framework (Commission 1985). Member states resisted this transfer of power over migration policies to the Commission even more fiercely, going as far as to open court proceedings against the body at the European Court of Justice (ECJ 1987). Ad hoc cooperation therefore continued to be dominant. In parallel, however, five pro-integration

member states moved to circumvent the opposition, seen especially from the UK and Denmark.

The abolition of internal border controls thus made its debut in the 1985 Schengen Agreement. The agreement was signed by a subset of the ECC: France, Germany and the Benelux countries (Geddes 2000, 80–84). Schengen was considered a testing ground for the removal of internal border controls, and was based on the multilateral agreements to reduce or abolish internal border controls that had previously emerged between particular subsets of EEC countries.³ As such, Schengen marked a compromise on the issue to abolish internal border controls, which was formalised in the Single European Act (1986).

Article 17 of the Schengen Agreement states:

With regard to the movement of persons, the Parties shall endeavour to abolish checks at common borders and transfer them to their external borders. To that end they shall endeavour first to harmonise, where necessary, the laws, regulations and administrative provisions concerning the prohibitions and restrictions on which the checks are based and to take complementary measures to safeguard internal security and prevent illegal immigration by nationals of States that are not members of the European Communities (European Union 2000c).⁴

As is clear, not only is the abolition of common border controls proposed, but the need to transfer such controls to the external border and to implement ‘complementary measures’ are highlighted. Andrew Geddes (2000, 67–85) calls this a ‘paradox of liberalisation’, whereby freedom of movement is coupled with more restrictions on mobility. The complementary measures indicated in the Schengen Agreement are broad principles, including, for example, the need to ‘approximate visa policies’ (Article 7), ‘combat vigorously illicit drug trafficking’ (Article 8), ‘reinforce cooperation between their customs

³ For example, the Benelux countries signed an agreement in 1958 creating the Benelux Economic Union, shortly after the Nordic Passport Union was established in 1957. In 1984, France and Germany agreed to gradually abolish controls at their mutual borders, spurred in part due to on-going strikes held by French truck drivers and customs officials who were protesting against the long queues they faced at the border (Brouwer 2008, 21).

⁴ Member states signed the ‘Convention Implementing the Schengen Agreement of 14 June 1985’ in June 1990 (European Union 2000a).

and police authorities’, and ‘improve the exchange of information’ (Article 9) (European Union 2000c). Thus, the seeds of distalisation were established as a logical consequence of abolishing internal controls.

The task of fleshing out these complementary measures fell largely to intergovernmental working groups, such as the Trevi Working Group, the Ad Hoc Group on Immigration, and the Group of Co-ordinators. The interior ministers of twelve EEC states established the Trevi Group in 1975 with an initial mandate to combat terrorism and coordinate police activities across these states. However, as the scope of intergovernmental cooperation expanded in the 1980s, the Group extended their remit to include ‘illegal migration’ and organised crime.⁵

In 1986, the Trevi Group created the Ad Hoc Group on Immigration at the behest of the British presidency. The Ad Hoc Group was divided into six subgroups tasked with asylum, external frontiers, forged papers, admission, deportations, and information exchange. It was also responsible for drafting the Dublin Convention (1990), which established responsibility for asylum applications between the member states (Brouwer 2008, 13–46; Karyotis 2007). The Dublin Convention and its successor, the Dublin II Regulation, were another step in the process of distalisation and are discussed in more detail below.

The Ad Hoc Group on Immigration also drafted an External Frontiers Convention in 1991. The Convention’s aim was to create a harmonised approach to the regulation and control of the external frontiers through measures such as a common visa policy, and common rules of access and surveillance. Although disputes between Spain and the UK over the sovereignty status of Gibraltar stalled the implementation of the Convention, the

⁵ In 1989, the Trevi 1992 Group was set up in order to anticipate measure that would need to be taken in parallel with the abolition of internal border controls under the Maastricht Treaty (1992) (Brouwer 2008; Bunyan 1993, 1–15; Karyotis 2007).

draft did indicate the evolution of the status of compensatory measures.⁶ The External Frontiers Convention, along with the Dublin Convention (1990), did not include rules concerning the abolition of border controls, although both begin with reference to the EEC as ‘an area without internal frontiers’. These conventions therefore reflect the development of compensatory measures as an independent objective within the EEC (Brouwer 2008).

Similarly, the Group of Co-ordinators was established in 1988, in order to coordinate different groups, including the Trevi and the Ad Hoc Group on Immigration, and activities within and outside the treaty framework. Made up of representatives from member states, the Group of Co-ordinators drafted the Palma Document on measures needed in order to advance the freedom of movement of persons within the community⁷ and went on to establish new forms of co-operation in Justice and Home Affairs that would be enshrined in the Maastricht Treaty (1992),⁸ such as the Council of Justice and Home Affairs Ministers, the K4 Committee, three Steering Groups and their Working Parties (European Union 1992: Article K, Title VI).

Such intergovernmental processes of negotiation and bargaining shaped the decisions on immigration, asylum, and the external border during the 1980s. These informal intergovernmental negotiations lacked transparency and added to the democratic deficit at the European level, often including unelected officials and a forum that allowed governments to bypass national resistance and constraints. The Maastricht Treaty, signed in 1992, went some way in formalising these intergovernmental processes under the third pillar of the EU, where justice and home affairs would remain for the next seven years.

It was not until the Amsterdam Treaty came into force in 1999, however, that asylum and immigration matters were moved into the first pillar and thus under the auspices of

⁶ The text of the draft Convention is reproduced by Bunyan (1997).

⁷ The European Council adopted the document in Madrid the following summer (Council 1989); the Palma Document is reproduced by Bunyan (1997; c.f. Geddes 2000).

⁸ Also known as the Treaty of the European Union.

Community law. Although the development of an ‘area of freedom, security and justice’ continued to be central to this Treaty, the compensatory measures necessary in order to achieve such an area were also highlighted. Article 1(b) underlines the need:

*to maintain and develop the Union as an area of freedom, security and justice, in which the free movement of persons is assured in **conjunction with appropriate measures with respect to external border controls, asylum, immigration and the prevention and combating of crime*** (emphasis added) (European Union 1997c, 8).

These sentiments are echoed in Title IV of the Treaty that outlines the Union’s competence on immigration and asylum law.

Throughout the 1980s and 1990s, policy developments reflected the rise in importance of the perceived need to compensate for the lack of internal border controls with measures taken at the external border. Sandra Lavenex, for instance, notes that while the Schengen Agreement of 1985 ‘focuses on borders from the point of view of their abolition, [the Schengen Convention of 1990] can be read as a re-confirmation of the function of borders for state sovereignty and security....’ (2001, 94). Therefore, in the context of the politicisation of immigration, the border, and especially the EU’s external border, moves to the centre of the debate on immigration at the EU and national levels (c.f. Lahav 2004). The September 11th attacks prompted the EU’s Justice and Home Affairs Council to go further in linking security concerns with immigration and the provision of asylum (Huysmans 2000; McDonald 2008; c.f. Boswell 2007). In requesting that the Commission ‘examine urgently the relationship between safeguarding internal security and complying with international protection obligations and instruments’, the Council rendered the issues of internal security and the provision of asylum as being at odds with one another (Council 2001a).

In its November 2001 communication on illegal immigration policy, the Commission responded:

Border controls must in particular respond to the challenges of an efficient fight against criminal networks, of trustworthy action against terrorist risks and of creating mutual confidence between those Member States which have abandoned border controls at their internal frontiers (Commission 2001).

These sentiments were echoed a month later at a European Council meeting in Brussels (Council 2001d, 11-12). The increasing focus on the external border and the perceived need to compensate for the relaxation of internal border controls and to create ‘mutual confidence’ led to a number of developments in both electronic and physical systems of control. Physical controls gravitated towards the external border, with the introduction of new surveillance technologies, as well as the launching of the EU’s own external border agency, Frontex, which is discussed later in the chapter. In parallel, electronic controls have expanded through the development of databases, such as the Schengen Information System and Eurodac.⁹ The next section discusses the evolution of the Eurodac system within the context of developments in European asylum policies that occurred concurrently with those regarding the EU’s internal and external border policies.

Accessing Asylum and Sharing the ‘Burden’

The year that the Amsterdam Treaty came into force was also the year when member states committed to developing a common policy on immigration and asylum at the European Council summit in Tampere, Finland. Before 1999, asylum policies, like border controls, had been negotiated within intergovernmental forums. Indeed, before the 1970s, asylum rarely emerged in the political spotlight as the number of people applying for protection was minimal and those arriving from behind the Cold War’s Iron Curtain were often given

⁹ The Schengen Information System, a database comprised of a centralised unit in Strasbourg, as well as national interfaces in all Schengen states, became operational in March 1995. Today it holds over 32 million entries on objects, such as stolen vehicles or property to be used in criminal proceedings, and on people, including those to be arrested or extradited, those to be denied entry into Europe, those to be kept under surveillance, and missing people. Its limited capacity to allow for detailed data exchange prompted the development of a supplementary system called SIRENE (Supplément d’Information Requis à l’Entrée Nationale). SIRENE facilitates the exchange of ‘softer’ data, such as fingerprints, photographs, and other criminal intelligence information.

refugee protection. The large flows of labour migration into northern Europe at the time also gave refugees other channels through which to arrive in Europe. However, the oil crisis in 1973 and the ensuing economic recession prompted governments to close off these migration routes and essential labourers soon became problematic asylum seekers and illegal immigrants within the political discourse. In parallel, the eruption and escalation of conflicts around the world in places such as Iran, Iraq, Lebanon, and Sri Lanka encouraged people to travel to Europe to seek asylum, a process facilitated by the increased access to air travel. Thus asylum figures in Europe rose steadily as the decades passed: from 13,000 in 1972 to 158,500 in 1980 to 425,100 in 1990 (Joly 1994, 162–163).

Asylum applications also concentrated in northern Europe, with 60 percent of applicants being lodged in Germany between 1988 and 1990, and 20 percent in France during the same period (Joly 1994, 163; c.f. Martin and Widgren 2002, 19–20). Northern EEC states suspected that asylum seekers travelled through southern European countries, lured northwards by higher standards of living. Concerned that these trends would be exacerbated by the implementation of the Single European Act, which would see internal border controls removed, provisions were laid out in the Schengen Agreement of 1990 clarifying responsibility for asylum applications.¹⁰

The Dublin Convention replaced these asylum provisions once it entered into force in September 1997.¹¹ Drafted by the Ad Hoc Group on Immigration in the late 1980s, the Convention was signed by 12 EEC states in June 1990 and echoed the Schengen Agreement in restricting the ability of asylum seekers to determine where to apply for asylum, with the exception of being allowed to join children under the age of 18 or spouses already residing in an EU country. The initial member state permitting a person into the

¹⁰ Officially, the Convention implementing the Schengen Agreement.

¹¹ The Schengen Executive Committee decided this on 26 April 1996 in what is known as the Bonn Protocol, officially the ‘Protocol on the consequences of the Dublin Agreement coming into effect for some regulations of the Schengen Supplementary Agreement’ (reproduced in Bunyan 1997, 133–135).

EU (by way of a visa or permit), or through which they had travelled, was deemed responsible for any subsequent asylum application made. The Convention also included provisions for returning asylum seekers to this country should a person lodge a second application or be found residing irregularly in another member state (European Union 1997a). To facilitate the implementation of the Dublin Convention, the European dactylographic system, known as the Eurodac, was proposed to store and share biometric identification data in order to hinder multiple applications by and secondary movements of asylum seekers, behaviour labelled as ‘asylum shopping’.

The Eurodac came into operation in January 2003 and holds the fingerprints of all asylum seekers over the age of 14 in the European Union, as well as of migrants entering the EU without authorisation (European Union 2000b). It is the first instance of biometric identification technology being applied within a supranational body, although on a national level, states and their security apparatuses have collected and stored fingerprints since the late nineteenth century and introduced digitalised dactylographic systems by the 1980s (Aus 2006, 5–6).

A decade before the Eurodac came into operation, the Council’s Legal Services established that Article 15 of the Convention provided an adequate legal basis to establish such a database. However, they were explicit in circumscribing the function of the database, prohibiting its use for ‘the functioning of other international instruments’ or ‘starting criminal investigations against asylum seekers’ (Legal Services of the Council 1993; c.f. Brouwer 2008, 119). Nevertheless, over the 1990s, the Eurodac took on a secondary role of preventing irregular immigration. The Schengen Executive Committee had already noted in 1997:

... that it could be necessary to take the fingerprints of every irregular migrant whose identity could not be established without doubt, and to store this information for the exchange with other member states (quoted in Broeders 2007, 82).

Unable to store fingerprints in the Schengen Information System, other options had to be considered.

These developments were accelerated at the behest of the German government, due to an influx of refugees, primarily Kurds from Northern Iraq, in the late 1990s. Arriving in Italy and other southern European countries, many of these refugees travelled northwards to Germany, France, the Netherlands, and Scandinavia, unhindered by the Italian authorities (Aus 2006, 7; Puggioni 2005, 327). In response to these events, the Schengen Executive Committee created a Task Force made up of officials from both transit countries (Italy and Greece) and destination countries (Germany, France, the Netherlands, and Sweden) to coordinate measures to curb this migration. During its first meeting in early 1998, the German government exerted formidable pressure on its southern partners to interpret the situation as an ‘illegal immigration’ problem rather than an issue of asylum (Aus 2006).

Political tension heightened over the first half of 1998 as Austria re-introduced immigration controls on the Austro-Italian border, and Germany threatened to veto the Eurodac proposal on the table if the *ratione personae* of the Eurodac was not extended to include ‘illegal immigrants’ as well as asylum seekers (Aus 2006; c.f. Council 1998). By April 1998, the Schengen Executive Committee had agreed to:

... the fingerprinting of every foreign national entering the Schengen area illegally whose identity cannot be established with certainty on the basis of valid documents; [and the] retention of fingerprints for the purpose of informing the authorities in other Schengen States (Schengen Executive Committee 2000, 191).

Moreover, the rationale was explicitly linked to the ‘increase in the number of foreign nationals immigrating into the Schengen States, in particular nationals of Iraq and other States’ (Schengen Executive Committee 2000, 191). In the end, the Council agreed that in addition to the fingerprints of asylum seekers and those irregular immigrants crossing

external borders, the Eurodac would hold the fingerprints of every ‘alien [who] is apprehended beyond the external border, where he/she is still en route’ (Council 1999b; c.f. Aus 2006). The member states’ representatives in the Council thus disregarded the European Parliament’s reservations concerning inadequate data protection provisions (European Parliament 1999).

The Eurodac now holds the fingerprints of three categories of people: the first category includes individuals over the age of 14 who apply for asylum in a member state; the second category comprises individuals who have been apprehended for crossing external borders without authorisation and who cannot be turned back; and the final third category involves individuals who are found to be residing illegally in a member state. The fingerprints in this latter category are checked against the first two categories, but are not stored in the Eurodac. Dennis Broeders (2007, 83) has argued that this function highlights the development of internal immigration controls, as a corollary of controls on the external border. Indeed, this function allows for the return of irregular migrants to other member states they have transited through, under the Dublin Convention. As Broeders points out, the Commission has reminded member states on the external border of their legal obligations to record the details of migrants entering the state irregularly, due to the relatively low number of entries in the database for this second category. However, the incentive for member states along the external border to do so is minimal, as such entries increase the likelihood that migrants will be returned to these states under the Dublin Convention (c.f. Broeders 2007; Brouwer 2002).

The Dublin Convention and the Eurodac system were an unambiguous development in the process of distalisation. Graph 3.1 below demonstrates how the percentage of asylum applications made along the external border has increased since 1997, while decreasing in the core member states of France and Germany. Moreover, unlike the

compensatory border measures discussed above, they were clear examples of deliberate choices taken by policy makers at the EU level to transfer responsibility towards the external border. Although the Convention ensured that asylum applications would be assessed in at least one country by placing responsibility for asylum with the first country of arrival, in doing so it also placed an arguably-disproportionate obligation on member states at the EU's periphery and those with large ports and airports. This in turn has created friction between core and peripheral member states, as well as between member states on the external border and their non-EU neighbours (Koslowski 1998).¹² The responsibility placed on peripheral states is exacerbated by the fact that the vast majority of asylum seekers are forced to enter the EU in an irregular manner.¹³ This is in part due to the EU's emphasis on the distalisation and externalisation of immigration controls and asylum responsibilities, towards and increasingly beyond the external border.¹⁴

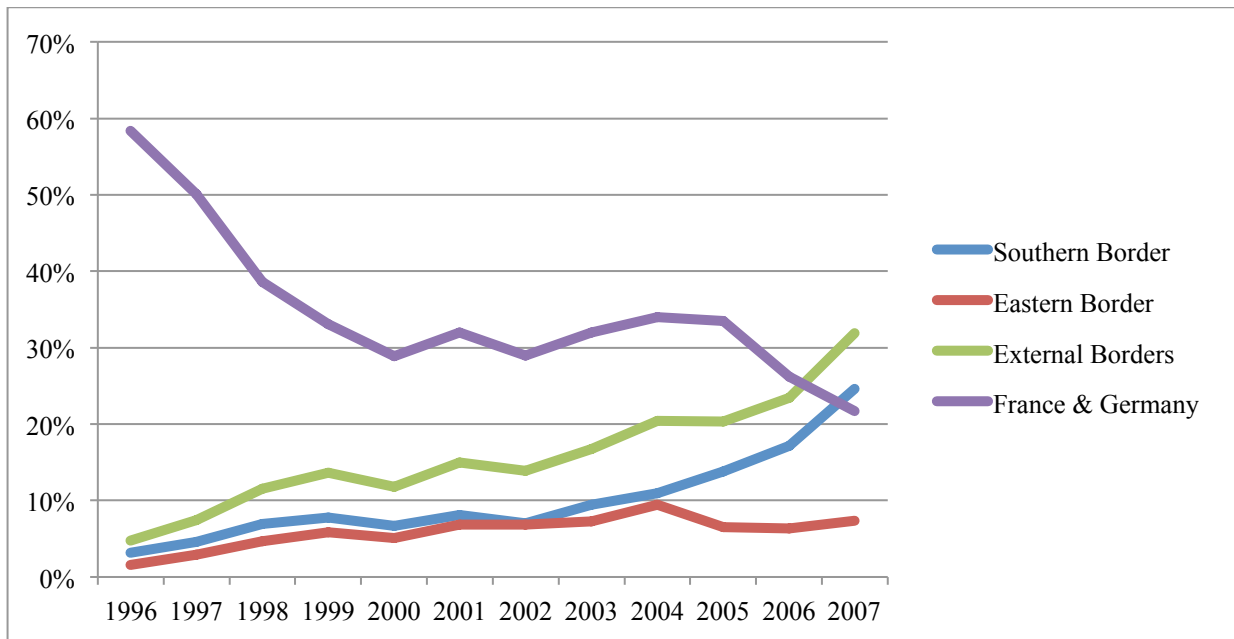
In 2003, the Dublin II Regulation replaced the Dublin Convention and brought the provisions under Community law as required under the Amsterdam Treaty (Council 2003a). The opportunity to revisit the Dublin Convention was not lost on the European Commission and, in its working paper on the subject, it proposed different systems for allocating responsibility for asylum applications, including a system based on where the application is lodged (Commission 2000). However, member states resisted any changes and thus the Dublin II Regulation was introduced with only minor amendments.

¹² Heather Grabbe (2000) discusses this in relation to Eastern Europe.

¹³ These figures are for obvious reasons difficult to ascertain. Nevertheless, in 2004, the European Council on Refugees and Exiles (ECRE) estimated that 90 percent of asylum seekers enter irregularly (ECRE 2004; c.f. Oxfam 2005).

¹⁴ For more on the externalisation of migration controls and asylum provisions, see discussion by Daniele Joly (1994) and Gregor Noll (2003).

Graph 3.1: Asylum Applications as percentage of EU 27, 1996-2007¹⁵



Criticism of the Dublin Convention and its successor abounded, especially in terms of the assumption that asylum provisions were equal and adequate across member states, quite evidently not the case even today.¹⁶ Member states addressed this failing, at least in rhetoric, at the European Council meeting in Tampere in 1999. The Tampere Conclusions echoed the Treaty of Amsterdam in focusing on ‘the creation of an area of freedom, security and justice in the European Union’. The establishment of common policies on immigration and asylum was seen as an integral part of its creation (Council 1999a). With regard to a European asylum system, the Conclusions called for common standards in asylum procedures, equivalent reception conditions, and an approximation of recognition processes. Moreover, the member states indicated an awareness of the possibility of inequitable arrivals of asylum seekers across member states, noting the need to:

¹⁵ Graph compiled using Eurostat data; for full data set see Appendix A.1. Applications made at the ‘Southern Border’ include those in: Greece, Spain, Italy, Cyprus, Malta, and Portugal. Applications made at the ‘Eastern Border’ include those in: Bulgaria, Estonia, Lithuania, Latvia, Hungary, Poland, Romania, Slovakia, and Finland. The ‘External Border’ is an aggregate of the two former categories.

¹⁶ The decision to temporarily suspend Dublin returns to countries such as Greece, Italy and Malta by other member states confirms this (see discussion in Chapter Four).

... reach agreement on the issue of temporary protection for displaced persons on the basis of solidarity between Member States. The European Council believes that consideration should be given to making some form of financial reserve available in situations of mass influx of refugees for temporary protection (emphasis added) (Article 16 in Council 1999a).

Nevertheless, much of these ambitious plans were not yet realised when the Hague Programme replaced Tampere in 2004. The Hague Programme thus rearticulated much of the Tampere Conclusions, calling for the ‘development of a common policy in the field of asylum, migration and borders ... based on solidarity and fair sharing of responsibility including its financial implications and closer practical cooperation between Member States’ (Council 2004e).

After the Big Bang: The New Southern Island States

Before the 2004 enlargement round, the member states making up the southern rim of the European Union included Italy (who entered the Union in 1952), Greece (1981), Spain (1986), and Portugal (1986). The four countries would join the Schengen area in later years: Spain and Portugal in 1995, Italy in 1997, and Greece in 2000. In the 1980s and 1990s, they responded ambivalently to the EU transfer of responsibility for immigration controls and asylum provision towards their borders. Informality and irregularity had long been prominent features of the economies of all four countries, which experienced modest levels of immigration before the 1980s.¹⁷ Martin Baldwin-Edwards (1997) argues that it was politically expedient for these countries to accept EU and Schengen arrangements, without actually being able to implement them due to the incompatibility of their geographies, economies, and bureaucracies. Similarly, Geddes notes that the EU shaped the external dimensions of migration controls in these four countries, prompting, for

¹⁷ For a more detailed discussion on the migration histories of these four countries, see special issue on ‘Comparing the New Hosts of Southern Europe’ (González-Enríquez and Triandafyllidou 2009). On Spain and Italy, see Wayne Cornelius and others (Cornelius, Martin, and Hollifield 1994, 303–369).

instance, the signing of readmission agreements and the introduction of more sophisticated border controls. However, internally, a divergence occurred with regularisation schemes being frequently used as a means to circumscribe irregularity and the informal labour market (Geddes 2003, 149–172; c.f. González-Enríquez and Triandafyllidou 2009).

In 2004, ten new member states acceded into the EU: eight eastern European countries, along with Malta and Cyprus on the EU's southern periphery. As part of the accession process, these states were required to implement the Schengen Acquis and Dublin II Regulation, which saw their borders redefined as external borders in need of fortification to compensate for the reduction in internal border controls (European Union 1997b: Article 8). Thus the ten new member states that acceded in 2004 (and the two in 2007) were obliged to adopt the Schengen acquis, and have been responsible for implementing the related complementary measures, despite not having taken part in their development or drafting. They also do not benefit from the flexibility afforded to the United Kingdom and Ireland in being able to opt-out of such agreements. All have implemented the acquis, with the exception of Cyprus, Romania and Bulgaria. In Cyprus, the de facto division of the island has delayed the adoption of the acquis; while Romania and Bulgaria's prospects have been thwarted by opposition from member states such as France and Germany, which point to unacceptable levels of corruption and organised crime in the two countries (Anon 2011b).

As has been discussed, such arrangements have caused a distalisation of immigration controls towards this external border and have arguably produced more asylum and immigration pressure on countries along the external border.¹⁸ In comparison to the large economies and significant informal sectors in Spain, Greece, Italy, and Portugal, Malta and Cyprus have significantly smaller economies. Coupled with the constraints on power they

¹⁸ See Graph 3.1 above and full data in Appendix A.1.

face due to being small states, one might expect that they have had little impact on developments in regional migration and asylum policies. However, surprisingly, they have been vociferous in campaigning for a redistribution of the perceived burden of asylum and migration. EU officials view Malta in particular as extremely vocal, as well as effective (Interviews: Official, Asylum Unit, Directorate General for Justice, Freedom and Security [DG JFS], July 2010; Official, Cypriot Permanent Representation, July 2010; Policy Officer, International Aspects of Migration and Visa Policy, DG JFS, July 2010; Policy Officer, Asylum, Visas, Immigration, Frontiers Directorate, DG JFS, July 2010; Official, DG for External Relations [RELEX], July 2010). For example, one Commission official said,

In Malta, my opinion is that they are the kings of lobbying... for a country so small, they have been very, very strong, lobbying everybody at the EU level, the Commission, Parliament, all the member states... I think the Maltese authorities should be congratulated, in the sense that even though it is a small administration with limited resources and so on, they have worked hard to lobby for their interests, much more than Greece, much more than Cyprus. Certainly Greece has a bigger administration than either Malta or Cyprus (Interview: Official, Asylum Unit, DG JFS, July 2010).

Cyprus, on the other hand, is characterised as less vocal:

Cyprus hasn't lobbied so strongly, they are not really very vocal. I mean, okay, they were in this Quadro Group and everything, but they are completely overshadowed by Malta in that aspect, ... even though for many years, they have had more asylum seekers... (Interview: Official, Asylum Unit, DG JFS, July 2010).¹⁹

Reflecting these nuanced positions, Malta has led the calls for more 'burden sharing' in the EU, and for an expansion of the notion of solidarity. These demands re-emerged after the events in 2007, which saw 27 migrants clinging to a tuna pen in the Mediterranean Sea, while Malta, Italy, and Libya argued over who was responsible for their rescue (c.f. Grech

¹⁹ The Quadro Group is discussed below.

2008; Bilefsky 2007).²⁰ Shortly after, the Justice and Home Affairs (JHA) Council noted Malta's 'difficult situation' and also 'reaffirmed the principle of solidarity and the need for taking into account the particular pressure which specific situations may put on individual Member States regarding assistance to persons in distress at sea' (Council 2007a).

In this section, I examine four different but interrelated migration policy initiatives where Malta and Cyprus have been involved in lobbying for particular outcomes. These include (1) the European Pact on Immigration and Asylum in 2008, (2) the subsequent creation of the European Asylum Support Office in 2010, (3) the extension of the Long-Term Residents Directive to refugees and other beneficiaries of protection, adopted by the Council in 2011, and (4) the Council decision in April 2010 on supplementing the Schengen Borders Code with respect to surveillance at sea. The argument in this section is that Malta has been more vocal, while Cyprus has acted more in line with the other larger southern EU member states, reflecting its higher degree of reliance on migrant labour. In terms of the states' impact on the European level, the most significant consequence is the expansion of the concept of solidarity to not only include financial transfers, but to also comprise the relocation of people, albeit still on a voluntary, ad hoc basis.

The European Pact on Immigration and Asylum

The European Pact on Immigration and Asylum reflected these developments (Council 2008). Nicholas Sarkozy proposed the Pact in July 2008 when France assumed responsibility for the European Council Presidency. The Council subsequently adopted the proposal in October. The Pact is not legally binding, but rather a political document and in this capacity proposes five commitments:

(1) to organise legal immigration to take account of the priorities, needs and reception capacities determined by each Member State, and to encourage

²⁰ See Chapter One, page 2.

integration; (2) to control illegal immigration by ensuring that illegal immigrants return to their countries of origin or to a country of transit; (3) to make border controls more effective; (4) to construct a Europe of asylum; [and] (5) to create a comprehensive partnership with the countries of origin and of transit in order to encourage the synergy between migration and development (Council 2008).

Due to considerable lobbying from Malta, the Pact contained a reference to the ‘Member States which are faced with specific and disproportionate pressures on their national asylum systems, due in particular to their geographical or demographic situation’. It suggested that on the basis of the principle of solidarity, the EU should ‘promote, on a voluntary and coordinated basis, better reallocation of beneficiaries of international protection from such Member States to others, while ensuring that asylum systems are not abused’ (Council 2008).

Another important aspect that Malta attributes to its handiwork is the insertion of a commitment to hold an annual debate on immigration and asylum in the Council (Council 2008, 15). As the Coordinator of the Maltese Permanent Representation in Brussels explained:

One of the most important things in the Pact is that ... the European Council will have an annual debate on the immigration and asylum scenario in the EU.... [T]hat at least helps keep the subject on the agenda, and hopefully one day ... my Prime Minister will stop having to come to the European Council, and every time he says, ‘listen, I need a proper commitment, I cannot have my experts going to working groups after you have promised them certain things and your experts are telling them, “no way”.’ So this is something ... which is a success on our part of having introduced the subject of solidarity ... of having ensured that prime ministers will discuss this on a regular basis.... And this Principle of Solidarity, we have been arguing [for it] since we entered the EU. We worked very hard to introduce it in the Pact ... (Interview: Coordinator of the Maltese Permanent Representation, July 2010; c.f. Council 2008).

Despite these successes, the redistributive measures in the Pact, such as the relocation of people from member states on the periphery, remain voluntary, causing Malta and Cyprus to continue to demand more ‘solidarity’ from member states. Indeed, others have noted

that the Pact's guiding principles are nationalism and intergovernmentalism, undermining the goal of common European migration and asylum policies (Carrera and Guild 2008). Instead, a running theme within the Pact is the need to strike a balance between stricter migration controls and upholding migrant rights, as well as the rights of non-member states. The logic of balancing freedom and security, which permeated EU discourse after the September 11th attacks in the United States, has been criticised for creating the illusion not only that liberty and security are similar and comparable concepts, but also that they are antithetical. This trade-off creates a detrimental tension between human rights and security (Bigo et al. 2007).

Accordingly, the Pact does not address the issue of mixed migration flows and the asylum-migration nexus. The logic employed also ignores the fact that globalisation, as well as the economic and political structures that exist in the EU (and the developed world more generally), cause the mixed flows of migration to varying degrees and in different manners. For example, increasing restrictions and border controls have created illegality and resulted in more sophisticated smuggling techniques and the diversification of migration routes, which in turn has prompted calls for further restrictions. Externalising the responsibility of migration controls to North African countries with poor human rights records not only jeopardises migrants' basic human rights, but also causes some migrants who were intending to remain in the region to move on to Europe due to increasing repression (Carling 2007; Cuttitta 2006; de Haas 2007; Lutterbeck 2006).

Taking inspiration from the Pact, Malta spearheaded an alliance between itself, Italy, Greece and Cyprus, known as the Quadro Group. In its paper, presented to the Justice and Home Affairs Council in February 2009, the Group emphasised what it perceived to be disproportionate and specific pressures of asylum and 'illegal' immigration on front-line member states. The four states did so 'with a view to put into practice the Union's

principle of solidarity and fair burden sharing’ (Council 2009a; 2009b). Among other actions, this took the form of advocating for adequate financial compensation and also, increasingly, the resettlement of people from these peripheral states to other member states. Labelled alternatively as reallocation and relocation within European circles to distinguish it from resettlement to or from countries outside the EU, this type of cooperation has in practice only been implemented on a temporary and ad hoc basis, targeting those migrants who have already been given some form of protection. Nevertheless, the members of the Quadro Group have made calls for the frequency and scope of this relocation to be broadened to include asylum seekers, as well as irregular migrants (Council 2009a; 2009b; Interviews: Official, Asylum Unit, DG JFS; Anonymous Council Official, July 2010).

The Council’s presidency conclusions in June 2009 echoed these concerns, calling for the ‘internal reallocation of beneficiaries of international protection present in the member states exposed to specific and disproportionate pressures and highly vulnerable persons’ (Council 2009c). The conclusions also pointed to the pilot reallocation project that the Council initiated in Malta in 2009. During the first 24-month phase of the project, 227 people were resettled within six other member states. After the second phase, the Commission has indicated they will propose ‘a permanent relocation scheme, based on voluntary commitments by Member States and consent of beneficiaries’ (European Union 2011). A more ambiguous version of this initiative, calling for ‘mechanisms for the voluntary and coordinated sharing of responsibility between the Member States’, was also inserted into the Stockholm Programme (European Union 2010c, 32: Article 6.2.2).²¹

²¹ The Stockholm Programme is the European Union’s five-year plan for justice and home affairs between 2010 and 2014.

The European Asylum Support Office

The location of the new European Asylum Support Office (EASO) is also a tacit admission of the unequal pressure on peripheral states. Malta won the bid in December 2009, with minimal competition from Cyprus and Bulgaria, by arguing that the immigration and asylum pressures it faced warranted the placement of the Office on the island. The Office has a mandate to ‘promote, facilitate and coordinate exchanges of information and other activities related to relocation within the Union’ (European Union 2010b: Article 5). Its mandate reflects developments in the negotiations over defining ‘particular pressures’. For example, Article 8 refers to:

...Member States subject to particular pressure which places exceptionally heavy and urgent demands on their reception facilities and asylum systems. Such pressure may be characterised by the sudden arrival of a large number of third-country nationals who may be in need of international protection and may arise from the geographical or demographical situation of the Member State (European Union 2010b).

Although these definitions remain vague, they clearly reflect the interests of southern European states, highlighting the issues of demography, geography, and sudden influxes. Indeed, they have long been the arguments deployed most clearly by the Maltese government, but also by Cyprus, in advocating for relocation mechanisms and other forms of so-called ‘burden sharing’, and in campaigning for the EASO headquarters. The decision to establish the EASO in Malta indicated the leverage the state holds at the EU due to the increase in irregular immigration to the island. It also highlights the interest Malta has in maintaining the image of being overwhelmed by irregular migration, a crisis rhetoric that is discussed further in the following chapters. As one Commission official said, ‘[I]t made sense to put [the EASO] in Malta, as long as there is an asylum problem in Malta, because if nobody arrives in Malta in the next three years, it’ll be a bit strange!’ (Interview: Official, Asylum Unit, DG JFS, July 2010). The logic in this statement reflects

Malta and Cyprus' success in arguing that the EASO should be placed in a country facing 'disproportionate' migration pressure, a somewhat flawed argument considering that the role of EASO is one of providing coordination, information exchange, and expert advice, rather than carrying out the assessment of asylum applications.

Shortly after the establishment of EASO, the European Parliament's Civil Liberties, Justice and Home Affairs (LIBE) Committee published its study on 'burden sharing' between member states in March 2010, highlighting that different countries face disproportionate asylum pressures in terms of numbers and costs, pointing to Malta, Cyprus, Sweden, and Greece in particular. The study acknowledges the difficulties in assessing asylum pressure, due to the different results obtained when using various capacity indicators (e.g. GDP, population, or population density). Nevertheless, it concludes by proposing an increase in financial compensation for countries facing a disproportionate responsibility and also suggesting the *voluntary* relocation of asylum seekers (European Parliament LIBE Committee 2010).

Within the European Parliament, Malta has a strong champion in the Maltese MEP, Simon Busuttil, who has been responsible for pushing forward the 'burden-sharing' agenda, especially within the LIBE Committee on which he is the European People's Party's coordinator. Busuttil has been very active and influential in migration debates and has cast himself as Malta's advocate in the struggle for influence over EU migration and asylum policies.

Although Malta and Cyprus have been effective in widening the concept of solidarity within the EU, the history of the redistribution of responsibility for refugees in Europe has been characterised by stalled efforts and unsuccessful proposals. For example, the Council's Directive on Temporary Protection in the Case of Mass Influx (2001) has yet to be invoked (Council 2001b). The arrival of over 800 migrants in March 2011, caused by

the political unrest in Libya, prompted Malta to demand that the Directive be implemented in order to allow asylum seekers a fast-track procedure in any EU member state. However, such redistributive measures continue to be resisted by the Commission as well as other member states (Pop 2011). Moreover, Malta and Cyprus have been ultimately unsuccessful in recasting the Dublin Regulation in order to pool asylum applications in one central EU system to be shared ‘equitably’ across the Union or to suspend transfers to a member state if they pose a ‘disproportionate burden’ (Interview: Official Asylum Unit, DG JFS; Coordinator of the Maltese Permanent Representation, July 2010). Although initiating these discussions is in its own right a success, there appears to be little political will to actually implement many of these changes. Indeed, more powerful states have been unsuccessful in pursuing similar measures. For example, after receiving the highest share of asylum seekers in Europe in 1991 (with a significant number arriving from Yugoslavia), Germany unsuccessfully proposed so-called burden sharing measures at a European summit in Luxembourg (Bosswick 2000, 53–55; Schuster 2003a, 229–235).

The Long-Term Residents Directive

A significant limitation on the power of these small states took place when the EU altered its decision-making procedures on immigration from a system necessitating unanimity to qualified majority voting. A blocking minority must now consist of at least four member states, comprised of more than 35 percent of the Union’s total population. The change came into effect in November 2009 as part of the Lisbon Treaty and soon impacted the negotiations over an amendment to the Long-Term Residents Directive, which would see its scope extended to the beneficiaries of international protection (i.e. refugees and those with subsidiary protection).²² Malta and Cyprus were both opposed to this amendment and,

²² The original Directive was adopted in 2003 (Council 2004b).

in 2008, Malta vetoed the proposal under the former unanimity rules. The change in the voting rules resulted in the amendment nevertheless being passed in May 2011 despite Malta and Cyprus' protestations (Council 2011).

In 2008 and 2011, Malta's ambitious demand was the inclusion of an exception where, after one year, beneficiaries of international protection on the island would have the right to move to other EU member states and ultimately the five years needed to qualify for residency under the Directive could be calculated across different member states. Detailing Malta's political fears with regard to the Directive, the coordinator of Malta's permanent representation in Brussels explained:

[T]his Long-Term Residents Directive, which is going to be extended to all beneficiaries of international protection, will grant a free movement right to persons after five years. But what that means in effect is that after five years when you would have given them so many more rights, then they will not leave (Interview: July 2010).

While another official from Malta's Ministry for Justice and Home Affairs concurred:

[F]or someone to qualify for long-term residence, so having been in Malta for five years, having health insurance, having employment, the necessary resources. If someone qualifies, if someone fulfils all of those criteria, then it means that they are perfectly well integrated. They're not the ones who really need to move (Interview: July 2010).

These political negotiations reflect Malta's focus on short-term deterrence and prompted a Commission official to interpret the country's veto of the directive in 2008 as 'shooting itself in the foot', since in the long term it would facilitate the ability of migrants to move to other member states (Interview: Asylum Unit, DG JFS, July 2010).

The Republic of Cyprus, on the other hand, has been concerned with other aspects of the Directive due to the large number of migrant labourers present on the island. Under the Directive, a person must be legally and continuously resident in a country for five years in order to qualify. In response, the RoC restricted the number of years that migrant visas could be renewed from six years to four in order to disqualify labour migrants from

applying for residency (Thomson 2006; Trimikliniotis and Pantelides 2003, 3). Moreover, in January 2008, the RoC's Supreme Court ruled that a migrant domestic labourer was not eligible for long-term residence, despite having been legally and continuously residing in the RoC for more than five years. The verdict was based on the fact that her residence permit was temporary. The European Commission queried the ruling and, in response, Cyprus enacted Law 143(I) (2009), which imposed new integration requirements on potential applicants.²³

Frontex and the Schengen Borders Code

The final migration issue that has raised concern among southern EU member states and that Malta, in particular, has challenged is the Council decision in April 2010 amending the Schengen Borders Code (2006) with regard to missions at sea carried out by the European External Borders Agency, Frontex. Frontex became operational in October 2005 and was the first EU agency to be based in one of the new 2004 accession states, Poland. The agency is tasked with the application of the EC's Schengen Borders Code and is the institutional manifestation of the EU's 'Integrated Border Management'. As such, it is responsible for external border security, it coordinates the activities of national border guards and it carries out risk analysis on border areas (Council 2006; 2004c).

The conception of border management envisaged in Frontex's mandate gives priority to the understanding of the border as a demarcating line between what is inside and what is outside (Carrera 2007, 2–8). Moreover, an essential aspect of the Integrated Border Management approach is the particular focus on the southern maritime border. Indeed, although Frontex is based on the EU's eastern border, much of its activities have taken place on Europe's southern periphery, so much so that the idea of opening a separate

²³ 'Cyprus' in Migration Integration Policy Index, available here: <http://www.mipex.eu/cyprus>.

Frontex branch in the Mediterranean has arisen (Commission 2006c; Interview: Research Fellow, Centre for European Reform, July 2010). The Agency first launched its European Patrol Network in the Canary Islands in 2007, as a response to the increase in migrant arrivals, which totalled over 30,000 during the previous year. Since then, Frontex's missions have expanded eastward across the Mediterranean, responding to the evolving migration routes that likewise reacted to the new regional and national border controls.

As Frontex extended its geographic sphere across the Mediterranean, as well as along Europe's eastern land borders, it also expanded the type of activities in which it engaged. For example, it developed Rapid Intervention Border Teams to react to 'emergency' situations. The first of these was deployed along the Greek-Turkish border in 2010 (European Union 2007b, 30-39; Human Rights Watch 2011). The Stockholm Programme also includes the proposal to create a 'European system of border guards' as part of the development of Frontex. Perhaps most controversial is Frontex's recent and ambiguous involvement in return activities. Its precise role in deporting migrants from EU territory remains undefined (Carrera 2007, 17-18). In parallel with the Agency's expanding mandate, the subsidy it receives from the European Community more than quadrupled during its first four years, from €18.9 million in 2006 to €77.3 million in 2009 (Frontex 2010a; 2007).

Criticism has overshadowed Frontex's work. For example, its move into return programmes has been opposed for lacking a legal basis. Its initial mandate limited the Agency's operations to detection, without the possibility to identify particular people or to process personal data. However, its involvement in return programmes will necessarily engage it in these activities (Gonzalez-Fuster and Gutwirth 2011). The second vulnerability of the Agency is its politicised nature. Although Frontex is officially a Community organisation, it remains highly dependent on member states, financially and politically, and

is thus susceptible to focusing on ‘emergency-driven situations as politically constructed in the national arena’ (Carrera 2007, 27). The dominance of the member states is reflected in the institution’s long-winded title – the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union – that initially did not make reference to the ‘Member States of the European Union’ as it does today.

The proposed amendment to the Schengen Borders Code in 2010 was intended to clarify the rules that applied to Frontex missions at sea. The decision confirmed that the legal framework of Frontex operations falls within the remit of the Schengen Borders Code, even if conducted on the high seas.²⁴ It also clarified the rules for disembarkation following the rescue of migrants, a contentious issue between Malta and Italy that is illustrated by the tuna pen incident.²⁵ The provision in Article 2 notes that:

[w]ithout prejudice to the responsibility of the Rescue Coordination Centre, and unless otherwise specified in the operational plan, priority should be given to disembarkation in the third country from where the ship carrying the persons departed or through the territorial waters or search and rescue region of which that ship transited and if this is not possible, priority should be given to disembarkation in the host Member State unless it is necessary to act otherwise to ensure the safety of these persons (Council 2010).

Malta’s desire for disembarkation at the nearest safe port was thus made the exception rather than the rule in the legislation, a result that was due to pressure from the Italian authorities who believed Malta would interpret such a statement in order to disembark migrants rescued at sea in Lampedusa or Sicily.²⁶ Nevertheless, the fact that this clause remained an exception demonstrates Malta’s power, as the Italians were opposed to its inclusion, even as an exception (Interview: Commission Official, DG JFS, June 2010). Despite this small success, the rules prompted Malta to refuse to continue to host

²⁴ Including the principle of non-refoulement (Interview: Policy Officer, International Aspects of Migration and Visa Policy, DG JFS, July 2010).

²⁵ See Chapter One, page 2.

²⁶ For more on this legal dispute between Malta and Italy, see Chapter Four (c.f Klepp 2011).

Operation Chronos, Frontex's mission in the central Mediterranean in 2010 (Camilleri 2010c; Xuereb 2010).

The European Parliament also subsequently challenged the amendment to the Schengen Borders Code and referred it to the European Court of Justice, a move spearheaded by Malta's MEP, Simon Busuttil. The Parliament claimed that the Decision exceeded the scope of the Schengen Borders Code by introducing rules on interception, search and rescue, and disembarkation, which went beyond surveillance as defined by Article 12 (European Union 2010a, 34-35). It also claimed that the Commission had exceeded its powers in passing the rule through comitology, rather than the normal legislative procedure that would have given the Parliament a larger role in the decision-making process and an opportunity to amend the rule.²⁷ At this time, the European Parliament also appointed Busuttil as the rapporteur for a legal review of the Frontex regulation. In his review, which was approved by the Parliament, Busuttil championed the notion of 'compulsory solidarity' within the context of making member states' financial pledges to Frontex legally binding (European People's Party Group 2011).

These developments reflect Malta's prominence in leading debates around responsibilities for asylum and migration controls in Europe. In many of these negotiations, Malta has acted with tacit support from Cyprus. However, it is Malta who has been the most vociferous and decisive. For instance, although Cyprus also disagreed with the proposed amendment to the Long-Term Residents Directive in 2008, it was Malta who ultimately vetoed the decision. In explaining this, an official within the Cypriot permanent representation in Brussels explained,

The thing is that Malta has only this problem, which is a huge problem. On the other hand we have the other problem – the only real problem. So the priority

²⁷ Comitology refers to the process by which the Commission executes its powers given to it by the legislative branch of the EU (i.e. the Parliament and the Council) with the assistance of particular committees consisting of representatives from member states. The case is still pending (Busuttil 2010; Interview: Coordinator of the Maltese Permanent Representation, July 2010).

for Cyprus is the Cyprus problem and the solution to the Cyprus problem. Everything else comes second (Interview: July 2010).

As a result of the division of the island, Cypriot authorities make a clear distinction between labour migrants, who are on the island temporarily to fill labour market shortages, on the one hand, and ‘illegal migrants’ and asylum seekers, on the other. This latter group are largely portrayed as arriving in Cyprus due to Turkey and its occupation of the northern part of the island. For example, one Cypriot official in Brussels said,

[T]he Turks are channelling migrants and most of them are applying for asylum afterwards. They are channelling migrants into the free areas. They do it on purpose.... [A]lmost 90 percent of the asylum seekers pass from the occupied areas (Interview: Asylum Official, Cyprus Permanent Representation, July 2010).

Although such assertions are inaccurate, as will be discussed further in Chapter Five, this preoccupation defines Cypriot negotiation strategies and political stances considerably at the EU level. Similarly, Malta and Italy look to Libya as the culprit responsible for irregular immigration flows across the central Mediterranean. However, the division and related conflict on the island makes the accusation more salient in Cyprus.

In both Malta and Cyprus, there is an attempt to portray themselves as exceptional cases within the EU, due to their geographies and demographics. In deploying this strategy, they tread a fine line of advocating solidarity measures (as opposed to what other member states term ‘responsibility’ vis-à-vis, for example, the Dublin Regulation), while resisting harmonisation measures (Interview: Official, Asylum Unit, DG JFS, July 2010). Maltese authorities are clearest in their anti-harmonisation stance. For example, a Maltese official said,

[W]hat we have been trying to resist at EU level ... certain negotiations that would not be beneficial to us. It's that you cannot have a harmoniser, one shoe fits all, or one size fits all approach in the sense that you get the Commission that comes up with theoretically very nice proposals, always pro-harmonisation.... And we have always tried to argue, and to a certain extent we have been successful, although now we look in the future for the

Qualifications Directive and for the extension of the Long-Term Residents Directive, we are going to face, let's say, an uphill struggle (Interview: Coordinator of Malta's Permanent Representation, July 2010).

Such a position reflects the enduring intergovernmental nature of the European Union and the primacy of national interests, even at the cost of a coherent position vis-à-vis the Union.

Conclusion

The Tampere Council called for a common European approach to asylum and immigration in 1999. A decade later, the Lisbon Treaty (2009) enshrined the principle of solidarity in Article 80, which states that:

The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle (European Parliament 2011).

Nevertheless, progress towards harmonisation has been slow and solidarity has appeared in rhetoric more often than it has in action. Member states remain reluctant to commit themselves to higher standards, which are perceived as more costly and as an infringement on sovereignty (e.g. Interviews: German and Cypriot Officials, EU Permanent Representation; Commission Officials, June - July 2010). Thus, harmonisation has occurred most frequently in creating minimum standards, necessarily lower than those in many member states, and in standardising restrictive legislation regarding the control of borders and mobility (Trauner and Kruse 2008). Indeed, the EU provides a forum for cooperation on such restrictive measures above and beyond the national realm. For instance, the possibility for member states to systematically share data on asylum seekers and irregular migrants through databases such as the SIS and the Eurodac allow for a level of control unattainable in a purely national context.

The technological developments, moreover, allow border controls to be decoupled from the physical border, which follow migrants and asylum seekers beyond the external border and into Europe (Carrera 2007; Vaughan-Williams 2008; Walters 2006; 2002). Dennis Broeders posits that these technological tools were developed in order to control internal irregular immigration, as governments realised that Europe was more sieve than fortress and that asylum seekers and irregular migrants arrived in member states despite the compensatory measures in place (Broeders 2007). Indeed, the EU continues to promote technologically powered surveillance through proposed systems such as the SIS II and the Visa Information System (VIS).²⁸ Once operational, these systems, along with the Eurodac, will provide the EU with the capacity to survey the immigrant population, not only at the external territorial border, but also within the ‘area of freedom, security, and justice’ (Bigo and Guild 2005; Deleuze 2002). Thus a contradiction appears as the emphasis on creating such an area has produced further surveillance and restrictions on mobility (c.f. Geddes 2000, 67-85). This increased surveillance strengthens the distalisation of migration and asylum responsibilities towards the external borders of the EU. Moreover, these new systems are likely to hinder the use of identity routes of asylum and visas, increasing the reliance on irregular migration through smuggling and trafficking networks (Broeders 2007).

In response to these trends, the European Data Protection Supervisor (EDPS) stated in 2006 that VIS should not be used as a law enforcement tool. If routine access was given to law enforcement agencies, EDPS maintained that it would ‘violate the principle of purpose limitation’, and cause ‘a disproportionate intrusion in the privacy of travellers’ (EDPS 2006). In general, the EDPS has cautioned against the trend occurring at the EU

²⁸ The VIS is a database that will contain data on visas that are requested, issued, refused, annulled, revoked or extended. VIS will also have the capacity to hold biometric data on the applicants, such as photographs and fingerprints. Its mandate associates the system explicitly with the ‘fight against terrorism and illegal immigration’. Moreover, it will, for the first time, provide the EU with the tools to identify those who have entered the bloc irregularly and then overstayed their visa (Commission 2004a; European Union 2008).

level of the routine collection of data on individuals who are not suspected of any crime (EDPS 2008).

Such technological prowess involved in these ambitious projects is also financially demanding. For example, the SIS II has seen its budget increase by 1,000 percent, from €15 million in 2001 to €143 million in 2010. Additionally, the annual running costs are expected to be around €5-6 million (Statewatch 2010).

Such supranational forms of control are also a product of the distalisation impetus within EU immigration and asylum legislation that appeared as early as the 1980s. In 1985, the Schengen Agreement first codified the need to fortify the external borders in order to compensate for the relaxation of internal borders. The Dublin Convention (1990) followed suit by introducing a system that also shifted responsibility for asylum towards the external border, placing responsibility for asylum on the first country of arrival. Since these policy initiatives, the EU has expanded to 27 member states with many of the more recent accession states now lying along the EU's external border, with increased responsibilities for asylum and immigration control.

This distalisation pressure, which also blurs into externalisation to third countries outside the EU, creates tension between core and periphery member states. The level of trust between EU member states does not in any case correspond to the rhetoric of solidarity. Border controls are still present along many internal borders, a common exception allowed for within the Schengen Agreement 'where public policy or national security so require' (European Union 2000a: Article 2.2). For instance, France maintains border controls with Belgium and Luxembourg, viewing them as transit countries for drugs coming from the Netherlands. Other countries have replaced border checks with police units that control for irregular immigration directly inside the border, or have introduced obligations to carry national identity cards (Apap and Carrera 2003; Brouwer 2008).

The level of mistrust is heightened between core and peripheral states, as the latter argue that the distalisation measures in EU legislation confer upon them a disproportionate responsibility for immigration and asylum. Counter-intuitively, it is the new small island member states of Malta and Cyprus that have resisted this most emphatically. Malta particularly has led calls for amending mechanisms, such as the Dublin Regulation, that contribute to this distalisation of migration controls and asylum responsibilities. In its efforts, it has been successful in expanding the concept of solidarity beyond purely financial transfers to include the relocation of people between member states, albeit still on a voluntary and ad hoc basis.

The seeds of distalisation were planted in agreements made in the 1980s and 1990s. Since this time the Union has evolved in multiple ways, increasing its membership to the current 27 states. What role do these new member states on the periphery play in these dynamics? How and to what extent have they opposed the distalisation pressure? The next chapters look more closely at the national responses of these two particular member states, Malta and Cyprus, which could be considered the least powerful in the Union.

IV

Case Study I: Malta



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Introduction

At the crossroads of the Mediterranean, Malta finds itself on the periphery of the European Union, just within its shifting boundary lines demarcating those inside and outside the club. The island's geographic position also places Malta in the midst of an evolving migration route taken by people coming from Africa through Libya and across the Mediterranean, evolving in response to newly dispatched patrols and erected barriers. Although the number of migrant arrivals to the island remains low in absolute terms, this new reality as an immigrant-receiving country has garnered a lot of attention within Maltese politics and produced a degree of unease on the island as a whole.

Malta's EU membership has created an opportunity for the small state to participate in and influence regional policies, an opportunity which ostensibly results in Malta wielding more power. However, the structure of the EU as an institution conditions this power to a large degree, shaping Malta's interests and, in turn, its strategies. The Maltese imperative to guard its newly-found position and to keep immigration on the EU's agenda creates an incentive to portray Malta as an indispensable component of EU migration controls. As EU structures influence Malta's perceived interests, these interests subsequently crystallize into strategies at the multilateral and national level in response to irregular immigration. Although there is a trend towards a distalisation of migration controls and asylum procedures towards the periphery of the European territory, which one might expect countries on the periphery to resist, there is simultaneously a co-option of member states on the periphery into this policy logic.

This chapter aims to explore irregular immigration to Malta, how the government has reacted to these new flows, and the strategies that Malta, in its position as a small state within the European Union, has deployed in order to make its voice heard at the regional level. It does so through a lens of migration policy and practice, an issue that has become

the focus of Malta's relationship with the EU. In taking a broadly critical constructivist perspective, I aim to identify how the relationship between Malta and EU has been framed, whose interests are advanced by this framework, as well as indicating plausible alternative frameworks where possible.

The main argument is that the EU framework encourages a negative portrayal of the arrival of irregular migrants and refugees on the island, and provides a perverse incentive for Malta to continue to treat the situation as a crisis. The chapter is divided into two parts. The first turns to the migration trends on the island. More specifically, I begin with an overview of migration patterns to and from Malta over the last fifty years, and then turn to examine the current flows of irregular immigration that commenced in 2002. Finally, the first part takes a preliminary look at the Maltese government's response to these new flows and its emphasis on the number of migrants arriving on the island irregularly.

The second part, entitled 'Responding to Irregular Immigration', is a more detailed study of Malta's policy response to irregular immigration in the 21st century. It explores the strategies Malta has adopted at the regional, EU level, as well as the national level. It argues that the power dynamics involved in Malta's relationship with the EU have shaped its interests and response to irregular immigration.

In analysing how these new circumstances influence and shape Malta's interests, it becomes necessary to examine more closely the government's message that Malta cannot cope with the recent migrant and refugee influxes. Thus throughout the chapter, the realities of migrants and refugees are interwoven into the discussion in order to nuance the state's position and account for the ways in which Malta is not only coping with, but also profiting from migrants and refugees. An appreciation of the experiences of migrants and refugees is crucial in the endeavour to assess the effects of policy, but also in considering how migratory movements affect policies and state relations. Moreover, although migrants

and refugees do shape policies by moving across borders, policies are sometimes misguided in their assumptions about migrant and refugee decision-making processes and interests. Migrant and refugee experiences can therefore expose the assumptions behind national and supranational policies that do not reflect migrant and refugee realities.

Part 1

Irregular Immigration Trends

From Post-War Emigration to the Migration ‘Crisis’ of the 21st Century

Malta’s geographic location in the Mediterranean has shaped its migration history. Its strategic economic and military position has attracted successive waves of conquerors, the most recent being the British who occupied the island from 1814 until independence in 1964. This colonial legacy, coupled with high birth rates and the destruction of much of the island during World War II, encouraged levels of emigration after the War that have not been rivalled since. The period between 1946 and 1974 was thus dubbed the ‘Great Exodus’ as it saw the highest rates of emigration in the world at the time, with three percent of the population leaving the island every year.¹

Immigration has also been a feature of Maltese history, albeit on a smaller scale. Of those who emigrated from Malta between 1946 and 1996, over a quarter (115,973) returned to the island.² Besides those with Maltese heritage, British retirees continued to settle on the island, lured by the warm climate, the ubiquitous English language, the cultural ties to Britain that lingered after colonialism, and the lower cost of living.³ Towards the end of the twentieth century, the island also experienced the arrival of a small number of asylum seekers and refugees every year, with even fewer migrants arriving irregularly. For example, as Table 4.1 below illustrates, less than 200 people claimed asylum in Malta annually between 1995 and 2001, with only 57 irregular immigrants arriving on the island in 2001.

Maltese asylum and refugee policies reflect this history of mobility. Before Malta’s accession into the EU, the only relevant legislation promulgated in the latter half of the

¹ In total, 44 percent of the population (138,000 people) emigrated during this time period mainly to Australia, the UK, the US, and Canada (Delia 1982; Jones 1973). Similar emigration patterns were present across Southern Europe, although constituted a smaller percentage of the population (Venturini 2004, 9). However, as Huw Jones (1973, 108) notes, Maltese citizens did not emigrate to countries in Northern Europe, apart from Britain, as did many other labour migrants from Southern Europe at the time.

² Emigrants’ Commission Malta, see <http://www.maltamigration.com/statistics/>

³ In the 1960s, these retirees were known as the ‘sixpenny settlers’ as they profited from Malta’s low tax rate of six pence to the pound (2.5 percent) (King 2009).

twentieth century was the Immigration Act of 1970, implemented to ‘restrict, control and regulate immigration into Malta’ (Malta 1970). Although Malta signed the UN Refugee Convention in 1968, it continued to hold a geographic limitation until 2001, which restricted eligible asylum applicants to European nationals. Moreover, the United Nations High Commissioner for Refugees (UNHCR) was responsible for the majority of asylum and refugee matters in Malta. The UNHCR office in Rome oversaw the asylum process and the resettlement of refugees to other countries with the help of the Emigrants’ Commission, a non-governmental organisation set up in Malta in 1950 to assist Maltese citizens settling abroad.

Accordingly, there was no national refugee or asylum legislation before the implementation of the Refugees Act in 2001 (Malta 2001). The Act aligned Maltese policies with EU legislation, creating a national asylum system to be administered by a newly established Refugee Commissioner’s Office. It was inopportune then that in 2002 the young asylum system was faced with the unexpected arrival of 1,686 irregular migrants and a subsequent rise in asylum applications that peaked at 2,607 people in 2008.⁴

Since 2002, the ‘boat people’ continued to arrive in much greater numbers than seen before. With the exception of arrivals in 2003, between 1,000 and 3,000 people arrived each year, with a record of 2,775 arriving in 2008.⁵ Despite the long tradition of mobility, stretching back far beyond the twentieth-century snapshot given above, this most recent immigration episode at the turn of the twenty-first century has thrust the issue of migration into the political spotlight. The political attention both reflects and reinforces the unease felt amongst the Maltese population in the face of African migrants arriving on small and often unseaworthy boats.

⁴ Statistics provided to the author by the Office of the Refugee Commissioner in Malta, 2009; for these and other statistics on arrival and asylum, see Table 4.1 below.

⁵ In 2003, only 502 migrants arrived in a clandestine manner in Malta. No official reason is given for this decrease (National Statistics Office 2011).

The primary reason for the 30-fold increase in arrivals between 2001 and 2002 was a shift in migration patterns that once favoured West African routes into Europe. Throughout the late 1990s, controls were tightened over the Straits of Gibraltar and around the Spanish enclaves of Ceuta and Melilla, diverting migration flows towards the Canary Islands. In 2004, joint Spanish-Moroccan operations were launched to patrol the waters between Morocco and the Canary Islands, as well as the Straits of Gibraltar (Cuttitta 2006; Interviews: Maltese government officials, 2008-2009). Frontex also began operating in the region from 2006 onwards.⁶ Such migration controls along the West African coast increasingly caused embarkation points for the Canary Islands to gradually shift southward from Morocco to Western Sahara to Mauritania and finally to Senegal.

As migrants' journeys became longer and more dangerous, trans-Saharan routes into Europe through Libya became more popular. For many decades, Libya has been a destination for African migrants, as well as an embarkation point for Maghrebis moving across the Mediterranean into Europe. With a population of only 6.2 million, it has been vital for Libya to import labour to maintain its economic growth, especially in sectors such as construction and agriculture. The profits acquired in the wake of the 1973 oil crisis prompted the government to recruit foreign nationals in order to bring ambitious infrastructure projects to fruition. The former Libyan head of state, Muammar al-Gaddafi, subsequently adopted a pan-African political rhetoric in the 1990s, which in practice included an open-door migration policy to the south. As a result, the Libyan government estimated that, as of 2005, there were up to 1.2 million 'illegal' migrants residing in the country, as well as 600,000 legal migrants (de Haas 2007, 11–16; Human Rights Watch 2006, 12–19). These immigration flows to Libya reflected traditional trade routes and networks that connect the country with sub-Saharan ones. The journey remained, however,

⁶ For more detail on its operations (HERA I, HERA II, HERA III & INDALO 2007), see Frontex's Annual Reports (2007, 12; 2008, 20-24).

extremely dangerous as corpses strewn along the Saharan track from Niger and Sudan served to remind those who made the journey in overcrowded trucks with few provisions (Interviews: migrants and refugees in Malta, 2008-2009).

In parallel to these immigration flows into Libya, the early 1990s saw the emigration of Maghrebis from Libya and other North African states across the Mediterranean. Due to the introduction of new visa requirements in southern European countries, such as Italy and Spain, these journeys were made in small boats without state authorisation. In the late 1990s, a significant convergence occurred between these patterns of mobility into and out of Libya, when sub-Saharan Africans joined and eventually surpassed the number of Maghrebis migrating from Libya to Europe. Libya, however, remained a country of destination, as well as transit hub, and the vast majority of migrants who reached Libya did not make the trip across the Mediterranean to European shores, as many remained to work or returned to their countries or origin (de Haas 2007).

Nevertheless, media and other accounts successfully whipped up a sensationalist frenzy on the topic of irregular immigration across the central Mediterranean, claiming for instance that '[u]p to a million await calmer spring seas before risking their lives to cross the Mediterranean' (Townsend 2008).⁷ Academics and NGOs refuted these claims, presenting evidence that only a fraction of the migrants in Libya attempted to cross the Mediterranean. One indication of this is the small number apprehended on islands such as Malta, and on the Mediterranean borders of countries such as Italy and Spain.⁸ Apart from the evidence of apprehensions and deaths, the number making the journey across the

⁷ These figures have been echoed by Laurence Hart, the IOM representative in Libya, quoted by the BBC in *Destination UK*, Panorama, 14 January 2008. For other such inflated estimates from the IOM and others, see Düvell and Vollmer (2009, 8–9).

⁸ In 2005, the Maltese authorities apprehended 1,822 irregular migrants at sea (National Statistics Office 2006). In Greece, the number was around 5,000 during 2005 (Triandafyllidou and Maroukis 2008, 66-69). The same year, 11,781 irregular immigrants were apprehended at the Spanish southern sea border (including the Canaries, Andalusia, and the Balearic Islands), and the Italian authorities apprehended 22,824 on their southern sea borders (including Sicily and other minor Sicilian islands) (Cuttitta 2006, 2-3).

Mediterranean is difficult to ascertain as it includes migrants who succeed in making the journey without detection, those who lose their lives at sea and whose bodies are not recovered, and others who are thwarted in their attempts to leave North Africa before ever reaching EU waters (Cutitta 2006; de Haas 2007). Acknowledging the difficulties involved in gathering such data, estimates from academics and agencies are nevertheless more modest than the millions reported elsewhere. For example, the International Centre for Migration Policy Development estimated that around 100,000 irregular migrants crossed the entire Mediterranean each year in the early 2000s, while Frontex reported 90,243 doing so in 2008.⁹

⁹ The ICMPD estimates are based on the apprehensions of irregular migrants in Spain, Italy, Libya and Algeria (Simon 2006, 26–42; c.f. Frontex 2009a, 12); For a much more detailed discussion on the issue of quantifying irregular migration, see Düvell and Vollmer (2009, 16–17).

Table 4.1: Arrivals, Asylum Applications, and Returns in Malta, 1995-2011¹

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011 ²
Irregular Arrivals				166	219	24	57	1,686	502	1,388	1,822	1,780	1,702	2,775	1,475	47	1,530
Asylum Applications	148	75	65	165	85	70	120	350	570	1,000	1,170	1,270	1,380	2,515 (2,607)	2,337 (2,389)	135 (175)	1,546 (1,546)
1951 Convention Status	137	85	32	50	51	28	39	22	53	49	34	28	7	19	20	46	17
Subsidiary or Temporary Humanitarian Protection³				32	22	1	24	111	328	560	484	522	620	1,394	1,676	566	313
Rejections								286	187	259	580	637	329	1279	895	132	67
Asylum applications withdrawn								3	20	20	60	23	23	23	79	12	5
Asylum applications processed								422	588	888	1,158	1,210	979	2,715	2,670	756	402
Asylum applications still in process								52	32	141	149	211	611	503	222	23	1,291
Asylum applications awaiting start of procedure								0	84	449	692	720	1,285	1,110	17	0	0
Forced Returns									1,106	704	954	780	338	261	530	272	
Assisted Voluntary Return									-	0	-	1	1	52	148	-	

¹ All statistics are based on number of people, except for asylum applications, which reflect the number of cases. Figures for 2008-2001 in this category include the number of people involved with the cases in parentheses.

² Until May 30, 2011.

³ Humanitarian protection was awarded until 2008, when subsidiary protection was introduced as an additional category. Since then, the majority of asylum applicants have been awarded this status, although a handful of claimants are still awarded humanitarian protection every year. In 2010, another category of temporary humanitarian protection was introduced as a form of ex-gratia local protection and which was given to those people whose application was rejected, but who after many years could not be deported and had 'showed effort and some measure of success at integration'. This new category accounted for 555 people in 2010 and 293 in 2011.

Sources

Arrivals – 1998-2001: Simon 2006, 39; 2002-2010: National Statistic Office 2011; 2011: data provided to the author by the Maltese Immigration Police, 2011.

Asylum Applications – 1995-1999: UNHCR 2002; 2000-2007: UNHCR, 'Asylum Levels and Trends in Industrialised Countries', 2002-2009; 2008-2011: data compiled and given to the author by the Refugee Commissioner's Office in Malta, 2011, figures in brackets are the number of people involved with the cases.

Forced and Assisted Voluntary Returns - Pisani and Giustiniani 2009; National Statistic Office 2011; 2010.

Arriving Irregularly in Malta

In Malta, migrants and refugees who arrived irregularly during the last decade departed from Libyan shores on rickety boats, a journey which takes between three to five days and costs anywhere from \$800 to \$1,200. The perils of the sea are generally not the first to be faced by these migrants. Coming primarily from sub-Saharan Africa, they have traversed the Sahara Desert, travelling from Sudan or Niger, for example. A young Nigerian man who was appealing his rejected asylum claim described his experience:

When you're in the desert, you see people, the dead ones; you see skeletons of people, some female, some male. Even the ones sitting with you, some end up there because [there is] no food, no water, you don't know where you go, you don't know where you're coming from, and the heavy sun.... So if you're not strong, you lose your life (Interview: Migrant in Malta [M.M] 8, April 2009).

Those that arrive in Libya safely generally remain in the country for anywhere between days, months or years. Many have no concrete plans to move on to Europe at all, wishing initially only to find a safe place to live and work. However, some migrants revise these initial intentions during their stint in Libya, influenced by their experiences in the country and by the presence of smuggling networks that readily provide information regarding opportunities to travel to Europe by sea (Interviews: M.M 11, 12, 17, 19, 25, 27, January – April 2009). A young man from Côte d'Ivoire who made the journey and landed in Malta commented on the impact of these networks:

When I came to Tripoli, I met a lot of friends.... Someone [told] me to go to Europe. I say, eh? Europe? Me, in my life, I'm not planning to go to Europe before.... I spend my life [in Libya] doing small jobs.... One day, my friend comes and tells me, if you go [to Europe] you can manage in one year, you can get some money, you can come back, you can start a business (Interview: M.M 17, April 2009).

Others arrive in Libya with the intention of moving on, some relying on networks of friends and family who supply them with money at intervals along their migration journey

and some working in order to save for the price of a place on a boat that they hope will transport them safely to the shores of Southern Europe. A 21-year-old Somali woman explained how she secured a place on a boat bound for Europe, saying, ‘I paid \$900... [I have] two sisters, one she stays in Norway, the other she stays in America. She sent me the money and I [paid] them for the boat’ (Interview: M.M 10, April 2009). While an Ethiopian man who had spent five days at sea before being rescued by the Maltese Armed Forces described how he came to pay for his voyage across the Mediterranean, ‘I knew one guy.... He told me, do you want to go to Italy? You pay \$1,200. Yes, I said and we agreed. They knew some Libyans.... I have [the money] because my mother sent it’ (Interview: M.M 15, April 2009). The smuggling networks are well established in Libya and there are also reports of the police being complicit. For example, a young Eritrean related how the Libyan police caught him attempting to leave the country on a small boat. The police beat and threatened him, but eventually transferred him back to a large boat with other immigrants, which made its way to Malta (Interview: M.M 23, January 2009).

Tales of indiscriminate violence and racism inflicted upon migrants by Libyan officials and by Libyan nationals are commonplace (Interviews: M.M 2, 6, 7, 8, 13, 16, 17, 18, 19, 27, January – April 2009). Indeed, some point to this fact as the final motivating factor for risking their life once more in an attempt to reach Europe. What quickly becomes clear from discussions with migrants and refugees in Malta is that there are mixed motivations for migrating, both from Libya to Malta, but also initially from countries of origin. The decision is evidently a complex one, partially imposed on a person by structural factors outside of their control and partially a choice made in the face of great hardship. For example, a young refugee recounted how the Eritrean government imprisoned him for four months because of his religious beliefs. After releasing him, the government obliged him to return to military service, prohibiting the continuation of his university studies.

Fearing he would spend the rest of his life in the military – service that he described as ‘forced slavery’ – he decided to leave Eritrea (Interview: M.M 5, April 2009).

Contrary to the official perception and portrayal of irregular migration as a linear and premeditated process from country of origin to a country of destination, extensive interviews with migrants and refugees in Malta clearly reveal that their migration plans and routes change as new opportunities and barriers arise. Such a sentiment is expressed by the young Eritrean who although has been granted subsidiary protection in Malta, is limited in his ability to integrate and settle, and so dreams of another future:

Yes, I plan to go somewhere in the UK if I get the opportunity, if there is an opportunity for education or resettlement in any part of Europe by this country.... [M]y hope is just to continue my education if I get resettlement, especially to America, or any part of Europe, or Canada, or another country. I need to resettle, as well as to continue my education. This is my hope (Interview: M.M 21, April 2009).

There are those who decide to come to Malta while in Libya or in their countries of origin, either because they have friends or family already on the island or because acquaintances in Libya so advise (Interviews: M.M 17, 24, 25, January – April 2009). For example, a young man from Côte d’Ivoire explained that ‘before I don’t know Malta. But in Libya ... I hear the Libyan people talking about Malta.... And I say, Malta? Malta? [Is] Malta in Europe? And they say [it’s] in Europe’ (Interview: M.M 17, April 2009).

Currently, these cases are certainly much fewer in number than those whose plans upon departure from Libya are to travel to Italy (often via Lampedusa). However, inclement weather, navigational problems or petrol shortages at sea cause others to land prematurely in Malta. As a migrant who arrived in Malta explained:

We were not wanting to come to Malta.... Our compass, it was damaged when we were coming. But we wanted to go to Italia, but the compass is not good.... After [we experienced] bad weather, we see Malta. We don’t have a chance. [It was] just better to find earth ... [so] we came to Malta (Interview: M.M 19, April 2009).

The exceptions to this experience are significant in pointing to a flawed logic in the government's rhetoric, a rhetoric that insists that irregular migrants do not intend to arrive or wish to stay in Malta and that migrants have very fixed plans to travel to Italy. Interviews bring to light how most migrants' plans remain flexible and are affected by new opportunities and barriers, whether in their country of origin, in countries of transit, such as Libya, or at sea. On the high seas, people's initial ambitions of travelling to Italy may be eclipsed by a desire to find land and safety. For example, a man from Côte d'Ivoire described his feelings as he boarded a boat in Libya: 'I give my life to Allah, to God. Any place is good for me. Italy, Malta all the same' (Interview: M.M 17, April 2009). Moreover, although migrants and refugees remain frustrated due to the limited opportunities in the country, they nevertheless report feeling 'safe' in Malta and some wish to remain. A successful asylum seeker from Niger explained,

I worked in Libya for a few months.... There is a lot of work in Libya, but the problem is that you don't feel safe in Libya.... Frankly speaking, there's a lot of work in Libya, but if you are not concerned about the money, but peace, even if you have money, if the whole money in this world is given to you and you have no peace, there is no [point]... So there is a lot of money in Libya, there are a lot of jobs, but no peace. That's why we leave Libya and come to Malta. Though Malta, there is a difficult situation in Malta, but we are very, very happy because we are in a peaceful place (Interview: M.M 6, April 2009).

Search and Rescue in the Mediterranean: Malta, Libya and Italy

Complicating this scenario, and adding to the numbers now arriving in Malta, is the country's large search and rescue (SAR) region, a relic of British colonial rule. Although Malta's landmass is made up of only 316 square kilometres, its SAR region extends into the Mediterranean for over 250,000 square kilometres, encompassing the Italian island of Lampedusa. As the map below illustrates, the result is that any boat leaving Libyan shores must pass through Malta's SAR region before it reaches Italy. Tunisian ports, such as La

Goulette (Tunis), El Kantaoui (Sousse), and Sfax, are in fact closer in proximity to Malta and Italy than Libyan ports, and have previously been used as departure points for irregular migrants travelling across the Mediterranean to Europe. However, due to increased controls along the Tunisian coast, almost all irregular migrants arriving in Malta and Italy now embark from Libyan shores.¹

Before joining the EU, Malta's informal practice was to aid any boats in distress in this region before allowing them to continue their journey to Italy, generally their professed destination (Interview: Director of Policy Development and the Permanent Secretary, Ministry for Justice and Home Affairs [MJHA], July 2006; Maltese MEP, July 2006). However, accession to the European Union in 2004 brought with it new, or rather enforced responsibilities towards irregular migrants travelling through the region. Malta often points to this large SAR region as another element adding to the disproportionate 'burden' it bears as an EU frontier state. However, the Maltese government has roundly refused suggestions by various Italian and Maltese opposition politicians that Malta should relinquish some of the area. This is most likely due to the region coinciding with Malta's highly profitable Flight Information Area, from which the country annually earns over €8 million in air traffic control fees (Grech and Sansone 2009; Vella 2007).

The Armed Forces of Malta (AFM) only intercept boats in the SAR area if they are in distress. This is confirmed in a number of ways: (1) AFM patrolling vessels, one of which is at sea at all times; (2) aircraft; (3) commercial vessels; (4) fishermen; or (5) telephone calls from someone on the boat (a satellite phone is sometimes aboard) or from an NGO contacted by the passengers on the boat (Interview: AFM Maritime Squadron Commander, July 2009). Once the AFM is aware of a boat in distress, they are obliged to

¹ Italy and Tunisia signed a readmission agreement in 1998, as well as an agreement detailing police cooperation on border surveillance in 2003. Moreover, in 2004, Tunisia implemented new laws introducing stricter surveillance of vessels in its waters, and much larger penalties – up to 20 years in prison and fines over €65,000 – for people smuggling (Boubakri 2004, 22–23; de Haas 2007, 15, 19).

coordinate the rescue of passengers on board under the United Nations' Laws of the Sea.² The EU's Dublin II Regulation reinforces this responsibility by establishing that asylum seekers must lodge applications in the first member state in which they arrive. That member state is subsequently responsible for the migrant until an asylum decision is pronounced.³



Malta's Search and Rescue Region (250,000 km²)⁴

However, in the great expanse of the Mediterranean, ambiguity remains and politicking rules the day. A loophole in international maritime law also exacerbates the situation. A country is responsible for the coordination of rescue within its SAR area. However, it was, until 2004, unclear where they should be disembarked. The SAR Convention (1979) only required states to 'ensure that assistance be provided to any person in distress at sea', to 'provide for their initial medical or other needs, and deliver them to a place of safety'. This ambiguity resulted in cases where commercial ships taking rescued migrants on-board

² See the International Convention on Maritime Search and Rescue (SAR Convention) of 1979 and the International Convention on the Safety of Life at Sea (SOLAS Convention) (1974).

³ In 2003, the Dublin II Regulation replaced the Dublin Regulation (1990).

⁴ Source: Map from http://www.geocities.com/CapitolHill/Senate/1618/mediterranean_rel82.jpg; SAR region approximated and inserted by author. For a more exact image see the map on Malta's Search and Rescue website, http://www.sarmalta.gov.mt/sar_in_Malta.htm

subsequently encountered great difficulty disembarking them. In response, the International Maritime Organisation amended the SAR and SOLAS Conventions in 2004, establishing that a state responsible for an SAR area is also responsible for finding a safe port for disembarkation. Malta did not, however, adopt these amendments, which came into force in 2006 (Maritime Safety Committee 2004; c.f. Klepp 2011).

Disputes therefore continue to erupt either when boats are found in distress within Malta's SAR region, but in closer proximity to Lampedusa, or when there is uncertainty about whether a boat is still in Libyan waters. With both states acting within their legal commitments, heated negotiations result between Italy and Malta, often while migrants are left adrift for extended periods of time without proper attention or rescue.⁵

This is illustrated by an incident in May 2009. A four-day standoff between Italy and Malta ensued when a Turkish cargo ship, the Pinar E, came across two boats carrying 154 migrants and refugees who were in need of rescue 45 nautical miles from Lampedusa. Having taken the migrants on board through coordination from Malta's Operations Centre, the question arose as to whether the migrants should be taken to Lampedusa, which was geographically closer, or to Malta, in whose SAR region they had been found. The Maltese government insists that in cases like this, where boats are found outside their territorial waters but inside their SAR region, their obligation lies only in coordination and migrants should be taken to the nearest safe port. In line with the 2004 amendment to the SAR Convention that it promoted, Italy maintains that they should be received in Malta.⁶ In the Pinar case, Italian officials informed Malta's Operations Centre that 'this event is developing in your SAR, and Lampedusa isn't a safety [sic] place, the MV PINAR E must

⁵ Such incidents include, for example: in 2006, a Spanish trawler rescued 51 migrants, who remained stranded on board for five days while Spain, Malta, and Libya negotiated responsibility for their disembarkation (UNHRC 2006b); in 2007, the 'tuna pen' incident detailed in the introductory chapter; in 2009, the Pinar incident detailed in the paragraph below; and most recently in 2011, an incident involving 100 migrants rescued by a Spanish frigate under NATO control (Anon 2011i).

⁶ These two countries made similar arguments in EU negotiations over Frontex guidelines for operations at sea. See Chapter Three for more details.

head to Malta where the migrants will be recovered'. Malta continued to resist and, ultimately, Italy capitulated and agreed to transfer the migrants to their patrol boats. However, these negotiations between the two countries continued for four days while the migrants and refugees remained on board the Turkish cargo ship with minimal provisions for their health and safety (Ministry of Foreign Affairs 2009).

Although such incidents cause diplomatic tension between Malta and Italy, both states have long pointed to Libya as the real culprit. The blame was apportioned due to Libya's failure to prevent departures from its shores, with the ideal solution seen as the effective patrolling of the Libyan coast along with a readmission agreement in order to return third-country nationals who transit the country. Indeed, Malta and Italy viewed Libya, led by Colonel Muammar al-Gaddafi for over 40 years from 1969 to 2011, as a liability, as a country unwilling to sign the kind of formal and informal readmission agreements implemented in West African countries, which allow EU member states such as Spain to return migrants to countries they have transited, but where they are not nationals.⁷ Gaddafi often hampered negotiations with European countries, using his strategic North African position and large oil reserves to increase his bargaining power (Paoletti 2008).

However, in the wake of the Pinar incident and after years of negotiation, former Italian Prime Minister Silvio Berlusconi succeeded in securing a Treaty on Friendship, Partnership and Cooperation (2008), which ushered in joint operations between the two countries to patrol Libya's maritime border. In return for Libya's cooperation in curtailing irregular immigration and in providing access to the country's oil reserves, Italy pledged \$5 billion in colonial reparations over 25 years (Anon 2008a).

⁷ For a discussion on EU member states favouring informal readmission agreements see Jean-Pierre Cassarino (2007).

Although there was no formal readmission clause in the Treaty, the agreement resulted in Italy returning boatloads of migrants and refugees to Libya from the high seas, without granting them access to asylum procedures in Europe. The UNHCR reported that Italy refused entry to at least 900 people after the agreement came into force in May 2009. Along with NGOs and other international organisations, it voiced its dismay at these events and pointed to Italy's contravention of the principle of non-refoulement and other international norms (Fortress Europe 2007; Human Rights Watch 2009; UNHCR 2009d). These groups highlighted Libya's record of human rights' abuses and the lack of asylum legislation in a country that is not a signatory to the Geneva Convention. In 2012, the European Court of Human Rights subsequently ruled that the practice was in fact contrary to the principle of non-refoulement (European Court of Human Rights 2012). The grave consequences of denying access to asylum procedures in Europe came to light as reports emerged from those who were returned to Libya, only to suffer at the hands of Libyan authorities or to be repatriated to countries where their lives were in danger (Fortress Europe 2007; Human Rights Watch 2009).

Nevertheless, the Maltese government publicly supported Italy's Treaty on Friendship without reservation over human rights issues, having been unable to secure its own readmission agreement with Libya despite its best efforts. In the past, the island had wholly rejected similar Italian proposals that Malta should be responsible for all migrants and refugees travelling through its SAR region, and that the EU should create large detention centres in Malta and Cyprus to house all of Europe's irregular migrants. Nevertheless, moving the line of defence to Libya remained a top priority (Grech 2010; Interviews: government officials, 2008-2010, especially Maltese Ambassador to Libya, July 2008).

Malta's own relationship with Libya had changed quite significantly since it joined the EU. Despite persistent maritime disputes, Malta and Libya historically enjoyed good relations, as formalised in the 1984 Treaty of Friendship and Co-operation. Among other things, the Treaty allowed Maltese and Libyans to travel between the two countries without a visa, a practice that was upheld until 2004, when Malta joined the EU. Malta also previously acted as a mediator between the international community and the isolated Libyan state (Anon 2009b; Boissevain 1991; Metz 2004, 230–32).

In spite of this history, as Malta's political framework shifted to an EU context and there was simultaneously a volte-face in Libyan-EU (and Libyan-US) relations as the international community began to reintegrate Libya into its fold, Malta's relationship with Libya paradoxically suffered. Although Maltese officials maintained that they continued to play an important role as a mediator between the EU and Libya, the influx of migrants from Libya into Malta increasingly strained relations between the two countries.⁸ Frustration grew among the Maltese authorities and the wider public who believed that Gaddafi was turning a blind eye to migrants leaving Libyan ports – Malta's own informal policy before joining the EU (Interviews: Maltese MEPs, government officials, 2006-2009).

However, the Italian-Libyan agreement and the associated 'push back' policy caused a 40 percent drop in migrant arrivals in Malta between 2008 and 2009, and an almost complete cessation in 2010, with only 28 people arriving irregularly that year (see Table 4.1 above).⁹ The Maltese government thus embraced Italy's Treaty on Friendship, in part

⁸ For example, they organised a meeting in July 2005 on the issue of saving migrant lives in the Sahara Desert and the Mediterranean Sea, which Libya only attended because it took place in Malta, according to Maltese officials (Interviews: Permanent Secretary, MJHA, July 2006; Maltese Ambassador to Libya, July 2008).

⁹ There were 1,475 arrivals in 2009, compared to 2,775 in 2008 (Camilleri 2010a; National Statistics Office 2010). Arrivals resumed in 2011 due to the outbreak of the civil conflict in Libya. Seven boats arrived in Malta between 28 March and 1 June 2011, carrying a total of 1,530 immigrants landed in Malta (statistics provided to the author by the Maltese Police, July 2011). As of 1 December 2011, there were no further boat arrivals in Malta. However, five migrants in need of urgent medical attention were airlifted from a Spanish

in the hope that the Libyan-Italian agreement would resuscitate negotiations for a multilateral EU readmission agreement with Libya (Interviews: government officials, 2008-2009).¹⁰

These developments are clear examples of the trend towards externalising migration controls and asylum procedures outside of European territory, and towards the co-option of member states on the periphery into this policy logic. Within the Mediterranean, there also appears to be eastward pressures on migration controls; as Spain previously reinforced the Straits of Gibraltar with military and semi-military hardware to restrict migration flows across the short channel, now Frontex patrols the central Mediterranean. Moreover, Libya was induced to cooperate, at least for a short while, with the preliminary evidence of decreasing arrivals in Malta suggesting a diversification of migration routes towards the eastern Mediterranean, where Frontex is yet to dispatch sea patrols (Frontex 2010b, 5-6).¹¹ The evolution of migrant routes in response to new patrols and other barriers to mobility also indicate the importance of migrant agency in these dynamics.

From Malta's point of view as a small state with few resources to realise bilateral agreements, EU membership has changed the incentive structure and created a bandwagon effect. The government can now attempt to externalise its responsibilities towards the EU and other member states, rather than responding to irregular immigration from a more limited national perspective. Moreover, as a weak actor within these new structures with little prospect of significantly altering them, it must adjust its behaviour accordingly. The country has therefore supported Italy's controversial stance on arbitrarily returning migrants and refugees to Libya and set its sights on a yet elusive multilateral agreement

frigate under NATO command in July 2011 (Sansone 2011b). The AFM rescued a further 44 Somali migrants on 5 December 2011 as their dinghy was sinking (Anon 2011d).

¹⁰ The political unrest seen in Libya in 2011 obviously affected these agreements. This development is discussed further in the concluding chapter.

¹¹ The media also reports similar patterns. Nevertheless, there continue to be the occasional migrant boat departures from Libya that succeed in travelling into the Maltese SAR region (Sansone 2010; Grech 2010).

with Libya, to be negotiated by the EU as a whole. As will be discussed further in Part Two of this chapter, the government also continues to frame its policy response and emphasis within a discourse of impotence in the face of large numbers of migrant arrivals to the island in attempting to secure more multilateral support.

Negotiations at Sea

The delays due to political disputes over rescuing migrants at sea and especially their disembarkation provide disincentives for other actors at sea to cooperate in rescue missions. Fishermen and commercial vessels are less likely to report boats and come to their aid when they are aware they will lose time and money while states wrangle over responsibility for the migrants.¹² These dynamics place those making the journey across the Mediterranean in more danger. For example, an Eritrean refugee described experiencing tragedy at sea:

It was rough weather... and we kept on asking for help. We were just two days on the sea. At the end, we managed to contact the ... Malta AFM. There was a Russian vessel which was passing ... and they came to help us, to rescue us. When we [spoke] to them, they didn't want to take us from the sea as they were waiting for a reply from Malta. And then in that situation, the weather was very rough and we sank down into the sea. And we were just scattered because it was rough weather and they didn't want to help us. So, three of us they died in that moment and after two hours, we managed to be rescued by that Russian boat.... [T]hen at the end we came to Malta (Interview: M.M 5, April 2009).

Contradictory reports are also present in discussions regarding Malta's search and rescue role in the Mediterranean. In line with the government's interpretation of migrant decision-making noted above, the AFM maritime squadron and other officials report and emphasise that many migrants do not want to be rescued at sea and refuse help from Maltese officials (Interviews: Senior Policy Officer, MFA, April 2009; various interviews conducted at

¹² This was clear in the tuna pen incident in 2007. For more on the role of fishermen see the forthcoming report by the EU Agency for Fundamental Rights (2012), especially the case study on Malta by Derek Lutterbeck and Cetta Mainwaring.

AFM Maritime Squadron base, July 2008). However, most migrants report running into difficult conditions at sea and thus deciding to land in Malta or more frequently to attempt to elicit help from the Maltese Armed Forces. A young woman from Somalia reported being advised to continue on to Sicily by Maltese officials after she and her fellow passengers were helped at sea:

[W]e stayed at sea [for] four days and three nights. After that... they are coming in the sea the Maltese and they are helping me.... [On the boat it was] very crowded, very hard. All the people they sitting like this [demonstrates crouched position]. All the families, they are hungry and thirsty.... Because all the people they are hungry, nobody can speak. All the people [were] like that because [for] four days they did not eat, they did not drink water. The [Maltese AFM] boat they give me biscuits, water, a jacket ... and they say to me go to Sicily, Italy because they say to me Malta is not good, it's small. Yes, the police they say Malta is small, it's not big. Go to Italy, Sicily. [But] the people because they're afraid, they said no, we want Malta (Interview: M.M 10, April 2009).

These types of reports from migrants and refugees reveal the AFM's reluctance to transfer migrants at sea back to Malta, with pressure exerted where possible on other actors to take responsibility or on the migrants to continue their journey to Italy. On the high seas, boundaries of responsibility between states are unclear and there is little independent oversight. Moreover, contrary to government assertions that migrants want to continue on to Italy rather than be brought into Malta, migrant testimonies reveal a more nuanced picture: even those who intend to travel to Italy may change their plans in the face of imminent dangers at sea. There are also reports from migrants and AFM officials describing situations where conflict erupts between migrants aboard a vessel regarding whether to disembark in Malta or risk continuing their journey to Italy, which complicates rescue missions carried out by any one of the neighbouring states.

More broadly, migrant experiences point to the porous nature of these blue borders, contrary to the national and regional discourse of 'Fortress Europe', and to the agency of

migrants to exploit these fissures. For instance, an Eritrean refugee described the strategy employed by his fellow shipmates and himself upon departing from Libyan shores:

[F]rom the minute we left Libya, we were calling for international help to Italy, to Malta, to everywhere. But they keep on telling us just that we were on the territory of Libya. So we came forward, we came forward. At the end we were at the international line. We were in Malta's territory and we ask for help (Interview: M.M 5, April 2009).

These excerpts above highlight the trauma that many suffer before arriving in Malta. Being unable to procure the travel documents and airplane tickets that are available to the wealthier classes, these migrants must travel along longer, more dangerous and arduous routes. Many recount tales of watching fellow migrants, some being family members or friends, dying at sea or in the desert. One Nigerian man described such an experience travelling across the Mediterranean, saying, 'We were less than 30 in number in my boat. I lost one lady.... She had two kids....' (Interview: M.M 7, April 2009), while a young Eritrean woman explained how she had been separated from her father en route to the Sudan and now feared him dead. 'I never saw my father again', she said (Interview: M.M 2, April 2009).

Addressing the numbers

Despite these difficulties at sea, the number of migrants and refugees crossing the Mediterranean and arriving in Malta (and Italy) in an irregular manner has remained relatively constant since 2002. The government's rhetoric on the issue of irregular immigration has centred around two interrelated points: the large number arriving in Malta relative to its population and the limited space and resources to cope with these arrivals. The number of irregular immigrants arriving is in fact small in absolute terms, ranging annually between 1,000 and 3,000 between 2004 and 2009. Nevertheless, the government continues to argue that the impact of these arrivals is amplified due to the island's small

population (411,452) and high population density (1,282 per square kilometre).¹³ Comparisons based on population are made in order to argue, for example, that the total number of irregular migrants who arrived in Malta since 2002 are equivalent to 1.2 million reaching the UK.¹⁴

In turn, the government reinforces this ‘crisis’ in order to contend that Malta carries a disproportionate amount of the migration ‘burden’ in Europe. Arguing especially vociferously at EU forums, Maltese politicians have called for ‘solidarity amongst member states’ to resolve the crisis (Interviews: government officials, 2008-2009). In real terms, the Maltese government is requesting support for relocation schemes that would see those asylum seekers given protection in Malta resettled to other EU member states, and in renegotiating the Dublin II Regulation in order to add a proviso that would exempt countries facing ‘particular pressures’. After some years, Malta succeeded in garnering a limited amount of support for these demands. However, there remains little political will amongst other member states to implement permanent intra-EU relocation schemes.¹⁵

Moreover, the emphasis on the disproportionate numbers arriving in Malta is somewhat misleading and has been used to garner political attention and support. Out of 51 industrialised countries surveyed by the UNHCR, Malta did indeed record the highest number of asylum applications per capita in 2008, and the second highest (after Cyprus) for the period of 2004 to 2009. However, calculating the number of asylum applications based on gross domestic product per capita results in a very different picture. Using this

¹³ As of 2008 (World Bank).

¹⁴ See for example an article written by the Maltese Prime Minister (2004 – present), Lawrence Gonzi (Gonzi 2007, 42; Borg 2007).

¹⁵ The successes of the demands made by Malta (and Cyprus) are discussed further in Chapter Six. The relocation of asylum seekers, whose claims have not yet been decided and who may not ultimately qualify for protection, is a long-term goal for the Maltese government. This, however, is even less popular with other member states (Interviews: government officials, 2008-2009; Council 2009b).

measurement, Malta ranked 24th for the period between 2004 and 2009, amongst the 44 industrialised states surveyed.¹⁶

Although Malta certainly did see an increase in irregular migrant arrivals in 2002, the unrelenting emphasis on the ‘invasion’ of irregular migrants is politically convenient, as it allows Malta to continue to portray the phenomenon as a security crisis and itself as in need of ever-increasing financial and practical support from other member states (Interview: Officer, MFA, January 2009). Numbers, coupled with questions of security, are also used to justify questionable policies such as the detention of asylum seekers and refugees for 12 to 18 months. For example, when asked about the role of detention, one senior official in the Ministry of Foreign Affairs responded, ‘We can’t have a sudden influx of people roaming about on the streets of a small country’ (Interview: May 2009).

The focus on irregular migrants also presents a skewed picture. After all, EU citizens, foreign students, and third-country nationals migrate to Malta in large numbers: there were an estimated 8,000 third-country nationals holding residence permits in 2008 (Interview: Citizenship & Expatriate Affairs, MFA, April 2009). Malta also accommodates over one million tourists every year.¹⁷ This indicates that the issue at hand is not a purely numerical one, but rather one that is influenced by race and class, as well as the EU context within which it occurs. Asylum seekers and irregular migrants are viewed superficially as solely a drain on the welfare state and economy. This portrayal allows the government to underline Malta’s vulnerability to the EU in order to acquire more support. Moreover, this depiction disregards the contribution that migrants and refugees make to the economy, working primarily in construction, agriculture, and the service industries. One official

¹⁶ GDP per capita is calculated taking purchasing power parity into account, which equalizes purchasing power by using long-term equilibrium exchange rates (UNHCR 2010a; 2009a). Interestingly, using this measurement, the ‘burden’ affects developing countries much more than EU member states. For example, Pakistan and United Republic of Tanzania, two major refugee-hosting countries, hosted 347 and 785 refugees respectively per US dollar of GDP per capita at the end of 2007 (UNHCR 2009c, 27-28).

¹⁷ In 2008, an estimated 1,290,856 tourists visited the island according to the National Statistics Office (2009).

stated it plainly: 'We want migrants to satisfy our economic [needs], our labour market mismatches, but at the end of the day I don't think we would want them to stay here permanently' (Interview: MJHA, April 2009).

Irregular immigrant arrivals on the island are also portrayed as accidental. Most politicians I interviewed reported that migrants and refugees 'do not want to come to Malta' and that 'Malta is not a country where asylum seekers would choose to settle' (Interviews: MFA; MJHA April 2009). It is important to make two observations here: first, it is politically expedient for Malta to maintain that most migrants do not want to remain, a logic which helps the government portray Malta as a victim of migration patterns and EU legislation; and second, focusing on this particular aspect of migrants' aspirations disregards global patterns which point to the likelihood that Malta will continue to receive migrants and refugees in the coming years. It also conveniently ignores the effects of Maltese policies on migrants' desires to remain on the island. Moreover, there is evidence suggesting that Malta is in fact a final destination for some migrants and refugees, a reality that will likely continue as the migrant population integrates into Maltese society, fills gaps in the labour market, and establishes networks between Malta and countries of origin (Interviews with migrants and refugees, 2008-2009).

In 2002, the young asylum and migration systems in Malta were unprepared for the number of arrivals that year. The government responded to the new phenomenon with an 'ad hoc arrangement ... made by the police immigration authorities' (Interview: MJHA, April 2009). This makeshift response confined those who arrived to detention centres located in military barracks. Although one might excuse the initial failings of the reception and asylum systems due to the unexpectedly high levels of irregular immigration, the continued depiction of migrant arrivals as a crisis almost a decade later is far less convincing.

Nevertheless, the Maltese government's discourse has focused on its 'exceptional' situation, emphasising the small population, high population density, and relatively large number of irregular migrants and refugees. The portrayal of the situation as a crisis, which further marginalises the migrant and refugee population, is accompanied by calls for European solidarity. Indeed, EU membership has created a perverse incentive to treat the arrival of irregular migrants as a political crisis. The following part delves deeper into how and why it has become politically convenient for Malta to do so.

Part 2

Responding to Irregular Immigration

Constructing Strategies on the EU's Periphery

Broadly speaking, Malta's migration interests since 2002 have been to address the influx of migrants and refugees arriving on the island on boats from North Africa. The government has responded to this interest in a number of ways: regionally, it has lobbied for more 'burden-sharing' measures within the EU, lobbying which has been bolstered by the country's interpretation of the arrivals as a crisis and the shifting of responsibility towards both Libya and Italy. Nationally, the government has limited the rights and opportunities of irregular migrants and asylum seekers in order to deter further arrivals and to reinforce the interpretation of irregular immigration as a crisis. Containment and control have therefore been emphasised and prioritised over alternatives such as integration or upholding basic human rights.

In this part, I examine how the EU framework affects Malta's power in migration governance, the shaping of its interests, and the strategies that follow. As was shown in Chapter Three, there is a distalisation process occurring within the EU in terms of migration control and asylum provisions. Here, however, I am interested in exploring how a state on the periphery becomes co-opted into a political framework and in turn how this multilateral framework influences interests and strategies.

Regional Strategies

EU membership has certainly increased Malta's bargaining power. Because of its geopolitical position on a major migration route, the small state has emerged on the political map with a voice in EU forums. The government's exploitation of the recent irregular immigration to the island has further amplified this voice. As the Minister for Foreign Affairs stated, 'We are punching above our weight.' Membership has also brought with it concrete financial benefit: €1.18 billion in EU funds is earmarked for Malta from

2007 until 2013 (Interview: MFA, April 2009). This is more significant when considering that Malta's annual gross domestic product is only €5.86 billion.¹ However, these material and immaterial benefits come with new obligations and a changing incentive structure.

The Minister for Foreign Affairs explained that it is his ministry's responsibility to ensure that irregular migration 'is always on the agenda of the EU, [and] of other international forums in the Mediterranean, for instance in the United Nations or in the Council of Europe' (Interview: April 2009). Indeed, as a small state in the Union, Maltese politicians expressed their satisfaction in attaining this goal. A senior policy advisor in the Ministry of Foreign Affairs noted, 'With 27 countries, you need to continually remind people of Malta's situation.... It's good to keep up awareness' (Interview: April 2009). The goal of keeping Malta on the EU's agenda, along with the island's relatively weak position in the Union, creates an incentive to portray the situation as a crisis and Malta as indispensable to EU migration controls.

Thus the issue is framed within the discourse of exceptionalism. This discourse hinges on the portrayal of Malta as vulnerable and weak in the face of the immigration 'crisis'. The state is presented as overwhelmed due to demographic and geographic factors but still playing a vital role as an EU gatekeeper. This allows responsibility to be shifted towards both the EU and third countries, such as Libya. An official in the Ministry for Justice and Home Affairs said,

It is clear that [Malta] is a country so small and so limited at the frontier, unless we can get the cooperation of both Europe on one side and the countries of origin on the other side, both on a bilateral level but perhaps more effectively if it's taken in the European context, where you can have more potential development of agreements... (Interview: April 2009).

This is not a new strategy. In the 2004 European Union enlargement, Malta exploited its 'exceptional' smallness in order to negotiate the highest number of transitional

¹ As of 2007 (World Bank Indicators).

arrangements and derogations. Many of these concessions were won and justified with reference to Malta's small size, highlighting how a negotiation handicap can be creatively transformed into a successful exceptional logic (Pace 2006; 2002). Moreover, the government won some of the concessions on the very same grounds that now underlie the irregular immigration rhetoric, that of population as a securitised issue. For instance, the permanent derogation on the acquisition of secondary residences and real estate by citizens of other EU member states was negotiated on the grounds of the size of the country, the population density, and the 'social effects' of a substantial increase in the demand for properties (Busuttil 2002). More recently, the government employed the same logic of exceptionalism, based on the number of migrant arrivals in Malta, in order to successfully lobby for the seat of the European Asylum Support Office. The Office was established in 2010 with a budget of over €45 million for the first three years (Anon 2009d).²

Another strategy to increase bargaining power has been to make alliances with actors who will raise Malta's profile and draw attention to the issue of irregular immigration in the EU. Thus, in 2008, Malta joined Italy, Greece and Cyprus to form the 'Quadro Group', the brainchild of Maltese officials in the Ministry for Justice and Home Affairs. The aim of the group is to raise awareness within the EU of the 'challenges posed by illegal immigration and asylum' in the Mediterranean, with a specific interest in promoting intra-EU reallocation programmes, a revision of the Dublin II Regulation, the strengthening of Frontex, and the continued negotiation of multilateral and bilateral readmission agreements (Council 2009b). The Group's focus is to shift responsibility for asylum and irregular immigration to other member states and to transit countries. It also ironically inverts previous rhetoric depicting the Mediterranean as Europe's 'soft, vulnerable underbelly'

² For emphasis on the numbers arriving in Malta, see Malta's bid for EASO, available here: <http://www.easomalta.eu/>; The success of Malta's bid has raised concerns among human rights organisations, who have pointed to Malta's lacklustre track record of receiving refugees and its priority of preventing 'illegal' migration both nationally and at the EU level (Phillips 2009).

(Haynes 1999, 19; Katrougalos and Lazaridis 2003, 169), shifting blame northward to larger member states for their perceived lack of interest in controlling southern EU borders.

On the matter, the Maltese Minister of Foreign Affairs said the following:

What is an interesting development now is that Italy, ... Cyprus and Greece have joined forces within the EU, mostly because they feel they are in the periphery and have been relatively abandoned on this issue and therefore they are offering a common front to see to it that more aid comes in their direction and as well not to increase [our obligations], - and this is the official position of the Maltese government – that we accept the international obligations which we have within the EU and outside the EU, but we do not intend to add to those international obligations. So if there's a directive which would increase, which would make more onerous our obligations on immigration matters, we are prepared to stop that to the extent that we are able to use it. So in this sense, the use of the veto, or better still that if a decision requires unanimity and that unanimity would increase the international obligations of Malta with regards to immigration, we are going to exercise our right not to agree. And we have already done so. For instance, there was a proposal on the long-term residence permit that would apply to anyone who was in Malta lawfully for five years, which would have included the protected persons as well, which would mean therefore that a person would remain in Malta for five years so that he would get that permit. We have blocked that.... [W]ith ones that do not require unanimity, we try to form an obstructing, a blocking minority with other countries. Like for instance, the rule which had been proposed in the past, and then transformed, but which could be proposed again, that no one can be detained under immigration laws for more than six months (Interview: April 2009).

These strategies employed at the regional level concentrate on the perceived need for northern member states to cooperate in tackling 'illegal immigration', often to the detriment of migrant and refugee rights. The resistance to extending the benefits of the Long-Term Residents Directive to refugees is illustrative of the problems in creating a common European asylum system and the tendency for harmonisation to occur in the realm of security and exclusion, rather than protection.³ Moreover, responsibility for solutions is often projected outside national borders; when asked about long-term solutions for the migration issue in Malta, one policymaker responded, 'Resettlement basically' (Interview: Official, MJHA, April 2009). Some officials regard even resettlement schemes

³ For more on the negotiations over the extension of the Long-Term Residents Directive, see Chapter Three.

as too soft a touch, maintaining that they act as a pull factor. Echoing these sentiments, the Head of Detention Services in Malta averred that '[r]epatriation is the answer' and '[r]epatriation is best done from detention' (Interview: July 2008). In all cases, the message by Maltese politicians is clear: 'the solutions are not in Malta' (Interview: Official, MJHA, April 2009).

National Strategies

Malta's decision to join the EU has not only transformed Maltese borders from national ones into regional ones, it has also multiplied the layers of boundaries within and beyond the national borders. Beyond the national borders, the Dublin II Regulation, and on-going Italian and EU developments vis-à-vis Libya all serve as barriers to mobility for those trying to reach European shores. Other barriers to mobility are found within Malta's geographic borders and can be classified into two categories: those that are perceived by the government as acting as a deterrent, in part aimed at preventing migrants and refugees from arriving on Maltese shores, and those that limit onward mobility.

In 2008, the government consolidated migration policies and services under the auspices of the Ministry for Justice and Home Affairs (MJHA), ostensibly to provide more cohesiveness for irregular migration policies in Malta. However, this move also signalled the establishment of separate and unequal legal channels and procedures. For example, the Ministry established the Organisation for the Integration and Welfare of Asylum Seekers (OIWAS) in 2007, adopting the responsibilities of the Ministry for Social Policy, which previously oversaw welfare and integration matters for asylum seekers and refugees along with its task of maintaining these provisions for Maltese nationals. In stark contrast to its titular focus, OIWAS emphasises resettlement and repatriation as long-term strategies for Malta: although it runs the ten open centres on the island, which house migrants and

refugees after they are released from detention, it claims that ‘very few are interested in integration’.⁴ This emphasis was reconfirmed when in 2009 the Organisation modified its name to the Agency for the Welfare of Asylum Seekers (AWAS), conspicuously abandoning any reference to integration.

Detention

*We are not criminals.*⁵

The increase in migrant arrivals in Malta coincided with changes to governmental structures as part of the pre-accession process, which would culminate in EU membership as part of the 2004 ‘big bang enlargement’ (Anon 2002). In passing the Refugees Act (2001), Malta created its own structures to manage the arrival of asylum seekers, through the establishment of a Refugee Commissioner’s Office on the island. The following year, the government opened a detention facility in the Hal Far military barracks with a capacity to hold 80 people, the assumption being that Malta would continue to receive a few hundred migrants each year (Interviews: government officials, NGOs, 2008-2010; UNHCR Malta Representative, Maltese MEP, July 2006).

However, the 1,686 migrants who arrived in 2002 overwhelmed the facility and arguably sparked the current immigration ‘crisis’ (NSO 2010, 2). Malta’s detention policy stipulates that migrants arriving in Malta without authorisation be detained for up to eighteen months. The time spent in detention was previously indefinite. This limit of eighteen months was only set in 2005 after pressure from local NGOs resulted in the Council of Europe sending a delegation to investigate the matter. The Council subsequently insisted that Malta change its indefinite detention policy. More recently, the EU directive on the reception of asylum seekers prompted Malta to introduce a legal

⁴ In January 2009, the open centres accommodated 3,100 migrants and refugees (Interview: Head of OIWAS, January 2009).

⁵ Interview: M.M 19, April 2009.

provision that allows for the release of asylum seekers after twelve months if their claim is still pending due to Article 11, which calls for asylum seekers to have access to the labour market after one year. Rejected asylum seekers are held in detention for up to eighteen months (Malta 1970; JRS Malta 2008; c.f. Council 2003b).

Detention remained in place as an administrative fiat despite the fact that in 2002 Malta decriminalised the entrance without leave into its territory (Council of Europe 2004, 4). The government often points to bipartisan political support and security concerns when justifying its use of immigration detention. These concerns are primarily based on the number of people arriving (Interviews: government officials, MJHA & MFA, April 2009).

Immigration detention is also considered to be a ‘powerful deterrent’ by the government (Council of Europe 2005a).⁶ Despite being reminded by the Committee for the Prevention of Torture that international standards discourage using detention to deter potential future migrants, government officials admit that they use the practice for this purpose (Council of Europe 2005a). Outlining the reasons for detention policy, the Minister of Foreign Affairs said, ‘The message needs to ... be received by everyone that entering Malta illegally will not go unpunished’ (Interview: April 2009). Another official explained that the detention policy ‘is good to persuade [illegal migrants] that they have to go back home.... It’s good that they contact their relatives and say, listen, don’t come to Malta because it’s terrible here’ (Interview: Senior Policy Officer, MFA, April 2009). A senior official in the Ministry of Foreign Affairs also shrugged off the poor conditions in detention by attributing them to the high number of arrivals: ‘I hope those conditions [in detention] will be improved, but it all depends on the arrivals. The moment you have a sudden influx, it creates problems’ (Interview: MFA, April 2009).

⁶ Maltese politicians who are responsible for such policies expressed similar views (Interviews: 2006 – 2009).

The numbers in detention do indeed fluctuate according to the number of arrivals. For instance, in November 2010, there were only 79 people in detention due to the Italian ‘push-back’ policy to Libya, while in July 2008, the detention policy rendered 1,750 people who had committed no criminal offence behind bars (Interview: Head of Detention Services, July 2008; Anon 2010a).⁷ In parallel to the rise in irregular immigration after 2002, the number of detention centres on the island also increased. Along with the original Lyster Barracks Closed Centre in Hal Far, the government opened the Safi Closed Centre and the Ta’ Kandja Closed Centre. If these facilities are not sufficient to detain the number arriving, the police headquarters in Floriana are also available for this purpose (Interviews and fieldwork between 2008 and 2010; c.f. Global Detention Project 2009; MSF 2009). Advocacy organisations have regularly criticised the conditions in which immigrants are detained for being overcrowded, unhygienic and inhumane. In February 2009, Médecins Sans Frontières (MSF) suspended their work at the centres after six months due to the conditions they found. MSF subsequently published a scathing report detailing the unacceptable conditions (MSF 2009).

Detained migrants and refugees echo these grievances. Having arrived in Malta irregularly, migrants and refugees are immediately placed in mandatory detention for up to 18 months. Those who are detained routinely refer to the detention centre as a ‘prison’, and maintain that they ‘... are not criminals’ (Interview: M.M 19, April 2009). The majority are detained in the biggest centre in Safi, a military barracks that houses hundreds of men in a large open room.⁸ The detainees – the majority of whom are asylum seekers – hang tattered and dirty sheets between the rows of bunk beds, only a few feet apart, in an attempt to create some semblance of privacy. Those with a bed are the lucky ones who have not been

⁷ The number of migrant arriving irregularly during these years can be found in Table 4.1 above.

⁸ For example, this centre housed 950 migrants and asylum seekers in July 2008 (Interviews: migrants and refugees, 2009; Head of Detention Services, July 2008).

merely allocated a mattress on the floor. The lack of windows at human height also adds to the cramped atmosphere.⁹

Arriving in Malta in 2006, an Eritrean man, who was eventually given subsidiary protection, first spent 14 months in detention and described the oppression of being prohibited from going outside for eight months while in detention. He said, ‘Detention is amazing. You don’t treat an animal like that. You don’t get any newspapers, information. You lose so much in there. You lose your talent, everything. You need books to read, fresh air’ (Interview: M.M 20, April 2009).

Deprived of their liberty, asylum seekers and migrants also raise objections to the material and psychological circumstances within which they are held. Amongst these are: (1) neglected and inadequate toilet and sleeping facilities, (2) a lack of physical security, (3) inadequate health provisions, (4) a lack of privacy, (5) a lack of education and more broadly mental and physical stimulation, (5) inadequate identification of vulnerable groups, (6) limited communication with families and the outside world, (7) the absence of visitation rights for friends on the island, and finally, (8) a lack of information about the reasons for their internment and (9) about their asylum process.¹⁰ Médecins Sans Frontières’ condemnatory report corroborates these grievances (Médecins Sans Frontières 2009).

Although conditions in detention have improved over the last decade, they remain susceptible to deterioration, especially when large numbers of people arrive on the island. These conditions, coupled with the well-documented psychological stress of long-term detainment, result in long-lasting psychological and physical effects on the detainees (Steel

⁹ This description draws upon the author’s firsthand experience of visiting detention centres during fieldwork between 2006 and 2010. A report published by Médecins Sans Frontières, which condemns the Maltese government’s inaction in improving conditions in detention centres, confirms these observations (Médecins Sans Frontières 2009).

¹⁰ This list is compiled from interviews with migrants and refugees, January – April 2009, especially M.M 4, 7, 8, 9, 11, 15, 16, 20, 21, 22, 27.

et al. 2006). They also produce an unwieldy population for the government, prone to protests and escape attempts (e.g. Peregin 2011; Ameen 2009; UNHCR 2005). A Sudanese man from Darfur explained the trauma involved with being put into detention for what seemed like an indefinite time period, with very little access to the outside world or to information about his asylum case:

When we arrived in Malta, they took us somewhere and took our fingerprints and gave us a number and put us in detention. I had never been in detention before. I was very confused and didn't have a phone to call my family. It made me crazy. It is like a jail. I applied for asylum but heard nothing for three or four months. I kept having nightmares and knew that I couldn't stay in detention. So I planned to escape with one other man from detention. We made a small hole in the fence and escaped (Interview: M.M 27, January 2009).

Such acts of migrant agency have effects on the regional level. Regional and international bodies, such as the EU's Committee on Civil Rights, Justice and Home Affairs, the Council of Europe's Committee for the Prevention of Torture, and the International Commission of Jurists have all reported on the escape attempts, hunger strikes and protests carried out in detention, admonishing the country for continuing the practice (Council of Europe 2011; European Parliament 2006; International Commission of Jurists 2012; c.f. Peregin 2012). An Algerian national also successfully brought a case against the Maltese government to the European Court of Human Rights. He alleged that Malta had unlawfully detained him (Article 5 § 1), had not made him aware of the legal and factual grounds for his detention (Article 5 § 2), and had not provided a remedy by which to challenge the lawfulness of his detention (Article 5 § 4). The Court found a violation of Article 5 §§ 1 and 4, and awarded the applicant €12,000 (European Court of Human Rights 2010).

The difficulties faced by detainees due to the nature and conditions of detention in Malta are heightened when it comes to vulnerable people, for whom there is not a systematic process of identification in place. Rather, vulnerable cases are brought to the attention of AWAS by the police during their initial screening upon disembarkation or by

NGOs working in detention. Minors, pregnant women and other vulnerable people are thus still detained. One Somali woman explained how in 2006 she arrived on the island heavily pregnant and remained in detention for six months after giving birth to her son (Interview: M.M 4, April 2009; c.f. MSF 2009; Lutterbeck and Mainwaring 2012). Another systemic issue is the lack of access to detainees. Although a limited number of NGOs and international organisations now have access and regularly work in detention centres, the press and researchers continue to have limited access.¹¹ These individuals must apply for permission to visit the centres through the Ministry for Justice and Home Affairs, applications that are assessed on a case-by-case basis. Moreover, friends and family members of detainees who may already be on the island have limited visiting rights, further isolating the detained population and increasing their vulnerability (Interviews: M.M 11, April 2009; NGO representatives, 2008-2009).

The influx of migrants and refugees since 2002 has caused the role of the Armed Forces in Malta to expand significantly and now includes the responsibility of rescuing migrants at sea and of running the detention services. Creating detention centres under the remit of the military was initially part of the ‘ad hoc arrangements that were made at that time by the police immigration authorities’ in the face of a large increase in the number of arrivals (Interview: MJHA, April 2009). However, this practice remains in place almost a decade later, without consideration given to the negative impact of placing the welfare of often-vulnerable asylum seekers and migrants in the hands of those trained in the use of force.

Echoing these sentiments, the young Eritrean refugee who spent 12 months in Safi Detention Centre before being released, describes his experiences:

¹¹ The organisations working regularly in detention as of January 2010 were the Red Cross, JRS Malta, MSF, and the IOM.

As I told you I've been in prisons in a lot of places and ... I can say that [the detention centre] was the worst prison I've seen. Because what makes it the worst for me is that [it] was not my expectation. And in other countries, I was in prison because I broke the rules, but in Malta I didn't break any rules. The only crime I committed is just that I asked for asylum. Asking for asylum, if it is a crime, they were right to put me in that situation.... I can tell you that [in detention] I was cut off from everything. I had no communication with family; I had no communication with other people who live on the outside. I was doing nothing, just eating, waking up ... for months, doing nothing.... During my time, there [were] a lot of problems happening in detention, but ... you cannot go and tell someone who is in charge.... If you want to speak to the soldiers - soldiers they are soldiers and they are trained to be soldiers, not trained to be a social worker or a care worker. They are trained to be soldiers ... so I don't expect anything from them (Interview: M.M 5, April 2009).

Senior officials in the Ministry for Justice and Home Affairs justify the lengthy detention policy by invoking 'the smallness of the country, issues of influx in a short time' and highlighting that 'there isn't a convenient border which you can take them to and allow them to skip off to the other side as has been the case with several other countries.... It's our method of controlling and containing at the same time' (Interview: MJHA, April 2009). As well as the role of detention as a deterrent, officials justify such policies with reference to 'control', 'order' and 'security', and even 'in order to protect the migrants in detention' (Interview: Third Country Nationals Unit, MJHA, January 2009). Here again the logic of Malta as an exceptional case is deployed due to its small size, high population density, and blue borders.

While the government upholds that the detention policy is an intended deterrent, there is little evidence that it is effective in light of most boats being brought into Malta when they are found in distress on the high seas. Moreover, not one of the migrants interviewed knew of Malta's detention policy before arriving on the island. Although the length of detention for asylum seekers is officially limited to 12 months and the aim of the Refugee Commissioner's Office is to decide cases within six months, migrant testimonies reveal a different picture (Interview: Refugee Commissioner, January 2009). In contrast to

the government's own goal, over 40 percent of asylum seekers in detention had been there for over six months in 2009 and many of those released in previous years reported being in detention for longer than 12 months (Maltese Parliamentary Question 2009c; Interviews: migrants and refugees, 2008-2009).

The conflict over Malta's detention policy between detainees and NGOs, on the one hand, and the Maltese government, on the other, has had effects on state relations at the regional level. As noted above, the EU, impelled by riots in Maltese detention centres and NGO activism, has consistently called on Malta to improve conditions in detention centres and to review its mandatory 18-month policy. Such feedback effects from migrant experiences have even led some countries to cite the conditions in detention as justification for the suspension of the transfer of migrants to Malta under the Dublin II Regulation when they are found to have travelled on to another EU member state without authorisation. Moreover, this has led to contradictory messages emanating from the EU towards Malta. The desire for this small island to act as a migration gatekeeper through increasing immigration controls and deterrent measures is clear. However, simultaneously the government has been reprimanded by the bloc for its treatment of migrants and refugees in detention.

Malta's detention policy has remained central to the government's response to the increase in irregular immigration to the island since 2002. It has played its part in the crisis narrative constructed by the government, of a small island overwhelmed. Indeed, the detention policy has been symbolic of the 'crisis' and has acted to reinforce it.¹² Nevertheless, it has come at a price to both the migrant and host communities. The government's insistence on detention has led to the incarceration of people who have committed no crime for up to 18 months in sub-optimal conditions, negatively affecting

¹² Elsewhere, I have written about the role of immigration detention in constructing a crisis in Malta (Mainwaring 2012b).

asylum seekers and refugees in their efforts to integrate into Maltese society. More generally, it has also served to criminalise the migrant population. In parallel, the country has seen a rise in xenophobia and racism amongst the Maltese people, as well as the emergence of the first far-right wing party campaigning specifically and primarily on an anti-immigration agenda.

Open Centres

People are ... [not] 'housed' in the open centres. They are 'tented' or put into containers and therefore contained, far from being housed.¹³

Once migrants and asylum seekers are released from detention, they are placed in one of the ten open centres on the island, intended to be temporary accommodation for released detainees before they either integrate into Maltese society or are repatriated. In reality, these centres have become permanent holding centres, overcrowded with those who have limited opportunities to create independent lives for themselves in Malta or to resettle in other countries, whether they are rejected asylum seekers or possess some form of refugee status. The centres include those for single males, single females, and those for families and single mothers. They vary widely in terms of their material condition, ranging from small houses to industrial hangars to canvas tents erected in Malta's most infamous open centre, renamed the 'tent city', which has the capacity to house around 600 migrants and refugees.¹⁴ Although the conditions in all the centres need improvement, the conditions at the smaller centres (for families) and those run by NGOs and religious organisations rather than the government (such as the Peace Lab in Hal Far and the Marsa Open Centre) are markedly better, discrepancies which, as shall be discussed, cause problems of their own.¹⁵

¹³ (Interview: JRS Director, July 2010)

¹⁴ In April 2012, these tents were replaced with pre-fabricated, metal containers (Anon 2012c).

¹⁵ The NGO Suret il-Bniedem previously ran the Marsa Open Centre, but announced in August 2010 that it would not seek to renew its contract and thus management responsibilities would return to the government agency, AWAS (Peregin 2010).

The open centres (along with the detention centres) are concentrated on the southern end of the island, historically poorer and dotted with far fewer holiday resorts than the north of the island. Thus the dilapidated centres and their residents are relatively hidden from the eyes of the more than one million tourists who visit the island every year. This geographic isolation, which is quickly becoming ghettoisation, decreases levels of mobility around the island, making it difficult for migrants to search for employment opportunities and to integrate into Maltese society (Interviews: migrants, refugees, & NGO representatives, 2006-2009).

In general, the lack of adequate space results in the deterioration of conditions in open centres. In the Marsa Centre, which houses single males, bunk beds for 36 people are crammed into a small room, leaving little extra space and certainly no privacy. The building itself is dilapidated, with structural problems such as cracks in the walls and ceiling. An Ethiopian man decried these conditions as breeding discontent amongst the residents, saying, ‘You see in Marsa, most people, they are angry, most people [are] scared’ (Interview: M.M 15, April 2009). Another resident, an Eritrean with subsidiary protection, described the living conditions in more detail:

If you see our bedroom, it is a small place with 16 people. The bed is up and down [in bunk beds]. As well as, no door to enter.... [I]t is open. [There's] no privacy. Yes, as well as not enough toilets here. It is very dirty [because there are] not enough materials to clean the rooms. There are workers to clean this [common] area, but only this area. No one is coming to clean our rooms.... Because we are a lot of people, some of them are working, some of them do not.... [I]t is difficult to live here (Interview: M.M 21, April 2009).

Yet, this is considered one of the better open centres by migrants and refugees who, without authorisation, relocate from other centres where conditions are even more dire, causing evermore crowding (e.g. Interview: M.M 18, April 2009). In 2009, the coordinator at the Marsa Centre reported that although officially there were 600 residents, he estimated

that in reality there were likely to be 1,200 residents (Interview: December 2009).¹⁶ As a response, the centre installed a new barrier at the entrance of the centre, to be manned by the centre's staff during the day and by the police outside of working hours.

Without underestimating the significance of the freedoms gained by being released from detention, the physical conditions endured in open centres and detention centres are largely similar: overcrowded, dilapidated and not suitable for long-term residence (Interviews and field visits, 2009). The centre receiving most criticism is the Hal Far Tent Centre, housing 600 people in canvas tents, which provide little protection from wind, rain and extreme temperatures in summer and winter. As one resident summarised:

Living in the tents is like living in the ghetto.... [I]magine under the tarpaulin, there are 16 people, up and down, up and down [in bunk beds].... It's very, very bad. Imagine last time, when there was heavy wind and the rain was falling, the heavy wind took off the tent. So our property, everything, we lost it. It was destroyed. You can see why some [tents] are new, some are old because it takes some days, one week for them to replace the broken tents. So you see, it's really bad because you feel cold when it is winter, it's bad. When it is summer, it's bad, it's too hot, very hot. In winter, it's very cold, so there's never a time it's comfortable. And problems, problems, problems: fighting, [and] different things. You know in the night you cannot sleep because of the wind. You see maybe there's a hole, the water... when I was sleeping the rain was falling and it was falling on my body because the tent is old. Even my clothes, my foodstuff, my flour, everything was wet and damp.... We don't have anywhere [else] to go... (Interview: M.M 8, April 2009).

The lack of emphasis on the long-term integration of migrants and refugees into Maltese society compounds the problems in the centres, causing further overcrowding. Instead of developing more comprehensive integration policies, politicians reacted to the realisation that those living in open centres remain for many years by attempting to enforce the long-standing, one-year limit on residency, which had hitherto been largely ignored. The limit is now implemented to varying degrees across open centres: smaller centres such as the one housing families adhere to stricter regulations whereby residents sign four-month contracts

¹⁶ This was confirmed by other interviews with refugees and migrants in Marsa, 2008-2009.

that may be renewed for a maximum of one year, after which they must find their own private accommodation. The only extension available is for those who are most vulnerable, usually single mothers who are unable to work and find someone to mind their children (Interview: Centre Coordinator, April 2009).

In larger centres, residents are also only supposed to remain for one year. However, these centres do not always enforce the policy because as one centre coordinator said, ‘if they left, where would they go?’ (Interview: January 2009). Despite the lack of opportunities for residents to become more independent and to integrate into Maltese society, centres run directly by the government agency AWAS have begun to enforce the one-year limit. When asked where the residents go afterwards, a brusque response accompanied with a shrug was given by another centre’s coordinator, ‘I don’t care.... I’ve got enough problems here’ (Interview: April 2009). Even those coordinators who are sympathetic to the difficulties of migrants and refugees who are turned onto the streets explain that from an organisational standpoint, this is not their concern. Although shocking, these attitudes reflect the short-term view taken by the government with regard to migration and asylum policies.

Another policy is similarly short sighted. Asylum seekers and refugees are entitled to a minimal per diem allowance from the government while they reside in Malta.¹⁷ In order to receive this support, residents in open centres must register three times a week, on Mondays, Wednesdays and Fridays. If they fail to register on one day, they are no longer entitled to their allowance for that week and, in addition, must pay the centre eight Euros per week for their accommodation. The assumption is that they are not registering because they are employed elsewhere. If this occurs over three consecutive weeks, they are no

¹⁷ Asylum seekers and those recognised with humanitarian or subsidiary protection receive a daily allowance of €4.66 (equivalent to €139.80 for a 30-day month); rejected asylum seekers receive €3.49 (€104.70); and children are allocated €2.33 (€69.90) (information provided to the author by OIWAS in January 2009).

longer allowed to reside in the centre (Interviews: open centre coordinators and residents, 2008-2009).

In reality, those lucky enough to find work, do so on a casual and part-time basis; many work seasonally during the peak tourist months and then have difficulty finding any work during the rest of the year. In this cycle of precarious employment, underemployment, and unemployment, many return to the centre after a period away to find their bed taken and their belongings thrown out. They have been ‘terminated’ in the words of one centre’s coordinator. These short-sighted and punitive policies, based on false assumptions, result in people being left homeless, with only the help and generosity of their friends on which to rely. It also provides a disincentive for migrants and refugees to search for employment, encouraging them to remain dependent on the government’s subsistence allowance, ultimately increasing the cost that the government incurs.

Despite the risk of losing the security of a steady, albeit minimal level of income and accommodation, the overwhelming majority of interviewees were actively looking for work, accepting the risks involved with precarious labour in order to gain some semblance of independence and dignity (Interviews: open centre coordinators and residents, 2008-2009). As a young asylum seeker explained:

When I was working, I stopped signing because I was working. And I want to help the government, so I went to get a flat on my own. Unfortunately, I lost the job. So after I finish my money, spending it on food, clothes and [my] house, then I came back here to the tent, to start signing again, [but] they could not allow me. So for seven months now, I don’t work, I don’t receive money. Some of my friends who receive money, they help me.... I don’t have a place of my own, even a tent here. I don’t have a place because when I stopped signing, I lost my bed, even a tent here.... They take over my bed. So now I don’t have a place to stay outside, I just move from camp to camp (Interview: M.M 8, April 2009).

These accounts illustrate how precarious labour, and precarious lifestyles more generally, are created by particular rules and policies governing immigration in Malta. Such policies

cause migrants to be vulnerable to exploitation and limit their ability to integrate into Maltese society.

Elusive Integration

*All of us have problems, just different stories.*¹⁸

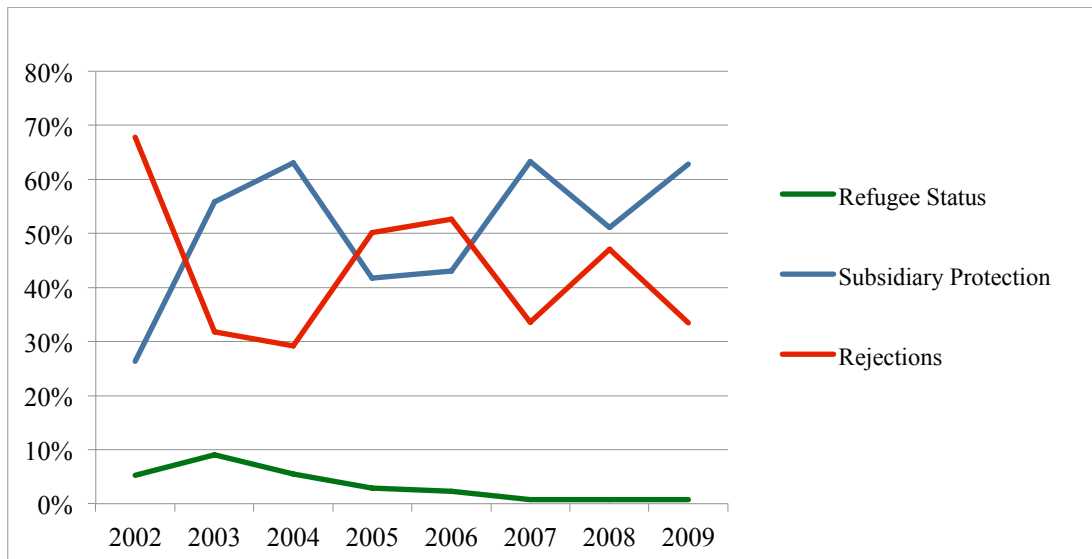
In line with its portrayal of the situation as a crisis, the Maltese government has favoured granting temporary subsidiary protection to asylum seekers over permanent refugee status. Although the government maintains that it has one of the highest rates of refugee protection in Europe and has indeed given some form of protection to between 45 and 69 percent of applicants between 2003 and 2009, temporary forms of protection are granted much more frequently as the chart below indicates (Ministry for Justice and Home Affairs 2005, 5). Moreover, the granting of refugee status, which is in any case minimal, has declined steadily over this period from 5.5 percent of applicants in 2005 to 0.7 percent of applicants in 2008 and 2009 – the lowest annual rates in Europe apart from Greece.¹⁹ These trends run contrary to overall EU statistics, where a smaller percentage are granted some form of protection, but a much larger percentage of those given a positive decision obtain refugee status. For instance, in 2008, 53 percent of positive decisions in the EU were those granted refugee status (Juchno 2011).²⁰

¹⁸ Interview: M.M 3, April 2009

¹⁹ Calculations are based on the number of people who had their asylum claim processed during one year, either receiving some form of protection, being rejected or withdrawing their application. The number is not necessarily equal to the number of applicants who lodge their claims during one year as the Refugee Commissioner's Office has experienced delays in processing these claims since its creation in January 2002 (Eurostat 2010; Interview: Refugee Commissioner, July 2006; statistics provided by the Refugee Commissioner's Office, August 2011).

²⁰ Others have discussed the origins of temporary protection and its prevalence across Europe (e.g. Koser, Walsh, and Black 1998).

Graph 4.1 Recognition Rates in Malta, 2002 – 2009²¹



The granting of temporary forms of protection leaves the recipients in a legal limbo where the government may at any time decide that it is safe for them to return to their country of origin. It also bars the recipient from accessing family reunification provisions, which many are keen to do having left behind spouses and children. Consequently, integration proves more difficult and many attempt to leave Malta permanently, travelling on a tourist visa to other member states within the EU and reapplying for asylum in hopes of finding a more secure and less transient existence. For instance, Somalis and Eritreans, who are usually granted temporary protection in Malta, are often aware that other European countries are more likely to grant them refugee status. This may lead them to overstay a visa in another EU country and attempt to re-apply for asylum (Interviews: migrants & refugees, 2006-2009). Indeed, the discrepancies in recognition rates as well as reception conditions between EU member states highlight the politicised nature of asylum, as well as the inadequacies of the Dublin II Regulation, and have underpinned calls for a common asylum process within the EU (European Parliament 2009).

²¹ See full statistics in 'Asylum Applications in Malta, 1995-2011', in Appendix A.1.

In Malta, the pervasive granting of temporary forms of protection reinforces the depiction of irregular immigration as a crisis, allowing the government to deploy a logic in which exceptional measures are acceptable and even necessary to manage the effects of the perceived crisis. For example, within this crisis framework, the government can justify the prolonged detainment of people who have committed no criminal offence and who generally endure great hardship in their country of origin as well as en route to Malta (Interviews: migrants and refugees, 2008-2009). The framework also displaces responsibility to external actors such as Libya and the EU. These examples illustrate how perceptions may crystallise into interests over time, pointing to the importance and power of a framework to delineate and circumscribe policy options.

In Malta, the government's politically convenient interpretation of migration patterns ignores the presence of migrants and refugees who are interested in integration opportunities in Malta. Integration remains elusive, especially due to the government's rhetorical and financial focus on deterrence, detention, and deportation. For example, the Third Country Nationals Unit within the MJHA described their top priorities as (1) readmission agreements, (2) implementing the burden-sharing commitment in the 2008 European Pact on Immigration and Asylum, and (3) increased and better cooperation with African countries in order to facilitate migrant returns (Interview: Third country nationals unit, MJHA, January 2009). The lack of integration policy is justified with reference to Malta's small size and to the perceived apathy felt by migrants and refugees towards Malta. A senior official in the MJHA commented,

They're not interested in being integrated in the local context. They would like to integrate, but in an environment which is fertile in terms of their returns, their perceived returns. They see Malta as being small, constrained and the first thing they want is out.... [T]he fact is that [integration] is not a consideration for practically all of them (Interview: MJHA, April 2009).

As a result of this focus, there is a lack of information provided to migrants and refugees about their rights and obligations, especially after they are released from detention. Although NGOs try to compensate for government failings, their resources and time are limited and thus the lack of information provided continues to hinder migrant and refugee integration. The most common complaint is that regulations and rights are unclear, an ambiguity that is reflected in the relatively young asylum and immigration systems that have not developed sufficient legislation on a number of issues. For instance, access to healthcare is still inadequate and it is unclear within the migrant and Maltese community who is entitled to care (Luhmann et al. 2007). Migrant and refugee experiences are therefore very much dependent on the individuals they encounter. Some report great kindness and generosity, while others encounter racism, especially when attempting to access services, such as in hospitals, at the Employment Training Centre, and with the police (Interviews: migrants and refugees, 2009).

The Maltese government's continued assessment of irregular immigration as a temporary crisis and a security concern hinders integration further. The categories and processes that result, which for instance favour temporary protection, confine migrants and refugees to a state of limbo. Moreover, practices, such as handcuffing migrants and asylum seekers while transporting them, as well as the broader detention policy, serve to criminalise migrants and refugees and negatively affect the way Maltese people perceive them (Fernández, Manavella, and Ortuño 2009; Guild 2010; Webber 2000).²² These practices discourage the Maltese population from accepting the new immigration realities on the island. A survey conducted in 2009 reported that 84 percent of respondents viewed immigration to Malta as a 'national crisis' (Anon 2009a). That same year, a project by the EU Fundamental Rights Agency also concluded that Africans in Malta experienced the

²² Others have written on the criminalisation of asylum seekers through detention policy in the UK and US in particular see (Banks 2008; Welch and Schuster 2005).

second highest level of discrimination in the EU (EU Agency for Fundamental Rights 2009). Fuelled by the government's portrayal of the situation as a crisis, the Maltese peoples' initial sympathetic response to the plight of irregular migrants arriving on the island has turned hostile, increasingly xenophobic and racist.²³

However troubling, the racism and xenophobia in Malta are hardly surprising. The public and government discourse surrounding migration largely ignores the realities of mixed flows of migration and the current, as well as possible, positive contributions of migrants and refugees to Maltese society. Instead, the emphasis is on the high number of economic and irregular migrants, adding to the distrust of asylum seekers. This omission in the migration story is detrimental to the reception of migrants in Malta and adds to prevalent racism, xenophobia, and feelings of invasion that are widely expressed in the country.

In Malta, local NGOs as well as international organisations criticise the government for not doing enough to curb the growth of racism. These organisations point to the distorted picture presented to the Maltese population by the emphasis on the numbers and the cost of migration. Officials have also been accused of making racist remarks themselves, linking migrants and asylum seekers to crime, terrorism, and the spread of illness. The assistant director of Jesuit Refugee Services Malta, said,

A lot of statements have been made, even by those in authority, associating immigrants with illness and with a security threat. Obviously anyone can be sick; ... it has nothing to do with nationality. But, irregular immigrants have been publicly associated with illness or with the threat that they might be terrorists. Of course, so could anyone else and we're more likely to be than they are. No terrorist is going to come and spend 18 months in Safi [Detention Centre].... But, the fact that in the public mind we have made these associations is very dangerous (Interview: June 2006).

²³ A poll conducted by the *Sunday Times of Malta* in 2005 revealed that 90 percent of respondents perceived an African or Arab neighbour to be undesirable (Grech 2005). Carmen Sammut (2007) has written a report on this and an interesting discussion of the ethics of newspaper reporting on migration, while Mark-Anthony Falzon and Mark Micallef (2008) provide a detailed account of the rise of the far right, spurred in part by the issue of irregular migration.

Ignorance and misinformation encourages the perception of being invaded by migrants and asylum seekers, leading to xenophobia and racism. Two interrelated factors based largely on fear appear to fuel this racism: (1) the fear of losing economic security and the related perception of material scarcity, an image propagated by the governments' rhetoric within the EU regarding Malta's inability to cope with the migration 'burden'; and (2) the fear of losing one's national identity, a fear exacerbated by stereotypes and myths relating to both the national culture and migrant cultures.²⁴ The perception of Maltese society as homogenous, along with the state's tacit reinforcement of racism through its exclusionary practices, has further aggravated the issue (Schuster 2003b; c.f. Hayter 2000, 21–36). The migrant is thus constructed by nationals as the 'other', who is both inferior and threatening, challenging traditional divisions between nationals and non-nationals through the act of migration, as well as a group's sense of identity within a specific culture, territory or ethnicity (Triandafyllidou 2001; Anthias and Lazaridis 1999, 1–11).

Related and perhaps more fundamental is the lack of voice for migrants and refugees. As one Eritrean refugee said, 'We have nowhere to speak. There is no mediator between the migrants and the government or between the migrants and the NGOs' (Interview: M.M 5, April 2009). Adopted policies, such as the one-year limit on residency in open centres, are therefore short sighted with a limited understanding of the hardships and reality of living as a migrant or refugee in Malta.

Where National Meets Regional

The implementation of policies that limit onward mobility exacerbates the situation. These are primarily policies that Malta adopted due to EU accession, such as the Dublin II Regulation discussed previously. As the matrix below illustrates, the attempts to

²⁴ These claims are drawn from the extensive interviews done by the author. There is limited literature on the issue of racism in Malta (Borg and Mayo 2007; Calleja 2000).

simultaneously deter migrants and refugees from arriving in Malta (a national priority) and to hinder their onward mobility (an EU objective) stem from divergent national and supranational interests, resulting in tension. Most obviously, in endeavouring to deter arrival and permanent settlement through practices such as the pervasive granting of temporary protection, the Maltese government encourages onward mobility, if not facilitates it. For instance, those with temporary protection are allowed travel visas for other EU member state, where some overstay in the hope of finding more opportunities (Interviews: migrants and refugees, 2008-2009).

	<i>Discourage Arrival</i>	<i>Restrict Onward Mobility</i>
<i>Supranational</i>	Frontex Patrols	Dublin II
		EURODAC, SIS, VIS
<i>National</i>	Detention	Assisted Voluntary Return Schemes
	Temporary Protection	

Table 4.2: Policies and Practices Preventing Onward Mobility and Arrival

The effectiveness of these policies can be questioned. Without Libya’s cooperation, Frontex has not been able to deter arrivals, but has supported Malta and Italy in previous search and rescue missions. Nationally, it is also worth noting that although assisted voluntary return (AVR) does in practice restrict onward mobility by encouraging migrants to return to their countries of origin, this is not necessarily the primary aim of the policy. Nevertheless, I include it here as it is a policy that has been prompted in part by the

restrictions on onward mobility, which have produced a significant population of failed asylum seekers in Malta with few opportunities.

Indeed, due to the EU pressures to reduce onward mobility and the ineffectiveness of policies aimed at deterring arrivals, the Maltese government implemented an AVR scheme in 2007. Voluntary repatriation is complementary to both the EU and national objective of reducing the number of irregular immigrants in Malta, as well as removing the need to control for onward mobility to other member states. Such schemes are increasingly prevalent across Europe as forced returns have attracted criticism and had limited success.²⁵ In Malta, an AVR scheme was first introduced as a pilot project run from the Ministry of Foreign Affairs, which later developed into to a more permanent arrangement under the auspices of the International Organization for Migration. Initially, AVR targeted people both inside and outside of detention, offering migrants up to €5,000 to return to their countries of origin (Interview: Official, MFA, January 2009). Like other such initiatives across Europe, AVR has met with limited success in Malta: between 2004 and 2009, the programme repatriated 202 people, primarily to Ghana (81), Nigeria (43), and Sudan (41).²⁶

During the course of the pilot project, the site of recruitment for voluntary repatriation shifted away from open centres to those still inside detention. Echoing the sentiments of many Maltese politicians, an official within the Ministry of Foreign Affairs explained the reasoning behind this emphasis:

If they are in detention they're not enjoying it for sure. In detention they can't dream, but once they are in open centres they can dream of escaping Malta.... I think detention is tough on the individual and conditions could be improved,

²⁵ France introduced an AVR programme as early as 1991. However, such 'voluntary' schemes have also met with limited success, being afflicted with low participation rates (Koser 2001). Kahlid Koser and his colleagues have explored the relationship between the granting of temporary protection and return policies (Koser, Walsh, and Black 1998).

²⁶ During the same time period, the government carried out 3,839 forced returns (National Statistics Office 2011; 2010; Pisani and Giustiniani 2009).

but for us it's a blessing that people get disgusted and want to leave (Interview: January 2009).

Improvements of detention conditions are hence portrayed as counterproductive to strategies aimed at the so-called 'voluntary' repatriation of migrants.

The relative (in)effectiveness of these policies results in migrants and refugees arriving in Malta, but being unable to transit to their intended destinations. The prevention of onward mobility reflects in part the power relations involved in migration policies. Having adopted EU structures and objectives – and with insufficient political clout to alter them significantly – Malta must implement and publicly support EU legislation that conflicts with national political objectives. Moreover, it appears that this public discourse feeds back into interest formation by shaping the perceptions of the relevant political actors. Thus Maltese politicians are reluctant to criticise the EU, focusing instead on the need for evermore 'solidarity' (Interviews: government officials, 2006-2009). By contrast, non-member states, such as Libya, remain more independent to refuse EU pressure to harden borders and accept readmission agreements, although the degree of economic and political power to remain independent varies across countries and issue areas (Lavenex 2004; Lavenex and Wichmann 2009; Paoletti 2008).

The financial implications of these policies are rarely brought to light in national discussions, but are nevertheless substantial. For example, the government spent over €8.2 million to detain irregular immigrants in 2008, an increase from €6.8 million in 2005 (Maltese Parliamentary Question 2009a). Furthermore, the average cost of forced returns is €900 per deported person (including airfare and police escorts), although this varies depending on the migrant's country of origin. Between February 2008 and 2009, the government spent €72,158 repatriating 80 immigrants (Maltese Parliamentary Question 2009b).

These policies reflect the government's perception of the value of detention as a barrier to mobility, a method to deter unwanted migrants or to remove them once they arrive. Moreover, EU membership encourages the emphasis on deterrence as a national interest to the detriment of integration. Indeed, it is in the interest of all EU member states that Malta continues to restrict the number of arrivals on its shores. Malta's limited financial resources and blue borders also encourage the emphasis on deterrence as once migrants and refugees arrive on the island, there are few opportunities to move forwards or return home. The borders act as a barrier to mobility to migrants and refugees who wish to move on to other EU countries; meanwhile, the government's inability to deport many migrants results in a sizeable population of rejected asylum seekers remaining in Malta.²⁷ The government's inability to carry out forced returns, due primarily to its limited diplomatic relations with African countries, reinforces the image of a state unable to cope with irregular immigration.

However, the focus on deterrence and the government's tough rhetoric on migration also belie a reality where migrants from all walks of life continue to live on the island, integrating into society to varying degrees. The reliance on detention and other deterrent policies thus skews policymakers' understandings of migrant and refugee experiences towards propagating a false dichotomy between the good migrant and the bad migrant, the victim and the villain (c.f. B. Anderson 2008). The language of 'genuine refugees' and 'genuine asylum seekers' further perpetuates a culture of suspicion and distrust and disregards or maligns the agency of migrants and refugees (Interviews: officials in the MFA and MJHA, 2008-2009).

²⁷ This number is of course difficult to estimate. An indication may be that the number of rejected asylum applications between 2002 and 2009 was 4,458 (data provided to the author by the Refugee Commissioner in August 2011). Although during this period the government also forcibly returned 3,403 people, the majority of those were North African nationals, who do not usually apply for asylum in Malta (Interviews: government officials, 2008-2009; Pisani and Giustiniani 2009).

Island Immobility

*Malta has my finger.*²⁸

These state practices and strategies ripple through the migrant community. The difficulties experienced in Malta influence migrant and refugee strategies and decision making, along with their perceptions of an attainable lifestyle in other EU countries. Those that want to leave Malta generally do so in order to find more opportunities for education or employment. The perception is that life will be easier in other EU countries and that Malta is either unwilling or unable to help. This perception is deeply imbued with both the government's rhetoric regarding Malta's limited resources and space, as well as with stories from those who travel to other countries, only to be caught and returned to Malta under the Dublin II Regulation.

The incorporation of the Dublin II Regulation has extended Maltese borders into the European Union. Under the Regulation, all irregular migrants are fingerprinted when they arrive in an EU member state. These fingerprints are held as part of the Eurodac, a European database containing the fingerprints of all asylum seekers and migrants who cross borders irregularly. Once a state records a person's fingerprint, the migrant can be returned to this country if found residing irregularly in another EU member state. Organisations such as the European Council on Refugees and Exiles disapprove of the link made between the allocation of responsibility and entry controls. They argue that this practice places a disproportionate amount of responsibility on peripheral states and falsely assumes that standards of reception and access to protection are comparable and adequate across member states (ECRE 2006).

In Malta, these regulations add another barrier to the onward mobility of migrants and asylum seekers. The geographic boundary of the Mediterranean Sea already makes it

²⁸ This statement was repeated by many migrants in Malta with subsidiary protection (Interviews: April 2009).

more difficult and dangerous to move irregularly to continental Europe. The same risks that were taken in leaving Libya to cross the Sea must be borne once again in the hopes of reaching Italy. However, those who are fortunate enough to be granted subsidiary protection – the majority of asylum seekers in Malta over the last few years – have another, albeit still irregular, route available to them. They are able to acquire travel documents that permit them to visit other member states for up to three months. Those with subsidiary protection therefore have the opportunity to overstay in other member states, and do so in order to search for employment opportunities, to join family members, or to take advantage of standards of living, social services, and asylum procedures that are perceived to be superior to those in Malta (Interviews: migrants & refugees, 2006-2009).

Once in another member state, the stipulations under the Regulation compel these migrants and asylum seekers into an irregular existence, as entering official bureaucratic channels such as asylum processes are likely to result in apprehension and repatriation to Malta. Although the number of people returned to Malta due to this mechanism is low in absolute terms (59 in 2006, 37 in 2007, 131 in 2008, and 470 in 2009), the limited data available suggests an increase over these four years (data provided by the MJHA to the author, January 2010; c.f. Eurostat 2012). Moreover, the possibility of being returned remains a powerful reality in the lives of migrants and refugees in Malta. Many of those migrants and refugees interviewed had travelled to other EU countries, only to be sent back; they explained that ‘they sent me back because they have my finger’ (Interview: M.M 2, April 2009). Others, aware of the risk of being sent back under the Dublin Regulation, made statements such as ‘if Malta gives me my finger, I would go to another [EU] country’ (Interview: M.M 3, April 2009).

Thus regional legislation that extends migration controls beyond Malta’s national borders into Europe causes further immobility for migrants and asylum seekers. Frustration

is evident when migrants and refugees recount the experience of being continuously told that Malta has limited capacity to provide for them, but nevertheless being returned from other EU countries when they are apprehended. Some, having been sent back multiple times from as far away as Norway or the UK, despair that they will never manage to leave Malta and start their lives afresh.

Interestingly, this paradox reveals the tension between Malta's position and interests on one hand, and EU policy on the other. Indeed, Maltese politicians, as well as NGOs and international organisations, are critical of this return policy, frustrated that they are unable to negotiate an exemption. They claim that all their efforts to negotiate relocation projects with other EU member states are undermined by such returns that sometimes outnumber those being relocated (Interviews: government officials & NGOs, 2009-2010).

Parallels are also made with Greece. A Somali mother explained how the Dutch government returned her to Malta with her two young children, while they allowed another woman who entered the EU through Greece, to remain (Interview: M.M 3, April 2009). Indeed, in December 2009, the UNHCR called for countries to stop returning asylum seekers to Greece, due to the inadequate protection afforded to asylum seekers in that country (UNHCR 2009b). Subsequently, in an important judgement in December 2011, the European Court of Justice ruled that the UK could not return an Afghan national to Greece under the Dublin II Regulation. The Court held that member states:

may not transfer asylum seekers ... where they cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers in that Member State amount to substantial grounds for believing that the asylum seeker would face a real risk of being subjected to inhuman or degrading treatment within the meaning of Article 4 of the Charter (ECJ 2011b).

In parallel, there is an EU proposal under discussion to suspend Dublin II returns when a member state faces 'particular pressures' or asylum applicants will not receive adequate protection (Commission 2008).

Accordingly, some Dublin transfers to Malta have already been suspended, although to a lesser extent as reception conditions in Malta are considered superior to those in Greece: Germany did so through the sovereignty clause by reference to inhumane conditions in reception facilities in Malta, the overstretched Maltese asylum system, and the need to show solidarity with Malta (UNHCR 2010c). The German rationale is interesting in the association it establishes between inhumane reception conditions and a need to show solidarity with Malta. This convergence of these very different reasons reflects how the EU structures within which Malta now operates provides an incentive for the state to emphasise its vulnerability and inability to cope with migrant arrivals. It also simultaneously creates an incentive to neglect detention conditions and other migrant and refugee rights in order to complete the image of an overwhelmed island.

The UNHCR among others highlight how the Dublin II system assumes the existence of harmonised protection standards across EU member states. As is clear, this is not the case: the ruling by the European Court of Human Rights in 2011 illustrated the discrepancies between member states when it suspended the transfer of migrants back to Greece under the Dublin Regulation due to the reception conditions in the country (ECHR 2011b). Moreover, in the current atmosphere it appears that the Dublin II Regulation actually creates an incentive to neglect if not mistreat asylum seekers. If the EU adopts the proposal to allow for a suspension of the regulation if a country faces ‘particular pressure’, it will increase the incentives for Malta to continue to limit provisions for asylum seekers and migrants and to portray the situation as a crisis.

What becomes apparent in discussions with policymakers is that the new incentive structure has shaped their interests and they are now wedded to the EU as an institutional framework. Although EU membership has provided new opportunities to exert power and promote interests at the regional level, this new structure also ushers in new parameters to

those interests. Indicative of this is the change in policymakers' attitude within the last few years. In 2006, politicians privately joked about the idea of giving all irregular migrants Maltese citizenship in order to facilitate their onward movement to Europe. Now, however, policymakers' rhetoric is one of solidarity with Europe and the need to carry one's 'fair share of the burden' (Interviews: government officials, 2006-2009). In some instances, this new framework may result in progressive steps being taken to expand the protection given to those making their way across the Mediterranean, through for instance the European Court of Human Rights (ECHR 2010); however, it has also produced an incentive to emphasise illegality and exclusion.

Conclusion: Malta, Migration, and Power

Despite concerted attempts to deter irregular immigration, migrants and refugees continue to arrive in Malta. This indicates the likelihood of other factors at play, factors outside the remit and control of the Maltese government. The increase in arrivals to Malta and the central Mediterranean region since 2003 can be partially attributed to a diversion of migratory flows due to the fortification of patrols along the West African route (Lutterbeck 2006). Furthermore, it is only the Italian-Libyan agreement that effectively, yet temporarily, stemmed this flow: the arrivals recommenced in March 2011 due to political unrest in Libya.

For Malta, its layered blue borders are hundreds of kilometres away from the country's land territory. These watery boundaries cannot be patrolled or fortified in the same manner as land borders. Since walls cannot be erected in the Mediterranean and patrols cannot cover the long expanse of its SAR region, Malta first encouraged joint EU patrols and more recently welcomed the Italian initiative to return migrants and refugees to Libya. Although this strategy temporarily realised Malta's interdiction goals, it raised

serious questions about the ethics of withdrawing protection for refugees and asylum seekers. Indeed, the European Court of Human Rights later ruled that the practice was contrary to the principle of non-refoulement (ECHR 2012). Libya's erratic and unaccountable treatment of migrants and refugees compounded the normative concerns involved with Malta's strategy (Human Rights Watch 2009).

Malta's geographic boundaries also limit the effectiveness of policies employed to deter migrants and refugees. The AFM rescues the large majority of these migrants at sea when they face increasing risks due to adverse weather, problems with their boats (e.g. leaky boats, insufficient petrol, etc.), or a lack of food and water on board. As the majority are on course for continental Europe when their journey is interrupted, it would seem that policies to deter arrival are not particularly useful. Such policies also have negative impacts on Maltese society by criminalising and marginalising the migrant population, while encouraging xenophobia and racism.

What this case study makes clear is that the EU framework has provided an incentive for Malta to treat its immigration flows as a crisis, and that this interpretation has led to negative consequences for the immigrant and host populations. This chapter highlights the role of power in these dynamics, including the power of the state over individuals and other states, the power of institutions over states, and the power of individuals. Migrants and refugees hold the power of individuals whose actions have effects on policies and who may also have the means and ability to circumvent rules and regulations. Although migrants and refugees are a disempowered and vulnerable population in many respects, they are important as the initial drivers of migration policies and the intended recipients of such policies. Their stories reveal the misguided assumptions behind policy makers' decisions, as well as their own power to resist the imposition of boundaries and barriers in the search for a better life.

As this small island adopted a new role within the European Union – one of an outpost attempting to halt the influx of immigrants – this new framework has influenced its interests and strategies. It should be clear that the relationship between the EU as an institution and Malta as a small state within this institution is hardly unidirectional. Although Malta is still a rule-taker, it now has the power to make itself heard on the supranational level and has done so by emphasising its ‘exceptional’ status as a small, island state on the EU’s periphery, unable to cope with the current situation. However, the EU, as an institution, circumscribes its power and its ability to delineate the acceptable terms of debate. The re-bordering process that has occurred has involved multiple interests (supranational, national, local), and thus an incoherent set of policies results with the mobility of migrants limited in different ways.

Indeed, the migration discourse in Malta reveals the power of the EU to set the parameters of the discussion. Instead of negotiating for more progressive policies, such as giving more freedom of movement to migrants and refugees, Malta has instead chosen to implement policies that restrict mobility in line with EU policies and trends. Furthermore, the government has done so despite its concern that too many irregular migrants are arriving on the island. This chapter has demonstrated that Malta’s strategic and political interests in curtailing and controlling immigration flows have been doubly influenced by a superficial understanding of the migrant experience as well as its adoption of the EU framework into its own policies and objectives.

Within these dynamics, migrant agency is also important in understanding why migrants and refugees continue to arrive on the island, and how their actions within the state affect Malta’s relationship with the EU. The government’s focus on deterrence is in part unsuccessful due to this agency, to the ability of migrants to choose to cross national borders without authorisation despite the risks involved. In the aggregate, these decisions

to move force Malta into a dialogue with Libya, Italy and the EU more broadly in order to 'manage' the migration. Along with these acts of migrant agency, the resistance seen within the state to policies such as mandatory immigration detention also shape Malta's relationships with other European states. Protests, riots and hunger strikes illustrate the plight of migrants in the country and prompt states and regional bodies to put pressure on Malta to change these policies. In this context, organisations such as JRS and the UNHCR have acted as important intermediaries in advocating for changes in policies on behalf of the migrant and refugee population.

V

Case Study II: Cyprus



‘Cyprus from the Air’

Introduction

In the far south-easterly corner of Europe, Cyprus shares a similar geography, history, and culture with Malta.¹ For example, both islands have a long colonial history, being attractive as strategic ports and military bases in the Mediterranean. Religion also plays an important role on both islands: the Orthodox Church and the Roman Catholic Church still hold significant political power in Cyprus and Malta, respectively. In Cyprus, the Ottoman millet system reinforced the political and economic roles of the Orthodox Church by allowing religious authorities to govern non-Muslims (Baldacchino 2002; J. Mitchell 2003; Sepos 2008, 16).

However, Cyprus is also a unique member state in the European Union. It is a European exclave, an island separated from other EU member states and Europe's mainland by hundreds of miles of Mediterranean Sea. It finds itself geographically closer to its large, belligerent neighbour to the north, Turkey, and turbulent neighbours to the east – Syria, Lebanon, Palestine, and Israel. In addition, it is a divided island: Turkey has occupied the northern part of the island since 1974, and established the Turkish Republic of Northern Cyprus (TRNC) in 1983, a pariah state that remains unrecognised by any other state in the international community and wholly dependent on Turkey's resources in order to sustain its economy and security.

Cyprus acceded into the EU on 1 May 2004 under less than perfect circumstances. Days earlier, the Greek-Cypriot community decisively rejected the 'Annan Plan' for reunification of the island in a referendum.² Due to this largely unexpected turn of events,

¹ This research's primary focus is the Republic of Cyprus (RoC), rather than the unrecognised Turkish Republic of Northern Cyprus (TRNC). When a distinction needs to be made between the two sides of the island, they are distinguished with references to the TRNC and the RoC, or more simply the north and south of the island.

² The plan was named after Kofi Annan, the United Nations Secretary-General. Alvaro de Soto was the chief architect of the agreement. Seventy-six percent of Greek Cypriots voted against the Plan, while sixty-five

the entire island acceded into the EU, with community law suspended north of the partition line, the so-called Green Line, ‘...in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not have effective control’ (European Union 2003, 955: Article 1.1). The suspension of law was limited to the territory, and not extended to the personal rights of Turkish Cypriots who are considered EU citizens, due to officially being citizens of the Republic of Cyprus.³

This chapter focuses on the southern part of the island, the Republic of Cyprus (RoC). The reasons for this should be evident: it is the relationship between the EU framework and national migration policies and realities that is of interest in this thesis; moreover, as an unrecognised and largely undeveloped state, the TRNC has minimal official migration and refugee policies. That being the case, I devote a small part of the chapter to analysing the situation in the TRNC, as many migrants and refugees enter the RoC by crossing the Green Line without authorisation from north to south.

Like the previous, this chapter is divided into two parts, which explore the phenomenon of irregular immigration on the island and the state’s response between 2000 and 2010. The first part turns to the history of the island since its independence in 1950, examining the origins of the division of the island, the ‘Cyprus problem’ as it is bluntly referred to, and how this history frames the current debates on immigration to the RoC. This leads to a discussion of contemporary immigration patterns, which considers economic and irregular immigration flows to the Republic of Cyprus since the early 1990s

percent of Turkish Cypriots voted in favour (Ker-Lindsay and Webb 2005; Tocci and Kovziridze 2004). The reasons why the Greek Cypriot rejected the proposal were manifold, including concerns over the economic aspects of the plan and the security provisions that would allow Turkish troops to remain on the island. Another major factor was the belief that EU membership would create a more favourable environment (for Greek Cypriots) in which to proceed with the reunification of the island and thus settlement efforts should wait until after accession (Heraclides 2004). James Ker-Lindsay (2009) provides a more detailed exposition of the Cypriot path to EU membership, and whether accession acted as a catalyst for peace or further divisions.

³ Turkish Cypriots’ access to citizenship in the Republic of Cyprus is a reoccurring theme in the conflict for legitimacy and recognition between the RoC and the TRNC. Nicos Trimikliniotis (2009) provides an interesting analysis of the issue (c.f. European Union 2003, 955).

when the government initiated the first guest-worker scheme. The last section of this first part details the current patterns of irregular immigrant arrivals and the evolution of asylum policies in the RoC since EU accession in 2004. Here, I also include the experiences of asylum seekers in the TRNC, in order to contextualise the immigration flows across the Green Line.

The second part of the chapter then turns to examine how the EU framework has shaped and reinforced the RoC's perception of irregular immigration to the island. It also explores how this relationship shapes the strategies that the RoC employs at an EU level in order to influence regional migration and asylum policies. Throughout, the realities of migrants and refugees in Cyprus are instrumental in highlighting the discrepancies between these realities and the assumptions that inform migration and asylum policies.

As well as detailing the current migration and asylum issues, this chapter argues that the RoC, somewhat understandably, continues to focus on the division of the island. Thus migration and asylum matters have been subsumed under the spectre of Turkish occupation, linking the phenomenon with the sensitive, securitised, and often sensationalised issue of the demographic makeup of Cyprus. In its relationship with the EU, this has meant that the RoC government's attention is disproportionately focused on so-called 'illegal immigration', while the many other forms of migration to the island are disregarded. Indeed, the issue of irregular immigration is more useful in drawing attention to the division of the island, the Turkish occupation, and the related issue of Turkish membership in the EU.⁴ EU membership and the trend of moving migration controls towards and beyond the EU's external border shapes this relationship as it has redefined and complicated Cyprus' already problematic borders.

⁴ Ker-Lindsay notes that since accession the RoC threatened to obstruct Turkish membership negotiations at least three times: in December 2004, over the decision to offer Turkey a date for the commencement of formal membership negotiations; in October 2005, when those negotiations were due to begin; and in June 2006, when the RoC threatened to prevent the opening and closing of the first chapter of the *acquis communautaire* (on Science and Research) addressed by Turkey (Ker-Lindsay 2009, 230–31).

Part I

Irregular Immigration Trends

Contextualising the Migration Debate in Cyprus: A Divided History

The antagonism between the two constitutionally recognised communities on the island, and the events of 1974, dominate the historical narratives of Cypriot migration and thus warrant some consideration here.¹ Since independence was achieved from Britain in 1960, the country struggled with the fractious relationship between the two largest communities, the Greek-Cypriot majority and the Turkish-Cypriot minority. The division was not based solely on ethnicity, but was also reinforced by language, religion, culture, and political segregation. The legacy of British colonialism exacerbated these divisions through its divide and rule policy that favoured a conflictual bi-ethnic relationship that would strengthen Britain's role as arbitrator and undermine any decolonisation movements. Indeed, the Greek-Cypriot struggle against British rule largely took the form of a call for 'enosis', unification with Greece, rather than a call for independence (Joseph 1985, 23–65; Sepos 2008, 15–21). By 1955, Turkish-Cypriot opposition to enosis had developed into a call for 'taksim' or a partition of the island, a claim encouraged by the British in order to contain the Greek-Cypriot demands (Anthias and Ayres 1983).

At the time of independence, Cyprus had a population of 573,566; the last official census conducted in 1960 held that 77 percent of the population was Greek Cypriot (441,568), while 18 percent was Turkish Cypriot (103,822). There were also 3,627 Armenians and 2,706 Maronites (who would later be counted as Greek Cypriot according to the new Constitution), as well as 24,408 foreign nationals residing on the island (Solsten 1993; c.f. Tocci and Kovziridze 2004, 7).

The island's first constitution (1960) reinforced these broad ethnic divisions, by establishing a consociational structure whereby the two communities held various positions based on demographic ratios. For example, the President was Greek Cypriot, while the

¹ Here, only a brief sketch is given, but there is an extensive literature on the Cyprus issue (e.g. Anthias and Ayres 1983; Joseph 1985; Richmond 1998).

Vice President was Turkish Cypriot; the Council of Ministers included seven Greek-Cypriot and three Turkish-Cypriot ministers. Public service positions were also filled on a seven-to-three ratio, while the army was composed of units based on a six-to-four ratio. The Constitution institutionalised this ‘communal dualism’ not only within the executive bodies of the government, but also within the legislative bodies, the judicial system, municipal structures, and the civil service (Cyprus 1960a: Article 1, 46, 123, and 129, 1960; c.f. Joseph 1985, 23–65).

Although the two Cypriot communities signed the Constitution in London on 19 February 1959 and had contributed to drafting its text, it was officially negotiated between Britain, Greece, and Turkey. Alongside the Constitution, the two communities also signed three treaties that reinforced the role of foreign powers on the island, another recurring theme in Cypriot history (Joseph 1985, 23–65; c.f. Constantinou 2008). The Treaty of Alliance provided for the permanent presence of Turkish and Greek military contingents in Cyprus, made up of 950 and 650 men, respectively. The Treaty of Establishment safeguarded Britain’s military interests in Cyprus, allowing the country to retain two sovereign military bases. The Constitution also incorporated a Treaty of Guarantee, which named Britain, Turkey, and Greece as guarantors of power. As guarantors, the three states had responsibility to ‘guarantee the independence, territorial integrity and security of the Republic of Cyprus ... and prohibit ... either the union of the Republic of Cyprus with any other State, or the partition of the Island’ (Cyprus 1959: Article 2).

The demographic dualism established within the Constitution ultimately caused its demise. The seven-to-three ratio, which Greek Cypriots saw as unjust and in discordance with the eight-to-two ratio present in the population, and the power of veto given to the Vice President caused a constitutional deadlock. As a result, basic laws could not be adopted, and the establishment of institutions was inhibited. For instance, the inability to

agree on income tax legislation resulted in two separate communal laws, whereby the two ethnic groups imposed taxes on their respective communities. Similarly, a bi-communal army was never realised, and the country instead saw the emergence of private paramilitaries organised along ethnic lines (Joseph 1985, 23–65).

Consequently, the Constitution collapsed in 1963 and the hope of a peaceful transition to a power-sharing arrangement faded as inter-communal violence erupted on the island. Turkish Cypriots retreated into enclaves protected by their own paramilitaries, and governed by a Provisional Turkish-Cypriot Administration established in 1967. Violence continued between Cypriots, with the active involvement of Greek and Turkish forces. Events came to a head when, in July 1974, a military coup led by Nikos Sampson overthrew the president, Archbishop Makarios, at the behest of the US-backed military junta in Athens, with a view to carry out ‘enosis’, or unification with Greece. A few days later, Turkey responded by invading the island with 40,000 troops near the northern city of Kyrenia, eventually occupying and partitioning 37 percent of the island’s northern territory. Turkey justified the intervention by evoking its right under the Treaty of Guarantee, despite protests that Article Four clearly restricted action to that ‘with the sole aim of re-establishing the state of affairs created by the present Treaty’ (Cyprus 1959: Article 4). Unconvinced, the international community issued resolutions in the United Nations’ Security Council condemning the military intervention (Resolution 353 in 1974), the persistent presence of Turkish troops on the island (353, 1974; 367, 1975), and the establishment of the TRNC in 1983 (541, 1983).²

As a consequence of the violence and the population exchange agreement made in the spring of 1975 in Vienna, many Cypriots were displaced – 30 percent of the population

² Angelos Sepos (2008) gives a more detailed account of these events, and especially of foreign intervention and non-intervention.

following the events of 1974.³ Between 180,000 and 200,000 Greek Cypriots fled their homes in the northern, now occupied area; likewise, the violence across the island from 1963 until the Turkish invasion displaced 50,000 to 60,000 Turkish Cypriots, who moved to northern part of the island (Kliot and Mansfeld 1994, 328–329; c.f. Tocci and Kovziridze 2004, 6–11). These people are legally classified as ‘national refugees’, but are regularly referred to as ‘refugees’.⁴ The events also caused substantial waves of emigration from Cyprus. Between 1946 and 1985, 134,223 Cypriots left the island, destined most frequently for Britain (78,401) and Australia (19,798). The majority of this emigration occurred between 1955 and 1979 (114,680), with significant spikes occurring in 1960 and 1961, and again between 1974 and 1976 (Diamantides and Constantinou 1989).

The partition of the island and the division between the two large ethnic communities were complete as the 180-kilometre ceasefire line was sealed and guarded by the military on both sides (Tocci and Kovziridze 2004). It is now known as the Green Line and is in fact a buffer zone, ranging in width from 3.3 metres to 7.4 kilometres, that continues to divide the island and its capital, Nicosia. For almost three decades after 1974, the partition deepened divisions between the two communities by sustaining their complete segregation

³ The leaders of the two communities, Glafkos Clerides and Rauf Denktas, addressed the issue of population transfer during the third round of negotiations, which resulted in the Vienna III Agreement of 2 August 1975. The issue was raised due to the crisis that erupted in June 1975 when Greek-Cypriot security forces beat up Turkish Cypriots attempting to cross to the north. In response, Turkey expelled 800 Greek Cypriots from the north. The Agreement declared that the 10,700 Turkish Cypriots still residing in the south would be allowed to move to the north, with the assistance of the United Nations, should they so desire. The approximately 10,000 Greek Cypriots still resident in the north (mostly in the Karpass Peninsula) would also be allowed to move to the south ‘at their own request and without having been subjected to any kind of pressure’. The Agreement also stipulated that if they desired to remain in the north, they would ‘be given every help to lead a normal life’. As a result of the Agreement, only 130 Turkish Cypriots remained in the south by 1975. Greek Cypriots left the north more gradually: approximately 2,500 left in 1975 after the Agreement was signed, 5,800 during 1976, and 900 during 1977; only 1,076 Greek Cypriots remained by November 1981, and 500 by the early 1990s (Gürel and Özersay 2006).

⁴ This is a somewhat confusing historical artefact given that today they would be considered internally displaced peoples and there are now foreign nationals claiming refugee status in the RoC and to a much lesser extent in the TRNC.

with absolute prohibition of movement across the line.⁵ The conflict and subsequent partition of the island also caused enduring political, social, and economic cleavages and discrepancies. Being isolated from the international community, the Turkish-Cypriot community suffered economically despite inhabiting the most resource-rich part of the island, while the Republic of Cyprus was remarkably successful in recovering growth levels after 1974 through tourism and construction.

The social divisions are even more enduring. In 2000, a poll conducted revealed that seventy-five percent of Greek Cypriots would not agree to a marriage between a Turkish Cypriot and one of their family members. Eighty percent responded that they would not live in a Turkish-Cypriot area in the event of a federal solution (Tocci and Kovziridze 2004, 8). Although significant divisions remain, the decision by the Cypriot authorities in April 2003 to ease travel restrictions and open a number of crossings along the Green Line has improved relations between the two communities (Tocci and Kovziridze 2004). According to a survey conducted in 2009, 53 percent of Greek-Cypriot respondents would not mind having a Turkish-Cypriot neighbour, 15 percent were neutral, and 33 percent would oppose such an arrangement. Interestingly, there was more ambivalence towards such an eventuality from Turkish-Cypriot respondents, only 38 percent of whom would not mind having a Greek-Cypriot neighbour, 28 percent were neutral and 34 percent would mind ('Cyprus 2015' 2010, 4-5).

Division, Demographics, and the Military

This history has shaped the current debates over immigration and asylum in the Republic of Cyprus. In particular, two characteristics – the militarisation of the island and a securitisation of demographics – remain conspicuous and are worth noting in relation to

⁵ In 1996, Turkish-Cypriot troops opened fire on Greek-Cypriot protesters who entered the buffer zone, killing one man; this incident illustrates the restriction on mobility and the tension between the two sides (United Nations 1996).

migration and asylum. The military presence in Cyprus is oppressively conspicuous. Thirty to forty thousand Turkish troops remain stationed in the TRNC, along with 5,000 conscripts (with a term of eight to fifteen months) in the local Turkish Cypriot Security Forces. These forces patrol the northern edge of the Green Line, while the RoC's National Guard patrols the southern side. Conscription also persists in the RoC, with every male citizen obliged to serve in the military for two years at the age of eighteen. Literally in between the two sides is the UN Peacekeeping Force, which has been present on the island since 1964, and which, in 2011, consisted of almost 1,100 troops stationed in the buffer zone.⁶ The United Kingdom also maintains its two sovereign base areas, Dhekelia and Akrotiri, in the Republic of Cyprus, which cover 250 square kilometres, almost three percent of the island's landmass, and are home to 7,800 British military and civilian personnel.⁷

The Sovereign Base Areas (SBAs) are an interesting aspect of Cypriot politics and geography. They are, however, less significant in terms of the volume of migrants entering the island in a clandestine manner: for example, between April 2007 and May 2008, the RoC authorities apprehended 5,844 migrants entering the country irregularly, out of which 5,710 entered across the Green Line, 128 entered via the SBAs, and six directly into the RoC (Select Committee on European Scrutiny 2008).⁸ Nevertheless, the SBAs provide another example of a 'state of exception' operating in Cyprus (c.f. Constantinou 2008). The

⁶ See www.unficyp.org

⁷ See UK Ministry of Defence, Sovereign Base Areas Cyprus, see <http://www.sba.mod.uk/index.htm>

⁸ Migrants do not regularly arrive by sea to either of the bases, but instead cross the Green Line into Dhekelia, which borders it. An exceptional case of boat arrivals in the late 1990s caused a dispute between the British military and RoC authorities over who was responsible for the migrants. The RoC refused to accept responsibility, arguing they were the responsibility of the British, a position bolstered by the fact that the migrants themselves claimed they wanted to go to Britain (Mita 2002). Nevertheless, in 2003, the RoC signed a memorandum of understanding with the British military authorities in which the RoC accepted responsibility for assessing the asylum claims of those who enter Cyprus through the SBA. However, they do not accept any further responsibilities and this results in some migrants and asylum seekers feeling stranded in the SBAs without access to rights and opportunities. For example, in 2008, eight asylum seekers – seven Iraqis and one Iranian – threatened to jump off a building in the SBA unless they were given British passports (Kambas 2008).

SBAs are not governed by Cypriot or British law, but on the basis of the Colonial Laws Validity Act of 1865. They are also not part of EU territory, being exempt from EU jurisdiction under Protocol 3 of the EU Treaty of Accession (2003) (Commission 2010a). Nevertheless, in practice, the SBAs operate under similar regulations as those in the RoC, although they are not under a strict legal obligation to do so. The Treaty of Establishment in 1960 that created the bases includes the following clause: ‘the laws applicable to the Cypriot population of the Sovereign Base Areas will be *as far as possible* the same as the laws of the Republic’ (emphasis added) (Cyprus 1960b: Appendix O).

The militarisation of the island is also a palpable part of daily life. Military posts are dotted along the Green Line, and bands of young, male conscripts can be seen spending their free evenings walking up and down Nicosia’s main promenade. The promenade is within Nicosia’s old fortified centre, a centre abruptly divided by an eerie buffer zone made up of abandoned houses with broken windows, military barricades made of sandbags, rusty oil drums, barbed wire, and walls of corrugated iron, hastily constructed decades ago. A few enterprising café proprietors on the southern side of the Line attempt to transform the tragedy into a tourist attraction, with names such as ‘Checkpoint Charlie’ and ‘Berlin 2’.

The second issue that remains a constant source of tension on the island is that of demographics. Statistics are often deployed for political purposes in the propaganda war surrounding the ‘Cyprus problem’, and large discrepancies between figures are commonplace. The facilitation of Turkish immigration to Cyprus exacerbated Greek-Cypriot insecurity surrounding the demographic makeup of their population, compounding the effects of the history detailed above. The policy pursued by Turkey and Turkish-Cypriot authorities encouraged Turkish citizens, usually from poor farming communities across Anatolia, to move to northern Cyprus in the aftermath of the 1974 partition. The

number of such immigrants is illustrative of politicised numbers. These people are labelled by the RoC government as ‘illegal settlers’, and are perceived as a threat to the demographic fabric of Cyprus, replacing Turkish Cypriots as the ‘other’ in the country’s narrative. The number of settlers is a source of contention and their fate is also a stumbling block in the political negotiations over the reunification of the island. The RoC government is clear in its views: an official document entitled ‘Toward a Unified Cyprus’, produced by the Ministry of Interior in 2006 claims, ‘Turkey ... has flooded the occupied areas with more than 160,000 illegal settlers ... who currently outnumber Turkish Cypriots by two to one’ (Miltiadou 2006, 8).⁹

However, Cypriot academics, among others, have questioned these numbers and categories. The demographic situation in northern Cyprus is more complex than the dichotomy between ‘illegal settlers’ and Turkish Cypriots. First, there is a large population of temporary residents, made up of students, migrant workers, and tourists, who are often included in the settler estimates. Moreover, some ‘settlers’ have lived on the island for decades, acquiring TRNC citizenship and having children.¹⁰ Making the distinction between TRNC citizens and non-citizens, Mete Hatay (2005) estimates that in 2005 the total number of temporary residents with Turkish origin was 102,000, while the number of Turkish émigrés who have acquired TRNC citizenship is between 32,000 and 35,000.

Within a total TRNC population of 265,000, these figures are less significant than those quoted by the RoC government (TRNC State Planning Organisation 2006).¹¹ Moreover, in

⁹ A census carried out in the TRNC in 2006 estimated that the de facto population in northern Cyprus was 265,000 (TRNC State Planning Organisation 2006).

¹⁰ Access to citizenship in the Republic of Cyprus is only available to Turkish Cypriots, and not to Turkish emigrants residing in the TRNC. Moreover, Turkish Cypriots who have one parent who ‘unlawfully entered or resides in the Republic’ are also not eligible, even if their other parent is eligible. This discriminatory measure is evidently politically motivated, targeting Turkish citizens who settled in Cyprus after 1974 (Trimikliniotis 2009, 399).

¹¹ The TRNC Census carried out by the State Planning Organisation (2006) also provides a further breakdown of the de jure and de facto population by citizenship.

conceptual terms, the understanding of people in the TRNC as ‘illegal settlers’ relies on a naïve narrative of static, sedentary populations. Contrary to this perception, Cyprus has experienced waves of migration for thousands of years, which are reflected in the composition of the island’s population.

The militarisation and the emphasis on demographics, along with the division of the island and occupation in the north, fuel an extreme form of nationalism, evident in the language used by politicians. Along with references to Cypriot refugees and ‘illegal settlers’, is an explicit lack of recognition of the presence of another government, however illegitimate, on the island. Thus, government officials unfailingly refer to the northern part of Cyprus as ‘the territory *not* currently under the control of the Republic of Cyprus’, while the south is ‘the territory currently under the control of the Republic of Cyprus’ (Interviews: government officials, July – August 2009) – quite a mouthful for the untrained tongue.

Within this nationalist framework, foreigners are treated with suspicion, although to varying and contradictory degrees depending on class and race. Tourists, for instance, are exempt from such suspicion. The tourist industry has long been the backbone of the Cypriot economy and contributed significantly to what is referred to as the ‘economic miracle’ of the 1980s and 1990s, following the severe blow dealt to the economy after the loss of 37 percent of the island’s territory in 1974.¹² Likewise, British retirees who settle in the RoC and businessmen from various third countries, such as Russia and India, are viewed as less suspicious due to the wealth that accompanies them; they have access to

¹² Between 1973 and 1975, gross domestic product fell by 18 percent, while unemployment increased by 30 percent (reaching 22.5 percent in 1975), according to the UN Statistics Division [<http://unstats.un.org/unsd/default.htm>] and the ILO Bureau of Statistics [<http://www.ilo.org/stat/lang--en/index.htm>].

long-term residence and experience less bureaucratic and social difficulties, generally integrating more easily into Cypriot society.¹³

On the other hand, Cypriot society – the government and the wider public – view low-paid migrants, asylum seekers, and refugees with suspicion at best. The ubiquitous rhetoric of ‘illegal’ migrants who threaten the labour conditions of nationals is unsurprisingly present as justification for the suspicion, but is coupled with language that strikes at the heart of nationalist fears. First, from both sides of the Green Line, Turkish settlers are often portrayed as low-paid workers undermining the economic and social wellbeing of Turkish Cypriots in the north. Second, the fact that immigration to the Republic of Cyprus is made up in part of people travelling irregularly through northern Cyprus and across the Green Line has also been politicised within the framework of the ‘Cyprus problem’. Government officials levy accusations against the authorities in the TRNC for attempting to undermine the demographic fabric of the Republic of Cyprus by encouraging and even facilitating the movement of irregular migrants across the Green Line (Interviews: Head of Asylum Service; MEP 1; MEP 2; Head of the EU Department, MFA; Permanent Secretary, MOI; Permanent Secretary, MFA; Immigration Officer in the Police Aliens and Immigration Unit, July - August 2009). For example, the Permanent Secretary of the Ministry of Foreign Affairs claimed that,

... the biggest problem of course is the long dividing line which is 183 kilometres long.... A lot of [migrants and refugees] come to the north illegally and the regime there causes problems here. It tolerates, if not encourages, this kind of situation (Interview: August 2009).

This quote illustrates how blame for irregular immigration is apportioned to a transit country. By doing so, governments simplify the issue, ignoring other aspects of migration,

¹³ Paradoxically, it appears that these migrants face less bureaucratic and social challenges due in part to their migration and integration being more rather than less regulated with clearer and more transparent procedures. Moreover, many of these upper class migrants are motivated primarily by economic factors (Interviews with migrants, especially M.C 2, refugees and representative from non-governmental organisations in Cyprus, July – August 2009).

such as pull factors and migrant agency, as well as the more complex relationship between the EU and its neighbours. The next section demonstrates how such rhetoric belies the complexity of the migration and asylum situation in Cyprus and how, nevertheless, demographic concerns, tinged with race and class issues, continue to rear their heads in debates over these issues. Moreover, such debates are underscored by a palpable unwillingness to accept a not-so-new migration reality in Cyprus, a multicultural country that has experienced immigration and emigration for many decades.

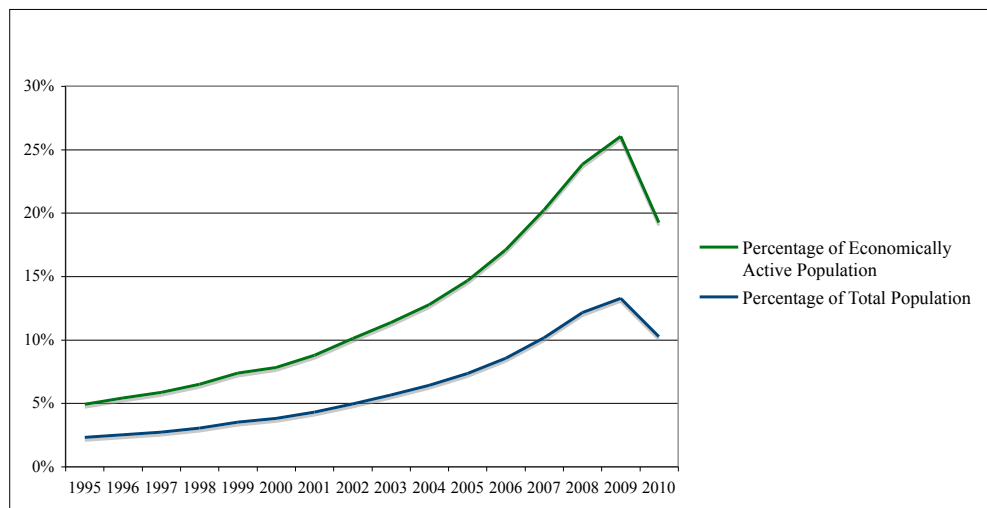
Current Migration Patterns

In spite of the devastating poverty and unemployment in the aftermath of 1974, economic growth followed in the 1980s primarily due to mass tourism, the expansion of the tertiary sector, and considerable monetary investments from refugees fleeing the Lebanese civil war. Cheap labour supplied by the internally displaced Greek Cypriots, who were expelled from the northern part of the island after the Turkish invasion, also made the economic ‘miracle’ possible. During this time, the Republic of Cyprus had little need for migrant labour and maintained restrictive immigration policies (Trimikliniotis and Demetriou 2005).

However, in the late 1980s, continued economic growth on the island led to a demand for labour that exceeded the supply provided by the native population (Trimikliniotis 2001, 58). Therefore, in 1990, the RoC abandoned its restrictive policies and adopted a guest-worker system, granting temporary work visas to foreigners. These permits were given for up to six years in sectors deemed to have labour shortages that Cypriots could or would not fill. Migrant workers were thus generally employed in low-skilled and low-paid employment, primarily as domestic workers, but also in the manufacturing, agricultural, and construction industries. The institutional assumption

behind this new policy was that migrant workers would remain in the RoC temporarily: visas were renewed annually and were attached to a specific employer, limiting a migrant's ability to change jobs.

The new scheme was successful in attracting migrant labour to the island, as Graph 5.1 below demonstrates. According to the Cypriot Statistical Service, there were 15,012 foreign workers in the Republic of Cyprus in 1995. By 2009, this number had increased to 106,100, rising from two to thirteen percent of the entire population (and 26 percent of the economically active population).



Graph 5.1: Migrant Workers in the Republic of Cyprus, 1995-2010

Sources: Cyprus Statistical Service 2011a; 2011b; 2010b; 2003; 1998

In parallel, more political attention was also given to irregular immigration, especially those migrants entering the country clandestinely. These immigrants included people from China, and from countries in Eastern Europe (Bulgaria, Romania, ex-Yugoslavia, Russia, Ukraine, Georgia, and Moldova, among others), in Southeast Asia (especially women who are employed as domestic workers from the Philippines, Sri Lanka, India and Pakistan), and in the Middle East (Syria, Lebanon, Iran, Iraq, to name a few). Assessing the size of this population is difficult due to the nature of an irregular status, variable migration

controls, and the fluidity between legality and illegality, an issue returned to later in this chapter. In the RoC estimates vary tremendously from 6,000 to 45,000 (c.f. Thomson 2006; Trimikliniotis and Demetriou 2007, 51; Trimikliniotis and Pantelides 2003, 4). A gauge that may be used is the number of apprehensions, outlined in Table 5.1 below. Using this measure, irregular immigration increased in the early 2000s, especially between 2002 and 2003, with reports indicating a decrease in the number since 2007 (European Commission 2011e; 2010b; Simon 2006, 36).

International political events shaped these changes in immigration patterns to Cyprus. For example, the dissolution of the Soviet Union resulted in labour migration from countries that were previously part of the USSR. Most notably, Pontic Greeks arrived from the Caucasus region, as they were entitled to Greek nationality, which in turn allowed them to immigrate to the RoC without the normal bureaucratic formalities. Unsurprisingly, conflicts such as the Gulf War, ongoing turmoil in Palestine, and the violence in the Balkans during this decade also contributed to the flow of immigrants and refugees arriving in Cyprus (Trimikliniotis and Demetriou 2005; Trimikliniotis and Pantelides 2003).

Year	Overstayers	Clandestine Entry		Total
		Green Line	Coast Line	
2005	2,382	5,189	16	7,587
2006	2,293	3,735	18	6,046
2007	2,027	5,736	7	7,770
2008	1,853	5,162	36	7,051
2009¹⁴	1,707	2,143	1	3,851
Total	10,262	21,965	78	32,305

Table 5.1: Irregular Migrants Apprehended in the Republic of Cyprus

*Sources: data given to the author by the Office of the Permanent Secretary in the Ministry of Interior, July 2009.*¹⁵

¹⁴ Up to May 2009.

Arrival

Patterns of irregular immigration to and in Cyprus are more complex than those in Malta due to the partition of the island and the more sizeable presence of labour immigrants. Although irregular migrants arrived on the island's south-eastern coast by boat in the late 1990s, boat arrivals no longer occur in the Republic of Cyprus.¹⁶ Instead, irregular migrants either arrive in the TRNC – whose coastline is under less surveillance and is also connected to Syria and Turkey with direct ferry routes – before crossing the Green Line into the southern part of the island, or migrants arrive in the Republic of Cyprus on visas and then subsequently overstay or breach their conditions (Baldwin-Edwards and Kraler 2009; Interviews: MOI, July 2009; Aliens and Immigration Unit, Police, July 2009; Thomson 2006).

When discussing 'illegal immigration', government officials focus almost solely on those arriving in the RoC by crossing the Green Line. Indeed, they insist that up to 98 percent of 'illegal immigrants' come to Cyprus through the northern area. For example, the Permanent Secretary of the Ministry of Foreign Affairs claimed that '... the biggest problem is of course Turkey ... because 90 percent of the illegals [sic] come through the dividing line, through Turkey essentially' (Interview: August 2009). A Cypriot Member of the European Parliament (MEP) espoused similar views, saying, 'In Cyprus, the main problem ... is that the immigrants come to the occupied area – 98 percent – and from there they penetrate to the free area of the Republic of Cyprus' (Interview: MEP 1, July 2009).

The reality of irregular migration in Cyprus is more complex than the picture portrayed by government officials. Irregular migrants do travel to the Republic across the

¹⁵ Total figures for 2009 and 2010 show a further decrease in irregular migrants arriving across the Green Line and along the coastline, with 3,781 and 10, respectively, in 2009, and 1,855 and 2 in 2010. Furthermore, 21 irregular migrants were apprehended in the eastern Sovereign Base Area (Dhekelia) in 2009 and 18 in 2010. These figures do not include the number of apprehended overstayers, which are not reported (Commission 2011e; 2010c).

¹⁶ Thomson (2006) notes that, as in Malta, many of these migrants paid smugglers with the intention of going to Greece, not Cyprus.

Green Line. However, irregular migration in the RoC does not result solely from people moving across the Green Line, as statistics from the Ministry of Interior in Table 5.1 indicate: of those irregular migrants apprehended between 2005 and 2009, 32 percent had overstayed their visas, while 68 percent had travelled across the Green Line.¹⁷ These statistics may themselves be skewed as the government has prioritised the apprehension of those coming across the Green Line rather than overstayers.

Migrants and refugees arrive in Cyprus in a number of ways. Those entering irregularly generally cross the Green Line, travelling to northern Cyprus from Turkey, Syria or Lebanon. For these people, who often eventually apply for asylum on the island, the journey from country of origin to Cyprus is rarely made directly and is instead usually made in stages. For example, an Iranian refugee described how she arrived in the RoC, travelling through Turkey and Syria with her two young children, after her husband (who she subsequently divorced) had already left Iran.

Your ex-husband went through the mountain to Turkey?

Yes, through the mountains to Turkey.

On foot?

Yes, some they took it by donkey. Anyway, it was very difficult for him. And they beat him in the prison [in Iran]. He had too much pain in his legs, because they beat him on his legs. Anyway, he went and ... he stayed in Turkey to find someone to take him to Germany, but this person, who wanted to help him, was not ready for this.... Afterwards, I left [Iran], I went to [Turkey].... I could not contact my ex-husband, so I went.... I didn't stay because it was very dangerous for me in Turkey.... I was in Ankara and so I say, I cannot stay, so I went to Syria because we had some friends there....

So, you went to Ankara by plane?

No, not with airplane, with the bus I went, because they had my name on the airport, so I can't go from the airport. And so, I went to the Syria and I stayed about 10 days.... My ex-husband he called me and he said to me, I cannot find this.... I cannot go out from Turkey to this place ... [but] someone has promised to bring me to the Turkish side [of Cyprus], I mean from the North ... to Cyprus. So, take a ticket and go [to Cyprus]. So I came to Cyprus.... [My ex-husband] came illegally to northern Cyprus. Somebody is helping him. They

¹⁷ See Table 5.1 above; Figures provided to author by the Ministry of Interior, July 2009; figures for 2009 are only until May.

make it some way illegally with the passport. [He came] with others.... They brought him with the boat from the Turkish side. Yes, with a small boat. And they closed his eyes! ... It's not like now. Now, it's easier because they bring them very easily with the car, you know? Before there was nothing there, the green line it was not open.... But at that time, it was very, very difficult (Interview: Migrants in Cyprus [M.C] 25, August 2009).

As this quote illustrates, it was only after an unsuccessful attempt to navigate a route to Germany that her ex-husband heard of an opportunity to go to the RoC while in Istanbul. Travelling by ferry to northern Cyprus, he was then met by another smuggler. His wife and two young children, on the other hand, had travelled separately by bus to Turkey and then, when they failed to contact him, to Syria where they knew other Iranians. Finally, upon hearing that he had arrived in the RoC, they flew to the island on a tourist visa, before applying for asylum (Interview: M.C 25, August 2009).

Social and smuggling networks are powerful facilitators for many of the migrants and refugees coming to Cyprus. For example, a young Congolese journalist travelled by foot from his native Congo to Uganda, after his life was threatened due to his political writings. From Uganda, he travelled to Kenya, and then flew to Damascus, Syria. Here he went by bus and then by foot across the border to Turkey. Eventually reaching Istanbul, he was told by other migrants that it was relatively easy to travel to northern Cyprus.

I had information that it's easy from Turkey to go to Cyprus. In fact, I saw so many people who were coming with their visa, with a Turkish visa and they will fly from Istanbul to Ercan [Airport in Nicosia]. You see easy. And then the guys say, okay, when you reach north Cyprus, you just cross to the south and you are in Europe. So it's the easy way! (Interview: M.C 26, August 2009)

Intending to follow this advice, he borrowed a passport for the price of \$150 from a man from Burkina Faso who had a Turkish visa, which allowed him to travel to the TRNC.

Once in the TRNC, a smuggling network usually aids those migrants travelling from the north across the Green Line. Migrants and refugees are met upon arrival and taken to safe houses for a few days, before they are shown where they can attempt to cross the

Green Line, often at an additional fee. For example, the same Congolese asylum seeker recounted his experience once he arrived in the TRNC:

Those who came before, the same routes, they found these people, they get their number, [and] they give it to us. They waited for us at the airport [in Nicosia]. From the airport, they take us in one house, somewhere in Famagusta.... And okay we have to pay money to cross to this side, \$500. And after one day, somebody came – two guys, they say they are police, where is our papers, like this. They started intimidating us, until they took all our money.... [But] they are just the people in this same business. They take my \$600, whatever remained in my pocket, they took it away.... Then, we stay four days in the north until some other people came so that they can cross us (Interview: M.C 26, August 2009).

The risks to the individuals on the move remain high. Those lucky enough to be successful in their crossing spoke of injuries they sustained in jumping great heights or clambering over barbed wire, as well as violent and racist encounters with the police on the southern side of the Line (Interviews: migrants & refugees, July – August 2009). The same Congolese asylum seeker continued:

Okay, we are going to cross in the car maybe one hour driving like this. And they park here at Ledra, the other side, [at] the wall, the big wall. They say this is, they show us, see, this is Cyprus, Europe, so you just jump there and you are in. We jump the wall. Me, I get hurt down in the cheville [ankle]. I couldn't walk (Interview: M.C 26, August 2009).

He went on to explain how after being seen jumping down the wall, he and his fellow travellers were caught by Cypriot Police on the southern side of the Line. The police denied them the opportunity to apply for asylum and treated them inhumanely, before they 'thrown back to the other side' of the line.

So the guy came and arrested us, take us to the police here at Paphos Gate. ... [W]e were four people: two Congolese and two guys from Senegal. The police at the police station, they start beating us. 'Why you are beating us like this?' 'Oh, who are you?' 'Me, I'm from Congo.' 'Where is your passport?' 'I don't have it my passport. The people took it, from the North there.' 'So what do you want?' 'I want to apply for asylum.' 'There is no asylum in this country.' That was the answer. And they were beating me up because I was the only one who could speak a little English. I was telling them, look, it's not like this. I am a human rights activist from Congo and this is Europe, so you cannot treat me

like you are doing, like this. If I did a criminal offence, you have to take me to court. Then ... the court will decide about my fate, not beating me like this, like an animal. Ah, you, okay! So you are the one who brought these other people here. You will see. Now I will go and inform the other police, they will come and beat you seriously. And then, there was a small meeting: talk, talk, talk, call, telephone call, discuss, discuss. The final decision: they took two guys, come. They go with them, we don't know where. After 20 minutes like this, they come back. They take me and the other guy in their car, somewhere in the buffer zone. They throw us in the other side. They put a gun in my chest, a shotgun. They said man, look if you try to come back here, we will kill you....

Even though I was injured, I started to jump. I jumped because there was sewage there, I had to jump over to the other side. [It was] night ... and there was a small bush. When they throw us there, they disappeared. I told the other guys, you see, why did these police disappear? They would have stayed around to make sure that we are not [jumping back] Because they disappear, so this is a dangerous place.... I said, all of us, we should sleep, nobody move. This place, either it's a minefield or there should be a military barracks a few metres away here. If we move, they will shoot us. And if they shoot us, we will be shot in the North, there it's not their problem. They will make a report that maybe some people wanted to cross, then we shoot them. So we should not let ourselves be killed. We have to be careful. We slept. I said everybody have to stay the place he is, no movement.... And then after a few minutes, we hear some noise in the bushes. I said you see, these are military. This is the reason why those police, they disappeared. We have to stay, sleep until we relax a little bit, to see the next step. There was not another option but to come back. So we decided to come back... (Interview: M.C 26, August 2009).

Despite the implementation of such barriers to stall migration efforts, the agency of those making these journeys is key in understanding how and why people continue to enter countries in a clandestine manner. In the case of this Congolese migrant, his persistence and his reliance on kinship networks ultimately proved successful:

I said we should avoid the number four because they know that they throw four people. So if they see four people walking around, immediately they will come and catch us. We have to go either one by one, or two by two, or... Then the last decision was okay, you three you go, I stay.... So, they left. It was at night. This is around ten now, ten or eleven [p.m.]. Then, I have to leave as well. So, I left slowly, slowly, I left and crossed this time.... I didn't have anything on me, no money, nothing.... I was just going like this. Until I find one shop, which is 24 hours working. They have telephone. I was dusty, hungry and I didn't have anything. So, I have to call my sister in Canada.... I get her, I say this is the situation. We were arrested by the police, beaten up like this, they throw us in the north and then.... I'm really tired, I don't know what is going to happen to me. I wanted them to at least arrest me so I can get treatment and some food like this. I don't know. My sister was a little bit concerned. She said, what can I

do? The only way I can send you money, but now no Western Union. And she told me, okay, you have to go to one hotel and then from the hotel you call me, so I can pay, I can transfer the money directly from my account, my credit card to the hotel so they will deduct, they will take out their money. So this is what I do. I said, no, I should not stay in Nicosia because maybe these police are still looking for me. I went to Larnaca (Interview: M.C 26, August 2009).

As the experiences of these migrants illustrate, very few asylum seekers interviewed had the RoC as a clear destination in mind when they fled their countries of origin. Most had limited knowledge of the country and were either attracted to it by friends and family already on the island, or by information from fellow travellers or smugglers, information that varies in accuracy. For instance, one asylum seeker explained that she ‘... arranged some visas with an agency because it was in the newspaper that it was easy to go to Cyprus...’ (Interview: M.C 22, August 2009). Others place themselves into the hands of smugglers and have little idea of where they have arrived or even that the island they have arrived on is divided (Interviews: migrants and refugees, July – Aug 2009; Coordinator, KTIHV, July 2009).

The other factor that attracts migrants and refugees to the island is the role of private agents who recruit both foreign labour and foreign students from around the world. Domestic workers are the largest group of migrant workers in the RoC; in 2009, the government estimated that the group comprised of 30,000 women, primarily from Southeast Asia – Sri Lankans, Vietnamese and Filipinos constitute the majority of this labour force (Interview: Head of Department of Labour, Ministry of Labour and Social Insurance, August 2009). Most are recruited in their country of origin by agencies peddling migrant visas for up to four years, which continue to be attached to a specific employer. Accounts of the money they will be able to earn are often exaggerated, seducing many to mortgage their houses or borrow money in order to pay the large fees charged by the agencies. These women then find themselves in a precarious situation in the RoC: they

mostly work as live-in maids, dependent on a specific employer for their visas and their livelihood, without recourse to a complaints' procedure or protection from abuse and exploitation (Interviews: migrants and refugees, July – Aug 2009; Director, Action for Equality, Support, Antiracism [KISA], July 2009). As shall be discussed further below, these arrangements result in people easily slipping into an irregular status, even if they have arrived in the RoC on a work visa.

Other migrants and refugees are attracted to the Republic in order to pursue a tertiary education. Similarly, agencies tout the RoC as an ideal package: visas for the RoC are easier and cheaper to obtain than for other first-world, English-speaking countries, as are university fees; promises of employment opportunities while studying also abound. In reality, third-country nationals who hold a student visa in the RoC have only recently been allowed to work on a part-time basis. Thus students arrive, finding their employment opportunities more limited than they were led to believe, and their fees higher (Interviews: migrants and refugees, July – Aug 2009; M.C 3, July 2009). Unable to afford these, some fall into an irregular status, while others apply for asylum in an attempt to remain legally on the island. A young Nigerian man's anger was evident as he explained how he had been forced to discontinue his university studies after finding the fees higher than an agent had promised. When asked about his family back in Nigeria, who had financed his journey, he said, 'I don't want to contact my family because I quit school and they don't know. I lost a lot of money. I want to go back to Nigeria but I need to make some money' (Interview: M.C 14, July 2009).

The government's disregard for the diversity of immigration patterns to the RoC results in officials maintaining superficial understandings of the situation, often blaming Turkey for any difficulties to do with immigration, as well as predicting that these difficulties will cease to exist if the political problem on the island is resolved. Evidently

this interpretation of the situation is politically convenient as it allows the government to continue to draw regional and international attention back to the division of the island and the Turkish presence in the north.

Asylum: Legislation and Trends

Along with the first arrivals of migrants and asylum seekers travelling by boat, the late 1990s also saw a rise in migrants claiming asylum in the Republic of Cyprus. This prompted a debate on the need to adopt national refugee legislation. Although Cyprus signed the 1951 Geneva Convention while the island was still a British colony, inter-ethnic conflict after independence hindered its implementation. Therefore, since 1974, the UNHCR has taken responsibility for processing the limited number of asylum applications made every year, having already established a presence in Cyprus in response to the division of the island with a mandate to help the internally displaced population (Interview: Associate Protection Officer, UNHCR, July 2009).

For this reason, it was not until 2002 that the RoC, in order to align itself with the EU's *acquis communautaire*, began to process asylum claims within a national system, with the UNHCR assuming a monitoring and training role. Paralleling events in Malta, the young system experienced a considerable increase in asylum applications in 2003, rising from 951 in the previous year to 4,411 (see Graph 5.2 below). Asylum applicants in the RoC reflect the island's diverse migrant population, as well as its proximity to turbulent regions. Syrians (5,946 applications), Bangladeshis (3,970), Sri Lankans (3,196), and Pakistanis (3,118) were the nationalities that applied for asylum most frequently between 2004 and 2010. These applicants were closely followed by Georgian, Iranian, Indian, Palestinian, Ukrainian, Chinese, Iraqi, and Russian nationals.¹⁸

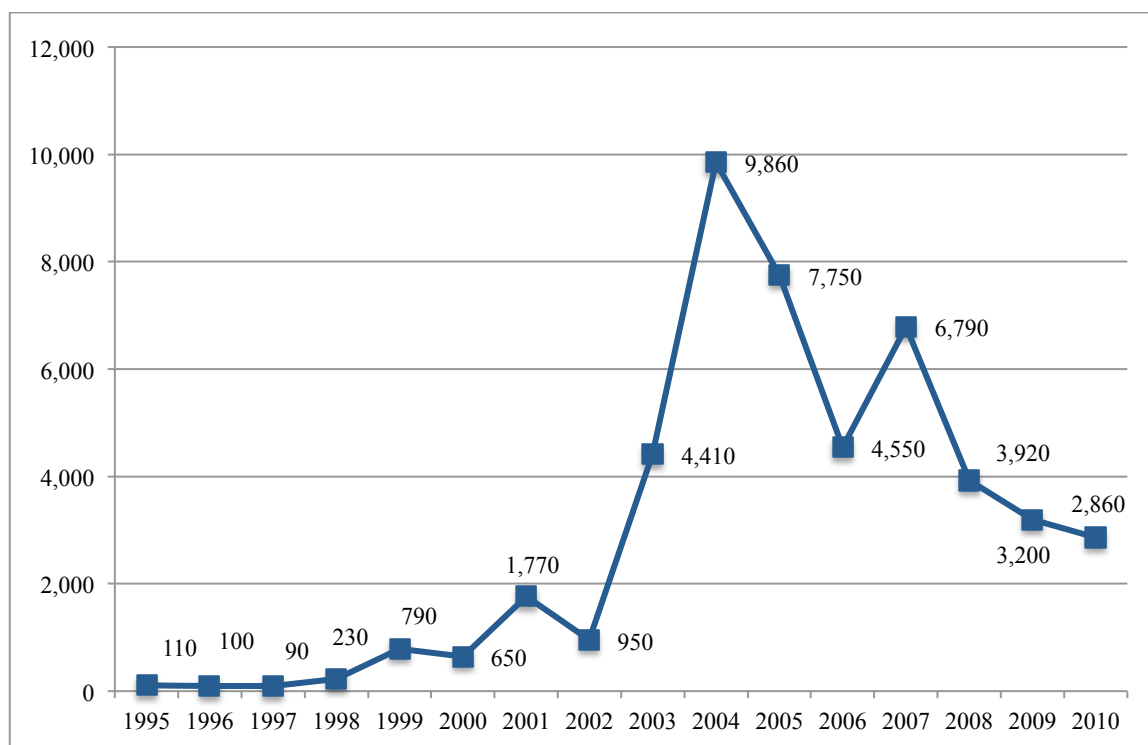
¹⁸ For more information and sources, see A.1 in the Appendix.

There were multiple reasons for the increase in asylum applications after 2002. Events such as the US-led invasion of Iraq certainly added to the number of asylum seekers. However, the number of Bangladeshi and Pakistani asylum applicants also increased unexpectedly, the overwhelming majority coming from students. The principal reason behind these applications was that asylum seekers enjoyed the right to access the labour market, while foreign students did not. Such applications were rejected and, as an example to others ‘falsely’ claiming asylum, the government deported some of the students without allowing them to finish their studies (Strovalidou and Colville 2005). The RoC authorities also implemented stricter regulations for the granting of student visas. More progressively, the country adopted an EU directive in 2007 that allowed third-country nationals to work while pursuing their studies through an amendment of the Aliens and Immigration Law. Foreign students are now entitled to work on a part-time basis (Council 2004a, 12-18; Cyprus 2007; c.f. Department of Labour 2007).

After the establishment of national asylum institutions in 2002, asylum figures remained relatively high in comparison to the previous decade. As Graph 5.2 depicts, asylum claims peaked at almost 10,000 in 2004, subsequently falling to 2,860 by 2010. The RoC government pointed to the levels of asylum applications, the highest in Europe if taken per capita, as evidence of the unfair burden placed on Cyprus as a member state on the EU’s southern external border. Indeed, the UNHCR ranked Cyprus first amongst 44 industrialised countries, having received 30.1 applications per 1,000 inhabitants between 2005 and 2009.¹⁹ However, the government’s assertion was certainly disingenuous if one takes into consideration the large number of students applying for asylum, described above. Cyprus (like Malta) does not rank highly when the rate of asylum applications is

¹⁹ Malta ranked second (21.6), with Sweden coming a distant third (13.7).

calculated per one US dollar of gross domestic product per capita.²⁰ Using this calculation, Cyprus finished 15th out of the 44 countries for the period between 2005 and 2009 (UNHCR 2010a).



Graph 5.2: Asylum Applications in the Republic of Cyprus, 1995-2010

Sources: Asylum figures for 1995-2009 given to author by the Ministry of Interior, 2009; for 2009 and 2010 asylum figures: Eurostat 2011; 2010

The increase in asylum applications during the 21st century, in parallel with students applying for asylum, has fuelled a distrust of asylum seekers amongst government officials. This is reflected in the rate of recognition of refugees, which has been at or below one percent of all asylum claims between 2004 and 2010. If one includes those granted temporary forms of protection, the success rate is only slightly higher, around three percent between 2004 and 2008.²¹

²⁰ This is done taking into account purchasing power parity, which equalizes purchasing power by using long-term equilibrium exchange rates.

²¹ However in 2009 and 2010, this rate increased to nearly 19 and 17 percent, respectively, indicating an increase in those given subsidiary forms of protection (Eurostat 2011a; 2010). Although it is unclear what caused this reversal in the trend of low recognition rates, it may be due to the Asylum Service's prioritisation

North of the Green Line

North of the Green Line, the issue of Turkish settlers eclipses the matter of asylum, as their presence is much larger than the handful of asylum applicants every year. Nevertheless, the asylum and immigration situation is worth considering in order to contextualise the political and economic space within which most migrants and refugees travel south across the Green Line. Although the Geneva Convention is theoretically part of the unrecognised state's domestic law, due to it having been adopted by the Republic of Cyprus before 1963, in practice there is little protection and few services afforded to asylum seekers or refugees. The weight of responsibility for the few people who do apply for asylum rests primarily on the only human rights NGO in the TRNC, the Turkish Cypriot Human Rights Foundation (KTIHV), and its sister organisation the Refugee Rights Association.

Asylum seekers arrive in the TRNC, as do many economic migrants, on small boats launched from the shores of Syria, Lebanon or Turkey with the help of smugglers, or on the direct ferries that operate from Turkey and Syria. An alternative method for those able to secure airfare and travel documents is to arrive by plane at Ercan Airport outside Nicosia (via Istanbul). If the authorities identify asylum seekers, they remain in detention while KTIHV – the UNHCR's implementing partner responsible for receiving asylum claims – is informed. The organisations' representatives noted that asylum seekers are generally kept in detention for around ten days, although there is no official legal limit. KTIHV has also highlighted the unacceptable conditions of detention, as well as the detention of children as young as twelve years old (Interview: Lawyer, Refugee Rights Association [RRA], July 2009).

of what it deemed unfounded asylum claims in previous years (Interviews: head of Asylum Service, July 2009; NGOs, migrants & refugees, July – August 2009). For more statistics on the number of asylum applications made between 1995 and 2010, and the corresponding recognition rates, see A.1 in the Appendix.

Although KTIHV tries to monitor the process, they are ultimately subject to the whims of the TRNC authorities, who inform the organisation when there are detainees requesting to apply for asylum. The NGO cited concerns over asylum seekers being deported without their presence on the island being made known. Exacerbating this risk, people are informally regarded as eligible or ineligible to apply for asylum based on their country of origin. For example, even a representative from KTIHV said of Syrian migrants, 'They're economic migrants. They're not refugees' (Interview: July 2009). Although a breakthrough in 2007 produced a promise from the administration in the TRNC to refrain from returning Iraqis and Palestinians due to the situation in those countries, the principle of non-refoulement is not thought to be widely upheld, and at the very least cannot be monitored by NGOs due to the authorities' lack of transparency (Interviews: Associate Protection Officer, UNHCR, July 2009; Coordinator and Lawyer, KTIHV, July - August 2009; Coordinator and Lawyer, RRA, July - August 2009).

Once asylum seekers are released, they often find their way across the Green Line to the Republic of Cyprus, rather than remaining in the TRNC. In 2010, there were less than ten refugees in northern Cyprus. The few asylum seekers who remain must apply for refugee status from the UNHCR through its implementing partners, KTIHV and the Refugee Rights Association. They then find themselves in legal limbo until the UNHCR can negotiate their resettlement to another country: there is no national legislation to protect their rights as asylum seekers or refugees. In the absence of a legal framework, they remain invisible, not entitled to any financial assistance or healthcare from the authorities, and not privy to any legal mechanism through which they might acquire a residence permit or the right to work.

The aim of the UNHCR and the local NGOs in the TRNC is to resettle these refugees. In 2009, the NGOs had their first success, sending a Cameroonian couple, who

had only been in the TRNC for a couple of years, to another European country. However, some are not so lucky. Single men are most disadvantaged in the resettlement process, being seen as less desirable applicants for resettlement (Interviews: Coordinator and Lawyer, KTIHV, July - August 2009; Coordinator and Lawyer, RRA, July - August 2009). For example, a young Afghan arrived in the TRNC in 2001 and was subsequently granted refugee status by the UNHCR. However, he spent the next nine years waiting to be resettled. His refugee status is not legally recognised by the authorities in the TRNC, a convoluted situation that caused the UNHCR to advise him to continue to use the fake Pakistani passport with which he arrived, as this is the identity that the authorities recognise. Despite these and other difficulties, he managed to find work (without a permit) as a deliveryman (without a driving license), and learnt Turkish. However, he is fated to a precarious existence in the TRNC, having no security in terms of employment or legal status on the island, and having no access to healthcare or welfare. When asked whether he has had problems with the police, he answers, 'Never. I am so silent a person' (Interview: M.C 23, August 2009).

In light of the authorities' inaction over the rights of asylum seekers and refugees, the only institution available to help people like this young Afghan is the small human rights NGO, KTIHV. The NGO carries a heavy responsibility in terms of providing services to asylum seekers and refugees and attempting to ensure their rights are upheld. Moreover, their work is only possible due to the goodwill of individual government officials, with whom they have built personal relationships. With governmental elections come new government officials, with whom new relationships and trust must be built, hindering progress towards creating legal structures available to refugees and migrants. Also detrimental to KTIHV's work is the lack of recognition of the state within which the NGO operates, along with the wider political climate. This limits international support for their

work and oversight of asylum procedures and other human rights issues north of the Green Line (Interviews: Coordinator and Lawyer, KTIHV, July - August 2009; Coordinator and Lawyer, RRA, July - August 2009). The lack of legal structures, as well as the allure of the EU, thus causes most migrants and refugees to travel across the Green Line to the south of the island.

The next part of this chapter returns to the south of the island, to the Republic of Cyprus, and examines the response to these contemporary migration patterns outlined above. The discussion focuses on how the relationship between Cyprus and the EU has shaped migration policies and practices, as well as the lingering influence of the ‘Cyprus problem’.

Part 2

Responding to Irregular Immigration

Constructing Interests and Strategies on the EU's Periphery

The unorthodox arrangement under which Cyprus acceded into the European Union continues to inform the way the state responds to the phenomenon of irregular immigration. It also continues to have implications for the political and legal interpretations of Cypriot borders and hence the EU's external borders. These interpretations, moreover, are often at odds with the reality of borders in Cyprus. The Green Line stretches 180 kilometres across the middle of the island, through the centre of Nicosia's old town. In an attempt to delegitimise the division of the island and the Turkish presence, the government in the Republic of Cyprus does not recognise it as a border. Within the EU, it is also not considered an external border due to the ostensibly temporary arrangement negotiated for accession in lieu of the island's still-elusive reunification. However, the division of the island persists as the main barrier to Cyprus' accession into the Schengen area (Ministry of Foreign Affairs 2007).

In 2003, multiple points along the Line were opened to allow for the free movement of Cypriot (and eventually EU) citizens, including both Greek and Turkish Cypriots. While the RoC government now has a responsibility to facilitate the movement of EU citizens, it also has a legal obligation to carry out checks on all persons crossing the Line in order to 'secure the Green Line from illegal immigrants' (Interview: Permanent Secretary, MOI, July 2009; c.f. Council 2004d, 52). As such, the government is trying to tread a thin political line: it limits its control of the Line in a desire not to convey legitimacy or permanence to it and thus the division of the island, while it also exaggerates in pointing to the Line as the entry point of the large majority of irregular migrants due to the perceived unwillingness of the TRNC authorities (and Turkey) to adequately patrol the area (Interviews: Head of Asylum Service; MEP 1; MEP 2; Head of EU Department, MFA;

Permanent Secretary, MOI; Permanent Secretary, MFA; Immigration Officer in the Police Aliens and Immigration Unit, July - August 2009). The Permanent Secretary of the Ministry of Interior summed up the government's position:

We're talking about people who come illegally to Cyprus. And the majority of these people, if not all, they do filter through the occupied areas. So we do have a considerable amount of problems.... We are not responsible for either the [northern] borders or the Green Line, but we are responsible for the people who are actually coming in.... They do because the line is about 116 miles and it's very, very difficult to secure it. We do not consider it as a border, so we do not want to build a wall from the one side to the other, so that nobody would actually come over it, but at the same time, we have to fulfil the obligations like being a border. But there are so many holes! And people they filter, either through the occupied areas of the Republic or through the [British] base... (Interview: July 2009).

In reality, however, the Green Line is a de facto border. The ease in travel restrictions applies to EU citizens; non-EU citizens are only allowed across the line if they 'possess either a residence permit issued by the Republic of Cyprus or a valid travel document and, if required, a valid visa for the Republic of Cyprus' (Council 2004d, 52).¹ When passing through the official openings, one must present a passport to be stamped in the TRNC. The controls south of the Green Line are less systematic, although anecdotal evidence suggests that these lapses are much more likely to occur if you fit the 'European' stereotype. Migrants and refugees also cross the Green Line clandestinely in an attempt to reach the Republic, but they do so in places that are less exposed and patrolled than the checkpoints (Interviews: migrants, refugees & NGO staff, July – August 2009).

The reality of irregular migration in the RoC is more complex than the picture portrayed by government officials, who focus on such people coming through the TRNC and more often than not depict them as villains, 'illegal' migrants attempting to exploit Cyprus' wealth and relatively high standards of living. In fact, both economic migrants and

¹ However, anecdotal evidence of third-country nationals being arrested and deported after entering the TRNC and travelling south across the Green Line may deter travellers. Such anecdotes are common in Cyprus, as well as on internet forums discussing travel to Cyprus.

refugees who are unable to afford or access direct flights and visas to the Republic use this route into Cyprus. The percentage using it is also much lower than the government's claim that up to 98 percent of 'illegal immigrants' come to the Republic of Cyprus through the TRNC (Interviews: Permanent Secretary, MFA, August 2009; MEP 1, July 2009).

Nevertheless, in responding to irregular immigration, the government's emphasis on the national and regional level has been on the Turkish occupation. As shall be argued, this results in the securitisation of irregular immigration and an interpretation of the phenomenon as part of the broader, ongoing 'crisis' based on the division of and Turkish presence on the island. In associating irregular immigration with this crisis in Cyprus, the government also reinforces the interpretation of irregular immigration as a temporary phenomenon that will ostensibly cease once the political problem is resolved.

Regional Strategies: Exceptionalism and the 'Cyprus Problem'

The emphasis on the number of irregular immigrants coming across the Green Line appears in the Cypriot government's strategy within EU forums. Here, the government is interested in drawing attention to Turkey's continued occupation of the northern part of the island, especially in light of its pending EU membership. It is thus politically expedient to associate the issue of irregular immigration to the RoC with Turkey's presence on the island. Within this political rhetoric, irregular immigration acts as corroboration of the exceptional burden the RoC bears due to the division of the island. For example, one politician stated that, 'Turkey decides to send Cyprus all this population.... I think that without the occupation, [asylum and irregular migration] numbers would be approximately normal' (Interview: Head of Asylum Service, July 2009). While another concurred:

The problem [of illegal migration] is becoming serious on this island because of its small size, the number of its population, the existence of the problem with the Turks, and the demographic composition; [illegal immigrants] are directed

to the south.... [Turkey] facilitates them to come to Cyprus (Interview: MEP 2, July 2009).

This emphasis reinforces the rhetoric of exceptional vulnerability that Cyprus endures as a small state on the EU's external borders. It simultaneously allows the government to point to factors outside of its control as reasons for the arrival of migrants and refugees. Not only are the smuggling routes across the Green Line signalled as pull factors, but officials also emphasise the island's geographic proximity to politically volatile areas of the Middle East and its recent accession into the European Union. Moreover, some officials continue to portray the island as an area of transit migration and not a final destination. This supports the notion of Cyprus as a small, vulnerable, while also justifying the emphasis on exclusionary measures (Interviews: Head of Welfare Services, Ministry of Labour and Social Insurance; Head of Asylum Service, MOI; Head of EU Department, MFA, July-August 2009). Thus when government officials discuss immigration, they underscore the demographic and geographic limitations of the island (Interviews: government officials, July-August 2009). The following quote from the Permanent Secretary of the Ministry of Foreign Affairs illustrates the framework within which policy decisions on immigration are made.

Well, we estimate that one in four people in gainful employment in Cyprus are non-Cypriots ... and all-in all, one in six residents on the island in the government controlled area in the south are also non-Cypriots, which for a country of a population of around 800,000 is a big number.... So one main concern, given the political problem that we have had and the massive influx of settlers from Anatolia to the occupied north, is the challenge to the demographic character, traditions and the national character of the island... (Interview: Permanent Secretary, MFA, August 2009).

The association between irregular migration and the 'Cyprus problem' not only securitises migration, but also produces an incentive for the government to perceive and portray

irregular immigration to the RoC as a temporary, crisis situation.² It creates the opportunity to shift responsibility for irregular immigration towards Turkey as described above, but also for more responsibility to be laid at the EU's feet as a measure of 'solidarity' amongst member states (Interview: Permanent Secretary, MOI; Head of EU Department, MFA; MEP 1, July 2009). For instance, government officials stress the need for relocation within Europe, as part of a 'burden sharing' arrangement. Many politicians envisage a redistribution of people who are still applying for asylum or even migrants arriving irregularly, in addition to people who have been successful in their asylum claim (Interview: government officials, July-August 2009). This has never been discussed at an EU level, and there is little evidence that the political will to implement such a suggestion exists amongst other member states. The voluntary resettlement schemes that have already taken place, between Malta and France, for example, have only involved recognised refugees or those with subsidiary protection. In the RoC, this would hardly make a significant impact, as the rates of recognition are minimal, hovering around three percent of all asylum applicants between 2004 and 2008.³

More important in terms of the government's stated interests is the need for the EU to negotiate multilateral readmission agreements with countries in the region, especially with Turkey. In this regard, government officials emphasise Cyprus' limited capacity due to being a 'small state' (Interview: Head of EU Department, MFA, July 2009). Currently, the RoC holds readmission agreements with Lebanon and Syria, countries where migrants may be returned regardless of their nationality if proof can be produced demonstrating that they have indeed transited one of these two countries. The RoC negotiated these agreements in the late 1990s, which were probably partially responsible for the subsequent

² There is of course a large literature on the securitisation of migration, originating from the Copenhagen school (e.g. Huysmans 2000; Waever et al. 1993; c.f. Boswell 2007).

³ Although, in 2009 and 2010, this rate increased to around 18 percent, respectively, it is still significantly below the rate seen in Malta, averaging 7.1 percent between 2004 and 2010, while in Malta the average was over 70 percent (see A.1 in the Appendix).

decline in boat arrivals to the southern part of the island (Interviews: Permanent Secretary, MFA, August 2009; MEP 2 and former Minister of Foreign Affairs during this time, July 2009). However, the island cannot conclude a readmission agreement with Turkey due to the political tension between the two countries and Turkey's continued refusal to recognise the government of the Republic of Cyprus. As a result, the Republic lobbies for the EU to do so on a multilateral level (Interviews: Permanent Secretary, MOI; Head of EU Department, MFA, July 2009).

Government officials view such a multilateral readmission agreement with Turkey as the answer to stemming the irregular migration coming from northern Cyprus, while arguing that it is not only the RoC, but many EU countries, and especially Greece, that suffer due to Turkey's negligence vis-à-vis its borders. However, even if the EU were to successfully negotiate a readmission agreement with Turkey, it is unlikely to be the golden ticket to solving Cyprus' perceived immigration problem. It remains unclear how such an agreement would, on the one hand, overcome the political tension that plagues relations between Cyprus and Turkey, and, on the other hand, stem the flow of irregular migrants arriving across the Green Line seeing as many do not come through Turkey, but from Syria or Lebanon with whom the RoC already has readmission agreements. Nevertheless, the emphasis is clearly on externalising responsibility to Turkey. For example, a Cypriot Immigration Officer explained in frustration that:

Turkey has to decide to protect their external borders with other third countries, meaning external borders at airports, land borders, sea borders, and so on. And [Turkey] has to start cooperating with member states, including Cyprus (Interview: Police Aliens and Immigration Unit, August 2009).

The arguments put forward at EU forums for more solidarity hinge upon the portrayal of irregular immigration to the RoC as exceptional, severe and out of control; and importantly as distinct from other EU countries' experiences. When Cypriot officials mention the

immigration concerns of larger, northern member states, they include a caveat that the immigration that these countries experience is different to the pressures faced by Cyprus. For example, when discussing the difference between migration to northern EU states and to the RoC, the Permanent Secretary at the Ministry of Interior explained that, ‘the difference is that Sweden chooses the people that are going, whilst Cyprus does not choose the people that are coming because they are coming through the filter of the occupied areas’ (Interview: July 2009). This reinforces the portrayal of the situation as a crisis, outside the control of the state.

Within the RoC, framing migration and asylum within the context of the division of the island and the occupation also results in racism and xenophobia associated with a lack of acceptance of changes in migratory patterns to the island. Indeed, nostalgia is palpable for a mythical Cyprus of the past, against which the new ‘crisis’ scenario is juxtaposed. Policymakers describe this past as ‘... a small homogenous society with uniform culture, very few foreigners living permanently and those were mostly from Western countries where the culture is more similar’ (Interview: Permanent Secretary, MFA, August 2009). This is a dangerous ideal and a dishonest reinterpretation of the past, brushing over the ethnic diversity within the Cypriot population, as well as the complicated history of Greek and Turkish Cypriot relations on the island. Today, more recent waves of migrants and refugees, including settlers from Turkey, have become the new ‘other’, inferior yet threatening. Through the act of migration they challenge traditional divisions between nationals and non-nationals and contest the conceptualisation of identity within a specific culture, territory and ethnicity (Anthias and Lazaridis 1999, 1–11; Triandafyllidou 2001).

The Southern Alliance

Along with the influence of the EU framework outlined above, the RoC government is conditioned in its response to immigration to the island by the alliances it has developed within the EU arena. The country has allied itself with three other states in Southern Europe – Greece, Italy and Malta – in the so-called ‘Quadro Group’ in order to ‘raise awareness and recommend action in an EU context related to the challenges posed by illegal immigration and asylum’ (Council 2009b). In aligning itself with the likes of former Italian Prime Minister Silvio Berlusconi, the RoC has taken a restrictive stance on the issue of irregular migration, although it has not supported all measures taken by other members in the Quadro Group. For instance, it refrained from publicly supporting Italy’s policy of returning boatloads of migrants and refugees directly to Libya without giving them access to asylum in 2009 and 2010. RoC authorities have, however, rejected the idea of regularisation schemes, such as the ones seen previously in Spain, Italy and Greece (González-Enríquez and Triandafyllidou 2009; Levinson 2005).

As noted by high-level government officials, the Quadro Group is used as a vehicle to draw attention to the ‘exceptional’ situation the RoC finds itself in:

The Quadro group ... have been pushing for the implementation of the European Pact on Immigration and Asylum.... [I]t brings to the attention of the member states the pressures that have been faced by the four member states and it invites the other member states to assist them in dealing with this particular issue (Interview: Permanent Secretary, MOI, July 2009).

In this context, EU structures create an incentive to portray the situation as a crisis and to emphasise restrictive measures, rather than the long-term integration of migrant populations. This is illustrated in the attempt by the RoC (and Malta) to block the

extension of the EU's long-term residence directive to refugees (Interview: Lawyer, KISA, July 2009).⁴

Despite advocating for more solidarity from other EU member states, the RoC has been co-opted into EU logic enough to be wary to criticise the Union too harshly. Officials are quick to assure that '[a]ll partners [within the EU] are sympathetic and cooperative', often shortly after explaining the shortcomings of EU cooperation (Interview: Head of EU Department, MFA, July 2009). Despite this, some officials do hark back to a time before the EU imposed its directives and regulations. Explaining how the arrival of migrants, by boat in this instance, were not problematic before joining the EU, officials plainly eschew liberal values, such as the principle of non-refoulement: 'We were not conforming to the rules of the European Union regarding asylum seeking at the time. All of them in the boat and back! But now you have to do what the book says and it's different' (Interview: MEP 2, July 2009).

Since the RoC's accession into the European Union, the framework of the discussion is now one of a vulnerable state in an exceptional situation, with a third of the island occupied and with high levels of immigration to the island. This is of course in part true: apart from Ireland, Cyprus is the only divided country in the EU and has had the highest rate of asylum applications per capita. However, the reasons for this are complex as has been discussed. Moreover, if one calculates asylum figures by gross domestic product, a different picture emerges. The next section turns to the national level, and examines the practices involved with asylum, the relationship between legal and illegal migration statuses, and detention and deportation in the RoC. In doing so, it assesses how the RoC's relationship with the EU, and its interests on the regional level, have influenced these policies.

⁴ Malta and the RoC's roles in negotiations over extending the long-term residence directive are discussed in more detail in Chapter Three. I also return to it in the subsequent, comparative chapter.

At the National Level

As is evident from the discussion above, EU membership has affected migration politics and policies in a significant way. It has triggered the implementation of national refugee law, but has also caused a lowering of standards as the country attempts to eliminate pull factors (Interviews: Associate Protection Officer, UNHCR, July 2009; KISA, July 2009; c.f. Guiraudon 2000; Koser and Black 1999). For example, with the initial implementation of national refugee law, asylum seekers had access to the labour market, which was quickly restricted to the agriculture and husbandry sectors in an attempt to limit ‘abuse’ of the system. Although in 2008 a handful of other sectors, such as manufacturing, were added to the list, asylum seekers are still predominantly offered employment in agriculture (Interviews: Head of Department of Labour; Social Advisor, Future Worlds; migrants & refugees, July-August 2009).

A superficial understanding of why and how migrants move across borders fuels this strategy of eliminating perceived pull factors in order to reduce irregular immigration. The emphasis on the Turkish presence in Cyprus exacerbates this, resulting in a disregard for the agency of migrants and creating a superficial view of migration driven primarily by a lack of adequate patrols in the north, rather than a complex decision-making process in response to opportunities and barriers (c.f. Tsianos and Karakayali 2010). This strategy also assumes that migrants are rational actors who have set preferences and complete, accurate information about their country of destination, which is very rarely the case (Interviews: migrants & refugees, July-August 2009). Nevertheless, this logic continues to underlie government assumptions regarding asylum and migration, as well as government policies, such as the employment restrictions for asylum seekers and those with subsidiary protection.

The lack of appreciation for migrant agency in the decision-making process is evident in government officials' rhetoric regarding why people migrate. The factors cited are those such as misery and war in countries of origin, along with the RoC's prosperity and EU membership. Accordingly, migrants and refugees are rendered as flotsam and jetsam, being pushed and pulled by tidal forces outside of their control. Moreover, the strategy of reducing pull factors is reinforced by the RoC's position within the EU, in particular the government's conviction that migrants and refugees arrive in Cyprus in order to travel to other EU countries. Many still see the RoC as a transit country, despite evidence to the contrary. The Republic has experienced two decades of labour migration to fill labour shortages and many asylum seekers and refugees report their desire to settle on the island. For example, one asylum seeker described her feelings about Cyprus:

Well, I like Cyprus, actually.... You know, I'm free, I can dress however I want ... I can speak out, things like that.... I have a lot of friends. For me, you know, it's a place I feel I naturally belong.... I know everyone and I know everything. I feel free.... I don't have this dream of being somewhere. Okay I want to be free, I want to go out of the country, I want to go on vacation, I want to see things. But I don't want to have this specific dream that I want to be in America or somewhere else (Interview: M.C 22, August 2009; c.f. M.C 3, July 2009).

The superficial understanding of the determinants of migration leads the government to give prominence to the factors it feels it can control within this equation: the pull factors. Inadequate emphasis is placed on integration measures, in order to prioritise policies that shore up borders and restrict employment and other opportunities within the RoC. For example, a bill passed in 2011 made the employment of irregular migrants, as well as renting accommodation to irregular migrants an offence, punishable by large fines and prison sentences (Pantelides 2011). This type of legislation shifts the responsibility of control downward to local actors, and evidently does little to address root causes of illegality, but instead further marginalises already disenfranchised populations. The

emphasis on what are interpreted as pull factors within the RoC therefore results in an attempt to make migrants and refugee lives as difficult as possible, with grave effects on the wellbeing of these populations, as well as the wider Cypriot society.

Asylum Matters

Having arrived in the RoC, migrants who want to claim asylum must do so at any police station or at the central Asylum Service office in Nicosia. Those coming from northern Cyprus cannot claim asylum at the Green Line as it is not officially considered a border. The RoC had one of the lowest asylum recognition rates in Europe between 2004 and 2010 (Eurostat 2010; UNHCR 2010b; 2009c; 2008; 2007a; 2006a). Moreover, the process of receiving refugee status or subsidiary protection can take many years. For example, an Iranian woman and her two young daughters waited for twelve years before they were granted refugee status (Interviews: M.C 24 & 25, August 2009). At the other extreme are those immediately deemed ineligible, resulting in rejections being processed in a few months, with some NGOs claiming that these claims are not properly assessed (Interviews: Lawyer and Director, KISA; Social Counsellor, Future Worlds, July 2009).

The low recognition rate and delays in processing asylum claims are partly due to a government decision to prioritise unfounded asylum claims as a deterrent and to reduce the backlog, which peaked at over 13,000 pending applications at the end of 2005 (Interviews: Head of Asylum Service, July 2009; Administrative Officer, MOI, July 2009). This policy has at best penalised those who have legitimate claims. At worst, the government is obstructing successful asylum claims in the hope that people will move on, frustrated with the lack of opportunity to settle and integrate into Cypriot society (Interview: Kofinou Reception Centre Coordinator, July 2009).

Moreover, there is well-founded suspicion amongst observers in the RoC that immigration officials judge asylum applications on a country basis, rather than an individual basis – a flagrant violation of the Geneva Convention if this is indeed the case (Interviews: Future Worlds; Director, KISA, July 2009). Although certainly disadvantageous to some, the practice can also be advantageous to other asylum seekers. For example, due to political considerations, the Cypriot government almost automatically gives subsidiary protection to Kurds, from Turkey and Syria, and Palestinians. Other applicants, for example from West or North Africa, are immediately rejected (Interviews: migrants and refugees; Legal Advisor, Future Worlds, July-August 2009). Accordingly, a migration officer informed a young Egyptian man that the Asylum Service did not accept applications from Egypt. This reflects the power of the individual, as the young man explained, ‘He said that [they didn’t accept applications from Egypt] and he decided. It’s his own law ... there is no law to say that’ (Interview: M.C 3, July 2009).

The policy of prioritising unfounded claims is also used as a deterrent measure to send a clear message to those attempting to ‘abuse’ the asylum system in order to remain in the RoC to work for a few years (Interviews: Head of Asylum Service; Associate Protection Officer, UNHCR, July 2009). The assumption of many policymakers is that the vast majority of asylum seekers are not genuinely in need of protection but are attempting to cheat the system. This results in an emphasis during the asylum interviews on unearthing inconsistencies in the applicant’s story, as well as more generally giving asylum seekers minimum provisions within the law.

The tactic has produced a lack of thoroughness in the assessment process and long delays for refugees who wait in legal limbo for years, sometimes for over a decade, to have their claims adjudicated (Interviews: NGOs, migrants & refugees, July-August 2009). Even those who are eventually successful in their asylum claim have had their integration

severely hampered by these measures. The Egyptian man quoted above, who lived in the RoC with his wife and two small children, explained the frustration and distress involved in waiting for many years for their asylum claim to be assessed:

We are suffering here so much.... I am here seven years and maybe they leave us like that, pending case, hanging like that for 20 years, who knows? ... You know, there is no hope. There is no hope at all. It's very black.... You cannot feel really the situation we have, what we had in these seven years, the most black years of my life.... [Y]ou have no choice... you are just waiting. I don't know, waiting for what? If we spend 20 years like that, no work ... how we can stay [such a] long time without having your life?! We're still young! ... I came here, I was 28. Now I'm 36. It's unfair. The best of my life, I spent in a disaster like this. Who will give you what you lost? ... There is no future! Where is the future to plan for?! There is none (Interview: M.C 3, July 2009).

The most vulnerable asylum seekers, such as unaccompanied minors, single parents, the disabled, and torture victims are at an even greater disadvantage as there is no process of identification for vulnerable people until the first asylum interview, an occasion for which one can wait many years. Moreover, the method relied upon during the first asylum interview is that of self-identification, therefore being dependent on an asylum seeker's understanding of this process and its significance, as well as their willingness to divulge sensitive information (Interviews: Associate Protection Officer, UNHCR; Social Advisor, Social Counsellor, Legal Advisor, Future Worlds; migrants and refugees, July-August 2009). Summing up the shortcoming of this process, a representative from an NGO working with torture victims explained that from the government's point of view, 'asylum seekers are not considered to have special needs' (Interview: Social Counsellor, Future World, July 2009).

Without adequate or appropriate services to address the needs of those who have suffered trauma, mental and physical stress is left untreated and exacerbated. The late identification process is partially due to the assumption that irregular migrants are male and single. The system, therefore, does not adequately accommodate the needs of female

migrants, minors, single parents, or families. For example, a Bangladeshi asylum seeker explained how when she arrived in the RoC at the age of sixteen, she was not informed of the possibility to continue her education, but was compelled to take up employment in a remote area.

No, no, no, there wasn't any process [of identification] and they didn't really tell me that you have a right to this, to go to school, to do this. Rather the thing was to pressure me to find a job. And I went to the labour office, I was registered there, and they gave me some jobs.... Where? You know it was fourteen or fifteen kilometres outside of Larnaca. I went there by bus.... I have to work every day, I have to go there around four or five o'clock in the afternoon and then I will be working in the restaurant until one, two o'clock, three o'clock, whenever it's finished. And then I have to come back to Larnaca and there is no bus! I went there, but I came back the fifteen kilometres on foot. I walked from there the first time! (Interview: M.C 22, August 2009)

During the asylum process, claimants also face bureaucratic harassment and confusion. For example, the same Bangladeshi woman applied for asylum in 2000 and subsequently had 28 different interviews. Her application was still pending in June 2009 (Interview: Director, KISA, July 2009). Asylum files are often closed without the claimant being informed, resulting in unexpected arrest and deportation. Between 2006 and 2008, almost 12,000 people's cases were closed, representing over half of all asylum decisions made during this period.⁵ Frequently, the official reason given for closing a file is the applicant's failure to attend their interview. Yet, conversations with asylum seekers revealed that bureaucratic inefficiency, rather than deviant behaviour on the part of asylum seekers, lies at the heart of this problem. Asylum seekers must register a change of addresses with the immigration police, who are in turn responsible for informing the Asylum Service. However, the slow and sometimes absent communication between these departments results in letters from the Asylum Service being sent to old addresses and asylum seekers unwittingly missing their interviews. Migrants and refugees move frequently due to their

⁵ For more details and sources see full chart in A.1 in the Appendix.

uncertain and precarious lifestyles. These bureaucratic practices, at best inefficiencies and at worst obstructions of the asylum process, are illustrated by the experiences of two asylum seekers below.

During the ten years it took for their asylum claims to be processed, an Iranian refugee reported that her husband's Iranian military ID went missing from his file, nearly causing their case to be dismissed before they were fortunately able to provide other supporting documentation. Later during their case, they received an unexpected letter informing them they must leave the RoC within two weeks' time. Bewildered, they went to the relevant department to make inquiries and were informed that they should ignore the letter as it had been sent to everybody. Nevertheless, in the following months, the husband was arrested outside their home and threatened with immediate deportation. Fortunately, assistance from their lawyer and an acquaintance within the Migration Department secured the man's release (Interview: M.C 25, August 2009).

In another case, an Egyptian asylum seeker, who had been waiting for four years for his family's first interview, was attempting to renew his permit, which allowed him to remain in the country while claiming asylum. He was asked to return to the office on a particular day with his wife. Leaving their three-year-old daughter at her nursery school, they arrived at the office at eight o'clock in the morning. Having waited all day, and being required to make arrangements with the nursery to keep their child for longer than normal, they finally were ushered into an office after three o'clock in the afternoon. Here, they were brusquely told that the Asylum Service had closed their file and they must immediately produce ninety Cypriot pounds each in order to pay for their deportation to Egypt. The two were separated and handcuffed, without any explanation as to why their file had been closed prior to their first interview. The young Egyptian man witnessed his wife being beaten by the police and was also beaten when he attempted to intervene. They

were then jailed for four days without any access to the outside world, their daughter, or a lawyer. Eventually, they were released, but without an explanation as to why they were released, or if their file was reopened (Interview: M.C 3, July 2009).

These two cases are intended to demonstrate the bureaucratic harassment experienced by asylum seekers, which sometimes involves physical violence. Although the details are particular to the individuals involved, they reflect experiences of many other interviewees. They are also indicative of the government's policy to limit the amount of information given to asylum seekers regarding their rights, and even their own case. As the institutional structures and services available to migrants and asylum seekers are weak or absent, their experiences are often dependent on particular individuals within the government bureaucracy with whom they come into contact. The practices outlined above, tantamount to bureaucratic harassment, violence, and strategic confusion, heighten the sense of fear and uncertainty felt by asylum seekers. As the Egyptian man explained,

They set [my wife] free, we didn't know why. We didn't know what happened to our file. It's closed, so why did they set her free? Is it reopened or.... We don't know.... And [then] they let me out [of jail], but you know, I still worry too much. Maybe they [will] send us home and they [will] come to take us from home because they don't want a lot of trouble in front of people.... I felt that I will go out from the [Cypriot] jail to the airport to another jail in Egypt.... I still have a lot of fear (Interview: M.C 3, July 2009).

The logic underlying these new policies, such as prioritising unfounded asylum claims and restricting the asylum seekers' employment, is one aimed at control and deterrence, the reduction of asylum numbers, and combating perceived abuse of the system. These priorities undermine the provision of protection for refugees and their long-term integration into Cypriot society (Interviews: Permanent Secretary, MOI; Head of Asylum Service; Head of Department of Labour; Associate Protection Officer, UNHCR, July-August 2009). Moreover, the assumption that asylum seekers are attempting to cheat the system and do not have genuine claims is hugely detrimental to those in need of protection.

This vilification is partially due to the conflation between asylum seekers and irregular immigrants. For example, politicians claim that, ‘usually all of them declare themselves as asylum seekers in order to gain time’ or ‘the problem is with the illegal... with the asylum seekers who are not real asylum seekers’ (Interview: MEP 2, July 2009). Irregular migrants are also explicitly linked with crime. For instance, a Police Immigration Officer commented:

We have a lot of cases where illegal immigrants are involved in crimes and small crimes and all that. [I’m] not saying that they are the only ones that commit a crime but it’s much easier committing a small crime in a different country in order to get some money or whatever in order to live for a couple of days ... because living in a different country without any money or any job or whatever, then ... you need the money, you need to buy food or something, then you’re going to commit a small crime (Interview: August 2009).

In order to stem the perceived abuse of the asylum system, the government restricted the economic sectors in which asylum seekers can work, as well as the initial employment possibilities available to applicants who are granted subsidiary protection. The head of the Department of Labour explained that ‘the whole policy was decided taking into account the labour market needs; not to encourage people to come here to work’ (Interview: Head of Department of Labour, August 2009). Moreover, there is no formal provision for those who are unable or unwilling to move outside of urban areas, where much of the agricultural work available to asylum seekers is to be found. A situation is thus created where individual bureaucrats have excessive power over the fate of asylum seekers – some being sympathetic will do their utmost to find work for those who are unable to move outside cities, while others will be less flexible. Unsurprisingly, the result is people leaving jobs they are assigned by the Department of Labour, opting to work illegally in urban areas where more money can be made, despite being vulnerable to exploitation. Indeed, the head of the Department of Labour reported that only fifty percent of asylum seekers register for work in the Department (Interview: Head of Department of Labour, August 2009).

Asylum seekers are firmly placed into the camp of undesirable migrants, threatening Cyprus' demographic fabric and so hindered from integrating fully into Cypriot society. Meanwhile, a much larger presence of foreign communities, such as British retirees, which one official estimated to be around 50,000, or the two million tourists who visit the island every year, are not deemed to be undesirable or a threat to the country's 'demographic fabric' (Interview: Permanent Secretary, MFA, August 2009).⁶ Officials also readily admit that the RoC needs a foreign labour force.

Thus there is an on-going contradiction in the government's rhetoric. On the one hand, there is an admission that labour migration is crucial to the wellbeing of the RoC economy (Interview: MEP 2, July 2009). Indeed, this is one reason why the Republic did not implement a transitional period with respect to the freedom of movement of nationals from the eight Eastern European countries that acceded into the EU along with the RoC and Malta in 2004. Labour migrants are considered desirable, along with EU citizens, and other wealthy migrants, whether they are British retirees or businessmen from other third countries. Even domestic workers are desirable as temporary labourers. For example, one politician stated:

There is a significant contribution from women mostly from Southeast Asia who serve in houses as domestic staff because both members of the family work and essentially raise a good number of our children today here in Cyprus (Interview: Permanent Secretary, MFA, August 2009; c.f. Interview: Head of Department of Labour, August 2009).

Along with trying to attract such migrants, there is an explicit goal of reducing the number of 'undesirable' migrants, the 'illegals' encouraged from Turkey to northern Cyprus and across the Green Line. The contradiction lies in the emphasis on the number of 'illegal migrants' and even asylum seekers, who are seen to be changing the demographic

⁶ For example, it is estimated that there were 59,000 British citizens living in Cyprus in 2006 (Institute for Public Policy Research 2006).

character of Cyprus and creating social and economic disorder, whereas labour migrants are excluded from such rhetoric, despite making up a larger portion of the population, and are seen as necessary, albeit often only as units of labour and not as complex human beings with their own agency. Moreover, the two categories of migrants – desirable and undesirable – are not distinct categories. The next section discusses how migrants and asylum seekers easily slip between legality and illegality in the RoC.

Stumbling into Irregularity: Employment and Rights

Once an asylum application has been made, the claimant is entitled to six months of a government allowance, before they may access the labour market. The allowance is equivalent to that available to Cypriot and other EU citizens seeking unemployment benefits, but the limited statistics available indicate that a much lower number of asylum seekers claim the allowance than are eligible.⁷ Moreover, those who do claim the allowance often face financial difficulties when the initial six months comes to an end, as the bureaucratic inefficiencies between the different government departments responsible cause delays in access to employment or welfare (Interview: Head of Social Welfare Services, August 2009). Even government officials admit to these problems of coordination between government departments (Interviews: Head of Asylum Service, July 2009; Head of Social Welfare Services, August 2009). For example, it may take one or two months to process a request for welfare payments, and migrants report chronic delays in receiving their cheques. Such delays encourage, if not compel people to work illegally, creating more vulnerability within this population.

⁷ In 2009, when interviews were conducted, a single person was allotted €452 per month, plus €226 (half the allotted amount) for rent, amounting to €678 in total. For any dependent over 14, €226 more was allocated. For any dependent under the age of 14, €133 was allocated. Thus a married couple would receive €904 per month (€678 plus €226, as the wife would be counted as a dependent) (Interviews: Head of Social Welfare Services, August 2009; Associate Protection Officer, UNHCR, July 2009).

Before 2003, asylum seekers enjoyed full access to the labour market after the initial six months. However, after a spate of applications from students without actual asylum claims, but with a wish to work legally, this access was limited to the agricultural and husbandry sectors. Although in 2008, the sectors were expanded to include manufacturing, whole trade, cleaning services, personal care services, and employment at car washes and petrol-filling stations, asylum seekers are still primarily offered work in the agricultural and husbandry sectors (Interviews: M.C 3, July 2009; Head of Department of Labour, August 2009).

The employment opportunities for those granted subsidiary protection are also limited to similar sectors for one year (Interview: Head of Department of Labour, August 2009). The restrictions on employment force migrants into low-skilled and low-paid work, impeding them from accessing work that matches their skills and qualifications. The restrictions have a disproportionate effect on women and families, as much of the work entails hard, physical labour on sites that often do not employ women. Moreover, much of the agricultural work is to be found in remote, rural locations, far from schools, migrant communities, accommodation, and public transportation. Here, an asylum seeker explains the challenges he and his family continued to endure after over seven years of waiting for their asylum claim to be assessed in the RoC.

In the beginning, we had the chance to work anywhere and then the law said, refugees are not allowed to work anywhere, they must work in construction, in delivery, in farm, agriculture. So, you go to the labour office – I went a lot of times because you know I have a family: my wife, I now have two daughters, six years old and one and a half years. I pay rent, electricity, I have a car, telephone, mobile.... I'm not allowed to work. If I go, they send me to agriculture, farms up in the mountains. I told her, it's too far, I cannot go and come every day. She told me you must take your family, your children, you go and stay there. I told her, I have my daughter, she's going to school, I have my little baby, we go to the doctors and we cannot do that (Interview: M.C 3, July 2009).

Migrants and asylum seekers also experience exploitation even when they accept jobs offered by the Labour Department: many report being underpaid and being expected to work without a contract (Interview: M.C 1, July 2009; c.f. Polykarpou 2005, 13-16; Mackay 2008, 10-18; Anon 2008b). These circumstances cause asylum seekers to opt to work illegally in cities instead. Besides adding further risk and insecurity to their lives, the decision to refuse work that is either unsuitable or inaccessible makes them ineligible for welfare support from the government. Changing policies and bureaucratic impediments therefore produce illegality amongst the population of asylum seekers in the RoC, further marginalising them (c.f. Düvell 2011a).

In these circumstances, women are especially vulnerable to abuse, exploitation and sexual harassment. A young Bangladeshi asylum seeker quoted above recounted arriving in the RoC and only being offered work by the Department of Labour in a restaurant 15 kilometres outside the city where she lived. Unable to fill this position and thus resorting to looking for work in the city, she recounted her experience:

I remember I was looking for a job there, over there, [on the beachfront promenade]. And there is a navy marine shop and there's a guy. You know I started from that corner and went to every shop when I was desperate looking for a job. And I said, do you have any job for me? And he says to me, today, my apartment is not free. Come tomorrow at this time and I will take you to my apartment. Okay. The job opening I meant in your restaurant not in your apartment. And, I said okay, no I don't need a job like that and I left. And I see this guy [often], I even saw him coming today. Of course, he doesn't remember, he saw a thousand girls like me. But whenever I see him, I feel urgh. And you get so many offers.... Other places I went, the one of the beach there, I felt very insecure there. The guy was insisting that I had to stay in the room next to the kitchen, though it's not far away from here.... I always have this idea that ... people might sexually harass me, thing like that I fear (Interview: M.C 22, August 2009).

Services for asylum seekers and refugees, such as healthcare, language classes or employment training, are certainly limited. However, more detrimental appears to be the lack of information given to asylum seekers about these services and the bureaucratic

hurdles involved in accessing them (Interview: Associate Protection Officer, UNHCR, July 2009; Legal Advisor, Social Advisor, Future Worlds; migrants and refugees, July-August 2009). Highlighting this difficulty is the practice at the Kofinou Reception Centre of escorting residents to hospital or to a government department in order to facilitate the process. The Reception Centre opened in 2004 and is the only one in Cyprus. In 2009, it housed 120 asylum seekers. Although the centre is located in a remote part of the island and is not well connected to urban areas through public transportation, the residents are given priority both in receiving services as well as in the assessment of their asylum claims. This arrangement speaks volumes of the difficulties that most asylum seekers face; the majority do not have the help of the reception centre and so must battle the government bureaucracy alone (Interview: Kofinou Reception Centre Coordinator, July 2009).

Asylum seekers are also not the only migrants who are vulnerable to working irregularly. Domestic workers, who make up the largest percentage of labour migrants in the RoC, face the same precariousness due to their visas being attached to a single employer, and the fact that they are usually wholly dependent on these employers for their accommodation, as well as their salaries. Practices such as the confiscation of passports and valuables by an employer are common and exacerbate this situation of dependency, encouraging exploitation and abuse (Interview: M.C 15, July 2009; c.f. Trimikliniotis 1999).

For example, a young Vietnamese woman recounted her experience of arriving in the RoC at the age of 23, after leaving her three-year-old child behind and mortgaging her house in order to acquire a work visa through an agency. In Cyprus, she had a dispute with her employer and left the residence after nine months, but was arrested by the police and put in detention, where the interview took place:

Yes, she took my passport.... When I came [to] Madam's house ... Madam kept everything [and] put [it] in the safe. When I want to take money or passport, I

ask Madam.... I worked 10 hours [everyday] ... until six o'clock, seven o'clock, eight o'clock ... too much work, but I have to take money.... I have never one problem with Madam, but [my friend] was angry with me and he said something and Madam believed him and after I have a problem.... After, my madam, said [to me], you go out. And after, I'm afraid to come back to Madam's house and I'm afraid Madam make me go to Vietnam and I'm afraid too much and I run away.... All the time I'm thinking if I go, Madam will call immigration.... And after, Madam keeps my passport for CID [the Criminal Investigation Department]. And after they take me [to detention] for two month and a half now and Madam keeps my passport. I want to go home.... And now I don't have money for the bank and if after one year, I don't give enough to the bank, the bank [will] take my house (Interview: M.C 15, July 2009).

Another 41-year-old Filipina care worker explained how she had lost her contract when her elderly employer died. She remained in the RoC irregularly, and began working as a cleaner (Interview: M.C 7-9, July 2009). The precarious situation in which these domestic workers find themselves leaves them with very little recourse to legal remedies. Indeed, many I approached to interview were too frightened to speak to me, even after being reassured that the conversations would be completely confidential and their names would not be used. Still they shook their heads shyly and murmured something about their 'Madam', who might appear at any moment, a looming spectre even when not present (Fieldwork, Limassol Beach Front, July 2009).

Indeed, a degree of illegality appears to be tolerated by the Cypriot state. Not only do some policies encourage illegality, such as the attachment of a work visa to a specific employer, but irregular migrants are also easily identifiable in the community. One needs only to visit Venizelos Square in Nicosia to find groups of mostly African men waiting for work. They arrive as early as five o'clock in the morning and wait until the late afternoon in the hope of obtaining a day's work doing odd jobs, for €20 to €30. These are men who may have applied for asylum and been rejected, or arrived on a student visa, but been unable to continue their studies. A young Nigerian man explained how he had arrived on the island two months before on a student visa, but had to drop out of university because

the fees were higher than an agent in Nigeria had led him to believe (Interview: M.C 14, July 2009).

The experiences of migrants and refugees in the RoC challenge the conception of irregularity as the status of individuals and a ‘problem’ to be solved by the state. Instead, their experiences reflect irregularity as a condition that is produced at the intersection of state controls and migrant agency. It is not only migrant action that is responsible for their irregularity. Irregularity is also produced by state policies, by national and supranational regimes (De Genova 2011; Goldring, Berinstein, and Bernhard 2009).

At the heart of this nexus between legality and illegality is the relationship between desirable and undesirable migrants. The state has attempted to draw a clear line between those who are wanted and useful – labour migrants on the island temporarily to fill labour shortages – and those who are not – ‘illegal’ migrants who travel from the northern part of Cyprus and apply for asylum. However, there is a tacit admission that these migrants are also economically useful in practices such as limiting the employment of asylum seekers to particular sectors. Indeed, the Permanent Secretary in the Ministry of Foreign Affairs acknowledged this by saying,

I suspect, even though I'm sure that no one has professed that, the officials that you have met, that a lot of those people, their presence, even if they had an illegal stay, it was tolerated because they were considered as essential to perform certain tasks in the economy that otherwise would not have been performed (Interview: August, 2009).

Despite this, there is an attempt to limit migrants’ residence in the country. For instance, due to concern that the EU directive on long-term residence of third-country nationals could allow for permanent settlement after five years, labour visas are now issued for four, rather than six years (Thomson 2006; Trimikliniotis and Pantelides 2003, 3). The Cypriot Supreme Court sanctioned this restriction in a decision in 2008, ruling that labour migrants who are present in the country for over five years are ineligible for long-term residence

under the directive because of the temporary nature of their stay in the RoC (Supreme Court of Cyprus 2008). NGOs working with the migrant and refugee populations have argued that the RoC government has interpreted the long-term residence directive to apply mainly to wealthy, white migrants: businessmen and employees of international companies, largely Russians and Eastern Europeans nationals from countries not already in the EU (Interviews: Lawyer, KISA, July 2009; Head of Department of Labour). Indeed, the judgement argues that the domestic worker in question could not ‘put down roots’ in the RoC due to the limited nature of her visa. Moreover, it points to the island’s size in justifying its decision, stating:

*We should emphasise that that policy is directly related and takes into account all the factors underlying immigration of third-country nationals, including **the degree of the possibility of the Republic, due to its small size, its geographical position and its population, to accept and assimilate third-country nationals, which constitutes a legitimate parameter in the framework of the Directive** (emphasis added) (Supreme Court of Cyprus 2008).*

Such a position echoes the exceptionalist position maintained by the country’s political elites. It illustrates the relationship between RoC’s focus on its exceptional smallness, geography and population, on the one hand, and the treatment of third-country nationals within the country on the other.

Detention and Deportation

Officials also cite the limited capacity of the island as the reason why illegality is not addressed, particularly emphasising the capacity shortage in detention centres, where those who await deportation are held. The RoC does not maintain a mandatory immigration detention policy and only detains those who have committed a criminal offence or who are awaiting deportation. Although there are difficulties in obtaining official figures on detention and deportation, a police immigration officer claimed that the RoC deports 3,000 every year from detention. Detainees are deported on regular flights and are generally

escorted by four police officers. Deportations are hindered, however, due to the county's limited diplomatic relations (Interview: Immigration Officer, Aliens and Immigration Unit, Police, August 2009).

In 2009, detention capacity was around 220. The biggest detention centre is a block within the Central Prison in Nicosia, which housed 50 detainees in 2009.⁸ Police stations can also act as detention centres. Detainees are ostensibly kept in these small police cells for only one or two days. However, one NGO reported that they knew of asylum seekers kept in such facilities for up to three months (Interview: Director, APANEMI, July 2009). Similarly, another organisation reported problems with inadequate food being given to detainees:

The problem is people who are detained for less than fifteen days, they are not considered as regulars. You have to be detained for two weeks and more to be able to have the food that other people have. So for two weeks you have food once a day. This is really bad. A snack, once a day, for two weeks. Because you are supposed to be released. But you are not... (Interview: Legal Advisor, Future Worlds, July 2009).

Although the government appears to have improved conditions in detention, according to the Police and NGOs, there is still very little oversight of these conditions. Moreover, some of the improvements made speak to the distress of detainees. One such initiative sought to remove bars from the inside of windows and place them on the outside in order to avoid people trying to commit suicide by hanging themselves with bed sheets (Interview: Legal Advisor, Future Worlds, July 2009). Furthermore, the most common complaint from detainees, according to the police, is not being given access to asylum processes (Interview: Head of Human Rights Office, Police, July 2009).

Government officials indicated their wish to expand the detention system, referring to a new detention centre to be constructed outside Larnaca in Menogea in 2012. The

⁸ The male guards on duty at the detention centre are placed there for bad conduct or for being incompetent. There is therefore frustration amongst the guards who consider it an unfavourable posting (anonymous interview, July 2009).

centre, which is partially funded by the EU, will have a capacity of 200 to 300 people.⁹ The reason for this new detention centre was made clear by an Immigration Officer: ‘We need more capacity, we need more space so we can arrest more migrants and deal with their documents and manage to expel them’ (Interview: Aliens and Immigration Unit, Police, August 2009; c.f. Interview: Head of Human Rights Office, Police, July 2009). Deterrence is also signalled as an aim of a more robust detention policy:

We have no facilities to detain anyone, so this will be, well, as I have said until now these people are given social benefits and the right to work. By detaining them, or a number of them... that might discourage new arrivals (Interview: Permanent Secretary, MFA, August 2009).

Those working with the migrant and refugee populations corroborated that detention is used as a deterrent (Interview: Associate Protection Officer, UNHCR, July 2009). Despite their wish to detain and deport more people, officials have adopted a more progressive detention policy than in some other countries, such as Malta, and openly disagreed with the practice of mandatory immigration detention (Interview: Permanent Secretary, MOI, July 2009).

Although detention was previously unlimited, in 2009, the government announced there would be a six-month limit apart from in ‘exceptional’ cases (Interview: Associate Protection Officer, UNHCR; Lawyer, KISA; Permanent Secretary, MOI, July-August 2009). However, this policy was not legally binding. The RoC subsequently transposed the EU’s Returns Directive in November 2011, which set a legal limit of 18 months. Organisations continue to highlight the lack of legal remedies for people in detention, the lack of independent oversight of the system, as well as the inadequate conditions in which people are held (Interviews: Associate Protection Officer, UNHCR, July 2009; KISA Steering Committee 2011; Kosmopoulos 2011). Moreover, although government officials

⁹ It was noted by officials that a discussion was still ongoing regarding who would be detained in the new centre (Interviews: Immigration Officer, Aliens and Immigration Unit, Police, August 2009; Head of Human Rights Office, Police, July 2009; Permanent Secretary, MFA, August 2009).

insist that those who are detained are deported within a few days, this is refuted by evidence from NGOs as well as detainees (Interviews: Permanent Secretary, MOI; migrants in detention; Associate Protection Officer, UNHCR; Lawyer, July-August 2009). The type of informal response by the government accords with the general treatment of asylum and migration matters in Cyprus, which are often left to individual administrations or even individual officials rather than being transposed into legislation. As a lawyer working for an NGO explained,

This detention is arbitrary in the sense that it's too long, it does not take account the situation of the people. It does not take into account the fact that in the majority of cases, they cannot be deported, and it's arbitrary also in terms of the conditions of detention because they detain people in detention centres that are normally designed for people to stay for a few days until somebody can be deported, and they have been detaining people for six months to three years. So, according to the law, if you are arrested on the basis of detention and deportation orders – to be detained [and] to be deported – there's not a maximum period of detention, so they can detain you indefinitely. The government obviously says no we abide by the court of human rights case law. This is crap. If you are caught to be deported, you may end up in detention indefinitely, until you are deported (Interview: KISA, July 2009).

EU membership has thus had varying effects on Cyprus' detention and deportation policies. It has prompted Cyprus to introduce legal limits to detention, as well as introducing more monitoring mechanisms of both detention and deportation practices. However, there are less positive consequences as well. Since its accession into the European Union, Cyprus appears to be expanding its detention practice, as well as employing it as a deterrent. Cyprus has also persisted in viewing detention as a short-term measure prior to deportation, although it is not always a straightforward process and there have been cases of people remaining in detention for years. Accordingly, people are also detained in buildings and conditions designed for short-term detention. This practice, seen in the use of police stations as detention centres, is detrimental to detainees as such facilities are limited, for instance, in their provision of outdoor space.

The use of detention and deportation is also politically charged. Cyprus' limited detention capacity is useful in underlining the message that the country is overwhelmed in the face of irregular immigration, and thus in need of EU support. As those that enter the RoC without documents or with falsified documents may be detained, and have often entered the country by crossing the Green Line, detention and deportation are also linked to the 'Cyprus problem'.¹⁰

Conclusion

The history of immigration and asylum in the Republic of Cyprus has resulted in a continued expectation, despite evidence to the contrary, that migrants are on the island only temporarily and primarily as labourers, rather than as people with families in need of protection and with possible expectations of long-term settlement. This assumption informed the temporary migration model set up in the early 1990s and still informs many policies today despite the two-decade interlude and foreigners comprising at least 14 percent of the current population.¹¹ The temporary migration model has not only restricted the rights and opportunities of migrants and asylum seekers, it has produced illegality, with people moving fluidly and often unwittingly between states of legality and illegality.

Indeed, as has been discussed, migrants and refugees face a great deal of strategic confusion and bureaucratic harassment when engaging with the Cypriot state. In response to these and other forms of control, migrants have of course developed strategies and exercised their own agency. For instance, people now travel to the island on work permits or on student visas. Others arrive having destroyed their documents in order to avoid deportation. Asylum applications have also been made in order to delay one's departure

¹⁰ If they then apply for asylum, their detention is limited to 32 days (European Parliament 2008, 4).

¹¹ This is a conservative estimate for 2008 and includes: the foreign workforce (96,324), the number of asylum seekers and refugees (9,479), and conservative estimates of irregular migrants in the RoC (5,000) (sources for the figures respectively come from: Cyprus Statistical Service 2010a; UNHCR 2010b; Trimikliniotis and Demetriou 2005).

from the country or in order to gain access to the labour market. Marriage was another strategy that some migrants used in order to stay in the country. In response, the government was taking new measures to 'verify' marriages between EU citizens and third-country nationals. Alongside many of these strategies, social networks provide money and support throughout the migrant journey (Interviews: e.g. M.C 3, July 2009; police officials, migrant detainees, 2009). Employing such strategies does not of course make migrants and refugees the villains they are often portrayed as. They are subjects with varying degrees of autonomy to pursue their own interests within the confines of a state.

Such negotiations between non-citizens and the state take place within the context of the government's association of irregular immigration with the so-called 'Cyprus problem', the division of the island and the Turkish presence in the north. The association reinforces the idea of irregular immigration as a temporary phenomenon, while somewhat paradoxically linking it to an enduring state of exception in Cyprus. This latter association results in irregular immigration being interpreted as a threat to the 'demographic fabric' of Cyprus and its security more broadly, thereby supporting an extreme, militarised form of nationalism.

At the EU level, Cyprus has emphasised the need for more 'solidarity' within the context of sharing the 'burden' of irregular immigration financially and practically, and the context of bringing about a resolution to the division of the island. However, Cyprus does not only portray itself as vulnerable and weak, as a nation invaded and occupied, unable to control its own border and irregular immigration. Although it sees itself as a small state within the EU, it also appreciates its power. At a conference in 2009, the Minister of Interior said that 'Cyprus, although a small EU member state, has shown that it has an

important role in shaping EU immigration and asylum policy.’¹² Moreover, when asked about the pressures the EU imposed on Cyprus to act as a migration gatekeeper, the Permanent Secretary in the Ministry of Foreign Affairs said,

*Well, of course there is, I wouldn't say pressure at this stage because they see that we do our best and they understand the magnitude of the problem. Quite to the contrary, I would say there is mutual understanding with the Commission and a number of member states are trying to deal with the situation. **Quite the contrary I would say there is pressure from us on the EU to offer more effective help and on our partners, especially the bigger countries, for burden sharing in the sense of, that they should accept and host a number of these people pending the outcome of their applications given the restrictions that we have in terms of resources and space** (emphasis added) (Interview: August 2009).*

Of these two statements made by Cypriot politicians, the latter made by the Permanent Secretary reflects the emphasis on being a small state with limited capacity, an exception within Europe. However, the former statement made by the Minister of Interior portrays Cyprus as more of an ‘expert’ on migration matters, a position that is fundamentally different to that taken by Malta as a country overwhelmed by clandestine migration. The second quote also reinforces this Cypriot position, and alludes to perhaps an overinflated sense of power within EU migration policy-making circles. The next chapter examines these different strategies adopted by Malta and Cyprus in response to immigration to the two islands, patterns that are also compared.

¹² Interior Minister speaking at IASFM in Cyprus, June 2009, reported by the *Cyprus News Agency*, 26 June 2009, given to author by the Permanent Secretary of the Ministry of Interior, June 2009.

VI

Lilliputian Powers? Comparing Malta and the Republic of Cyprus

Introduction

This chapter compares the case studies of Malta and the Republic of Cyprus (RoC), examined in the previous chapters. In doing so, it identifies both similarities and differences between the two in order to better assess the role of power in the relationships these countries have with the EU, as well as the role of migrants within the context of these relationships. Although both states are structurally weak players within the European Union, having few representatives in forums such as the Council and little material power in the form of strong militaries or large economies, they have both employed forms of nonmaterial power in order to make their case vis-à-vis irregular immigration and asylum within the bloc.

Before addressing how Malta and the RoC's use of nonmaterial power within the EU compare, I shall turn first to the migration trends in the two countries between 2000 and 2010. This discussion explores how the different geographies and labour market conditions of the two islands result in nuanced migration patterns. The differences and similarities of migration controls are also explored. I then turn to the two states' strategy of employing exceptionalist discourse in order to create a crisis scenario. And finally, the success and limits of this strategy are discussed, as well as its inherent contradictions. The argument in this chapter is that, compared to the RoC, Malta has played a much more significant role in influencing EU migration and asylum policies since 2004, while the Republic of Cyprus has continued to emphasise the division of the island and Turkey's continuing presence in the north.

Migration Trends

Both Malta and the RoC saw an increase in irregular migration between 2002 and 2003. In Malta, this increase took the form of boat arrivals from Libya, due at least in part to new mobility restrictions and surveillance along the West African coast, which prompted migration patterns to move to routes through central Africa. In the RoC, the rise in numbers was more complex. The opening of the Green Line in 2003 appeared to cause an increase in the number of third country nationals arriving across the Line irregularly. The Cypriot Police reported an increase in the apprehension of migrants crossing the Green Line irregularly during this period, from 725 in 2002 to 2,796 in 2003, and to 5,287 in 2004 (European Commission 2006a). However, the interviews I conducted with migrants suggest that they did not cross the Line at official checkpoints and thus the increase in apprehensions may have been due to the intensification of patrols and surveillance.

Both countries also saw a related increase in asylum applications, which peaked at 9,589 in the RoC (in 2004) and at 2,515 in Malta (in 2008). In the RoC, the extraordinarily high number of asylum applications was attributed to the lack of access to the labour market for those on student visas. Thus, in 2003 and 2004, a large number of Pakistani and Bangladeshi students applied for asylum in order to work while carrying out their studies in the RoC. The law was subsequently amended in order to allow students access to the labour market, and a decrease in the number of asylum applicants followed.

The nationalities of migrants and refugees in Malta and the RoC reflect the geographic positions of the two countries. In Malta, the top five nationalities of asylum applicants between 2004 and 2010 were people from Somalia, Eritrea, Nigeria, Sudan, and Côte d'Ivoire. This is representative of those entering the country irregularly as the vast majority of migrants apply for asylum. It also echoes well-established migration routes from Sub-Sahara Africa through Libya and across the Central Mediterranean. In the RoC,

the top nationalities for this period were Syrians, Bangladeshis, Sri Lankans, Pakistanis, and Georgians. This indicates the island's proximity to the Middle East and to migration routes from Asia. There are also two other clusters of irregular migrants that are important in the RoC. First, there are those who have travelled from Sub-Saharan Africa, usually via Turkey. Nigerians are the largest in number who apply for asylum. However, I also spoke to people from the Congo, Kenya, Cameroon, and Ghana, some of whom had arrived as students. The second group is made up of female domestic workers from Southeast Asia, particularly Vietnam, the Philippines, and Sri Lanka. These migrant women are the largest group of labour migrants on the island and are susceptible to falling into an irregular status due to the conditions of their visas.

Both states saw a decrease in the number of irregular migrant arrivals and asylum applications towards the end of this decade: in the central Mediterranean, this was due to new migration controls, such as those produced by the Libyan-Italian Treaty on Friendship, Partnership and Co-operation; while in the RoC, government officials identified the moribund economy as the reason for the decrease (Interviews: government officials in Malta and Cyprus, 2008-2009; for numbers in Cyprus, c.f. European Commission 2011d). In 2011, however, Malta saw the number of migrants arriving by boat increase once more due to the civil war in Libya and thus the de facto end of the Italian agreement with Libya's former leader, Muammar Gaddafi. The majority of these arrivals occurred between 28 March and 1 June of that year, comprising 1,530 people on seven boats. A further 44 Somalis arrived in early December 2011.¹

Some conclusions may be drawn about the different migration patterns of the two islands. Malta has experienced people entering its territory clandestinely by boat, while in the RoC migrants have primarily travelled by land, across the Green Line. This has

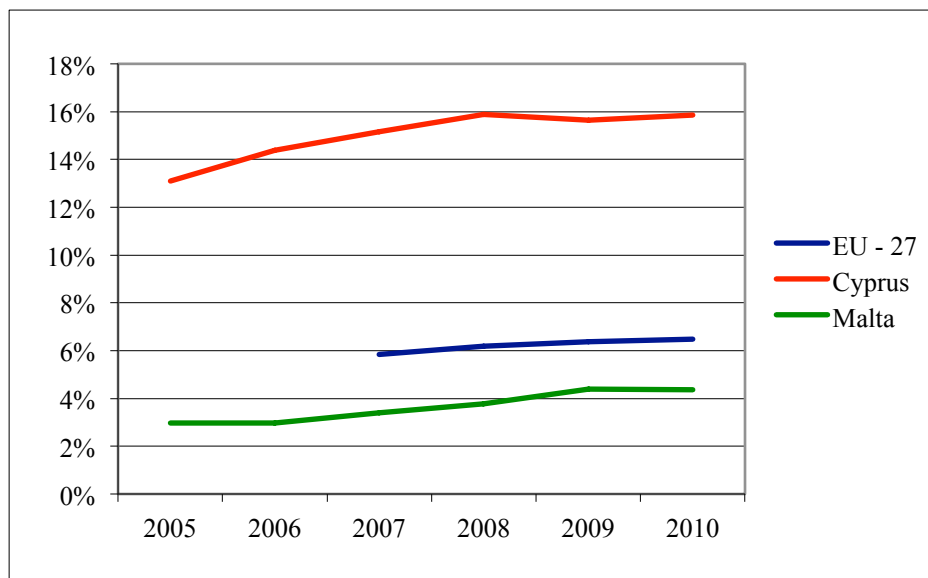
¹ I return briefly to these developments in the next chapter [c.f. research carried out with Derek Lutterbeck for project commissioned by the EU Agency for Fundamental Rights (2012); Anon 2011j].

implications for the volume of migrants arriving at any one time: boat arrivals generally involve larger groups of people than those crossing land borders. The issue of irregular immigration to Malta has also garnered more media attention within Europe than similar flows in Cyprus. This is likely due to multiple factors, among them the government's unrelenting emphasis on these flows within European forums and the sensational images of people arriving on overcrowded, unseaworthy vessels. Malta is also portrayed as a place of transit, a springboard for migrants into Europe, while Cyprus could be considered an enclave of Europe, far from its shores in the Eastern Mediterranean, where migrants have few opportunities for onward mobility. Of course, the reality is more complex: a lack of mobility is a frustrating reality for many migrants in Malta, some of whom do not manage to continue to Europe. In the RoC, on the contrary, the feeling of being 'stuck' is less pervasive amongst migrants, in part due to more economic opportunities in the country.

Divergent Economies and Geographies

The differences in the patterns of immigration as well as the governments' responses, which are considered in more detail in the next section, can be explained by the different economic conditions, as well as the different geographies of the two islands. Although formal labour migration is a feature in both countries, in the RoC, these numbers are more significant. The introduction of a guest worker scheme in the early 1990s produced a steady rise in the proportion of migrant workers since 1995, peaking at 26 percent of the economically active population in 2009 (c.f. Graph 5.1). More generally, in 2010, there were 127,316 foreigners (including EU citizens) living in the RoC, making up 16 percent of the population, as depicted in Graph 6.1 below. In Malta, this number was only 4.4 percent, while across the EU as a whole the percentage was 6.5 percent. Although foreigners make up a smaller percentage of the Maltese population compared to the RoC

and the EU, they are still considerable when compared to the number of irregular migrant arrivals. For instance, in 2010, it was estimated that 7,300 EU citizens resided in Malta (making up 1.8 percent of the population), along with 10,800 non-EU citizens (2.6 percent) (Eurostat 2011b).²



Graph 6.1: Foreign Population as Percentage of Total Population³

In both countries, the political emphasis is clearly on those entering the country irregularly, rather than irregularity more broadly. Moreover, labour migration and its relationship to irregular migration has been conspicuously absent in state and media representations of migration. The focus on clandestine entry turns our attention to the countries' borders as symbolic sites of state power, the power of these states to fortify and control them. In Malta, the number of overstayers is less significant than in the RoC.⁴ Nevertheless, their absence from the migration debate reflects its politicised nature. Similarly, asylum is publicly and politically associated solely to those arriving in a clandestine manner. Thus

² Similarly, according to one government official, there were an estimated 8,000 third-country nationals with residence permits in Malta in 2009 (Interview: Director of Citizenship and Expatriate Affairs, MFA, April 2009).

³ Includes EU citizens; data not available for EU aggregate in 2005 and 2006 (Eurostat 2011b).

⁴ For example, in 2010, the police reported 196 people who overstayed their visa or otherwise contravened the Immigration Act. Statistics for other years were not available (figures provided to author by the Police, March 2012).

asylum applicants who have arrived through legal channels – 300 in 2011 – are also rarely mentioned (figures provided to the author by the Refugee Commissioner, December 2011).

In the Republic of Cyprus, however, the number of overstayers is more sizeable, making up 32 percent of the irregular migrants apprehended between 2005 and 2009. This trend reflects the more numerous third-country nationals working in the country, as discussed above. Indeed, their presence as domestic workers and carers is palpable in the country, where on a Sunday many congregate in public spaces by the sea or in parks in order to enjoy their weekly day off. For these labourers, falling into an irregular status is often due to the vulnerability propagated by the conditions of their visas, which are attached to a specific employer. Domestic labourers therefore lose the right to remain in the RoC if a dispute with their employer results in their dismissal.

The large number of migrant labourers in the RoC has also prompted labour unions to take a more prominent role in migration discussions on the islands. Trade unions in the RoC were involved with the introduction of the labour migration scheme in the early 1990s. In order to avoid a tiered labour market, the unions negotiated with the government and employers for an agreement that would allow foreign workers to become union members. This has proven quite successful: for instance, within the construction sector branch of the largest Cypriot trade union confederation, 60 percent of the 18,000 members were foreign nationals (both EU and non-EU nationals), according to the branch's General Secretary.⁵

However, according to the General Director of the confederation, despite these safeguards, the marginalisation of asylum seekers and irregular migrants in more recent years has introduced a hierarchy within the labour market: 'We are now facing a situation

⁵ The sector employs 45,000 workers, 50 percent of whom were foreign and around 2,000 of whom were third-country nationals. Eighteen thousand of these workers are unionised (Interview: General Secretary, Pancyprian Federation of Labour, July 2009).

where we have, let's say, a labour market, which is supposed to be one, but in reality it has levels - two, maybe three labour markets' (Interview: July 2009).

Another variation in the labour markets of the two countries is suggested in the access afforded to asylum seekers and refugees. In the RoC, asylum seekers do have access to the labour market after an initial six months, but only to particular sectors where there are labour shortages, such as in agriculture. It is only once asylum seekers are recognised as refugees that they have full access to the labour market. Those with subsidiary protection are also restricted to particular sectors, while failed asylum seekers do not have any formal access. In Malta, on the other hand, asylum seekers gain access to the labour market after their initial period of up to 12 months in detention.⁶ Moreover, they continue to have access regardless of whether or not they are recognised as refugees, although failed asylum seekers face more barriers, such as higher costs and more stringent requirements to obtain permits.

This is not to say that formal access results in migrants and refugees finding work easily. On both islands, many resort to working informally, unable to find work through legal channels. In both countries, government officials largely overlook migrants' formal and informal contributions to the labour market, especially those migrants who have arrived on the islands irregularly. There is thus a clear division between discussions about labour migration, which is seen as beneficial to the economy, and irregular migrants and asylum seekers, who are depicted as a drain on the economy and a threat to the state's security and culture. However, such a sharp distinction is constructed. The experiences of migrants and refugees, as well as the governments' labour policies prove otherwise. In Malta and the RoC, migrants in all three of these categories contribute to the labour

⁶ In Cyprus, by contrast, the Refugee Regulation (2000) forbids the detention of asylum seekers for more than 32 days (European Parliament 2008, 4).

market, formally and informally. Moreover, in the RoC, asylum seekers' labour power is harnessed to fill particular labour market shortages.

The distinction made between these types of migrants also belies the fact they are not rigid categories. For instance, in both countries, labour migrants arriving on visas sometimes overstay them – a phenomenon more common in the RoC than Malta. More broadly, the political vilification of asylum seekers and irregular migrants is at odds with the histories of the two islands specifically, and the histories of islands generally, as spaces of mobility. Both countries have seen conquerors come and go, have been and continue to be sites of trade, travel and military ventures in the Mediterranean. They attract millions of tourists every year, as well as foreign students, retirees, and labour migrants. Class divisions between migrants on the islands are clear, as those forced to take irregular routes into the islands live alongside those who are able to afford lifestyle migration. Such class divisions also manifest themselves in the types of migration controls imposed on migrants entering the two islands. The relative ease with which students, tourists and retirees move into and out of these states is not afforded to those less fortunate who risk their lives in order to overcome the systems of control and deterrence implemented by the states. Alongside class is a racial and religious element to the depiction and thus control of irregular migration: irregular migrants are often superficially and inaccurately portrayed as the black, Muslim other, who at the extreme becomes an invader in a white, Christian country.

Between Malta and the Republic of Cyprus, there are also differences in irregular migration controls due to the islands' varying political geographies, including their borders and border zones. In Malta, most irregular migrants do not land on the island, but are rescued by the Armed Forces in the state's search and rescue (SAR) region. Lacking the resources or legal mandate to control such an extensive border and stop migrants from

crossing it, Malta has therefore decided to prioritise deterrence through, for instance, the maintenance of an 18-month mandatory immigration detention policy, despite the scant evidence to suggest that this deterrent is effective.⁷ The large search and rescue area has also prompted the government to maintain that it is not legally responsible for the rescue and thus disembarkation of those in its SAR area, but rather solely responsible for the coordination of such action. In this, it has been engaged in an ongoing dispute with the Italian government over responsibility for migrants at sea who are rescued nearer to Lampedusa, as well as refusing to allow commercial vessels to enter Maltese ports after they have rescued migrants in the state's SAR region (e.g. Sansone 2011a; Anon 2011h; 2009c; Ministry for Justice and Home Affairs 2009; c.f. Council of Europe 2012).

In the Republic of Cyprus, most unauthorised entries occur across the Green Line rather than by sea. This is due to the northern coastline being under less surveillance than the southern area, and the fact that there are direct ferries from the Turkish Republic of Northern Cyprus to Turkey and Syria. Nevertheless, the RoC authorities are hesitant to patrol the Green Line too explicitly, fearing that these actions would bestow the division with legitimacy and permanence. Detention is also not automatic upon arrival, but rather used primarily as a means to deport migrants. There was previously no legal limit to detention, although the Communist government elected in 2008 stated they would not detain people for longer than six months. The transposition of the EU's Return Directive in 2011 has now set a legal limit of 18 months.

Thus in Malta and the RoC, there is an emphasis on uncontrollable borders. A discourse of victimhood is adopted, where these states are depicted as vulnerable to the influxes of irregular migrants, flows that are associated with the security of both islands. This is certainly more explicit in the case of the RoC. Nevertheless, in both countries, the

⁷ An interesting point of comparison is the literature on the use of detention (Bosworth 2008; Leerkes and Broeders 2010) and deportation (Gibney 2008; Gibney and Hansen 2003) as a spectacle, symbolically reasserting the power of the state.

focus on deterrence in order to reduce the ‘burden’ results in a minimal amount of attention given to vulnerable groups within these mixed flows of migration, the assumption being that migrants tend to fit a single, male stereotype, who are also often portrayed as attempting to abuse the asylum system. The governments’ neglect of this aspect of migration, as well as broader integration measures are redressed by NGOs, to the extent that their capacities permit. As such, NGOs play a crucial role in both countries in the process of identifying vulnerable migrants and also carrying out more long-term support for these and other migrants.

The Use of Nonmaterial Power: Discourses of Exceptionalism

Despite these different trends in migration and migration controls in Malta and the RoC, the two countries have joined forces within the EU. In this section, I will outline how Malta and the RoC have employed strategies based on nonmaterial power in order to garner more support from the EU with regard to migration. Both countries have emphasised the relative numbers of irregular migrants and asylum seekers arriving on the islands, even though the numbers are not large in absolute terms. Both governments highlight the number of arrivals per capita. In Malta, the population density (1,200 per square kilometre), which is one of the highest in the world, is also underlined as amplifying the effects of these arrivals. For example, the Permanent Secretary of the Maltese Ministry for Justice and Home Affairs said, ‘... in relative terms there are no countries who have our problem with respect to the size of our population and population density’ (Interview: April 2009).

Geography is another important factor. Both countries stress that they are on the EU’s periphery and also border turbulent areas. For example, in explaining the increase in migrant arrivals in the RoC, the head of the Asylum Service said, ‘Cyprus is surrounded by

conflict areas producing beneficiaries to international protection: Palestine, Iraq, Turkish areas, [and the] former Soviet Union' (Interview: July 2009). Similarly, Malta looks to Libya as the source of its flows of irregular immigration. The Director General of Operations in the Ministry for Justice and Home Affairs said,

If you want to patrol a border, especially a sea border which is much more difficult than a land border, you just can't put up a gate with a notice that says this is as far as you go. The situation comes back to the cooperation in this case mostly with Libya, which is the source of departure. And unless we get this cooperation, it's very difficult to enforce something (Interview: April 2009).

Malta and the RoC thus present themselves as overwhelmed by immigration due to demographic and geographic factors, while paradoxically still playing a vital role as EU migration gatekeepers. Indeed, this role as a gatekeeper adds to the perceived burden. In particular, the Dublin II Regulation, which stipulates that asylum seekers must apply for asylum in the first EU country of arrival, is regarded as placing disproportionate responsibility on these peripheral member states. In making this argument, they deploy nonmaterial power in the form of moral authority, as small member states carrying a considerable humanitarian responsibility. As the head of the RoC's Asylum Service explained, 'Dublin was made in order to protect the interior of the Union. Thus this accords burden to the borders of the Union in order to take measures to combat the asylum shopping' (Interview: July 2009).

By employing their symbolic capital as small states, Malta and the RoC have also used this portrayal to argue that the answer to these problems is more support from the EU, and in particular practical support in the form of a 'burden-sharing agreement' based on 'solidarity amongst member states' (Interviews: government officials, 2008-2009; Crosbie 2007). The two states have championed relocation schemes within Europe, and the

inclusion of an exemption clause in the Dublin II Regulation for countries facing ‘particular pressures’.⁸

Malta and the Republic of Cyprus have also exploited policy networks in southern Europe. In order to further their cause, the two states joined Italy and Greece in 2008 to form the ‘Quadro Group’. Such alliances made between subsets of EU member states are not a novel phenomenon. Indeed, a handful of countries, comprising of France, Germany, and the Benelux countries, first initiated the Schengen Agreement within the EU. Considered a testing ground for the relaxation of internal borders, the agreement also built upon previous multi- and bi-lateral arrangements such as the Benelux Economic Union (1957), the Nordic Passport Union (1957), and the abolition of border controls between France and Germany in 1984. These alliances acted as political pacemakers within the Union, paving the way for the Schengen Agreement, which would be adopted into community law in 1997 as part of the Amsterdam Treaty.

How does the Quadro Group compare to these other alliances? It is certainly much less established and coherent, having not signed any formal agreement. Instead, the Group presented a statement to the Council in January 2009, which outlined the countries’ joint position on the issue of irregular immigration in the Mediterranean. The concerns raised by the Group did subsequently become ‘a major political issue and dominated discussions in the Justice and Home Affairs Council over 2009’ (Collett 2010). As I have argued in Chapter Three, the Group has also been successful in widening the debate over solidarity, which has traditionally been restricted to financial transfers and now includes the transfer of people within the Union. From a small state perspective, the Group has proven a

⁸ The relocation of asylum seekers, whose claims have not yet been decided and who may not ultimately qualify for protection, is a long-term goal of the Maltese and Cypriot governments. This, however, is even less popular with other member states (Interviews: government officials, 2008-2009; EU Council official, July 2010; Council 2009b).

valuable tool for Malta and the RoC to reference a wider bloc of states that share their position on the subject.

However, there are also limitations to the Group's power and its ambitions, as the four countries' interests do not always align neatly. The tension between Italy and Malta that periodically erupts over the rescue and disembarkation of migrants at sea is one example. Moreover, the momentum of the Group seems to have stalled: after 2009, the Group has been largely inactive, with Malta continuing to champion many of its goals unilaterally. As such, the alliance may have been short-lived, unless other opportunities arise around which the countries can coalesce.

Despite these internal tensions in the Quadro Group, the rhetoric used by Maltese and Cypriot government officials is principally one of solidarity with each other, even when, for example, ostensibly competing for the seat of the European Asylum Support Office in 2009. As the Permanent Secretary in the Cypriot Ministry of Interior explained,

What we are interested in is that the [European Asylum] Support Office should be, we feel strongly that it should be in the Mediterranean because the other member states do not feel the particular pressure that we are facing. Okay, we shall be very, very glad if the member states give it to Cyprus, but we shall not be that disappointed if the office is given to one of the [other] member states that are in the Mediterranean (Interview: July 2009).

Cypriot officials thus indicated their interest in promoting the narrative of irregular immigration in the Mediterranean as being exceptional, above the interest of securing the seat for the Asylum Support Office. The RoC and Malta were the main contenders for the seat, along with Bulgaria. Malta, employing the same logic of exceptionalism based on the number of migrant arrivals on the island, was ultimately successful (Anon 2009d).⁹

⁹ For emphasis on the numbers arriving in Malta, see Malta's bid for EASO, available here: <http://www.easomalta.eu/>; The success of Malta's bid raised concerns among human rights organisations, who pointed to Malta's lacklustre track record of receiving refugees and its priority of preventing 'illegal' migration both nationally and at the EU level (Phillips 2009).

The two islands have responded to the phenomenon of irregular migration (and the associated increase in asylum applications) in a similar manner in many ways, drawing on their nonmaterial power in the forms of symbolic capital, moral authority and networks. However, there are also important nuances in their response. Although both islands are small, size and population density play a more prominent role in Maltese migration discourse and the government is generally more vocal in calling for further ‘burden-sharing’ initiatives within the EU. The RoC, on the other hand, is politically dominated by the fact that the island remains divided despite its accession into the EU, a political issue within which irregular immigration is subsumed.

The emphasis on the Turkish presence in the north thus spills over into the debate on irregular immigration. Government officials focus on those migrants arriving across the Green Line, interpreting it as an attempt by Turkey to alter Cyprus’ demographic fabric. In doing so, the government distorts the figures of irregular migrant arrivals, overlooking the irregular immigration that occurs on the island due to labour migrants overstaying their visas or working outside their conditions. Government officials also go further in maintaining that the number of asylum seekers and irregular migrants in Cyprus would be ‘approximately normal’ without the Turkish presence on the island (Interview: Head of Asylum Service, July 2009).

The Cypriot government has also given less prominence than Malta to the consequences of the Dublin II Regulation, especially to the migrants returned from other member states through this mechanism. Indeed, other states return fewer people to the RoC than to Malta (Interviews: Permanent Secretary and Administrative Officer, MOI, July 2009; MEP 1, July 2009). For example, in 2008, there were 71 and 541 Dublin requests in the RoC and Malta, respectively, while in 2009, there were 60 and 1,125. These resulted in

15 people being returned to the RoC in 2008 and 11 in 2009, while in Malta, 131 were returned in 2008 and 473 in 2009 (Eurostat 2012).

Although both governments point to the disproportionate ‘burden’ placed on peripheral states by the Regulation, the calls for its renegotiation and the emphasis on the injustice it inflicts on the small states are much more strident in Malta. The reasons for this are three-fold. First, geographically, Malta finds itself along a migration route, from North Africa to continental Europe. Cyprus, on the other hand, in the eastern corner of the Mediterranean, cannot make the same argument. Athens, the closest EU capital city, is almost 1,000 kilometres away from Nicosia. RoC government officials thus believe that the country’s geographic location inhibits people from leaving the island (Interview: Permanent Secretary, MFA, August 2009).

Second, fewer people in the RoC are granted refugee or subsidiary forms of protection, which would grant them the legal right to travel to other countries in the EU (and the possibility to overstay). This limits the number of people who may be returned to the country under the Dublin II Regulation. Third, the two islands differ in the proportion of labour migrants present, as discussed above. Generally encouraging more labour migration, the RoC also employs asylum seekers in particular sectors. There are thus fewer incentives and opportunities to continue on to Europe from the RoC. Although the blue borders of both islands produce immobility for migrants, the history of labour migration to the RoC means that the country is considered more of a destination county, while Malta sees itself and is seen by many migrants as a place of transit, geographically along the migration route to Italy.¹⁰

Despite these differences, the RoC has joined Malta in calling for a redistribution of the perceived disproportionate responsibility placed on the periphery of Europe through

¹⁰ Evidence of this lies in the fact that, since the early 1990s, one of the biggest labour unions in Cyprus has accepted foreign workers as members, and there is a deliberate attempt to unionise (legal) migrant workers (Interview: General Director, PEO Union, July 2009).

various measures. This has included support for the proposal to suspend transfers under the Dublin II Regulation for states facing ‘particular pressures’ and also for relocation schemes to be introduced, whereby those asylum seekers granted protection would be resettled in another EU country. Support for such schemes by the RoC is somewhat surprising considering they stand to benefit little even if such proposals are accepted due to having a limited number of both recognised refugees and Dublin transfers on the island. It suggests that the RoC has supported the schemes in order to profit from the attention they draw to the broader issue of irregular immigration in the Mediterranean, which in the RoC has been associated with the division of the island and Turkish presence in the north. As such, it has been useful in attracting funds from the EU and in reinforcing the blame that the RoC lays at Turkey’s door for irregular immigration and the broader issue of the division of the island.

Constructing a Crisis

In both states, a crisis scenario has been constructed through the use of discourse based on exceptionalism. Although there are differences between the two states, as outlined above, an important element in both countries is the portrayal of the situation as a crisis, as one that is outside the control of the state. In a distortion of reality, poor migrants become the invaders with the well-worn imagery of floods being adopted, alongside that of borders that cannot be secured, whether they are sea borders in Malta or the Green Line in Cyprus.

The crisis scenarios in Malta and the Republic of Cyprus are based on two important assumptions about the past. First, sprinkled throughout the rhetoric of politicians in both countries is a belief in a mythical homogenous society of the past. For example, the Cypriot Permanent Secretary in the Ministry of Interior explained that,

Until a few years ago, maybe 15 years, we were a pretty homogenous society with very few foreigners. So the presence of so many non-Cypriots among us

come from diverse origins and traditions, religions and civilizations presents a serious challenge to society, especially a small insular place like Cyprus, which also happens to be geographically remote in comparison to the rest of the European Union (Interview: July 2009).

Maltese politicians express similar beliefs. Such sentiments are not only dangerous ideals and dishonest reinterpretations of the past, but also reject entirely the idea of mobility, which is fundamental to the history of islands. The histories of Malta and the RoC reflect the comings and goings of empires, militaries, and peoples. In Cyprus, this interpretation is reminiscent of the ideologies that led to the division of the island. As such, it brushes over the complex relationship between Greek and Turkish Cypriots, as well as the ethnic diversity within the Cypriot population. Similarly, in Malta, successive waves of colonial powers as well as the mobility of the Maltese population has resulted in ethnic diversity on the island.

The second assumption underlying the crisis scenarios in both countries is that before joining the EU, they had less responsibility for irregular immigration. For instance, in Malta, the unofficial policy before joining the EU was to help those migrants in distress before allowing them to continue on to Italy (Interviews: Maltese MEPs, government officials, 2006-2009). Similarly, officials in the RoC hark back to a time before the EU imposed its directives and regulations, when boatloads of migrants could be returned without consideration of human rights and other international forms of protection (Interview: MEP 2, July 2009).¹¹

These assumptions allow Malta and the RoC to deflect responsibility towards the EU for imposing new regulations, towards migrants and refugees for creating social tension within the national community, and towards neighbouring non-EU countries for ‘allowing’ these migrants and refugees to cross their borders. For example, in the RoC, the same

¹¹ As noted in the previous two chapters, despite this nostalgia, both states have wholeheartedly adopted rhetoric of EU solidarity and thus fall short of criticising the institution.

rhetoric of externalising responsibility is used about Turkey, as is used about Libya in Malta and the wider central Mediterranean. More broadly, responsibility is eschewed by depicting irregular immigration as a crisis, driven by factors beyond the control of these impotent states. The crisis construction is thus another deployment of nonmaterial power in the form of symbolic capital. At its heart is the image of the two island states as overwhelmed by irregular immigration due to demographic and geographic factors. However, alongside this depiction of vulnerability, Malta and the RoC are simultaneously depicting themselves as vital to the EU as migration gatekeepers, a contradiction that I return to below.

Deploying a Crisis: an effective strategy?

It is now almost a decade since these two small islands saw a significant increase in irregular immigration. However, the interpretation of irregular immigration as abnormal and a crisis remains dominant. Before turning to the limits and contradictions inherent in the strategy of constructing a crisis in the following section, I first assess its effectiveness. In particular, I point to how the two countries have been successful at agenda setting at the regional level, how they have attracted a large amount of financial support from the EU, and how they have fostered a widening of the concept of solidarity to include the relocation of refugees within Europe, along with the transfer of money.

Both countries agree that they have been successful at keeping irregular immigration in the Mediterranean on the EU's agenda. Commission and Council officials in Brussels also recognise the strength that Malta, in particular, and the RoC as part of the Quadro Group have shown in keeping the subject on the table. For instance, an official within the Polish permanent representation said about Malta,

... [T]hey have managed to go a huge way out since the time they actually started talking about this. Last year and a half was a huge success for Malta, I would say, because we know that the problem is drastic (Interview: July 2010).

Indeed, as small states in the Union, Maltese and Cypriot politicians expressed their satisfaction in attaining this goal (Interviews: government officials, 2008-2010).

In both countries, the discourse has been successful in prompting financial support from the EU, as illustrated in Table 6.1 below. Between 2007 and 2011, Malta received €44.1 million from the EU Funds for Solidarity and Management of Migration Flows, while the RoC received €30.1 million.¹² This programme comprises of four funds: the European Refugee Fund, the European Integration Fund, the External Borders Fund, and the Return Fund. Reflecting the broader regional allocation of money between these four funds, the majority of funds received by Malta and the RoC has been from the External Borders Fund (78 percent and 46 percent, respectively).¹³ This pattern is starker if one considers both the Return Fund and External Borders Fund as primarily pertaining to exclusionary measures such as forced returns and surveillance equipment and infrastructure. The two funds make up 84 percent of the money allocated to Malta, and 62 percent of that allocated to RoC. The smallest share of EU funds in both Malta and the RoC is dedicated to integration measures, such as language courses and civic orientation.

Cypriot and Maltese officials describe the financial assistance provided by the EU as adequate. Indeed, amongst the 27 EU member states, Malta and the RoC are also two of only ten member states that have received a larger share of these funds than their share of population and GDP.¹⁴ Moreover, the expected allocations from the External Borders Fund in 2012 will increase from 1.31 percent to 2.21 percent of the total Fund for the RoC, and

¹² In February 2012, the Commission approved a further €1.2 million in emergency funds for Malta as part of the European Refugee Fund 2011 programme (Anon 2012b).

¹³ See Appendix A.2 for more details.

¹⁴ Interestingly, the other eight states are also found on the EU's external borders and many could be considered 'small' in terms of population and size. They include Estonia, Finland, Greece, Hungary, Latvia, Lithuania, Slovenia, and Spain (see Appendix A.2 for further details and sources).

from 1.14 percent to 4.64 percent for Malta. The small states see two of the three largest percentage increases in EU funding, Malta expecting the largest increase at 3.5 percent, Italy at 2.64 percent, and the RoC at 0.9 percent (European Commission 2011c).

Table 6.1: Allocation of EU Funds, 2007-2011¹⁵

	Malta	Republic of Cyprus
External Borders Fund	€ 34,414,837	€ 14,040,530
<i>as % of total</i>	78%	47%
Return Fund	€ 2,847,680	€ 4,840,330
<i>as % of total</i>	6%	16%
European Refugee Fund	€ 4,200,776	€ 6,838,782
<i>as % of total</i>	10%	23%
European Integration Fund	€ 2,669,576	€ 4,371,469
<i>as % of total</i>	6%	15%
Total	€ 44,132,869	€ 30,091,111

Malta and the RoC also succeeded in garnering a limited amount of support for some of their demands, evident in the references to their interests within EU documents. For instance, the Presidency Conclusions of June 2009 address the externalisation of migration controls to Turkey and Libya, in particular, noting that:

Concluding the negotiations on the EC readmission agreements with key countries of origin and transit such as Libya and Turkey is a priority; until then, already existing bilateral agreements should be adequately implemented (Council 2009c, 15).

Due in part to Malta's political efforts in Brussels, the 2008 European Pact on Immigration and Asylum also explicitly points to the 'disproportionate influxes of immigrants' faced by member states on the external border. To remedy this, the Pact calls for 'better reallocation

¹⁵ The External Border Fund and the Return Fund are for 2008-2011.

of beneficiaries of international protection from such Member States to others, while ensuring that asylum systems are not abused' (Council 2008, 10-12). The Pact, however, is not legally binding and such schemes ultimately remain voluntary.

Thus member states have only participated in relocation schemes on a voluntary and ad hoc basis, accepting a handful of asylum seekers who have already received some form of protection. Perhaps reflecting the RoC's priority of underscoring the division of the island within EU forums, Malta has been more successful at this. It was the host for the EU's first pilot relocation scheme, Eurema, which was initiated in 2009, and resettled 227 people in the first 24-month phase (Council 2009c; European Union 2011). However, without the force of legal obligation, only six member states participated in the project. Paradoxically, it is only the United States that has agreed to accept people from Malta on an ongoing basis, a scheme that resettled 700 people in the three years since it was initiated in May 2008.¹⁶

Member states are generally reluctant to participate in such relocation schemes, preferring to resettle people directly from third countries. This is for a number of reasons. It has been argued by some states that relocation from member states on the EU's periphery to others within Europe will act as a pull factor for irregular migrants and asylum seekers (Commission 2010b, 38-39). The EU also offers a greater financial incentive to resettle people from third countries than from other EU member states: the European Refugee Fund provides €4,000 for each person resettled from a third country, an amount that was increased to €6,000 in March 2012 for countries accessing the Fund for the first time. While there are currently discussions over establishing similar financial mechanisms for inter-EU relocation, they are not yet in place (Commission 2010b, 38-39; European Parliament 2010; Interview: Official, Asylum Unit, DG JFS, July 2010).

¹⁶ As of June 2011 (Anon 2011g).

These discussions surrounding relocation schemes in the EU have raised the issues of trust and solidarity amongst member states. Such schemes are hampered by the fact that the legal status of a refugee or a person with subsidiary protection in one EU member state is not transferable to another member state. The principle of mutual recognition has not been applied to positive asylum decisions, although it is applied to negative asylum decisions, as well as decisions on refusal of entry and expulsion of third-country nationals (J. O'Dowd 2011). From a legal perspective, it thus reflects the limited success of creating a common European asylum policy. On a political level, it highlights the limited amount of trust between the member states in recognising the asylum processes in another country as legitimate. As one official within the Commission described:

There is not full trust [between member states]. So member states do not trust the Maltese decision making, even though we in the Commission believe it's perfectly fine, and UNHCR also told us we are fine... Because, it's true that in Malta, I think 60 or 70 percent of the asylum seekers receive some kind of protection, which is very high. But why? Because they are Somali (Interview: Official, Asylum Unit, DG JFS, July 2010).

Although Malta's high recognition rates are powerful in reinforcing the narrative of a burdened small state with the moral high ground, they also appear to add to the mistrust felt by other member states. Despite these limitations, Maltese and Cypriot efforts have widened the debate around solidarity, which has traditionally focused on financial transfers between member states and now includes the transfer of people (Interview: anonymous Council official, July 2010).

Malta has clearly taken a lead role on these matters at the European level, being more vocal and active in the Council framework than the RoC. Indeed, Malta has been more successful at convincing member states that they face a bigger problem in terms of irregular immigration, while the RoC has continued to associate the phenomenon with the division of the island. Nevertheless, the two have joined forces in the Quadro Group, and

have both looked to the EU to sign readmission agreements that they cannot achieve bilaterally because of their small size. In this, they have had success in agenda setting at the EU level, despite their differences, as is reflected in the following statement by a Cypriot official:

[The Quadro Group] has been effective to bring the problem to the agenda of the European Commission and of the Council and when we push, we agree to push for something together, we are heard. But you have to understand that after a point, there are competing interests (Interview: JHA Attaché, Cypriot Permanent Representation, July 2010).

One such divergence between Malta and Cyprus' interests is apparent in their stance on the harmonisation of migration and asylum policies at the EU level. The RoC has embraced and promoted the development of common European asylum and migration policies. An official in charge of asylum matters within the Cypriot permanent representation in Brussels explained:

We are particularly in favour [of a common European asylum system] because we think that if there is harmonisation, if there are the same rules everywhere, then the other member states will be more willing to accept and recognise refugees from Cyprus because now one other argument they say is that what if you give asylum status very easily? (Interview: JHA Attaché, Cyprus Permanent Representation, July 2010)

Malta, on the other hand, has taken a more critical stance towards harmonisation and has insisted:

that further harmonisation without solidarity measures, will result in placing much heavier burdens on those member states that are already facing disproportionate pressures (Interview: Development Officer, Maltese Ministry for Justice and Home Affairs, July 2010).

In taking this stance, Malta has continued to emphasise its exceptional situation, which necessitates exceptional measures both domestically and regionally, whereas the RoC has sought to pursue its own interests through a common, European approach.

A Crisis? Contradictions and Limits

Despite these successes in terms of the governments' goals, the interpretation of irregular immigration as a crisis is problematic. Even when such exceptionalist discourse is effective, it can create negative consequences for migrants and refugees and the host populations in Malta and the RoC, as demonstrated in the previous chapters. These consequences undermine the liberal values ostensibly promoted by the European Union.

Moreover, there are various contradictions involved in this strategy that should be considered. First is the contradiction of portraying the islands as weak and overwhelmed, but simultaneously as indispensable to EU border controls. Similarly, irregular migration is presented as a security issue in order to justify deterrent and restrictive measures, while also being presented as a humanitarian concern in order to acquire support for relocation schemes and other solidarity measures within the EU. Such inconsistencies obviously weaken the arguments made by the two states at the EU level, as well as having negative effects domestically. This contradiction is not lost on those who it affects most. Clearly frustrated, a young Eritrean woman who had been granted subsidiary protection in Malta said:

I know Malta is small. If Malta's small, why are we sent back [here]? Because there are a lot of people in detention. Why do they send the paper and send us back? ...We understand that Malta is small. But when we come back to Malta, they say again: Malta is small, we cannot keep you (Interview: M.M 2, April 2009).

Another young Somali woman who had also been granted subsidiary protection echoed these sentiments asking, 'If Malta cannot help, why does she say come back?' (Interview: M.M 3, April 2009).

These contradictions indicate Malta and Cyprus' geographic and political positions within the EU. On the one hand, they argue that it is their geographic position on the periphery of Europe that makes them vulnerable. However, it is their geographic position

that gives them power within the EU. It is precisely because they are ‘gatekeepers’ on the periphery that irregular immigration is so salient both nationally and within EU forums. Within the EU, a small country such as landlocked Luxembourg lacks this strategic power vis-à-vis migration because of its geographic location (and thus limited irregular immigration arrivals), and because it therefore cannot make the argument that it is ‘exceptional’.¹⁷

Such contradictions arise in part due to an opportunistic exploitation of different aspects of the phenomenon for different claims made by the two countries. However, they can also be explained by the need to address multiple audiences. Although my focus is on the relationship between the regional and the national, it is important to note that many of these strategies have other audiences, such as the national electorate or the migrants who the policies target. For example, the emphasis in Cyprus on the division of the island and the Turkish presence in the north is useful in terms of attracting more support from the EU, but also useful in order to satisfy the demands of the national electorate and so to ensure re-election.

David Zammit points to the contradictions in the discourses aimed at different audiences in Malta. He explores the tension between a securitised understanding alongside the insistence on burden sharing in Europe, and argues that this conflict results in temporary forms of protection being given to migrants as government officials attempt to appear enlightened to Europe and defensive to their local electorate. It also results in any human rights discourse being couched in terms of charity, rather than rights (Zammit 2011).

Inconsistencies are clearly unhelpful in the deployment of nonmaterial power, undermining the message promulgated by Malta and the RoC. In his discussion of soft

¹⁷ Migrants do, nevertheless, make up a large part of Luxembourg’s population: in 2010, 43 percent of the population was foreign, EU citizens made up 37.1 percent and citizens from non-EU member states made up the remaining 5.9 percent (Eurostat 2011b).

power, Joseph Nye notes that consistency is key to the development of such power and that congruity between a state's stated values and actions enhances its potency (Nye 2004, 111; c.f. Mattern 2005). Certainly, the lack of consistency is more apparent now that Malta and the RoC have acquired a larger degree of political power within the EU with regard to immigration and asylum matters. Their accession into the Union not only brought with it the opportunity to participate in and influence regional negotiations over migration, but also more monitoring of domestic practices and policies. This is an indication of how political power can come at a cost, how political power can also make an actor vulnerable.¹⁸

The consequences of this vulnerability can be seen if we consider the temporal features of the constructed crises outlined above. The persistence of a crisis discourse, even when, for instance, there was a decrease in irregular immigration flows to Malta in 2009 and 2010, indicates the limits of this approach. Taking into account that such crisis rhetoric has been used for almost a decade in Malta, one also has to wonder at what point such an entrenched 'crisis' becomes normality. Here, one may draw parallels with the state of exception in the RoC, which has persisted since 1974, and with the conclusion drawn by some academics that joining the European Union does little to overcome such crises, but rather entrenches and reinforces the state of exception (e.g. Constantinou 2008).

Even from the perspective of the efficacy of the approach, the question arises as to whether such crisis rhetoric becomes less powerful with time. Amongst EU officials interviewed for this research, a small but palpable level of crisis fatigue had already set in. For example, when asked if there was an incentive for Malta and the RoC to portray arrivals on the islands as a 'disproportionate burden', one Commission official responded,

¹⁸ Doris Fuch (2005) discusses the vulnerability associated with an increase in political power in the context of the role played by transnational corporations within global politics.

If you say I don't have a big problem, then they will have to cope with the problem by themselves. So there is an interest to call this [a disproportionate burden], even if it's not. I think it is, but even if it wasn't they would like to call it a disproportionate burden. It is today, I don't have any doubt about it, but if the situation improves in the coming year I think they will still call it, this is too much for us. But I think, and this is sensitive, but Malta and Cyprus haven't come to terms with the idea that they are now in this rich club of 27 member states and so on and that they also have to do... They are immigration countries, they are not emigration countries anymore and sometimes we feel the Maltese authorities see their country as well, we don't have any place here, nobody should come, only tourists or rich European tourists. And I think Malta has to accept that it has to take part of the burden, maybe not everything which falls on the island, but at least part of it (Interview: Official, Asylum Unit, DG JFS, July 2010).

These sentiments indicate that the potency of the crisis imagery conjured up by the RoC and Malta may be on the decline. Nevertheless, the continuing attention and money that the islands receive from the EU are a powerful incentive to stay the course.

Conclusion

This chapter compared how Malta and the RoC have exercised nonmaterial power in order to further their migration interests within the European Union. The states have used symbolic capital in the form of their small state status, they have deployed moral authority in pointing the 'disproportionate burden' they are carrying within the Union, and they have relied on policy networks, seen for instance in the formation of the Quadro Group.

The goal of keeping irregular immigration on the EU's agenda, along with the islands' relatively weak positions in the Union, create an incentive to portray irregular immigration as a crisis and the islands as the indispensable enforcer of EU controls. EU membership has created an opportunity for these small states to participate in and influence regional policies, an opportunity which ostensibly results in Malta and the RoC wielding more power. This power is sustained by the fact that the islands have seen an increase in irregular migration, reinforced by the migrant agency that causes these flows.

As this chapter has argued, there are also important differences in the strategies adopted by the two states with regard to keeping irregular immigration in the Mediterranean on the EU's agenda. In these political forums, Malta is in the driver's seat, while Cyprus rides in its wake. The next chapter examines how Malta's predominant role results in more external monitoring of the migrant experience on the island from the EU and international organisations. This constrains Malta's power and also provides a more powerful platform for migrants to make themselves heard outside of Malta. Migrant agency thus shapes Malta's relationship with the EU more than that of Cyprus.

The structure of the EU as an institution also conditions this power to a large degree, shaping Malta and Cyprus' interests and, in turn, its strategies. Malta and the Republic of Cyprus have thus constructed ambivalent relationships vis-à-vis irregular immigration. The emphasis is now on deterrent policies to halt such migration flows. However, it is these very migration flows that have put them on the European political map. At the very least, the 'threat' of migration is necessary, politically useful and powerful.

VII

Conclusion: State Power, Migrant Agency and International Relations

Introduction

The research for this doctoral thesis was initially inspired by an incident that occurred in 2007 in the expanse of the Mediterranean Sea. It involved 27 migrants whose boat, being unseaworthy, sank before reaching its destination. The images of these migrants clinging to a tuna pen briefly captured the attention of Europe. More lasting, however, were the circumstances that led these 27 men to leave Libya on the small fiberglass boat and to be subsequently stranded at sea. The owner of the tugboat pulling the tuna pen explained how, after allowing the migrants onto the pen, the five crew members contacted the Maltese Armed Forces (AFM) who informed them that the migrants were not in Malta's jurisdiction and should be sent back to Libya.² The tugboat owner described the situation:

We could not do this because they had no boat. Their lives were at risk.... The regulation is general. It states: you must take them to the nearest, safest port. This was Misrata. But it was not safe for them. They would have been imprisoned. The Maltese authorities threatened legal action against me. We argued for at least two days.... There was a financial loss for us because we were delayed. There is no insurance for this kind of loss.... They [the AFM] believe that if they delay this will act as a deterrent to immigration (Interview: Director of Ta' Mattew Fisheries and President of the Fisheries Cooperative, August 2011).

The protracted negotiations that brought Italy, Malta, the wider EU, and Libya into contact with each other prompted discussions over responsibility for border controls and for rescue at sea. This incident, and others in similar circumstances, generated the national and regional policies that have been at the core of my research. However, it is the agency of the migrants who chose to leave Libya for Europe that initially provoked these developments and was the impetus for migration governance, arguably creating a particular type of interaction between the states involved that would have otherwise not arisen.

¹ Interview: M.M 19, April 2009.

² The owner was not present on the boat, but conducted these negotiations from Malta.

The tuna pen incident briefly focused attention on the margins of Europe, on issues of asylum and non-refoulement on the high seas, on who is allowed into the bloc, on who is kept out, and on how the whole process is performed. The margins reflect the whole and serve to define the character of the Union and its member states. Although the events in the Mediterranean are arresting and significant in terms of the lives lost at sea, the contemporary focus on controlling the European Union's southern periphery is disproportionate given the actual number of irregular border-crossers. Many more migrants arrive in the European Union through legal channels and then subsequently fall into irregularity.

Throughout this thesis, I challenge the official emphasis on controlling the southern border as means of governing migration throughout the European Union. I question the way in which the EU centres on the margins, while at the same time seeking to show an alternative and I believe more valuable way of centring on the margins. I offer primary evidence collected both at the macro level and at the micro level to demonstrate the actual but hidden effect of feedback loops from the migrants surviving at the margins of the margins to the policy makers operating at the core of the system.

This conclusion is an opportunity to review and re-examine my key arguments as well as to discuss the implications of facets of the research. Accordingly, by drawing on specific examples, I focus on the nexus of migrant agency, state power and international relations. In considering future developments around migration and migration controls in the Mediterranean, I also examine the political uprising and ensuing civil war in Libya in 2011. I conclude with some remarks on more general migration and asylum issues in Europe.

Transferring Responsibility for Migration and Asylum within Europe

Why has there been an emphasis on controlling the EU's external border against the constructed threat of 'illegal immigration'? This focus can be partially explained by the movement of migration controls from the core of Europe towards the external borders. This process of distalisation, comprised of the compensatory measures envisaged in the Schengen system, created tougher migration controls on the periphery in order to compensate for the large-scale removal of internal controls. The Dublin Convention similarly placed a high degree of responsibility for asylum adjudications on the EU's periphery.³

As other scholars have argued, when the southern states of Greece, Italy, Spain and Portugal joined the EU, they responded ambivalently to these new responsibilities. They found it politically expedient, though practically difficult, to adopt and implement the agreements. Notably, many of these countries carried out regularisation schemes to circumvent the problem of irregularity and large informal labour markets.

After joining the Union in 2004, Malta and Cyprus became the southern gatekeepers of Europe. Adopting these new roles, they have called for a re-evaluation of the policies, which they argue inflict a 'disproportionate burden' on them. In making their case, they have successfully highlighted the perceived pressures faced by southern countries: for example, references were inserted into the European Pact on Immigration and Asylum (2008) and the mandate of the European Asylum Support Office (2010). Most substantially, Cyprus and especially Malta have developed the concept of solidarity within EU migration governance to include the relocation of people, as well financial transfers, albeit on an ad hoc and voluntary basis.

³ This term 'distalisation' is used to denote the movement of migration controls and asylum responsibility from the core of Europe towards its external borders. It is discussed in more detail in Chapter Three.

Although the successes of these island outposts may be viewed as minimal, they have nevertheless managed to make a larger impact than expected of two small states. EU officials referred to Maltese politicians, in particular, as the ‘kings of lobbying’ (Interview: Official, Asylum Unit, DG JFS, July 2010). However, they have also had setbacks. For example, the Council extended the scope of the Long-Term Residents Directive to include refugees and other beneficiaries of protection in 2011, despite Malta’s veto, supported by Cyprus, some years earlier. Indeed, Cyprus and Malta’s efforts in Brussels indicate the dearth of common interests in the arena of migration and asylum and the absence of trust between member states. This dissension in Brussels has impeded the harmonisation of migration and asylum policies at the regional level.

Moving from the regional to the national, the thesis traces the evolution of immigration patterns and of ensuing policy responses, in Malta and Cyprus. In Malta, irregular immigration gained the political spotlight in 2002, when the island saw a significant and unexpected increase in arrivals. Since World War II, the country had primarily experienced waves of emigration and return migration. With the onset of new flows of irregular immigration originating from Libya, Malta was reminded of the extent of its large search and rescue region, through which the migrant boats travelled on their way to Italy and where Malta was responsible for them if they needed rescue.

In response to these new immigration patterns and to its 2004 accession into the European Union, Malta adopted strategies to manage the new flows. These strategies were influenced in large part by the state’s new powers within EU forums. On a regional level, it was therefore strategic for Malta to emphasise its ‘exceptional’ situation. Maltese representative thus repeatedly brought attention to the relationship between the number of irregular immigration arrivals and Malta’s small size, small population, and high population density. I argue that a crisis was constructed whereby Malta was portrayed as

vulnerable and overwhelmed by irregular immigration. In fact, at less than one percent of the population, and with proper support, these annual flows could have been perfectly manageable.

Nationally, the government pursued policies and practices intended to deter arrivals and reinforce the sense of crisis: for instance, despite widespread criticism emanating from EU and Maltese advocacy groups, they maintained an 18-month mandatory immigration detention policy. More generally, the government prioritised deterrent and control policies over integration measures. Migrants and refugees therefore have had limited opportunities to integrate into Maltese society, as well as few prospects to move on to other EU member states.

On the island, however, a more complex picture emerged of migrants and refugees organising and strategizing to overcome their marginalisation. With the help of NGOs, they continued to persevere in establishing lives in Malta or in attempting to move on to other EU countries irregularly, despite the multiplication of borders within and outside the state and the risk of being returned as a result of the Dublin II Regulation. After a decade, migrants and refugees are still in Malta. Without wanting to discount the discrimination and marginalisation they face, their continued presence and integration into society demonstrates the fallacy of the crisis.

Eastward across the Mediterranean, the Republic of Cyprus (RoC) saw a similar increase in irregular immigration and asylum claims just after the turn of the 21st century, but due to different reasons. The island has a history of labour immigration dating back to the early 1990s when the government initiated a scheme to recruit foreign workers to fill labour market shortages. Since then, the RoC has seen a steady increase in the percentage of labour migrants on the island, along with tourists, students, and retirees.

Nevertheless, Cyprus' historical narrative continues to influence local understandings of mobility. In particular, the ethnic tension between Greek and Turkish Cypriots and the forced division of the island in 1974 dominate perceptions of belonging and nationalism. Successive administrations have strongly associated contemporary patterns of irregular immigration with the division of the island as well as the Turkish presence in the north. This association persists despite the fact that irregular immigration occurs when people stay on with an irregular status after arriving on work or tourist visas, as well as when people arrive by crossing over the Green Line from the north into the Republic.

Such a narrative is politically convenient for the county both domestically and at the EU level as it shifts the responsibility for irregular immigration to the EU and to the already-vilified Turkish state. Accordingly, the discourse of exceptionalism in the Republic of Cyprus is based on another constructed crisis: the high numbers of irregular migrants and asylum seekers resulting from the division of the island, itself a protracted 'crisis' that strikes at the heart of demographic fears within Cypriot society. Nationally, the Cypriot 'crisis' is reinforced by the government's legally constructed distinction that pits irregular migrants against labour migrants. Asylum seekers are often cast as irregular migrants who are attempting to abuse the system. As such, the Cypriot government prioritised the rejection of unfounded asylum claims, leaving those with a claim in limbo for many years.

The fiction of this division between wanted and unwanted non-citizens becomes evident when one takes into account the experiences of migrants. Migrant testimonies articulate how they face vulnerability in a system with few safety nets, and how their precariousness facilitates the ease with which they lose regular immigration status. However, this false distinction allows the government to disregard the relationship between labour migration and irregular migration (c.f. B. Anderson 2008). It is also convenient for

politicians to point to Turkey and its occupation of the northern part of the island as the dominant reason for irregular immigration.

My research illustrates how, in trying to garner more support from the EU by highlighting the ‘disproportionate pressures’ of migration, Malta and Cyprus have reinforced the imperative of guarding against irregular immigration on the external border. The crisis narrative, hinging on the portrayal of these states as overwhelmed and vulnerable to flows of irregular immigration, paradoxically underlines the need to continue to reinforce Fortress Europe, albeit with more financial and practical provisions from the EU. National practices that focus on deterrence and controls also re-emphasise the crisis at the regional level.

My thesis thus makes three significant contributions. First, empirically, it has provided macro and micro level data on two countries that are under researched in migration studies and International Relations by providing a ‘thick description’ of migration policies and migrant experiences in Malta and Cyprus. Second, theoretically, the research demonstrates how small states employ nonmaterial power with varying degrees of success and how migrant agency can be constitutive of that power. I further argue that the degree of influence of small states in regional governance confirms that these processes are not politically neutral and that power relations ought to be considered within them. Third, the thesis pushes the boundaries of IR as a discipline to include the perspective of the seemingly powerless. Methodologically, then, it argues that the use of ethnographic material is an innovative way for the discipline to unearth new truths about state power and international relations.

In this thesis, the migration and power dynamics analysed illustrate the importance of moving beyond the regional and state levels. It is instead necessary to examine how the micro level affects the macro, how migrants shape state relations through their actions and

how people overcome barriers to mobility. The ethnographic material reveals how a deeper appreciation of migrant agency falsifies the crisis of migration that reverberates through Europe.

Power and Weakness in Malta and Cyprus

The thesis' theoretical framework examined the roles of small states within governance processes, particularly migration governance within the European Union. In doing so, I argue that we must reconsider power and not proceed as though governance is a neutral process or that the results are always beneficial. Within governance structures, observers often assume that small states either wield very little power or that they benefit greatly from their equalising power. Here, I argue that small states do have power to wield, often in the form of nonmaterial power: symbolic capital, moral authority, networks, and information. However, more powerful actors and larger structures condition small states' interests and strategies and therefore circumscribe the power available to them. As discussed in Chapter Two, I have drawn on the works of Lukes, and Barnett and Duvall to move beyond a purely actor-oriented approach to power in order to understand how structures have subtle effects on the power of actors.

Within the EU, Malta and Cyprus have had some success in directing attention to migration patterns in the Mediterranean. The two countries have received substantial monetary support from the EU. Malta also initiated the Quadro alliance with Cyprus, Italy and Greece in order to highlight the 'challenges posed by illegal immigration and asylum' in the Mediterranean (Council 2009b). The alliance has aided Malta and Cyprus in expanding the scope of solidarity within the European Union to include the relocation of people.

Where Malta has led the alliance and been much more vociferous on the issues of immigration in EU forums, Cyprus focused on the division of its territory. Nevertheless, both countries recognise the potential and constraints of the new EU framework. A Cypriot politician noted that, ‘The field where we are going to play football is the European Union with European member states, so we have to try and find a solution within this’ (Interview: Head of Asylum Service, Cyprus, July 2009). The new framework gives the two small states a new regional forum within which to pursue their interests. Due to their geographic location on the fringes of Europe, in the path of irregular immigration routes into Europe, their voices have been amplified within the Union. However, pursuing their regional interests has also resulted in a lack of ownership and responsibility over irregular immigration. In both countries, the measures adopted are short sighted, emphasising deterrence and control. Without the recognition that immigration is an enduring feature of these islands in the 21st century, the long-term integration of these inhabitants is disregarded.

The deployment of this strategy has thus been costly and contradictory. Irregular immigration has been portrayed as a security issue threatening the two small states, but also as a humanitarian problem necessitating EU solidarity through relocating beneficiaries of protection. Similarly, the two states paint themselves as weak and overwhelmed in the face of the new flows, but also as the indispensable enforcers of EU migration controls along the external border.

These small state strategies have also come with consequences for both the migrant populations and wider societies in Malta and Cyprus. The migrant populations have been marginalised and often criminalised. Migrants and refugees have encountered difficulties with integration as well as racism and xenophobia. In turn, such racism emphasises the

division between those perceived as insiders and those perceived as outsiders, and reinforces the conceptualisation of the border as a clear demarcation of sovereignty.

Malta and Cyprus have deployed nonmaterial power in pursuit of their interests vis-à-vis irregular immigration and asylum. They have used networks in order to build alliances. Being restricted in their capacity to tackle multiple policy issues, they have concentrated on issues related to immigration at the EU level. Malta, in particular, has developed in-depth knowledge of EU immigration and asylum governance issues. Both states have deployed moral authority by portraying themselves as carrying a ‘disproportionate burden’, as shouldering the responsibility of controlling the EU’s external borders on behalf of the Union as a whole. They have attempted to reinforce this moral authority by pointing to the high number of asylum seekers on the islands as representative of the humanitarian responsibility they are likewise assuming. The two islands have also used symbolic capital in emphasising their small state status in order to gain more support from the European Union.

Much of this nonmaterial power rests upon discourses of exceptionalism, upon portraying Malta and Cyprus as states facing unique challenges in the area of irregular immigration in the EU. Of course, they are not the only states to portray themselves as exceptional. A quick search finds academic articles on the ‘exceptionalism’ of the United States and France, but also of Slovenia, Jordan and South Africa. Indeed, notions of exceptionalism, of us versus them, of friend versus enemy, are arguably fundamental to conceptualisations of the nation, national identity and nationalism.⁴ Malta and Cyprus are also not the only states to portray immigration as an exceptional phenomenon in need of

⁴ The legal scholar Carl Schmitt places the politics of exceptionalism at the centre of his analysis of state sovereignty, a politics that is characterised by a friend-enemy distinction (Schmitt 2007; c.f. Doty 2009, 9–18).

exceptional responses.⁵ In this research, however, the exceptionalism employed by Malta and Cyprus demonstrates how small states use this discourse as a means of nonmaterial power. It also is an example of ‘exceptionalism’ that is counter intuitively constructed on seemingly negative characteristics such as smallness and vulnerability.

As such, ‘exceptionalism’ is a relative and imprecise concept. Within EU migration governance, it has been translated into references to states facing ‘specific and disproportionate pressures’, hindered in its application due to a lack of agreed definition (Council 2008). Nevertheless, defining a phenomenon within a discourse of exceptionalism does allow for exceptional measures to be taken in response. In Malta and the Republic of Cyprus, such discourse has justified the detention and ill treatment of migrants. Similar language is also fundamental to other aspects of EU border controls, where for instance the newly-established Rapid Border Intervention Teams have been designed by Frontex to intervene:

... at the request of a Member State faced with a situation of urgent and exceptional pressure, especially the arrival at points of the external borders of large numbers of third-country nationals trying to enter the territory of that Member State illegally (emphasis added) (Council 2007b, 30-39).

These case studies illustrate how weakness can be exploited to gain power, but also how that power is constrained by the structures within which the two states operate. Malta and Cyprus’ embrace of control at the EU’s external border has come with consequences for their own societies. Indeed, their membership within the European Union has created a perverse incentive to treat irregular immigration as a crisis so as to attract more support. As such, Malta and Cyprus are not merely rule takers as one might expect from such small states; they have participated in making the rules, and have played a role in shaping EU immigration and asylum policies, with Malta exhibiting and employing more power in this

⁵ Exceptionalism can also be employed at various levels of government. For example, Roxanne Doty (2009) explores the politics of exceptionalism within the Minutemen Project, the civilian border patrol group along the border between Arizona and Mexico.

arena. Their success at initiating more ‘burden-sharing’ initiatives within the EU is more impressive when compared to Germany’s failure to do so in 1991 (Bosswick 2000, 53–55; Schuster 2003a, 229–235). The distalisation process of moving migration controls towards the external border is thus not merely a one-way process of powerful core states exerting control over weaker peripheral states: these peripheral states have been co-opted into this EU logic and have employed it to their own advantage.

The Role of Migrants

I have argued that one cannot understand the migration dynamics in the Mediterranean and the relationship between Malta and Cyprus, on the one hand, and the EU, on the other, without putting the agency of the migrant at the centre of the story. Indeed, the migrants and refugees who cross state borders without authorisation are central to the arguments made by Malta and Cyprus. Migrant agency is often overlooked in policy studies. However, the inclusion of migrant experiences is important in understanding the consequences and assumptions of policies. Overcoming the border security apparatuses of states, irregular migrants also force their will on receiving states, compelling them to open a dialogue with other state actors. The ongoing political negotiations amongst Italy, Malta and Libya are an example of this. On the other side of the Mediterranean, the Republic of Cyprus has developed bilateral agreements with Syria and Lebanon in response to immigration from these countries. Irregular immigration through northern Cyprus has also affected the country’s already-strained relationship with Turkey.

The agency of migrants in moving across national borders and seeking asylum also shapes state relations. By granting asylum, states risk increasing political tensions with the countries of origin. For example, the reception of Kurdish migrants in Germany impacted upon German-Turkish relations. The activities of the Kurdish diaspora, who arrived as

guest workers before 1973 and afterwards as refugees, compelled the German government to apply pressure on Turkey to alter its attempts to forcibly assimilate the Kurdish minority in the country (Lyon and Uçarer 2001, 928–931). Similarly, the fact that the Dalai Lama and his followers fled Tibet to India in 1959 strained the country's relations with China. In parallel, the growing tension along the Sino-Indian border led to an armed conflict between the two states in 1962. Thus Tibetans seeking asylum in India, not least the Dalai Lama, have in part constituted Sino-Indian relations, although since 1988 India has reasserted its position that the Tibetan issue is China's internal affair in which foreigners should not intervene (Ruixiang 1993, 68).

Migrant and refugee experiences and actions within the state thus have feedback effects on policies and on the state's relations with other actors. Migrants' resistance to state practices, seen for example in the form of protests and court cases, influences Malta and Cyprus' relationships with the European Union. In Malta, protests in immigration detention have led to the EU exerting pressure on Malta to improve the conditions of its detention centres and to reconsider its mandatory 18-month detention policy. The report compiled by the European Committee for the Prevention of Torture after their visit to Malta specifically references protests held by detainees, as well as allegations of mistreatment. In doing so, they have encouraged the government to conduct inquiries into the incidents and allegations (Council of Europe 2005b). These actions and the advocacy work of NGOs also contribute to the decisions made, for instance, in European courts, to suspend the transfer of immigrants back to Malta through the Dublin II Regulation.

Migrant and refugee protests are less common in the Republic of Cyprus. This may be explained by several different factors: having no mandatory detention policy, the Cypriot government does not detain large numbers of irregular migrants in one place for extended periods of time. This, alongside the more sizeable presence of migrant labourers

who are also vulnerable to losing their legal status, causes the irregular immigrant population to be more dispersed across the island. Nevertheless, NGOs have made use of their contact with the migrant population and the oversight provided by the European Union in their advocacy work. The local advocacy organisation, KISA, filed complaints with the European Commission, for example, in response to the Cypriot Supreme Court decision to deny labour migrants access to residency under the Long-Term Residents Directive (Interview: Lawyer, KISA, July 2009; c.f. KISA Steering Committee 2008a; 2008b). KISA and other groups, such as Amnesty International, have also highlighted the length and conditions of immigration detention prior to deportation, for which they rely on testimonies that they gather from migrants and refugees (KISA 2011; Kosmopoulos 2011). This has created more monitoring of Cypriot practices vis-à-vis migration and impinges upon the state's relationships at the regional level.

The feedback loops originating from migrant and NGO actions appear to be more influential in Malta than in Cyprus. Malta is more visible in the European Union with regard to migration and asylum. Having emphasised its vulnerability in the face of the irregular immigration 'crisis', Malta has attracted more attention from regional actors and thus simultaneously constructed a larger, more visible platform for migrants, refugees and NGOs. Migrant and refugee action can therefore affect a state's image and relationships to varying degrees, depending on the levels of monitoring and oversight by non-governmental and supranational actors. NGOs play a crucial role in these feedback loops, as their advocacy work is often the most powerful tool available to marginalised migrants and refugees.

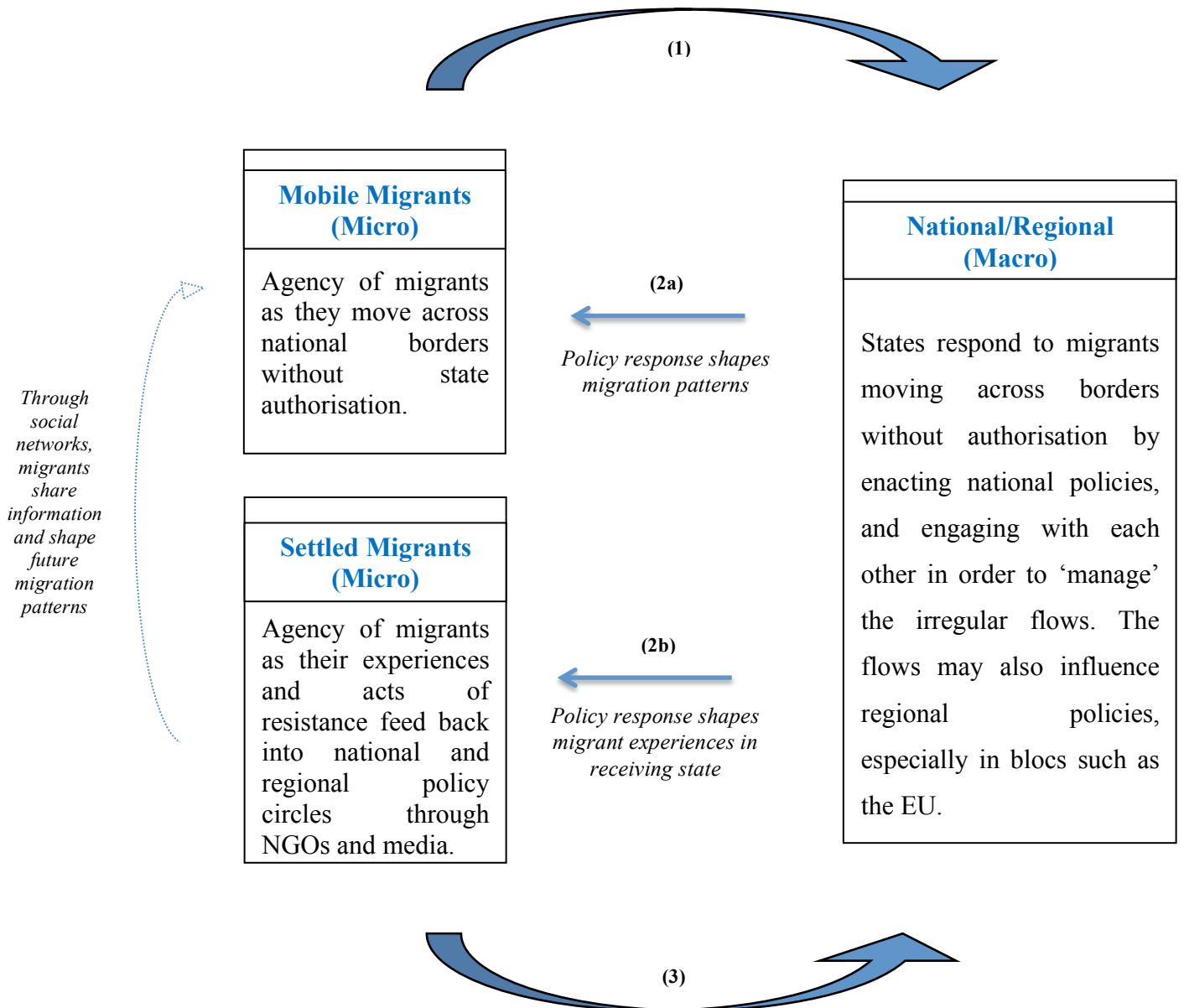
Although migrants and refugees may be legally and socially marginalised by a state, they are by no means absent from these interstate relations. Politically, they are marginalised both at the national and regional levels. Individually, they may be weak

actors who are often overlooked in International Relations scholarship. However, in the aggregate, these flows of people are politically powerful. Indeed, it is their very marginalisation within a state that prompts migrants to resist state practice, inciting protests and riots. Although the effects may not be felt immediately, these acts carry broader political consequences.

Taking migrant agency into account reveals the political struggles over mobility at Europe's border. This approach moves beyond the Agambian accounts of biopolitical control, but also appreciates the limits of migrant agency, bounded by the political power of the state. Thus the agency of migrant may be harnessed or even exploited by the state for its own purposes (c.f. De Genova 2011, 1–25).

The diagram below illustrates the dynamics between migrant agency at the micro level and state relations at the macro level. It includes both the initial act of agency that migrants exercise in moving across national borders without authorisation as 'Mobile Migrants', and also subsequent action within the receiving or transit state as 'Settled Migrants'. My research has focused on: (1) how states react to the initial movement of people across borders domestically, as well as bilaterally and multilaterally; (2a-b) how these policy responses in turn shape future immigration patterns as well as the experiences of migrants and refugees within the state; and (3) how the experiences of migrants within a state have feedback effects on state relations. What has not been examined, but what is included for the sake of clarity as a dotted line, is the manner in which the experiences of migrants and refugees within a receiving or transit state are communicated through social networks and thus shape future migration flows.

Migrant Agency in International Relations



The power exhibited by migrant agency can thus be divided into three categories: indirect, direct and epistemic. First, as migrants cross border without authorisation they have indirect, causal effects on migration policies and state relations. Second, within the state, their collective action, mediated through NGOs, directly affects their position within society, as well as indirectly affecting a state's relationship with other states. These first two categories reflect causal forms of power. Third, by crossing borders without authorisation, migrants also constitute the power that Malta and Cyprus hold within the European Union. This third category differs from the two former categories as it reflects a constitutive form of power.⁶

Despite the apparent complexity of the migrant-state power dynamic, within government discourse, irregular migrants continue to be portrayed in the extreme, as victims or villains (c.f. B. Anderson 2008). On the one hand, they are associated with criminal networks, and often portrayed as criminals themselves. As abusers of asylum systems, they are taking advantage of a state's generosity. On the other hand, irregular migrants are portrayed as victims, as people exploited by criminal networks, as passive actors without agency. In contrast to this facile depiction, an appreciation for migrant agency reveals how migrants adopt various strategies in their everyday lives to cope with vulnerability. For example, the threat of detention and deportation makes many adopt an inconspicuous lifestyle. As one migrant in Cyprus remarked, 'I am so silent a person' (Interview: M.C 23, August 2009; c.f. Sigona 2012).

Constructing migrants as merely victims or villains depoliticises the political decisions regarding who can enter and reside in a state, how to enforce border controls, and how much political freedom to allow migrants. It also ignores how a state creates vulnerability through immigration controls, and disregards the agency of migrants,

⁶ Although there is not a neat separation between causation and constitution (c.f. Wendt 1998).

exercised even in the face of the state power and bureaucracy deployed to restrict it. The very fact that migrants have arrived in Malta, Cyprus, and elsewhere in a clandestine manner and settled in these countries speaks to their agency. Notwithstanding the fact that they are often marginalised and discriminated against, irregular migrants' long-term presence on the islands is not due to policy design. In this albeit limited sense, their agency has proved more powerful than that of the state.⁷

Ethnography and the 'Powerless' in International Relations

In short I have argued that International Relations theory needs to more often integrate the perspective of seemingly powerless actors' individual agency and not only that of policy makers, businesses, and international advocacy organisations. The incorporation of these perspectives could open up new insights and avenues of research. For example, it might encourage new ways of thinking about borders as more than just the territorial edge of a state and rather as a site of contested mobility that is increasingly present beyond and within the state (c.f. Squire 2011; Vaughan-Williams 2009).

This thesis demonstrates both the feasibility and the value of incorporating the agency of non-citizens, as a marginalised population, into IR studies. Including such perspectives and examining the intersection of micro and macro level forces allows us to deconstruct the narratives of powerful elites. As Sarah Mahler has argued, it can serve to illuminate 'the agency of underrepresented and misrepresented groups within a broader geography of power' (Mahler 2000, 199).

Indeed, critical IR scholars, as well as some constructivists, have started to employ more ethnographic methods in their inquiries in order to examine such obscured geographies of power (e.g. Chin 1998; Neumann 2005; Pouliot 2007a; Tickner 2005).

⁷ In a similar vein, Stephen Castles and Mark Miller (2003, 286–290) argue that the cultural diversity seen in many countries today is due to the immigration of previous decades.

However, the methodology has remained on the fringes of the discipline, especially when it includes marginalised populations. Although this thesis does not claim to be an ethnographic study on par with those done in the field of anthropology, the ethnographic methods incorporated have been invaluable in revealing the unexpected agency of migrants and its effects on state policies and interstate relations.

The Future of European Border Controls

What do the relationships and developments explored in this thesis mean for the future of European border controls? While Malta and Cyprus have to some extent been successful at expanding the concept of solidarity within the Union, the political interests of member states remain diverse enough to make the implementation of this principle less than straightforward (e.g. European Parliament 2011). Moreover, the mutual trust envisaged by the principle of solidarity has been undermined, not least by the 2011 judgement of the European Court of Human Rights, which saw the suspension of transfers to Greece under the Dublin Regulation (ECHR 2011b).

The principle of solidarity was also challenged in the wake of the political uprising in Libya in 2011, which caused a mass outflow of people fleeing violence and persecution. Arrivals resumed in Malta and Italy after the hiatus caused by Italy's push-back policy, implemented in May 2009. The first boat arrived in Malta on 28 March 2011 carrying 333 migrants and refugees, 271 of whom were Somali. By the end of that summer, 1,530 people arrived in Malta having fled the war in Libya.⁸

The reaction from southern member states, and the EU more broadly, to the new flows of migration speaks to many of the issues discussed in this thesis. Despite rhetoric of the 'invasion' into Europe, the vast majority of these migrants travelled from Libya to

⁸ By the end of 2011, 1,579 migrants had arrived on the island. Arrivals continued in 2012 and at the time of writing, approximately 1,000 had arrived (figures provided to the author by the Police in Malta, 2011; c.f. Anon 2012a).

neighbouring African countries. In total, 96.6 percent of migrants leaving Libya made their way to neighbouring African countries, often countries of their birth. In contrast, only 3.4 percent of these migrants (20,659) arrived in the southern European countries of Malta and Italy.⁹

Nevertheless, and despite the fact that the volume was no different to the number of irregular immigrants arriving in previous years, the reaction by the European Union, especially its southern member states, exaggerated and sensationalised the issue. For example, Robert Maroni, the former Italian interior minister, warned of a ‘biblical exodus’ and former Prime Minister Silvio Berlusconi referred to a ‘human tsunami’ in Lampedusa (Anon 2011a; Pop 2011). Under attack from both European countries in the coalition and the Libyan Transitional National Council, Muammar Gaddafi did little to quell these fears, threatening to ‘unleash an unprecedented wave of illegal immigration’ into Europe (Hewitt 2011).

This constructed invasion obscured the agency of migrants and their complex decision-making. Even when Gaddafi fell out of favour with the international community, the rhetoric surrounding immigration from Libya reified the power of a dictator to single-handedly chart the course of migrants. It also conveniently overlooked the crucial role that Europe played in creating these flows of refugees by supporting the rebel forces in Libya and prolonging the conflict. As such, it sensationalised the issue at hand, encouraging racist and xenophobic reactions.

The renewed migration flows from Libya and other North African countries struck at the heart of EU solidarity, revealing fractured relationships. In Italy, the arrival of Tunisian migrants instigated a diplomatic standoff with France, as Berlusconi facilitated their

⁹ Statistics are as of 5 July 2011 and refer only to migrants leaving Libya. As of this date, 612,872 migrants had left Libya since the war began. Forty-three percent of these migrants fled across the border to Tunisia. A further 31 percent fled across the eastern border into Egypt and 12 percent across the south-western border into Niger (International Organization for Migration 2011).

movement across the Italian-French border. Dramatically, this caused France to reinstate controls along its borders with Italy, signalling a significant breakdown in the cooperation and trust envisaged in the Schengen Agreement.

In Malta, the government renewed its criticism of other member states for not sharing responsibility for these new flows. It was especially disappointed when its calls to activate an EU-wide temporary protection mechanism were rebuffed.¹⁰ These events served to confirm and reinvigorate the government's perceived need to emphasise the irregular immigration 'crisis' in Malta.

Due to these tensions within Europe, caused in part by the placement of responsibility for migration controls and asylum at the external borders, accord between member states has been easier to reach on the issue of externalising responsibilities outside of Europe. In the Mediterranean, this has meant that states, such as Malta and Italy, have attempted to shirk responsibility for migrants at sea. Prior to the Libyan unrest, Italy had successfully returned migrants intercepted at sea to Libya as part of the 'push-back' policy allowed for in the 'Treaty of Friendship' signed between the two countries in 2008.

The fall of the Gaddafi regime and the renewed flows of migrants fleeing the war-torn country across the Mediterranean rekindled the tension between Italy and Malta to the detriment of the migrants travelling across the Sea. Thousands drowned at sea, and others fell victim to political wrangling between EU states.¹¹ For example, on July 10th, a Spanish warship, operating under NATO command, rescued 111 migrants, including women and children, who were drifting at sea after their engine failed. Unable to repair their engine, the Spanish ship brought the migrants aboard and travelled to Lampedusa, the closest port. The Italians refused them entry and directed them to Malta, whose Operations Centre had

¹⁰ This is provided for in a 2001 Council Directive in the event of a 'mass influx of displaced persons'. However, the directive has yet to be activated, in part due to the political difficulties of defining a 'mass influx' (Council 2001c).

¹¹ Fortress Europe estimated that 1,931 migrants drowned in the first seven months of 2011 (Anon 2011e).

coordinated the initial rescue. The Spanish ship waited in Maltese waters as diplomatic talks took place between Malta, Italy, and Spain. However, Malta refused to receive the migrants, and they were eventually disembarked in Tunisia six days later (Sansone 2011b). These political disputes denied migrants access to European asylum processes. Instead, they were sent back to a country with a much lower asylum capacity. Such political disputes also certainly cause deaths at sea, as countries are slow to respond to migrants in distress for fear of setting political precedents.¹²

A report by the Council of Europe's Committee on Migration, Refugees and Displaced Persons details the situation in the Mediterranean Sea in 2011. It recounts the experience of one boat that left Libya with 72 people on board only to drift back two weeks later with only nine survivors. The boat allegedly made contact with multiple vessels, including two fishing boats, a large military vessel under NATO command and a helicopter. All of these vessels failed to rescue the migrants. The Libyan authorities, along with the Maltese and Italian Maritime Rescue Coordination Centres also all failed in their responsibility to dispatch search and rescue (SAR) missions. The Council of Europe's report concludes by making various recommendations, including avoiding different interpretations of what constitutes a boat in distress and overcoming any barriers that third parties perceive in fulfilling their duty to rescue those in distress. In this vein, the Council suggests resolving the dispute between Malta and Italy over disembarkation, compensating for economic losses incurred, and providing assurances that those rescuing migrants will not be prosecuted as smugglers or traffickers. The report goes further in encouraging Malta and Italy to 'fill the vacuum of responsibility for an SAR zone left by a State which cannot or does not exercise its responsibility for search and rescue, such as was the case for Libya' (Council of Europe 2012).

¹² Recognising this trend, NGOs are launching an initiative whereby they would have a presence at sea in order to aid migrants in distress (Anon 2011f).

The report also cites the landmark judgement made in March 2012 by the European Court of Human Rights, which found that Italy's 'push-back' policy in 2009 violated the principle of non-refoulement (ECHR 2012). Despite these significant steps in underlining states' responsibilities to uphold human rights beyond their territorial borders, it is unclear how member states within the EU will react (c.f. ECHR 2011a). On the one hand, the judgment reinforces the importance of maintaining an accessible asylum system within Europe. On the other hand, it may also encourage states to continue to externalise border controls and asylum processes further outside of EU territory.

For example, very soon after the civil war erupted in Libya, the reaction from the EU and its southern member states was to highlight the need to sign a new readmission agreement with Libya. Both the Commission and the Council supported the strategy of externalising border controls to countries outside the EU through so-called 'mobility partnerships', particularly to countries on the southern rim of the Mediterranean in this context. For example, the Commission stated that:

cooperation [with third countries] should also build on the principle of conditionality applied to migration issues in order to encourage effective commitment by our partners in preventing irregular migration flows, in managing their borders efficiently and in cooperating on the return and readmission of irregular migrants (European Commission 2011a; 2011b).

In June 2010, the Commission had signed a Memorandum of Understanding with Libya, and a few months later, in October, signed a two-year agreement that included 'cooperation on the management of irregular immigration flows, border control and security, regional and pan-African dialogue on refugees and international protection to asylum seekers'. As part of the arrangement, the EU dedicated €50 million for joint projects (Camilleri 2010b; Anon 2010b). The civil war that erupted in Libya just months later disrupted this cooperation. Nevertheless, on 17 June 2011, Italy, somewhat prematurely, signed a migration accord with the Libyan Transitional National Council. The

Agreement is said to cover ‘cooperation in combating illegal immigration, including repatriation of illegal immigrants’ and is in line with the Transitional Council’s previous pledge to uphold any agreements made by Gaddafi (Anon 2011c). In defiance of the European Court’s 2012 ruling, the Maltese foreign minister publically stated that the country would have no qualms over directly returning migrants to Libya as the Italians previously did (Sansone 2012).

In contrast to these developments detailed above, the European Union’s own Global Approach to Migration first set out in 2005 emphasises the need to:

*... reduce illegal migration flows and the loss of lives, ensure safe return of illegal migrants, strengthen durable solutions for refugees, and build capacity to better manage migration, including through maximising the benefits to all partners of legal migration, **while fully respecting human rights and the individual’s right to seek asylum** (emphasis added) (Council 2005).*

As such, it is inconsistent to maintain that Europe is ‘an area of protection and solidarity’, while simultaneously increasing the height of the fence around Europe, compelling asylum seekers and other migrants to take even greater risks in order to enter the bloc. The ‘fight against illegal migration’ (European Commission 2006b) necessarily involves violent and racist border controls that reduce access to asylum in Europe and cause more deaths at sea and elsewhere.

Concluding Remarks

Sensationalised rhetoric in response to immigration is certainly prevalent in other countries across Europe and beyond its borders. Similarly, most states in the international system argue that they are ‘exceptional’ in order to pursue their interests. In this sense, it is not completely surprising that Malta and Cyprus have adopted this rhetoric. However, what I have analysed here is how EU dynamics, along with small state status, reinforce the incentive of constructing a crisis. The regional framework encourages Malta and Cyprus to

present themselves as overwhelmed in order to shift responsibility towards the EU and towards third countries. Without this framework, it would have been necessary to accept a higher degree of accountability for migrants and refugees arriving on the island.

Malta and Cyprus' roles within the negotiation and implementation of EU migration governance expose the different interests at play. The tensions between cooperation and burden shifting, between solidarity and self-interest, exemplify the power involved in migration governance. On the national level, crisis rhetoric also serves to depoliticise highly political issues in Malta and Cyprus. The border re-emerges as a focus of attention and immigration is filtered through a security lens, dehumanising the migrants and their experiences. Simultaneously, it distracts from the political and subjective nature of the boundaries constructed between categories of people that judge them as wanted or unwanted.

Moreover, the language used to understand irregular immigration patterns ironically and insidiously inverts positions of power. It characterises the migrants making their way across the Mediterranean Sea as the invaders, and the rich, European states receiving them as vulnerable and weak. It disregards the economic discrepancies between countries bordering the northern and southern shores of the Mediterranean. It omits the history of colonial subjugation that Europe inflicted on many parts of the third world, a history that continues to leave its mark on migration patterns and on the politics, economics and societies of these countries. And it ignores the enduring patterns of economic exploitation and power discrepancies seen in the international system that sustain migration.

The crisis discourse also obscures questions of social justice, inherent in immigration control. How a state treats marginalised people, including non-citizens, reflects on society as a whole and, I would argue, is a litmus test for its respect for human rights and democratic values. Indeed, the rights of non-citizens are inextricably linked to the rights of

citizens; what becomes acceptable for a state to do to one part of the population has consequences for the population as a whole. Similarly, the exclusion of irregular migrants at the external borders of Europe has implications for the Union. The EU cannot promote itself as a bastion of progress and human rights, as a pillar of mobility and asylum, while building walls along its edges. It is inconsistent to advocate for better asylum systems within Europe, while simultaneously creating barriers that deter asylum seekers from arriving on the continent or that make their journeys more dangerous.

If Europe is to be a place of refuge and a continent that upholds and promotes human rights, then it must rethink the walls it has built along its southern periphery. Its political leaders and citizens must reflect upon the causes and implications of migrants expressing such sentiments: ‘A lot of times, my wife ... tried to kill herself.... They push us to end our lives’ (Interview: M.C 3, July 2009). Malta and Cyprus are now in the European Union. They have a platform to call for more progressive measures that do not lead to deaths at sea and marginalisation within member states. They may be small states but their power over migration and asylum governance is rich and complex.

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Appendix

A.1

Asylum Applications in Malta and Cyprus

Top populations of origin of asylum applicants in Malta, 2004-2010¹

Malta	2004-2010		2010		2009		2008	
	Somalia	4,017	Unknown	45	Somalia	1,445	Somalia	1,081
	Eritrea	1,498	Somalia	34	Nigeria	280	Côte d'Ivoire	264
	Nigeria	636	Pakistan	12	Eritrea	273	Nigeria	223
	Sudan	556	Syria	7	Mali	104	Mali	208
	Côte d'Ivoire	487	Nigeria	7	Côte d'Ivoire	44	Eritrea	176
	Mali	358	Libya	7	Sudan	40	Ghana	111
	Ethiopia	355	Ethiopia	6	Ethiopia	35	Ethiopia	97
			Iraq	5	Bangladesh	23	Niger	94
			Sudan	*	Guinea	21	Togo	71
		Eritrea	*	Burkina Faso	18	Gambia	44	

Malta (cont'd)	2007		2006		2005		2004	
	Somalia	585	Eritrea	390	Eritrea	255	Somalia	438
	Eritrea	339	Somalia	208	Sudan	243	Eritrea	65
	Côte d'Ivoire	77	Sudan	179	Somalia	226	Congo	41
	Sudan	76	Ethiopia	125	Côte d'Ivoire	92	Palestine	38
	Ethiopia	73	Niger	75	Congo	54	Turkey	27
	Mali	46	Nigeria	57	Stateless	48	Pakistan	19
	Nigeria	38	Togo	44	Nigeria	31	Ethiopia	19
	Niger	25	Côte d'Ivoire	40	Liberia	29	Sudan	18
	Ghana	15	Ghana	30	Iraq	23	Iraq	18
Congo	14	Stateless	16	Ghana	20	Côte d'Ivoire	14	

¹ An asterisk denotes between one and four applications (UNHCR, 'Asylum Levels and Trends in Industrialized Countries', 2010, 2009, 2008, 2007, 2006, 2005, 2004).

Top populations of origin of asylum applicants in Cyprus, 2004-2010²

Cyprus	2004-2010		2010		2009		2008	
	Syria	5,946	Iraq	343	Palestine	493	Syria	963
	Bangladesh	3,970	India	318	India	303	Sri Lanka	408
	Sri Lanka	3,196	Vietnam	227	Sri Lanka	248	Palestine	391
	Pakistan	3,118	Egypt	211	Syria	224	India	232
	Georgia	2,455	Sri Lanka	187	Pakistan	212	Pakistan	221
	Iran	2,401	Pakistan	155	Iraq	189	Iran	213
	India	2,270	Bangladesh	148	Iran	171	Egypt	211
	Palestine	1,902	Nigeria	133	Egypt	168	Bangladesh	178
	Ukraine	1,599	China	123	Bangladesh	165	Iraq	170
	China	1,109	Nepal	121	Nigeria	97	Georgia	122
	Iraq	1,034						
	Russia	1,025						

Cyprus (cont'd)	2007		2006		2005		2004	
	Syria	1,752	Syria	1,255	Syria	1,205	Bangladesh	2,410
	Palestine	1,018	Sri Lanka	389	Georgia	886	Pakistan	1,327
	Sri Lanka	661	Georgia	336	Sri Lanka	806	Ukraine	868
	Iran	475	Bangladesh	310	Pakistan	596	Georgia	759
	Georgia	352	Iran	305	Ukraine	587	Iran	668
	Pakistan	339	Pakistan	268	Iran	569	Russia	618
	India	294	India	253	Bangladesh	498	Syria	547
	Bangladesh	261	China	174	Russia	357	India	538
	China	214	Ukraine	144	India	332	Sri Lanka	497
	Iraq	200	Iraq	132	China	259	China	339

² UNHCR, 'Asylum Levels and Trends in Industrialized Countries', 2010, 2009, 2008, 2007, 2006, 2005, 2004.

Asylum Applications in Malta, 1995-2011³

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011 ⁴
Asylum Applications	148	75	65	165	85	70	120	350	570	1,000	1,170	1,270	1,380	2,515 (2,607)	2,337 (2,389)	135 (175)	1,546 (1,546)
1951 Convention Status	137	85	32	50	51	28	39	22	53	49	34	28	7	19	20	46	17
Subsidiary or Temporary Humanitarian Protection⁵				32	22	1	24	111	328	560	484	522	620	1,394	1,676	566	313
Rejections								286	187	259	580	637	329	1279	895	132	67
Applications withdrawn								3	20	20	60	23	23	23	79	12	5
Applications processed								422	588	888	1,158	1,210	979	2,715	2,670	756	402
Applications still in process								52	32	141	149	211	611	503	222	23	1,291
Applications awaiting start of procedure								0	84	449	692	720	1,285	1,110	17	0	0
Recognition Rate (total)										68.6%	44.7%	45.5%	64.0%	52.0%	63.5%	81.0%	82.1%
Recognition Rate (1951)										5.5%	2.9%	2.3%	0.7%	0.7%	0.7%	6.1%	4.2%

³ All statistics are based on number of people, except for asylum applications, which reflect the number of cases. Figures for 2008-2001 in this category include the number of people involved with the cases in parentheses.

⁴ Until May 30, 2011.

⁵ Humanitarian protection was awarded until 2008, when subsidiary protection was introduced as an additional category. Since then, the majority of asylum applicants have been awarded this status, although a handful of claimants are still awarded humanitarian protection every year. In 2010, another category of temporary humanitarian protection was introduced as a form of ex-gratia local protection and which was given to those people whose application was rejected, but who after many years could not be deported and had 'showed effort and some measure of success at integration'. This new category accounted for 555 people in 2010 and 293 in 2011.

Asylum Applications in Cyprus, 1995-2010⁶

Cyprus	1995	1996	1997	1998	1999	2000	2001	2002	2003
Asylum Applications	109	101	92	225	789	651	1,766	952	4,407
Decisions made								143	411
1951 Convention Status	10	12	8	45	27	39	36	0	0
Subsidiary Protection (Allowed/humanitarian)			20					0	10
Rejected		61	41	70	222	223	291	143	274
Closed								0	127
Pending End of Year		23	32	134	210	499	1,860	809	4,805
Recognition Rate (total)								0.0%	2.4%
Recognition Rate (1951)								0.0%	0.0%

Cyprus (cont'd)	2004	2005	2006	2007	2008	2009	2010
Asylum Applications	9,872	7,746	4,545	6,789	3,922	3,200	2,860
Decisions made	5,345	5,804	5,601	7,184	7,913	6,515	2,440
1951 Convention Status	30	41	37	36	65	75	30
Subsidiary Protection (Allowed/humanitarian)	56	122	151	191	163	1,135	395
Rejected	2,734	3,133	1,779	2,316	4,001		2,015
Closed	2,525	2,508	3,634	4,641	3,684		
Pending End of Year	9,332	11,274	10,218	9,823	5,833		
Recognition Rates (total)	1.6%	2.8%	3.4%	3.2%	2.9%	18.6%	17.4%
Recognition Rate (1951)	0.6%	0.7%	0.7%	0.5%	0.8%	1.2%	1.2%

⁶ Asylum applications are calculated by the number of people (not cases) [figures before 2002: UNHCR, 'UNHCR Statistical Yearbook – Cyprus', 2005; for 2002-2007, see European Parliament, 'Report from the LIBE Committee Delegation on the Visit to Cyprus (25 - 27 May 2008)', Brussels, 11 July 2008, p. 14; figures for 2008 supplied to the author by the Ministry of Interior in Cyprus, 2009; for 2009 & 2010 asylum rates: Eurostat News Release, 'Asylum decisions in the EU27: EU Member States granted protection to 78 800 asylum seekers in 2009', STAT/10/89, 18 June 2010; 'Asylum in the EU27: The number of asylum applicants registered in the EU27 stable around 260 000 in 2010', STAT/11/47, 29 March 2011].

EU Asylum Applications by Member State, 1996 - 2007

	1996		1997		1998		1999		2000		2001	
	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total
Belgium	12,435	5.4%	11,790	4.7%	21,965	7.0%	35,780	9.4%	42,690	10.5%	24,505	5.8%
Bulgaria	:		370	0.1%	835	0.3%	1,350	0.4%	1,755	0.4%	2,430	0.6%
Czech Republic	:		2,110	0.8%	4,085	1.3%	7,355	1.9%	8,790	2.2%	18,095	4.3%
Denmark	5,895	2.6%	5,100	2.0%	5,700	1.8%	6,530	1.7%	10,345	2.5%	12,510	2.9%
Germany	117,335	50.9%	104,355	41.5%	98,645	31.5%	94,775	24.9%	78,565	19.3%	88,285	20.8%
Estonia	:		0	0.0%	25	0.0%	25	0.0%	5	0.0%	10	0.0%
Ireland	1,180	0.5%	3,880	1.5%	4,625	1.5%	7,725	2.0%	10,940	2.7%	10,325	2.4%
Greece	1,640	0.7%	4,375	1.7%	2,950	0.9%	1,530	0.4%	3,085	0.8%	5,500	1.3%
Spain	4,730	2.1%	4,975	2.0%	4,935	1.6%	8,405	2.2%	7,925	1.9%	9,490	2.2%
France	17,405	7.5%	21,415	8.5%	22,375	7.1%	30,905	8.1%	38,745	9.5%	47,290	11.1%
Italy	680	0.3%	1,890	0.8%	13,100	4.2%	18,450	4.8%	15,195	3.7%	17,400	4.1%
Cyprus	:		:		225	0.1%	790	0.2%	650	0.2%	1,620	0.4%
Latvia	:		:		35	0.0%	20	0.0%	5	0.0%	15	0.0%
Lithuania	:		240	0.1%	160	0.1%	145	0.0%	305	0.1%	425	0.1%
Luxembourg	265	0.1%	435	0.2%	1,710	0.5%	2,930	0.8%	625	0.2%	685	0.2%
Hungary	1,260	0.5%	:		7,120	2.3%	11,500	3.0%	7,800	1.9%	9,555	2.3%
Malta	:		70	0.0%	160	0.1%	255	0.1%	160	0.0%	155	0.0%
Netherlands	22,855	9.9%	34,445	13.7%	45,215	14.4%	39,275	10.3%	43,895	10.8%	32,580	7.7%
Austria	6,990	3.0%	6,720	2.7%	13,805	4.4%	20,130	5.3%	18,285	4.5%	30,125	7.1%
Poland	600	0.3%	3,580	1.4%	3,425	1.1%	3,060	0.8%	4,660	1.1%	4,480	1.1%
Portugal	270	0.1%	250	0.1%	355	0.1%	305	0.1%	225	0.1%	235	0.1%
Romania	585	0.3%	1,425	0.6%	1,235	0.4%	1,665	0.4%	1,365	0.3%	2,280	0.5%
Slovenia	35	0.0%	70	0.0%	335	0.1%	745	0.2%	9,245	2.3%	1,510	0.4%
Slovakia	415	0.2%	645	0.3%	505	0.2%	1,320	0.3%	1,555	0.4%	8,150	1.9%
Finland	710	0.3%	970	0.4%	1,270	0.4%	3,105	0.8%	3,170	0.8%	1,650	0.4%
Sweden	5,775	2.5%	9,680	3.9%	12,840	4.1%	11,220	2.9%	16,285	4.0%	23,500	5.5%
United Kingdom	29,640	12.8%	32,500	12.9%	46,015	14.7%	71,160	18.7%	80,315	19.8%	71,365	16.8%
EU 27 Total	230,700		251,290		313,650		380,455		406,585		424,170	

EU Asylum Applications by Member State, 1996 – 2007 (cont'd)

	2002		2003		2004		2005		2006		2007	
	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total
Belgium	18,800	4.5%	13,585	3.9%	12,400	4.5%	12,575	5.4%	8,870	4.5%	11,575	5.2%
Bulgaria	2,890	0.7%	1,320	0.4%	985	0.4%	700	0.3%	500	0.3%	815	0.4%
Czech Republic	8,485	2.0%	11,400	3.3%	5,300	1.9%	3,590	1.5%	2,730	1.4%	1,585	0.7%
Denmark	5,945	1.4%	4,390	1.3%	3,235	1.2%	2,280	1.0%	1,960	1.0%	2,225	1.0%
Germany	71,125	16.9%	50,565	14.7%	35,605	12.9%	28,915	12.3%	21,030	10.7%	19,165	8.6%
Estonia	10	0.0%	15	0.0%	10	0.0%	10	0.0%	5	0.0%	15	0.0%
Ireland	11,635	2.8%	7,485	2.2%	4,265	1.5%	4,305	1.8%	4,240	2.1%	3,935	1.8%
Greece	5,665	1.3%	8,180	2.4%	4,470	1.6%	9,050	3.9%	12,265	6.2%	25,115	11.3%
Spain	6,310	1.5%	5,765	1.7%	5,365	1.9%	5,050	2.2%	5,295	2.7%	7,195	3.2%
France	51,085	12.1%	59,770	17.3%	58,545	21.2%	49,735	21.2%	30,750	15.6%	29,160	13.1%
Italy	16,015	3.8%	13,705	4.0%	9,630	3.5%	9,345	4.0%	10,350	5.2%	14,055	6.3%
Cyprus	950	0.2%	4,405	1.3%	9,675	3.5%	7,715	3.3%	4,540	2.3%	6,780	3.0%
Latvia	25	0.0%	5	0.0%	5	0.0%	20	0.0%	10	0.0%	35	0.0%
Lithuania	365	0.1%	395	0.1%	165	0.1%	100	0.0%	145	0.1%	125	0.1%
Luxembourg	1,040	0.2%	1,550	0.4%	1,575	0.6%	800	0.3%	525	0.3%	425	0.2%
Hungary	6,410	1.5%	2,400	0.7%	1,600	0.6%	1,610	0.7%	2,115	1.1%	3,420	1.5%
Malta	350	0.1%	455	0.1%	995	0.4%	1,165	0.5%	1,270	0.6%	1,380	0.6%
Netherlands	18,665	4.4%	13,400	3.9%	9,780	3.5%	12,345	5.3%	14,465	7.3%	7,100	3.2%
Austria	39,355	9.3%	32,360	9.4%	24,635	8.9%	22,460	9.6%	13,350	6.8%	11,920	5.4%
Poland	5,170	1.2%	6,810	2.0%	7,925	2.9%	5,240	2.2%	4,225	2.1%	7,205	3.2%
Portugal	245	0.1%	115	0.0%	115	0.0%	115	0.0%	130	0.1%	225	0.1%
Romania	1,000	0.2%	885	0.3%	545	0.2%	485	0.2%	380	0.2%	660	0.3%
Slovenia	650	0.2%	1,050	0.3%	1,090	0.4%	1,550	0.7%	500	0.3%	370	0.2%
Slovakia	9,745	2.3%	10,300	3.0%	11,395	4.1%	3,550	1.5%	2,850	1.4%	2,640	1.2%
Finland	3,445	0.8%	3,090	0.9%	3,575	1.3%	3,595	1.5%	2,275	1.2%	1,405	0.6%
Sweden	33,015	7.8%	31,355	9.1%	23,160	8.4%	17,530	7.5%	24,320	12.3%	36,205	16.3%
United Kingdom	103,080	24.5%	60,045	17.4%	40,625	14.7%	30,840	13.1%	28,320	14.3%	27,905	12.5%
EU 27 Total	421,475		344,800		276,670		234,675		197,415		222,640	

EU Asylum Applications by Region, 1996 – 2007

	1996		1997		1998		1999		2000		2001	
	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total
France & Germany		58.4%		50.0%		38.6%		33.0%		28.9%		32.0%
Southern Border		3.2%		4.6%		6.9%		7.8%		6.7%		8.1%
Eastern Border		1.5%		2.9%		4.7%		5.8%		5.1%		6.8%
External Borders		4.7%		7.5%		11.6%		13.6%		11.8%		14.9%

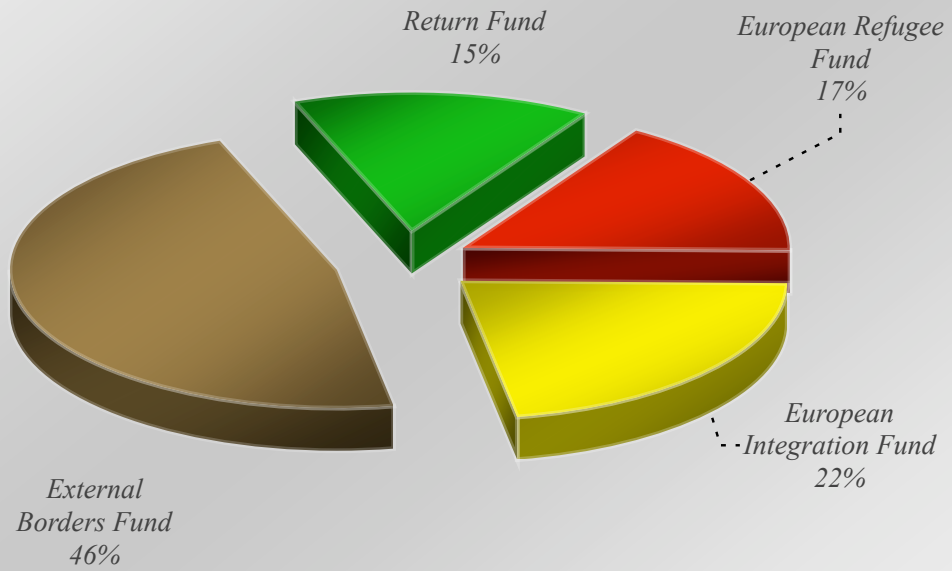
	2002		2003		2004		2005		2006		2007	
	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total	Asylum Claims	% of EU Total
France & Germany		29.00%		32.00%		34.00%		33.50%		26.20%		21.70%
Southern Border		7.00%		9.50%		10.90%		13.80%		17.10%		24.60%
Eastern Border		6.90%		7.30%		9.50%		6.50%		6.30%		7.30%
External Borders		13.90%		16.80%		20.40%		20.30%		23.50%		31.90%

Source: Eurostat; Applications made at the ‘Southern Border’ include those in: Greece, Spain, Italy, Cyprus, Malta, and Portugal. Applications made at the ‘Eastern Border’ include those in: Bulgaria, Estonia, Lithuania, Latvia, Hungary, Poland, Romania, Slovakia, and Finland. The ‘External Border’ is an aggregate of the two former categories.

A.2

Allocation of EU Funds to Member States

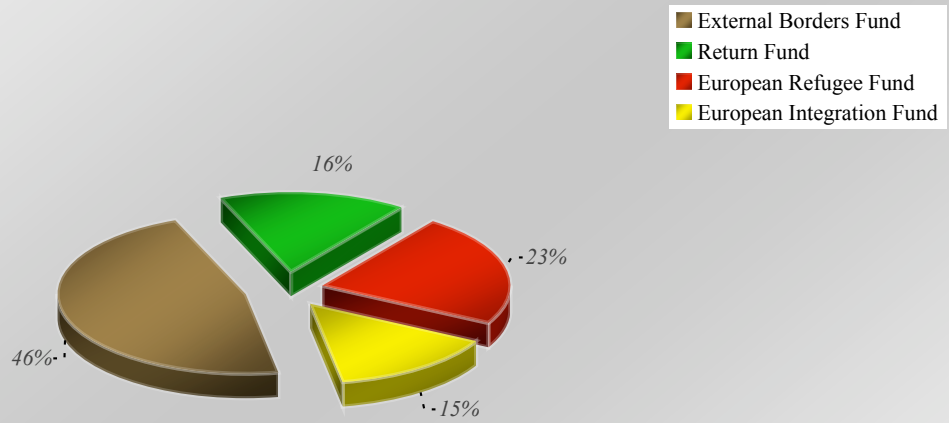
**European Solidarity and Management of Migration Funds,
2007-2011**



Total of €2,205,668,603¹

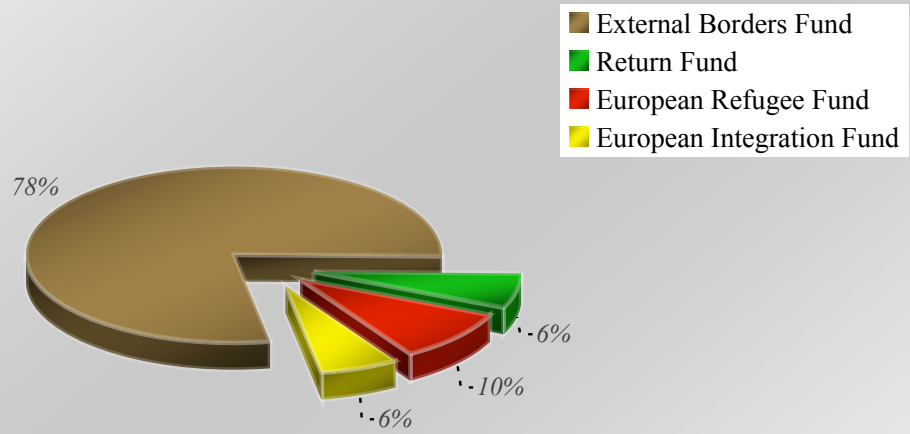
¹ The Return and Refugee Funds are for 2008-2011; Source: EU Commission, Home Affairs, see <http://ec.europa.eu/home-affairs/funding/integration/Table%20n%20%201%20v%2020%2006%2011.doc>

Allocation of Funds to Cyprus, 2007-2011



Total of €30,091,111

Allocation of EU Funds to Malta, 2007-2011



Total of €44,132,870

Allocation of EU Funds Compared with Population and GDP*

Member State (MS)	Solidarity and Management of Migration Flows Programme Funds, 2007-2011 ²		Population (2010) ³		% of EU27 GDP (based on millions euro in 2010) ⁴	MS with larger % of Funds than Pop or GDP
	Total	% of MS Total	Total	% of MS Total		
Austria	44,095,118	2.3%	8,375,290	1.7%	2.3%	Cyprus Estonia Finland Greece Hungary Latvia Lithuania Malta Slovenia Spain
Belgium	47,626,952	2.4%	10,839,905	2.2%	2.9%	
Bulgaria	23,083,726	1.2%	7,563,710	1.5%	0.3%	
Cyprus	30,091,111	1.5%	803,147	0.2%	0.1%	
Czech Republic	28,635,204	1.5%	10,506,813	2.1%	1.2%	
Denmark	4,315,396	0.2%	5,534,738	1.1%	1.9%	
Estonia	24,525,912	1.3%	1,340,127	0.3%	0.1%	
Finland	45,124,595	2.3%	5,351,427	1.1%	1.5%	
France	172,767,318	8.9%	64,716,213	12.9%	15.8%	
Germany	159,472,896	8.2%	81,802,257	16.3%	20.2%	
Greece	198,509,710	10.2%	11,305,118	2.3%	1.9%	
Hungary	48,573,939	2.5%	10,014,324	2.0%	0.8%	
Ireland	14,676,459	0.8%	4,467,854	0.9%	1.3%	
Italy	238,130,423	12.2%	60,340,328	12.0%	12.7%	
Latvia	20,096,349	1.0%	2,248,374	0.4%	0.1%	
Lithuania**	26,531,170	1.4%	3,329,039	0.7%	0.2%	
Luxembourg	6,416,150	0.3%	502,066	0.1%	0.3%	
Malta	44,132,870	2.3%	414,372	0.1%	0.1%	
Netherlands	61,543,647	3.2%	16,574,989	3.3%	4.8%	
Poland	70,170,325	3.6%	38,167,329	7.6%	2.9%	
Portugal	31,142,680	1.6%	10,637,713	2.1%	1.4%	
Romania	33,931,444	1.7%	21,462,186	4.3%	1.0%	
Slovakia	16,697,193	0.9%	5,424,925	1.1%	0.5%	
Slovenia	37,359,756	1.9%	2,046,976	0.4%	0.3%	
Spain	285,128,880	14.6%	45,989,016	9.2%	8.6%	
Sweden	83,785,790	4.3%	9,340,682	1.9%	2.8%	
United Kingdom	155,284,809	8.0%	62,026,962	12.4%	13.9%	
Member States' Totals	1,951,849,822	100.0%	501,125,880	100.0%	99.9%	

² Source: EU Commission, Home Affairs, see: <http://ec.europa.eu/home-affairs/funding/integration/Table%20n%20%201%20v%2020%2006%2011.doc>;
This data originally included other European states such as Switzerland, Norway and Iceland.

³ Source: Eurostat Data

⁴ Ibid.

* Figures are in red when the percentage of Solidarity Funds that the state receives compared to the rest of the EU-27 is larger than their share of GDP or population.

** Lithuania also received an additional €76 million under the Transit Scheme, which is for the implementation of EC regulations in ‘the management of the transit of persons by land between the Kaliningrad region and the rest of the Russian Federation through the territory of the Community’.⁵

⁵ EU Press Release, ‘External Borders Fund 2007-2013 – A two fold financing for Lithuania’, IP/09/107, Brussels, 23 January 2009; c.f. Council Regulation (EC) No 693/2003, ‘Facilitated Transit Document (FTD), a Facilitated Rail Transit Document (FRTD) and amending the Common Consular Instructions and the Common Manual’, Official Journal, L 99/8, 17 April 2003