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Reconfiguring the spatiality of power: the construction of a supranational migration framework for the European Union

HELGA LEITNER

Department of Geography, University of Minnesota, Minneapolis, MN 55454, USA

ABSTRACT. This paper examines the construction of a supranational framework for immigration control for the European Union since the mid-1980s and its implications for national sovereignty, for EU membership and for migrants. As in the case of European integration more generally, this construction process has been highly contested, involving numerous negotiations, tensions and struggles among different political actors situating themselves and operating at different geographic scales. Contestation occurred over three issues in particular: first, over where power and authority should be located—at which geographic scale and in which institutions; second, over geographic scope—the territorial extent of the framework; and third, over the principles according to which power and authority should be exercised—over divergent visions of justice and democratic accountability. Examination of the cacophony of intergovernmental institutional arrangements and agreements on immigration matters suggests that power over the immigration of non-EU nationals remains in the hands of nation-states, with supranational policies materializing only when they are seen as consistent with national interests. An analysis of the tensions and struggles between different state and non-state actors concerning the rights of current and potential non-EU immigrants reveals contrasting visions of justice and democratic accountability. Juxtaposed to the exclusionary policies promoted by national government representatives and right-wing nationalist parties are calls by transnational nongovernmental organizations for more inclusionary policies encompassing the protection of human rights of immigrants and their representation in the democratic process. Copyright © 1997 Elsevier Science Ltd

It takes only mere acquaintance with the modern world to note a new order and intensity in spatial interactions, including an accelerating internationalization of economic activities and globalization of migration flows. These trends constitute a challenge to the boundedness of nation-states. For example, the massive internationalization of financial and commodity flows and services from the mid-1970s onward has challenged the concept of the 'national economy' as a natural unit of the world economic order and the role of the nation-state within it (Jessop, 1994: 261). In a period when firms can escape effective national control with relative ease, national economic policies are less effective, and it no longer appears obvious that the national scale is the most appropriate one for pursuing economic growth, technological innovation or competitiveness. This realization

is reflected in actions such as the creation by states of transnational economic strategies and agreements (de Smidt, 1991), and of supranational regional blocs, such as the European Union, the major purpose of which is to facilitate increased international capital mobility and trade flows.

In the case of population flows, by contrast, retaining national boundaries and limiting international mobility continues to be regarded as a legitimate prerogative of nation-states. National sovereignty within the sphere of population movements (immigration control) has been relatively uninhibited by supranational regulations, except for international agreements governing the admission and treatment of political refugees (Zolberg, 1989).

The integration of nation-states into the European Union (EU),[1] however, did have significant implications for their sovereignty in relation to immigration matters. As part of the process of economic integration, free movement of labor among member states was introduced. Until the mid-1980s, immigration control over non-EU nationals remained the sovereign prerogative of member states and was regarded as lying outside the sphere of competence and interest of the EU. Yet since then, proposals for the abolition of internal border controls within EU territory, together with increased immigration pressures from outside EU territory, have generated increased activity to coordinate migration policies at the supranational scale.

The history of European integration during the last 40 years provides, I argue, a paradigmatic example of the political construction of scale. It demonstrates well that scale, in this case the supranational scale, is purposefully constructed by political actors in response to place- and time-specific contextual realities. This paper examines the political construction of a supranational framework for immigration control for the EU to illustrate the complex institutional arrangements, political practices and discourses through which scale is constructed. It also highlights the tensions and struggles among a multitude of political actors over the geographic scale and scope of political power and authority and the principles according to which power and authority should be exercised. Before turning to these issues I provide a brief discussion of the constructionist approach to scale employed in this paper and the positions taken by European nation-states towards the admission of immigrants in the post-Second-World-War period.

Reconfiguring the spatiality of power: the political construction of scale

Scale is a familiar and largely taken-for-granted concept for geographers. For cartographers it denotes 'the ratio between a model and the object represented, between a map and the area represented', according to the *New Shorter Oxford English Dictionary* (1993, Vol. 2: 2701, definition 8). More generally geographers have employed the term 'geographic scale' to represent a graduated series, usually a nested hierarchy of bounded spaces of differing size, such as the local, regional, national and supranational. This meaning of scale has become an important spatial ordering principle of the world, but also a framework for social scientific inquiry. In pursuing this framework, social scientists and geographers alike have very often treated such geographic scales as simply different levels of analysis in which the investigation of economic, social and political processes is set. Such treatment is questionable, because geographic scale is considered as an unproblematic, pre-given and fixed hierarchy of bounded spaces in which processes and phenomena occur and are to be examined.

Recently the notion of geographic scale as fixed and pre-given has been challenged (Smith, 1992; Agnew, 1993). Geographers have stressed that the geographic scale at which, for example, economic activities and political authority are constituted is not fixed but periodically transformed (Smith and Dennis, 1987; Herod, 1991) and that different social, economic and political processes tend to operate at different spatial scales (Taylor, 1982; Duncan and Savage, 1989). Furthermore, attention has been drawn to the relations and influences of processes operating at different spatial scales (such as the local and global), and how they interact to produce incentives and motives for political action (Miller, 1994; Staeheli, 1994). The common ground of this body of research is that geographic scale is conceptualized as socially constructed rather than ontologically pre-given, and that the geographic scales constructed are themselves implicated in the constitution of social, economic and political processes.

Adopting a constructionist perspective, this paper focuses on the actual practice of the political construction of scale; on how this construction is attempted and accomplished by actors in political transformations, and on the significance of such practices for an understanding of political and spatial change. The notion of scale employed here is that of a nested hierarchy of political spaces, each with a distinct geographic scope, that is, territorial extent. A central aspect of the practice of the political construction of scale is the manipulation of relations of power and authority between overlapping or mutually inclusive political territories, by actors operating and situating themselves at different geographic scales. This process is highly contested, involving numerous negotiations, tensions and struggles among different actors as they attempt to reshape the spatiality of power and authority. In the cases examined in this paper, there was contestation over three issues in particular. First, there was contestation over where power should be located and exercised; that is, at which geographic scales and in which institutions at those scales. In essence, these are struggles over the transformation in the vertical order of the territorial structure of governance. Second, disputes took place over the geographic scope; that is, over the territorial extent of power and authority. More generally, this is an example of disputes over the territorial boundaries of governance structures, boundaries that define the geographic scope of the political power and authority associated with a particular scale. Third, disputes transpired over the principles according to which political power should be exercised; that is, over divergent visions of justice and democratic accountability. Political actors whose identities are situated at contrasting geographic scales, particularly nationalists and internationalists, have very different visions of the norms that should govern supranational policy. To illustrate these three aspects of the political construction of scale, consider the disputes surrounding European integration.

The economic and political integration of nation-states into the EU (that is, the construction of this supranational scale) has been marked, first, with struggles over the location of power and authority. At the center have been issues of whether, to what degree, and in which policy arenas member states should surrender national sovereignty to centralized EU institutions. There has been a tug-of-war between two contrasting visions of the EU: a strong Euro-state replicating nation-state authority at a supranational scale, or a strategic supranational association expected to be capable of better representing respective national interests in European and global affairs. Opponents of a strong Euro-state have been preoccupied with the threat of the transfer of power and authority from national governments to the central decision-

making bodies of the EU and with the loss of national control over political ideologies and ideas of nationhood. Proponents, on the other hand, interpret an increasing concentration of authority and power in the central decision-making bodies as signs of successful integration. The latter have not been content to engage in a reinterpretation of nation-state sovereignty, attempting instead to replace the concept of nation-state sovereignty with supra-state sovereignty.

Since the late 1980s the notion of subsidiarity, central to discussions about the vertical distribution of power and authority within federal governance structures, has become the key term in the integration debate. The principle of subsidiarity currently applied within the EU affirms that power and authority should be located at the national scale, and that the transfer to the supranational scale should only occur if it seems efficient and necessary. As a number of observers have pointed out, this formulation has been used to justify both increasing competencies of EU institutions and opposition to the transfer of power and authority to the supranational scale (Reichardt, 1994). The actual process of transferring authority and power from the national to the supranational scale will depend on the degree to which it is seen as advancing the interests of member states and the extent to which it enjoys popular legitimacy (Murphy, 1994: 14). It can be expected that the application of the subsidiarity principle will continue to be subject to conflicts, not only between EU institutions and member states, but also among member states due to differences in the territorial structure of governance and in administrative and economic capacities (Renzsch, 1993). It can further be anticipated that the current restriction of the subsidiarity principle to the vertical distribution of power and authority between EU institutions and member states will be challenged by subnational-scale institutions, particularly regions (Renzsch, 1993). What the acceptance of the subsidiarity principle has achieved, however, is to compel EU institutions to explain and justify their activities more seriously than in the past (Laffan, 1992).

A second area of dispute has concerned the geographic scope of European integration. This issue has assumed heightened importance in light of the geopolitical changes in Europe since the late 1980s, as a result of which East European states have shown increased interest in joining the EU and participating in the process of European integration. This has intensified debates and disputes centered around the relative merits of deepening economic and political union among current member states versus widening the geographic scope of the EU. What emerged was a compromise, whereby some of the advanced East European states have been allowed partially in through 'association agreements'. Thus, although the EU today officially consists of 15 member states, it is functionally much bigger. Through numerous agreements and structures, and to various degrees, most countries of Europe have effectively become part of the economic sphere of the EU. This suggests that the future will lie in a more flexible geographic scope of European integration with varying degrees of participation.

The third area of dispute over the exercise of power has focused on issues of democratic accountability and the social equity and justice content of supranational policy and practice. Even proponents of a strong Euro-state differ substantially on these issues and struggle with one another in seeking to realize their specific visions of democratic accountability and social justice. Examples include conflicts over decision-making power between EU institutions, such as the democratically elected European Parliament and the Council of Ministers of the European Union. Other examples, discussed in more detail below, are the activities of transnational nongovernmental

organizations concerned with the protection of human rights and environmental sustainability. While generally supportive of EU competence over immigration matters, they have challenged specific EU policies that pay inadequate attention to these concerns.

Struggles over the allocation of power and authority to different scales, the geographic scope of the supranational scale, and the visions of justice and democratic accountability that should govern the exercise of power together create an arena of negotiation, conflict and uncertainty that makes the reconstruction of the spatiality of power contingent and unpredictable. In the remainder of this paper, the practice of this reconstruction in the development of a supranational migration framework is investigated, and potential implications of the nature of this new framework for national sovereignty and for migrants is explored.

The geographic and civic admission of foreigners to West European states

Debates over immigration generally start from the premise that every nation-state has the right to control the admission of foreigners. This is seen as essential to a nation-state's sovereignty and territorial and cultural integrity. Indeed, every modern nation-state devises its own criteria for deciding both who should be admitted to its territory and who should become a member of the receiving society (Zolberg, 1989; Leitner, 1995). Migration policies developed by nation-states thus generally have two dimensions constituting two separate, although closely related, policy focuses. The first is geographic admission, determining access to residence and work within the national territory, which is governed by asylum, immigration and foreign labor employment policies. The other is civic admission, granting access to citizenship rights—that is, civil, political and social rights—which is governed by integration and naturalization policies. Civil rights include freedom of opinion and expression, equal protection under the law and, of particular importance for this paper, freedom of movement. Political rights usually include the right to vote and run for office. Social rights refer to the eligibility for welfare state programs such as public education, health care, family allowance, unemployment and retirement benefits (Marshall, 1973). Through selective application of these two sets of policies, states determine whom they wish to admit into their territory and labor market and what citizenship rights they wish to accord to those foreigners admitted, thus defining the permeability of territorial (external) and communal (internal) boundaries.

The dominant model for the geographic and civic admission of foreigners in a number of continental European states for much of the post-war period was the guestworker system. While this system dominated most notably in states such as Germany, Switzerland and Austria, a colonial model of more permanent labor figured more strongly in the UK and to some extent also in France and The Netherlands. In the guestworker system, foreigners were admitted into national territories for the purpose of work, initially for a restricted period of time, and with limited citizenship rights. Access to territory and national labor markets was strictly controlled through work and residence permits, with work permits initially tied to a specific job or sometimes a specific employer, and through initial restrictions on family reunification (Leitner, 1987). These policies were complemented during the 1970s by integration policies primarily targeted at improving migrants' access to and participation in welfare state programs. In most West European states, legally admitted temporary or permanent residents now enjoy, *de jure,* most social and civil rights accorded to

citizens. On the other hand, foreign residents remain excluded in varying degrees from political rights.[2] Naturalization policies, defining access to formal citizenship, have been rather restrictive, with a long list of conditions that must be met before a foreigner can become naturalized (for detailed discussion on citizenship rights see Hammar, 1990; Layton-Henry, 1990; Bauböck, 1992). The application of this model, although modified over time and varying significantly among West European states, has been seen as best serving the national interest; ensuring the economic well-being of citizens, domestic tranquillity, welfare state benefits and, last but not least, preserving national culture and identity.

There are periods when existing laws and policies are deemed quite effective in serving the national interest, and periods when nation-states perceive that they are losing control over immigration, such as when borders are feared to be too permeable or when the presence of large numbers of immigrants is seen as constituting a threat to social order. Until the mid-1980s, the influx of non-West-European migrants was at least perceived to be under control in the member states of the EU. This perception began to change, however, as the number of asylum-seekers from the Third World and from across Eastern Europe increased significantly during the latter part of the 1980s. At the same time, some West European states were faced with rising xenophobia among the indigenous population, anti-foreigner rightist extremism, and outbursts of violence against foreigners within their territory (Nielsen, 1985; Balibar, 1991; Salt, 1991; Fijalkowski, 1993; Leitner, 1995).

In response to these developments, most national governments overhauled their migration policies and institutional frameworks for immigration control.[3] The outcome of this legal and institutional reform has been a tightening of national controls on entry, right of settlement and asylum for non-EC nationals.[4] This increase in state surveillance of non-EC nationals, through tighter immigration policies and control, constitutes a strong affirmation of member states' sovereign prerogative over immigration.

It is worth noting that immigration control policies have taken precedence over integration and naturalization policies, despite the fact that by the mid-1980s most West European states housed substantial and, in many cases, poorly integrated, immigrant populations. This has been justified in part on the grounds that policies aimed at the social integration of migrants are bound to fail as long as the migratory influx into the national territory is not brought under control.

At the same time that member governments faced the increased challenge of unwanted immigration from outside Community territory and became preoccupied with keeping out potential immigrants, there were moves towards enhanced economic integration within the EC. Negotiations were under way to complete the creation of a Single European Market, which culminated in the passage of the Single European Act of 1986. The aim of this Act was to remove remaining barriers within the Community to the free movement of people, as well as of goods, capital and services. The Act provided, among other measures, for the abolition of border controls between member states.[5] The abolition of intra-Community border controls was intended to be accompanied by common policies towards the world outside the EC. As internal borders restricting the movement of persons come down, member states perceive a need both to increase control of external borders of the EC territory and to regulate the movement of non-EC nationals already residing within EC territory. When any person admitted into one member state can move freely, *de facto* if not *de jure*, to another, liberal admission policies of one member state have the potential to undermine the restrictive policies of other member states.

Constructing a supranational migration framework: institutional and territorial cacophony

> The conviction that, confronted with these developments, a strictly national policy could not provide an adequate response has been consistently gaining ground . . . [and on] that basis, it would appear advisable to define a common answer to the question of how this immigration pressure can be accommodated. This will require an extended form of cooperation among member states. (Ad Hoc Group on Immigration, 1991, cited in Collinson, 1993: 117)

Increased real or perceived immigration pressures and plans for lifting internal border controls thus provided a strong incentive, which since the mid-1980s has led to increased institutionalized supranational cooperation on immigration matters between EC member countries.[6] The move towards formal cooperation was further facilitated by an increasing convergence in national legislation and policies towards non-EC nationals and by a general consensus that none of the member states were or would be declared immigration countries.

After the signing of the Single European Act, parallel intergovernmental groups on immigration among EC member countries proliferated. The most notable are the Schengen Group, constituted in 1985, which originally included ministers and state secretaries of five EC countries (Belgium, The Netherlands, Luxembourg, France and Germany), and the Ad Hoc Group on Immigration, established in 1986, which brings together ministers of justice and interior and senior civil servants from all member states. Despite its EC membership, the Schengen Group was established outside existing EC institutions. The Ad Hoc Group on Immigration, however, operated under the coordination of the Commission of the EC. The purpose of these groups was to pave the way for the harmonization of migration policies between participating governments through intergovernmental consultations and to achieve formal harmonization through agreements and conventions (Collinson, 1993: 112). Intergovernmental cooperation on immigration matters has not been restricted to EC member states, however. There have been numerous other initiatives for intergovernmental cooperation on immigration matters, the most important operating within the framework of, or coordinated by, international institutions and organizations such as the Council of Europe (for further details, see Cruz, 1993). Because of space limitations, discussion in this paper is restricted to activities involving EC/EU member states.

The two most important conventions emerging thus far from intergovernmental negotiations have been the so-called Schengen and Dublin conventions of 1990 (*Table 1*). The 1990 Convention on the Application of the Schengen Agreement was signed in December 1994 by 9 of the then 12 EC countries comprising what came to be known as the Schengen Territory (The Netherlands, Belgium, Luxembourg, Germany, France, Italy, Spain, Greece and Portugal; that is, the EC territory excluding Great Britain, Ireland and Denmark). It includes provisions for reinforcing the common external borders, a common visa policy, the setting up of a database on migration (the Schengen Information System), and formalizing the free movement within the Schengen Territory of citizens of the signatory states (Meijers, 1991: Cruz, 1993). The Schengen Convention provided a model for the Draft Convention on the Crossing of External Borders, drawn up in 1991 by the Ad Hoc Group on Immigration (not yet signed and ratified), which sets out conditions for the crossing of external frontiers and for issuing and using visas.

TABLE 1. Major formal conventions and treaties since the mid-1980s forming the building blocks for the emerging supranational migration framework

Convention/treaty	*Details*
Schengen Agreements of 1985 and 1990	Cover a wide range of issues related to cross-border movements within the Schengen territory and from the outside
Dublin Convention of 1990	Lays down provisions for examining applications for asylum
Draft Convention on the Crossing of External Borders (not yet signed)	Lays down conditions for the crossing of external borders and for issuing and using visas for the EU
Treaty on European Union, Maastricht 1991	Gives legal competence to the EU in the area of visa policy; establishes the basis for formal institutional cooperation among member countries in the areas of asylum, immigration policy and policy regarding non-EU nationals residing within EU territory, treatment of illegal immigration and deportation; and addresses rights of workers, including non-EU nationals

The Schengen Agreement also proposed the harmonization of procedural and substantive norms governing asylum policies, an issue addressed in the Dublin Convention of 1990, signed but not yet ratified by all member states. A key provision of the Dublin Convention is to make the country where a refugee first arrives responsible for examining and making a final decision on the application for asylum for all signatory states. The goal is to prevent multiple or successive applications for asylum to different member countries and to stop asylum-seekers from 'shopping' for the best European havens (Bolten, 1991).

A characteristic feature of the 'harmonization' of migration policies emerging from these conventions is that they are primarily based on intergovernmental cooperation and coordination, rather than on transferring immigration matters into Community competence. Community institutions, in particular the Commission, have been active in this process, however. For example, the Commission has developed recommendations for coordinated action on immigration and refugee issues among member states, including:

(1) taking action on migration pressure by making migration an integral element of the Community's external policy;
(2) controlling migration flows through harmonized monitoring of external borders, common measures to combat illegal immigration, a joint approach to asylum, harmonization of criteria for reuniting families, and a joint framework for temporary contracts for foreign workers;
(3) strengthening integration policies for the benefit of legal immigrants, in particular improving their residency status (Collinson 1993: 119).

Some aspects of these recommendations were, in fact, incorporated in the 1991 Maastricht Treaty on European Union (Council of the European Communities, Commission of the European Communities, 1992: Art. K.1 to K.9: 131ff), which has recently been ratified by all member states.

Three aspects of the Maastricht Treaty pertaining to immigration matters give the already existing intergovernmental cooperation agreements such as Dublin and Schengen a formal basis within EU institutions. First, the treaty gives legal competence to the Union in the area of visa policy:

> The Council, acting by unanimity (and by qualified majority after January 1, 1996) on a proposal from the Commission and after consulting the European Parliament, shall determine the third countries whose nationals must be in possession of a visa when crossing the external borders of the Member States. (Article G 100 c(1))

This implies the formulation of a common list of countries from whose nationals visas will be required by all signatory states (Collinson, 1993: 127). Second, the treaty (Title VI, Articles K.1–K.7) establishes the basis for formal institutional cooperation between member states in the areas of asylum policy, immigration policy and policy regarding non-EU nationals with respect to conditions of entry and movement, residence, family reunion, treatment of unauthorized immigration and deportation. A coordinating committee of senior officials will be working with the Commission, which also has the right of initiating policy in those areas regarded as matters of common interest (Article K.4 (1,2)). Third, as part of the 'Protocol on Social Policy' (signed by all member states except the UK), the treaty addresses the rights of workers, including non-EU nationals legally residing in Union territory, thus addressing conditions of employment for non-EU nationals (Callovi, 1993).

The institutional arrangements underlying the emerging supranational migration framework share many of the features that characterize the process of European integration. As in the conventions preceding the Maastricht Treaty, intergovernmental cooperation continues to prevail over a Community approach in the harmonization of immigration policies, with the exception of visa policies. The dominance of intergovernmental cooperation, together with harmonization rules which give member states the option of deciding whether or not to incorporate EU common standards into their national legislation, provides ample space for member states to pursue their own agendas. It also makes the implementation of harmonized standards a significant challenge because of the complexity of the ratification processes that ensue. Thus, the development of a supranational migration framework continues to be a highly complicated and cumbersome saga, with ministers of the now 15 member states responsible for immigration discussing, and in some cases adopting, numerous draft resolutions for implementing harmonized immigration laws and policies (at the London Conference in 1992, Copenhagen Conference in 1993; see Boeles *et al.*, 1993). The purpose of these resolutions is to elicit a political commitment from the member governments to adapt their legislation to the common standards laid down in the resolutions, since the optional nature of harmonization rules cannot compel them to do so (Boeles *et al.*, 1993).

Imbalances in decision-making power between national governments and EU institutions and among EU institutions are part and parcel of the structure of the institutional arrangements. The decision-making process is primarily in the hands of public officials of the member states and the Council of Ministers, while other EU institutions, such as the Commission, the European Parliament and the European Court of Justice, remain peripheral. The marginal position of these institutions has not been one of choice. Members of the European Parliament have repeatedly been critical of the fact that the decision-making process is left in the hands of

national officials and the EU executive, with little or no direct accountability to national parliaments or the European Parliament. Indeed, the European Parliament has repeatedly requested greater involvement of the Parliament and the European Court of Justice in the creation of, and control over, the development and implementation of common standards (Boeles *et al.*, 1993: 7). According to Dummett and Niessen (1993), thus far neither the European Parliament nor the Court of Justice have been given real power in the construction of the supranational migration framework.

The emerging territorial structure of the supranational migration framework generally reflects not only the territorial dimension of the European integration process during the last ten years, but also its elaborate institutional arrangements. In 1985, anticipating implementation of the Single European Act in 1986, five member states of the EC created the Schengen Group; by 1990, it was extended to the nine member states that made up the Schengen Territory in December 1994. This effectively created a sub-territory within the EU for the purpose of eliminating internal borders for their citizens and achieving common protection of their external borders (see *Figure 1*). The recent spatial expansion of European integration beyond EU territory has also led to an enlargement of the territorial boundaries of the emerging supranational migration framework. The construction of a European Economic Area (EEA),[7] which includes the member states of the EU and three of the four remaining members states of the European Free Trade Association (EFTA) (Norway, Iceland and Liechtenstein) allows, *inter alia*, for the freedom of movement of workers who are nationals of these 18 countries. Furthermore, preparations have been under way to expand the asylum provisions of the Dublin Convention to the EEA territory (*Figure 1*).

Association agreements between the EU and such East European states as Hungary, the Czech and Slovak Republics and Poland have pushed the territorial boundaries of the emerging supranational migration framework toward the east. Among other aspects, these provide limited access of these countries' nationals to the EU labor market. In addition, East European states have entered into readmission agreements with EU member states covering 'irregular persons' (illegal immigrants and persons who have been denied asylum). For example, in March 1992 the Schengen states and Poland reached a readmission agreement which requires Poland to readmit any person who enters the Schengen Territory via Poland, or a Polish national who does not fulfill (or no longer fulfills) the conditions for entry or residence in the Schengen Territory. The purpose of this, and the numerous other bilateral readmission agreements between East and West European states, is to reduce the load of asylum-seekers in West European states and to facilitate deportations of illegal immigrants. These readmission agreements have put pressure on East European states to strengthen their immigration control and restrict entry of asylum-seekers in line with West European restrictions, thus effectively extending the geographic scope of the migration framework. Furthermore, in order to protect themselves from a likely increase in the number of unwanted immigrants, East European states have sought readmission agreements of their own. For example, Poland has been pursuing readmission agreements with the Czech Republic, Slovakia, the Baltic states, Ukraine and Russia. Restrictive immigration policies and readmission agreements are thus placing East European states in the role of 'buffer states', in terms of absorbing those who do not qualify for entry or are expelled from West European states, and through controlling access to the borders of potential West European receiving states.

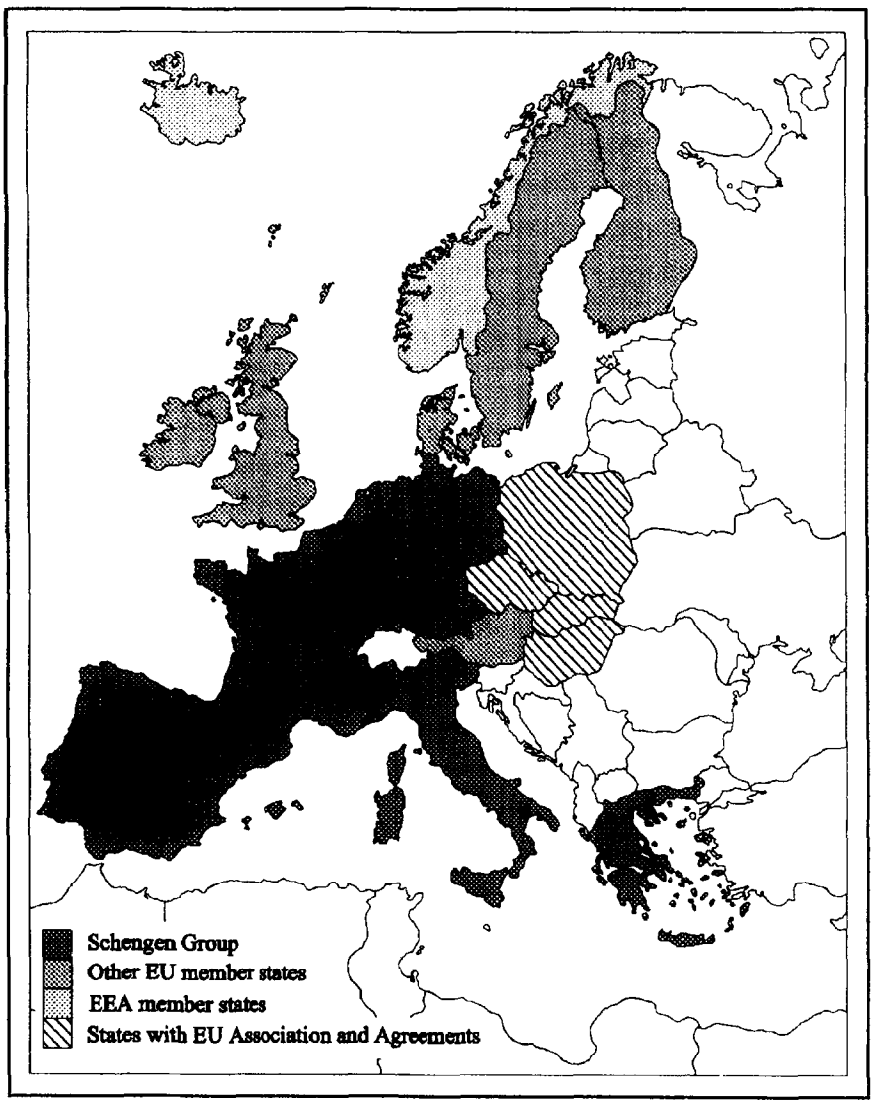

FIGURE 1. The territorial structure of the supranational migration framework, 1 January 1995.

Policy outcomes and internal conflicts

The supranational migration framework currently in the making is characterized by the development of common standards which aim first at restricting geographic admission and legal protection of East European and non-European nationals, creating what has been referred to as 'Fortress Europe' (Kofman and Sales, 1992; Brochmann, 1993). As Cohen and Joly (1989: 17) have put it: 'The European Community looks more and more like a gilded cage with the Ministers of the Interior bracing and painting the bars'.

A brief overview of some of the common standards developed in the conventions and resolutions for the harmonization of asylum law and procedures may serve as examples. A key provision of the Dublin Convention is to make the member state where a refugee

first arrives responsible for examining and making a final decision on the application for asylum, for all signatory states. This prevents multiple and successive applications for asylum to different member states, thus reducing asylum opportunities in signatory countries (Bolten, 1991). In order to deter potential asylum-seekers and to prevent the perceived abuse of asylum procedures by 'economic refugees', the asylum decision-making process has also been simplified and accelerated by developing new common criteria for what constitutes manifestly unfounded applications for asylum and by specifying that decisions on unfounded applications should be taken within one month. Asylum applicants from countries defined as 'safe' are regarded as making unfounded applications because, generally speaking, there is no serious risk of persecution. The safe-country concept is thus place-based, and predicated on conditions in the country of origin and not on an assessment of an individual's history. Unfounded asylum requests also include cases in which the persecuted person could flee to other areas of their country of origin where there is no fear of persecution, as well as cases in which an asylum-seeker can be referred to a so-called safe 'host third country'. The 'host third country' rule implies that if a legitimate asylum-seeker entered a country outside the 12 member states prior to coming to the EU, the application for refugee status may not be examined by the member state and the asylum-seeker can be expelled to that country. This forces asylum-seekers to lodge an application for asylum at the border of, or within the territory of the first country they reach after leaving their home country (for a detailed critical evaluation of common asylum rules see Fernhout and Meijers, 1992).

Article K.2 of the Maastricht Treaty states that measures to be taken within the framework of intergovernmental cooperation in the field of asylum policy shall be dealt with in compliance with the 1951 Geneva Convention on the Status of Refugees and the Protocol of 1967. As has been pointed out by international refugee and nongovernmental human rights organizations (United Nations High Commission for Refugees [UNHCR], Amnesty International and the Standing Committee of Experts in International Immigration, Refugee and Criminal Law), however, the common standards that have been evolving constitute in some areas a deterioration of the rights to asylum and protection of refugees provided in the Geneva Convention and in the numerous resolutions of the UN General Assembly (Boeles *et al.*, 1993). Although protests by the UNHCR and Amnesty International about such issues as the safe-country concept have led to minor revisions in this provision, the overriding trend towards reducing access to the territory and automatic access to asylum procedures remains.

Some observers have pointed out that the common standards evolving from the intergovernmental negotiations and conventions are even more restrictive than current asylum law in a number of member states (Boeles *et al.*, 1993). Common standards can thus be used as a convenient tool by member states to legitimate a reduction in the rights of asylum-seekers within their national asylum laws. Cognizant of these developments, the European Parliament has urged member governments in its Asylum Resolution of 1992 (A3–0337/92) to accept the view that national asylum laws should 'ensure unfettered access to the territory and unfettered and automatic access to the procedures, even if the states have arrangements based on a list of "safe countries of origin"' (cited in Boeles *et al.*, 1993: 10).

In contrast to immigration control policies, harmonization of integration policies promoting the participation of legally residing migrants has not become part of the numerous intergovernmental conventions and resolutions; nor are they addressed in the Maastricht Treaty—with the exception of employment conditions for non-EU nationals. Harmonization of integration policies would include common rules to combat discrimina-

tion in the labor market and in social, education and housing services, and the granting of limited political rights. The absence of harmonization efforts in the area of immigrant integration is particularly noteworthy, since immigrant integration has been cited as one principal concern in reports by the European Commission and the European Parliament. Both these bodies have been recommending a joint approach to strengthening integration policies for the benefit of legal immigrants (Commission of the European Communities, 1990b, 1991). For example, support and advocacy by members of the European Parliament and the Commission for the extension of the right to vote in local elections to non-EU nationals has not found an open ear among national officials or the EU executive.

The lack of interest in developing international agreements harmonizing integration policies, and the inability of interested EU institutions to instigate cooperation in this area, reflect in part the significant differences that exist between the member states in the rights accorded to immigrants and their families. For example, of the 12 member states in 1994, only The Netherlands, Denmark and Ireland have granted legally resident non-EU nationals the right to vote in local elections. What seems to be exhibited is the unwillingness of member states to support common standards that are inconsistent with their own standards and are not seen as serving their national interest. In the area of social rights, this corresponds with the lack of progress in establishing substantial social rights at the EU scale in general (Levelt, 1993).

Differences in the rights accorded to legally resident non-EU nationals relative to EU nationals are also evident in the treaties and agreements that have been reached. This can be seen with respect to right to Union citizenship, and the right to freedom of movement for the purpose of work and settlement. The Maastricht Treaty makes provisions for Union citizenship. Citizens of member states become EU citizens as a kind of second nationality. Union citizens have the right to move and reside freely in the member states, and also the right to vote and stand as candidates in municipal elections and elections to the European Parliament in their country of residence (Council of the European Communities, Commission of the European Communities, 1992). Union citizenship, however, is not available to the approximately 15 million non-EU nationals, many of whom have been residing within EU territory for all or most of their lives. By excluding these non-EU nationals from Union citizenship, the EU is affirming the *jus sanguinis* principle of citizenship[8] as the dominant principle for the attribution of Union citizenship. This exclusion of non-EU nationals from Union citizenship reinforces their image as second-class citizens, as quasi-outsiders who can legitimately be excluded from rights accorded to insiders, the EU nationals. At best this image does not challenge racist and xenophobic attitudes prevalent among Union citizens, and at worst it reinforces them (Levelt, 1993: 41).

Similarly, in the Schengen Convention, the right to the freedom of movement for work and settlement within the Schengen Territory is expressly limited to nationals of member states. This stands in contrast to repeated recommendations of the European Parliament stressing that the right to freedom of movement for the purpose of work should be extended equally to EU and non-EU nationals (*Migration News Sheet*, March/May 1991).[9] In December 1989, the European Parliament passed a resolution expressing concerns over intergovernmental agreements acting outside the competence of European institutions, because of their potential negative effects on the rights of non-EU migrant workers (Bunyan, 1991). Proposals that would gradually enable certain categories of non-EU nationals to move and work in another member state have also been advanced in some Commission documents (*Migration News Sheet*, June 1991).

During the last decade, we have seen different and shifting positions by EU institutions on the extent of membership of legally resident non-EU nationals. The European Parliament has been most consistently in favor of the eventual granting of equal rights. The Commission, although to some degree supportive of extending rights to non-EU nationals, has generally not advocated equal rights for all persons residing within EU territory. The Council of Ministers has concerned itself primarily with control policies, taking the stance that determining the rights of non-EU nationals should remain the competence of national governments. More generally, national governments and their representatives in the Council of Ministers have been the most resistant to according equal rights to non-EU nationals.

Although the last word has not been spoken on these issues, what seems to be emerging within this supranational framework of governance is a hierarchical complex of membership categories: groups with different bundles of rights based on nationality, state and place of residence. The broad structure of the hierarchy is based on nationality, with EU citizens at the top, followed by citizens of EEA member countries, non-EU citizens legally resident within the EU and/or EEA, and citizens of East European states that have association agreements with the EU or EEA. Cross-cutting this territorial core–periphery model of bundles of rights are variations in laws and policies which make certain civil, social and political rights attainable by some immigrants, but not others, depending on the state and place of residence (Dummett and Niessen, 1993).

External challenges to the supranational migration framework

Prominent challenges to the supranational migration framework as it is currently established have come from political actors and institutions peripheral to the decision-making process. Two groups stand out, operating and situating themselves at different geographic scales and propounding starkly contrasting ideals of political community and conceptions of social justice. Transnationalists, rooted in a liberal tradition of universal human rights and operating at the international scale, but also at national and local scales, are concerned with the protection of human rights. Nationalists, grounded in a boundary-orientated communitarian tradition and operating primarily at national and local scales, are concerned with safeguarding national community. Transnational immigrant organizations (such as the Council of Immigrant Associations in Europe [CAIE][10] and SOS Racisme[11]), other issue-orientated nongovernmental organizations (such as the Churches' Commission for Migrants in Europe [CCME],[12] the Standing Committee of Experts in International Immigration, Refugee and Criminal Law[13]) and networks (such as Platform Fortress Europe? [PFE][14]) have been critical of the restrictive nature of 'harmonized' policies towards international migrants and the creation of different classes of citizens within EU territory (*Table 2*). The common goal of these organizations is to ensure the protection of human rights and democratic participation in order to improve the precarious legal and social situation of refugees, asylum-seekers, documented and undocumented foreign workers and their families, and displaced persons.

The different organizations have adopted a variety of strategies and political practices to make their voices heard. The CCME and the CAIE have set up offices in Brussels and engage in active lobbying of EU institutions to make policies on immigration and ethnic minority matters more inclusive rather than exclusive. These two organizations have also been tireless in pointing out perceived deficiencies in the resolutions and recommendations issued by the EU and in intergovernmental agreements with respect to the rights of non-EU immigrants. The CAIE has also filed

TABLE 2. Selected transnational immigrant organizations and migration-orientated nongovernmental organizations and networks

Organization/network	*Details*
Council of Immigrant Associations in Europe (Counseil des associations immigrées en Europe) (CAIE)	Established in 1985, comprising 2500 national-level and single-nationality immigrant organizations in 14 states, based in Brussels. Concerned with immigrants' rights in host countries and at the European level
SOS Racisme	Second-generation anti-racist movement, originated in France in the early 1980s. Now has an organizing network across Western Europe
Churches' Commission for Migrants in Europe (CCME)	Founded in 1964, includes Protestant, Anglican and Orthodox churches and church organizations in 16 member states, based in Brussels. Concerned with stimulating discussion, gathering and disseminating information on migration policies and immigrant treatment in Europe
Standing Committee of Experts in International Immigration, Refugee and Criminal Law	Established in 1990 by five Dutch nongovernmental organizations. Concerned with providing legal advice and dissemination of analyses of immigration and refugee laws and policies
Platform 'Fortress Europe?' (PFE)	International network of groups and individuals. Concerned with European harmonization in the fields of internal security, policing, justice, immigration and asylum and its effects on fundamental rights and liberties

complaints with EU authorities whenever a member government has enacted legislation or administrative procedures that appear to violate Community standards or other international conventions (*CAIF Infos*, October 1987, cited in Ireland, 1991: 3). SOS Racisme has formulated and publicized a charter defining the rights of immigrants, including the right to free movement for the purpose of work and residence, voting rights in municipal elections for all non-EU nationals resident within Union territory, and easier access to naturalization (*Libération*, 20 December 1988, cited in Ireland, 1991). The Standing Committee of Experts in International Immigration, Refugee and Criminal Law offers requested and unrequested legal advice on immigration matters to the European Parliament and the national governments involved.

Another important activity of migration-orientated nongovernmental organizations has been the establishment of networks that gather and disseminate information through newsletters and circulars. For example, the monthly *Migration News Sheet* provides detailed information on national and supranational policy developments and practices towards immigrants in European states. The *Circular Letter* of the PFE also examines trends in government policies and treatment of immigrants across Europe, but has a much stronger emphasis on evaluating current trends and presenting alternatives.

It is extremely difficult to evaluate the impact of the activities of these transnational nongovernmental organizations and networks, not least because many of the connections are unmapped and are known primarily by people who participate in them.

From the limited evidence I have examined, it appears that the alternative discourse on immigrants and immigration spearheaded by these organizations and their lobbying efforts and the specific recommendations for alternative common migration policies (Niessen, 1994) have had some impact on Commission reports and proposals made by the European Parliament. As already mentioned, the European Parliament is the EU institution that has been most consistently concerned that harmonized migration policies are in conformity with human rights and constitutional democracy. Like SOS Racisme, the Expert Committee of the European Parliament developed a proposal for an Immigrants' Charter which was passed by the European Parliament. Yet 'its implementation will depend on whether . . . [the European Parliament] is able to have a direct effect on each member state's legislation or [whether the Charter can] be incorporated as part of an action program within EC competence' (Kofman and Sales, 1992: 32).

Nationalist challenges to the emerging supranational migration framework and Union citizenship have come from ascending right-wing, nationalist political parties (Republikaner in Germany, Front National in France , FPÖ in Austria, Lega Nord and the Alleanza Nazionale in Italy), bolstered by anti-foreigner violence across Europe. Right-wing, nationalist parties present themselves as guardians of the national interest and of a national identity and cultural/racial distinctiveness that is in danger of being obliterated both by foreigners and by European integration. They employ slogans castigating international migrants and ethnic minorities as evil and as a danger to living standards, lifestyles and social cohesion in order to justify the promotion of maximum exclusion. Central to their platforms are calls for even stricter immigration controls and vehement opposition to all policies that would improve the position and rights of immigrant minority populations.

The actions of Jörg Haider, leader of the Austrian Freedom Party (FPÖ), may serve as an example. Haider was not only a major opponent of Austria's membership in the EU, but also initiated an anti-foreigner plebiscite. This referendum, held in January 1993 and titled 'Austria first', presented both resident foreign nationals in Austria and potential immigrants as the source of numerous problems in the spheres of housing, employment, education, public order and security. Measures proposed in the referendum to deal with the *Ausländerproblem* included: no further admission of new foreigners into the territory; tighter border controls through a permanent border police; segregation of foreign children in special classrooms; measures to curb the abuse of the welfare state; stricter naturalization regulations; no voting rights for resident aliens; and immediate deportation of foreigners with a criminal record (Leitner, 1995).

Although the Austrian referendum failed by a small margin, the relative electoral success of right-wing political parties with anti-foreigner platforms during the past decade has influenced the positions taken by parties in power on immigration matters (Miller, 1991). Some scholars have argued that increased electoral support for right-wing political parties has coincided with expanded anti-foreigner stances within mainstream political parties to win back the electorate (Messina, 1989). This shift towards 'anti-immigrant illiberalism' is evidenced in more restrictive national laws and policies governing the admission of foreigners and the rights of immigrants. Anti-foreigner discourses have also dominated the construction of the supranational migration framework, since the harmonization of migration policies at this scale has been left in the hands of national officials who have carried their parties' concerns about nationalist pressure to the supranational level.

Conclusions

During the past decade, immigration matters have been moved from the sidelines to the center of European integration. Numerous negotiations have been undertaken, putting in place institutional frameworks and regulations to develop a joint approach to migration policies at the supranational scale. The major driving forces behind these initiatives have been enhanced European integration itself, and changing internal and external economic, political and social conditions within member states. Perceived and real immigration pressures, and the belief that these could be dealt with more effectively at the supranational scale than by individual member states, acted as particular stimuli to engage in what has been referred to as the 'harmonization' of migration policies.

In this paper this process of 'harmonization' has been analyzed as an example of the political construction of scale. I have demonstrated that the construction of a supranational migration framework has been purposive, primarily created and maintained as a way of ensuring better control of joint external borders, in order to deter and restrict the geographic admission of outsiders. Who is considered an outsider has also been continuously reconstructed as a result of the expansion of the geographic scope of the framework beyond EU territory to cover member countries of the EEA and some East European states that have association and readmission agreements with the EU. This territorial expansion of the framework has not only increased the ability of the EU states to insulate themselves from potential non-desirable immigrants, but has also resulted in the construction of a new hierarchy of membership categories assuming the form of a core–periphery model that places EU citizens at the center, followed by citizens of EEA member states, non-EU citizens legally resident within the EU and/or EEA, and citizens of associated East European states at the margins.

The institutional mainstay of the evolving supranational migration framework has been a complex, multi-layered process of intergovernmental cooperation. Initial intergovernmental cooperation developed outside EC institutions, only subsequently becoming loosely connected to the Community structure through the Maastricht Treaty. Most aspects of the framework continue to be dealt with by ministers of member governments as cooperating agents to the intergovernmental process. Thus far, only visa policies have been ceded to Union responsibility.

The insistence by member states that the decision-making process remains vested in the hands of their public officials has resulted in numerous tensions between member governments and EU institutions, and among EU institutions over the location of power and authority. Within the EU, therefore, the Council of Ministers has had more influence over immigration matters, while other EU institutions, such as the directly elected European Parliament, remain peripheral voices. The ministers making up the Council reflect their national governments' reluctance to relinquish sovereignty in areas that are seen as inconsistent with their national interest. The migration policies emerging from the supranational framework thus largely replicate at the supranational scale the national policies of dominant member states. In this case, assenting to harmonized standards, as laid out in the Maastricht Treaty and the numerous conventions and resolutions, can be interpreted as a reaffirmation of national sovereignty.

Conflicts between national governments, and between their representatives in the Council of Ministers and other EU institutions, also reflect disagreements over the principles according to which power should be exercised. Particularly noteworthy have been disputes between the Council of Ministers and the European Parliament over the breadth of application of the framework. The latter has been recommending that a

supranational migration framework should concern itself not only with border control policy but also with strengthening integration policies benefiting legal immigrants.

Disagreements over the breadth of the framework and principles of justice also lie behind challenges from two groups of political actors peripheral to the policy-formation process, operating and situating themselves at different geographic scales: nationalist right-wing political parties and transnational nongovernmental human/immigrant rights organizations. Central to the anti-immigrant platforms of the former have been calls for even stricter immigration controls and vehement opposition to any policies that would improve the position and rights of immigrants. Through their electoral success these parties have been able to impose at least part of their anti-immigrant rhetoric on national political discourse, and thereby on the harmonization process at the supranational scale.

The major challenge to this anti-immigrant discourse has come from transnational nongovernmental organizations advocating the design of migration policies that would require Europe to fulfill its human rights obligations towards economic migrants and political refugees and to grant equality of treatment to all legal residents within its territory. They seek to replace current exclusionary policies with a comprehensive supranational approach encompassing the protection of human rights and the provision of development assistance to improve living and employment conditions in potential sending countries. Although these ideas have found some resonance both within EU institutions and some national governments, they remain marginal within the emerging supranational migration framework.

The history of the political construction of a supranational migration framework for the EU is a story of contests over the reconfiguration of the geographic scale and scope of power and authority by political actors, operating and situating themselves at different geographical scales, with conflicting interests and also divergent visions of justice and democratic accountability. It represents contemporary challenges both to the concept of the nation-state as the dominant unit of political-territorial order and authority and to its integrity and identity, challenges that some European states have struggled with particularly intensely as a result of the long and difficult process of European integration. More generally, it exemplifies efforts to reconfigure the territorial structure of power and authority between overlapping political spaces in an era of increasing globalization and regionalization.

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Notes

1. Until the Treaty on European Union in 1991, the European Union (EU) was known as the European Community (EC). In this paper both terms are used depending on the timing of the discussed events.
2. Denmark, The Netherlands, Norway, Sweden, Ireland, parts of Switzerland and, to some extent, also Iceland and Finland have granted permanent foreign residents the right to vote in local elections. Many European states have also introduced immigrant advisory committees, as a sort of surrogate political right (Levelt, 1993).

3. For a discussion of recent changes in immigration policies of EC member states see Commission of the European Communities (1990a, 1992).
4. There existed, of course, free movement of labor between member countries. The Treaty of Rome laid the foundations for the progressive acceptance of complete labor mobility for EC nationals within Community territory.
5. Intra-Community border controls have yet to be removed by some member countries.
6. Formal and informal initiatives for an international harmonization of immigration and refugee policies have been pursued since the 1970s by such supranational institutions as the Council of Europe. However, their impact on the practice of migration policies in the major receiving countries has been limited. For example, in the late 1970s a European Convention on the Legal Status of Migrant Workers was formulated within the framework of the Council of Europe, which at the time was only ratified by five states (for further details see Murray and Niessen, 1993).
7. The EEA came into effect on 1 January 1994. Switzerland voted in a referendum against membership in the EEA.
8. All states have established legal rules regulating the attribution of citizenship which are laid down in nationality acts and laws. Generally two basic principles can be found underlying national regulations for the attribution of citizenship: *jus sanguinis* and *jus soli*. *Jus sanguinis*—citizenship by descent—reserves citizenship to those descended from earlier citizens. In contrast, *jus soli*—citizenship by place of birth—confers citizenship to all persons born within a national territory. Some West European countries apply a combination of these two principles with one of the two being dominant. In Western Europe the *jus soli* principle is dominant in the UK, France, The Netherlands and Belgium. *Jus sanguinis* is dominant in Sweden, Germany, Switzerland and Austria. In Germany, attribution of citizenship is based solely on *jus sanguinis*, place of birth being irrelevant. This means that children of foreigners, even if born in the country, have no automatic claim to citizenship. In contrast, persons of German background, ethnic Germans, coming from former German territories or from other parts of Eastern Europe, have an automatic claim to citizenship.
9. *Migration News Sheet* is a publication of the European Information Network (EIN) whose members are: Centre d'Information et d'Etudes sur les Migrations Internationales (CIEMI), Paris; Churches' Commission for Migrants in Europe (CCME), Brussels; Commission for Racial Equality (CRE), UK; Flyktinggruppernas och Asylkomitteernas Riksrod (FARR), Sweden.
10. The CAIE has been active in pointing out perceived deficiencies in the EC's resolutions and recommendations concerning immigrant rights, and has filed complaints with EC authorities whenever a host-society government has enacted legislation or administrative procedures that have appeared to violate Community standards or other international conventions. The central mission of the CAIE is to press for equality of European and non-European immigrants in a post-1993 EC and to combat racism and anti-immigrant sentiment in Europe. The Council has already consultative observer status at UNESCO, the Council of Europe and the International Labor Organization (Ireland, 1991: 471).
11. In 1985 SOS Racisme adopted a 'European Charter Against Racism' that targeted each West European host society, as well as the EC and the Council of Europe (*Piazza*, September 1985: 14).
12. The Churches' Commission for Migrants in Europe is part of the wider ecumenical network of the World Council of Churches, the Conference of European Churches and the Brussels-based Ecumenical Organization for Church and Society and for Development. The aims of the CCME are: (1) to stimulate discussion within church and society on migration and its European dimension; (2) to make known to the various European institutions the churches' concern for migrants; (3) to gather and disseminate information on developments in European societies and trends in governmental policies. The CCME has official observer status with the Council of Europe, has regular working contacts with the institutions of the European Communities and specialized agencies of the UN and the Conference on Security and Cooperation in Europe.
13. This Committee was established by the Dutch Bar Association (NOVA), the National Bureau against Racial Discrimination (LBR), the Dutch Section of the International Court of Justice,

the Dutch Refugee Council and the Dutch Center for Immigrants. These organizations have each appointed legal experts to form the Standing Committee of Experts. Objectives are to give requested and unrequested legal advice and issue publications concerning international refugee, immigration and criminal law, especially for the aforementioned organizations, and the European Parliament and national parliaments involved.

14. PFE serves as a forum of mutual information, analysis and critical debate among experts and laymen, scholars and practitioners in both the East and West of Europe. Its major objective is to encourage a common search for alternative policies in conformity with human rights and constitutional democracy. As an informal and open network, PFE refrains from taking public stands, leaving this to the initiative of each participating group or individual. PFE is associated with the European Civic Forum.

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