
MA MAJOR RESEARCH PAPER

**ASYLUM POLICY IN THE EUROPEAN UNION: AN EXAMINATION OF THE
RECEPTION CONDITIONS DIRECTIVE AND HOUSING FACILITIES FOR ASYLUM
SEEKERS IN MALTA**

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The Major Research Paper is submitted
in partial fulfillment of the requirements for the degree of
Master of Arts

Public Policy and Administration
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August 30, 2010

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ABSTRACT

This paper starts on the premise that common asylum policies in the European Union (EU) have levelled and pushed down standards of protection and reception offered to people fleeing persecution (asylum seekers). Based on preliminary field research conducted at a state-funded housing facility for asylum seekers in Malta in 2008 as well as secondary sources, this paper employs a human rights approach to demonstrate that the poor conditions in the housing facility are a manifestation of the EU's larger asylum policy which is based on security, control and deterrence. Significant events in the historical evolution of EU asylum policy are discussed to show that supranational control of asylum policy and asylum policy harmonization has resulted in inadequate standards of protection and reception. The conclusion offers research implications which arise from this paper as well as recommendations on how to better integrate asylum seekers and housing facilities into the host community.

ABBREVIATIONS

CBPR Community-Based Participatory Research

CEAS Common European Asylum System

ENAR European Network Against Racism

ENARO European Network of Asylum Reception Organizations

EU European Union

ICMPD International Centre for Migration Policy Development

JRS Jesuit Refugee Service

MFSS Ministry for the Family and Social Solidarity

MSF Médecins Sans Frontières

MdM Médecins du Monde

OIWAS Organization for the Integration and Welfare of Asylum Seekers

TEU Treaty of Maastricht on European Union

UNHCR United Nations High Commissioner for Refugees

1. INTRODUCTION

Over the past 20 years the European Union (EU) has significantly reduced the number of asylum seekers entering the EU (Hansen, 2009). Beginning with the Schengen Agreement and Dublin Convention, intergovernmental and supranational policies have introduced restrictive instruments to control asylum migration and have had a detrimental effect on standards of asylum protection (Hansen, 2009). Although a group of thinkers known as the ‘cosmopolitans’ argue that supranational control of asylum policy will “produce a counterweight to the kind of intergovernmental decision-making that was built around the lowest common denominators [of refugee protection] of each nation”, the EU’s Common European Asylum System (CEAS), which came about from the 1999 Amsterdam Treaty and Tampere Programme, has not reversed nation’s ‘race to the bottom’ of asylum protection (Hansen, 2009 p.29).

This paper starts with the premise that there has been a levelling down of refugee reception standards and investigates how a state-funded housing facility for asylum seekers in Malta is affected by this alarming trend in refugee reception. The paper asserts that there must be a continuing investigation of the way in which asylum seekers are being received and treated in the EU and elsewhere. It is important that academia continues to push Refugee Studies forward while also not losing sight of the fact that this work should be attempting to improve the lives of the most vulnerable populations in need. To do so requires understanding theories of migration, globalization, and push and pull as well as the personal experiences of those who are stateless. Such a holistic approach will allow us to better understand the phenomenon of forced migration. The paper attempts to answer the following question: what are the legislative shortcomings in the EU’s *Directive 2003/9/EC on the minimum standards for the reception of*

*asylum seekers*¹ which have subsequently contributed to legitimizing the state's "right" to accommodate asylum seekers in undignified, ghettoized housing facilities and why do these shortcomings exist? Essentially this paper describes the conditions in ghettoized housing facilities for asylum seekers in the Mediterranean island-state of Malta and attempts to demonstrate how these conditions are a manifestation of the contested meaning of 'adequate' and 'dignified' as stipulated in the Directive. In doing so, this paper demonstrates the extent to which, and why, asylum policy in the EU has contributed to the marginalization of asylum seekers.

This paper argues that, as the EU has moved towards harmonizing asylum reception policies across the member states, there has been a 'levelling down' of reception standards. As the EU has moved towards creating a common asylum policy, the wide degree of interpretation the Reception Conditions Directive allows for has resulted in member states lowering standards of asylum reception. This paper argues that supranational control of asylum policy has not improved the standard of protection with regards to (at least) accommodation in Malta because member states have refused to cede control of security (and thus asylum policy) to supranational governance. The conditions in housing facilities in Malta are undoubtedly undignified and inhumane spaces occupied by marginalized populations. The existence of such spaces demonstrates that while the Reception Conditions Directive attempts to ensure that asylum seekers are provided the opportunities to live dignified lives, because of its interpretative leeway, it has only legitimized the existence of such centres as being acceptable spaces to house the Other. Essentially the conditions in the housing centres are a result of the state's concern with protecting itself from a perceived threat at the expense of the asylum seeker's international right to protection and dignity.

¹Referred to in this paper as the Directive or the Reception Conditions Directive.

First, this paper explains why a human rights approach is the most appropriate method to employ when studying refugee reception. Immediately following, the history and ideological framework of asylum policy harmonization in the EU is outlined to demonstrate that there is a history of national-supranational tension with regards to asylum policy. The former discussion will also explain how a security-obsessed orientation towards ‘the Other’ has resulted in an asylum policy which favours the state over the asylum seeker. Next, the conditions at - and the host community’s perception of - Marsa Open (accommodation) Centre for asylum seekers in Malta is examined within the context of the previous analysis of the Reception Conditions Directive to show how the Directive is ineffective in ensuring that asylum seekers are provided dignified living spaces. Finally, the previous discussions are reflected upon and recommendations aimed at integrating asylum seekers into the host community are provided in the conclusion. This paper focuses most specifically on asylum migration to Malta and how this country has received asylum seekers. It was decided that an in depth analysis of the more than one EU member country would not be possible mainly due to time constraints. At a minimum this paper provides a starting point from which housing facilities in other member states can be analyzed and placed within the literature on asylum in the EU.

2. DEFINITIONS, THEORY, AND METHOD

2.1 Definitions: ‘Asylum Seeker’, ‘Refugee’, ‘Asylum Policy’, and ‘Open Accommodation Centre’

While ‘asylum seeker’ and ‘refugee’ are often used interchangeably and both categories are often referred to as ‘irregular’ migrants in Malta and elsewhere, in this paper ‘asylum seeker’ will refer to those people who are in the more precarious position of applying for asylum protection; have applied for refugee status and have been rejected and are awaiting deportation; or those who have received a ‘subsidiary’ form of asylum protection.

In Malta a subsidiary form of protection is called ‘humanitarian protection’ status. It is a temporary form of protection granted by the Maltese Refugee Commissioner when it is determined that the applicant cannot return safely to his or her home country, but does not qualify for full refugee protection (Jesuit Refugee Service – Malta 2006 p.5; and Jesuit Refugee Service – Malta, 2010). This form of protection does not allow applicants to travel to other EU countries unless special permission is granted (Cimbaljevich, 2010) (and due to the Dublin Regulation – which requires that the state within which the seeker first enters shall be responsible for processing his or her application - those that leave without proper papers are forcibly returned to Malta by authorities with assistance from the EU-wide fingerprinting system known as Eurodac). In April of 2009 the Maltese Employment Training Corporation changed its policy with regards to those who have humanitarian protection. Individuals whose application to receive full refugee status has been rejected twice are no longer eligible to receive temporary work permits (Jesuit Refugee Service Europe, 2009). This legal conundrum is exasperated by the fact that the majority of people applying for refugee status receive a subsidiary form of

protection. In 2008, of the 2,775 migrants to arrive in Malta, 1,397 people received humanitarian protection status and 19 received refugee status (National Statistics Office – Malta 2009, pp. 75 and 77). In sharp contrast, those who are granted refugee status are granted the rights equivalent to a Maltese citizen. It has been noted that the country has justified its restrictive citizenship and immigration policy based on its small size and large population (Amore, 2007).

‘Asylum policy’ in this paper refers to the intentions and actions of the state, government departments, NGOs, and other agencies which affect those individuals who are seeking refugee status (i.e. asylum seekers or those granted humanitarian status). The term ‘asylum policy’ is widely used in political discourse and policy documents. Asylum policy has implications on a range of socio-economic factors affecting asylum seekers including: integration; security; education; employment; social welfare; access to health care; accommodation; and legal protection. Essentially an asylum policy encapsulates an attitude towards those seeking protection and is expressed in actions (or inactions) to meet the obligations of the international community in providing protection.

‘Open centre’ as used here refers to those facilities which are legislated and thus ‘legal’ spaces which governments choose to house asylum applicants in. In contrast, ‘closed’ centre refers to detention centres or prisons where the residents’ mobility is entirely restricted. The number of open centres for asylum applicants located in the EU is not known. This is due to the fact that a universal definition of what constitutes a centres’ *open-ness* does not exist and therefore it is impossible to specify, with any certainty, the number of centres located across the Union. Yet secondary sources suggest that centres which allow for asylum applicant’s mobility (to varying degrees) are located in the majority (if not all) of the member states. In England, centres which are ‘open’ allow residents to leave during the day but they must return at night to

receive state benefits (Dilley, 2002). Belgium refers to these spaces as “collective reception structures” (Federal Agency for the Reception of Asylum Seekers 2007) whereas in Cyprus and Hungary they are called “open reception centres” (Hennis-Plasschaert, 2008; and Kőszeg, 2004). The UNHCR reports that, Germany provides large collective “accommodation centres” where residents may travel up to 15 square kilometres outside the facility; in Poland asylum seekers must live in the centre to receive state support and must inform authorities of any absence of more than 72 hours; similarly in Denmark all state assistance is also dependent upon asylum seekers registration with an open centre; and in Italy and Greece open centres are managed by a combination of state and NGO support where mobility is regulated in varying degrees depending on the centre.² Yet even slum villages such as the ghettos occupied by Roma in Italy are in some ways similar to centres regulated by the state; mainly because these spaces are equally as effective in externalizing residents from fully integrating into the host community. Such a broad conceptualization makes quantifying the number of centres across the continent difficult.

2.2 Theory and Method

A human rights approach is particularly relevant for this topic because asylum seekers, as stateless people, are the most vulnerable population in society. María-Teresa Gil-Bazo (2006, p. 574) writes that although a human rights perspective does not provide a “black and white” list of state’s duties to an asylum seeker - because refugee law is imbedded in both “regional” and “universal” laws and norms - this perspective does offer a more comprehensive and complex understanding of the relationship between individuals and the state. A rights-based approach draws our attention to human beings as they are deprived of their dignity and respect (Morago-Nicolás, 2000) and is useful for this topic because it offers a refugee-centred perspective.

² see Field (2006 pp.30-35) for a discussion of similar centres in other EU countries.

Within the rights-based approach, this paper considers the notion of dignity as being a normative concept which has been applied in national and international law to refer to the ideal goal of human rights and as the moral ground for protest against abusive treatment (see for example Schachter, 1983). Writing about dignity as a normative concept, Oscar Schachter tells, “nothing is so clearly violative of the dignity of persons as treatment that demeans or humiliates them” (1983, p. 85). However, human rights - like any concept - is abstract. And if we are to understand injustices in reality using a human rights approach we must first ground ourselves and provide a reason to oppose such injustices (Freeman 2002, pp. 2-3). Therefore, this paper reiterates that the Universal Declaration of Human Rights states that, “all human beings are born free and equal in *dignity* and rights” (Article 1) and that “everyone has the right to a standard of living *adequate* for the health and *well-being* of himself and of his family” (Article 25(1)) (emphasis added). Thus the accommodation centres which governments provide asylum seekers ought to be conducive for a respectful, humane, and dignified lifestyle. Essentially by using a critical rights-based approach this paper aims to draw attention to the phenomenon of asylum immigration to the EU, and particularly Malta, while also demonstrating how national and supranational responses to this phenomenon have marginalized asylum seekers. A case study analysis of Malta as an asylum-receiving country on the periphery of the EU will deepen our understanding of asylum policy in the EU and its effects on people seeking protection.

Malta provides for a particularly interesting case study. Its geographic location - south of Italy and north of Libya in the Mediterranean Sea - places it in a precarious geopolitical situation. Malta is only miles away from Africa where millions of people are living in abject poverty while the country is also included within the imaginary borders of the EU. Every year thousands of sub-Saharan Africans migrate to Europe in search of protection or a better life and

Malta finds itself acting as a “bridge” between Africa and Europe. The panic surrounding the arrival of migrants in Malta has been exacerbated by the idea that the country’s “limited space” - about 315 square kilometres - large and congested population - about 400,000 residents - makes it more vulnerable to being negatively affected by the arrival of immigrants (Amore, 2005 p.16). Considering the current economic downturn and the increasing gap between the North and South, migration from Africa to Europe shows no signs of ceasing in the near future. Indeed Malta will continue to receive asylum seekers as long as global economic disparities persist. Such a situation calls for a continuing investigation of this phenomenon.

Primary and secondary sources are used in this study. While volunteering at Marsa Open Centre in 2008 (see Cameron, 2008) the author was able to engage in field research and make observations of the Centre and its residents. This research partially informs the analysis of Marsa Centre presented in this paper. Field research requires observing and analysing real-life situations and studying the actions and activities of the subject as they occur. This method is useful when studying a specific population because it allows the field researcher to learn firsthand about a people and their culture (Burgess, 1989 p.2). Karen Jacobsen and Loren Landau (2003) suggest that the researcher’s observations are one of the strengths of qualitative research. Conclusions are less likely to be swayed by “politically loaded” interviews (in this case, conversations and other interactions) because the researcher is familiar with local politics, nuances, and customs. However, what Bruce Berg (2007) calls the ‘researcher’s voice’ can impose its views on the data and take stands on social and political issues which arise from what the researcher observes during fieldwork. Essentially, through participant observation, at Marsa Centre “data” was collected through casual conversations with asylum seekers, the Centre’s

administration, and Maltese volunteers. The combination of information gathered from these sources has shaped the perspective which this paper adopts.

With regards to research at Marsa Centre, it was relatively easy to access the residents and the Centre's administration. The Manager had a policy to actively encourage groups of students and researchers to tour the centre and meet the residents in order to provide exposure to the situation. Yet many residents are cautious when speaking with strangers and especially researchers. Asylum seekers in Malta are under close surveillance from international nongovernmental organizations, the Maltese government, the Centre's administration, the media, and Maltese citizens. As a result, inquisitive researchers are often viewed with suspicion. As an English instructor at the Centre the author was able to come to know many of the residents personally and was thus in a privileged position to hear residents' stories about the reasons they left their home countries, their journeys across the Mediterranean Sea, and their current situation at Marsa Centre and in Malta.

In this paper the field research completed at Marsa Centre is not discussed using a narrative or similar technique. Since detailed records of conversations with residents and the Centre's administration were not kept – and every conversation can not be recalled in accuracy – this paper therefore relies on secondary sources such as NGO reports and scholarly articles to provide a more scientific approach and reliable examination of the topic. These secondary sources were found online through Google, GoogleScholar, and academic search engines. Many of the NGO reports come from such organizations as the Jesuit Refugee Service (JRS), Médecins Sans Frontières (MSF), Médecins du Monde (MdM), and the European Network Against Racism (ENAR). The JRS provides advocacy and legal services to asylum seekers and refugees, the internationally recognized MSF and MdM provides medical services to forced migrants around

the world, and the ENAR monitors race relations in Europe and reports on cases of racial discrimination and racially-motivated violence. Since these organizations work in close contact with asylum seekers, the reports they produce provide rich detail of the status of asylum seekers in Europe.

3. REFUGEES AND ASYLUM POLICY

3.1 The Refugee Protection Regime

European countries are bound to protect asylum seekers by various international agreements and standards, namely the *1951 United Nations Convention Relating to the Status of Refugees*. The Convention obliges signatory states to protect those who are

“owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it” (Article 1 A (2) 1951 Convention).

As stated in the introductory note of the Convention, “it lays down basic minimum standards for the treatment of refugees, without prejudice to the granting by States of more favourable treatment. The Convention is to be applied without discrimination as to race, religion or country of origin, and contains various safeguards against the expulsion of refugees” (1951 Convention p.5). Contracting States to the Convention guarantee to protect refugees and to respect the principle of ‘*non-refoulement*’; that is, not to return refugees to a country where they may be persecuted. As Stephen Castles (2002, p.178) explains, the Convention is at the core of the refugee protection regime. The United Nations High Commissioner for Refugees (UNHCR) is an important institution, however, many other organizations including the International Committee of the Red Cross, the World Food Programme, the United Nations Children’s Fund, and the International Rescue Committee also have a role in protecting people fleeing persecution.

Yet even with the development of a global refugee protection regime following the mass displacement of thousands of Europeans during and after World War Two, today states routinely

contradict the spirit of the Convention and deny asylum seekers the right to seek safety. One reason for this situation is the vague language contained in the Convention. States have been allowed to interpret it in a restrictive manner (Kjærur, 2002). In particular, the issue of Contracting States according to a refugee - *lawfully in their territory* - treatment as favourable as possible has negative implications when it comes to rescuing asylum seekers at sea. Although there are a number of international and customary laws which provide that states rescue people in distress at sea (i.e. the Safety of Life at Sea Convention, the Law of the Sea Convention, and the International Convention on Maritime Search and Rescue) as Pugh (2004) explains, “coastal destination states have exposed uncertainties, gaps and room for discretion that relate to distress and safety at sea, disembarkation, interception, and search and rescue by merchant ships” (2004, p. 58).

Indeed the hesitancy of states to rescue asylum seekers at sea was witnessed in 2009 when 154 people seeking asylum aboard a boat in the Mediterranean Sea waited for days while Italy and Malta disputed who should receive these people and the subsequent ‘burden.’³ Often times asylum seekers are deemed to *be* illegal and thus unworthy of refugee status because of the informal way that they entered the country, such as by make shift raft or through human trafficking and smuggling. Such a tendency to correlate one’s illegality with their physical immigration is problematic because in the case of asylum seekers - whom in some cases do not have identification papers or who lost or deliberately threw them away for fear of negative repercussions – many are forced to enter a country in an ‘irregular’ or clandestine way because they have no other option. The issue of rescuing asylum seekers at sea is a highly contentious and politicized issue. As in the case of Sri Lankan boat people landing on Canada’s West coast in August 2010, Afghani refugees attempting to enter Australia by sea, and the thousands of

³Update 3: Malta, Italy in new migrants standoff’. (2009). *Times of Malta* 17 Apr. Available online.

Africans who cross the Mediterranean Sea to reach Europe each year, migration is a sovereignty-sensitive issue. Many of those who enter a country via boat are quickly labelled ‘irregular’ and a threat to the state because these asylum seekers are viewed by the state to be entering its territory “through the back door” and thus to be challenging its perceived sovereignty and supreme authority. As a result of being labelled ‘irregular’, the host community resents these people for their perceived illegality. In brief, although the Convention has been referred to as a “milestone in international refugee law” (UNHCR n.d. par.04) its interpretive leeway and states’ reluctance to apply it in favour of the asylum seeker has resulted in a refugee protection regime which places the state’s interests before humanitarian considerations.

In terms of the standard of protection offered to asylum seekers once they arrive in EU territory, the literature shows that asylum seekers’ right to be received in a dignified manner has been eroded and that in all most all areas of reception (i.e. access to healthcare, access to the labour market, access to education, etc.) the level of protection offered to asylum seekers has been ‘levelled’ or ‘pushed’ down (Amnesty International, 2005; Borchelt, 2002; Coman, 1998; da Lomba, 2006; Hatton, 2005; Klepp, 2010 p.18; and Martin, 1999). Liz Fekete (2005) writes that in an era of post-9/11 heightened security dominated by US interests, the EU has moved towards a common asylum system which aims to protect the state from the international “burden” and “threat” of refugees. In the process, the 1951 Convention and other international instruments which aim to protect human rights have not been upheld.

3.2 Asylum Policy and Asylum Ideology in the EU

In defining external borders to form a distinct political territory, the EU has moved towards harmonizing immigration and asylum policies (Ucarer, 1998 pp. vi-vii). This process of

creating a common immigration and asylum policy has been conceptualized by scholars as the “Europeanization” of immigration policies and politics. Supranational control of asylum policy has resulted in a “top-down process of member-state adaptation to the EU” (Ette and Faist 2007, p.14).⁴ Europeanization is a process where common policies are implemented across the Union, while European ideas, values, and “ways of doing things” are diffused into national discourses (Ette and Faist, 2007). Global migration flows have encouraged international cooperation among states both within and outside of the EU.

The harmonization of asylum policies in fact began before the creation of the EU. European countries have a history of intergovernmental cooperation on asylum which dates back to the 1970s. Since the 1970s oil crisis, European states have progressively become more restrictive to asylum seekers and other immigrants (Schuster, 2000 p. 120). The economic recession prompted governments to reduce the number of asylum seekers entering Europe while at the same time, throughout the Cold War, the difficulty in leaving communist states limited the number of people from the Eastern Bloc seeking asylum in Europe. During this period asylum policy was determined through intergovernmental cooperation and on an *ad hoc* basis. The creation of the 1986 Intergovernmental Ad Hoc Group on Immigration demonstrates the former point. Indeed, there was and continues to be a strong correlation between the way in which asylum seekers enter a country and their perceived illegality and criminality. Martin Baldwin-Edwards writes that the Ad Hoc Group operated outside of the European Parliament, Commission, and Court of Justice and therefore was not subject to its scrutiny or checks. The Intergovernmental Group’s activities “were predicted on the ‘threat’ posed by asylum seekers, illegal immigrants, and international crime.” (Baldwin-Edwards, 1997 p. 498). The Ad Hoc

⁴ and see also for example Guild (2006).

Group's security-obsessed orientation towards immigrants – be they 'irregular' or 'regular' - ultimately influenced forthcoming policies.

The fall of the Soviet Union in the late 1980s and the accompanying influx of persons seeking asylum put immense pressure on national asylum policies which were unable to cope with this influx. The need for a co-ordinated, regional asylum policy came to look more attractive for members of the European Community (Boccardi , 2002 p.27). European countries saw a quantitative change in the numbers of people seeking asylum and began to consider ways to further restrict asylum arrivals (Schuster, 2000 p. 120). As a result, following the Ad Hoc Group, discussions took place that led to further harmonization and collaboration on asylum policy.

The first initiatives at the European level were the Schengen Convention and later the Dublin Convention (Costello, 2005 p.37). In addition to establishing a "borderless" zone for the free flow of capital and citizens of certain European countries, the agreements attempted to determine which state is responsible for the processing of an asylum seeker's application to prevent people from making multiple applications for asylum in European countries (Neuman, 1993). As Baldwin-Edwards (1997 p. 498) suggests, the conventions emphasized control of immigrants and asylum seekers whilst offering little in the way of refugee rights. Such cooperation on security, immigration, and economics eventually led to the 1997 Amsterdam Treaty. The Treaty set out a legislative agenda for the creation of an asylum and immigration policy which attempted to harmonize the fragmented asylum system across Europe (Niessen, 2004 p. 3). Alice Bloch *et al.* writes that, "the signing of the Treaty of Amsterdam in 1997 placed immigration, asylum, and issues of migrant citizenship at the top of the EU agenda for the first time" (2000, p.5). The 1999 Tampere European Council reaffirmed the 1997 Treaty and

committed member states to fully realizing the 1997 Treaty through two successive phases. (Niessen, 2004 p. 3; and Presidency Conclusions, 1999). During the 1999 meeting, EU Heads of state called for the establishment of a common European asylum system. (Lavenex, 2001 p.851).

The signing of these agreements did not come spontaneously. These agreements were a manifestation of a political landscape which was shaped by a history of shifting asylum trends as well as specific global events, namely the collapse of communism and the ensuing influx of asylum seekers across Europe. Furthermore, following the September 11 terrorist attacks, immigration in the EU became, more explicitly than ever, connected to the security of the state. On May 10th, 2005, in a post-9/11 era of heightened security, the European Commission launched its Hague Program – a five year action plan on terrorism; migration management; visa policies; asylum; privacy and security; the fight against organised crime; and criminal justice. The Hague program places asylum policy firmly underneath the umbrella of state security.

Chris Rumford (2006, p. 157) suggests that state borders “wax and wane” – that is, as globalization leads to an increasing ‘debordering’ to allow for the free flow of capital and technology, at the same time, international migration which is associated with the same “transcendability” results in processes of securitized “rebordering.” Stephen Castles (2002, p. 182) conceptualizes migration as being a part of a global process of social transformation where the cross border flow of values, ideas, and people - coupled with the North-South divide – has resulted in Northern global economic elites crossing borders as they wish, while Southerners wishing to migrate to the North are kept at home by policies and instruments of “containment.”

Such policies of containment resulting from globalization are evident when asylum policy is examined alongside the creation of a distinct EU territory. While the EU is removing internal borders to allow for the free flow of capital, goods and services, and labour, it is “hardening” its

external borders in order to protect the region from a perceived immigrant-terrorist-threat.⁵ Since asylum seekers often migrate alongside economic migrants, restrictive EU policies which have aimed to protect the territorial integrity and sovereignty of the Union from the ‘invasion’ of the ‘unwanted’ migrant have forced asylum seekers to engage in more dangerous routes of migration (Lutterbeck, 2006). As a result, the legal protection of these people has been jeopardized (Boswell, 2003 p. 619).

Indeed this security-obsessed environment contributed to difficulties in asylum policy harmonization across the EU and to member states’ willingness to cede asylum policy to supranational control. The literature on the harmonization of asylum policy in the EU suggests that such harmonization has been difficult due to the unique asylum goals of the member states and because of a lack of political will to provide protection to the racialized and ‘Othered’ asylum seeker. (Faist and Ette, 2007; and Robinson, 2003 pp.5-6). Studies which highlight the divergent regional practices in asylum protection and reception between the member states suggest that asylum policy remains a state sovereignty-sensitive issue and one which member states have refused to relinquish control of.

The harmonization of asylum policies faces obstacles at the national level (Givens and Luedtk, 2004; and Trendell, 1996). For example, Harold Trendell found that immigration policy is a “sovereignty-sensitive political issue” (1996 p.iv). Trendell writes that member states have been reluctant to relinquish immigration policy-making to the EU, and have instead preferred intergovernmental negotiations to control their immigration (Trendell, 1996 p.iv; and Klepp, 2010 p.18). Examining the negotiations between member states which led to the Reception Conditions Directive, Doede Acker determined that there are divergent practices in asylum reception across the EU because: asylum procedures are embedded in procedural law and

⁵ See also Kostakopoulou and Thomas (2004 p.6) for a note on the removal and hardening of borders.

procedural law is difficult to harmonize; asylum procedures in the member states had developed at different degrees previous to the Directive⁶; and because the outcome of the negotiations were influenced by shifting domestic political agendas – mainly in Austria, France, Germany, the Netherlands and the United Kingdom, where these countries brought forth new asylum legislation during negotiations (2005 p.2).

From interviews with policy-makers in the EU member countries, Matthew Fouse determined that the political will for a common EU policy is lacking (2005 p. 2). Andreas Maurer and Roderick Parkes (2007) suggested that the European Commission and European Parliament failed to create an effective “policy-image” where supranational actors are viewed by the member states as being more capable of managing asylum policies. As a result, the Commission and Parliament have failed to mobilize national discourses to be in favour of a harmonized asylum policy which is steered by supranational governance (Maurer and Parks, 2007 p. 175). The literature suggests that unlike other policy areas, immigration has not yet been fully Europeanized (Givens and Luedtke, 2004).

Asylum policy is a controversial area of European integration. Immigration affects economic, social, and demographic objectives (Baldwin-Edwards, 1997 p. 497). Thus in the EU where there is an interplay between national and supranational actors, opportunity is increased for supranational immigration policies to conflict with the member state’s individual economic, social, and demographic goals as well as their right to supreme, independent authority over their territory. The literature demonstrates that such conflicts lead to political gridlock where national politics conflict with EU Directives and thus the harmonization of policies (see for example Faist and Ette, 2007).

⁶ For example, Germany had comprehensive asylum policies as of 1992 whereas Italy was only beginning to develop asylum policy at this time.

Legislative and procedural difficulties in harmonization are and were a major obstacle to policy harmonization. Yet these difficulties ultimately arose from member states believing that supranational governance is not capable of adequately protecting the security of each individual member state. Even though member states called for a common asylum system, the actual process of harmonization was fraught with complications. Citizen's negative perceptions of asylum seekers is both affected by - and contributes to - anti-immigrant policies at the national and supranational level. Through policy shifts and discourses from the media and politicians, asylum seekers have been securitized and positioned as a threat to the state. National governments have become cautious of ceding security policies (and thus asylum policy) to supranational control. Furthermore, asylum trends are quantitatively different in various regions of the EU. These quantitative differences have brought forth additional challenges to policy harmonization.

3.3 Asylum in the Mediterranean Region

Located in the periphery of Europe, the Mediterranean Region is a distinct social, political, and geographic zone. Its geographic positioning – with the Middle East and Africa to its south and Europe to its north – requires that the Mediterranean Region be considered distinct from, but not independent of these areas (Tanner, 1996 p.280). The Mediterranean Region has long been connected to European migration flows. In the past, Mediterranean countries supplied cheap labour to northern European countries (Rystad, 1992 p. 1177). However more recently, the Mediterranean Region has gone from being an area of emigration to immigration. The International Centre for Migration Policy Development (ICMPD) reports that approximately 100,000 to 200,000 migrants cross south to north of the Mediterranean Sea each year (2004 p.8).

Thousands of these people arrive in Mediterranean countries, usually by boat, attempting to reach Europe. Indeed there is a high humanitarian cost to this immigration; the ICMPD reports that at least 10,000 people have died over the past decade during this dangerous crossing (2004 p.8).

Southern EU countries such as Italy, Malta, Spain and Greece, have exceptionally different asylum immigration patterns than do countries in the North. In 2008 the UNHCR reports that a total estimated figure of more than 67,000 asylum seekers crossed the Mediterranean Sea to reach Europe (UNHCR, 2009c). In 2008, out of a total of 383,000 asylum applications registered worldwide, European countries received close to 290,000 claims (UNHCR, 2009a p.4). And in 2009 the southern European region accounted for three-quarters of all asylum requests in Europe (UNHCR, 2010) (although there was a 10% drop in asylum applications in Southern Europe in the first half of 2009 (see UNHCR, 2009b p.4). The UNHCR reports that in 2008, in southern Europe more than 75,000 individuals applied for international protection, with the largest numbers being recorded in Italy (31,200 claims) and Greece (19,900 claims). Asylum applications in Malta were the highest for that country on record (2,600) (UNHCR, 2009a p.4). Spain received a total of 4,445 asylum applications in 2008 (Ministry of Interior Asylum Service, 2009).

EU Mediterranean countries' close proximity to Africa and the Middle East creates for very different immigration patterns in terms of numbers when compared to northern EU countries. Such differences pose challenges in implementing a common immigration and asylum policy which suits the regional interests of all member states. Writing about Mediterranean EU countries' asylum and refugee policies, Sedef Arat-Koç (2010) explains that these countries' restrictive policies are tied to their cultural identity. As their own European belonging is rather

insecure, in attempting to “fit into” a contemporary European identity, these Mediterranean EU countries have Othered asylum seekers in attempt strengthen the idea who ‘We’ are (white and European) as opposed to ‘Them’ (immigrants). Such Othering has led to extreme anti-immigrant sentiments and racism and an increasing reluctance to provide protection to asylum seekers (Arat-Koç, 2010).

Furthermore, through ‘externalizing’ its immigration policies, the EU has pressured North African Maghreb countries to “clamp down” on irregular migration in exchange for development aid and financial support for border controls and military equipment (de Haas, 2008 p. 1309; and Gil-Bazo, 2006 p. 587). This externalization of asylum control has thus transferred the EU’s *unhumanitarian* asylum policy to countries outside of the Union (Klepp, 2010). Silja Klepp’s study, which included interviews with migrants in Libya, demonstrated how the EU’s poor humanitarian practices were being exported elsewhere when one migrant stated that “the Libyans want to show that they are doing something against migrants to satisfy the European countries which are important for their economy” (p.12). Klepp writes that “it is clear that before the visits [to Libya] of high-ranking missions from European countries the imprisonment of migrants and raids in the Sub-Saharan neighbourhoods rise sharply” (p.12). The economic power of the EU and its persuasive influence over weaker states makes the exporting of its asylum policies relatively easy.

In brief, Mediterranean member states have different asylum patterns than do those in the north. This has resulted in the need to for Mediterranean countries to interpret policies on an *ad hoc* basis, usually whereby the state interprets legislation or Directives in its own favour. Having little experience with immigration policies, many Mediterranean EU countries have developed a poor track record in refugee protection as security and control have taken precedence over

protection and adequate reception. Thus, supranational control of asylum policy has not improved refugee reception in the southern or northern regions of the EU. If we examine Directives which implicate asylum policy, we see that they have their roots in earlier forms of intergovernmental cooperation which was based on security and control. Thus while Directives are being adopted which attempt to provide asylum seekers with adequate reception such as accommodation and other services, the standard of reception offered to seekers remains poor.

3.4 Housing Facilities for Asylum Seekers

The *Directive 2003/9/EC on the minimum standards for the reception of asylum seekers* attempted to ensure that member states were offering asylum seekers adequate services when they first arrive in the member's territory. In 2003 the Directive came into force and national transposition occurred in 2005 (European Commission, 2003). The Directive attempts to establish common standards of protection and reception across the EU. The Directive affects people applying for asylum and family members who are recognized by the state as being dependent on the applicant (such as spouses and children). The Directive requires states to guarantee certain material reception conditions including: accommodation; food and clothing; family unity; health care; access to the education system and language courses for minors; as well as certain rights which affect applicant's access to the labour market. Essentially the Directive aims to guarantee that asylum applicants do not become destitute and that they are being received in a manner which is dignified (EUROPA, 2008).

The housing facilities which are provided to asylum seekers once they are released from closed detention and that allow for residents' freedom of movement – also known as open centres and accommodation centres – are important spaces as they have a profound affect on the social

and economic status of asylum seekers. Housing facilities have implications on refugees' and asylum seekers' access to healthcare, education, and employment (Phillips, 2006 p. 539). Safe and secure housing plays a role in shaping residents' sense of identity, security, community relations, as well as the residents' capacity to secure independent living (Phillips, 2006 p. 539). Bogusia Temple and Rhetta Moran (2005) suggest that spaces of exclusion, such as accommodation centres for asylum seekers, often equate to spaces of destitution and thus negatively impact residents' upward social and economic mobility. With regards to housing facilities for asylum seekers in the EU and integration, the European Council on Refugees and Exiles writes that,

“Housing is also important for integration outcomes, for example, if one has a job, it is easier to find housing. Ironically the opposite is also true: if one has a house, it is easier to find and keep a job. Housing also has an influence on educational progress: if one is badly housed, for example, in overcrowded or noisy accommodation, it is very hard for a student to find a place to concentrate and study. Unfortunately, if refugees do find housing, it is often in the cheapest forms of housing which is low quality and overcrowded. Many of these houses are in poor condition, which poses a hazard to the health of their inhabitants. This is a general poverty problem, not specifically a ‘refugee problem’, but the fact is that a large proportion of refugees live in poverty” (2005, p.31).

Thus, the space within which asylum seekers live greatly impacts their social and economic mobility in the host community. Inadequate housing facilities only furthers the marginalized position of people who have often survived numerous traumatic events and are suffering from mental and physical health problems; may lack the skills necessary to succeed in the host community; have been granted few legal rights and are shunned in the receiving community. The Universal Declaration of Human Rights recognizes the impact housing has on one's life in Article 25(1) where it states that, “everyone has the right to a standard of living *adequate* for the health and *well-being* of himself and of his family.”

In terms of the obligations the member states in the EU have in providing shelter for asylum seekers, the Reception Conditions Directive stipulates the following:

- (2)(1) “‘accommodation centre’ shall mean any place used for collective housing of asylum seekers”;
- (7)(2) “member states may decide on the residence of the asylum seeker for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application”;
- (7)(4) “member states may make provision of the material reception conditions subject to actual residence by the applicants in a specific place, to be determined by the member states. Such a decision, which may be of a general nature, shall be taken individually and established by national legislation”;
- (14) (1) (a,b,c) “Where housing is provided in kind, it should take one or a combination of the following forms: (a) premises used for the purpose of housing applicants during the examination of an application for asylum lodged at the border; (b) accommodation centres which guarantee an *adequate standard of living*; (c) private houses, flats, hotels or other premises adapted for housing applicants”; and
- (14)(2)(a,b) “member states shall ensure that applicants provided with the housing referred to in paragraph 1 (a), (b), and (c) are assured: (a) protection of their family life; (b) the possibility of communicating with relatives, legal advisers and representatives of the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organisations (NGOs) recognised by member states.

The Directive applies to “any place used for collective housing of asylum seekers”, therefore, those centres which are open – where persons can enter or leave the space at their own will – or closed – where persons are confined or relatively confined as in the case of detention centres or prisons. As the above Articles demonstrate, the Directive is framed in a language of dignity - seemingly with the asylum seeker’s best interest in mind - which is indicative of the EU’s obligations to the international community, yet, statements such as “member states may decide on the residence of the asylum seeker for reasons of public interest, [and] public order . . .” also suggest that asylum immigration is linked to the security of the state. The Directive has dual purposes: it encourages member states to provide protection to the asylum seeker while not trumping the state’s right to protect its territory from real or perceived threats.

Concerned researchers have routinely pointed out that the Directive has been ineffective in providing adequate standards of protection and that the policies which were laid out in the Directive have not been fully harmonized across the member states (Odysseus Academic Network, 2006). Field research in EU countries has shown that, in particular, the Directive has not been effective in ensuring that asylum seekers are provided adequate health services (Deville and Goosen, 2006 and Clerkin and MacFarlane, 2009). In terms of housing facilities, the closed detention centres - which many EU countries place asylum seekers in when they first enter the territory - continued to be criticized for penalizing people seeking protection and for their inhumane treatment even after the adoption of the Reception Conditions Directive (see for example MSF, 2009). In the case of Malta, numerous NGOs and EU-funded reports have shown that the standard of living in the open (and closed) centres is sub-standard and has negative repercussions on the health and well-being of residents.

4. CASE STUDY

4.1 The Open Accommodation Centre in Malta

In 2008 the social welfare of asylum seekers in Malta went from being a social welfare issue to one of security and control, demonstrated by the Ministry for the Family and Social Solidarity (MFSS) ceding control of the social welfare of asylum seekers to the Ministry for Justice and Home Affairs. As Mariella Micallef (2006, p.8) notes, no official policy with regards to the social welfare of immigrants has been adopted by the Maltese government, however, the MFSS's 2005 policy document *Irregular Immigrants, Refugees and Integration* provides the most coherent indication of how the social welfare of asylum seekers is to be provided by the state. In the document, 'social welfare' with regards to asylum seekers is somewhat ambiguous and poorly defined. The document suggests that 'social welfare' ranges from food and shelter to financial entitlements to education and job opportunities to medical and health coverage (see p.17). However, exact monetary figures or in kind amounts are not specified.

The title of the document, which refers to asylum seekers and economic migrants as being 'irregular', highlights the ideological framework which surrounds the government's policy towards asylum seekers and the Maltese public's perception of these people. Indeed, the government's policy towards asylum seekers is not framed in humanitarian terms. Rather asylum seekers' *irregularness* is viewed as being problematic because their arrival is difficult to control and monitor - and as the discussion later in this paper will demonstrate - these people are viewed as a threat to the order of the state.

Since 2005, the Reception Conditions Directive has been integrated into Maltese national policy (Sammut, 2009). The 2005 Maltese legal notice 320/55: "Reception of Asylum Seekers

(Minimum Standards) Regulations” is a subsidiary form of legislation which, as the title implies, attempts to establish minimum standards of reception for asylum seekers in Malta. With regards to the open centres, the Regulation stipulates the following minimum implications:

- **11(2):** The material reception conditions shall be such as to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence.
- **12(1):** Where accommodation is provided in kind, it should take one or a combination of the following forms: **(b):** accommodation centres which guarantee an *adequate standard of living*; and
- **12(6):** In exceptional circumstances modalities may be set for material reception conditions which are different from those provided for in this regulation, for a reasonable period which shall be as short as possible, when: (b) material reception conditions, as provided for in this regulation, are not available and (c) accommodation capacities normally available are temporarily exhausted.

The Regulation has attempted to ensure that asylum seekers living in the open centres are guaranteed a standard of living which is adequate and dignified. It also provides Maltese authorities the power to disregard the Regulation in circumstances which are deemed to be “exceptional” such as when accommodation capacities are exhausted (Article 12(6)). The MFSS states that open centres should “operate so as to ensure that the welfare needs of all residents are adequately met” (MFSS 2005, p. 23).

The meaning of ‘adequate’ and ‘dignified’ have been levelled-down and interpreted by Maltese authorities in a manner which has reduced residents of the open centre to being deprived of their dignity and respect. On this note, essentially Maltese authorities have suggested that the mere existence of asylum seekers in the country is “exceptional” and thus the state is excused from providing housing in line with the Regulations (and Directive). This situation reflects larger asylum goals which aim to protect the state from the immigrant-threat at the expense of the asylum seeker’s right to live in dignified housing facilities. The application of the Directive with regards to housing in Malta can be argued to be almost obsolete.

The majority of those living in open centres in Malta hold temporary humanitarian status (ENARO, 2007). The Government of Malta offers these people free accommodation in tents or shared rooms. The Ministry for Justice and Home Affairs, has subcontracted the Organization for the Integration and Welfare of Asylum Seekers (OIWAS) to oversee the centres. The OIWAS aims to limit the fragmentation of asylum services through co-ordinating resources from the national Ministry and the open centres (European Network of Asylum Reception Organizations (ENARO), 2007 p. 10). Administration of the open centres are led by a Centre Co-ordinator who oversees staffing and resource allocation, as well as liaises with the OIWAS and other NGOs. Secondary sources tell that there are social workers who are responsible for the well-being of the residents and care workers who assist with providing general assistance to the centre's residents (ENARO, 2007 p. 15).

In 2007 there were five open centres which were managed directly by the OIWAS and two which were managed by NGOs. (ENARO, 2007). In July of 2007 the European Network Against Racism (ENAR) reported that there were over 2000 people living in open centres. (Kalweit, 2007 p. 15). Those living in the open centres are provided a combination of financial aid paid in cash or in kind; some language training (depending on the availability of volunteers); as well as some vocational training (such as computer literacy, again, depending on the availability of volunteers). Asylum seekers are expected to leave the open centre after one year, find employment, and support themselves independent of state assistance (ENARO, 2007 p. 14). Those who have received temporary humanitarian status may apply for work permits which are valid for one year. However, in practice few of these individuals are successful in obtaining permits and thus are often employed illegally. (ENARO, 2007 p.18).

4.2 Conditions in the “Open” Centres

In its 2006 assessment of open and closed facilities in the then 25 EU member states, the European Parliament Committee on Civil Liberties, Justice, and Home Affairs reviewed the conditions in open centres across the Union and how they impacted vulnerable populations. They were able to observe some characteristics which were common to all of the open centres which they visited. Referring to the general situation in open centres, the Committee stated that, “open centres . . . usually form part of the measures for ‘managing’ asylum seekers” (p.192). This “management” policy included “recycling” old facilities such as military barracks and placing them in remote areas away from major cities. The Committee reported that many residents felt “outcast” and “abandoned” and that such a situation leads to, “dehumanised, conflict-ridden relationships both in the centres and towards the outside world . . .” (p.195).

The following section describes conditions in the largest open centre in Malta, Marsa Open Centre. This discussion is based on secondary sources including newspaper articles, NGO documents, and EU reports, as well as field research conducted by the author at the centre in 2008. In order to situate Marsa Centre within the literature on refugee spaces, a brief overview of the scholarship relating to this type of space is required. Migreuop writes that,

“the first image which the term ‘camp’ evokes is that of a closed space But to stick to this definition of the camps would mask an important part of the reality. The diversity of administrative procedures and various technical and humanitarian constraints aimed at regrouping the migrants go beyond the reference to confinement and lead us to consider the camps as places used to keep the foreigners at a distance It then becomes clear that certain ‘open’ centres of reception, transit or lodging provide assistance and a roof for migrants but it hides the fact that the occupants of these open centres, migrants and asylum seekers, have no other choice but to be there” (Migreuop, 2005 p.2).

The literature on refugees in camps highlights the negative social, psychological, and physical consequences associated with living in this space. Even though this space has profound

negative consequences on residents' health and well being, for states, the "camp" has been considered the most suitable spatial mechanism to accommodate, control, monitor, and organize asylum seekers and refugees since the end of World War Two (Malkki, 2002). Placing asylum seekers and refugees in camps, Liisa H. Malkki (2002) suggests, has reduced camp inhabitants to depoliticized, passive receivers of humanitarian aid. Writing about camps, Giorgio Agamben tells that "the camp as dislocating localization is the hidden matrix of the politics in which we are still living, and it is this structure of the camp which we must learn to recognise in all its metamorphoses . . ." (1997, p.113-114). Simon Turner, studying camps as "suspended spaces", writes that, "it is the kind of space that begs for questions about power, biopolitics, and sovereignty, pushing the limits of our received wisdoms on these issues" (2005, p.312).

Studying these spaces deepens our understanding of the regulatory and oppressive structures of the state. The oppressive and exclusionist nature of the camp requires that this space be viewed as a deliberate state-mechanism to control and organize those who do not belong to the state and its community. The accommodation centre, or what has been called the 'open centre', is a space of exclusion, that is, it houses individuals in such a way that it limits residents' interaction with society. In the centre, residents are reduced to "bare life" - stripped of dignity and rights, and as Agamben tells, "reduced to a vulnerable and easily manageable entity" - outside of the society of national citizens (Turner, 2005 p.313 and Szczepaniková, 2004 p.1) Agamben and others writing about the camp suggest that in reducing inhabitants to bare life, the camp becomes both within and outside of the state and within and outside of the law. This situation not only leads to the erosion of the legal protection offered to residents, but also the legitimization of this erosion, because these people are not viewed as belonging to the state or being entitled to its benefits. Writing about the refugee camp as a space for exception,

Suvendrini Perera and Agamben argue that “the refugee or 'stateless' figure represents that which cannot be contained within the nation-state because of anxieties over 'national security', and is therefore relegated to a new space, 'the camp', within state boundaries, and yet outside. The camp thus appears as a 'space of exception' within and without national space” (Perera and Agamben, 2002 par. 13). Indeed, the camp as a space to house or “warehouse” refugees has become commonplace and legitimized by states even though the negative repercussions to residents has been well documented.

The *open-ness* of Marsa Centre has been reduced and the residents of this facility are living a protracted life of exclusion. Marsa Open Centre is operated by the state-funded Fondazzjoni Suret il-Bniedem on behalf of the OIWAS (Department of Information – Malta, 2009) and it is located in the town of Marsa. It is situated next to a harbour and away from suburban housing areas, in an area which is notorious for crime and prostitution. The approximately 1000 male residents of the centre come from a range of sub-Saharan African countries including Sudan, Somalia, Ethiopia, and Eritrea.⁷

Visually, one would not immediately recognize that Marsa Centre is a centre for forced migrants and asylum. At the entrance of the centre, the residents manage kiosks and sell fruit, vegetables, and novelty items mainly to other residents. Inside the centre are also small kiosks which sell food, cooking items, clothing, and shoes. There are restaurants which cater to the various ethnicities in the centre, a small bar, a mosque, a prayer centre, and a barber shop. There are also internet labs and an education centre where people access the social and skills

⁷Accurate government statistics do not exist which document the population at Marsa Centre which suggests that the population is unknown. Personal communication in 2008 with the Centre’s Manager indicates that the population of Marsa Centre is anywhere between 800-1400 residents however that it fluctuates day-to-day and in the colder months of the year it can increase dramatically. A cross comparison of multiple local sources suggests that the population at Marsa Open Centre is unknown: 600 residents (ENAR (2009)); 750 residents (Compendium of Cultural Policies and Trends in Europe (2010)); 800 residents (IntegraRef (2008 p.35)); 400 (Texeira (2006 p.56)); and 224 residents (Government of Malta (2006 p. 128)).

development programs offered by NGOs and various humanitarian agencies in Malta. The centre's administration is located in a small office in the corner of the centre.

The quality of living at Marsa Centre is well below Maltese standards. Sleeping units are cramped, sometimes up to 4 people are forced to share the same bed. Sanitation is poor, sewage units are in need of repair and the centre is surrounded by a moat of floating garbage and sewer waste. Hot water is periodically shut off; and the centre is constantly dealing with small rodent issues (personal observation, 2008).⁸ It is an understatement to say that Marsa Centre is in dire need of a major structural renovation to ensure that its residents are living in humane and adequate accommodations.

In 2009, European Justice, Freedom, and Security Commissioner Jacques Barrot visited the open centres in Malta and commented that after visiting the facilities he “expected the government to improve living conditions at the open and closed centres” (see European Commission 2009, par 04). In April of 2010, European Commissioner for Home Affairs Cecilia Malmstrom noted that at Marsa Centre there was “more to be done” in terms of the accommodations being provided to asylum seekers in Malta (Borg, 2010). The Committee on Civil Liberties, Justice, and Home Affairs reported that “the general reception conditions in the open centres should be improved” (2006 p.123). Indeed, concerned NGOs have documented the poor living conditions at Marsa. In 2007 Médecins du Monde undertook an exploratory tour of the open centres in Malta. In terms of sanitary conditions, the organization was concerned because there was approximately 1 shower for 8 people, 1 toilet for every 9 people, and the centre was dealing with reoccurring rat infestations (p. 10). The organization reported that the close quarters of the residents, sometimes up to 25 people sharing one room, increased the occurrence of skin conditions such as scabies and other communicable diseases. Furthermore, it

⁸ see also Vassallo's (2009) article in the *Malta Independent* newspaper.

was noted that a lack of privacy contributes to severe problems concerning the asylum seekers' psychological health (Médecins du Monde, 2007 pp.11-12).

The Jesuit Refugee Service (JRS) produced a comprehensive report titled "*We are Dying Silent*" *Report on Destitute Forced Migrants* (2007) where it documented the conditions at Marsa Centre and at similar centres across Europe. JRS writes that the conditions at Marsa "are extremely poor and can be considered to be substandard" (2007 p.62). They reported that the centre lacks sufficient water facilities; buildings are in need of repair; electricity is unreliable; and the staff at the centre are not adequately trained (2007 p.62). As a result of such poor conditions, the residents' well-being and morale is negatively affected. The report included quotes from residents at the centre, which are rather telling of the conditions at Marsa. One resident told, "Mostly the people transferred from a closed to an Open Centre feel like coming from a small to a big prison" (p.63) and another resident stated, "[i]n fact, the Open Centre is the last village you want to live in" (p.63). In the JRS's 2010 review of open centres in Malta, they noted that, "basic accommodation in very large open centres can be literally described as the mere provision of a bed and a roof" (JRS, 2010 p.70).

Furthermore, an all male centre such as Marsa disrupts traditional family and gender relationships. The residents mentioned that they had left their families in Africa and/or that they had died while crossing the Mediterranean Sea. In describing their futures, the residents communicated that they hoped to one day support a family, but they believed the prospects of doing so were bleak because of their current legal and social status in Malta. Such poor living conditions have a negative impact on the overall well-being of the residents. Similar to other refugee spaces occupied only by men, the residents of Marsa Centre have become extremely frustrated (in part) due to the fact that they are living in destitute conditions. Frustrations

occasionally escalate to physical conflict or violence against women (in some cases prostitutes).⁹ Cases of such idleness and violence are not specific to Marsa Centre. They have been well documented in the literature on refugee encampments. (Connolly, 1981; Katona-Apte, 1993; Smith, 2004; and Turner, 1999).

Although the centre is ‘open’ – that is, the mobility of residents is not regulated - in many ways those living at Marsa Centre have been involuntarily confined to this space. Marsa Centre can be conceptualized, as Milica Bookman (2002) notes in her study of the political economy of refugee encampments, as a *de facto* encampment. Bookman states that, “*de facto* encampments are compounds in which populations experience conditions analogous to those in [traditional] refugee encampments. [The conditions in the host community include] such severe discrimination that their residents *de facto* lack choice in their housing, employment, . . . and other economic and social activities” (2002 p.16).¹⁰ Indeed, even when the residents of Marsa Centre attempt to be integrated into Maltese society, they are shunned. Due to legal and social exclusion, many are not able to find employment legally or attend grade school or university. As a result of being excluded from opportunities for social and economic upward mobility, the forced migrants remain poor, uneducated, marginalized, and they have little opportunity to reverse or improve their conditions even though they are legally entitled to leave the space of the centre. The space becomes one which is occupied by a disenfranchised, idle, and marginalized population.

⁹ see for example ‘Eritrean gets suspended sentence for attempted indecent violent assault’. (2009). *The Malta Independent* 29 Dec. Available online; and “Four African men charged with raping woman’. (2007). *MaltaMedia* 21 Mar. Availableonline.

¹⁰Using this definition, reserves for Aboriginal populations; camps for internally displaced people; as well as racialized ghettos and slums are all considered to be *de facto* encampments although not necessarily *refugee* encampments.

4.3 Perception of Asylum Seekers in the Host Community

Michael Pugh discusses migration in the Mediterranean Region as “often [being] constructed in terms of an invasion metaphor in which the invaders undermine national identity and/or jeopardize a relatively prosperous Western way of life. . . . (2001 p.2). Such sentiments towards migrants and asylum seekers in Malta are reflected in the local media. As suggested by Sammut (2008, p.88), in small states real or perceived threats to the territory are much more keenly felt by the populace than in larger states because the smallness of the territory makes the populace more aware of their vulnerability to outside threats. Furthermore, in small states the close contact the populace has with elites creates “easily accessible channels of transmission for discourses of insecurity that quickly necessitates a security response” (Sammut, 2008 p.88). Indeed in Malta discourses of insecurity are in part communicated by the media and are quickly diffused because of the country’s small territory. Deborah Phillips writes that, “negative media images and emotive, politicised debates over asylum help to reinforce the commonsense view of asylum seekers as ‘outsiders’” (2006 p.551). In a small state such as Malta, a commonsense view of asylum seekers as “outsiders” undoubtedly impacts the way in which they are received in the host community as well as the way in which asylum spaces such as the open centre are perceived and treated by the host community.

Media discourses of exclusion are present in Malta as they are in other EU countries.¹¹ Right-wing leaning newspapers such as the *Malta Independent* have been accused of fuelling anti-immigrant sentiments by publishing articles which only further alienate and ‘Other’ asylum seekers. In 2008 the ENAR reported that in Malta, “exponents of the far right often used media

¹¹Teun A. van Dijk (2006) writes that, “International research of the last three decades has consistently found that the European news media in general, and the written press in particular, have been part of the problem of racism, rather than part of its solution” (p.2). Furthermore, “A nearly exclusively white newsroom also contributes to lacking diversity in daily routines of news gathering, source selection, and quotation” (van Dijk 2006 p. 2).

forums to diffuse discriminative messages and to promote xenophobia” (Kalweit, 2008 p.4). The ENAR report tells that the Maltese media have often been insensitive with regards to terminologies, by naming refugees and asylum seekers “illegal” immigrants (Kalweit, 2008 p. 8). A brief scan¹² of articles published in the *Malta Independent* between April and June of 2008 demonstrates the way in which asylum seekers are represented in the media. In reviewing these headlines, it becomes apparent that the frequent use of the terms and comments ‘irregular’¹³; ‘illegal’¹⁴; ‘flood in’¹⁵ and ‘more arrive’¹⁶ suggests that migrants and asylum seekers in Malta are unwanted. The existence of “genuine” asylum seekers in Malta is largely ignored by the mainstream media and such representation has a negative effect on public opinion and the protection of people fleeing persecution. Such media coverage replaces humanitarian sentiments with an *Us* and *Them* mentality towards the reception of asylum seekers. Furthermore negative coverage undermines support for improving Marsa Centre to develop a dignified standard of living for asylum seekers.

It is important to note that, through sensationalist reports, the media both reflects and reinforces the dominant sentiments or the “commonsense” views of the host community. Indeed, asylum seekers in Malta are reminded of their lesser social status when they leave Marsa Centre and are denied entry on to public transportation vehicles, bars and restaurants. When they leave Marsa Centre, they also see “Blacks Out” spray painted on a wall at the central bus terminus in

¹²These articles were retrieved using the term ‘migrant’ and are accessible by an article title search online at <http://www.independent.com.mt>

¹³ See in the *Malta Independent* newspaper, ‘8,880 irregular migrants in six years’. (2008, June 21).

¹⁴ See in the *Malta Independent* newspaper, ‘Boatload of illegal migrants arrives’. (2008, April 10); ‘Illegal immigrants land in Gozo’. (2008, May 25).

¹⁵ See in the *Malta Independent* newspaper, ‘Illegal immigrants continue to flood in’. (2008, June 08).

¹⁶ See in the *Malta Independent* newspaper, ‘More illegal migrants’. (2008, May 23); ‘More irregular migrants arrive’. (2008, May 02); ‘More irregular migrants arrive’. (2008, June 18); ‘More irregular migrants arrive’ (2008, May 24); ‘More irregular migrants rescued, corpse recovered’. (2008, June 11); ‘More irregular migrants’. (2008, May 27); ‘More irregular migrants’. (2008, May 28); ‘More irregular migrants’. (2008, June 07); ‘More irregular migrants’. (2008, June 23); ‘More migrants intercepted, one corpse recovered’. (2008, May 08).

the capital, Valletta (personal observation, 2008). Xenophobia and racism in Malta has at times escalated to racially-motivated, physical violence towards forced migrants. One such incident was in June of 2009 when a bouncer denied entry into a night club to a Sudanese man named Suleiman Abubaker. Abubaker was then pushed down a set of stairs by the bouncer and beaten to the point where he went into a coma. He subsequently died from his injuries.¹⁷ The ENAR has documented racism and xenophobia on the island ranging from the poor treatment of migrants in the closed and open centres to the inability to find employment and housing because of stigmatization (Kalweit, 2008). The 2009 European Union Minorities and Discrimination Survey included reports from migrants in Malta who had been subjected to racially motivated violent attacks.

Arat-Koc's discussion of European identity provides insight into why anti-immigrant sentiments exist in Europe. Arat-Koç (2010 p.182) suggests that the recent enlargement of Europe has resulted in a "monolithic conception of 'Europe'" which is defined by the politics and culture of Western Europe. Such a conception of 'Europeanness' has resulted in intensifying geographic distinctions between North and South and East and West and has led to anxieties about what it means to be - and how to become more - 'European'. Arat-Koç explains that this situation has had a negative affect on race relations and class divisions. The European enlargement project excludes those who do not mirror this Europeanness. Negative discourses in the media and from politicians contributes to defining what is European through messages, images, and stereotypes about migrants and asylum seekers which portrays them as being illegal, 'bogus', a burden, and/or a threat to the order of the state while Europe is portrayed as civilized, developed, and orderly. Discourses which portray forced migrants in a negative light do not acknowledge the fact that asylum migration from one's home country can be motivated not only

¹⁷ see article in the *Times of Malta* newspaper 'Migrant beaten up in Paceville dies' 2009

by persecution, but also the breakdown of economic and social infrastructure needed for survival.¹⁸ Often times, economic motivations for asylum migration are overlooked and the asylum seekers are portrayed as entering the state ‘through the back door.’ In terms of asylum protection, this situation manifests itself through the rise of ‘Fortress Europe’ which sees, for example, the militarization of the EU’s borders and the utilization of instruments which force asylum seekers to return to their home countries (Hansen, 2009 p. 30).

Such social and political stigmatization of asylum seekers affects the institutional character of Marsa Centre. Referring to Marsa Centre and the town of Marsa, the *Malta Independent* reported that, “the area is a whole mess, which is often accompanied by the stench of drainage”¹⁹. As one reporter writing for *Malta Today* suggested, “[t]he notion that entire parts of Malta – especially Marsa . . . – have somehow been turned into off-limit enclaves by an army of ‘klandestini’ is now so firmly entrenched in the national psyche that it is almost the stuff of instant legend”²⁰. This idea was also noted by Marsa Mayor Francis Debono when he told media sources that, “people were afraid to frequent the area at night . . . as a result of the site’s environment.” (Cordina, 2009 par 03). The accommodation centre becomes a space of oppression partially because of the way in which it is perceived by residents of the host community. Asylum seekers are forced to remain in this space not out of choice, but rather because they have *de facto* been forced to remain in the centre due to social exclusion in the host community.

¹⁸ see Castles (2002 p. 175) for a further discussion of this issue.

¹⁹ ‘Doubts over sanitary conditions at Marsa open centre’. (2005). *The Malta Independent* 02 Jul. Available online.par 09

²⁰ See ‘A stroll through Malta’s no go zone’. (2007). *Malta Today* 26 Aug. Available online.

5. DISCUSSION

From this human rights-based examination of the open centre, we see that the Reception Conditions Directive, which sets out minimum standards, has been largely ineffective in its purposes which was to ensure asylum seekers “a dignified standard of living” (Preamble (7)) and to provide “accommodation centres which guarantee an adequate standard of living” (Article 14 (1)(b)). Indeed as the former discussion of the conditions at Marsa Centre has demonstrated, this space of exclusion provides an example of how the EU’s common asylum policy has positioned asylum seekers as outsiders and threats to the state. This has meant that although the Directive was framed in a language of humanitarianism, dignity, and respect - and is situated with the EU’s larger asylum policy which is framed in a similar way - the interests of individual states prevail. In the case of Malta, even though the country transposed the Directive into national legislation and has produced an official document which claimed to apply the Directive, the living conditions for asylum seekers have not improved, because those seeking protection are unwanted. As a result, this analysis of the Directive does not lead to a conclusion that deviates from the previous discussion which suggested that the refugee protection regime ultimately favours the state’s interests.

According to Liz Fekete, the “warehousing” of asylum seekers in these centres leads to conditions whereby, asylum seekers, “already set apart from society . . . can be more readily expelled; treated as commodities, . . . parcelled up, packaged and sent out of Europe” (2005 p. 68). Levelling down the living standards in open centres has an underlying goal, which is to involuntarily force residents to return to their country of origin and discourage any potential asylum seekers in the long term, because the prospects of a dignified standard of living is greater

at home than the host community.²¹ Since the open centres have seemingly been given the official stamp by the Reception Conditions Directive, their existence has been legitimized and they do not contradict legal instruments.

This brings into question the effectiveness of the Reception Conditions Directive and the EU's larger common asylum program. Non-governmental organizations have both welcomed and criticized the Reception Conditions Directive. The European Council on Refugees and Exiles, Caritas Europa, and the Churches' Commission for Migrants in Europe praised the Directive for setting adequate minimum standards with regards to access to NGOs, legal advisers, and health care (Rogers, 2002 p. 223). However, NGOs were also critical of the fact that member states are allowed a significant level of discretion in how the Directive is implemented. National-based NGOs noted that member states in practice are restrictive of asylum seekers' freedom of movement, access to healthcare and financial assistance. These NGOs' criticisms apply to the facilities in which asylum seekers are housed. In the case of Marsa Centre we see that the Directive, lacking clear standards and enforcement mechanisms, has allowed member states to "legitimately" house asylum seekers in this space because this does not explicitly contradict the Directive.

The ineffectiveness of the Directive in ensuring that Malta provides asylum seekers dignified housing is also demonstrated in other member states with regards to other aspects of asylum seekers' reception. Examining the reception experiences of asylum applicants in other EU countries through a rights-based lens shows that poor reception standards are not unique to EU countries in the Mediterranean. For example, Marie Seeberg, Cecilie Bagge, and Truls André determined that in Norway, refugee children's reception experiences were below the norm of

²¹ Similarly, the EU's Return Directive was criticized by Amnesty International for encouraging a similar process of 'leveling-down standards' and "encouraging" individuals' return to their home country through legitimizing prolonged closed detention sentences. See Amnesty International (2008).

most Norwegian children (2009). Dora Kostakopoulou and Robert Thomas found that the Reception Conditions Directive, which focused on asylees' freedom of movement and dignified reception, contrasted sharply with the UK's asylum goals which were based on control and deterrence (2004 p.23). As a result, the UK has opted out of transposing the Directive. In 2006 the *European Journal of Public Health* provided abstracts of research projects which looked at the health of asylum seekers in accommodation centres in the EU (Devillé and Goosen, 2006). The supplement edition found that although the Directive stipulated that asylum seekers were to receive "essential treatment", it was unclear exactly what 'essential' treatment included, thus, the level of healthcare asylum seekers receive across the Union is not consistent and in some cases inadequate.

Hans-Olaf Pieper, Pauline Clerkin and Anne MacFarlane (2009) reviewed the literature relating to the Reception Conditions Directive and health and determined that although there are international norms and conventions which aim to ensure that asylum seekers have access to health care, there are large discrepancies across the EU states in the quality of health care asylum seekers receive. Not unlike other studies on the Reception Conditions Directive, Pieper, Clerkin, and MacFarlane essentially concluded that EU states are allowed a wide discretion in applying the Directive. Therefore, in many cases, the member states employ the most minimalist interpretation of 'acceptable' and, in the process, asylum seekers receive less than adequate health care. Steve Peers writes that the standard of protection in the agreed Directive is so low that the legitimacy of the EU's asylum policy is questionable (2003 p. 387).

In addition to the academic studies cited above, since 2000, there have been a number of studies commissioned by the EU which have assessed asylum reception conditions in the EU. These studies have shown that there is a wide discrepancy in the standards of which asylum

seekers are received in the member states (see for example Director General for Justice and Home Affairs, 2000; and Odysseus Academic Network, 2006). In particular, these studies have focused on the inhumane and deplorable conditions in closed detention centres across the Union. In reviewing these reports, Nicola Rogers found that the only harmonized policy among the member states was with regards to access to education for children until the age of 15 or 16; emergency medical care; and medical screening upon arrival. Those policies which are “near universal” include: accommodation of some kind; access to the labour market with some restrictions; financial assistance of some kind; mental health care; and special accommodation for unaccompanied minors (Rogers, 2002 p. 218). Rogers notes, however, that there is wide discrepancy between member states in which these rights are granted.

Again, the inability of the Directive to ensure standardized, humane and adequate reception conditions is not limited to housing facilities. In fact, the scholarship relating to this Directive suggests that in almost all areas of asylum reception (i.e. adequate health care, access to the labour market, access to the education system, access to social welfare benefits, etc.), standards have been “levelled-down”. Writing about the Directive, Sylvie da Lomba states, “whilst concern for fundamental human rights encouraged the adoption of more generous standards protective of human dignity, the drive towards reducing asylum seeking in the Union called for the levelling down of these standards” (2006 p. 87).

6. CONCLUSION AND RECOMMENDATIONS

Beginning as early as the 1970s, intergovernmental cooperation on asylum policy has been based on security and control. With the collapse of the Soviet Union, already security-obsessed European countries sought to further restrict asylum arrivals through intergovernmental cooperation. The Schengen and Dublin Conventions and later the common European asylum system were born out of this environment of security. The events of September 11, 2001 only strengthened the association between security and asylum and intensified efforts to harden the EU's territorial borders to deter asylum arrivals. Indeed the idea that asylum seekers are a threat to the state has affected almost every area of refugee reception. The appalling conditions in housing facilities for asylum seekers in Malta and other member states demonstrate this point. Although the Reception Conditions Directive attempted to ensure that asylum seekers were being offered 'adequate' and 'minimum' standards of protection, the Directive's interpretive leeway led to asylum seekers receiving less than adequate protection.

International asylum migration to Europe shows no signs of ceasing. The EU is continuing to move towards harmonizing asylum policies among the member states. In its 2007 Green Paper on the future of the CEAS the Commission noted that future legislative developments should promote a "higher common standard of protection and greater equality in protection across the EU and . . . ensure a higher degree of solidarity between EU member states" (Commission of the European Communities, 2007 p.3). In the Commission's 2008 recast of the Directive, the Commission acknowledged that it "identified a number of deficiencies regarding the level of reception conditions for asylum seekers which mainly results from the fact that the Directive currently allows member states a wide margin of discretion concerning the

establishment of reception conditions at national level” (p.2).

The Directive and its 2008 recast contains language which is purposely subjective and ambiguous. If left to the member states to determine exactly what ‘self-sufficiency’, ‘respect’, and ‘dignity’ means, the interests of the host community and the state will prevail. Asylum seekers then risk becoming destitute and marginalized while the aforementioned is attempting to protect itself from a perceived threat. Concerned individuals and organizations should therefore remain conscious of reception conditions following the Commission’s 2008 recast. If the reception experience of asylum seekers are not continuously researched and monitored, people fleeing persecution will continue to be marginalized in receiving countries and the refugee protection regime will increasingly become ineffective in protecting asylum seekers.

A number of policy implications follow from the research in this paper. First, it is particularly important that more specific terminology and requirements be established to achieve truly adequate reception standards. NGOs involved in the protection of asylum seekers must be consulted with regards to defining requirements or specific “bench-marks” to include in the Directives that would lead to genuinely dignified standards of living. Development of specific requirements and “bench-marks” would give the Directive more ‘teeth’. In the case of housing facilities, the most obvious “bench mark” would be the standard of living which residents of the host community receive when they are afforded housing by the state.

As we saw in the Ministry for the Family and Social Solidarity’s policy document on irregular immigrants, subjective language in Directives translates into policy documents which are equally subjective. National policy documents which stipulate how asylum seekers are to be received must be reviewed by, for example, such agencies as the European Union Agency for Fundamental Rights to ensure that 1) they are meeting the obligations as set out in Directives and

2) more importantly, to ensure that such documents are encouraging adequate reception standards and are not simply legitimizing the state's poor treatment of asylum seekers.

Second, the Directive should try to address negative public opinion on asylum seekers. A major shortcoming of the Directive has been that it did not take into account the public's perception of asylum seekers and how this affects housing facilities (and other forms of reception). In the case of Malta, a negative view of asylum seekers encouraged Marsa Centre to be viewed as being an acceptable space to house asylum seekers. The Directive should include articles which address negative views in the host community and suggest ways to encourage the positive reception of asylum seekers. Alternately, entirely separate Directives which address education and the elimination of racist and xenophobic sentiments need to be considered. Improving the conditions of housing facilities is a multifaceted issue and requires a multidimensional approach including both legislation as well as education.

A third policy development, related to the second, could be in regards to the media. The way in which asylum seekers are perceived in the host community will affect the standard of living they receive in accommodation centres. If asylum seekers are generally unwanted, then it is likely that this sentiment will be reflected in the conditions of the accommodation centre. To change sentiments towards asylum seekers and improve the standard of living which host community residents perceive asylum seekers to "deserve" is a complex issue and no easy solution exists. The media, however, significantly impacts the level of reception asylum seekers receive because of its persuasive influence on public opinion and therefore requires attention. More scholarly attention on the media is necessary to ensure that it is focused on avoiding racist perspectives and language and providing truthful, generally unbiased, analytical reports. It is necessary that education on the media and its role in a liberal democracy is encouraged so that

readers are not blind-sided by sensationalist and security-obsessed reports.

Finally, there needs to be specific plans to improve the quality of housing and its relationship to the larger community. Research demonstrates that positive relationships between planned housing facilities and the local communities within which they are situated encourages integration and improves the well-being of the residents of the housing facility (see for example Stephens and Bernstein, 1984). Collaborative projects which produce mutually beneficial results should be encouraged between the open centre and the local Town Council. One such project has recently occurred between Marsa Open Centre and Marsa Town Council where residents of the Centre engaged with the Council to facilitate a “clean up” of the local community.²² Such a project has the potential to change the perception Maltese have towards asylum seekers while also further engaging asylum seekers in the local community.

More specifically, a research model known as community-based participatory research (CBPR) could be utilized to encourage better relations between the housing facility and community. The outcome of using CBPR would have multiple benefits including relationship building between the housing facility (and its residents) and the local Town Council (and its members). The Centre for Community Based Research (2009) defines CBPR as being community situated; collaborative; and action oriented. Research indicates that CBPR has been used to improve the lives of socially marginalized groups and formulate policy (Haswell-Elkins et al., 2009; Higgins et al., 2001; Krieger et al., 2002). CBPR projects would allow scholars to study asylum migration and reception while the research process would also encourage the integration of the housing facility (and its residents) into the community.

As of 2010, over 50 years since the signing of the 1951 Convention, people fleeing

²² See MacDonald, Vanessa. (2009). ‘Open Centre residents clean up Marsa’. *DI-VE*. 28 January. Available online.

persecution are still not receiving adequate protection. Economically powerful, developed countries are not respecting international laws and norms with regards to refugee protection. States must continue to be monitored to ensure that they are respecting international laws and standards and interpreting them in ways that are respectful of human rights and the equality of all human beings regardless of nationality. Since housing facilities have a profound affect on the social and economic status of asylum seekers, this is a space which deserves more attention.

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