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Ralph Rotte

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SORTIES FROM THE FORTRESS: THE CURRENT SYSTEM OF ANTI- IMMIGRATION POLICIES IN GERMANY

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ABSTRACT

Sorties from the Fortress: The Current System of Anti-Immigration Policies in Germany*

This paper gives a short synoptical overview of the most important elements of current anti-immigration policy in Germany. Based on the hypothesis that its primary aim is exclusion of new migrants, the measures taken within the framework of a groupwise nationally oriented but internationally cooperative approach are summarized. It is argued that German migration policy constitutes a complex system in which one has to take account of administrative and legal measures, as well as of applied instruments of foreign policy and development assistance. It should therefore not be characterized as a strictly defensive "Fortress Germany" approach any more.

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1. Introduction

One key element of West European countries' recent response to rising immigration pressure from Eastern Europe and the developing countries has been the tightening of their legislation concerning asylum policy and labour migration (Rotte, 1996; SOPEMI, 1997). Within the framework of the European Union immigration control has become an important field of administrative and legal cooperation (e.g. Convey and Kupiszewski, 1995). On the national level, avoidance of new immigrants has been combined with the primary goal of socio-economic integration of present permanent immigrants.

Two aspects of this development seem underresearched in the migration literature. First, the analysis of migration policy has concentrated on the legal and administrative measures taken by host countries in order to restrict the ongoing influx of migrants, while political activity abroad, aiming at a reduction of the migration potential has been largely neglected. Foreign policy as an important field of migration policy has become a topic of the scientific discussion only recently (e.g. Münz and Weiner, 1997), in part due to the fact that European governments themselves still see migration primarily as a task of home affairs. Nevertheless, recent activity in foreign policy and development cooperation, e.g. concerning the Mediterranean or the Balkans, have been influenced by the aim of migration control.

Second, there is the new complexity of the migration problem in the European setting. Not only have the patterns of immigration pressure into the EU changed since the demise of socialism, the increasing intensity of intra-EU integration and cooperation has also created a multitude of different legal claims for immigration to its member states. While influencing the political behaviour of East European countries due to their prospect of EU membership, migration policy is still in the hands of national governments depending on the mood of their electorates. Despite the potential gains by (controlled) immigration claimed in the economic literature (e.g. Bauer and Zimmermann, 1997a, 1997b) this mood seems to have shifted more and more to a general anti-immigration position in recent years.

Combining these two aspects results in the need of a broader perspective on migration policy, including foreign policy and development assistance. Moreover, instead of concentrating on the economic costs and benefits of immigration, the analysis of current European migration policies has to take into consideration the genuinely political aspects and motivations of anti-immigration measures taken on the national as well as on the international level.

This paper intends to take account of the new complexity of migration policy by giving an overview of current German policy aiming at the exclusion of new immigrants. In several ways, Germany is a special case in Europe. First, it has been the country experiencing the greatest influx of immigrants since the Second World War. Moreover, it has an intensive immigration tradition throughout the twentieth century (except for the 1920s to 1940s). Since the mid-eighties, Germany has received the largest share of refugees and asylum seekers while additionally having to take account of the specific group of ethnic German immigrants from Eastern Europe and the former Soviet Union. Finally, Germany is the West European country which has been affected most by the political and economic changes since the end of the 1980s, e.g. by the Bosnian civil war. Especially after unification, growing economic problems and the need for a new definition of Germany's identity and international role have influenced public and elite attitudes vis-à-vis immigration and migration policy.

The paper is organized in the following way: First, in order to provide a structural framework for the systematic overview of the complex system of German anti-immigration policies, a simple model of the migration process is introduced. From this idea there follow three paradigmatic "rules" for an anti-immigration policy which aim at every stage of the migration process. According to my hypothesis, German policy in principle follows all four of these rules. Second, based on a short overview of the German immigration experience in the twentieth century, the underlying principles of current migration policy and their political motivation are explained. Then, after a short sketch of the basic legal positions and claims of potential immigrant groups, concrete measures aiming at immigration avoidance are explained: Section five shows the policies aiming at the incentives and possibilities to migrate in the sending countries, section six deals with the prevention of access to German territory, and section seven presents internal measures taken (or not taken) in order to reduce the social and economic attractiveness of staying in Germany. The paper concludes with an assessment of the problems, political efficacy and future prospects of the set of anti-immigration policies taken by the German government.

2. Migration and Exclusion

A simple idea of the migration process

International migration can be simply modelled as a process of four subsequent steps: First, the potential migrant faces a decision problem in his home country. Comparing his prospects in the case of staying and in the case of leaving, he has to

decide whether to go at all, and if he intends to leave, where to go. Relevant factors of this decision, which are typically given in the literature, are e.g. differences in net wages, present discounted values of expected returns in different regions, expected costs of movement, existence of ethnic networks, or household and family considerations (for an overview see Bauer and Zimmermann, 1995).

Second, having decided to go, the individual moves to the chosen country of destination. This movement may be handicapped by geographical, physical or economic restrictions, which, if unexpected, may prevent the individual from reaching his aim. An example for unexpected financial restrictions would be an external shock like the devaluation of the Franc CFA against the French Franc in January 1994, which according to OFPRA (1994: 2), the French National Office for Refugees, prevented many Africans from travelling to France in the spring of 1994 since they could not afford the tickets anymore.

Third, when having reached the intended destination, the new immigrant tries to find his place in the socioeconomic order of his host country. One important aspect of this is participation in the labour market in order to secure one's material living conditions. Apart from the migration decision itself, it is this stage on which most economic analyses on immigration focus, looking at problems of discrimination, unemployment and wage effects of immigration (for an overview see Zimmermann, 1995; Bauer, 1998).

Finally, fourth, if the migrant has adapted to the formal and material circumstances in his host country, he may assimilate himself into the destination country's society which, apart from labour market success, consists of social, cultural and political ties and behaviour. In the end of this process, which may be very different among different countries, depending on their social and political system, the migrant may have become a full-fledged member of the host countries society, including citizenship and the whole range of political rights.

Three paradigmatic "rules" of anti-immigration policy

This simple model of the migration process ignores of course important aspects of actual migration, like return migration. Nevertheless, it is sufficient to clarify the argument of this paper since it enables us to formulate several principles of a policy intending to prevent immigration:

- C Make potential migrants stay at home.
- C If you cannot stop them from leaving their country, stop them on their way, and prevent them from entering your country.
- C If you cannot stop their coming, make them leave again soon.

Obviously, since these paradigmatic “rules” which are presented here without any normative indication about the actual socio-economic or political desirability of immigration, are closely connected to the geographical aspects of the migration process. Policy measures designed to implement those principles within an active anti-immigration strategy may thus be divided into three groups: First, there are measures aiming at the conditions fostering emigration from the sending countries as well as the behaviour of the sending countries’ governments. Moreover, administrative means are used in order to restrict the actual number of people leaving their countries. Second, given that there is migration nevertheless, there are activities designed for the space between sending and host countries, including policy vis-à-vis transit states and border control. Third, measures are taken within the host country in order to limit attractiveness of permanent immigration. The underlying hypothesis of this paper is that current German migration policy consists of a complex mix of administrative, legal, political and economic action in each of those three fields.

German immigration experience in the 20th century

Active anti-immigration policy is not at all typical for the German experience. Throughout the 20th century Germany/the Federal Republic has been an immigration country, except for the inter-war years. An overview of the development of immigration to Germany since 1945 is given by Schmidt and Zimmermann (1992) who distinguish five basic periods of post-war migration:

- C the phase from 1945 to 1950, when about 12 million Germans (of which about 8 million came to the western occupation zones) left Eastern Europe and the eastern territories of the Reich as a direct consequence of the Second World War;
- C the war adjustment phase from 1950 to 1961, when the GDR closed her borders to the Federal Republic in order to stop the outflow of East Germans (about 2.6 million in total);
- C the manpower recruitment phase from the mid-1950s to 1973, when West Germany’s need for labour was satisfied by net immigration of about 2 million guestworkers from South and Southeast Europe (Schmidt, 1994);
- C the consolidation phase from 1974 to 1988, when immigration of non-Germans was allowed in principle only within the framework of family unification, stabilizing the foreign population at about 4 million (Schmidt, 1994); and
- C the phase of intra-German migration (about 500,000) between the GDR and the FRG in 1989/90 until German unification in October 1990.

Since the end of the 1980s, the main influx into Germany was due to asylum seeking and immigration of ethnic Germans (*Aussiedler*) from Eastern Europe. According to Schmidt (1996), more than 200,000 *Aussiedler* came to Germany each year since 1988, with almost 400,000 in the peak years 1989 and 1990. Between 1985 and 1994, about 1.8 million people applied for asylum in the Federal Republic, of which about 760,000 in 1992 and 1993 alone (Rotte et al., 1997).

Including the early century into the perspective shows that between 1900 and 1914, Germany experienced a permanent emigration of about 25,000 people per annum, far less than the average of 134,000 and 53,000 p.a. in the 1880s and 1890s, respectively (Woytinsky, 1925: 114-115). At the same time there was massive recruitment of mostly seasonal workers in East Germany's agriculture and in the mining industries of the Ruhr and Silesia. In 1912, it was estimated that about 580,000 Poles and 450,000 other nationals arrived in Germany annually, most of them from Russia and Austria-Hungary (Olsson, 1996).

While this overview demonstrates that Germany has various experiences as an immigration country, it also shows that, nevertheless, there have been only two periods of active labour recruitment, i.e. pull migration according to the definition by Zimmermann (1995), in this century: during the economic boom phases before 1914 and before 1973. Immigration to Germany has been mostly push migration as a consequence of political and military events as well as of socio-economic differences between Germany and Eastern Europe and the LDCs.

Moreover, one can identify a simple traditional migration pattern which was valid until about the mid-1980s. If one excludes family reunification, pull migration was mostly immigration of foreign workers, while push migration into Germany consisted mainly of German citizens and ethnic Germans, i.e. took place within the framework of assumed national solidarity. Only since the end of the 1980s push migration has been characterized by a mixture of nationalities, including ethnic Germans from Eastern Europe and the former Soviet Union, and asylum seekers from Eastern Europe and the Developing World. Furthermore, the overall potential of push migrants increased considerably after the breakdown of the socialist regimes in Europe and abroad (Straubhaar and Zimmermann, 1993). Finally, in addition to that there has been growing pull migration from the EU and Eastern European countries in selected industries of the German economy, namely construction, agriculture and tourism.

3. Underlying motives of current German migration policy

General exclusion and specific acceptance

The basic reaction of German policy vis-à-vis this new complexity of immigration and migration potentials has been reluctance against any new inflow of migrants into the Federal Republic. In general, the German government as well as important parts of the opposition, especially of the Social Democrats, have adopted a view that Germany does not want to be an immigration country and that immigration has to be restricted as far as allowed within the present framework of legal, constitutional, international and humanitarian obligations. This stand against an increase of the number of foreigners in general, and of foreign labour in particular, is enrooted in a whole range of political, social and economic reasons. Basically, however, the defensive position of the German government seems closely related to the electorate's growing perception of socio-economic competition of natives and foreigners in recent years, and to a more nationally oriented political world view after the end of the Cold War and German unification. The most important demonstrations of rising xenophobia which with the government is confronted, have of course been violent crimes against foreigners during the 1990s, and the rise of right-wing extremist parties, especially on the state level. Thus, among the most important aspects of anti-immigration policy cited in the literature there are the following:

C Since reunification, Germany seeks her identity as a full-fledged national state at the end of the twentieth century (Hedetoft, 1998). Given the particular lack of East German experience with the Federal Republic's post-war integration in the West, one important aspect of this reorientation is the new importance of national self-determination and self-confidence since 1990 (e.g. Brands, 1997). This change of attitudes in public and elite opinions after unification can be generally associated with less enthusiasm for international openness and integration. After having been the major champion of European integration for decades, for example, recent German policy emphasizes the limits of political integration vis-à-vis national interests (e.g. Weidenfeld, 1997). It has even given up the ultimate aim of a European Federation similar to the U.S., and has turned to a more "Gaullist" position of a confederate Europe of nation states (Rotte, 1997). In 1993, the German Constitutional Court has explicitly ruled out the possibility of giving up national sovereignty to a degree where the member states of the EU might be reduced to federal states without substantial rights (Bundesverfassungsgericht, 1993).

- C Since unemployment has become a major issue of German economic and home affairs, there is some fear of rising competition in the labour market and in social transfers (e.g. Zimmermann, 1992).
- C There is a permanent latent potential of culturally and ethnically oriented xenophobia which is easily mobilized in periods of economic crisis. This is not a typically German, but a general European problem, where, despite different legal traditions of immigration policy and abstract political principles, national identity is still closely connected to country-specific culture and ethnicity (Fuchs et al., 1993; Kurthen, 1995; K uchler, 1996).
- C Independent of actual social or economic problems caused by immigrants, the accelerating social disintegration of the globalizing western societies due to the loss of traditional patterns of orientation, is compensated by a reorientation in nationalism which is closely linked to xenophobia (e.g. Ignazi, 1992; Fijalkowski, 1993; Mudde, 1995; Fijalkowski, 1996).
- C Given its problems, the German economy and production has been associated with a rising intensiveness of conflicts between natives and foreigners in recent years. Increased competition is seen as a major reason fostering ethnic group orientations and social and political fragmentation (Jaschke, 1996).
- C In public discussion, there is a close connection between immigration and organized transnational crime. Especially conservative politicians and audiences seem to tend to simplifications which, in principle, perceive immigrants as potential or actual criminals in the first place. Public discourses and political press releases therefore mix easily fundamental problems of organized crime, internal security and immigration, especially illegal and asylum migration, e.g. BPA (1998a). Indeed, official numbers indicate that there is a certain criminal potential connected to migration: Between 1991 and 1996, for example, the share of non-German suspects in organized crime has risen from 50.6 to 62.2 percent (BPA, 1998e).
- C Aggressive nationalism has led to active violence against foreigners in Germany, together with a revival of right-wing extremist political groups (Krell et al., 1996). In the worst postwar year of anti-foreigner violence, there were 2,544 acts of violence against foreigners reported (Krueger and Pischke, 1997). In 1992 and 1993 a total of 6,336 and 6,721 crimes against foreigners were committed, respectively, including racist propaganda and threats. This number decreased to 3,491, 2,468, and 2,232 in 1994 to 1996 (Beauftragte der Bundesregierung f ur Ausl anderfragen, 1998). At the same time, right-wing extremist parties which mainly build on xenophobia had a number of election

successes, especially in the State Parliaments (Husbands, 1992; Betz, 1996). In 1992 and 1996 the so-called Republicans (*Republikaner*) gained 10.9 and 9.1 percent of the vote in the state of Baden-Württemberg, and 7.1 percent in the European elections in 1989. The German People's Union (*Deutsche Volksunion*) received 10.3 percent and 5.7 percent in Bremen in 1991 and 1995, respectively, and, most recently, 12.7 percent in Sachsen-Anhalt in spring 1998.

It is obvious that these problems result in a certain pressure on German policy concerning immigration restriction. Nevertheless, this anti-immigration position has also its limitations. First, despite the general fear of competition in the labour market, there are qualifications demanded which cannot be provided by natives. If there is special demand for such labour without native supply, immigration, at least temporarily, is desired in order to maintain operation and growth potentials of those sectors of the economy, like in the computer industry or in tourism.

Second, for Germany as a constitutional country under the rule of law, there are limits of immigrant exclusion by constitutional, legal, international and humanitarian restrictions of policy. As a consequence, even if there were the political will to do so, immigration could not be reduced to zero but can only be restricted according to a migrant's particular status and claims. This is why it is important to take account of the complex legal framework when discussing German migration policy.

Primacy of national policy and EU cooperation

For the German government, migration and migration policy remain a domain of the nation states. Although the Title V of the Maastricht Treaty of 1991 has established immigration as a topic of common EU policy, it is a matter of intergovernmental cooperation. Germany also insisted in the need for unanimity of decisions within the framework of a EU migration policy. Consequently, Title IIIa of the Amsterdam Treaty of 1997 sticks to the avoidance of majority decisions in the Council concerning migration issues of non-EU citizens.

Despite this national reservation, however, Germany has been prepared to participate in extensive EU cooperation and coordination in migration control in recent years: For example, asylum procedures have been standardized according to the Schengen and Dublin Conventions of 1990; common visa regulations concerning sending countries and content of permits have been introduced since 1995; and access regulations to the EU have been harmonized since 1993 (BPA, 1998b).

In addition to the important field of EU coordination German migration policy also acts within the framework of bi- and multilateral cooperation and international governmental organizations.

A mixed approach

German migration policy is mixed in two basic aspects. Not only vary the measures taken according to the different legal claims of potential immigrants, but also according to the field of action taken. While in the past, German authorities relied almost exclusively on restrictive legal and administrative measures, recent policy has been counting increasingly on the field of foreign policy and international cooperation, and on economic incentives for potential migrants. Due to the latter, development cooperation has become an important domain of migration control. It is important to note that those new fields of policy certainly cannot be reduced to anti-immigration aims but are always mixed with other goals like international security, trade or human rights. Nevertheless, these fields have important consequences for the migration flow to Germany which are deliberately taken into account by decision-makers. Thus, in this paper, we look at legal and administrative measures, international cooperation as well as economic incentives as instruments of migration policy.

As indicated above, the actual use of these instruments depends heavily on the legal status of potential immigrants and on the range of German political action. While legal and administrative measures are obviously most attractive within the grasp of the German state, for example, international cooperation and foreign policy are mostly oriented at influencing the circumstances to which people leave their home countries. At the same time, if legal action is excluded because of e.g. international arrangements, changes in economic incentives for migrants are a potentially promising means for migration prevention from countries to which one cannot simply close one's borders.

According to their legal status (including international obligations) one can distinguish five main groups of potential immigrants:

- C ethnic Germans,
- C EU foreigners,
- C non-EU foreigners,
- C asylum seekers and refugees, and
- C family members.

4. Five groups of potential immigrants

Ethnic Germans

The Citizenship Act (*Reichs- und Staatsangehörigkeitsgesetz*) of 1913 which, though changed for several times since, is basically still valid, has introduced the principle of *ius sanguinis* as the major way of acquiring German nationality. Contrary to the e.g. U.S., Australia or France, being born on German territory thus does not result in a claim for German citizenship. Article 116 I of the Basic Law of 1949 explicitly recognizes a claim of citizenship for ethnic Germans ("*deutsche Volkszugehörige*" and their descendants). The Expellees Act (*Bundesvertriebenengesetz*) of 1971 defines ethnic Germans as descendants of German citizens who are still enrooted in German culture (language etc.) and have declared their nationhood in the country of origin.

One historical specialty which has resulted in the claim for German citizenship by several million inhabitants of the Eastern European countries and the Soviet Union after 1945 is the Federal Republic's acceptance of legislation on nationality which was introduced by the German government during the Second World War. The Citizenship Regulations Act (*Gesetz zur Regelung von Fragen der Staatsangehörigkeit*) of 1955 accepts that German nationals who were collectively naturalized by legal acts of the Reich, especially in the occupied eastern territories between 1941 and 1943, are still German citizens if they have not voluntarily given up their nationality. Given that they are still connected to German culture according to the Expellees Act, their descendants have the right to claim their German citizenship as *Aussiedler* and to immigrate to Germany.

EU citizens

Article 48 of the Treaty on the European Economic Community of 1957 has introduced the principle of free movement of labour within the EEC/EU. Following this privilege of EU nationals, there is a facilitated procedure according to the Law of Residence of Citizens of EEC Member States (*Aufenthaltsgesetz/EWG*) of 1980, for EU citizens claiming a residence permit. Free movement of labour applies to all employees, self-employed, suppliers and consumers of services.

Unlimited residence is permitted after five years of residence in Germany if the applicant has some minimum knowledge of German, sufficient housing space and is not dependent on public financial support. The same applies to family members. EU citizens do not need a work permit and may stay in Germany after having terminated their job if their residence and occupation has taken some minimum period of time, or as retirees. Basic regulation was introduced by the EC Commission as early as in 1970. No residence permit is needed for commuters working in Germany and living abroad, and for activities which take less than three months of time.

Non-EU citizens

For non-EU nationals, access to Germany and to the German labour market is restricted by the so-called “double regulation”, according to which they are required to have a residence permit (*Aufenthaltsgenehmigung*) and a (separately granted) work permit. A overview of this system is given by Bauer (1998).

According to the Foreigners Act (*Ausländergesetz*) of 1990, there are four types of residence permits distinguishing duration and geographical location of the migrant’s stay in Germany. The *Aufenthaltserlaubnis* is not restricted to any special aim and is granted on a temporary base. Unlimited extension is possible after five years if the migrant has some command of German, a flat and a secure income independent from social transfers. The *Aufenthaltsberechtigung* is unrestricted in time and space, and can be granted if the applicant has had a limited *Aufenthaltserlaubnis* for eight years or an unlimited one for three years. Moreover, the migrant must not have a criminal record, has to have paid contributions to the public pension scheme for at least 60 months, and must be in a financially secure position. The *Aufenthaltsbewilligung* is limited to an explicit aim, e.g. a specific occupational task in Germany, and is granted for a maximum of four years. The *Aufenthaltsbefugnis* covers residence of immigrants due to humanitarian, political or (international) legal grounds. In general, reception of a residence permit requires the prospect of a job in Germany.

There are two types of work permits for foreigners in the German system (Bauer, 1998): a general work permit for new immigrants, and a special one for resident foreigners, family members or recognized refugees. In general, the requirements for obtaining a work permit are a residence permit and the

fulfillment of primacy of natives principle as laid down in the Work Promotion Act (*Arbeitsförderungsgesetz*) of 1969. The primacy of natives principle gives Germans, EU citizens and foreigners with an *Aufenthaltserlaubnis* or an *Aufenthaltsberechtigung* priority in procuring of vacancies. There are, however, some exceptions from this rigid system: Some specialists like chefs, and citizens of selected countries, like the EFTA member states, the U.S., Canada, Israel, Australia and New Zealand do not need a work permit.

Asylum seekers and refugees

Concerning the protection of political refugees there is a basic setting of international law which each European state and the EU has to follow. The most important is the Geneva Convention on Refugees (1951) which protects "any person who owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion." The Convention was amended by the 1967 Protocol removing time and geographical limitations. One has to mention, however, that international law neither implies that political refugees have a right of entry to any state nor a individual right on asylum for persecuted persons. Furthermore, only persons who have been recognized as refugees are protected. The states are largely free in setting the recognition procedures and criteria, although there are recommendations by the UNHCR Executive Committee. International law thus gives the states a wide scope to arrange shelter for refugees. In the German case, asylum for political refugees is a legal claim laid down in article 16a of the Basic Law which was amended in 1993, introducing important restrictions specified in the the Asylum Procedures Act (*Asylverfahrensgesetz*) of the same year, which we will look at below.

On the EU level, the Dublin und Schengen Conventions (1990) have settled the responsibility for asylum applications. The Resolution of London (1992) and the Decision on Minimum Guarantees (1995) have dealt with common standards of the asylum procedures. Further steps in this direction have been the Resolution of London (1992) and the Agreement on Minimum Guarantees in the asylum procedure (1995).

Family members of permanent immigrants

As indicated above, there is facilitated entrance to Germany for a resident EU citizens' family and spouse. Basically, the same rules concerning housing space and financial independence from public transfers apply as for labour migrants. Moreover, since marriage and family are especially protected by article 6 of the Basic Law, there is a general minimum claim for family unification for non-EU residents, too. Again, the general requirements according to the Foreigners Act include secured employment, an adequate flat, and a minimum duration of residence of head of family. Finally, there are special facilitated regulations for family unification of recognized asylum seekers and refugees.

5. Migration Prevention

Preventive diplomacy and foreign policy

Diplomatic means have come to the service of anti-immigration policy only recently, since traditionally, like in other western countries, migration to Germany has been a concern of the Ministry of the Interior (Münz and Weiner, 1997). During the Cold War, the prevention of migration to Germany by the socialist governments was of course used as an argument for the inhuman political systems of Eastern Europe in foreign policy. Facilitating transnational migration was also one of the main topics of the humanitarian aspects of the CSCE process after 1975. Nevertheless, it was rising migration pressure since the demise of the Warsaw Pact system which provided the most important incentives for German policy to turn from being fixed mainly on legal and administrative aspects of immigration to a broader perspective including foreign policy as an instrument to influence the migration potentials in the sending countries.

Moreover, the experience of the Bosnian War came as shock to German foreign policy and has led to a renewed focus on crisis prevention and international cooperation in order to avoid migration flows due to violent conflicts. For the premature German recognition of Croatian and Slovenian

independence (in order to internationalize the intra-Yugoslav disputes in the framework of the United Nations), despite hesitation from her European allies, has been made responsible for having contributed to the violent dissolution of Yugoslavia, which has led to about 350,000 Bosnian refugees coming to Germany (Axt, 1997).

Germany is not interested to make a similar experience again. Recent German policy tries therefore to participate in crisis prevention measures within the framework of the European Union, the United Nations, NATO or multilateral cooperations. Diplomatic activities include e.g. the Contact Group of the U.S., France, the U.K., Russia and Germany on the Balkans, especially on the Bosnian armistice and the Kosovo problem (BPA, 1998c). Germany also supports the introduction of a permanent UN War Tribunal in order to deter potential aggressors from breaking the peace, and takes part in the EU's "constructive" dialogue with non-democratic regimes like Iran and China in order to promote small steps of humanitarian improvements. These activities are of course intertwined with general strategic security and economic interests. Immigration control, however, has become more and more important as a concern of German security policy, since potential mass migration from politically and economically destabilized countries of the West European "rimlands", especially from South East Europe and North Africa, has been identified as one of the new strategic threats of the post-Cold War era (e.g. Roper, 1995; Mattes, 1996).

Development cooperation

One special aspect of foreign policy as an instrument of migration control is development cooperation. Following the basic idea that improvements of political and socio-economic living conditions in the sending countries should reduce the migration potential, at least in the long run (Martin, 1997; SOPEMI, 1997), German development policy has adopted an orientation of migration prevention. Development cooperation is explicitly seen as a means of crisis prevention providing relief not only for the LDCs but also for the industrialized countries (Spranger, 1996). Despite theoretical and empirical doubts about the concept (in the short and medium run) in the literature (e.g. Faini and Venturini, 1993; Rotte et al., 1997; SOPEMI, 1997), Germany tries to reduce her immigration potential by promotion of free trade, project-related development

aid, credits and technical assistance for improvement of infrastructure and administration.

Total public development assistance (including credit guarantees) amounts for about 0.5 percent of the German GNP (about DM 17.3 billion in 1995). About two thirds of direct aid are spent on bilateral projects, and one third in multilateral aid, especially within the framework of the European Union. More than a third of bilateral aid goes to Sub-Saharan Africa, almost a third to South and South East Asia and the Pacific, about one tenth to Latin America and the Mediterranean countries each, and the rest to Eastern Europe. German total contribution to United Nations development funds rose from US\$ 12.2 billion in 1993 to US\$ 13.8 billion in 1996, while cumulated contribution undertakings increased from US\$ 13.1 billion in 1993 to US\$ 15.7 billion in 1996 (BMF, 1993, 1997). Within the EU framework, the Mediterranean countries are to receive assistance amounting for ECU 4.7 billion in 1995 to 1999; the Lomé (ACP) countries about ECU 13 billion for 1996-2001 (about one fourth comes from Germany); the East European countries expected to join the EU about ECU 1 billion annually (since 1990); and the CIS countries and Mongolia ECU 2.2 billion for 1996-1999 (BMF, 1997).

Apart from the indirect, long term effect of development assistance through an improvement of economic and political living conditions in supported countries, there is an important direct, short-term consequence of using aid and cooperation as a means of migration policy: In return to assistance, Germany and the other industrialized countries now demand anti-emigration and anti-transit measures by the supported governments. In a statement on the Barcelona Declaration of 1995, the German Foreign Minister put this position in the following way: "A prerequisite of solidarity is cooperative behaviour concerning ... migration" (Auswärtiges Amt, 1996). In fact, the Barcelona Declaration of the EU and the Mediterranean countries aims at close political and socio-economic cooperation as well as a free trade zone by 2010, and declares simultaneously the participants' willingness to reduce the migration pressure and to cooperate in avoiding illegal migration (European Commission, 1996). In early May 1998, the Federal government even explicitly threatened to cut development assistance for 18 African and Asian countries including Ghana, Nigeria, Sudan, Pakistan and India, if they continued to refuse or delay acceptance of refused asylum seekers of their nationality from Germany.

Contingents and thorough testing for ethnic Germans

Foreign policy and development cooperation focus on the prevention of non-German migration from the South and from violent conflicts. Since the late 1980s, however, one major source of immigration to Germany has been ethnic Germans. Between 1984 and 1995 about 1.8 million *Aussiedler* arrived in Germany. While in 1987 the number was only 78,000, the collapse of the socialist systems in the East resulted in a rise to 397,000 in 1990. In order to keep this influx at bay, the need for application in the home country was introduced in 1990. Until then, every claimant could enter Germany and apply there for recognition of his status of *Aussiedler*. As a result, the number of ethnic German immigrants was reduced to 222,000 in 1991 and 230,000 in 1992. By the end of 1992 the migration potential of ethnic Germans left in Eastern Europe was about 3.5 million.

In order to preempt new waves of mass migration the Consequences of War Regulations Act (*Kriegsfolgenbereinigungsgesetz*) of 1992 introduced immigration contingents of about 200,000 *Aussiedler* per year. Moreover, since the basic claim of ethnic Germans for citizenship is hard to change due to its connection to constitutional law, German authorities have concentrated on more thorough testing of the requirement of actual German cultural roots of the applicants. They have to pass a German language test in their country of origin now, which is administered by the German diplomatic and consular representatives. At the same time, there is financial aid for potential migrants staying at home. Together with the Russian government Germany assists especially supported regions on the Volga, in West Siberia and around St. Petersburg where ethnic Germans are to find a permanent home.

The effects of these measures has been considerable so far (BPA, 1998d). In 1995, 218,000 *Aussiedler* came to Germany. In 1996 this number decreased to 178,000, i.e. to less than the contingent. By early 1998 the monthly inflow has been even further reduced to about 50% of the 1996 levels. 100,000 immigration permits for ethnic Germans which have been granted in recent years remain unused by their possessors, which indicates that the incentives to stay at home have been improved and the claim of immigration to Germany is increasingly perceived as an insurance policy against risks in Russia. Finally, the failure rate of ethnic Germans at the recently introduced language tests is about 1/3, which reduces the actual number of potential migrants considerably.

Limitation of temporary work permissions

In order to control the migration pressure of workers from Eastern Europe after the dissolution of the Warsaw Pact, Germany has introduced an explicit pattern for temporary labour migration. The two most important instruments are contingents for seasonal workers with a residence permit of three months per year at most, and for project-related workers. Basically, the same rules are valid as for any other non-EU labour migration, especially the primacy of natives principle.

In 1991, there were 123,000 official seasonal workers, mainly in agriculture (about 92 percent) and hotel and gastronomic services (about 5 percent), and 51,000 project-related workers. These numbers rose to 212,000 and 94,000 in 1992, before the fear of labour market competition and a general anti-immigration mood made authorities reduce the contingents. Thus in the subsequent years the numbers were 164,000 and 76,000 (1993), 141,000 and 41,000 (1994), 177,000 and 57,000 (1995), and 210,000 and 47,000 (1996), respectively (IAB, 1997). The increase in the number of seasonal workers was mostly caused by structural changes in agriculture towards ecological farming resulting in a higher need of manual labour (BfA, 1997).

Although the number of seasonal workers seems quite high one has to take into account that the average duration of seasonal employment is about two months. 200,000 seasonal workers per year thus mean that the average number of seasonal employees from Eastern Europe is only 33,000. The most important sending country for seasonal workers is Poland, with about 88 percent of all temporary labour immigrants. Concerning the project workers, not even the existing small contingent of 52,600 in 1996 was fully used.

Facing rising unemployment in the construction business for a number of business cycle and structural problems (Rotte and Zimmermann, 1998), employment of seasonal workers in construction was forbidden in 1993. Moreover, project-related work on German construction sites which accounted for about 64,000 of 70,000 jobs (90 percent) in 1993, was also reduced. In 1996, the number was only 20,000 or 43 percent (IAB, 1997). Nevertheless, there are still important problems with illicit employment in this area.

Negative incentives for EU employment

While East European workers can be excluded from the German labour market by administrative means without too many problems, labour market competition

from EU-citizens is not directly avoidable, due to the principle of free movement of labour according to the EEC Treaty. Especially in the field of construction, however, German employees perceived themselves as increasingly threatened by migrant workers from the EU partner countries Portugal, Ireland and the U.K. In 1994, about 50,000 self-employed Britons and 160,000 dispatched workers from the other countries worked in the German construction business, an increase by 40 percent since 1990. About 18.5 percent of legal employees in construction were foreigners. At the same time, unemployment in construction jobs rose from about 7.5 percent in 1990 to more than 12 percent in 1996 (Rotte and Zimmermann, 1998).

The special problem which German workers and employers faced, was the legal instrument of dispatchment, according to which an EU-citizen can work in another EU country for a wage negotiated in his country of origin if he is dispatched by his employer. In 1994, this principle meant that a dispatched Portugese worker would work for an average (Portugese) wage of DM 1,130 per month in Germany, whereas his German colleague would receive the union wage of DM 3,450. Obviously, this wage differential created a strong incentive for German employers to hire dispatched workers from low wage EU countries and dismiss Germans.

In 1996, massive pressure from the unions and from the construction workers led to the Dispatched Workers Act (*Arbeitnehmer-Entsendegesetz*) which tries to counter the comparative advantage of EU workers by introducing compulsory minimum wages in order to avoid "social dumping". This law rules that, under certain formal requirements, basically every employee on a German construction site has to be paid the minimum union wage which is negotiated between German unions and employers. Legal EU support for this measure was provided by the Council's Dispatched Workers Directive of 1996 against "wage dumping". Initiated already in 1991, and backed mainly by Germany, France, Austria and Belgium, this directive obliges the EU member states to guarantee national standards in workplace security and wages for all employed EU nationals on the territory.

In fact, the law seems to work as far as exclusion of EU workers is concerned. Since 1996, the share of legally employed foreigners has decreased from about 17 to about 14 percent. Concerning German employment, however, the Workers Dispatchment Act was quite futile because, due to the more fundamental structural problems of the German construction business, unemployment has been ever rising since. Legal employment seems

to have been substituted for illegal employment (Rotte and Zimmermann, 1998).

6. Access Prevention

Border control

The measures described in the previous section are designed to reduce the immigration potential to Germany by limiting migrants' incentives and opportunities to move at all. Nevertheless, no measure taken can be expected to reduce the migration pressure to a degree that free movement for those still actually willing to come would be acceptable for German policy. Therefore, a number of additional defensive positions have been established in order to prevent migrants from getting access to German territory.

First, there is improvements in border control. The Federal Border Police (*Bundesgrenzschutz*) has been technically upgraded in recent years, including infrared, motion and carbon dioxide tracking devices, patrol boats and helicopters for coverage of the thousands of kilometres of the German eastern frontier (BPA, 1998e). Moreover, personnel from intra-Schengen resources has been reallocated and new techniques of police control in a security belt of 30 kilometres behind the borders have been introduced to compensate for the loss of controls at the intra-EU borders. The budget of the Federal Border Police has been one of the most massively rising expenses of the Federal government. Between 1993 and 1997, it increased from DM 2.1 billion to DM 3.1 billion, or by 48 percent. The success of these measures has been demonstrated by the number of detected illegal immigrants and illegal immigration agents rising from 18,909 and 952 in 1996 to 35,205 and 2,023 in 1997 (BPA, 1998e). On the other hand, the same figures hint at the persistent basic problem of illegal immigration.

Apart from technical, personnel-related and administrative improvements Germany also tries to cope with the control aspects of anti-immigration policy by cooperating with her EU partners. For example, the Schengen countries have installed a supranational information system on criminals within the EU, as the potential core of a future Europol. Similarly, a system of fingerprint files of asylum seekers is about to be implemented, which can be accessed by

authorities from the EU countries and is intended to help to avoid “asylum shopping”, i.e. parallel or subsequent application for asylum in different EU member states.

Asylum law

The influx of asylum seekers has been a major concern of German politics since unification. It is here where the new complexity of push migration is felt most intensively, since high numbers of applicants have coincided with high numbers of refusals of recognition, indicating economic grounds of migration which have easily been labelled as “abuse of the asylum law” in the public discussion in an situation of budget restraint and rising unemployment. The number of asylum seekers was 193,00 in 1990, 256,000 in 1991, and 440,000 in 1992. By then public and political pressure, including right-wing extremism and xenophobic violence, had created an atmosphere in which the conservative government coalition and the social democratic opposition agreed to change the Asylum Procedures Law (*Asylverfahrensgesetz*) and the Basic Law in which it is laid down as a fundamental right.

This reform was introduced in 1993 and relies on two basic exclusion rules for asylum application: According to the “safe third country” rule, there is no admission to the asylum procedure when an applicant arrived in Germany by transit via one of the neighbouring countries (which are all considered as constitutional states with their own asylum procedures). Those countries are listed in the law and include, except for the contemporary EU countries, Finland, Austria, Poland, Sweden, Switzerland, and the Czech Republic. The “safe country of origin” rule refuses admission when the sending country is considered respecting human rights. According to the law, the safe countries include Bulgaria, the Gambia, Ghana, Poland, Romania, Senegal, Slovenia, the Czech Republic and Hungary.

Apart from illegal immigration and deliberate discharge of one’s papers, there is only one major remaining way of entering Germany as an asylum seeker: by plane. Therefore the 1993 Asylum Law has introduced special airport procedures for applicants coming by plane. They are not admitted to the country before acceptance as refugees but are kept in special isolated areas at the airports where their claim is examined.

The consequences of these restrictions were according to the reform’s intentions: The number of asylum seekers subsequently went down to 323,000

in 1993, 127,000 in 1994, 128,000 in 1995, 116,000 in 1996, and 106,000 in 1997. According to expectations of the German government there will be less than 100,000 applicants in 1998 (BMF, 1997).

“Cordon sanitaire” policy

Apart from defining all neighbouring countries as “safe third countries”, anti-immigration policy is also flanked by international agreements with some of the most important sending and transit countries in Eastern Europe (BPA, 1992, 1993, 1994; BMI, 1995). Germany has concluded readmission treaties with Romania (1992), Poland (1993), Switzerland (1993), Croatia (1994), Bulgaria (1994), and the Czech Republic (1994) which oblige those countries to take back illegal immigrants from Germany coming from their territory. The costs for readmission are covered by the German government. Similar agreements have been projected for Albania, Pakistan, India, Sri Lanka, Algeria, Vietnam, Russia, Ukraine, and several Sub-Saharan African countries (BMI, 1995).

Moreover, Germany provides financial and technical support for the countries in order to improve their own migration infrastructure (e.g. asylum administration) and border control. In 1993 and 1994, for example Germany paid Poland DM 120 million for these purposes. It is obvious that the preparedness of the East and Southeast European countries for cooperation is further enhanced by Germany being a champion of eastern enlargement of the EU and EU assistance for the post-socialist socio-economic transformation of those states.

Again, diplomatic initiatives are used for aims of anti-immigration policy. In two conferences of the European countries, in Berlin (1991) and in Budapest (1993), there was agreement that uncontrolled migratory movements are a joint European problem which has to be fought accordingly. The German goal of this international cooperation was explicitly formulated by the German Ministry of the Interior as follows: “The ... follow-up task force agreed that the ‘European Conference on Uncontrolled Migration’ (Budapest Conference) had the leading role in creating a *continental defense system*” (BMI, 1994: 70).

7. Internal Measures

Use of the primacy of natives principle

The final set of measures taken against immigration consists of the use of instruments aiming at excluding foreigners from the German labour market and social security system, and at avoiding potential additional attractiveness of Germany as an immigration country concerning political rights etc..

Although the primacy of natives principle has been established since the end of the 1960s, its actual application by the German labour market administration has varied considerably according to economic situation and the political mood. Since the mid-1990s, the use of the principle has become tougher, i.e. German authorities try more thoroughly to find a German or equivalent unemployed for vacant jobs before granting a work permit to a foreigner (BfA, 1997a), similar to the traditional Swiss approach (Golder, 1997). The number of first time work permits issued went down from 519,000 in 1993 to 398,000 in 1994, 470,000 in 1995, and 440,000 in 1996. Among these the number of general permits (for specific jobs) has remained relatively stable: 360,000 in 1993, 307,000 in 1994, 375,000 in 1995, and 346,000 in 1996.

Nevertheless the number of first time special permits which grant a less restrictive access to the labour market has been reduced sharply from 159,000 in 1993 to 91,000 in 1994, 95,000 in 1995, and 93,000 in 1996. This demonstrates that it is the German authorities aim to restrict the legal influx of needed foreign workers as far as possible by administrative means.

The fight against illegal employment

At the same time, the fight against illegal employment has become an important topic of German economic and migration policy (Steineck, 1995). The shadow economy in Germany has reached estimated 15 percent of GNP in 1997, of which about two thirds were covered by construction-related and service activities (IWD, 1997). The number of illegal foreigners was estimated as 500,000 in the mid-1990s (UNHCR, 1995). Other estimates claim up to 500,000 illegally employed foreigner in the construction business alone (Merz, 1996).

In order to reduce this, tougher sanctions have been imposed: The Law against Illicit Work (*Gesetz zur Bekämpfung der Schwarzarbeit*) of 1995

provides for exclusion of firms from public tenders for two years, fines of up to DM 100,000 for employer and employed, and imprisonment of more than three months up to several years. Similar sanctions are part of the Dispatched Workers Act.

Actual implementation, however, remains extremely difficult, despite increased controls. In January and March, for example, two raids were made by labour authorities on construction sites all over Germany. 90 and 150 of 250 and 500 controlled enterprises, respectively, were found to employ illegal aliens or to offend against the minimum wage provisions (BfA, 1997b, 1997c). The fight the shadow economy and illegal employment of foreigners remains overburdened with administrative problems.

Decrease in social transfers

In order to reduce the supposed attractiveness of social transfers for asylum seekers in Germany, the Asylum Seekers' Benefits Act (*Asylbewerberleistungsgesetz*) of 1993 has cut transfers drastically for applicants who are not yet accepted as refugees. Since its 1997 reform transfers to asylums seekers have been decreased to about 30 percent below the official level of welfare. While according to the Federal Welfare Act (*Bundessozialhilfegesetz*) unmarried individuals and heads of household would be eligible for an average of DM 530 per month, asylum seekers receive transfers for only DM 440 of which DM 80 are in cash (Röseler, 1998). Applicants who live outside of community accommodation have to pay for their housing, and may receive their assistance in coupons. Applicants having financial assets have to use them up before being eligible for social transfers.

Moreover, recently, there have been attempts to cut back social transfers to asylum seekers even further. According to a government draft, refused asylum seekers who are not expelled from Germany due to humanitarian reasons, should not be eligible for social transfers anymore. Such a change of law would, for the first time, erase a claim for transfers when the claimant cannot be deported (Proasyl, 1998).

Difficult naturalization

Apart from restrictions in the labour market and transfers access of immigrants, another way of restraining political attractiveness of migration to Germany is the

citizenship law. As mentioned above, Germany does not accept the *ius solis* principle. Therefore there is no automatic acquisition of German nationality by second generation immigrants. More important still is the basic refusal of double or multiple citizenship. Acquiring German nationality means in principle renunciation of the prior citizenship. In general, German citizenship law thus is not intended to contribute to immigrants' assimilation by political full-fledged participation. German nationality is considered the formal final step of previous assimilation.

Recent years have seen several legal steps in order to facilitate naturalization of second-generation and permanent immigrants. The Foreigners Act 1991 gives these two groups a claim for German citizenship if they have attended school in Germany (so-called "educational natives") or have lived in Germany for at least 15 years and have command of the language. Nevertheless it is still necessary for them to give up their former nationality if they want to become Germans. Double citizenship may be accepted if the home country does not release its citizen. Here, however, an important aspect is the assessment of German authorities, which, according to anecdotal evidence, varies across states and state governments. Spouses and children of permanent immigrants may also be naturalized but do not have a legal claim. Further reforms have failed so far, e.g. the most recent attempt to introduce temporary double citizenship for second generation immigrant children, which was turned down by the *Bundestag* in March 1998.

Although the number of naturalization has risen since these reforms, the overall rate of naturalization is still low in Germany. Including naturalization of ethnic Germans having a claim for German citizenship gives the impression that Germany's naturalization procedures are very generous: In 1995 there were 313,606 naturalizations (Beauftragte der Bundesregierung, 1998). But only 71,981 of them were actually naturalizations of non-ethnic Germans. Although the number of naturalizations rose from 61,709 to 86,356 between 1994 and 1996, the refusal of double citizenship and potential problems in the countries of origin (e.g. concerning the law of succession) seem to make the acquisition of the German nationality rather unattractive.

For 1995, the naturalization rates for the two biggest groups of foreign population in Germany, Turks and Yugoslavs, were about 1.6 percent and 0.9 percent, respectively. This is comparable to France before the administrative reforms of 1993, where about 1.3 percent of the Moroccan and 0.9 percent of the Algerian population in France were naturalized (Statistisches Bundesamt,

1997). There is, however, one basic difference: While in France, there were no second generation foreigners in that time, since France followed the *ius solis* principle, i.e. practically had an additional naturalization rate of 100 percent for those immigrants, the German stock of foreigners includes second generation immigrants. It is evident that the existing legal and administrative hurdles have no positive incentive effect on the wish for naturalization. The restrictions on the final formal step of assimilation of foreigners are thus in line with the assumed policy of non-immigration.

8. Conclusions

Looking at this short overview of the multitude of anti-immigration measures taken by German policy in recent years, there are several conclusions to draw:

- C Current German migration policy aims at general exclusion of immigrants. The synopsis given above demonstrates clearly that Germany in principle does not intend to accept any more immigrants from outside the European Union and countries closely connected to it, like the U.S.
- C Looking at the recent experiences of anti-asylum and anti-EU immigration measures, one cannot expect a more open attitude concerning new immigrants if there is a change of government. Despite some conflicts about e.g. citizenship, the general notion of immigration prevention in times of high unemployment is a consensus among the main government and opposition forces. Current German policies constitute a complex system of measures which aim at every stage of the migration process, including the migration decision in the home country and the transit through other states.
- C When looking at the actual consequences of anti-immigration policy, legal immigration seems under control. The main problem is illegal immigration, especially from the East European countries sending cheap labour migrants into sectors of the German economy which have serious problems with wage-related international efficiency, like agriculture and construction.
- C Given the aim of migration prevention, the relatively new fields of migration policy (foreign affairs and development cooperation) become more and more important. Slowly but steadily, German policy seems to

accept that migration issues do not only concern defensive measures at the borders but also offensive political and economic action in the countries of origin.

Thus, given its aims and restrictions, the basic framework of current German migration policy seems *politically* optimal, despite some practical problems and the need for a stronger focus on its more recent fields of action. After a relatively long period of reluctance and inexperience concerning the international aspects of the migration issue, German political elites have accepted that a simple “fortress Germany” approach to migration is no longer valid in the present EU and international framework. Although still hesitant in many aspects, German policy has accepted the ultimate challenge of preserving overall national welfare and identity by trying to cope with the roots of transnational migration instead of playing for time defending one’s borders. It is thus finally preparing to tackle the principal problem of any purely defensive strategy of preservation as Prussia’s Frederick the Great has put it for the siege of fortresses: “L’art de défendre des places est celui d’éloigner le moment de leur réduction. Ainsi toute la science des gouverneurs et commandants de villes fortes se réduit à gagner du temps”¹ (Bode, 1992: 93).

¹“The art of defending fortified places has always been prolongation of the moment of surrender. Thus the whole expertise of governours and commanders reduces to winning time.”

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