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Abstract

This study accounts for the emergence of a supranational biometric control regime in Europe. The empirical focus lies on the institutionalization of Eurodac, an automated fingerprint identification system covering asylum seekers and "illegal" immigrants. Who promoted the idea of setting up an automated biometric system in the European Community? Which behavioral logics were underlying the negotiation of the Eurodac Regulations in the Justice and Home Affairs Council? And how did the European Commission get involved in policing the so-called "Area of Freedom, Security and Justice"?

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Eurodac: A Solution Looking for a Problem?(*)

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1. Introduction

The Eurodac Regulations adopted by the *Council of the European Union* on December 11, 2000 and February 28, 2002, respectively (Council 2000a, 2002), provided the legal basis for the establishment of an automated *Euro*pean *dac*tylographic system (hence the acronym *Eurodac*) in the European Community. Automated biometric identification systems like Eurodac allow for the instant and exact comparison of unique physiological features such as an individual's iris, face, or fingerprints for law enforcement purposes.

Eurodac represents the first application of biometric identification technology within a supranational political entity. For the time being, we do not know by which social mechanisms this development was brought about. Nor can we be sure of Eurodac's impact on the relationship between EU citizens and third country nationals, on the one hand, and supranational political institutions, on the other. In spite of the democratic and human rights relevance of this project, Eurodac has received only scant attention outside practitioners' circles. (The Eurodac-related secondary literature is accordingly limited; see Aus 2003, Brouwer 2002, and van der Ploeg 1999. For legal commentary from a practitioner's perspective, see *inter alia* Schmid 2003.) In order to ameliorate this situation, this paper addresses the following questions: How can we account for the institutionalization of biometric control procedures in the *European Community*? Which actors successfully promoted the idea of setting up an automated European dactylographic system? And what were the logics of action

underlying the negotiation of the Eurodac Regulations both in the *Justice and Home Affairs (JHA) Council of the European Union* and within the intergovernmental *Schengen* framework?

I seek answers to these questions in the following manner: Section 2 introduces two theoretical perspectives, Rationalism and Institutionalism, which, by focusing our attention on different logics of action, may serve as ideal-typical representations of the willful political construction of a supranational biometric control regime in Europe. Section 3 provides empirical insights into the stepwise institutionalization of Eurodac, with a particular emphasis being placed on the negotiation of the Eurodac Regulations in the JHA Council and the variable enforcement of Eurodac across the Member States and associated third countries. Section 4 reviews the empirical findings of the case study in light of the crucial theoretical question of how analytically distinct behavioral logics interact with one another in political practice. I shall close with a discussion of the scope conditions of strategic calculation and rule following in EU Justice and Home Affairs.(1)

2. Rationalist and Institutionalist Perspectives on Intergovernmental Decision-making

2.1 Problems Looking for Solutions

Rationalists adhering to a *logic of consequentiality* tend to believe that political outcomes, including supranational legislative acts, are brought about by strategically calculating actors seeking to maximize given interests. Within a Rationalist analytic framework, we expect purposive-rational actors to perform means-end and ends-ends calculations culminating in utility-maximizing choices: "Action is instrumentally rational *(zweckrational)* when the end, the means, and the secondary results are all rationally taken into account and weighed. This involves rational consideration of alternative means to the end, of the relations of the end to the secondary consequences, and finally of the relative importance of different possible ends" (Weber 1978: 26; cf. Elster 2000).

The stylized image of instrumentally rational, strategically calculating actors, formulated in an ideal-typical manner by Max Weber, has been succeeded by formal models of both cooperative and non-cooperative interactions among several "players." The contemporary policy analyst will thus most likely draw on "the basic [game-theoretic] notions of interdependent strategic action and of equilibrium outcomes" (Scharpf 1997: 7). In line with this interaction-oriented variant of rational-choice theory, Thomas Gehring has argued that the intergovernmental Schengen regime was brought about by a group of Member States' governments looking for innovative solutions to a set of collective action problems. According to Gehring, the members of the "Schengen club" were aiming at identifying the most efficient and effective means of collectively dealing with the consequences of the elimination of internal border controls in Europe. Schengen's common provisions concerning external border control, visa, asylum, and police and judicial cooperation, incorporated into the EU in May of 1999, have thus been interpreted as functionally adequate re-regulatory measures willfully designed by strategists of "differentiated integration" (Gehring 1998).

The Rationalist notion of efficient and effective problem solving may also be applied to Eurodac. The *problem* that Eurodac is allegedly attempting to resolve is that of "secondary movements" among asylum applicants deliberately concealing their identity. A Commission official accordingly recollected that "the main problem we addressed with the Eurodac Regulation was that you simply couldn't identify persons. At first, people arrived and said that they had lost their identity cards or their travel documents while traveling – that was the case with more than 80% of all asylum applicants. … So although there was a theoretical legal possibility of transferring people back to another country, and, by doing so, to arrive at a certain [level of] burden-sharing [between the Member States], this was made impossible in practice by the asylum seekers themselves, who successfully managed to hide their true identity" (author's interview, May 17, 2004).

A viable *solution* to this problem is arguably the establishment of an automated fingerprint identification system on Community level in combination with the compulsory fingerprinting of certain categories of third country nationals. The effective *enforcement* of the supranational biometric identification regime, in turn, may require delegating implementing powers to the European Commission. A game-theoretic caveat is in order at this point, however. Fritz Scharpf rightly reminds us that the "'benevolent-dictator perspective' of most substantive policy analyses whose job is done when the causes of a problem have been correctly identified and a technically effective and cost-efficient solution proposed" is not satisfactory for the interaction-oriented political scientist. A comprehensive Rationalist account of any given legislative outcome in the field of EU Justice and Home Affairs must also provide empirical insights into actual modes of interaction between executive actors, "each with its own understanding of the nature of the problem and the feasibility of particular solutions…." (Scharpf 1997: 11). We shall see in due course whether the empirical material presented in *section 3.* below allows for the conceptualization of Eurodac as an equilibrium solution collectively endorsed by the members of the JHA Council.

2.2 Solutions Looking for Problems

Rationalist accounts of intergovernmental decision-making as efficient and effective problem solving may be challenged by a Sociological Institutionalist perspective based on the assumption that institutional actors adhere to a *logic of appropriateness* (see March and Olsen 2006). The latter involves the self-conscious matching of rules to situations. At first sight, this logic of action appears to explain only the behavior of institutionally embedded actors striving for the "common good." At closer inspection, however, it becomes readily apparent that this logic also accounts for the political mindset and behavioral traits of members of organizations pursuing "evil" objectives (cf. Arendt 1994).(2) The *logic of appropriateness*, in other words, is a useful yet normatively colorblind explanatory device.

Institutionalist analysts of organizational decision-making and administrative reform processes have come to observe that "changes often seem to be driven less by problems than by solutions" (March and Olsen 1989: 62; cf. also Aberbach and Christensen 2000). The dynamics of solution-driven problem solving can be studied in a variety of policy areas, including policing and criminal justice. "A law enforcement agency, [for example], may regard criminalizing an activity as the obvious way of eliminating it" (March and Simon 1993: 15; cf. also Crank and Langworthy 1992, Crank 2003). Policemen and women devoting their time and energy to the maintenance of law and order are doing what they are supposed to do. The value-rational social action of a policeman, to borrow once more the words of Max Weber, is ideal-typically motivated by "'commands' or 'demands' which, in the actor's opinion, are binding on him" (1978: 25). The matching of rules and roles to situations is a fairly complex cognitive process. By actively searching for the most efficient and effective means of preventing and combating crime, law enforcement officials and their political representatives are fulfilling a professional duty.(3)

Institutional actors like the police have every reason to believe that the efficiency and effectiveness of their operations can be improved by making use of cutting-edge technologies of political control (cf. Nogala 1989, Rappert 1999). The potential "added value" of biometric identification technology for "securing the homeland" from perceived threats such as bogus asylum seekers, illegal immigrants, and foreign-born terrorists is a case in point (cf. *inter alia* Woodward 2005, O'Neil 2005, Lodge 2005). And yet it would be foolish to think that political problems can be solved by technological means alone. This especially holds true if the political question to which a given technology is seemingly the answer is notoriously hard to determine, not least for its corporate suppliers solely interested in profit maximization. The *Steria Group*, for example, promotes its fingerprint image transmission (FIT) devices as follows: "The FIT solution, which is part of Steria's global 'biometrics' offer, can also be applied in fields such as electronic voting, authentication and verification in sensitive areas such as airports (passengers and personnel), nuclear power stations, research laboratories or e-commerce, internet kiosks, etc." (Steria Group 2002). Interestingly, the

Steria Group perceives Eurodac, whose Central Processing Unit (CPU) it developed itself, as being concerned with "immigration applicants." Aware of the lucrative prospect of selling Eurodac technology to customers other than asylum and immigration authorities, *Steria* representatives have (evidently quite successfully) suggested that "this solution may prove useful in combating organised crime and terrorist networks" (Steria Group 2003).(4) Commercially distributed automated fingerprint identification technology is a textbook example of a solution looking for a problem.

An organization's stance or "solution" towards a given problem at time *t* 0 may be approximated by identifying its position at *t* – 1 (cf. Allison and Zelikow 1999: 175). While such an exercise might prove useful for heuristic purposes, it is conceptually misleading to equate the social mechanism of rule following with unconscious repetition.(5) Traditional behavior, as Max Weber reminds us, is qualitatively distinct from value-rational social action. The Sociological Institutionalist task rather consists of empirically illustrating "the [social] process by which routines come to encode the novelties they encounter into new routines" (March and Olsen 1989: 34). Actors whose interests and perceptions are institutionally shaped arguably live up to the challenge of novelty by searching for a set of standard operating procedures that they can creatively "upgrade" and apply to a new set of problems. Fingerprinting as a police-specific standard operating procedure and its application to the refugee problem is a case in point.

The Institutionalist concept of solution-driven problem solving sketched out above fits well with Virginie Guiraudon's account of decision-making processes in the field of EU migration policy. As commonly known, Community legislation relating to asylum, immigration, and external border control has mainly been drawn up by national executives, i.e. by the members of the *Justice and Home Affairs Council* and the civil servants assisting them. Guiraudon accordingly observed that "interior, justice and police personnel ensured that they were the most well equipped to provide solutions to the problems that they themselves had identified" (2000: 260). Furthermore, she found that "they emphasized technical solutions that required their expertise" (2001: 10), and, most notably from a theoretical point of view, that "'solutions' had been devised before 'problems' had been identified" (2003: 268). Empirical observations of this kind should not come as a surprise to the organizational theorist trying to make sense of decision-making processes in an "Area of Freedom, Security and Justice." We shall see in due course whether similar patterns can be identified with a view to the negotiation of the Eurodac Regulations in the JHA Council.

3. Eurodac and the Emergence of a Supranational Biometric Control Regime, 1990–2005

3.1 Predecessors of Eurodac on National Level: Police Demand and Corporate Supply

One of the principal tasks of members of police records departments is to collect fingerprints. The latter can be achieved by investigating crime scenes and via fingerprinting actual or potential offenders. Fingerprint data can assist the police in *identifying probable perpetrators*. Forensic evidence and corresponding fingerprint matches of accused individuals may also be *admissible in court*. No wonder, therefore, that the manual collection and storage of fingerprints for police and criminal justice purposes was already in use by the late 19th century (Cole 2001).

Automated Fingerprint Identification Systems (AFIS), on the other hand, only began to spread across the Western world a century later. Thanks to new technological devices such as fingerprint scanners and computer hard drives, it became administratively feasible to retrieve and store vast amounts of *digitalized biometric data*. By 1983, automated searches in dactylographic databases had become commonplace among employees of the U.S. *"Federal Bureau of Investigation" (FBI)* (cf. Cole 2004: 18). Today's largest biometric database in the word, the "Integrated Automated Fingerprint Identification System" (IAFIS) maintained by the FBI, contains the fingerprint templates of more

than 47 million individuals (cf. FBI 2006).

The “added value” of such systems for the police stems from three features: AFIS operate with unprecedented speed, deliver scientifically exact comparative results, and offer the possibility of producing “cold hits” via random searches or automated “one-to-many checks.” The latter do not require the physical presence of the victim or criminal suspect in question, but merely their virtual digital representation. It is important to note, however, that the chance of obtaining a “hit” positively correlates with the number of entries stored in the database. The more crime scene evidence and biometric data of criminal suspects and convicted criminals can be collected, stored, and continuously compared with each other, the better for the police. In the best of all police worlds, *everyone’s* fingerprints would be stored in a central database accessible to law enforcement officials “24/7.”

Following the U.S. lead, the majority of *Western European countries* had, by the early 1990’s, installed AFIS targeted not only at ordinary criminals, but also at asylum seekers and “illegal” immigrants (see Busch 1995: 115-117; for a comparative view to the *Republic of South Africa*, see Breckenridge 2005). The *German* AFIS, for example, began its highly efficient operations in December of 1992. In addition to the system’s principal use for police and criminal justice purposes, federal German asylum authorities like the former *“Bundesamt für die Anerkennung ausländischer Flüchtlinge”* could now quickly determine whether or not a would-be refugee had filed asylum applications in more than one of the Federal Republic’s partially autonomous states, the “Länder” (cf. Weichert 1993: 36). A similar political objective, namely the detection and suppression of “asylum shopping” across national jurisdictions, would be stated by politicians and civil servants promoting the establishment of Eurodac in the European Community.

Governments and administrations interested in setting up large-scale biometric identification systems operating on a national or even supranational scale were, and still are, chiefly dependent on the resources and expertise of *private corporations*. The dependence of public administrations on corporate capabilities and know-how in the biometric realm can be illustrated by highlighting the comparatively vast resources at the disposal of *Sagem Morpho*, the corporation which in practice established the AFIS’s *inter alia* of Austria, France, and Germany. Sagem Morpho’s parent company, *Sagem Défense Sécurité*, belongs to the *Safran Group*. The latter employs approximately 55,000 people. (The European Commission, by comparison, employs merely 22,000 people; Egeberg 2003: 141.) *Sagem* is an arms producer which, faced with reduced public defense expenditures after the end of the “Cold War,” diversified into the law enforcement market.(6) With a global market share of nearly 50%, *Sagem* is currently the world’s leader in the AFIS business.(7)

The multi-national corporation which rightly claims to be a “major player in the Eurodac system” (Sagem Group 2003) has managed to expand its profitable biometrics business *inter alia* into the emerging African market for *election and population control*. Possibly the world’s first biometrically secured election was held in *Mauritania* between October 19-26, 2001. Every Mauritanian citizen had to submit his or her fingerprints to authorized business representatives and was later provided with a biometric *smart card* – allegedly in order to prevent “voter fraud” and thus to guarantee for fair and equal elections. Indicating that this large-scale operation not only served the purpose of strengthening democracy in Mauritania, a spokesperson of *Sagem* concluded that “Mauritania now has two advantages. First, it has a complete and coherent national database of the population. Second, all the adult citizens now have an ID card secured via a fingerprint” (Biometric Technology Today 2002: 1). At the time of writing, Mauritania’s AFIS is under the control of a military junta which took over power in August of 2005. With the signing of a contract with *Colombian* authorities in February of 2006, *Sagem* enlarged its pool of biometric customers to a total of 56 countries (Safran Group 2006). AFIS of the French, Mauritanian and Colombian type have few corporate parents but many brothers and sisters all around the world.

3.2 Intergovernmental Negotiations within Maastricht’s “Third Pillar”

Inter-executive deliberations on the technical feasibility of establishing an automated fingerprint identification system for asylum applicants in the EU range back as far as December of 1991. By November of 1992, the Council's *Ad Hoc Group on Immigration* had drawn up a confidential Eurodac progress report according to which a group of independent technical experts was supposed to elaborate the "user requirements" of such a system (see Council 1992). Following the short-term engagement of a consultancy firm, the *JHA Council*, now formally established under Maastricht's "Third Pillar," expectedly declared that "it is technically feasible to install a system for exchanging asylum seeker's fingerprints at European level" at its meeting on November 23, 1995 (Council 1995).

This course of events suggests that the evaluation of the *technical* feasibility of Eurodac preceded a *political* assessment of the project's desirability and appropriateness. In fact, intergovernmental discussions concerning the political objectives of Eurodac only began in 1996 (see Council 1996). At that time, it was still an open question whose fingerprint templates should be included in the database, which authorities should be granted access to the data, and whether the *Central Unit* should be managed by the *Commission* or a *Member State.* As we shall see in due course, some of these politically sensitive issues were still not resolved by the year 2000.

3.2.1 The Impact of Schengen on Intergovernmental Negotiations under the UK Presidency

In line with the political rationale of the Dublin Convention on asylum of 1990, the personal scope of Eurodac was initially conceived to be limited to potential *refugees* in the meaning of the Geneva Refugee Convention. (In regard to the Dublin Convention and its successor instrument on Community level, see Aus 2006.) In the end, however, Eurodac would also cover *"illegal" immigrants*, i.e. every third country national apprehended while trying to cross the external borders in an irregular fashion, and third country nationals residing in the territory of a Member State without proper authorization. How did this development come about?

The extension of the scope *ratione personae* of Eurodac cannot be understood without taking Member States governments' reactions to the refugee crisis of mid-1997 into account. The latter originated in war-torn Northern Iraq and quickly spread to Europe via Turkey. At the height of the crisis on November 2, 1997, a rusty ship with 769 would-be refugees of predominantly Kurdish ethnic origin on board stranded at the Southern coast of Italy. Most of the "boat people" were evidently heading for Germany, France, the Netherlands, and Scandinavia, and the Italian authorities initially did not prevent these people from traveling further to Central, Western and Northern Europe (cf. Frankfurter Allgemeine Zeitung 1997: 4, The New York Times 1998: 9, Tomei 2001: 88-94, and Puggioni 2005: 327).

In light of these irregular international migratory movements which seemed to undermine the effective application of the Dublin Convention from the very outset, the *Schengen Executive Committee* decided to create a *Task Force* responsible for coordinating practical measures for curbing "illegal immigration" in December of 1997. The first meeting of the *Schengen Task Force* was held on January 13-14, 1998, involving officials from France, Germany, the Netherlands, and Sweden, on the one hand, and Italy and Greece, on the other (Deutscher Bundestag 1998a: 15). Both transit and destination countries, in other words, were represented in the *Schengen Task Force.* According to Kurt Schelter, a former "Staatssekretär" in the German *Ministry of the Interior*, the German government exerted "massive pressure on Greece and Italy" during these meetings (Schelter 1998: 24. Schelter was acting in concert with his political superior, Manfred Kanther; cf. *Süddeutsche Zeitung* 1998: 6). What was interpreted as an asylum and refugee protection issue by the Italians and the Greek was read as a problem of "illegal immigration" and human trafficking connected with organized crime syndicates by the Germans, the French, and the Dutch.

It did not take long before the *Council of the EU*, now presided over by the British, decided to take collective action along the lines discussed within the *Schengen Group*. By January 26, 1998, the

General Affairs Council had formally adopted a cross-pillar *action plan* concerning the "influx of migrants from Iraq and the neighboring region" (cf. Council 1998a).(8) The plan had been drawn up by an *Ad Hoc Working Group* comprised of national asylum and migration experts, *Europol* personnel, and "Second Pillar" officials (cf. Deutscher Bundestag 1998b: 3). In spite of this cross-pillar EU initiative, the *Schengen Task Force* continued to convene parallel meetings on this subject matter (cf. Deutscher Bundestag 1998a: 15).

Epitomizing the intra-European political tensions prevailing at the time, the Austrian government unilaterally decided to *reinforce its border controls vis-à-vis Italy*. From a strictly *legal* point of view, the government in Vienna was entitled to do so since the *Schengen Executive Committee* had not yet declared that the conditions for the lifting of internal border controls vis-à-vis Italy, envisioned for April 1, 1998, had been met (cf. Der Tagesspiegel 1998: 4; Busch 1998). *Politically*, however, the strengthening of Austrian border controls vis-à-vis Italy was linked to (for the time being unfulfilled) Franco-German demands for extending the scope *ratione personae* of Eurodac to "illegal immigrants." This political rationale manifested itself at the meeting of the *JHA Council* on March 19, 1998. During this meeting, the German delegation formally entered a "general reservation on the Eurodac Convention, pending concrete progress on [the] issue [of] fingerprinting illegal immigrants" (Council 1998b). In other words, Germany was threatening to veto Eurodac unless German demands for extending the system to "illegal immigrants" would be met.

The *Schengen Group*, rather than the *JHA Council* as such presided over by a non-Schengen Member State, the United Kingdom, shaped the EU policy agenda during this phase of intergovernmental consultations. On April 21, 1998, the *Schengen Executive Committee* formally agreed upon *inter alia* the "fingerprinting of every foreign national entering the Schengen area illegally whose identity cannot be established with certainty on the basis of valid documents." In line with the ongoing technical preparations for launching the Eurodac database, the *Schengen Group* also called for the "retention of fingerprints for the purpose of informing the authorities in other Schengen States." The principal decision-making body of the *Schengen Group* justified these permanent measures as a collective response to "the increase in the number of foreign nationals immigrating into the Schengen States, in particular nationals of Iraq and other States" (Schengen Executive Committee 1998a; see also Schengen Executive Committee 1998b).

In effect, the *Schengen Group* had presented the UK Presidency with a *fait accompli* against which, in light of the forthcoming incorporation of the evolving *Schengen acquis* into the EU, no unilateral British remedies could be found. (In regard to the politics of incorporating Schengen into the EU, agreed upon during the 1996/97 Intergovernmental Conference, see McDonagh 1998: 165-182, den Boer and Corrado 1999.) At the last Council meeting under the UK Presidency in May of 1998, the *JHA Council* thus formally decided that "it will draw up a Protocol to the Eurodac Convention extending the Eurodac system to include the fingerprints of 'illegal immigrants' for adoption by the end of 1998" (see Council 1998c). In Bonn, this development was celebrated as a political victory for the German federal government under chancellor Kohl (Bundesministerium des Innern 1998a).

3.2.2 "Freezing" the Eurodac Convention under the Austrian Presidency

During the second half of 1998, the policy agenda concerning Eurodac was not only *de facto*, but also *de jure* shaped by the *Austrian Presidency of the Council* and the *German Presidency of the Schengen Group*. High-ranking German officials now made it publicly known that "Germany has demanded not only collecting the fingerprints of asylum seekers, but also those of aliens who have entered illegally" (Bundesministerium des Innern 1998b; translation JPA). The German delegation maintained this position throughout 1998 in spite of a change in federal government from the "center-right" towards the "center-left" (see Bundesministerium des Innern 1998c).(9)

Intergovernmental discussions now revolved around the question of how one could possibly define an "illegal immigrant." While the majority of national government representatives were apparently

willing to accept that the category of “illegal immigrants” should cover third country nationals apprehended while attempting to cross the external borders in an irregular fashion, the German delegation wanted to go further than that. It therefore suggested to “include all persons who had crossed the borders illegally and were caught in a Member State” (Council 1998d). The problem with such a wide definition was that a connection with irregular border-crossing was, for all practical purposes, very hard to establish for national police forces dealing with so-called *sans-papiers* or illegally resident third country nationals lacking any sort of documentation. Beyond that, extending the personal scope of Eurodac in such a manner might have signaled a departure from article 63 (1) (a) of the forthcoming EC Treaty, Eurodac’s envisioned legal basis. The Austrian Presidency could not resolve this intricate problem during its tenure.

What the Austrian Presidency did achieve, however, was to identify a means of taking collective action before the partial “Communitization” of Justice and Home Affairs cooperation could manifest itself in procedural terms. The Austrian Presidency thus decided to “freeze” those asylum-related parts of Eurodac which had already found intergovernmental approval. The *“frozen” Eurodac Convention* could then, according to the Austrian Presidency’s plan, reappear on the Council’s agenda in the form of a *draft Community Regulation* presented by the Commission immediately after the entry into force of the Treaty of Amsterdam. This technique allowed the JHA ministers to partially “lock in” their policy agenda while *de facto* stripping the European Commission of its (shared) right of legislative initiative under the “First Pillar.” In December of 1998, the *Council* thus formally decided, subject to parliamentary scrutiny reservations entered by Denmark, Italy, and the UK, that “the draft Eurodac Regulation … will be ‘frozen’ until the entry into force of the Amsterdam Treaty” (Council 1998e).(10)

3.2.3 “Freezing” the Eurodac Protocol under the German Presidency

The incoming German Presidency of the Council devoted a considerable amount of time and energy to drawing up a “Protocol extending the scope *ratione personae* of [Eurodac]” (cf. *inter alia* Council 1999a). By February 17, 1999, the *Eurodac Working Party* had reached “broad agreement” on the draft Protocol. About a week later, the *K4 Committee*, the “Third Pillar” predecessor of the *Strategic Committee on Immigration, Frontiers and Asylum (SCIFA)*, confirmed the “broad agreement” reached on working group level. The basic consensus among national civil servants paved the way for *COREPER’s* politically decisive involvement. The Member States’ ambassadors settled the remaining intergovernmental differences by drawing up a *Statement for the Council Minutes* on March 4, 1999. This legally non-binding yet politically important statement underlined Member States authorities’ obligation under Community law to systematically fingerprint not only every “alien [who] is apprehended at or close to the external border itself,” but also every “alien [who] is apprehended beyond the external border, where he/she is still on route” (Council 1999b, 1999c).(11) The *JHA Council* would rubberstamp this inter-administrative settlement a few days later (cf. Council 1999d).

In the end, the German Presidency had not only achieved that every Member State *must* systematically fingerprint *irregular border-crossers* (in addition to *asylum applicants*). It had also accomplished that national authorities *may* take the fingerprints of *illegally resident* third country nationals in order to check whether the templates of this person might match with an entry in the Eurodac database. Mimicking its Austrian predecessor, the German Presidency, headed by Otto Schily, the newly appointed *Minister of the Interior*, decided to *“freeze” the Eurodac Protocol* in March of 1999 (cf. Council 1999e). Having found a common position on the entire Eurodac agenda in due time, i.e. just weeks before the fundamental restructuring of both the “First” and “Third Pillar” of the EU, the *Council* asked the *Commission* to present an agreeable proposal for a Community Regulation immediately after the entry into force of the Treaty of Amsterdam. The *European Parliament’s* outright rejection of the Protocol, on the other hand, came far too late to affect the decision-making process in the Council (cf. European Parliament 1999b).

3.3 Incorporating Eurodac into Amsterdam's "First Pillar"

3.3.1 The Inter-institutional Struggle over Implementing Power

In the following weeks, legally trained Commission officials like Jean-Louis De Brouwer, at the time head of the "immigration and asylum unit" in the newly established Directorate-General "Justice and Home Affairs," managed to merge the two "frozen" texts into a single document.(12) On the basis of this preparatory work, JHA Commissioner Anita Gradin was able to present a *Commission proposal* for the establishment of Eurodac via EC Regulation to the members of the JHA Council on May 27, 1999 (see European Commission 1999, Council 1999f).

Having participated in all "Third Pillar" meetings of the Council, the Commission obviously knew what the Member States' governments were expecting from its first legislative proposal in the domain of Community asylum policy, namely to "ensure continuity in the results of the negotiations" on Council level (European Commission 1999: 8). In spite of some bickering about "[the unorthodox] technique of negotiating a draft Convention and a draft Protocol in parallel" (1999: 9), the Commission's services loyally adhered to the "frozen" Eurodac Convention and its equally "frozen" Protocol on irregular border-crossing and illegal residence, respectively. In one important respect, however, the Commission deviated significantly from the "frozen" texts. Whereas the *Council* had unambiguously expressed its intention of reserving implementing powers to itself, the *Commission* had drawn up a draft Regulation which "confers on the Commission powers of implementation to adopt provisions to give effect to it…." (1999: 8).

The reluctance of Member States' governments to accept the power-sharing arrangement envisioned by the Commission already surfaced at the very first meeting of the Council's *Working Party on Asylum (Eurodac)* under the "First Pillar" in July of 1999. During this meeting, numerous delegations formally entered "scrutiny reservations" in regard to the proposed "comitology" procedure (cf. Council 1999g). A few weeks later, an apparently irritated French delegation submitted in writing that "there is no reason to think that the authors [of the Eurodac Convention] wished to limit the power of the Council to adopt implementing rules...," while an equally concerned German delegation expressed the opinion that "the Council should … reserve the right to exercise the implementing powers for EURODAC [to] itself" (Council 1999h: 2, and Council 1999i: 3, respectively; cf. Peers 2001: 236, Brouwer 2002: 234).

In spite of the Commission's warnings that "the type of changes being envisaged by the French and German delegations would require the reconsultation of the European Parliament" (Council 1999j), the JHA Council stuck to its line of reserving the main implementing powers concerning Eurodac to itself (cf. Council 1999k). Being confronted with unexpectedly fierce intergovernmental resistance, the Commission backed off from its first legislative draft and grudgingly drew up an amended and considerably "watered down" proposal (European Commission 2000).(13)

The revised Commission proposal was presented to the Council in March of 2000. COREPER quickly cleared the Commission's amended legislative draft (cf. Council 2000b). In line with established legislative practice, the Council now had to re-consult the *European Parliament*. It would be the fourth and last time that the European Parliament would deal with the Eurodac dossier. As had happened before, however, the *European Parliament's* formal involvement in legislative proceedings had little impact on Eurodac's substantive profile. The latter may be illustrated by recalling the Council's response to the European Parliament's proposal to *raise the age limit* for the compulsory collection of fingerprints *from 14 to 18*. The Euro-parliamentarians justified their position by arguing that "the threshold of 14 is contrary to the existing international instruments on children's rights," including the *United Nations Convention on the Rights of the Child*, and that "it would be excessive to take fingerprint data as a routine practice from the age of 14" (European Parliament 2000: 5-8). The Council, however, simply *rejected* the European Parliament's amendment.(14)

The obligatory re-consultation of the European Parliament, at any rate, paved the way for the formal adoption of the Eurodac Regulation by the Council in December of 2000 (cf. Council 2000c, 2000a). There would be no ceremony on this occasion. Instead, the Regulation was adopted by means of the *written procedure* by the Health Council (cf. Council 2000d). In a similarly routine fashion, specific rules for the implementation of Eurodac were laid down via Council Regulation in February of 2002 (Council 2002).

3.3.2 Geographical "Spill-over" to Britain, Ireland, and European Third Countries

Eurodac was a test case for how national governments would deal with the peculiar "opt in" and "opt out" arrangements under Title IV of the EC Treaty agreed upon during the 1996/97 Intergovernmental Conference (cf. Monar 1998, Peers 2000).

Both the *Irish* and *UK governments* notified their intention of "opting in" to the Eurodac Regulation in October of 1999 (cf. Council 1999l). The geographic extension of Eurodac to Ireland and the UK is politically remarkable insofar as both countries uphold strict border controls vis-à-vis other Member States. This does not fit well with Eurodac's official justification as a "directly related flanking measure" (article 61 EC) to the elimination of internal border checks within an "Area of Freedom" (cf. Geddes 2005).

The relationship between the European Community and *Denmark* is more complex due to Denmark's unconditional participation in Schengen, on the one hand, and Denmark's categorical "opt out" of Title IV of the EC Treaty, on the other. Since Denmark's rights of influencing Community measures in the fields of asylum and immigration entirely depend on whether a given legislative dossier is deemed to be "Schengen-relevant" or not, the Danish delegation requested a written opinion from the *Council Legal Service* on the possible Schengen-relevance of Eurodac (cf. Council 1999m). The *Council Legal Service* apparently followed the *Commission's* official line according to which Eurodac could *not* be considered to build on the *Schengen acquis* (Council 1999g: 4). In response to this politically ambiguous assessment, the Danish government announced its intention of taking part in the Eurodac project on an *intergovernmental* basis (cf. Council 1999n: 6).

The EU institutions now had to find ways and means to *associate* Denmark with Eurodac. The organizational solution to this problem was to treat *Denmark* in the same way as *Norway* and *Iceland*, the two Nordic countries participating in Schengen but falling short of membership in the European Union (cf. Council 1999g). Norway and Iceland were associated with the Eurodac regime in 2001 (cf. European Community and Iceland and Norway 2001). Against this background, the Council began to hammer out a legal arrangement which would create reciprocal obligations under international law between the European Community, Denmark, Iceland, and Norway. Both Ireland and the UK would need to "opt-in" to this regime, of course. In May of 2003, the *Council* provided the *Commission* with a mandate for *parallel negotiations with Denmark, Norway, and Iceland* on extending the geographical scope of the Eurodac and Dublin II Regulations (see Council 2003). The association agreement with Denmark and a protocol to the existing agreements with Norway and Iceland were formally endorsed by the JHA Council in February of 2006 (see Council 2006a: 19; in regard to the protocol concerning Iceland and Norway, see Council 2006b).

At the time of writing, Eurodac spans 27 European countries, with implementing measures in the acceding states (*Bulgaria* and *Romania*) under way and association agreements with additional European third countries (*Switzerland* and *Liechtenstein*) in the making.(15) In geographical terms, Eurodac has developed into a truly pan-European biometric identification regime.

3.3.3 The Central Unit in Operation

The Eurodac database went "live" on January 15, 2003 (see European Commission 2003). From this

date onwards, designated Member States' authorities and those of associated third countries have been transmitting the fingerprint templates of asylum seekers, irregular border-crossers, and "illegal" residents as of the age of fourteen to the *Eurodac Central Unit* managed by the European Commission.

During the first year of operations, the *Eurodac Central Unit* received a total of around 272,000 fingerprint data sets (European Commission 2004: 10). Reflecting the start of Eurodac activities in the ten new Member States in mid-2004, the volume of biometric data sent to Luxembourg slightly increased during the second year of operations, with a total of about 288,000 digitalized fingerprint sets being transmitted to the *Central Unit* (European Commission 2005: 6). The *"top five" countries "feeding" the Central Unit* in 2003 and 2004 were, in declining order of magnitude, *Germany*, *France*, the *UK*, *Sweden*, and *Austria*. These five Member States combined contributed more than two thirds (68%) of the biometric data transmitted to the Central Unit. The states listed above are currently the Union's principal asylum destination countries (cf. UNHCR 2005: 5).(16)

Eurodac has been performing as efficiently as expected in regard to *asylum applicants*, i.e. the category of third country nationals covered by the former Eurodac Convention. The number of "hits" registered by the Central Unit relating to "asylum shoppers," i.e. people who have evidently lodged asylum applications in more than one Member State, increased in a more or less linear fashion from 0 in January of 2003 to around 3,100 in December of 2004. Unsurprisingly, the greatest number of foreign "hits" were recorded in *Germany*, *Sweden*, *France*, the *UK*, and *Austria*. We will continue to see "hit" growth rates of around 4% per month on European level unless Eurodac has a deterring effect on potential "asylum shoppers" *or* Member States' asylum authorities stop "feeding" Eurodac with new data. (As previously mentioned, the number of "hits" generated by AFIS like Eurodac tends to increase in proportion to the size of the database.)

Eurodac's performance in regard to *irregular border-crossers*, on the other hand, i.e. the category of people covered by the former Eurodac Protocol, is *a near complete failure*. At closer inspection of the data released to the public by the European Commission, one is struck by the *very small amount of Eurodac entries* relating to irregular border-crossers. The Commission had estimated to receive approximately 400,000 fingerprint templates of apprehended irregular border-crossers per year from the Member States. In actual fact, however, it merely received an average of about 12,000 fingerprint sets per annum. The overwhelming majority (82%) of fingerprint data in this category were transmitted by *Greece*, *Italy*, and *Spain*. What is interesting about these figures is not the relatively *high share*, but the *very low volume* of data transmitted to the Central Unit by Greece, Italy, and Spain. The patterns of intergovernmental conflict highlighted in section 3.2 above have evidently been resurfacing in the form of deliberate non-compliance with Community law.(17)

Underpinning the sense of premeditated non-compliance with EC law on the part of external border countries in Southern Europe, both the Greek and Italian authorities made sure that the few data they *did* transmit to the Central Unit were sent *so late* that other Member States' queries in the database would yield negative results. In 2004, for example, the Greek authorities waited on average more than 29 days before actually transmitting the fingerprints of an apprehended irregular border-crosser to the Central Unit. This gave the would-be refugee in question approximately four weeks to lodge a potentially successful application for asylum in another Member State – *after* having been fingerprinted for illegal border-crossing in Greece. (For insights into other practices aimed at undermining the Dublin II and Eurodac regime in Greece, see Papadimitriou and Papageorgiou 2005.) On the basis of the available data, we may infer that a large proportion of third country nationals illegally entering EU territory in *Greece* and *Italy* subsequently lodge asylum applications in the *UK*, *Sweden*, *Norway*, and *Germany*, whereas third country nationals transiting *Spain* typically request political asylum in *France*.

Optional searches in Eurodac based on fingerprint data collected from *illegally resident* third country nationals have mainly been carried out by *Germany*, the *UK*, the *Czech Republic*, *Norway*, and the

Netherlands. The relatively strong and partially successful use of this facility by the Czech Republic, a Central European country entirely surrounded by other Member States, illustrates the political and administrative rationale behind such queries. As one may have expected, Czech "hits" in this category paved the way for "removing" illegally resident third country nationals to Poland and Slovakia. Likewise, the majority of "hits" recorded by Germany pointed to Austria, while the greatest number of "hits" registered in Norway related back to Sweden.

Last but not least, one may inquire into *the reaction of would-be refugees* to the European Community's newly established biometric identification regime. The immediate reaction to Eurodac on the part of an apparently increasing number of asylum applicants seeking protection in the *Nordic countries* has been to deliberately *cut or burn their fingertips*. This has evidently been practiced by several hundreds of asylum seekers in *Sweden* during the first year of Eurodac operations. A member of the *Swedish Migration Board* reported "scars from knives and razors, or entire [fingerprint] patterns that are entirely destroyed because they've used acid or some other kind of product to destroy their hands." (BBC News 2004). *Norwegian* law enforcement authorities have tried to contain the problem by resorting to a strategy of deterrence, including outright imprisonment (see Norwegian Police 2005a, 2005b).(18) While we lack systematic cross-country evidence of such practices, they do suggest a new quality of Eurodac-related social interaction.

4. Conclusions

4.1 Eurodac and the Logic of Consequentiality

The past and present actor constellation and mode of executive interaction concerning Eurodac represent, game-theoretically speaking, a *Rambo-situation*. The political dynamics of such a situation may best be illustrated by shedding light on the patterns of inter-state conflict over the Rhine River.

By the mid-1970's, the Rhine River was so polluted that it was commonly referred to as "the sewer of Europe." The Rhine's water quality had progressively deteriorated due to its utilization *inter alia* by chemical producers such as *Sandoz*, *Ciba-Geigy*, and *BASF*. After having passed through Switzerland, France, and Germany, the water ending up in the Netherlands had to be qualified as toxic waste (see Bernauer and Moser 1997, Haftendorn 2000: 55).(19)

The water conflict between upper- and lower-lying riparian states of the Rhine River is a textbook example of an asymmetrical *Rambo game*. Cooperative solutions are very hard to achieve under such circumstances. After all, "Rambo" (in this case an upper-lying riparian state) benefits most from maintaining the status quo. The "underdog" (in this case the lower-lying riparian state), on the other hand, has a hard time convincing "Rambo" of the need to participate in a cooperative regime. Against this background, the disadvantaged country's government will try to improve its lot by making "threats (decreasing for the other the utility of defection) or promises (increasing for the other the utility of cooperation)" (Hasenclever *et al.* 1997: 51). If an intergovernmental settlement can be achieved at all in a situation like this, it will typically involve issue-linkages and/or side-payments (see Zürn 1992: 209-218; cf. also Scharpf 1997: 78-79, Holzinger 2003: 196).

The empirical material presented in *section 3.2* above suggests that the Member States' governments were engaged in a similar "game" while dealing with the problem of "secondary movements" among third country nationals in the EU. During the Iraqi refugee crisis of 1997-98, *transit countries* such as Italy and Greece found themselves in the position of the "Rambo" vis-à-vis *destination countries* like Germany and the Netherlands. As one may have expected, the "Rambos" at first showed no interest in a solution like Eurodac and were subsequently subjected to a strategy of Schengen-related "carrots" and "sticks." The latter involved the temporary reinforcement of internal border controls, while the former entailed the prospect of their complete removal – provided that the entire *Schengen acquis*, including the systematic fingerprinting of irregular border-crossers, had been fully complied with. The success of this strategy allowed the Austrian and German Presidencies of the *JHA Council*

to “freeze in” the draft Eurodac Regulation shortly before the entry into force of the Treaty of Amsterdam.

From the point of view of the *JHA Council*, the process of incorporating Eurodac into the “First Pillar” involved an unexpectedly fierce yet ultimately victorious power struggle with the *Commission* over implementing rules. In spite of the Council’s success in retaining maximum control over the Eurodac project, the effective enforcement of the Regulation would continue to pose practical problems for its political masters. Eurodac’s *ongoing operational problems* stem from the fact that cross-national compliance with new rules and procedures is very unlikely in Rambo-situations. This game-theoretic insight explains why *Eurodac is a near complete failure in regard to irregular border-crossers* (see *section 3.3* above). The unilateral political and administrative benefits of not being held responsible for processing the asylum requests of tens or even hundreds of thousands of irregular border-crossers each year are apparently valued higher than the costs of sustained non-compliance with Community law.

We have also learned that Eurodac is performing as efficiently as promised by its corporate suppliers in regard to *ordinary asylum applicants*. The Rationalist explanation for *Eurodac’s partial success* is that *all* Member States and associated third countries potentially *benefit* from conducting “one-to-many checks” in this category. What is at stake here is not the redistribution of asylum applicants from north to south or west to east, but rather the combating of “asylum abuse” in an integrating Europe striving for a full-fledged harmonization of substantive and procedural refugee law. Diverse national reactions to asylum applicants’ attempts to circumvent the system *inter alia* via deliberate self-mutilation may, however, create new interstate tensions. As recent practices in the Nordic countries have amply demonstrated, one would be mistaken to believe that Member States’ governments and administrations are the only “players” in the Eurodac game.

4.2 Eurodac and the Logic of Appropriateness

For the Institutionalist observer, organizations like the police are resourceful “carriers” of certain principles and worldviews. Police-specific worldviews stem from the internalization of a particular organizational *mission*, namely the *prevention and combating of crime*. How, then, does the police pursue its mission? How does the police know which practices are more suitable than others for the maintenance and enforcement of law and order?

The police knows because it is *experienced*. Its organizational memory is able to recall *standard solutions to repeatedly encountered problems* (cf. Luhmann 2000: 277). The police routine of collecting, storing, and comparing fingerprints for identification purposes is a case in point. Fingerprint experts doing what they are supposed to do adhere to a *logic of appropriateness* and “[deal] with calculation mainly as a means of retrieving experience preserved in the organization’s files or individual memories” (March and Simon 1993: 8).(20)

Dactyloscopy is the science of fingerprinting. Automated fingerprint identification systems like Eurodac are technologically advanced law enforcement tools. In contrast to human beings, these machines are able to compare hundreds of thousands of biometric datasets in a matter of seconds and achieve conviction rates of nearly 100%. But what, one may ask, does all of this have to do with the European Union in general and Community asylum policy in particular? The empirical answer to this question is that the operational success of automated fingerprint identification systems in the Member States motivated their establishment on European level. As documented in *section 3.* above, national governments and administrations experienced in operating large-scale biometric databases successfully managed to “upload” domestic standard operating procedures to the supranational level. The “bottom-up” process of applying ready-made national solutions to a new set of European problems involved a particular “framing” of the political challenge at hand. The empirical evidence accordingly suggests that resourceful actors like the German *Ministry of the Interior* perceived the refugee crisis of 1997-98 as *a problem of organized crime*.(21) The appropriate thing to do in a

situation like this was to call for the compulsory fingerprinting of "illegal" immigrants and for the storage of their biometric data in a central European database. Against this empirical background, one may conclude that Eurodac is first and foremost an expression of a police-specific behavioral logic.(22)

What is surprising about Eurodac from an Institutionalist perspective is not its particular conception of appropriateness, but rather the remarkable absence of empirically observable collisions with competing and contradictory sets of institutionalized rules. After all, "major political conflicts are focused on which set of rules should prevail when and where" (March and Olsen 1989: 37). The only political conflicts we have witnessed in the context of the negotiation of the Eurodac Regulations, namely the intergovernmental conflict over the redistribution of asylum applicants "through the backdoor," on the one hand, and the power struggle between the *Council* and the *Commission* over implementing rules, on the other, did not fundamentally challenge Eurodac's police-specific rationale. The apparent lack of concern *inter alia* for the privacy rights of third country nationals may be accounted for, however, by the particular institutional design of the intergovernmental Schengen regime, the so-called "Third Pillar" of the European Union during the "Maastricht" era, and the Community governance of external borders, asylum, and international migration following the entry into force of the Treaty of Amsterdam.

The Institutionalist explanation for Eurodac's weak performance in southern Europe is that law enforcement agencies tend to execute *selective enforcement programs* if inadequate resources do not allow otherwise (cf. LaFave 1962: 203). Members of the Greek, Italian, and Spanish border police are responsible for controlling thousands of kilometers of sea and mountainous land borders, crossed, in a more or less regular fashion, by several hundred million people a year. Greek, Italian, and Spanish officials know that "the [available] resources in men and equipment cannot keep up with the rhetoric of systematic control" (Bigo 1998: 158). Frontier security professionals need to set *enforcement priorities* under such circumstances. Carrying out stringent measures against illicit arms trade, human trafficking, and other forms of organized cross-border crime may then become prioritized courses of action. Subjecting irregular border-crossers and potential victims of political persecution to biometric identification procedures in conformity with Community law, however, may not.(23)

It is important to note in this context that the governments of Greece, Italy, Portugal, and Spain have repeatedly tried to close the gap between immigration control objectives and actual immigration outcomes by retroactively pardoning hundreds of thousands of "illegal" immigrants in the course of so-called *regularization programs*. (For a comparative analysis of regularization data for Greece, Italy, Portugal, and Spain, see Cavounidis 2002; cf. also Apap *et al.* 2000.) Such programs not only reflect the porous nature of selected external Schengen borders resembling anything but an "iron curtain." They also indicate that irregular border-crossers are frequently not "deportable" even if detected by the police.(24) Time and again, labor-intensive administrative efforts in detaining apprehended *sans-papiers* and identifying their nationality for the purpose of removal have been frustrated by the unwillingness of countries of origin and transit to cooperate in issuing the necessary documents. The standard operating procedure in cases like these is to eventually release the "illegal" immigrant in question into the so-called "Area of Freedom, Security and Justice."

4.3 The Politics of Supranational Biometric Control Revisited

James G. March and Johan P. Olsen hold that "[political] action generally cannot be explained exclusively in terms of a logic of either consequences or appropriate-ness. Any particular action probably involves elements of each" (March and Olsen 1998: 952). How, then, did analytically distinct behavioral logics *interact* with one another in the specific case of Eurodac? When and *under which conditions* were the Eurodac-related politics of biometric control driven by strategic calculation, rule following, or both?

The empirical material presented above strongly suggests that *accumulated organizational experience* with operating automated fingerprint identification systems lends support to social action based on a *logic of appropriateness*. If standard biometric control procedures are already in place, the *matching of established rules to new situations* tends to take precedence over comprehensive analyses of the expected consequences of alternative courses of action. The notion of *self-referential organizational memories* allows us to conceptualize an organization's typical response to changes in its environment, namely by applying ready-made solutions to any given societal problem. Experience-based processes of solution-driven problem solving are characterized by *cognitive recognition of precedents* rather than calculation of costs and benefits. Lawyers, judges, and other members of the legal profession are more familiar with this line of reasoning than businesspeople and economists.

The matching of rules to situations may give way to strategic calculation if particular organizational objectives cannot be achieved satisfactorily without obtaining the explicit *consent or cooperation of other actors*. Even the most resourceful executive actors in the Council are dependent on the support of other Member States for reaching intergovernmental agreement, especially if the supranational legislative act at hand needs to be endorsed unanimously. In the event of deviating or contradictory organizational experiences and standard operating procedures, inter-executive decision-making processes in the EU tend to reflect the self-interested "moves" of instrumentally rational "players." Accordingly, selected national governments and administrations' *strategic use of Schengen-related "carrots and sticks"* during the negotiation phase of Eurodac may best be accounted for from a game-theoretic perspective.

In conjunction with Eurodac's "hard" Community law characteristics (direct applicability without "transposition," precedence over national law), the system's formal incorporation into the "First Pillar" of the EU could have signaled a renewed shift toward rule-based action. This transition has been constrained, however, both by a lack of political will and a lack of administrative capacity in southern Europe to enforce the Eurodac *acquis* in its entirety. These tensions could theoretically be resolved by dedicating a greater share of the EU budget to border control and refugee protection in southern Europe. Alternatively, the members of the JHA Council may decide to abandon Eurodac in light of its unsatisfactory performance. The most likely outcome, however, is an enduring tension between the two logics of action.

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Endnotes

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(1) For an extensive account of the methodological approach of this study, see Aus 2005.

(2) Standing accused of carrying out the so-called "Final Solution of the Jewish Question," Adolf Eichmann stated that "I consider oath-breaking to be the worst possible crime and offence a person can be guilty of." The man who had thoroughly internalized the motto of the *SS*, "My honor is called loyalty!", was sentenced to death by an Israeli court.

(3) I would like to emphasize at this point that neither solution-driven nor problem-driven social action should be associated with the idea of temporal sorting. The latter figures prominently in the so-called "garbage can model" of organizational decision-making, a model suggesting that problems and solutions are linked by their simultaneity (see Cohen *et al.* 1972, Cohen *et al.* 2007).

(4) At the time of writing, *Steria* is developing the second-generation Schengen Information System (SIS II) and the Visa Information System (VIS) (see Steria Group 2004).

(5) This would constitute a shift towards *Historical Institutionalism*. The latter perspective's emphasis on dynamics of lock-in and increasing returns is undoubtedly of vital importance for understanding path-dependent developments. However, the micro-foundations of this approach are ambiguous and arguably do not depart from the logic of consequentiality (cf. Pierson 2000).

(6) The so-called "Sagem Mistral Seeker," currently employed *inter alia* by the French army, provides an illustrative example of *Sagem*'s military production line [arena-web]. In regard to the involvement of *Thales*, the French defense and electronics group, in issuing genetically enhanced identity cards to all Chinese citizens, see Amnesty International 2004: 58.

(7) The sale of fingerprint identification technology, in turn, accounts for almost 50% of the global biometrics market (cf. Institute for Prospective Technological Studies 2005: 133, *Biometric Technology Today* 2006: 9).

(8) The *action plan* as such was never published. Neither did the Council consult the European Parliament before adopting the measure. Against this background, the *European Parliament*, in a resolution passed more than a year after the *action plan* had been adopted by the Council, held that "the action plan was not established lawfully [and that] the Member States may not base any legislative action on it…." (European Parliament 1999a: 54).

(9) To be sure, this stance also reflected the domestic constraints placed upon the new "Red-Green" coalition government in Bonn by a Conservative majority in the "Länder" chamber, the *Bundesrat*. For a typical example of political pressure exerted upon an otherwise "center-left" federal government by the CDU/CSU-dominated "Länder" chamber, see Deutscher Bundesrat 2000.

(10) Several years later, the Greek Presidency of the Council employed the "freezing technique" for securing partial political agreement on the heavily disputed Council Directive on minimum standards

on procedures in Member States for granting and withdrawing refugee status (see Ackers 2005: 16).

(11) In regard to the technique of fostering intergovernmental agreement via attaching legally non-binding statements to the *Council Minutes*, see Aus 2006: 28.

(12) The organizational structure of the Commission's *DG "Justice and Home Affairs"* as it stood in late 1999 can be viewed on the [arena-web]. The new *DG* succeeded the Commission's *"JHA Task Force"* and was later renamed into the *DG "Justice, Freedom and Security."* A more recent organigram of the *DG*, referred to by its civil libertarian critics as the DG "Law, Order and Security," is also stored on the [arena-web].

(13) The Commission's services could not resist, however, from stating that "the Commission considers that the justification given by the Council [for reserving the main implementing powers under the Eurodac Regulation to itself] is totally inadequate" (European Commission 2000: 8). This normative assessment is at least debatable considering the circumstances. After all, the French government had justified its position by resorting to the argument that "it is not compatible with the rules of proper administrative management for an administration which applies legislation to determine its own operational rules where they go beyond the framework of strict internal management." The German government, for its part, had justified its stance by arguing that Eurodac "touches on a very sensitive area of state activity, which in Germany, for example, is covered … by the constitutionally protected right of an individual in respect of personal data" (Council 1999j: 5, and Council 1999i: 2, respectively).

(14) The *Commission's* reluctance to spare children from compulsory fingerprinting was apparently motivated by the consideration that "within the Council, the pressure has been for a lower rather than a higher minimum age limit" (Commission 2000: 2). This may very well hold true. According to Evelien Brouwer, the Dutch delegation suggested an age limit of only 12 years (Brouwer 2002: 237).

(15) In regard to *Switzerland* and *Liechtenstein*, see Council 2004: 3. Official records relating to this ongoing negotiation are classified. Information concerning the design of a Eurodac-related "twinning project" with *Bulgaria*, on the other hand, can be found on the [arena-web].

(16) The composition of this list may change in the long run as a result of EU enlargement. One may note in this context that the 15 "old" Member States experienced a 21% drop in asylum requests in 2004 compared to 2003, while the 10 "new" Member States simultaneously recorded a 4% increase.

(17) In the near future, we are probably going to witness similar tensions between selected "old" and "new" Member States. A first account of the impact of Dublin II and Eurodac on German-Polish relations was given by a group of German non-governmental actors visiting Poland in November of 2004. According to their report, Polish asylum authorities are already calling for a new "burden-sharing" mechanism taking some of the Eurodac-related pressure off of Poland [arena-web].

(18) It goes without saying that these people are typically so-called *sans-papiers*. In 2004, around 94% of asylum applicants in Norway could not be identified on the basis of ordinary papers (Norwegian Police 2005c: 14).

(19) I would like to clarify at this point that the comparison between Eurodac and the Rhine River merely serves a heuristic purpose.

(20) James G. March and Herbert A. Simon already noted in the first edition of their seminal work that "problem-solving [may consist] primarily in searching the memory in a relatively systematic fashion for solutions that are present there in nearly finished form…" (p. 198).

(21) UNHCR-affiliated policy analysts subsequently challenged this institutionally biased view by

demonstrating that “many of these individuals were clearly [Geneva] Convention status refugees, even by the standards of Member States own recognition rates” (Morrison and Crosland 2001: 34). For an earlier case study on the German Ministry of the Interior’s “lead in representing German positions at the European level,” see Lavenex 2001: 192.

(22) Manifestations of this police-specific rationale can be found in numerous polities. For a comparative view to the United States, see Manning 1992, 2001.

(23) Enforcement priorities of this kind are particularly likely to emerge if *irregular entry* as such is not regarded as a *crime*, but merely as an *administrative infringement.* The latter is evidently the case in Italy (cf. McCreight 2006: 122).

(24) Official figures analyzed by Stefan Alscher, for example, show that Spanish authorities ordered around 23,500 *expulsiones incoadas* in 2001 but executed less than 4,000 *expulsiones materializadas* (Alscher 2005: 17).

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