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Baltic State Membership in the European Union: Developing a Common Asylum and Immigration Policy

AMY L. ELSON

INTRODUCTION

Lithuania, Latvia, and Estonia, collectively known as the Baltic States, have experienced numerous political and social changes since their secession from the United Soviet Socialist Republic (USSR) in 1991. As member states of the USSR, the Baltic States were dominated by Soviet policy. With secession came the much desired opportunity for the Baltic States to return to their former independent status. This ongoing transition, although long awaited and hoped for, has not occurred without difficulty. In addition to the enormous challenge of integrating themselves into the economic world, the Baltic States must integrate and establish themselves in the world political regime as well. In order to facilitate this process, each of the three states hopes to become a member of the European Union (EU).

The EU recently expanded its membership to include Sweden, Austria, and Finland. This expansionary mode is expected to continue as the next phase, an eastern enlargement of the EU, occurs. EU leaders have agreed to the eventual admission of all those Central and Eastern European nations with which they currently have Europe Agreements. Estonia, Latvia, and Lithuania have also applied for EU membership. Although the EU has not yet granted membership to any of the three Baltic States, all are currently slated to become member states in the early years of the next century. The EU has formerly


1. Whether Estonia, Latvia, and Lithuania were, in fact, incorporated into the USSR is a subject of debate. The United States never formally acknowledged the USSR’s 1940 incorporation of the Baltic States.


3. Id.

4. Because it has a more advanced economy, Estonia is likely to become the first of the Baltic States to gain full membership to the EU. Lithuania and Latvia, with their slightly less developed economies, are expected to be granted membership shortly thereafter.
recognized both the economic and political importance of the Baltic States and has developed a schedule for their incorporation.\(^5\)

In order to prepare for their eventual membership in the European Union, the Baltic States must make numerous adjustments. All three states must continue to put forth a great deal of effort to prepare their economies for interaction with the economies of EU countries. Furthermore, the Baltic States must bring their foreign policy in line with that of the EU. One of the most important policy areas that will have to be aligned with current EU policy is immigration and asylum policy.

This note examines how the current immigration and asylum policies of the Baltic States must be modified so that Estonia, Latvia, and Lithuania can become full member states during the next wave of EU enlargement. Part I provides a brief history of the Baltic region, from medieval times through the region's secession from the USSR in 1991. Part II discusses the proposed membership of the Baltic States in the EU and the existing and emerging immigration and asylum policies of the European Union. Part III examines the actions the Baltic States must take in order to align their policies with those of the EU and whether the alignment of these policies will potentially violate the constitutions of these new states.

I. HISTORICAL BACKGROUND OF THE BALTIC STATES

The history of the Baltic States has been marked by periods of independence as well as by periods of control by other nations. It reflects the diverse and turbulent events that have shaped the region. An examination of Estonian, Latvian, and Lithuanian history provides an important perspective for the analysis of the developing immigration and asylum policies of these three countries. Examination of the ethnic composition of the Baltic States, both from historical and current perspectives, also provides information relevant to the current status of immigration and asylum policies in these three countries.

\(5\). BULL. EUR. UNION 10-1994, 1.3.21 [hereinafter BULLETIN].
A. The Baltic States Prior to Russian Incorporation

The geographic location of the Baltic States has played a major role in the development of the region's history. The three Baltic States comprise a unified geographic area that is bordered to the west by the Baltic Sea, the east by Russia and Belarus, and the south by Poland. From the end of the twelfth century, the Baltic region was primarily ruled by a succession of invading powers. Estonia and parts of Latvia were at times controlled by foreign powers such as Germany, Denmark, and Sweden. Lithuania, however, fared quite differently from her Baltic counterparts. The Lithuanian kingdom dominated the region from the Baltic Sea to the Black Sea during the medieval era, and the kingdom formed a commonwealth with Poland, her neighbor to the south.

This period of Lithuanian power, however, was not destined to last. In the eighteenth century, Russia conquered the Baltic Region. Peter the Great won Livland and Estland from the Swedes and, in 1772, Catherine II acquired Latgale through the First Partition of Poland. Russia completed her conquest of the Baltic Region in 1795; the Third Partition of Poland brought the provinces of Vilna, Kovno, and Grodno, as well as the Duchy of Kurland, into the Russian Empire. Through these conquests, Russia brought most of the Baltic peoples within the bounds of her empire. Despite this annexation, the Baltic territories retained a great deal of local autonomy. This autonomy,
however, did not create a sense of national identity; the majority of ethnic
Estonians, Latvians, and Lithuanians were peasant farmers who remained
cultural aliens to the Baltic nobility.\textsuperscript{16}

It was not until the Russian government turned its full attention to the
Russification of the Baltic provinces in the 1880s that the nobility and
peasantry were drawn together, thus forming for the first time a sense of
national consciousness.\textsuperscript{17} National awareness grew among the native Estonian
and Latvian populations as German pastors advocated economic and cultural
reforms designed to improve the lives of the peasants, and it continued to grow
as the peasantry cut its ties to the land and moved to larger urban areas.\textsuperscript{18}

National awareness was also fostered through religion. In an effort to increase
its membership, the Russian Orthodox Church began to write many of its
publications in Estonian and Latvian; this increase in native-language
publications provided education in native languages, thus drastically reducing
illiteracy almost to the point of elimination.\textsuperscript{19} National awareness in Estonia
and Latvia was also fostered by increasing identification of folk culture.\textsuperscript{20} "As
the identification of folk culture with national particularity originated in the
Baltic area and drew upon Baltic material, it was natural that this should be a
vital concept for the Baltic national movements."\textsuperscript{21}

A similar development of national awareness occurred in Lithuania. Unlike Estonia and Latvia, Lithuania experienced some degree of national
awareness before Russian domination.\textsuperscript{22} In an effort to crush these nationalist
stirrings, the Russian government reacted strongly by banning the publication
of Latin alphabet books in Lithuanian in 1865 and intensifying Russification
measures.\textsuperscript{23} The increased Russification efforts had exactly the opposite effect

\begin{enumerate}
\item Hanneman, supra note 6, at 488.
\item Id. See also White, supra note 8, at 19.
\item Hanneman, supra note 6, at 488.
\item Id. at 488-89.
\item White, supra note 8, at 20. The Germans supplied a great deal of the "intellectual underpinnings"
of the Baltic national movements. Id. at 19. For example, J.G. Herder expanded upon the ideas of Immanuel
Kant, suggesting that the "traditional artistic creation of the common people was imbued with specific
characteristics of the nation to which it belonged." Id. at 20. Through his theoretical writings, Herder
attached a new significance to folk culture; additionally, he also "initiated the collection of folk-songs by
making a compilation which included Lithuanian, Latvian and Estonian material." Id.
\item Id.
\item Hanneman, supra note 6, at 489.
\item Id. The ban on the use of the Roman alphabet was especially traumatic for many Lithuanians
because "the use of the Roman alphabet was something which distinguished the Catholic Lithuanians from
the Orthodox Russians." White, supra note 8, at 24.
\end{enumerate}
on the Lithuanian population; the Lithuanian nationalist movement was instead fostered by resistance to Russian policies.24

Emerging national awareness coupled with political unrest in the Russian Empire provided the ideal catalyst to spark the early twentieth-century liberation movements that would end in Baltic independence. As Russia became increasingly embroiled in the political conflicts of the 1905 Revolution, the Baltic States were quick to respond; strikes, both industrial and agricultural, spread rapidly throughout the region.25 Labor strikes were not the only form of resistance offered by the Baltic States. The examples are numerous:

Calls for freedom of the press and universal suffrage led to the formation of national assemblies that advocated group autonomy. "Liberation" demonstrations targeted German nobles and clergymen in Estonia and Latvia; protesters burned German houses and assassinated individuals who spoke German. In Lithuania, less dramatic uprisings were directed at Russian schoolteachers and clergy. The Lithuanian National Congress called for "autonomy, a centralized administration for the ethnic Lithuanian region . . . and the use of the Lithuania language in administration."26

Meanwhile, amidst the inner political turmoil, Russia was fighting a much larger political battle as well: World War I. The combination of these two struggles proved too much for Russia but provided the perfect opportunity for the Baltic States to seek the independence they desired.

B. Independence Gained and Lost

Following the end of World War I, the Baltic States declared their independence one by one, demonstrating the sentiments of national awareness that had been stirring within the nations. Lithuania was the first to declare itself an independent republic; on February 16, 1918, a twenty-member council

24. Hanneman, supra note 6, at 489.
25. White, supra note 8, at 30. On January 9, 1905, Russian troops opened fire on peaceful demonstrators in St. Petersburg. Id. at 29.
26. Hanneman, supra note 6, at 489.
declared Lithuania an independent state. Estonia followed suit, establishing the Republic of Estonia on February 24-25, 1918, by a declaration of the Provisional Council (Maapäev). The Latvian National Council proclaimed the independence of Latvia in November 1918.

This newfound independence, although long awaited, was not to be long lasting. The Baltic States retained their independence for only twenty years, from 1920-1940. However, during those years, Baltic national consciousness flourished as the three states embarked upon the challenge of building their nations. In an effort to secure their continuing independence, each of the three states concluded peace treaties with the Soviet Union, which agreed to renounce any claims (past or future) to the region. Each established a democratic constitution, a “bill of rights” designed to guarantee individual civil rights, and each state afforded ethnic minorities a great deal of political participation. This regard for minority concerns, like Baltic independence, did not last long. World tensions transformed the democratic regimes into authoritarian governments, concerned with developing well-defined national cultures.

The political chaos caused by World War I enabled the Baltic States to declare their independence. Ironically, however, it was political chaos associated with the next world war that once again cost them their sovereignty. As World War II approached, the Baltic States were unable to engage in a collective security agreement because Soviet and German political strategies pitted the states against one another and ultimately fractured the Baltic entente. Meanwhile, as Baltic political cohesion splintered, both Stalin and Hitler watched eagerly, each preparing his own plan for the Baltic region. Stalin sought control of the warm-water port of Riga (located in Latvia) and began military mobilization along the Estonian and Latvian borders to

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27. White, supra note 8, at 33.
28. Id. at 32-33.
29. Id. at 33.
31. Hannemann, supra note 6, at 490.
32. Id.
33. Id.
34. Id. at 491. The Baltic States may have been able to set aside their suspicions of one another "had not the trio been wedged between Russia and Germany during a period when, in the delicate language of a British Foreign Office Official, 'both these great neighbours had succumbed to unprincipled regimes.'" David Kirby, Incorporation: The Molotov-Ribbentrop Pact, in THE BALTIC STATES: THE NATIONAL SELF-DETERMINATION OF ESTONIA, LATVIA AND LITHUANIA, supra note 8, at 69, 69-70.
accomplish this end. Stalin also sought control of the Baltic States because they comprised an important and potentially vulnerable frontier zone. Hitler annexed the Memel portion of Lithuania in 1939. This continued interference from both Germany and the Soviet Union culminated in a secret protocol to the 1939 Molotov-Ribbentrop Pact, which provided the USSR with control of the Baltic States. The Soviets retained control of the Baltic States until two years later when German troops invaded the region to “liberate” the Baltics. “Liberation” occurred again in 1944 when Soviet troops returned to “free” the Baltics from German control.

Following annexation, the Soviets next faced the challenge of fully integrating the Baltic States into the USSR. One of the main obstacles faced by the USSR was suppression of the tides of national awareness. Russian linguistic terms were forcibly incorporated into native languages, and history books were rewritten to emphasize the glory of Russia’s past relations with the Baltic States. The USSR deported thousands of Baltic political, public, and religious figures of the independence period. These repressive measures, however, did not achieve their goal and were in fact counterproductive. Those fighting for liberation did not give up their struggles; they instead continued the movement underground.

C. Independence Regained

National awareness did not surface publicly again until, under the leadership of Gorbachev, the USSR embarked upon a policy of openness (commonly known as glasnost). It was within this period of openness that

35. Hanneman, supra note 6, at 491.
36. Kirby, supra note 34, at 70.
37. Hanneman, supra note 6, at 491.
38. Id.
39. Id. at 492.
40. Id.
41. Id.
42. Id. at 493-94.
43. Aleksandras Shtromas, The Baltic States as Soviet Republics: Tensions and Contradictions, in The Baltic States: The National Self-determination of Estonia, Latvia and Lithuania, supra note 8, at 86, 86-87. “It is estimated that Soviet repression and evacuations to the USSR in 1940-41 cost Lithuania 39,000, Latvia 35,000, and Estonia (where Soviet forces stayed the longest and some conscription into the Red Army was effected) 61,000 citizens.” Id. at 87.
44. Id. at 87.
45. Hanneman, supra note 6, at 494.
46. Id.
national identity once again blossomed and eventually led to the liberation of the Baltic States from Soviet control. The threat of ecological damage forced the Baltic States to revive their struggles for independence. This threat, combined with years of Soviet oppression, led the Baltic peoples to feel "that their national existence was at stake." Two occurrences prompted the Baltic States to make demands for their independence: the fall of Communism in Eastern Europe and the 1988 publication of the Molotov-Ribbentrop Pact. Following the publication of the Pact, even the USSR recognized that the Baltic States had been forced into the Soviet Union. Bolstered by international support, the Baltic States initiated a referendum to decide the question of independence; the population voted overwhelmingly in favor of freeing themselves from Soviet control. In 1991, the USSR moved quickly to squelch nationalist movements, initiating "a violent crackdown" in Latvia and Lithuania. However, under the pressure of Western disapproval, Gorbachev reluctantly agreed to grant the Baltic republics independence. On September 6, 1991, Gorbachev and the leaders of the Union of Sovereign States formally recognized the independence of the Baltic States. Estonia, Latvia, and Lithuania were granted membership in the United Nations on September 17, 1991.

47. Id. at 494-95. In Estonia, the "Panda incident" is credited with the resurgence of national awareness. A popular nature program entitled "Panda" broadcast the news that the USSR intended to expand phosphate mining, which caused extreme damage to the environment of Estonia as well as to the environments of the other two Baltic States. Protestors from all walks of Estonian life joined together to fight mining expansion. Latvia's national awareness was similarly revived by an ecological threat. The USSR intended to construct a hydroelectric plant on the Daugava river; the plant would have caused environmental harm and would have destroyed several Latvian cultural landmarks. Finally, in Lithuania, the proposed expansion of the Ignalina nuclear plant, which was modeled after the one located at Chernobyl, was the catalyst that once again awoke nationalist stirrings in the Lithuanian people. Id.

48. Id. at 495.
49. Id.
50. Id.
51. Id. Seventy-eight percent of Estonians supported independence, seventy-four percent of Latvians favored independence, and ninety percent of Lithuanians agreed that the Baltic States should separate themselves from the USSR. Id. at 495-96.

52. Id. at 496.
53. Id.
54. Id. at 496-97.
II. APPLICATION TO THE EUROPEAN UNION AND IMMIGRATION AND ASYLUM POLICY OF THE EUROPEAN UNION

With newly established independence came many opportunities and challenges. Numerous problems continue to confront the Baltic States on their individual and shared roads to international political and economic integration. To begin with, each of the three countries is small and therefore cannot easily impose its will on larger political actors. The Baltic countries must also address additional problems:

The position of Estonia, Latvia and Lithuania is complicated by two additional factors: 1) The Baltic countries are newcomers on the political stage, and their freedom of action is directly proportional to the duration of their existence; 2) In 1991 the Baltic countries were not only dependent, but their dependence (economic and political) was concentrated only on one participant in international politics—Russia. This situation could be described as unilateral independence.

Because of their relative lack of political power and potential unilateral independence, the Baltic States have made overcoming this dependence one of their major political objectives. All three of the nations have focused on converting unilateral dependence into pluralistic dependence, "so that dependence [is] not concentrated only on one actor on the international scene." In an effort to achieve this pluralistic dependence, each of the Baltic States is currently seeking membership in the European Union. Membership in the EU will certainly provide the Baltic States with the necessary economic and political support that they seek. In order to become members of the EU, however, the Baltic States will be expected to bring their foreign and domestic

56. Id.
57. Id.
58. Id.
59. The Baltic States have also applied for membership in several other multinational political organizations. Id. at 54-67. All three nations were granted membership in the CSCE on September 10, 1991, and all three have also sought membership in NATO and have not been accorded, but are quite unlikely to be accorded, membership status. Id.
policies in line with those of the EU. One such policy that will have to be modified, or in some cases developed, to comply with that of the EU is immigration and asylum policy.

A. Proposed Baltic State Membership in the European Union

The Baltic States' applications for EU membership were preceded by several other Baltic-EU agreements. The Baltic States gained Most Favored Nation status in May 1992, when each of the three states signed trade and cooperation agreements with the European Community (EC). Baltic foreign ministers were hopeful that the signing of these documents was indicative of events to come; they "expressed the hope that after this first step, a further step—associate membership in the European Community—would follow, resulting later in full membership in the EU." It was not until 1994 that it began to seem as if the Baltic States' wishes might in fact be realized. On October 25, 1994, the Commission adopted a communication stating that the EU recognizes the need to develop relations with the Baltic region. The Communication stated:

[T]he forthcoming enlargement of the European Union and the move towards closer relations with the countries of the Baltic create a need for an overall Union policy for that region. In the light of the latter's status as an important market and a major centre of economic activity, the greatest advantage to both sides would come from integrating the Baltic into the world and European economies as far as possible.

At the same time, the EU Commission also set forth a policy paper advocating deeper ties with the Baltic States. In this policy paper, the EU Commission once again examined the importance of the Baltic Sea region to...

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61. Id. at 95. Residents of the Baltic States also longed for EU membership. According to 1991 opinion polls, 88% of Lithuanians, 80% of Estonians, and 78% of Latvians supported EU membership. Id.

62. BULLETIN, supra note 5, at 1.3.21.

Europe. The paper reiterated the view that the EU would be best served by integration of the Baltic States into the European economy because so many EU citizens resided in the Baltic States. The Commission also noted in this paper that the EU had an "abiding interest" in "setting up machinery for the processing of asylum applications and for combating illegal immigration."

The foreign ministers of all three Baltic nations welcomed the EU's decision to negotiate with the Baltic States. These negotiations eventually resulted in the drafting of Europe Association Agreements with Estonia, Latvia, and Lithuania. Leaders who gave speeches at the signing ceremony stated that "[a]fter many years apart, [the] moment symbolized the return of the Baltic States to the European family." They did not, however, provide for the immediate return of the Baltic States to the "European family." The Agreements established transitional periods for both Latvia and Lithuania; however, because of Estonia's greater degree of development, no transitional period was established for the nation.

Plans for the Baltic States to join the EU continue to move forward. In April 1996, the European Commission approved yet another EU initiative designed to improve both economic and political stability in the Baltic States. "The Commission's new initiative covers activities as diverse as improving direct contracts between public and private institutions, protecting minority rights, exchanging information in the fight against organized crime and developing legislative and administrative systems in matters of asylum and the prevention of illegal immigration." As the situation currently stands, the Baltic States will probably become members of the EU during the first-wave enlargement after 2000.

64. Id.
65. Id. At the time the Commission released the policy paper, some 11 million residents of the Baltic Sea region were EU citizens. Id.
66. Id.
68. Signing of the Europe Association Agreements with Estonia, Latvia and Lithuania, RAPID, June 12, 1995, available in LEXIS, World Library, RAPID File. The Agreements were signed in Luxembourg on June 12, 1995. Id.
69. Id.
70. Id.
72. Id.
73. John Palmer, EU Urged to Take in States Left Out by NATO, THE GUARDIAN (London), Nov. 25, 1996, at 8, available in LEXIS, World Library, TXTNWS File. The Clinton administration has urged the
B. Immigration and Asylum Policy of the European Union

When the Baltic States achieve full membership status in the EU, it will be essential for the states’ foreign and domestic policy to coincide with the objectives and policies of the EU. Perhaps one of the more controversial policy areas of the EU concerns immigration and asylum procedures. In addition to their controversial nature, the policies are quite complex. However, in order to examine the changes the Baltic States must make in their own policies, it is necessary to first examine the basic development of EU immigration and asylum policy.

The development of workable immigration and asylum policies is essential for the continued progression of the European Union.74 "Just as free movement and equal treatment were of crucial importance for the development of the European Community, so common policies on immigration and asylum are indispensable for the deepening of the European Union."75 An examination provides the background information necessary to understand the emerging policy of today's EU and the challenges faced by it.

Immigration and asylum became important political issues for individual countries as well as for the European Community during the 1980s.76 The Community determined that these issues would be best addressed through intergovernmental cooperation and developed a cooperative method to regulate immigration and asylum procedures.77 The choice of intergovernmental cooperation as the means to address immigration and asylum issues is very significant. Intergovernmental cooperation, unlike a supranational authority, does not compromise state sovereignty. The EC Treaty does not impart upon European institutions a clear directive to enact legislation on immigration and

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75. Id. The many different names that refer to European political organizations are potentially confusing. For purposes of this note, the distinction set forth by Niessen will be followed. According to Niessen, the term "European Community" refers to the European Economic Community, established by the Treaties of Paris (1951) and Rome (1957). This name was then changed to European Community by the 1991 Treaty on European Union. Niessen uses the term "European Union" to refer to the Union as it was established by the Treaty on European Union. Id. at 3 n.1.
76. Id. at 5.
77. Id.
asylum matters. Immigration and asylum matters are addressed within "the framework of cooperation on justice and home affairs," more commonly known as the third pillar.

Because immigration and asylum policies fall within the third pillar, the European Court of Justice has no jurisdiction over these matters, and the role of the European Parliament is correspondingly weak. For example, although the EC has the authority to draft legislation regarding EC citizens, the EC Treaty does not confer this same authority regarding legislation addressing immigration and asylum of non-EC nationals; therefore, control of third-party immigration has traditionally been a matter left to the individual member states. However, in an effort to provide some degree of common policy, "a limited mandate has been developed to promote equality of treatment of the approximately ten million third-country nationals."

The Commission issued two communications designed to address immigration and asylum issues in 1991. The communication on asylum stated that asylum regulation measures should reflect a respect for human rights. It also addressed two major components of the asylum debate: the prevention of abuse of asylum procedures and the development of a common asylum machinery. Additionally, the Commission addressed the four major immigration problems confronting the member states in its communication on immigration. These problems were identified as: 1) abuse of asylum procedures; 2) managing the effects of migration pressure; 3) controlling immigration flow; and 4) integrating legally-admitted immigrants. The Commission once again addressed these issues in its 1994 Communication on Immigration and Asylum Policies, and it also proposed recommended action by the Union. "By and large, this Communication was an elaborated and

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78. Id. at 11.
79. Id. at 4.
80. Id. at 47-48.
81. Id. at 11.
82. Id. Equality of treatment is to be achieved through the implementation of Association and Cooperation Agreements between the Community and third countries. Id.
83. Id. at 16.
integrated version of the Commission's two 1991 communications on immigration and asylum.\textsuperscript{86}

There has been a significant amount of cooperation among member states. For example, in 1986, the Ad-hoc Group on Immigration was formed to coordinate immigration and asylum policies among member states.\textsuperscript{87} The texts of several conventions aimed at establishing a workable immigration and asylum policy have also been adopted by immigration ministers of member countries. The text of the Dublin Convention, adopted by ten of the twelve original member states, makes each state responsible for examining asylum applications made in one of the member states so that, in theory, applicants for asylum are not shuttled from state to state for application processing.\textsuperscript{88} Additionally, the Convention is intended to prevent applicants from applying for asylum in more than one member country.\textsuperscript{89}

It was not until 1992 that the European Council promulgated and adopted the Declaration on Principles Governing External Aspects of Migration Policy. This Declaration included the following principles:

1. the preservation and restoration of peace, and full respect for human rights and the rule of law, which would diminish migratory movements resulting from war and oppressive regimes;

2. the protection and assistance of displaced people in the nearest safe area to their homes;

3. the promotion of liberal trade and economic cooperation with countries of emigration, which would reduce economic motives for migration;

4. targeting development aid and job creation, and the alleviation of poverty;

\textsuperscript{86} Niessen, \textit{supra} note 74, at 17.

\textsuperscript{87} \textit{Id.} at 31. Several other intergovernmental groups were also established, including the Rhodes European Council, which was responsible for setting up free movement of people. \textit{Id.} at 32.

\textsuperscript{88} \textit{Id.} at 34. Only Ireland and the Netherlands have not yet ratified the Convention. The Convention will not enter into force until the initial twelve member states have ratified it. Sweden, Austria, and Finland, the three newest EU members, have yet to sign the Convention as well. \textit{Id.}

\textsuperscript{89} \textit{Id.}
5. efforts to combat illegal immigration;

6. the conclusion of bilateral or multilateral agreements with countries of origin or transit, to ensure that illegal immigrants were returned to their home countries;

7. the assessment of home countries’ practices in readmitting their nationals after they are expelled from the territories of the member states, and

8. the increase in cooperation in responding to the particular challenge of persons fleeing from armed conflict and persecution in former Yugoslavia.90

The 1993 Treaty on European Union, which established the EU as it currently exists, slightly expanded the EU’s potential authority to determine immigration policy.91 However, as of yet, immigration and asylum control measures currently remain issues controlled by intergovernmental cooperation.92 As such, a harmonized system of common policy has yet to be developed.93 According to one author, “[t]he European Union’s efforts to design common policies in the fields of migration, asylum and integration are without vision or direction. Moreover, the way in which policies are being shaped lack transparency and efficiency, and suffer from insufficient


91. Id. at 49. Article K.9 of the Treaty on European Union opens the door to the possibility that matters of immigration and asylum control may become policies increasingly under the EU’s control. Id. at 49-50.

92. Id. at 50. EU member states continue to guard their sovereignty, and, therefore, have consented only to work intergovernmentally on immigration and asylum issues. Id. at 19. See also supra notes 77-82 and accompanying text.

93. Immigration and asylum issues fall within the third pillar and, as such, are subject to the recommendations of the Justice and Home Affairs Councils. Id. at 53. However, because third pillar issues are addressed only through intergovernmental cooperation efforts, the recommendations of the Council are not binding, and the Court of Justice has no competence. Id. at 47-48. The Council has adopted one joint action in the immigration and asylum area which permits pupils to travel visa-free throughout the EU. Id. at 54. It has yet to propose to the member states any conventions addressing immigration and asylum issues. Id. In 1995, however, the Council did adopt a resolution on minimum guarantees for asylum seekers, which contained a statement of asylum seekers’ rights as well as a statement of appeal and review procedures. Id. at 56.
parliamentary and judicial control. The question of whether the current EU approach to these issues is effective and fair remains open. Regardless of the uncertain answer to this question, asylum policy and immigration control continue to remain two of the most pressing issues currently faced by the EU.

III. MODIFICATION OF BALTIC STATE IMMIGRATION AND ASYLUM POLICIES

As the Baltic States prepare for eventual member status in the EU, Estonia, Latvia, and Lithuania must all begin to align their own foreign policies with those observed by the EU. Because the EU does not have comprehensive immigration and asylum policies that are recognized equally by all of its member states, this task will be a very difficult one for the three hopeful member states to accomplish. At the very least, several key issues must be addressed by the Baltic States in their preparations for EU membership. For instance, will current immigration and asylum policies be sufficiently compatible with EU guidelines? If not, what changes will need to be made? Finally, if such changes are made, will these changes violate the constitutions of the three Baltic Nations?

A. The Question of Compatibility: Will Existing Laws and Policy be Sufficient?

1. The Effects of Past Immigration Experiences on Current Immigration Policy

Baltic history has played an instrumental role in the development of today’s citizenship and immigration laws. In order to better understand the policies underlying Baltic immigration and asylum procedures, it is first necessary to examine the historical threat of immigration. The inextricable tie of citizenship to immigration has been a central issue for all three states since the inception of the independence movements. Throughout Soviet occupation of the Baltic States, Estonia and Latvia were subject to a greater

94. Id. at 60.
96. See generally supra notes 37-44 and accompanying text (explaining the period of Soviet
The marked declines in ethnic populations that resulted from Soviet occupation led the ethnic populations of the Baltic States, especially Estonians and Latvians, to feel as if they were becoming minorities in their own states. Accordingly, after the states declared their independence from the Soviet Union, these fears were reflected in newly drafted citizenship laws.

Estonian and Latvian citizenship laws were based on policies of exclusion rather than inclusion. The nationalism that emerged in these two countries was "a form of nationalism based on ethnic or primordial ties and which stressed the exclusivist and symbiotic relationship between the core nation, homeland, and citizenship." In fact, many Latvian residents were so frightened of "national extinction" that Latvian politicians supported the introduction of quotas designed to dissuade immigration. Estonia's citizenship law suggests a similar distaste for immigrants.

In contrast, Lithuania did not experience a tremendous influx of immigrants during Soviet occupation. Therefore, its citizenship laws were based on a policy of inclusion rather than upon one of exclusion. The Lithuanian law based citizenship conditions on territorial, not primordial, factors. It was designed to foster a sense of national self-determination.

These countries' experiences with immigration cannot simply be considered historic relics of an age now passed; they continue to affect the Baltic States and have undoubtedly played at least some role in the formation of current immigration and asylum policies.

97. Smith et al., supra note 95, at 182. The Latvian share of its population decreased from 75.5% in 1939 to a mere 51.8% in 1989. Estonia experienced an ever greater decline, from 90% in 1939 to only 64.7% 50 years later. Lithuania did not experience such a decline; its population remained 80% ethnic Lithuanian. Id.

98. Id. at 184.

99. Id. at 185-86. The priority list for Latvian citizenship was as follows: 1) ethnic Latvians without citizenship, 2) spouses and children of citizens and those who made significant contributions to Latvian independence, and, finally, 3) ethnic Russians. Id. at 186.

100. See generally Smith et al., supra note 95, at 184-89 (providing an explanation of the conflict between the traditions of civic nationalism and ethnic nationalism in Estonia and Latvia). It should also be noted here that these citizenship laws are quite controversial because of their effect on ethnic Russians who migrated to the Baltic States during the period of Soviet occupation. Balts view these Russians as illegal immigrants. Russia: Russian Duma Urges Economic Sanctions of Latvia, Reuter Textline, Reuter News Service - CIS and Eastern Europe, Oct. 4, 1996, available in LEXIS, World Library, TXTNWS File.

101. Smith et al., supra note 95, at 183.

102. See id.
2. Examples of Current Immigration and Asylum Laws

The Baltic States do not currently have a unified immigration and asylum policy. Each of the three countries has developed its own unique set of standards and regulations which differ in content and degree of development. For example, Lithuania is currently the only Baltic State with an asylum law designed to govern the treatment of those seeking political refuge. However, according to Interior Ministry officials, the law cannot be implemented because of economic conditions; Lithuania simply cannot afford to provide food and shelter for the flood of immigrants and refugees destined for Scandinavia. Latvia is being compelled to address asylum policies. The Prime Minister has recently ordered the Interior Minister to develop a new law on refugee policy. Without this law it is extremely difficult to make proper and consistent decisions regarding who should be considered an illegal immigrant and who should be considered a refugee.

In addition to its refugee law, Lithuania has a comprehensive law on immigration that describes in detail the conditions and procedures for entry into the country. The law explains the rights of foreigners wishing to immigrate to Lithuania, and it sets forth reasons that may prohibit immigration. It also provides authority for the Supreme Council of the Republic of Lithuania to establish immigration quotas. The Seimas (Parliament) exercised this power in 1995 by setting an immigration quota which permitted only 2,500 foreigners to immigrate to Lithuania in 1996. The quota gave priority to those immigrating from countries with which Lithuania has concluded international agreements and to citizens of EU states.

103. This subsection is intended to provide only a few examples of the various immigration and asylum laws of the Baltic States. It is not intended to provide an exhaustive accounting of these laws.


105. Id.


108. Law on Immigration, art. 5 (1991)(Lith.), in CENTRAL & EASTERN EUROPEAN LEGAL MATERIALS, supra note 107, § 4, 4. Article 5 of the Law on Immigration lists several reasons why a person may be denied an immigration permit. Among them are affliction with a dangerous contagious disease, mental retardation or mental illness, drug or alcohol addiction, and commission of a serious crime within five years preceding the application, to name a few. Id.

109. Id. at art. 6, §4, 5.

110. Lithuania Immigration Quotas Set by Parliament, Reuter Textline - BBC Monitoring Service:
3. Does Current Immigration and Asylum Policy Adequately Address the Problems Faced by the Baltic States?

As with many other countries, the Baltic nations face the problem of illegal immigration. Combating the flow of persons using the Baltic States as transit routes to other nations such as Sweden has proved a costly venture. Furthermore, each of the Baltic States must deal with the problem of securing its international borders. Lithuania in particular has experienced a great deal of trouble trying to stop the flow of immigrants pouring through its Polish and Byelorussian borders.111 These borders are especially difficult for Lithuania to control because "[t]he economic and political position of Lithuania's southern and eastern neighbors is unstable, and, it appears, not headed for rapid stabilization."112 From January until November 1996, Lithuanian Border Guard officers captured roughly 380 illegal immigrants, mostly Asian, on the Polish-Lithuanian border.113 According to Stanislovas Stancikas, Chief Commissioner and head of the Lithuanian Border Protection Service, in 1995, nearly 333,000 illegal immigrants from Belarus intended to reach Western countries through Lithuania and Poland.114

Do the current immigration and asylum laws adequately address these issues? One incident in particular seems to suggest that they do not. On March 28, 1995, Lithuanian border police stopped a passenger train carrying immigrants just inside the border with Latvia.115 The group, which had been shuttled back and forth among Russia, Latvia, and Lithuania, was repeatedly refused permission to disembark in Latvia.116 The 105 Middle Eastern refugees, who had originally intended to seek asylum in Sweden, were stranded on the train for more than a week while Latvia and Lithuania argued about which country should provide them asylum.117 Latvian officials viewed

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112. Id.
116. Id.
the group as illegal immigrants using Latvia as a transit country and therefore refused the refugees entry. At a news conference the head of Latvia’s Interior Ministry Police explained that the country would not admit the refugees for fear of a “crash”; he felt that giving this group asylum would transform the country into a transit zone for refugees and would force the creation of an Asian quarter in the country’s capital.118 Meanwhile, as Latvia and Lithuania argued about which country would take the refugees, the Office of the United Nations High Commissioner for Refugees stated that the refugees, who were being “treated like cattle” on a “train of despair,” should be permitted to seek asylum in the Baltic region.119

This incident, although not routine, seems to suggest that current immigration and asylum procedures in the Baltic States are not functioning properly. The lack of a cohesive policy will continue to lead to incidents like the “Train of Despair” where refugees are stranded as the Baltic governments argue over who will take them. Furthermore, the tide of illegal immigrants crossing Baltic borders has not decreased and the numbers are certain to continue their upward climb. Unless the Baltic States work together to develop cooperative immigration and asylum policies, the current chaos will continue.

B. Moving Closer to EU Membership: Necessary Changes in Immigration and Asylum Policy

As the Baltic States continue on their journeys to full European Union membership, they must not only develop more effective immigration and asylum policies but must also develop policies that reflect the accepted principles governing EU immigration. Western European asylum policies can be roughly divided into two stages.120 “The first phase was marked by uncoordinated national policies designed to restrict the number of asylum-seekers and to discourage applicants from requesting asylum.”121 Unilateral measures transferred refugee problems from one state to another, leading to the

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118. Id.
119. Id.
121. Id.
problem of "refugees in orbit, 'those unwanted asylum-seekers who are bounced back and forth between countries like shuttlecocks.'" The second phase was marked by the introduction of a coordinated and integrated European asylum policy designed to alleviate the problems caused by unilateral management and to prepare for the abolition of border controls between EU member states. Baltic immigration and asylum policy currently corresponds with the first phase of EU policymaking. If the Baltic States are going to be prepared for full EU membership, it is essential that they "catch up" by developing a coordinated and integrated immigration and asylum policy.

The Baltic States have already taken several steps to move them closer to a unified policy. The Baltic Council of Ministers agreed in October 1996 to establish a committee on immigration issues. The Baltic States have also initiated measures designed to develop a common policy for dealing with illegal immigration. In an unofficial meeting between Lithuanian President Algirdas Brazauskas and Latvian President Guntis Ulmanis, illegal immigration was identified as one of the most important issues affecting relations between the two countries. "Speaking about the problems of illegal immigration, Brazauskas said: 'We agreed that talks about illegal immigrants should proceed much more rapidly. We should sign a so-called readmission agreement, or a treaty (to this effect), which would outline mutual commitments in respect of illegal immigrants.' Such a treaty has been signed; at a June 30, 1995 meeting, Baltic leaders approved a treaty governing repatriation of illegal immigrants. These changes have undoubtedly aided in developing a common policy; however, they alone are not enough. The Baltic States must continue to improve immigration and asylum policies through cooperation and collective policy.

122. Id.
123. Id.
126. Id.
C. Will Changes in Immigration and Asylum Policy Comport with Constitutional Principles?

EU membership will provide the Baltic States with many political and economic advantages. However, modification of Baltic immigration and asylum policy so that Estonia, Latvia, and Lithuania may become EU members may in fact provide one significant disadvantage: these changes potentially violate constitutional principles.

Lithuanian law provides the clearest example of this potential danger. Article 21 of the Lithuanian Constitution provides: "The person shall be inviolable. Human dignity shall be protected by law. It shall be prohibited to torture, injure, degrade, or maltreat a person, as well as to establish such punishments." By developing its immigration and asylum policy to reflect that of the EU, Lithuania may violate this provision of its Constitution. The Europe Association Agreement between the EU and Lithuania reaffirms the importance placed on respect for human rights. Arguably, the EU asylum policy does not place a great deal of emphasis on the dignity of human rights. "The bottom line—a conclusion shared by most independent legal commentators—is that the two arrangements [the Dublin Convention and the Schengen Agreement] in effect severely restrict the access of asylum-seekers to a fair hearing of their case, and are in contradiction of the 1951 Geneva Refugee Convention."

Returning a refugee to a country where he will face political persecution or even bodily harm can be characterized as an injury that violates the dignity and the person of the refugee. By modeling its asylum policy after EU policy, Lithuania may violate this constitutional provision. Similarly, Article 135 of the Lithuanian Constitution might also be violated by a harmonization of Lithuanian and EU immigration and asylum policies. The Article states:

128. LITH. CONST., art. 21, in CENTRAL & EASTERN EUROPEAN LEGAL MATERIALS, supra note 107, § 1, 6.
129. Signing of the Europe Association Agreements with Estonia, Latvia and Lithuania, supra note 68.
130. Henk Overbeek, Towards a New International Migration Regime: Globalization, Migration and the Internationalization of the State, in MIGRATION AND EUROPEAN INTEGRATION: THE DYNAMICS OF INCLUSION AND EXCLUSION, supra note 120, at 15, 31. All EU member countries have signed the Geneva Convention, a provision that guarantees that no one seeking refuge will be returned to her or his home country if she or he might face persecution there. Santel, supra note 120, at 80.
In conducting foreign policy, the Republic of Lithuania shall pursue the universally recognized principles and norms of international law, shall strive to safeguard national security and independence as well as the basic rights, freedoms and welfare of its citizens, and shall take part in the creation of sound international order based on law and justice.\textsuperscript{131}

Disregard of the Geneva Convention, which set forth universally recognized principles of the rights of refugees, would violate this constitutional provision as well.

The development of an immigration and asylum policy that reflects and coincides with EU principles will indeed be a very difficult task for the Baltic States to achieve. The level of difficulty, at least in the case of Lithuania, may be complicated by the additional requirement that these newly developed policies comport with constitutional provisions. Membership in the European Union will provide Estonia, Latvia, and Lithuania with many positive benefits. However, the road to member status is not free of obstacles.

\textbf{CONCLUSION}

Full integration into the European economic and political communities is essential for the Baltic States' continued growth as independent nations. In order to accomplish this goal, the Baltic States have turned to the European Union for assistance. Member status in the EU will undoubtedly provide the Baltic States with much needed economic and political support. Membership, however, does have its price. To prepare for membership, Estonia, Latvia, and Lithuania must develop economic and foreign policies that correspond with those of the EU.

As global immigration increasingly becomes a reality, creation of an immigration and asylum policy that corresponds to principles embraced by the EU is a challenge to which the Baltic States must rise. Several steps in the correct direction, such as the establishment of a committee designed to coordinate the three countries' efforts to combat illegal immigration and the development (or pending development) of asylum laws, have already been taken. However, at the same time, these states must avoid the lurking danger

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\item \textsuperscript{131} Lith. Const., art. 135, in Central & Eastern European Legal Materials, \textit{supra} note 108, \S 1, 37.
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of creating or adhering to policies that may violate their own constitutions. Achievement of these goals will enable the Baltic States to make an easier transition into the EU and will enable them to flourish as independent nations as well.