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ABSTRACT

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Policy towards asylum seekers has been a controversial topic for more than a decade. Rising numbers of asylum applications have been met with ever-tougher policies to deter them. Following a period of policy harmonisation, the EU has reached a crucial stage in the development of a new Common European Asylum System. This paper seeks to shed light on what form this should take. It summarizes the development of policy to date and it argues that these policies have been too tough, even from the point of view of EU citizens. Using an economic framework, it examines scenarios with different degrees of policy harmonisation and integration among EU countries. Finally, it argues that there is an important role for enhanced burden-sharing arrangements.

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Introduction

Over the last two decades there has been a rising tide of applications for asylum in Europe and other developed regions. It has sparked fierce political debate in a number of countries and it has led to a succession of policy changes, particularly in the countries of the EU. About two-thirds of asylum applications to industrialized countries over the last 20 years were lodged in the EU-15 (pre-enlargement). The trend in applications to the EU-15 can be seen in Figure 1. Most of these come from three main source regions, Africa, Asia and Eastern Europe. As the Figure shows, there is a sharp spike in the early 1990s associated with the surge in applications from Eastern Europe following the collapse of the Soviet Union and the fall of the Berlin Wall. But there is also a long-term upward trend in applications from Africa and Asia. Most asylum seekers arrived at the European destination as ‘spontaneous’ applicants rather than as part of an organized program. Thus the vast bulk of asylum claims are lodged at the border or within the country, the applicant having previously gained entry, often illegally.

As Table 1 shows, the level and trend in applications varies widely across the EU-15. The most notable case is Germany, which received over half of the EU total in the 1990s. In part, this was due to the surge in applications from Eastern Europe, which also affected other countries such as Austria, on the EU’s eastern border. By contrast countries such as Finland, Greece, Ireland and Portugal received relatively few applications. But relative to their populations, the heaviest concentrations in the 1990s were in countries such as Denmark, the Netherlands and Sweden. The Table also shows considerable variation in the trend of applications. While some countries such as Austria, Denmark, France and Sweden experienced a downward trend in applications between the late 1980s and the late 1990s, for others such as Belgium, the Netherlands, Ireland and the UK the trend is sharply upwards.

These two characteristics—the long term upward trend in the aggregate numbers, and the uneven distribution of asylum applications across countries—form the background to the ‘policy backlash’ that has occurred in the last decade and a half. It has witnessed the introduction of a wide range of policy reforms, detailed further below, that involve restricting entry, toughening the process of determining the legitimacy of asylum claims, and making living conditions less favourable for asylum applicants. The policy

backlash is illustrated by the index of policy toughness displayed in Figure 2. This is the average over the EU-15 (excluding Luxembourg) of an index ranging from zero to 11.¹ As the composite index illustrates, there has been a severe toughening in policy stance for the average EU country, with a particularly steep increase between 1991 and 1995. Another measure is the proportion of asylum seekers that are recognised as genuine refugees (the recognition rate). For the EU as a whole this fell from 50 percent in 1982 to 28 percent in 2001.²

This dramatic shift in policy has been seen as a ‘race to the bottom’ among EU countries. Many observers argue that policy is now much too tough, although the basis for this welfare judgment is often unclear. And it is often suggested that a more cooperative approach among EU member states, involving some form of burden-sharing, would produce outcomes that would be both more equitable among countries, and more generous to asylum seekers. Meanwhile asylum policy in the EU has evolved through a series of stages that have gradually brought closer harmonisation. Currently under discussion is the development of a policy that involves deeper integration and a further shift away from national policies towards an EU-wide asylum system.

The purpose of this paper is to outline the evolution of policy to date and to explore, using a simple theoretical model, some questions about the development of policy in the past and in the future. The questions are these: On what basis could greater cooperation lead to ‘better’ policy outcomes? Is there a role for some form of burden-sharing? And how does the process of harmonisation and integration affect the actual and potential policy outcomes? Answers to questions such as these provide a background to the even larger question: At this critical stage in the discussions, what type of asylum system should the EU be developing?

¹ The index for each country is constructed from 11 dummies, each representing a different dimension of asylum policy, that switch for zero to one when there is a significant toughening of policy. For further details of the construction of this index, see Hatton (2004), p. 58-9.

² This is the number granted full refugee status plus the number allowed to stay on humanitarian grounds, divided by the total number of decisions, based on data reported by the UNHCR. The recognition rate for full refugee status alone fell from 48 percent in 1982 to only 15 percent in 2001.

Asylum Policies in Europe

The key instrument of asylum policy is the 1951 *Geneva Convention Relating to the Status of Refugees* and its 1967 protocol to which all EU countries are signatories.³ It has two important clauses. Article 1 defines a refugee as someone who is outside his or her country of normal residence and is unable or unwilling to return to it ‘owing to a well-founded fear of persecution’. Article 33 provides that a person who has claimed asylum under the Convention must not be forcibly returned to a territory where he or she may be at risk of persecution—the so-called principle of *non-refoulement*. Any asylum claim submitted in a signatory state must be considered under due process irrespective of whether the applicant entered the country legally or not. Thus, in principle at least, the Convention provides access to asylum procedures for an unlimited number of applicants, once having gained access to the territory either legally or illegally.⁴

The Convention provides the foundation for asylum policy, but it was conceived in circumstances rather different from those of today. The Convention was originally designed to cope with the post-Second World War situation in Europe—at a time when the trickle of asylum seekers fleeing communism were welcomed in the West.⁵ It did not provide a detailed set of rules for dealing with a mass influx of ‘spontaneous’ asylum seekers, and it left open many ways in which receiving countries can act to deter asylum applications. As Figure 2 showed, asylum policies across the EU were severely tightened over the 1990s notwithstanding continued adherence to the letter (if not the spirit) of the Convention. These dramatic changes in asylum policy have involved a growing degree of coordination and it is useful to identify three phases: the period up to 1999, the period from 1999 to 2004, and finally the framework that is set to emerge between 2004 and 2010.

³ The Convention was signed by 29 countries in 1951 and became effective in 1954. The number of signatories has increased since then to 145 in 2004. The main provision of the 1967 Protocol was to extend the coverage of the Convention to those displaced from sources outside Europe and to those displaced before 1951. Signing the Convention is a condition of EU membership. The right to asylum is also enshrined in Article 14 of the *Universal Declaration of Human Rights* (1948) as well as in the *European Convention for the Protection of Human Rights* (1950), which contains a *non-refoulement* clause.

⁴ However, the Convention does not guarantee permanent right of residence in a host country except insofar as this is provided by the *non-refoulement* clause.

⁵ The history of humanitarian action under the Convention is described in UNHCR (2001b).

Asylum policy in the 1990s

In the 1990s EU countries introduced a wide range of regulations, which toughened policy towards asylum seekers, and which were chiefly introduced as deterrent measures in the face of a steep rise in the number of asylum applications. They include four types of policies: those designed to restrict access to the country's borders by potential asylum seekers; reforms to the procedures under which asylum claims are assessed; measures relating to the outcome of asylum claims; and changes to the treatment of asylum seekers during the processing of their claims. These components of policy are summarised in the index displayed in Figure 2.

The various elements of policy involved different degrees of coordination between the countries of the EU. Measures to tighten external border controls followed from the relaxation of internal border controls under the Schengen Convention (1990) and the Maastricht Treaty (effective 1993). Carrier sanctions were first introduced in the UK and Germany in 1987 and by the late 1990s they had become universal. Visa restrictions were gradually extended and by 1993 the Schengen signatories shared a joint list that included 73 source countries, a list that exceeded 150 by 1998. In addition several countries, led by France, introduced special airport zones from which the right to enter asylum procedures is tightly circumscribed.

The most important reforms to the processing of asylum applications followed from the 1990 Dublin Convention and the resolutions of a ministerial meeting in London in 1992. In Dublin it was resolved that, in order to prevent 'asylum shopping', an asylum claim would be dealt with by one state only, specifically the state of first entry. A consensus was developed in London on three further issues. The first was the 'safe third country' concept that allowed member states to refuse to consider an asylum claim if the applicant had transited through a country deemed 'safe' where he or she could have sought asylum. The second was to determine that 'manifestly unfounded' claims could be summarily rejected without the right of appeal.⁶ The third was the designation of 'safe countries of origin' where there is a presumption of no risk of persecution, and where an expedited procedure could be applied to applicants from those countries. In 1994 and

⁶ A claim is normally deemed manifestly unfounded when it is fraudulent, when the applicant is guilty of some crime (other than illegal entry), or where there is no prima facie evidence of persecution.

1995 the European Council of Ministers produced a series of further recommendations, the most important of which were on readmission agreements.⁷

These recommendations were not initially binding on member governments but they gradually diffused across the EU. The most notable case was Germany, where the measures introduced in 1993 required an amendment to the constitution (Basic Law), which contains a clause on the right to asylum (Hatton 2004, p. 23). Particularly contentious was the adoption of the safe country of origin concept. Between 1991 and 1998 most EU countries introduced policy packages that contained some of these measures, although the toughness and the timing differed. In addition there were reforms that affected the outcomes of the asylum procedures. These included the speed with which asylum claims are processed (which limits the opportunities for integration into the host community before a decision is reached), and greater enforcement of deportation policies in the event of an unsuccessful claim. Some countries also moved to limit the granting of humanitarian status to those denied full refugee status under the Convention.

Finally, various reforms were introduced relating to the treatment of asylum seekers during the processing of their claims, in particular dispersal and detention, access to welfare benefits and the right to seek employment. During the 1980s a number of countries permitted asylum seekers to work while their applications were being processed but these rights were largely withdrawn in the 1990s (e.g. France in 1991 and Belgium in 1993). A number of countries also restricted access to welfare benefits, substituting in-kind subsistence for cash benefits, often making them available only at designated reception centres. Such measures were often reinforced by increasingly strict rules on detention.

It is important to stress, however, that while a degree of harmonisation developed during the 1990s, most of the recommendations made at inter-governmental conferences and by the EU Council of Ministers were not binding on member governments—at least not until the end of the decade.⁸ In the absence of a binding EU-wide asylum policy,

⁷ These are bilateral agreements between an EU state and a non-member state that provide for an asylum seeker to be sent back to the non-member state through which he or she had transited. They have been heavily criticized for opening the door to serial *refoulement*.

⁸ The provisions of the Dublin Convention became binding on signatory governments in 1997. It was originally signed by 11 member states in 1990 and later by Denmark (1991), Austria (1997), Sweden (1998) and Finland (1998).

individual governments responded to mounting pressures, often with a succession of policy packages. Where some led, others followed. To a degree, EU-wide consultations can be seen as attempts to harmonise policies that were developed by individual national governments from the 1980s onwards. But true international coordination, in the sense that policy is set at the EU level rather than percolating upwards from below, did not emerge until the end of the decade.

Many observers have seen the process that unfolded during the 1990s as a ‘race to the bottom’. In his influential book Gregor Noll (2000) described in detail the mechanics of what he saw as ‘the common market of deflection’ within the EU. The implication is that governments, acting separately, sought to protect themselves against floods of asylum seekers by tightening access, toughening their procedures and affording less generous treatment to asylum seekers, thus deflecting them elsewhere. Some suggested that the solution to this lay in some form of burden-sharing. One form would be to transfer refugees from the countries facing the largest number of applications to those with fewer applications. That way, the countries facing the biggest burden would have needed less draconian measures, and the race to the bottom would be attenuated.

Germany made a proposal to the European Council in 1994 (at a time when it was receiving over half of all EU asylum applications), but it was rejected by other member states, particularly the UK, which at that time was receiving relatively few applications. The original proposal was to redistribute those receiving temporary protection across the EU using a formula based on population, size of territory and GDP per capita.⁹ Instead, two Council resolutions in 1995 proposed that, in event of a mass influx of asylum seekers, countries should respond by offering temporary protection ‘in a spirit of solidarity’. However, this amounted to little more than wishful thinking and the resolutions were not invoked even in the Kosovo crisis later in the decade (Theilemann, 2003b, p. 260).

⁹ The scheme bore some resemblance to that which has been used since 1974 to distribute asylum seekers among the *Länder* within Germany. For an assessment of this regional dispersal scheme and the one introduced by the UK in 2000, see Boswell (2003).

Policy harmonisation, 1999-2004

From 1999 onwards there was a concerted effort to harmonise asylum policies across the EU. The capacity to set policy at the EU level stemmed from the 1997 Treaty of Amsterdam and the meeting of the European Council of Ministers at Tampere, Finland in 1999. Under the former, immigration and asylum policy was moved from the Third Pillar, which covers inter-governmental agreements on issues such as justice, to the First Pillar, covering the free movement of goods, services and persons, and where binding regulations can be made by the EU itself. This gave the European Commission the exclusive right to propose legislation starting in 2002 in order to produce a set of harmonised asylum policies by May 1st 2004. In the Tampere agreement, EU Ministers reaffirmed that common EU policies would be based on a ‘full and inclusive’ application of the Geneva Convention and in particular that the principle of *non-refoulement* would be honoured. It also envisaged building a Common European Asylum System (CEAS) in two stages, the first being harmonisation of existing national asylum policies, and the second being a more fully integrated EU-wide asylum system, providing a unified status for all those granted asylum, and possibly including some centralization of processing.

Stage 1 of the CEAS involved agreement on four main building blocks. The first was the Reception Conditions Directive, which laid down minimum standards for the reception of asylum seekers while their claims are being processed.¹⁰ These minimum standards relate to access to employment and training, housing and subsistence, and health and education services.¹¹ The second is the so-called Dublin II Regulation, a revised mechanism for determining the member state responsible for processing an asylum application. This is underpinned by a database of fingerprints maintained by EURODAC, and by close police cooperation. The third building block, the Qualification Directive, covers the definition of a refugee and it creates a common set of criteria to be used in the status determination process. It also covers the rights accorded to those who receive humanitarian protection rather than full Convention status. Finally, the Asylum

¹⁰ The UK and Ireland, which are non-Schengen countries, obtained an amendment to the Amsterdam Treaty allowing them to opt out of specific laws enacted under it (or to opt in at any time). Denmark also negotiated a special status, but the 10 accession countries have no special exemptions. The UK has opted into the Reception Directive while Denmark and Ireland have not.

¹¹ This also includes issues such as limitations on freedom of movement, preserving the family as a unit, and provisions for unaccompanied children.

Procedures Directive covers the procedures under which asylum claims are processed. These include definitions of manifestly unfounded claims and safe third countries that determine whether a claim is deemed admissible for the full asylum determination procedure, as well as the rights to interviews, to legal assistance, and to appeal.¹²

After the pronouncements at Tampere, some observers believed that the process of harmonisation would produce a set of policies that would be more generous to refugees, at least for the countries with the toughest pre-existing policies. These hopes seem to have been dashed as those countries have exerted pressure to bring what were initially more generous proposals for harmonised policies more in line with their own.¹³ One example is that, after initial agreement on the Reception Conditions Directive in 2002, the UK government succeeded in introducing the removal of support from asylum seekers who did not apply for asylum in good time without good reason, in line with its Nationality, Immigration and Asylum Act of 2002. Similarly Germany was successful in establishing a provision to restrict the mobility of asylum seekers within the country, even though it is the only country that has this as part of its national policy (Refugee Council, 2004, p. 7).¹⁴ Another example is the progressive watering down of the rights accorded (in the Qualification Directive) to those who qualify only for humanitarian protection rather than for full refugee status, in particular the right to a residence permit.

In a few areas standards have been adopted that are above the ‘lowest common denominator’, but in general the process has been one of coordinating on the least

¹² Two other provisions, the Temporary Protection Directive (Council Directive 2001/55/EC) and the Family Reunion Directive (Council Directive 2003/86/EC) deal with more specific issues.

¹³ Thus the European Council for Refugees and Exiles comments that “ The promise of protection delivered by the EU Heads of State at the Tampere summit in 1999 left many of us full of hope that harmonisation would bring better protection for persons fleeing persecution and better solutions to the problems faced by governments. What we went on to witness was five years of difficult negotiations not driven by the spirit of Tampere, but driven by most European governments’ aim to keep the number of asylum seekers arriving as low as possible and by their concerns to tackle perceived abuses of their asylum systems. Countries showed little sense of solidarity and pursued their narrow national agendas at great cost to refugees and to the building of a fair and efficient European protection system. This took place in a generally deteriorating public climate of growing hostility towards asylum seekers and refugees and widespread irresponsible media reporting compounded by a lack of political leadership at the national level (ECRE, 2004, p. 3). These views seem to be shared not only by NGO’s directly involved in refugee issues but also by a range of more disinterested observers.

¹⁴ The Refugee Council concludes that: “Negotiations on the Common European Asylum System have veered towards the lowest common denominator approach. This is largely because states, such as the UK, want to ensure that national practices can continue and that EU laws will not prevent them from introducing new restrictive policies in the future. The result, most clearly apparent in the procedures directive, is that standards are set so low that in some areas they breach international law” (2004, p. 17).

favourable treatment of asylum seekers.¹⁵ Two reasons can be suggested for this. The first is that the harmonisation process in Stage 1 of the CEAS required unanimity across all of the EU-15 for each of the building block directives. The second is that these four building blocks lay out *minimum* standards; any country wishing to maintain higher standards is entitled to do so. However, the evidence suggests that, when adapting their own legislation, individual countries will take the opportunity to lower their standards (for fear of deflection effects), setting in train a process of ‘levelling down’.

Stage 1 of the CEAS does not include any further provisions for burden-sharing—perhaps in the belief that unequal refugee flows were due to differences in policies rather than to differences in asylum seekers’ underlying preferences for one country over another.¹⁶ However an element of financial burden-sharing was introduced in 2000 with the setting up of the European Refugee Fund, partly as a result of the Kosovo crisis. This central fund was intended to help defray the costs of projects for the economic integration of refugees and to finance emergency temporary protection measures in the event of a mass influx of refugees.¹⁷ It was designed to ‘achieve a balance of efforts’ among member states by recognizing the costs borne by those receiving disproportionate numbers.

The European Refugee Fund was provided with a budget of €16 million over the five years 2000-4, about a third distributed as a lump sum to member states and two thirds according to the number applying or receiving some form of refugee status. While this represents a significant step forward, it does not seem to have led to any easing of asylum policies. According to one observer:

¹⁵ One such exception is that the definition of a refugee explicitly includes those who are in fear of persecution by non-state agents. Previously France and Germany recognized as refugees only those who were at risk of persecution by agents of a state rather than by, say, rebels or bandits. A strict interpretation of that definition would, in principle, rule out many asylum seekers from countries like Somalia where there is effectively no national government, or from countries like Angola and Sri Lanka, where many of the refugees are fleeing from rebel groups in areas outside the control of the government.

¹⁶ In the Dublin II directive it is recognized that countries that are on the EU’s outer border are likely to face a heavier burden due to the ‘safe third country’ provisions that make the state of first entry responsible for the application. It offers special assistance to those countries to strengthen their border controls.

¹⁷ In addition the Temporary Protection Directive (2001/55/EC) introduced measures to promote a balance of efforts between member states in affording temporary protection in the event of a refugee crisis. This is likely to be a particular problem for the new member states. As one observer puts it: “Under Dublin II, geography will trump equity and relative reception and integration capacities as a guiding principle of the new system” (Byrne, 2003, p. 351).

Given the total costs of reception in the Member States and the share guaranteed to each Member State, the redistributive effects of the ERF are but a drop in the ocean. It must be praised as a dam-breaker construction with regard to the many dilemmas of fiscal burden-sharing, but its practical role in creating predictability and reducing resort to restrictive migration and asylum policies is rather negligible. (Noll, 2003, p. 245).

Integrating asylum policy: 2004-2010

Stage 1 of the European Asylum System is now legally complete even though in practice national policies are not fully harmonised.¹⁸ The past few years have seen extensive discussions that form the background to the development of Stage 2. These consultations have often stressed the importance of fostering higher levels of cooperation and burden-sharing. In 2003, the European Council received two proposals, one from the UK Government and one from the United Nations High Commissioner for Refugees (UNHCR), each mapping out a future scenario for an integrated policy. The UK government's scheme concentrated on the extra-territorial processing of asylum claims. Asylum seekers arriving in the EU would be transferred to a Regional Protection Area outside the EU (in a transit country or in the region of origin) where their refugee status would be determined (UK Government 2003). Those found to be in genuine need would either be transferred back to developed countries according to pre-agreed quotas, would be resettled elsewhere, or would remain until they could be safely repatriated. Aside from the practicalities of such a scheme, the proposal was widely seen as burden shifting rather than burden-sharing and it was subsequently dropped.¹⁹

The UNHCR's proposal, which received a more favourable reception, was presented as the 'EU prong' of its wider so-called 'Convention-plus' initiative (UNHCR 2003). Under this scheme, one or more closed Asylum Processing Centres would be set up within the borders of the EU, to act as community-wide clearing houses to which asylum applicants would be transferred from member states. At these centres, asylum

¹⁸ However, the provisions have not yet been passed into national legislation.

¹⁹ The UK's proposal was critically evaluated by the European Commission (2003) as well as in commentaries by NGO's such as the Refugee Council, Amnesty International, the United States Committee on Refugees and the European Council for Refugees and Exiles. Interestingly, this idea has recently been revived by Germany and Italy. At a meeting of ministers in October 2004 Germany proposed setting up detention centres in Africa where asylum seekers could be detained and their applications processed. In the wake of the arrival of a thousand boat people in the island of Lampedusa earlier that month, Italy has proposed setting up an asylum processing centre in Libya.

seekers would be held and their claims determined on behalf of member governments by a new European Asylum Agency. Those whose claims are successful would be transferred for settlement in member states according to 'agreed criteria' for burden-sharing. Those whose claims are rejected would be returned to their countries of origin through collective action by member states, and the costs of administration would be borne by the pooling of resources in a re-launched version of the European Refugee Fund. While such a system would at first deal with only some claims (such as those deemed to be manifestly unfounded) it would progressively take on wider responsibilities for registering and screening applications and it would become increasingly independent of member governments.

There are a number of reservations about this proposal.²⁰ One is the legality of transferring claims to be processed in another country, especially if such functions are delegated to an agency that is not itself a responsible government. Although a legal instrument on resettlement within the EU has been suggested, little attention has been given to exactly how successful applicants would be reallocated among member states. Another question is whether asylum applicants should be kept in mandatory detention at the Asylum Processing Centres, what freedoms they should have and who should monitor them. There are also practical questions about whether such centres would become magnets for people smugglers and traffickers and about how to deal with unsuccessful applicants who, for one reason or another, cannot be returned to their country of origin. Related to these issues is the question of how individual countries might be persuaded to allow EU Asylum Processing Centres to be established on their territory.²¹

It has been agreed that the process of building a new system, the so-called Hague Programme, will be completed by 2010. But, as yet, it is unclear how comprehensive and integrated a system will emerge. One element is an enhanced version of the European Refugee Fund (ERF II), the funds of which are to be used for reception, integration and voluntary return programmes. Of the €604m to be disbursed between 2005 and 2010, 84

²⁰ A number of criticisms of the (revised) UNHCR proposal were discussed by the European Union Committee of the UK House of Lords (2004).

²¹ It is widely understood, but not usually explicit, that one or more of the new members of the EU might be willing to act as hosts to such centres, which might be located conveniently close to entry points.

percent will be allocated to members states according to the number of asylum seekers.²² In addition, the European Council has proposed ever closer cooperation between member states leading to the establishment of a European asylum office, and that “this body should play a role in the field of financial solidarity and the division of responsibilities between Member States.” And it offers as a further possibility the establishment of “a common system for processing applications from specific categories of asylum seekers, such as asylum seekers from certain countries of origin or those who have been intercepted at sea, and to spread among the Member States refugees and persons qualifying for subsidiary protection who have gained admission in that procedure” (Council document 12710/04). At present, however, the principal focus is on deeper harmonisation of national policies by establishing a common ‘one stop’ procedure, rather than on the development of a separate EU-wide agency (Commission document COM(2004) 503; Parliament document 2004/2121(INI)).

Some Empirical Findings

Before setting out a framework to characterize policy under the three different regimes outlined above, it is useful to establish a few empirical facts relating to the effectiveness of asylum policy, the policy reaction function, and the underlying attitudes towards asylum seekers.

The determinants of asylum applications

The determinants of asylum flows have been analysed in several recent econometric studies. In one of these, I examined the annual number of asylum applications from three source regions (Africa, Asia and Eastern Europe) across 14 EU countries over the years 1981 to 1999 (Hatton, 2004). The results indicate that variables representing economic conditions, violence and oppression in source regions and asylum policy in EU destinations, all have significant effects on applications. The coefficients were used to decompose the overall change in EU applications between 1981 and 1999. While population growth in source regions added about 50,000 to total applications, this

²² These funds are project-based and are conditional on matching funding from member governments or NGOs. The amount going to individual countries is based on the number of asylum seekers registered over the last three years (70%) and the number of refugees granted protection over the last three years (30%).

was more than offset by the effects of economic variables, which reduced the number by about 90,000. Thus, economic and demographic effects had substantial effects on asylum flows, but they cannot explain the long-term upward trend. Measures of conflict and political rights in source regions also matter, as expected, but these trends also had a negative effect overall, reducing the numbers by 127,000 per annum. However, a ‘dummy variable’ for Eastern Europe from November 1989, which captures easier access from the East after the fall of the Berlin Wall, raised annual applications by 71,000 per annum.

Asylum policy is represented by the destination-specific policy indices that underlie Figure 2 above. This has a strong negative effect on asylum applications—the tougher is a country’s asylum policy, the smaller the number of asylum applications. Thus contrary to common belief, asylum policies have been an effective deterrent, but that finding leaves an even bigger puzzle. When the effect of the policy tightening of the last two decades is added to the effects of other variables, together they predict a dramatic *fall* in the number of asylum applications—in stark contrast to the observed secular increase. This seems to be the result of other, cumulative forces: the friends and relatives effect of past asylum seeker flows on current flows, and particularly the deepening channels provided by people smugglers.²³ However, if the effect of toughening policy in one country is purely to deflect asylum seekers to another EU country, then such policies would simply change the distribution of applications within the EU but not the total number. Such dramatic deflection effects seem unlikely; tests of the effects of policy in one country on asylum applications in another suggest that they may be present, but they are difficult to measure with any precision.²⁴

Two recent studies have examined the distribution of asylum applications across receiving countries in order to see whether the convergence in policy has led to a convergence in applications per capita. If so, then policy harmonisation would promote burden-sharing in the limited sense of a more equal distribution of applications across

²³ In the regression, this is captured by a variable representing the cumulative flow of applications (Hatton, 2004, p. 33). This (or alternatively a time trend) largely accounts for the difference between the observed change in total applications and that predicted from the other variables in the model.

²⁴ When the average policy index for *other* EU countries was included in the regression it took the expected positive sign, but it was not significant (Hatton, 2004, p. 33). Some support for deflection effects comes from a study of asylum applications to Germany, which finds that the French legislation of 1992 deflected asylum seekers to Germany (Rotte, et al., 1997).

countries. Thielemann (2003a) analysed asylum applications to 20 OECD countries from 1985 to 1999. He found that the key destination country variables were the unemployment rate, the existing stock of foreign nationals, and overseas development aid (a proxy for the country's reputation for generosity). An index of asylum policy had a negative effect on applications but was not found to be very important in explaining the trend in applications. Similarly, Neumayer (2004) found that asylum policy, as measured by the recognition rate took a significant coefficient in a regression analysis of a panel of asylum flows from 125 origins to 17 destination countries. But this was dominated by other variables such as lagged asylum flows, income per capita, and politics in the destination as well as common language and colonial ties with the origin. These findings are largely consistent with the responses from surveys of asylum seekers about why they chose one destination rather than another.²⁵ On the whole, the evidence suggests that, while asylum policies do influence the number of applications, such effects are often dominated by other powerful forces. As a result there can be no presumption that convergence across countries in asylum policy necessarily leads to a more even distribution of asylum applications.

The policy reaction function

Most observers see the dramatic tightening of asylum policy as a backlash induced by the surge of applications in the early 1990s. It is less clear how far this was simply a reaction to own-country applications and how far it was driven by the desire to pre-empt deflection effects from other countries. Analysing the country-specific policy index underlying Figure 2, I found that it was partly a reaction to the rise in a country's own application levels. But it was also a function of the number of asylum applications elsewhere in the EU, which suggests that policy was pre-emptive to some degree. In addition there is some evidence that policy in one country responded (with a lag) to policy elsewhere in the EU (Hatton, 2004, p. 31). Thus there was also some direct transfer effect from policy in one country to policy in another.

²⁵ See for example Böcker and Havinga (1997), Khoser and Pinkerton (2001) and Robinson and Segrott (2002).

Other studies have examined the recognition rates of asylum applications as a measure of policy stance. Neumayer (2004c) examined recognition rates by country of origin and destination between 1980 and 1999. The econometric results indicate that recognition rates are higher for applicants from countries experiencing wars, genocide and other human rights violations and from those where there are autocratic political regimes. The granting of full recognition is also negatively related to the volume of previous applications from the same origin, but only weakly to the total applications received by a destination country from all sources. While this may seem to suggest that policy was not very responsive to the volume of applications it should be noted that the overall policy stance has conflicting effects on the recognition rate. On the one hand toughening the status determination procedures reduces the number of asylum applicants who gain recognition. On the other hand tougher policies generally (not only status determination) may reduce the number of applicants, particularly among those with weaker claims.

Public opinion

It is widely believed that the toughening of asylum policies was a response by populist governments to increasingly hostile public opinion towards asylum seekers. Surveys of public opinion typically find that most voters do not want to see immigration increased. As Table 2 illustrates, the majority view is that immigration should be reduced except in countries where immigration is relatively low. Econometric analysis of these surveys suggests that those who are most vulnerable to labour market competition from immigrants, or who are most likely to bear the fiscal costs, are more inclined to be against immigration (O'Rourke and Sinnott, 2003). But there is also an element of racism towards non-white immigrants, particularly among the least educated (Dustmann and Preston, 2000). It also appears that, across different localities within a country, attitudes towards immigrants are more negative the larger the share of immigrants in the population (Dustmann and Preston, (2001). This suggests that there is diminishing tolerance of immigrants as the numbers increase.

Reports in the press seem to suggest that attitudes towards asylum seekers are even more hostile than they are towards other immigrants. In part, this may reflect the

ethnic origins of asylum seekers, most of whom come from Asia and Africa. But above all it reflects attitudes towards ‘bogus’ asylum seekers and illegal immigrants. As Table 2 shows, the majority opinion in most countries is that those with genuine reasons to fear persecution should be offered protection. In a Dutch survey, 70 percent of respondents agreed that “a country like the Netherlands has a strong moral obligation to admit refugees” (Brons et al., 2001). And respondents to a UK survey portrayed the press coverage of asylum seekers as much more negative than their own attitudes (MORI, 2002). This implies that the humanitarian motives underlying the Geneva Convention are more widely supported than negative press coverage would suggest.

A Model of Asylum Policy

In order to motivate the model set out below, it is important to establish the basis for admitting refugees in the interests of the residents of the receiving country, since it is they who ultimately determine policy. And it is useful to distinguish between refugees and other immigrants. In general, immigration policy can be thought of as being determined in the interests of the existing residents (who are the voters). Immigration policies in most European countries are based on admitting immigrants through family reunification schemes or through skilled worker programmes. In the former case immigration provides direct benefits to those whose relatives are admitted. In the latter case the immigrants admitted are those from whom the economic benefits to society at large are the greatest and where the losses to specific groups are small.

By contrast, asylum seekers who gain refugee status are admitted on the grounds of the benefit to *them* of escaping persecution rather than on grounds of social or economic benefits to the host population. Since public opinion is generally favourable towards genuine refugees, it is reasonable to think that host societies gain benefits from satisfying these humanitarian motives. Such benefit flowing to one individual does not preclude the same benefit accruing to others and hence providing a safe haven to refugees may be thought of as analogous to a public good. This in turn implies that individuals in one receiving country might be expected to gain some benefit from the knowledge that refugees also find safety in countries other than their own.

The basic framework

These elements can be captured in a two-country model following in the spirit of Hatton (2004) and Hatton and Williamson (2004). The net benefit from refugees accruing to the citizens in each of the refugee-receiving countries can be represented as:

$$W_1 = V_1(r_1, r_2) - c_1 r_1; \quad W_2 = V_2(r_2, r_1) - c_2 r_2 \quad (1)$$

where country 1's net valuation W_1 depends on the number that are accepted as refugees in country 1, r_1 , and the number that are received in country 2, r_2 , minus country 1's cost of refugees, $c_1 r_1$. It is assumed that V_1 and V_2 are concave functions of r_1 and r_2 , reflecting diminishing marginal utility for (or diminishing tolerance of) refugees and that each country has a constant cost per refugee.

The number of refugees accepted in each country depends on overall 'demand' for refugee places, on the generosity of asylum policy, and on deflection effects from policy in the other country:

$$r_1 = A[s\gamma_1 + \beta(s\gamma_1 - (1-s)\gamma_2)]; \quad r_2 = A[(1-s)\gamma_2 + \beta((1-s)\gamma_2 - s\gamma_1)] \quad (2)$$

Where A is total 'demand' for asylum, $0 < s < 1$ represents the share of asylum seekers with a preference for country 1 and $(1 - s)$ is the share preferring country 2. γ_1 is an index of the 'generosity' of country 1's asylum policy; the greater is γ_1 more asylum seekers country 1 admits for a given level of demand. The parameter $0 < \beta < 1$ captures the deflection of asylum seekers from one country to another resulting from policy differences weighted by country shares. Thus, for a given level of overall demand for asylum, country 1 accepts more asylum seekers as refugees the more generous is country 1's policy (the greater is γ_1) and the less generous is that of country 2 (the smaller is γ_2). In this setup the number of refugees accepted by both countries combined, R , does not

depend on the deflection effects, but only on total demand and the weighted average of policy.²⁶

$$R = r_1 + r_2 = A[s\gamma_1 + (1-s)\gamma_2] \quad (3)$$

Social optima

The set of efficient solutions (i.e. ones in which one country cannot be made better off without making the other worse off) are the policy choices γ_1 and γ_2 that maximise $V_1(r_1, r_2) - cr_1$ subject to $V_2(r_2, r_1) - cr_2 \geq K$. Choosing different values of K traces out the ‘welfare possibility frontier’ for these two countries. Equivalently, these efficient choices maximise $V_1(r_1, r_2) - cr_1 + \mu[V_2(r_2, r_1) - cr_2]$, where μ is the weight given to country 2’s preferences relative to those of country 1. If they are given equal weight, then $\mu = 1$. The weights may reflect political bargaining between the two countries.

From the first order conditions, an efficient outcome for country 1 must satisfy the following:

$$\partial V_1 / \partial r_1 = c_1 - \mu(\partial V_2 / \partial r_1) \quad (4)$$

$\partial V_1 / \partial r_1$ is the marginal benefit to country 1 of an additional refugee there, and $\partial V_2 / \partial r_1$ is the marginal benefit to country 2 of an additional refugee in country 1. Thus efficiency requires that $\partial V_1 / \partial r_1 < c_1$ for $\partial V_2 / \partial r_1 > 0$ and $\mu > 0$. Country 1 should set its policy parameter γ_1 so that its own marginal benefit of a refugee is less than the refugee’s marginal cost, because of the externality or public good spillover effect ($\partial V_2 / \partial r_1$) of its policy choice on the welfare of country 2. Equation (4) and its counterpart for country 2 determine the optimal number of refugees in each country that results from setting the policy parameters γ_1 and γ_2 to maximise social welfare. If asylum seekers have a preference for country 1 ($s > 0.5$) and the countries are otherwise identical, then country 1

²⁶ Note: for the number of refugees in each country to be positive the value of β must be such that:

$$\frac{1+\beta}{\beta} > \frac{s}{1-s} > \frac{\beta}{1+\beta}.$$

must set a tougher policy than country 2: ($\gamma_1 < \gamma_2$). Similarly if country 1 has higher costs per refugee, then if the countries are otherwise identical it will set a tougher policy.

Non-cooperative policy setting

In the 1990s there was little systematic cooperation between the countries of the EU over asylum policies. The Dublin Convention and the London resolutions provided guidelines that did not become binding until the late 1990s, while other dimensions of policy remained entirely under the control of individual governments. As the number of asylum seekers increased, countries progressively toughened their policies in what some observers saw as a race to the bottom. Hence, policy setting in this phase can be characterized as a non-cooperative (Nash) equilibrium.²⁷

Country 1 chooses γ_1 to maximise $V_1(r_1, r_2) - c_1 r_1$, taking γ_2 as given. This implies that:

$$\partial V_1 / \partial r_1 = c_1 + (\partial V_1 / \partial r_2) \beta / (1 + \beta) \quad (5)$$

Thus, $\partial V_1 / \partial r_1 > c_1$ for $\partial V_1 / \partial r_2 > 0$ and $\beta > 0$. Compared with the efficient solution in equation (4), γ_1 and r_1 (γ_2 and r_2) are too low. Policy is too tough when there are public good spillovers and deflection effects. From the comparative static analysis of equation (5) it can be shown that γ_1 increases with γ_2 ; similarly for country 2, γ_2 increases with γ_1 . These two reaction functions are illustrated in Figure 3. The comparative static analysis also indicates that country 1's reaction function shifts downwards, implying tougher policy, the higher are A , c_1 , s , and β . Similarly country 2's reaction function shifts inwards the higher are A , c_2 and β , and the lower is s .

The Nash equilibrium is given by the intersection of these two reaction functions. It is consistent with the idea that the toughening of policy that occurred in the early 1990s was driven partly by the rise in total asylum demand, A . It also predicts that countries such as Germany that were the most favoured destinations in that surge of asylum seekers would have tougher policies than other countries due to higher s . The model also

²⁷ What follows has much in common with the fiscal federalism literature following Oates (1972).

provides some support for the argument that the presence of deflection effects ($\beta > 0$) made policy tougher than it would have been in their absence. And as equation (5) shows, in the presence of a deflection effect, policy is tougher the greater is the public good spillover ($\partial V_1 / \partial r_2 > 0$).

Observers have frequently argued that greater cooperation would deliver better outcomes, but often without an explicit framework to explain why.²⁸ During the 1990s it was often suggested that better outcomes could have been achieved through some form of financial burden-sharing. In this model, the social optimum can be achieved by reducing the marginal cost of refugees. In order to mimic the social optimum country 1's marginal cost must be reduced to a level, \hat{c}_1 , that produces the same policy settings as in the social optimum. From equations (4) and (5) this is:

$$\hat{c}_1 = c_1 - (\partial V_1 / \partial r_2) \beta / (1 + \beta) - \mu (\partial V_2 / \partial r_1) < c_1 \quad (6)$$

Feasible reductions to marginal cost could be achieved through a common pool. The countries contribute to the refugee fund a lump sum amount such that the total is $(\hat{c}_1 - c_1)r_1^* + (\hat{c}_2 - c_2)r_2^*$, where r_1^* and r_2^* are the socially optimal numbers of refugees. Each receives back a subsidy per refugee that raises the number of refugees to the socially optimal level.

Burden-sharing along these lines could have been used to achieve better outcomes during the 1990s, as many observers argued. But as we have seen, this did not occur during the era when policy was set separately by each country. Perhaps it is too much to expect an agreement to have emerged on a financial burden-sharing scheme whose main purpose would be to compensate for the failure to reach cooperative outcomes on policy setting in the first place. However, financial burden-sharing has two features that might have made it easier to agree upon. First, it involves negotiating a *common* formula for both countries, whereas setting optimal policies involves agreeing on a *different* policy for each country (at least in the context of this model). Second, on a practical level,

²⁸ Exceptions include Betts (2003) and Theileman (2003b) who invoke the public goods approach to refugees as a framework in empirical tests of implicit burden-sharing.

asylum policy is multi-dimensional whereas financial burden-sharing is one-dimensional and might therefore be easier to negotiate. In this respect it is notable that the European Refugee Fund was set up early in the period of harmonisation.

Cooperative harmonisation

The Treaty of Amsterdam and the Tampere ministerial meeting set in train a gradual process towards closer agreement on asylum policy from 1997 to 2004. As we have seen, this first stage of the Common European Asylum System involved agreeing on common standards in several dimensions of asylum policy. While this falls short of complete harmonisation, it is nevertheless useful to consider the implications of setting an asylum policy that is identical for all countries.

Suppose that the harmonisation process involves maximizing the sum of welfare, $V_1(r_1, r_2) - cr_1 + \mu[V_2(r_2, r_1) - cr_2]$, for a common ‘cooperatively harmonised’ policy parameter $\gamma^{HC} = \gamma_1 = \gamma_2$. This implies policy should be set such that:

$$\partial V_1 / \partial r_1 = c_1 - \mu(\partial V_2 / \partial r_1) + [\mu(c_2 - \partial V_2 / \partial r_2) - (\partial V_1 / \partial r_2)](1 - z) / z \quad (6)$$

where $z = s(1 + \beta) - (1 - s)\beta$. Note that when $s = 0.5$, $z = 0.5$, and by assumption that $0 < z < 1$.²⁹ Equation (6) can be compared with the social optimum policy in equation (4) for country 1 when policies are allowed to differ. The comparison indicates that cooperative harmonisation will not in general be efficient. The presence of the preference weight μ makes it difficult to compare the cooperative harmonisation policy with the efficient solution for each country.

If we give the countries equal weight by setting $\mu = 1$, then we have:

$$\partial V_1 / \partial r_1 - c_1 + \partial V_2 / \partial r_1 = [\partial V_2 / \partial r_2 - c_2 + \partial V_1 / \partial r_2](z - 1) / z \quad (7)$$

Since the term in the square bracket has a sign opposite to that of the left hand side this means either that both countries are at the efficient level or that, relative to the efficient

²⁹ This is equivalent to the restrictions placed on the parameters in footnote 26.

level, policy is too tough in one country and not tough enough in the other. If the left hand side of equation (7) is positive then the *total* marginal benefit of an additional refugee to country 1 is greater than the marginal cost; that is, policy is too tough in country 1. This is the situation that would prevail if $s < 0.5$ and the countries are otherwise identical. If policy is constrained to be the same for both countries then there is no scope for financial burden-sharing to bring the outcome closer to the social optimum.

If cooperative harmonisation were taking place then we should observe an easing of policy for the country with the toughest policy under the pre-existing Nash equilibrium. But that does not seem to have happened during Stage 1 of the CEAS. Instead, the process has been one of ‘levelling down’ to the toughest set of policies. One reason is that the agreements reached up to 2004 have been about *minimum* standards. On the whole, these standards have been set to suit the countries that face the heaviest burden of applications. Countries that have fewer applications have been free to adopt somewhat more generous policies (and thus have no reason to object to standards that are not binding on them). Hence there has been little move away from the Nash equilibrium that characterised the earlier policy phase. But Stage 2 involves setting up common procedures that will place tighter constraints on how far individual countries can deviate from the agreed policy. In that case we might expect policy to be set somewhere above the minimum standards that have been established so far.

An integrated asylum system?

It is not clear as yet what form of asylum system will emerge by 2010 from the Hague Programme that is now underway. But it may be useful to consider an extreme example where asylum seekers are collected in EU asylum processing centres where their applications are processed by a central authority. In this case there would be no deflection effects since all asylum seekers would apply to the EU in the first instance, rather than to a specific country. Setting β to zero in equation (5) gives:

$$\partial V_1 / \partial r_1 = c_1 \tag{8}$$

Removing deflection effects alone would bring policy closer to the social optimum in (4) but it is still too tough because of the public good spillover.

Suppose, in addition, that policy is set by a central authority that also has the power to allocate successful applicants among the member states of the EU.³⁰ Policy could then be set at the level that produces an EU-wide number of refugees that is equal to the sum of the socially optimal numbers for each country that would be implied by (4). Some proportion of refugees would then be diverted from their preferred country so that each country gets its optimal number. Thus an integrated system could do better than harmonisation alone, partly by removing deflection effects and partly by introducing another form of burden-sharing—shifting some refugees away from their preferred country.

It is possible that a spirit of much greater cooperation will emerge as the Hague Programme unfolds. One reason for thinking this is that EU countries have recently agreed that this process be governed by qualified majority voting rather than by a unanimity rule as was the case with the Stage 1 harmonisation process. Nevertheless, it seems doubtful that this alone would push policy to the social optimum, particularly because it will now involve 25 member states rather than the 15 that were involved in Stage 1. If the central element is a common policy rather than a minimum standard, then there could be scope for both types of burden-sharing. The direct allocation of refugees would compensate for the maldistribution across countries that would otherwise be imposed by the constraint of a binding common policy if refugees were given a free choice of host country. An enhanced financial burden-sharing scheme could serve to compensate for the failure to agree on the socially optimal number of refugees in total.

Conclusion

The long-term rise in the numbers seeking asylum in Europe has brought asylum policy to the top of the agenda. After more than a decade of progressive tightening in asylum policies, the EU now has an opportunity to invent a new policy regime that better serves asylum seekers and its own citizens. But the judgment that past policies have been

³⁰ Of course this may reduce the welfare of refugees who do not get their first choice of destination country. But it is assumed that the benefit flowing to EU citizens is from knowing that refugees are safe, rather than knowing that they get to their preferred destination.

sub-optimal depends critically on the notion that refugees are considered as public goods with spillovers among EU countries. Only in the presence of these spillovers can the deflection effects of policy be seen as welfare reducing. In the regime of the 1990s when countries set policy separately, there would have been scope for a financial burden-sharing scheme to improve the outcomes but the incentives for cooperation seem to have been limited and the coordinating mechanisms largely absent.

Following the agenda set out at Tampere, the process of harmonisation seemed, initially, to offer an opportunity for greater cooperation. While harmonised policies are clearly not optimal, the process of harmonisation itself might have engendered greater cooperation. But rather than lifting the EU-wide policy stance towards the optimum, or even finding the middle ground, the process seems to have been one of levelling down. And the opportunity to improve overall welfare by financial burden-sharing through an enhanced European Refugee Fund was missed during Stage 1. Now a new opportunity is opening for a more integrated approach. In the light of past experience, it seems unlikely that the new regime will involve the creation of a completely independent institution—the migration and asylum equivalent of the European Central Bank. As a result, policy will probably remain too tough. If this is the case, then there is an argument for pursuing both forms of burden-sharing: redirecting refugees to get the distribution right, and financial burden-sharing to raise the overall intake to the optimum level.

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Table 1
Asylum Applications to the EU-15 by Destination Country and Region of Origin (Thousands)

Year	1975-9	1980-4	1985-9	1990-4	1995-9	2000-3
Total EU Applications	233.7	540.2	1102.3	2419.8	1613.5	1489.0
<i>Country of Application</i>						
Austria	14.7	63.2	64.4	76.1	53.5	120.1
Belgium	6.6	14.5	32.1	87.0	93.4	103.0
Denmark	1.3	5.6	42.1	76.4	36.0	35.4
Finland	-	0.1	0.3	11.4	6.9	11.5
France	40.5	106.3	178.7	184.5	112.2	211.8
Germany	121.8	249.6	455.3	1374.7	749.6	288.5
Greece	9.2	6.4	24.0	12.8	11.8	22.4
Ireland	-	-	-	0.5	21.2	41.0
Italy	9.2	16.5	26.3	40.8	48.8	54.6
Luxembourg	-	-	-	0.1	5.7	3.9
Netherlands	5.3	8.8	46.4	151.1	170.4	108.5
Portugal	1.7	4.3	1.3	3.9	1.7	0.8
Spain	-	5.4	15.7	53.1	30.4	29.6
Sweden	-	41.9	97.1	197.0	48.5	104.2
UK	3.4	17.5	28.5	150.8	223.3	353.6
<i>Region of Origin</i>						
Africa	-	57.8	169.0	452.2	292.4	360.7
Asia	-	278.3	464.1	677.3	672.0	653.3
Europe	-	141.1	291.3	1164.1	483.2	314.5
Latin America & Caribbean.	-	12.1	28.9	31.7	19.2	31.3
Other/Unknown	-	50.9	58.9	57.7	60.6	129.5

Source: UNHCR (2001a), Tables I.2, II.2, III.2, IV.2, VI.4, and VI.5, UNHCR (2004), Tables C.1 and C.4.

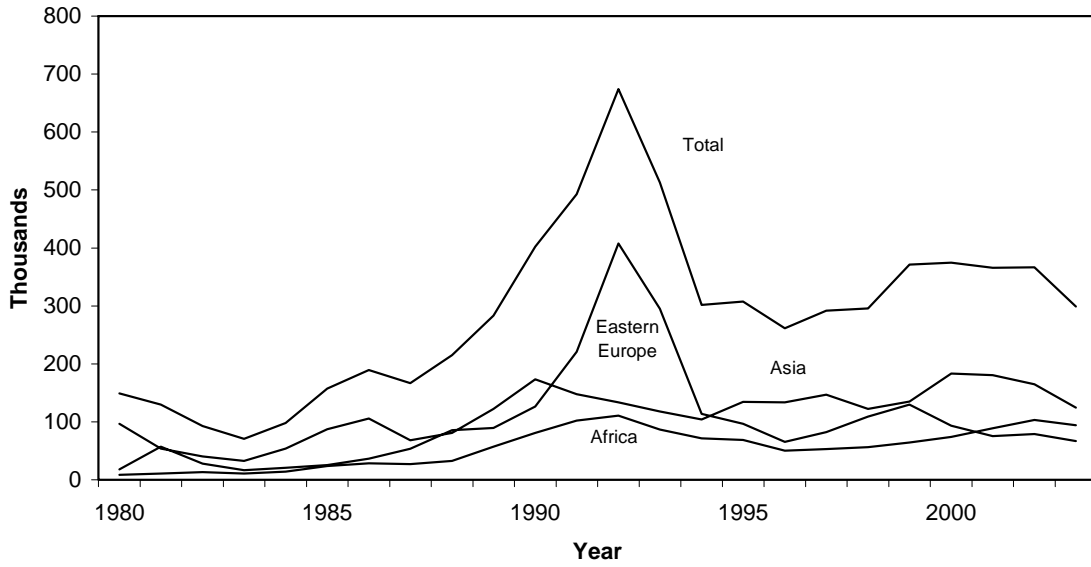
Table 2
Public Opinion on Immigration and Asylum, 1995
(percent of respondents)

	Austria	Germany	Italy	Ireland	Nether-lands	Spain	Sweden	UK
Reduce immigration	55.7	77.3	75.6	21.5	61.1	40.0	68.6	67.9
Refugees allowed to stay	75.2	81.2	47.7	72.6	64.7	60.0	66.5	42.9
Stronger measures to exclude illegal immigrants	81.6	87.2	95.0	--	81.4	67.1	--	80.0

Source: ISSP National Identity Survey at: http://www.gesis.org/en/data_service/issp/data/index.htm.

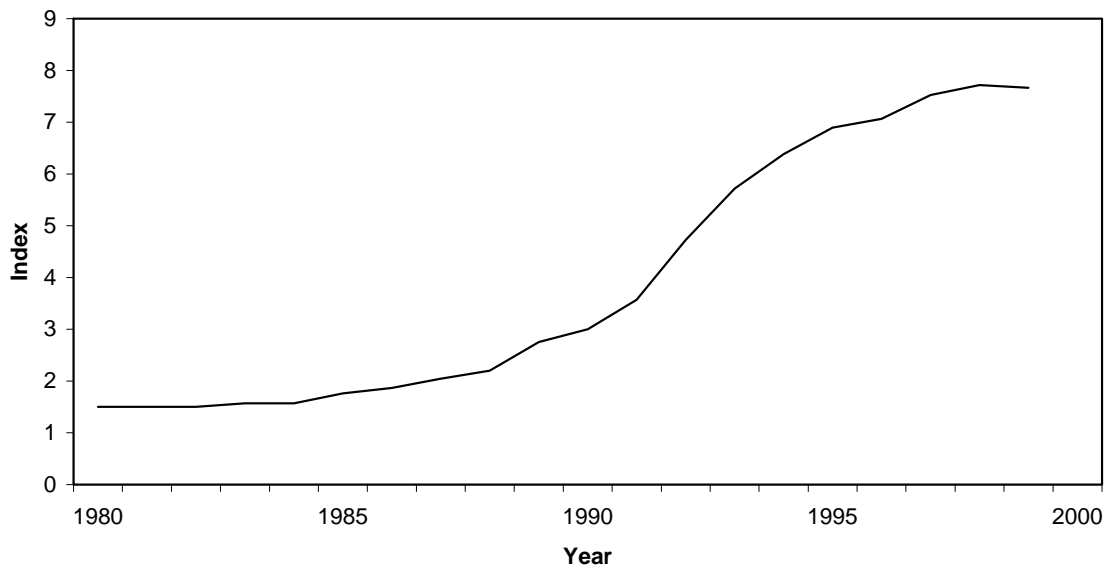
Notes: Percentage of respondents who agree or strongly agree with the following statements that: 'the number of immigrants should be reduced'; 'refugees who have suffered political oppression in their own country should be allowed to stay'; 'the country should take stronger measures to reduce illegal immigration'. The total number of responses on which these percentages were calculated includes those who 'neither agree nor disagree' with the statement but excludes respondents who 'can't choose', 'don't know' or refused to answer.

Figure 1
Asylum Applications to the EU by Source Region, 1980-2003



Source: UNHCR (2001a), Tables I.19, II.21 and III.28; UNHCR (2004), Table C.4.

Figure 2
EU Asylum Policy Index, 1980-1999



Source: Hatton (2004).

Figure 3
Nash Equilibrium in Asylum Policies

