Home Office Research Study 259

An assessment of the impact of asylum policies in Europe 1990-2000

Professor Roger Zetter, Dr David Griffiths, Ms Silva Ferretti and Mr Martyn Pearl

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Foreword

Commissioned by the Immigration Research and Statistics Service (IRSS) of the Immigration and Community Group in RDS, this study reviews the available evidence on the legislation, policies and practices that may have had an impact on the number and patterns of asylum applications to the EU between 1990 and 2000. It brings together an extensive body of literature and data on refugees and asylum seekers in Europe. The study should be of interest both to those involved with research in this area and with asylum policy.

The study is part of a programme of internal and external research and evaluation commissioned by RDS, which seeks to support policy development and implementation on asylum, immigration and integration issues in the UK and elsewhere.

Peter Ward
Assistant Director Immigration and Community Group
Research Development and Statistics Directorate

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Executive summary

Background

Based on a survey of research and electronic literature, fieldwork in selected European countries and statistical data, this study commissioned by the Home Office reviews the impact of asylum policies on the numbers and pattern of applications to European Union states for the period 1990-2000. More detailed analysis is provided for five country case studies – Germany, the Netherlands, the United Kingdom, Sweden and Italy – which represent a range of experiences, geographical locations, flows of asylum seekers and policy responses.

At the outset it is important to emphasise that as an assessment, this report provides a review of the available evidence and findings on the impact of such policies. It does not seek to provide a detailed or definitive analysis of the impact of asylum policies across the EU Member States. Moreover, because the study mainly used desk-based methods and secondary sources of evidence, there are significant methodological and data qualifications to the study.

Aims of the research

The specific objectives of the research are:

- to review the available evidence on the legislation, policies and practices that have had a significant impact on the number and patterns of asylum applications to EU Member States, and to identify shortcomings in the available information which require further investigation or research;

- to use readily available information to conduct a comparative analysis of the impact and effects of policies and legislation on asylum applications in five EU countries; Germany, Netherlands, UK, Sweden and Italy;

- to identify the requirements for additional work or research which will provide a better understanding of the relationship between asylum policies and asylum applications in order to help inform future policy development and implementation.

the study report is presented in two volumes.

Volume one presents a framework for examining the impact of legislative and policy shifts using a standard set of policy and practice indicators. The framework distinguishes between direct measures, including pre-entry regulation and deterrence, status determination and judicial procedures, and indirect measures including reception practices, welfare entitlements and support services, administrative responsibilities and funding. In assessing the impacts of changes in each of these areas a standard set of impact indicators has been applied to the research literature and other data. These include overall application rates, patterns of applications, in-country distribution, claimants of welfare services, funding, integration and livelihood.

Volume two presents immigration policy for 15 European members states and is available on-line only at www.homeoffice.gov.uk/rds/onlinepubs1.html

Asylum seeking in the EU

The substantial rise in asylum applications towards the end of the 1980s and the continuing high numbers in the last decade have driven policy change in EU states. The report shows there is some evidence of stability in asylum applications towards the end of the decade, suggesting that policies may have contained the overall flow of asylum seekers albeit at historically high levels. Following the exceptional peak of intake due to the crises in the Former Republic of Yugoslavia (FRY) and eastern Europe in the early 1990s, intake to the EU rose more gradually from 234,000 in 1996 to 387,000 in 1999, levelling off to 390,000 in 2000. Taking the EU as a whole, and given the exceptional peaking of claims resulting from the crisis in the FRY in 1991/2, the year-on-year figures for the decade consistently fluctuated between about 200,000-400,000 applications per annum. To this extent at least, whilst asylum claims remained at historically high levels, policy and legislative frameworks of EU Member States might have succeeded in maintaining applications within this range. In addition, by the end of the decade applications had levelled off, indicating that despite the lack of a full harmonisation of measures, the convergence of policy interventions may have kept asylum applications in check.

The report notes however that it has not proved possible to assess how application rates would have varied with a different range of policy instruments, nor indeed the consequences of much more limited intervention by EU states. A combination of other factors underpinned this general equilibrium in asylum applications in Europe between the start and end of the last decade. The relative absence of on-going complex emergencies on the borders of the

EU may have been significant in this respect. At the same time, other contextual factors account for the variation in the scale and processes of asylum seeking such that policy impacts have inevitably tended to be partial and fragmented.

Assessing policy impacts

The report emphasises throughout the need for caution in asserting direct links between policy and impacts, and in assuming homogeneity of impacts across EU states. The available research literature and statistics are inconclusive on these relationships.

From the available evidence, the research found that it was difficult to establish causal links between specific policies and the flow of asylum seekers for several reasons. These include the following:

- The tendency for a range of policy instruments to have been introduced simultaneously, which renders it difficult to disaggregate the impact of specific changes in asylum policy and practice;

- There were time lags in impacts, and because asylum policy in EU Member States has been essentially reactive, trends in asylum seeking may not necessarily have synchronised with the introduction of policy measures;

- In most cases, it was not possible to deduce whether the adopted measures reinforced or stemmed prevailing trends.

It addition there are often very real practical difficulties in finding out what a specific government aimed to achieve through a particular policy. In terms of judging whether a policy measure met its objective or had an impact, it is necessary to determine what the intended outcome was, or what would have happened if there had been no intervention.

A consistent theme throughout the report therefore is the muted relationship between policy and impacts for the period 1990-2000, and the difficulty of attributing, from the available research literature and statistics, direct causal relationships between policy and outcomes. Caution is needed because it was seldom possible to isolate the effects of specific policies, especially as packages of measures were often introduced simultaneously. Despite this there are some general findings about the experiences of different case study countries.

Case study countries

At the country level, the decade-long time series of claims for asylum plotted against the introduction of policy measures reveals several contrasting patterns. Overall in Germany, Sweden and France policy measures and impacts appeared to be correlated in terms of a reduced overall number of claimants sustained over a period of time. The UK, the Netherlands and Belgium by contrast were characterised by rapid rises in asylum seekers and a cyclical pattern of peaks and troughs.

The statistical evidence presented in the report suggests that countries which were 'first in the field' and adopted sustained policy programmes incorporating a combination of measures have been more effective in containing or limiting application rates. Germany, Sweden and France entered a period of sustained and reinforcing legislative and policy reform from 1990 to 1994, the impact of which appears to have been a substantial decline in applications and continued stability at lower levels. Conversely, the UK, the Netherlands and Belgium with later and more fragmented approaches have regulated trends in asylum seeking less effectively.

The decrease in applications in Germany was principally associated with important legislative changes, particularly related to pre-entry controls and procedures for determination, which occurred in the 1991-3 period. The main specific measures were the accelerated procedures for decision making, readmission agreements with Romania and Bulgaria (two of the main four nationalities involved) and application of the safe third country rule. Changes in the countries of origin of asylum seekers may also have been partially responsible for falling applications. Of the indirect impacts of the changes introduced in this period, the fall-out in the rest of the EU may well be the more enduring legacy.

The exceptional increase to 439,000 applications in Germany in 1992 and subsequent fall to 127,000 applications in 1994 was the product of several preceding historical factors which, viewed in hindsight, represent a unique conjunction of events. The opening up of Central and Eastern Europe in the wake of communist regimes and the onset of war in former FRY are the principal reasons for the increase in asylum applications in this period. The rapid and intense legislative response of the recently re-united German Government to an unprecedented challenge to its territorial integrity and national identity was no doubt partially responsible for the subsequent decline in applications from 1993 onwards.

In the Netherlands factors associated with the large increase in applications between 1992 and 1994 may have included: ongoing unrest in the FRY, Bosnia, Iraq and Iran; displacement to the Netherlands from Germany where a much more restrictive policy had

been implemented; and a pull factor element arising from interventions to grant residence permits to a backlog of Somali, Sri Lankan and Iranian asylum seekers, and a similar policy to victims of civil war affecting numbers of Somalis. The substantial legislation introduced in 1994 is likely to have been a factor in the notable fall in applications in the following two years. This can principally be linked to accelerated procedures for the initial phase of the asylum determination process which was combined with the introduction of the reception centres, application centres and registration centres.

In the United Kingdom intake doubled to 73,400 between 1990 and 1991 and reduced to 34,500 by 1992. Legislation targeting multiple and fraudulent applications along with possible source country factors are thought to have played a part though direct evidence is not available. The 1993 Asylum and Immigration Appeals Act was the first major piece of UK legislation on asylum and included a range of measures on carriers' liabilities and finger printing of asylum seekers. It also introduced a right of appeal for asylum seekers and reduced their rights to local authority housing. However there appears to have been little impact on the intake which was only slightly lower at 28,000 in 1993.

Further legislation was passed in the UK in 1996 following rises in the intake to 55,000 in 1995. The fall in in-country applications in early 1996 provides some evidence that these measures had an effect. However the level of intake rose again after two years from 37,000 in 1996 and 41,500 in 1997 to 58,000 in 1998. There is little evidence available about the impact of the measures associated with the 1999 Act, although the intake which had been rising rapidly up to 1999 levelled off in 2000.

Impact of specific policies

The evidence presented in the report suggests that direct pre-entry measures have had the greatest impact on the number of asylum claimants.

Conversely, indirect measures such as reception facilities, detention and the withdrawal of welfare benefits appear to have had much more limited impact. There is little systematic evidence in the literature for example which suggests that one system of dispersal is preferable to another. At the same time, there has been little research conducted on whether differences in overall application rates vary with changes in reception policies and practice. Indeed, it is important to emphasise that these conclusions are based upon a review of the literature and preliminary fieldwork and that there is a clear need for substantive research to clarify the role of direct and indirect measures in relation to asylum applications.

Determination procedures

Although the evidence on the quantifiable impact of in-country status determination policies, procedures and recognition rates on asylum seeker flows was inconclusive, there was some evidence that the targeted application of accelerated procedures for specific nationalities may have been effective in reducing applications over the short term. The use of temporary protection does not appear to have notably affected flows.

Welfare provision

Welfare provision is widely regarded as an important pull factor for asylum seekers. Across the EU a variety of measures have been introduced to reduce the perceived attractiveness and costs of welfare support in receiving states. These measures include the removal of social assistance to applicants who apply in-country and providing benefits in kind rather than cash.

The report illustrates that while there was a disparity in the reception and welfare support provided for asylum seekers in the EU, the level of benefits varied only slightly between comparable welfare assistance regimes. Yet application rates varied considerably, suggesting that other factors were more likely to account for variations in asylum applications. However there is some evidence to suggest that differences in overall asylum application rates were related to welfare provision. In the UK for example there is evidence to suggest that the introduction of Department of Social Security (DSS) benefit restrictions in February 1996 led to a fall in applications, although this was short-lived. The report also suggests that perceptions may be as important as reality. Perceptions about the availability of welfare support and economic opportunities in the UK may have acted as very influential pull factors, at least in the short term.

Employment and housing

Variations in employment and housing entitlement across states were notable. No evidence has been found in the literature however to assess whether employment entitlements have had an impact on asylum seeking (although it should be noted that states that withdrew or reduced entitlements in the 1980s, such as Germany, continued to experience noteworthy increases in asylum applications into the 1990s). Similarly, while it is widely assumed that restriction of movement or the limitation of choice in accommodation are deterrent measures there is little in the literature to indicate that changes in housing provision, as such, affect applications. On the whole, there is a need for further research to gauge more accurately the impact of the substitution of benefits in kind, or the reduction in benefit levels upon the asylum application rate of particular Member States.

Displacement effects and unintended consequences

There is some research evidence to suggest that while regulatory policies have had a generalised effect on the number of applications of particular groups at specific times, this may have resulted in displacement of applicants to neighbouring countries with more liberal asylum regimes rather than an overall EU-wide reduction in numbers. For example the post-1993 fall in applications in Germany is widely assumed to have caused the rise in applications elsewhere in Europe, especially the Netherlands. There is however no reliable statistical or empirical evidence to support this assumption.

The report also indicates that there may have been unintended and/or negative consequences of changes in asylum policy and practice. There is strong circumstantial evidence, though little authoritative research, that restrictionism – and most probably direct measures – led to growing trafficking and illegal entry of both bona fide asylum seekers and economic migrants. Since this issue is of increasing saliency in many EU states, research is needed to investigate the extent to which illegal entry and trafficking are correlated to the expansion of restrictionism in the last decade.

Historical specificity of impacts

The evidence presented in the report suggests that policy impacts experienced in one country may not necessarily have been repeated in another, because of country-specific determinants such as migration history and geographical location. Although research into system adjustment is sparse, it is conceivable that asylum seekers adapt their migration strategies including their routes and means of entry to a country according to policy shifts. This suggests that convergence of policies, though far short of harmonisation, is necessary but may happen too late to impact on complex and well-established trends. Moreover at a national level, domestic and political contexts, specific legal contexts, historical factors and the perceptions of humanitarian need, have tended to create unique conditions such that similar policies may have had differential impacts in different countries and may have been less efficacious.

Factors affecting policy impacts

The unpredictable and often limited success of policy instruments in controlling asylum flows and application rates at a country level raises the question of why the causal links between policy and impacts were weak. The report offers a number of explanations as to why the

results of changes in asylum policy and practice were frequently unpredictable or more limited than was anticipated by those formulating policy.

Timing of measures

Unilateral action and early entry to policy-making may explain the subsequent impact of policies and the long-term capacity of a country to manage asylum flows. Throughout the report it is suggested that, regardless of the types of policy measures adopted, those countries which adopted measures earlier in the nineties appear to have been more successful in regulating the flow of asylum seekers. The late entry of the UK into asylum policy making, especially with regard to packages of direct measures, may help to explain the more limited impact of restrictive policies. The periodisation of policies (i.e. the timing, staging and chronology of the asylum policy regime in specific countries) has therefore been an important variable in determining policy outcomes.

Conditions in the country of origin

The report suggests that the factors and processes underlying the movement of asylum seekers derive from protracted instability and conflict which is global in scale and pattern and may well be less susceptible to the range of policy measures that have been effective in the past. The political and economic situation in the home country is a major factor influencing flows and may be more significant than the characteristics of the receiving state. This may explain why direct measures were likely to be more successful than indirect measures in regulating the volume of asylum applications.

Contextual factors

The report suggests that contextual factors determining the flow of asylum seekers may provide some explanation as to why asylum seeking has been, to a large extent, 'policy resistant' over the last decade. These contextual factors include: the changing nature of humanitarian crises; historical legacy and asylum networks; geographical location; and policy encoding, design, timing and implementation. The report recommends that policy-making should be informed by a wider framework of determinants in order to guard against unintended impacts and to prevent the protection of refugees and asylum seekers – the core of a humanitarian policy – from being undermined or adversely affected.

The report suggests that the political context within which policy is encoded, the timescales within which policies are expected to achieve their outcomes and the administrative capacity

to manage chains of command, have all been crucial variables in determining impact. Policy measures cannot be treated in isolation, relying on a unidirectional cause and effect. The timing and impact of policy measures have been greatly affected by domestic and political contexts producing the asylum regime within each Member State and may help to explain why policy measures may not have always achieved their intended outcomes.

Structural factors

The report identifies a number of factors influencing the decision of asylum seekers to apply in particular countries. These include former colonial relationships between particular sending countries and particular receiving states; other long standing historic ties which may not be easily susceptible to relatively short term measures designed to curb unfounded claims for asylum; the existence of settled communities of co-ethnics or co-nationals and linguistic and cultural affinity with the receiving state; and the role of migrant networks. These factors help to explain why the number of asylum applications in EU states appear at times to have operated independently of changes in asylum policy and practice. The report suggests that one reason why restrictive policies have often not been as efficacious as intended is because they have insufficiently addressed some of the structural determinants such as the role of networks and pre-existing migration patterns which link the origin and destination of asylum flows.

Recommendations for future research

In the light of these findings the report makes a number of recommendations for future research in this area. Most importantly, having developed a framework for assessing impacts, the authors recommend that more detailed research, based on primary data collection and field based evidence, should be developed which will establish more clearly the efficacy of specific policy measures and the intended and unintended impacts. In addition they suggest the following areas for further research work:

- the relationship between restrictionism – and most probably direct measures – and the increase in the smuggling, trafficking and clandestine entry of both bona fide asylum seekers and economic migrants;

- the motivations of asylum seekers;

- the strategies of migrants including asylum seekers in negotiating asylum policies and the other constraints which they may encounter. This is a potentially rich and

fruitful area for policy research, because it impinges on critical variables in the current pattern of asylum flows in the EU – the 'backward' and 'forward' linkages' in the process;

- the role of different norms governing status determination, linked as they are to broader concepts of citizenship, nationality and social inclusion in influencing the eventual choice of asylum destination;

- the role of contextual factors in shaping flows of asylum seekers including historical ties underpinning immigration, geographical location and the existence of complex emergencies;

- the root causes of asylum flows in order to develop more sustainable, proactive and longer-term solutions to the asylum challenge in the EU;

- the extent of any causal relationship between the removal of failed asylum seekers and application rates.

1 Asylum policy: context and methodology

Objectives and introduction

The objectives of this study commissioned by the Home Office are to undertake the following for a ten-year period between 1990 and 2000:

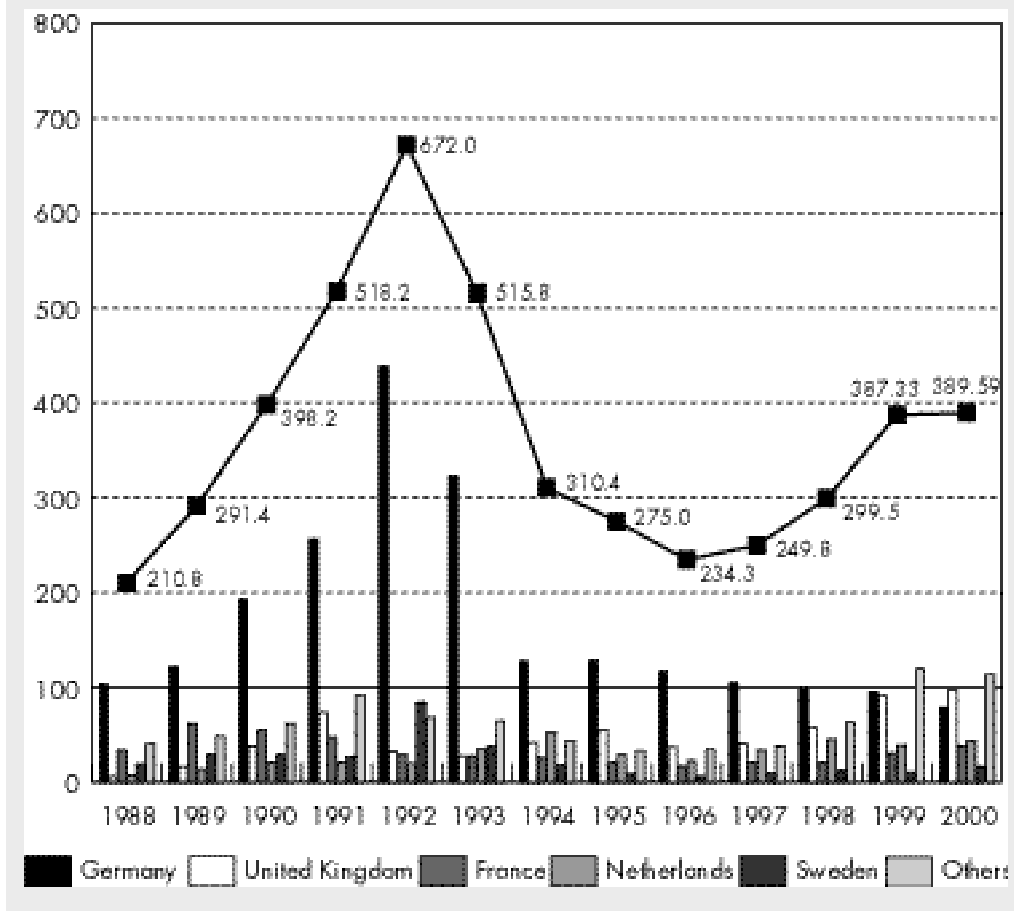
- review the available evidence on the legislation, policies and practices that have had a significant impact on the number and patterns of asylum applications to EU Member States, and to identify shortcomings in the available information which require further investigation or research;
- use readily available information to conduct a comparative analysis of the impact and effects of policies and legislation on asylum applications in a small number of selected EU countries, including the UK; and
- identify the requirements for additional work or research to provide a better understanding of the relationship between asylum policies and asylum applications in order to help inform future policy development and implementation.

The report is organised as follows. This chapter outlines the context of the study and locates the research within the wider context of the convergence of policy measures and the increasing integration and harmonisation of immigration and asylum policy. It details the methodology used to gather evidence for the research and provides a framework for systematically assessing the impacts of asylum policies and measures. Chapter 2 provides an overall assessment of the research literature and findings on the impact of asylum policies in Europe. The next four chapters present the detailed assessment findings for the five case study countries: Germany, the Netherlands, the UK, Sweden and Italy. Chapter 7 reflects on overall impacts of policies, policy constraints, and suggests the need for a broader contextualisation of policies to manage the flow and impact of asylum seekers. Chapter 8 makes recommendations for future research.

The rise, from the mid-1980s, of spontaneous arrivals seeking asylum from persecution and domestic conflict (combined in many cases with chronic economic insecurity), provides the backdrop to the present study. In the decade 1990-1999 over 3.746 million asylum

applications were made to EU Member States, peaking at 672,000 in 1992 and exceeding 300,000 per year for six years of the last decade (Figure 1.1). Unprecedented in terms of volume and the speed of onset, the steep rise in the numbers of asylum seekers has presented a major challenge to the governments of European Member States, both individually and collectively. This study explores these challenges in terms of the impact of the dramatic expansion of policy making and statutory provisions on the trends and processes of asylum seeking.

Figure 1.1: Asylum applications in Europe (1988 – 2000)



At the outset it is important to emphasise that, as an assessment, this report provides a review of the available evidence and findings on the impact of such polices. It does not seek to provide a detailed or definitive analysis of the impact of asylum policies across the EU

Member States. Moreover, using a desk study method in the main, which relies substantially on secondary sources, there are significant methodological and data qualifications to the study: these are elaborated at the end of this chapter.

Although an extensive and diverse body of research exists on the 'asylum problem' and the responses in many EU Member States, the evidence is ambiguous as to the impacts of the policy initiatives on the trends and processes of asylum seeking. Much of the research lacks a clear evaluative framework and methodology and tends to be country specific. Above all there is a lack of evidence on clear causal linkage between policy interventions and outcomes in terms of the nature, scale and process of asylum seeking. In this respect, the report suggests that it has been seldom possible to demonstrate a direct link between a particular measure and the outcomes in terms of the scale and authenticity of claims for asylum in the determination process.

This report draws attention to the many variables that determine trends in asylum seeking and the destinations of asylum seekers. Nevertheless, as Figure 1.1 suggests, at an aggregate level it appears that policies designed to regulate the flow of asylum seekers may have retained the status quo, taking the beginning and end of the decade as a whole.[1] To what extent this is attributable to the policy measures is the question this report seeks to assess. Caution in asserting the links is needed particularly because there is often a poor correlation between the statistics on annual asylum applications and the introduction of specific instruments when the data are disaggregated to the national level of the major recipient countries of the EU. This is most notable for the UK, the Netherlands and Belgium (Figure 1.2). Using available research evidence, the report assesses in detail the complex and often ambiguous relationship between asylum applications and policy measures, and the variable impact of apparently similar measures in different Member States.

Immigration and asylum in Europe

Although the current asylum challenge faced by nation-states in the EU is fairly recent, the roots of the challenge lie within a broader context of migration trends and a longer time period stretching back to the 1950s. Indeed, the complex interplay and recurring tension between policies on immigration and asylum are constant themes in the way European states have addressed the issue of migration.

1. The exceptional peaking of application rates in 1991/2 is almost wholly attributable to the crisis in the Former Yugoslavia, including Bosnia-Herzegovina and Kosovo.

The market-making foundations of the original European Economic Community (EEC) emphasised the advantages of economic integration and the free movement of goods, capital and information (Geddes 2000; Gill 1992). At the same time, a number of European states encouraged the immigration of non-Europeans to tackle labour shortages in industrial and service sectors of their economies.

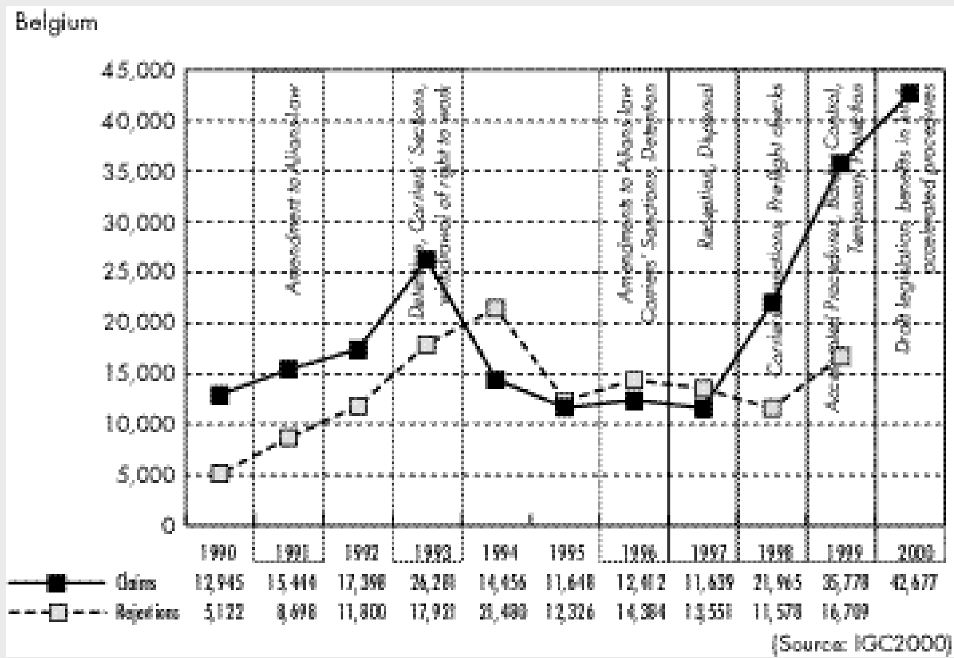
This phase of post-war economic migration to the industrialised states of Europe came to a close in the early 1970s (Castles and Miller 1998:78). In its wake international migration became increasingly diversified as a response to the growth of globalisation and economic restructuring. The increase in refugee flows from the mid-1970s onwards (ICIHI 1986) – the examples of mass flight from Vietnam and Chile are amongst the most striking – reflects amongst other factors processes of state formation, ethnic conflict and warfare in states outside the core industrialised powers (Zolberg et al. 1989).

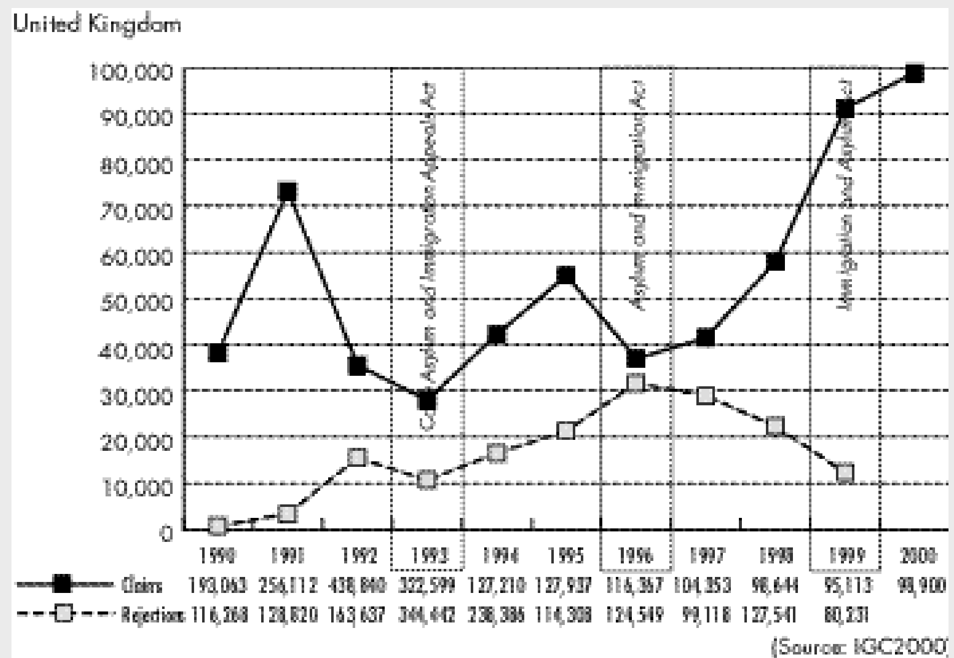
Against the background of global changes in migration, within Europe a second phase in the immigration policy emerges. As Geddes (2000) has noted, the abolition of internal border controls with the Single European Act (SEA) of 1986 led to free movement for nationals of EU Member States while simultaneously increasing the entry controls on 'global migrants' or third country nationals (TCNs). The spectre of 'Fortress Europe', welcoming to nationals of EU Member States but hostile to TCNs, including the growing ranks of asylum seekers from the mid-1980s onwards, was a common theme in the literature on asylum in the late 1980s (Joly and Cohen 1989).

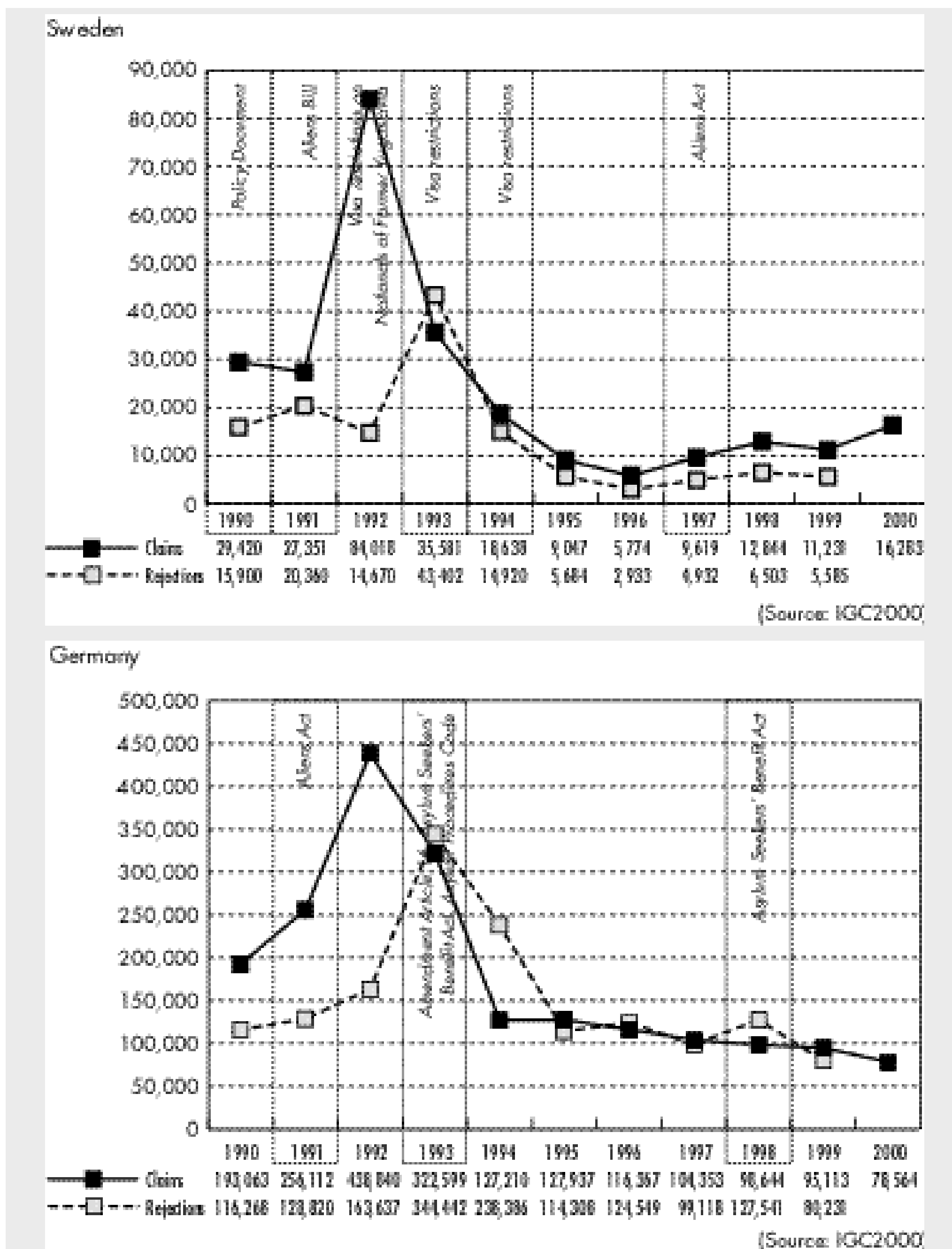
But with the closing of routes for primary economic migration to Europe from the 1970s onwards, the asylum option – apart from the increase in family reunion and other forms of skilled migration which tended to consolidate migrant communities in the core European states – became the principal means of immigration (Castles, Booth and Wallace 1984).

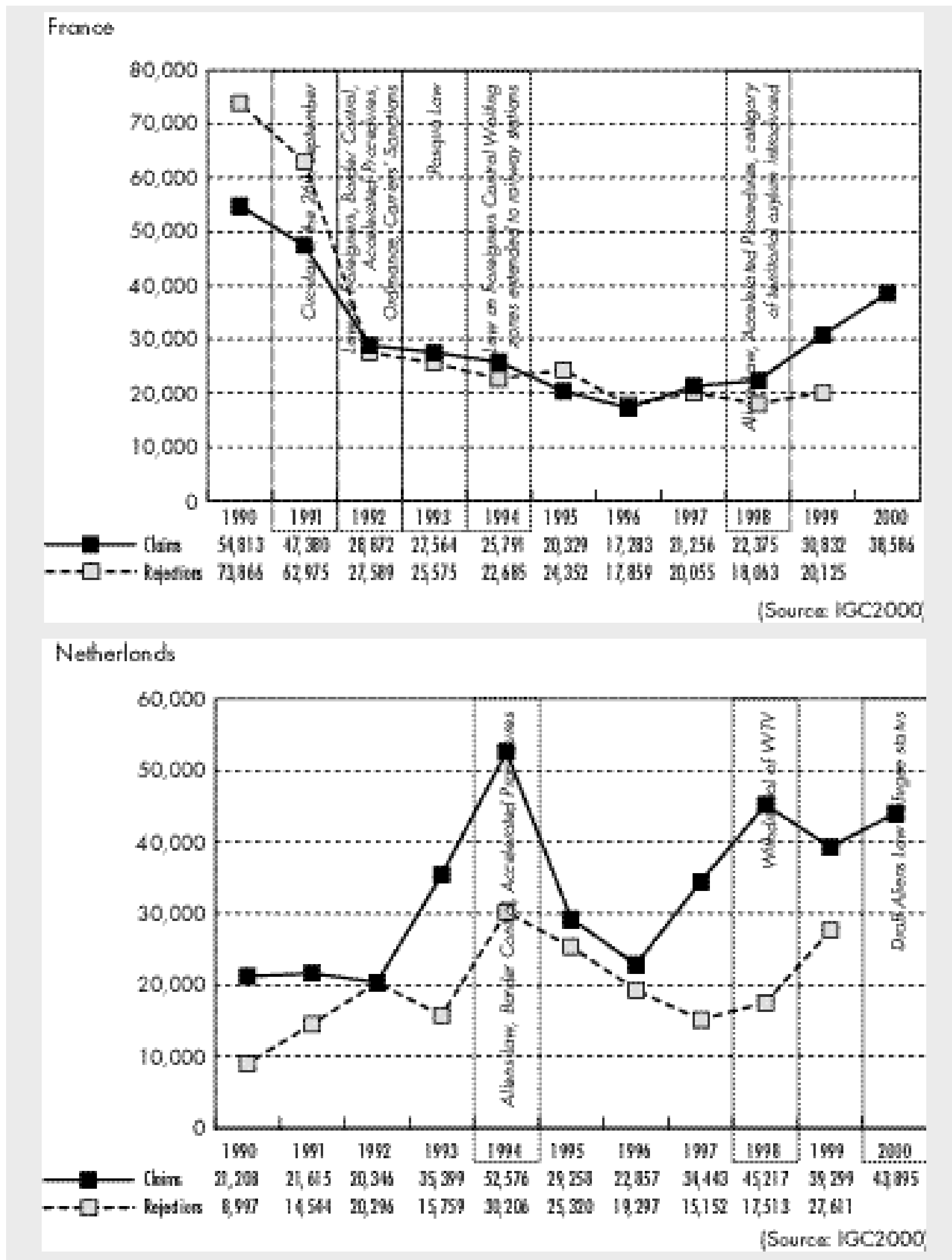
The growth in asylum seeking is the outcome of a complex set of factors but driven mainly by increased global mobility linked to the increasing incidence of complex humanitarian emergencies. For European governments more specifically, the key factor was the collapse of the Soviet bloc. This was the prelude to the internal collapse of a number of eastern European nation states, most notably in the Balkans, which in turn generated a massive exodus mainly into western Europe on a scale not experienced since the aftermath of the Second World War. Moreover, the collapse of the Soviet bloc de facto removed restrictions to exit and transit on Europe's eastern borders. Consequently, the onus to regulate migration flows, from both eastern Europe and further afield, was increasingly placed almost exclusively upon receiving states.

Figure 1.2: Asylum applications, registrations and main legislative instruments in key recipient countries






Sweden
90,000
80,000
70,000
60,000
50,000
40,000
30,000
20,000
10,000
0
Policy Document
Aliens Bill
Visa restrictions
Visa restrictions
Aliens Act
1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000
Claims 29,420 27,351 84,018 35,581 18,638 9,047 5,774 9,619 12,844 11,238 16,283
Rejections 15,900 20,360 14,670 43,402 14,920 5,684 2,933 4,932 6,503 5,585
(Source: IGC2000)
Germany
500,000
450,000
400,000
350,000
300,000
250,000
200,000
150,000
100,000
50,000
0
Aliens Act
Asylum Seekers' Benefit Act
1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000
Claims 193,063 256,112 438,840 322,599 127,210 127,937 116,367 104,353 98,644 95,113 78,564
Rejections 116,268 128,820 163,637 344,442 238,386 114,308 124,549 99,118 127,541 80,238
(Source: IGC2000)



Note: Data for the UK, Germany, Sweden and the Netherlands include estimates for dependents.

In terms of the origins of asylum seeking, the changing nature of persecution, perpetrated increasingly by non-state agency as by the state (the latter interpretation underpins the 1951 Geneva Convention), is a notable feature in generating the growth. More complex to understand than state agency, the differentiation of 'agents of persecution' has not only put pressure on the nature of response by the humanitarian regime as a whole, it has also impacted upon reception countries such as EU Member States, since the flows of asylum seekers become more diffuse and unpredictable. The significance of this change calls into question, amongst other factors, the status determination procedures for acceptance and refusal in many EU Member States.

On the theme of origins, some reviews of asylum applications and patterns in Europe typically focus on why asylum seekers have chosen particular destination countries over others. Böcker and Havinga (1997, 1998) for example, analyse asylum patterns in the period 1985-1994 in the then 12 EU Member States. To the extent that asylum seekers can exercise a choice of destination, their conclusions are as follows:

- there are a limited number of destination and sending countries;
- there is no simple linear relation between number of applicants and GNP or size of population of a country;
- strong links between particular sending countries and particular receiving states and former colonial ties are amongst the most significant factors explaining asylum destination (see also Hovy 1993); and
- the existence of settled communities of co-ethnics or co-nationals and linguistic and cultural affinity with the receiving state also helps to explain patterns of asylum seeking.

Other researchers also point to colonial ties and migrant networks as amongst the most important variables in explaining asylum flows (Kritz et al., 1992; Castles and Miller 1998; Koser 1997, 1998). These factors help to explain both the concentration of the majority of asylum applications in a few EU Member States, and the fact that receiving countries, initially at least, have tended to respond independently to what they perceived to be specific national conditions.

Consequently, the need to contextualise the response to the growth of asylum seeking within a broader range of variables which condition and constrain the impact of policies and statutory instruments on the process of asylum seeking is emphasised in Chapter 7 of this report. It is suggested that one reason why restrictive policies have often not been as efficacious as

intended is because they have insufficiently addressed some of the structural determinants such as the role of networks and pre-existing migration patterns which link the origin and destination of asylum flows as Hovy (1993) and Böcker and Havinga (1997) imply.

Arguably ill-prepared for this unprecedented growth, the changing phenomena of migration and asylum seeking, and the remarkably dynamic characteristics of the process, the response was to expand asylum policy-making and to reinforce the more general climate of restrictionism in relation to immigration across most industrialised states from the early 1970s onwards (Freeman 1992). In Europe, the profound changes in asylum processes have stimulated a period of major domestic policy making, especially in the last decade, which is mirrored by the progressive harmonization of EU-wide measures.

There has been a transformation in the way European states have attempted to: distinguish between immigration processes and asylum seeking; regulate the flow of asylum seeking; expand procedures to determine the well-founded nature of claims for asylum under the 1951 Geneva Convention; provide support for asylum seekers; and tackle the growing problem of clandestine entry and trafficking.

More recently, some commentators have stressed the ambivalent character of EU Member States' response to immigration, with differential forms of inclusion operating according to the type and level of immigration involved (Morris 1997). Geddes (2000) notes that restrictionism has gone hand in hand with expansionism for certain types of immigration and that social exclusion for some has been accompanied by differential inclusion for others. Most migration analysts point to the significant tension between the demographic and economic necessity for inward migration to the EU and the often-sustained political opposition to it (Miles and Thranhardt 1996). Simultaneously, this tension also parallels the growing challenge of protecting the rights of those with well-founded claims for asylum, and those who use these rights merely to support economic migration.

The interplay between and the politicisation of immigration and asylum is a central factor in the generation and content of policy and is thus a dominant theme in EU Member States. This is elaborated in the case-studies. Moreover, the tension between the national control of immigration and the move towards the supranationalisation of immigration and asylum policy in the EU – discussed principally within the context of the Maastricht Treaty on European Union of 1993 and the Amsterdam Treaty of 1997 – is also a dominant theme of the study. Clearly therefore the process and stages in the development of asylum policy in the EU must be located within the wider context of the convergence of policy measures and the increasing integration and harmonisation of immigration and asylum policy (Box 1).

There has been a gradual transition from a situation in the 1970s and early 1980s of ad hoc unilateral policy measures to deal with growing asylum applications in the EU, to one where multilateralism has become the norm in asylum policy from the mid-1980s and particularly during the 1990s (Joly 1996: 46; Overbeek 1996). A detailed account of this process is given by Uçarer (1997) who outlines the 'coping strategies' of EU Member States in responding to growing asylum pressures in the period 1985-95. For Uçarer, the failure of unilateral asylum measures to regulate asylum flows to the EU is best illustrated by the case of the amendment to Article 16(2) of the constitution in Germany in 1992 (see Chapter 3), as a result of which asylum flows were largely redirected to states with more liberal asylum policies.

Box 1.1: Chronology of multilateral policy initiatives[2]

1976 Terrorism, Radicalism, Extremism and Violence International (TREVI) was created to combat international terrorism, illegal immigration and crime.

1985 The Schengen Group of countries was the first intergovernmental body to implement border controls in a Europe without internal frontiers.

1986 The Single European Act introduced a single market for the free movement of people, capital, services and goods. In the same year the Ad Hoc Group of Ministers was formed from the Ministries of the Interior of EC Member States with a special remit on immigration and asylum.

1988 The Group of Coordinators or Rhodes Group was established by the Ad Hoc Group Of Ministers.

1989 The Palma Document was produced by the Rhodes Group paving the way for the Dublin Convention.

1990 The Dublin Convention established an EU-wide system for determining which state will process an asylum claim, thereby avoiding the possibility of multiple asylum claims made by one individual.

1991 The Draft Convention on the Crossing of External Borders was agreed, although not ratified.

1992 Resolutions on Manifestly Unfounded Applications and Host Third Countries were passed.

1993 The Treaty of European Union transformed the EC into the European Union. A Three Pillar structure was implemented:
Pillar One – Economic matters [Community Pillar]
Pillar Two – Foreign and security policy
Pillar Three – Justice and home affairs
[Asylum was placed under Title VI of the Third Pillar]

1995 The Schengen Convention is applied.

1997 The Treaty of Amsterdam moved asylum from the Third Pillar to the First Pillar. The Dublin Convention is ratified.

1998 Vienna Action Plan.

1999 Tampere Summit and Conclusions.

2000 Treaty of Nice – QMV and co-decision on asylum issues.

Policy instruments

How, more specifically, have European Member States responded? What are the key features of their policy instruments? The core of this report presents and analyses the policy instruments in detail. This section provides an overview of these instruments to set the framework for the study.

The convergence hypothesis on restrictive state practice has a broad following in the literature on asylum policy in Europe (Cornelius et al., 1994; Joly 1996; Overbeek 1996; Uçarer 1997). This perspective focuses on the common forms of policy instruments which are deployed by EU Member States to regulate and curtail asylum applications.

For Böcker and Havinga (1998), amongst others, there are two principal policy instruments:

- **Pre-entry procedures or containment** including visa controls, carrier sanctions, pre-flight checks in countries of origin or transit; and

- **In-country asylum procedures or 'deterrence'**, involving accelerated decision making, limited appeals procedures, detention and restricted access to welfare entitlements.

A similar distinction between pre-entry 'containment' and in-country 'deterrence' is also made by Hassan (2000:185) who emphasises the point that containment refers to those pre-entry measures which prevent individuals from leaving and gaining entry to a state . The regionalisation of asylum in areas near to the country of origin is a typical feature here. The creation of 'safe havens' for asylum seekers from the time of the Gulf war and in the former Yugoslavia is illustrative of this process. Containment also covers the imposition of visa requirements, the use of carriers' sanctions, in-flight checks and border control. Deterrence on the other hand "is a mixture of restrictive and punitive measures taken in the country of asylum" (Hassan 2000:185).

Koser in a number of publications (e.g. 1997, 2000) follows this twofold distinction of 'pre-entry' and 'in-country' measures, but has refined more precisely the different policy instruments. In his analysis, relations between policies and asylum migration are conceived in terms of direct and indirect interaction or impacts. In addition, the impacts of policies are conceptualised as affecting both the scale and distribution of migration.

- **Direct interaction** is limited to those which prevent entry into a country, e.g. visas and safe havens etc.

- **Indirect interaction** refers to those in-country deterrence measures which prevent access to relevant procedures, impair refugee status or result in the withdrawal of benefits.

The striking feature which these researchers demonstrate, however, is the growing convergence in terms of pre-entry regulation and the use of temporary protection measures across the EU – given the different starting points and power relations of particular states – rather than the national variations in specific legal processes and practices. Thus, for Schuster (2000) although there are wide variations between countries in terms of their migration histories and colonial ties with asylum groups, in practice the commonalities between them outweigh the obvious differences.

A number of commentators (see for example Schuster 2000) note the significance of the Dublin Convention 1990, followed by Schengen 1995 and other EU resolutions to the convergence of policy. Northern European countries in particular display convergence around a basic two-track approach, relating to restriction on entry and the gradual erosion of in-country provisions and certain rights.

By contrast, with regard to in-country deterrence there is considerable variation in relation to asylum determination processes and disparity in terms of the reception and welfare support provided for asylum seekers within particular Member States. This may reflect, as Hassan (2000) suggests, the different domestic political agendas with regard to immigration policies which each national government is addressing, and it reflects the underlying tensions between national and supranational control over immigration policies.

In summary, there are significant tensions between immigration and asylum policies, between national and communitarian levels, and between the intentions of policy measures and their outcomes. These factors reinforce the problematic nature of such a review of the impact of the extensive portfolio of measures, now in place in all EU Member States, on the flow of asylum seekers.

Analysing policy impacts

Against the backdrop of an intensification in national and supranational policy-making on asylum in Europe in the last decade, the central challenge of this study is to review the available evidence on the legislation, policies and practices that have had a significant impact on the number and patterns of asylum applications to EU Member States.

Escalona and Black (1995:374) in their review of the literature on refugees in Western Europe take a positive view that "in some respects… national asylum policies affect the geographical orientation and dimension of refugee movements to various countries in western Europe". Other commentators, for example Böcker and Havanga (1997) are more sceptical. These two sets of authors illustrate the difficulty of assessing policy impacts and the often-ambiguous evidence as to the nature of these impacts. Certainly, it is important to highlight the fact that simple conclusions about the relationship between policy changes and applications for asylum cannot be drawn from the statistical evidence alone as Figure 1.2 illustrates. It is this challenge which the study seeks to address.

The initial survey of the literature confirmed that an extensive body of research and policy analysis on refugees and asylum seekers in Europe is available, but no comprehensive study has been conducted on the impacts of policy measures.

The extant literature reviewing and analysing policy measures divides into two categories. There is a range of material identifying and cataloguing statutory and policy instruments – the most valuable has been produced by the Danish Refugee Council (2000). It is essentially descriptive. It offers neither an analysis of impacts nor, consequently, a comparative critique of policies and their impacts. In this context, Volume II (which can be found at www.homeoffice.gov.uk/rds/onlinepubs1.html) of this study provides a comprehensive reference catalogue of legislation and policy instruments in each EU state from 1990 onwards. This is a baseline which can be updated for reference needs.

More fruitful for this study is the burgeoning research literature, in the last decade, on the changing asylum seekers regime. A number of important collections exist (Lambert 1995; Guild 1996; Joly 1996; Bloch and Levy 1999; Schuster 2000). The extensive body of research literature, constituting the principal source for the research, reports on changing legislation, policy development and the situation faced by asylum seekers in specific countries through country-based assessments. The growing harmonisation of European immigration and the increasing use of deterrence as an instrument to regulate the flow of asylum seekers is also extensively documented and critiqued.

However, amongst the literature surveyed, there was remarkably little evidence of methodologies with which to analyse impacts within a comparative frame. For example, Böcker and Havanga (1997) use a movement model to examine the origin, destination and patterns of asylum seeking. Koser, in a number of publications (1997, 1998, 2000), is one of the few researchers offering an analytical frame. He has refined more sharply than most, the tools with which to analyse policy impacts (Box 1.2).

In summary, the available literature raises important and significant issues in assessing the impacts of asylum policies. Overall, however, the current research displays a number of limitations in the assessment of policy impacts, so far as requirements of the present study are concerned:

- a tendency to confuse the characteristics of policy measures with impacts;
- the narrow range of policy instruments which is assessed;
- a failure to distinguish between short and long term impacts;
- a comprehensive account of policy measures is not evident;
- country-specific rather than comparative analyses predominate;
- impact assessment was often not the objective of the research.

Significantly, much of the current research does not position the policy measures as the dependent variable. This is the starting point. Crucially, what these studies lack is a systematic baseline on which to examine the legislative and policy shifts and their impacts. To the extent that it is possible in a study based on secondary sources, it is this striking gap which this report attempts to fill.

Box 1.2: A categorisation of asylum policies and their impacts[3]

Nature of Impact	Policies
Direct	Visas, 'safe havens', 'in-country processing', carriers' sanctions, etc.
Indirect	Exclusion from asylum procedures, exclusion from refugee status, exclusion from state welfare, etc.
Scale	Visas and other direct measures, exclusion from asylum procedures and other indirect measures
Distribution	Closure of resettlement channels, Readmission Agreements, 'safe third country', etc.
Country of origin	Visas
Route	'Safe third country'
Country of destination	Closure of resettlement channels

3. Koser (2000:109).

Indicators and impacts – a systematic approach

Given both the ambiguity of much of the evidence, and also the lack of systematic investigation of impacts, the key issue which this study addresses is how best to assess policy impacts. Are there appropriate methods and tools that enable clear links to be made between policies and legislation and the impacts in terms of the number and nature of asylum seekers? To what extent is there causal relationship between policies and impacts and how might this be measured?

The innovation of this study is to develop a systematic baseline on which to examine the legislative and policy shifts using a common set of indicators to assess change and impact and a standard set of impact assessment indicators applied to the literature and other data which have been used. This is detailed in Box 1.3. In the body of the report this model of policy indicators is deployed to assess the impact of legislative and policy change on numbers, patterns of flow and distribution of asylum seekers on EU Member States.

Although legislative and policy change in EU Member States vary significantly in detail, in practice, a generic set of broadly similar policy instruments has been deployed. These have been grouped around a set of five indicators – the principal variables of policy and legislative change. The first four variables of the model of changing practice indicators replicate the key components of the asylum process – pre-entry measures, status determination measures implemented on and after arrival, reception practices and, subsequently, welfare and support services provided for asylum claimants once they are in-country. In this context the term 'Reception Process' is used to refer to practices and procedures which governments adopt, to locate and accommodate asylum seekers either initially, on arrival, or while their status is being determined. The Reception Process, in these terms, is distinct from but operates closely alongside Entitlements, Welfare and Support Services and, of course, in parallel with Status Determination Procedures.

The fifth variable is not related to this stage model, but is significant because most EU Member States have been engaged in developing different organisational and funding structures to manage increasingly more complex service provision and expanding budgets. These constitute the common set of indicators of changing policy and practice, a systematic framework, which is used in the following chapters to identify and review changes in EU Member States.

In addition to outlining the mix of policy approaches adopted by Member States in the EU, assessment indicators are used to elaborate the impact of changing policies based on the desk study literature review and the country-specific fieldwork. Here the model groups the impact indicators into two categories. In the first category is the overall number and pattern

of asylum applications; these variables are most likely to be impacted by pre-entry and status determination procedures. Conversely, policy measures related to reception, funding and entitlement are designed to have impacts on trends and processes of asylum seeking by those who have gained entry. Thus a second category of in-country impact assessment measures is proposed. This includes factors such as welfare and community support, settlement trends and livelihood strategies. There is transition from quantitative to qualitative impact assessment measures.

As used here, the idea of policy impact refers to the relative efficacy of policies, both in the comparison between states and in relation to the specific policy mix obtained within any particular countr y. At the same time the notion of impacts is also directed to the effects of policy upon asylum seeking processes as well as the question of the efficiency of restrictive measures in terms of controlling numbers. The distinction between short term and long term impacts is important for the ensuing discussion (Böcker and Havinga 1998), as is the distinction between direct and indirect impacts, already introduced in this chapter.

Case study countries

The policy and impact assessment indicators defined in the previous section provide the template for the EU-wide assessment in Chapter 2 and a detailed assessment of the impact of asylum policies in five EU Member States – Germany, the Netherlands, the UK, Sweden and Italy – contained in the following four chapters (Chapters 3-6). For each country the following is provided: a short introduction; the historical and political context of asylum policy; summary data and commentary on asylum applications and patterns of change; an evaluation of policy impacts; and an assessment of the country's asylum policy measures in the EU context.

Germany, the Netherlands and the UK were identified at an early stage as important case study countries. Representing the distinctive character of the northern European 'axis' of asylum policy, the significance of the former two as comparators with the UK lies in the large volume of asylum applications they have received (in terms of both absolute numbers and proportional to their populations), and the broadly similar scope of legislation and regulatory machinery which has been developed. There are important differences as well.

In particular, although the volume of asylum seekers in Germany is comparable to the UK, at least compared with recent UK experience, the development of asylum policy contrasts with the UK in terms of the degree of policy centralisation/decentralisation, the constitutional

Box 1.3: Policy and impact assessment indicators

Changing policy and practice indicators

1. Pre-entry regulation and deterrence
   - Carriers' liability
   - Passport control
   - Visa
   - Border controls
2. Status determination and judicial processes
   - Who is protected
   - Accelerated procedures
   - In country/port of entry
   - Appeals
   - Temporary protection
   - Detention
   - Removals
3. Reception practices
   - Reception procedures
   - Dispersal
4. Entitlements, welfare and support services
   - Social services entitlements
   - Cash and non-cash entitlements
   - Employment entitlements
   - Housing entitlements
5. Administrative responsibilities and funding regimes
   - Central/Local Govt. powers
   - Funding of programmes
   - Role of Non-Governmental Organisations (NGOs)

Impact assessment indicators

Impact on applications

Impact on overall application rate – decrease/increase in numbers

Impact on pattern of applicants – decrease/increase in countries of origin, demographic status/illegal entry and trafficking

Impact in-country

Impact on distribution of asylum seekers in country

Impact on numbers of claimants for welfare services

Impact on increase/decrease in funding requirements

Impacts on settlement and integration trends

Impacts on livelihood status and strategies of asylum seekers

Impact on role of NGOs and community based support mechanisms

status of asylum provisions and more generally, the role of immigration in the political discourse of the country, the different responsibilities of central and local government, and, of course, Germany's strategic location in relation to major refugee originating countries adjacent to its borders.

As regards the Netherlands, the contrasts with the UK relate to reception policies and provision, the role of voluntary agencies, and, as with Germany, the degree of policy centralisation/decentralisation. There are similarities as well. A strong tradition of immigration exists in both countries. As in the UK, there is tension between national political priorities to address domestic concerns about asylum seeker pressures, set against a wider debate about the extent to which to international norms and rights for refugees and asylum seekers may be compromised. There is also the extension in the designation and the use of temporary protection categories.

Table 1.1 summarises the chronology of the main legislative and policy instruments that the three main case study countries have adopted in the last decade to regulate the flow of asylum seekers.

Two shorter case studies have also been included in this study – Sweden and Italy. The main reason for including Sweden is that it represents a distinctly Nordic approach to asylum, typified by an international outlook on humanitarian affairs and a liberal policy framework domestically. More recently this stance has undergone profound change as the country adopts the more restrictionist portfolio of policies found elsewhere in Europe. The reasons for including Italy are rather different. The inclusion of a southern EU member state was considered important because of the significantly different national and supranational perceptions on asylum away from the 'core'. Until recently population migration has tended to be conceptualised in terms of immigration, especially illegal immigration, rather than asylum seeking. Contextually, there are many factors, the most relevant of which include contrasting histories of immigration and emigration, location and the permeability of borders, limited political saliency of the asylum seeker, until recently at least, and thus less pressure for changing legislative provision and policy change. In addition the very rapid rise of asylum and illegal immigration in the Italian political agenda – from Albania, Kosovo and the former Yugoslavia to the east and from across the Mediterranean to the south, mean that asylum issues are currently high on the political and policy agenda in Italy.

Table 1.1: Comparison of Germany, the Netherlands and the United Kingdom

	GERMANY	NETHERLANDS	UNITED KINGDOM
When did the first significant increase in applications occur?			
	1978-82	1985-7	1988-9
What is the chronology, range and content of legislative response?			
Pre 1990	Organised reception/ welfare restrictions	Organised reception/ divorce of asylum provision from mainstream welfare provision	No organised reception carrier sanctions
1991			
1992			
1993	Amendment, 1991 Aliens Act: accelerated procedures Safe third, country ASBA[4]: Benefits-in-kind		1993 Asylum and Immigration Appeals Act: accelerated procedures, appeals, welfare/ housing, pre-entry controls
1994		1994 Aliens Act: reception, accelerated procedures	
1995			
1996		Repatriation and expulsions	1996 Asylum and Immigration Act: safe country of origin, safe third country, welfare benefits and housing, employers sanctions
1997	ASBA		
1998	ASBA	Visas/withdrawal of VVTV[5]	
1999			1999 Immigration and Asylum Act: organised reception, dispersal, carriers' sanctions, vouchers, divorce from mainstream welfare
2000	Independent Immigration Commission reporting in July 2001	Aliens Act 2000: single status, withdrawal of right to appeal	

4. ASBA (Asylbewerberleistungsgestz) – Asylum Seekers' Benefit Act.
5. VVTV (Voorwaardelijke Vergunning Tot Verblijf) – conditional stay permits.

Data sources

The study draws on four main data sources. These are:

- Published research, government and intergovernmental literature

Books, edited volumes, journal papers and special issues dealing with European asylum/refugee and immigration policy in the last decade. In addition relevant publications have been consulted, including statistical data, policy documents and reviews, from government ministries and intergovernmental agencies such as UNHCR, EU, IGC (Inter-Governmental Consultations), and in-country voluntary agencies. These secondary sources have formed an essential base point for this work, and are listed in the bibliography.

- Electronic sources

Extensive use has been made of electronic information sources. These are listed in the Appendix.

- Primary field-work

Following the Europe-wide survey, fieldwork was undertaken in three of the five case study countries noted above – UK, the Netherlands and Germany – collecting primary data from key informants through interviews with government officials, academics and NGO staff. Additional documentary research has also been carried out on the other two case studies – Italy and Sweden.

- Statistical data

IGC statistics covering the study period have been used. Given that the main purpose of the study is to inform and contextualise policy-making in the UK, Home Office statistics have been used for the UK analysis.

This approach is consistent with comparative policy analysis, the diversity of data sets and the short time scale of the project. Not surprisingly, however, each source provided challenges and constraints for the study. Caution is needed in interpreting the findings, which are often inferential rather than conclusive. These qualifications are now considered.

Methodological and data qualifications

It was intended that the indicators outlined in Box 1.3 would be used as an instrument to assess impacts. In the event, it has not been possible to provide a comprehensive assessment of all the designated impacts. Little published evidence was found to inform the analysis and draw conclusions beyond the first three indicators – overall numbers, pattern, distribution – although there is some partial evidence on the fourth – welfare and support services. Of the remaining indicators, those concerned with funding and livelihood strategies are probably most significant for policy making. The former is often cited as one rationale for policies better targeted to asylum seekers genuinely in need of protection; the latter clearly has implications for the survival and settlement strategies adopted by asylum seekers. However, there is a significant gap in understanding the impacts of policies related to reception and welfare support – a notable feature of UK policy and legislation in recent years. This should be followed up in further research.

It is important to emphasise that a template has been 'imposed' on an extensive range of secondary data, extrapolating beyond the original intentions of much of this research. Thus, much of the literature which is drawn upon is:

- country-based rather than comparative;
- covers a narrow range of instruments and impacts rather than the comprehensive model which is proposed;
- predominantly comprises policy analysis rather than impact measurement; and
- covers a variety of time series.

In short, as with any research using secondary research, there are significant challenges and qualifications in consistency, comparability and comprehensiveness.

Accessing reliable and comparable statistical data has also been problematic. Of the range of sources available, IGC statistics have proved to be the most useful source of comparative statistical data over the period of the study. There are inconsistencies. There are data on detention and removals for example which are not available on a country by country basis and where different definitions are sometimes used between countries.

Fieldwork in the case-study countries was aimed at reviewing, elaborating and verifying the literature-based understanding of the changing policies and legislative instruments, and to develop a fuller impression of the impacts. As noted for the study overall, the case-study fieldwork was not aimed at providing a detailed analysis of impacts.

This research draws on a wide range of research literature, predominantly the work of independent researchers, but also government documents and commentary by civil servants on earlier drafts. It is important to emphasise that, whilst acknowledging the information provided by governments, as independent researchers this report may not always reflect the views of these contributors.

In conclusion, the report provides essentially secondary deductions about impacts and possible causes and effects from the review of the evidence. What this research more fruitfully elaborates, from the available research evidence and data, is why divergence between cause and effect exists, why impacts may not be those intended, and speculatively what the prime factors are that influence the flows and patterns of asylum seekers.

2. A European overview of impacts and outcomes

Introduction

The policies outlined in this report have been developed in the context of the increase in asylum applications which occurred in Europe between 1985-1992. These policies have been conceived by many commentators as an attempt to control increasing numbers within the broader framework of immigration control (Geddes 2000; Angenendt 1999; Böcker and Havinga 1998; Joly 1996). It is important however to note the IGC viewpoint (1997:21) that developments in asylum policy "were not intended to reduce the asylum flows, but rather to combat the misuse of the asylum procedure by unjustified claimants" in order to preserve the long-term integrity of the asylum system. In practice, the policy response to the increase in applications has combined pre-entry restriction or containment with in-country deterrence measures. These are believed (a) to curtail asylum flows at the point of exit and entry and (b) to deter future asylum flows by the imposition of harsher reception and welfare regimes. The fall in applications to the EU between 1992 and 1994 is often attributed to the effects of these policies, although many other factors have operated to produce these effects especially changes in the conditions in sending countries.

Deploying the typology developed in Chapter 1, this chapter provides:

- a narrative approach outlining the available evidence on the efficacy and impacts of the specific policy measures and legislative change; and
- a discussion and assessment of the quality of the evidence in relation to policy impacts.

Pre-entry controls

According to the literature, the shifting of some immigration control to external authorities is one highly effective means of reducing all types of inflow to receiving states, either in the case of illegal migration or flight from persecution.[6]

6. As a proviso it is important to note that several of these controls, for example those on visa issuance, are not carried by external authorities.

Carrier sanctions

Carrier sanctions are one of a variety of methods that, although they aim to limit the number of unfounded applications from asylum seekers at source, tend to impact upon all potential asylum seekers (UNHCR, 1997). A typical scenario would be that of an airline which has transported an alien to a Member State without valid documentation. A fine, usually on a per capita basis, would then be imposed on the airline and in some cases the costs of repatriation would also be borne by the carrier. As the European Parliament (EP) (2000:15) suggests, this policy initiative 'puts pressure' on carriers to check passengers before departure and therefore deflects pressure from the immigration authorities in the country of destination.

In practice, although there has been a degree of de facto harmonisation in relation to the imposition of carrier sanctions substantial variation in the type and extent of sanctions remains. ECRE (1999) have documented the variations in policy and practice across European states.

The implication of pre-entry restriction for the capacity of individuals to exercise their right to seek asylum in the EU is a bone of contention (Cruz 1995) and is, according to many commentators, part of a broader strategy of 'burden-shifting' from the EU to the region or country of origin (Kumin 2000).

In terms of the efficacy of the policies, Böcker and Havinga (1998:263) state that "measures that restrict the possibility of entering a country appear to be particularly effective". This conclusion is based upon a systematic review of the origins and destinations of asylum seekers in the EU in the period between 1985-1994. On whether detailed variations in the type and extent of sanctions have any significance at the level of impacts, there is as yet no substantive evidence. The concern here therefore is not with the variations in policy and practice but with the available evidence on the impacts of carrier sanctions on numbers and patterns of applications.

In this respect, the following points can be made from a review of the literature on EU states.

Firstly, the periodisation of policy implementation has been significant. Many states introduced carrier sanctions before 1990: Denmark in 1986 in the Amendment to the Aliens Act; the UK in 1987; Germany in 1987; Portugal in 1988; Sweden in 1989. In some of these cases – the UK, Germany, Sweden – the introduction of sanctions was accompanied or followed by increasing asylum applications. In other cases, notably Denmark, the introduction of sanctions was followed by reduced applications (Belay 1992). There is no

research to explain this pattern of variation or what the relative efficacy of sanctions was in relation to other policy measures that were introduced at the same time, a point that is elaborated below. In several other EU states, carrier sanctions were only recently introduced, so that the assessment of impacts has not been viable in these cases. In the case of Austria, sanctions were introduced in 1998. According to ECRE (1999) there is no available practical basis from which to draw conclusions in this instance. Finland had only introduced sanctions in January 1999, Italy in 1998. Deductions from either of these extremes – those EU states which had introduced sanctions before 1990 and those which introduced them towards the end of the decade – are therefore problematic and insufficiently documented in the literature.

This leads to the second point, namely that sanctions were often introduced as part of a policy 'package'. In the case of Belgium for example, sanctions were introduced in 1987 and subsequently reinforced in 1996 in the Amendment to the Aliens Law. In the latter case, the tightening of sanctions was part of a broader policy strategy including detention for insufficiently documented asylum seekers. Despite further legislation in 1997 tightening reception procedures, asylum applications continued to rise sharply, a pattern which was also apparent in Austria which experienced a similarly sharp increase from 1997 onwards. The introduction of sanctions in France in February 1992 was followed by the June Amendments to the Law on Foreigners which introduced detention for insufficiently documented aliens in waiting zones at the border. In this instance, as in others, there is no research to indicate that sanctions had an independent effect upon applications. Although applications have stabilised at a relatively low rate in France since 1992 (and began to decline in 1990) this may have been due to the earlier administrative overhaul of OFPRA[7] in the mid 1980s and the introduction of in-country measures, including the withdrawal of the right to work for asylum seekers in 1991, in addition to the 1992 reforms. The logical difficulty in isolating the causal efficacy of sanctions applied in all of those cases where a package of policies has been introduced.

Summarising, therefore, the position in much of the literature is that carrier sanctions have operated most effectively when used in conjunction with a range of pre-entry policy initiatives, including visa restrictions, pre-flight checks and documentation checks (EP 2000:15; UNHCR 1997; Kumin 2000; Böcker and Havinga 1998; Hovy 1993). These points are developed below.

7. Office Francais de Protection des Refugies et Apatrides – French Office for the Protection of Refugees and Stateless Persons.

Passport/documentation control

According to IGC criteria concerning pre-entry policies (IGC 1997:23), measures to deal with undocumented asylum seekers include carrier sanctions and a range of pre-flight, transit and in-country checks on documentation. The use of these measures has been widespread but also uncoordinated and overlaps with post-entry measures relating to undocumented asylum seekers. UNHCR (1997) pinpoints stringent pre-boarding documentation checks, in the country of origin or country of transit, as amongst the most effective of measures preventing undocumented aliens from entering a territory in order to claim asylum.

The following conclusions can be drawn from the literature.

Firstly, there is a notable lack of systematic information on these types of measure and the literature on their impacts is similarly anecdotal in nature. Again, it is the combination of passport/documentation checks with other measures, including expulsion and detention at the border which is the most striking feature in the literature. In Belgium, according to Ramaker (1997:111) the introduction of detention for asylum seekers without valid documentation under amendments to the Aliens Law in 1993 was effective in reducing asylum applications from particular nationalities. Further amendments to the Aliens Law in 1996 (Cruz 1999:99) allowed for the indefinite detention of insufficiently documented aliens pending a decision on their admissibility to the asylum procedure. However, asylum applications increased in Belgium in 1997 from 11,000 to 36,000 in 1999. France similarly introduced detention for insufficiently documented aliens in the July 1992 Amendments in the waiting zones at the border, although this was part of a broader mix of policies and a history of restrictive policy and practice from the mid-1980s onwards.

Secondly, the combination of detention and expulsion for undocumented asylum seekers was most evident in the case of EU states with long and exposed borders, in particular Greece and Italy. Under legislation passed in 1999 (PD 61/1999) accelerated procedures were to be introduced in Greece for undocumented aliens held in waiting zones at the border. In Italy, the 1990 Martelli Law introduced detention at the border for insufficiently documented aliens, a measure that was reinforced in the 1998 Aliens Act, which introduced detention for up to thirty days prior to expulsion. Although it is difficult to establish a connection between the policy and impact in the case of Greece, where applications have risen since 1999, Italy according to several commentators has proven more successful. The United States Committee for Refugees (USCR Italy 2000:3) notes that the legislation in Italy "had dramatic results. Expulsions from Italy increased by a factor of 10, between 4,000 and 5,000 in previous years to 54,000 in 1998. In 1999, the number of expulsions increased yet again to an estimated 65,000". In line with several other states Italy has experienced an upward shift in applications since 1997 (see Chapter 6).

Under the 1994 Aliens Act in the Netherlands, lack of valid travel documents is grounds for ruling an application inadmissible and therefore subject to accelerated procedures. Detention pending removal is therefore the norm for asylum seekers entering the Netherlands without valid documentation. Although applications declined dramatically during 1994 and 1995 (see Chapter 4), these policy measures were introduced as part of a broader process of policy change and are therefore difficult to treat in isolation. It is important to note that although applications in the Netherlands declined overall by 22 per cent in 1996, they increased in 1997 by 51 per cent.

Visas

A recurrent theme in the literature is the interrelated nature of policy measures. For Böcker and Havinga (1997), visa restrictions are amongst the most effective of measures for reducing the number of applications from specific nationalities. In their overall assessment of the role of asylum policy in determining asylum applications and patterns, the authors conclude that: "[V]isa policy appears to be more important than asylum policy. In cases of a very restricted choice, the absence of a visa requirement or the availability of a visa may determine the destination of asylum seekers" (Böcker and Havinga 1997: 85).

The EP (2000) similarly notes that the combination of carrier sanctions and visa requirements is particularly effective in reducing the ability of a potential asylum seeker (of a specific nationality) to claim asylum in a particular country.

Visa regulations are to be harmonised to some degree through the EU common list of countries requiring visas to enter the EU. As the EP (2000:14) notes, Member States can further determine visa requirements for nationals of countries not on the common list. Visa requirements typically affect applications at the border. In cases where a visa is required (but not held) a potential asylum seeker is held at the border and the determination procedure will typically take place while the applicant is held in a waiting zone at the border or airport. In practice, the absence of a valid visa may make it impossible to enter a Member State and file an application for asylum through the regular determination procedures.

The following conclusions can be drawn from the literature.

Firstly, evidence of the use of visas as a form of restrictive policy has been widespread, particularly as a response to crisis situations where substantial numbers of asylum seekers arrive at a particular destination in a short period of time. Denmark introduced visa

requirements for nationals of Bosnia-Herzegovina in 1993, with evidence of an immediate impact on the number of those applying (IGC 2000:5). Applications for asylum from Bosnia-Herzegovina declined from 8,329 in 1993 to 400 in 1994 and 484 in 1995.

Conversely, the Finnish experience is more ambiguous on the restrictive impact of visa controls. On the one hand, visa restrictions were imposed on nationals of former Yugoslavia in 1992, resulting in a reduction from 1,868 applications in 1992, to 515 in 1993, according to Koivukangas (1999). On the other hand, more recently in the Autumn of 1999, visa requirements were imposed on Roma asylum seekers from the Czech Republic and Slovakia arriving in Finland. In conjunction with the re-introduction of the 'secure country of origin' concept into Finnish law and the use of accelerated procedures for Roma asylum seekers, this resulted in a significant tightening on asylum applications from those areas, according to Finnish NGOs (Finnish Refugee Advice Centre, Helsinki 2000); but this appears to have had no discernable impact. Indeed, applications from the Czech Republic continued to rise from 44 in 1999 to 178 in 2000. The numbers are perhaps too small to draw significant conclusions.

According to Lambert (1996:125), since 1991 France has requested visas from selected nationals in order to deter individuals from claiming asylum while transiting in French airports. Böcker and Havinga (1998: 260) similarly point to the use of transit visas in 1991 as a contributory factor in explaining France's decreasing asylum applications. The UK had similarly introduced visa requirements in response to a rapid increase from a particular nationality, in the case of Kurds from Turkey in the spring of 1989. Although this stemmed the immediate influx, it is interesting to note that asylum applications from Turkey have remained amongst the top ten nationalities in the UK throughout the 1990s (see Chapter 5). The overall application rate in the UK has also obviously increased since that date, although there is no clear explanation in the literature for the increase or for the relative failure of visa regulation to control long-term flows.

Visa regulations appear to have functioned as a short-term, ad hoc response to the rapid influx of large numbers of a particular nationality. In this sense they appear to have had an immediate pay off in terms of stemming the flow of applications, although the degree to which this is sustained over time and the side-effects in redirecting flows to neighbouring states all warrant further examination. According to Böcker and Havinga (1998), the introduction of visa requirements in Sweden and Denmark in June 1993 for refugees from Bosnia-Herzegovina led to a marked increase in the number of refugees in Norway. As Chapter 6 notes, the fall in asylum applications to Sweden in 1993 was accounted for almost entirely by the dissapearance of former Yugoslavs (Kosovans) from the asylum statistics, while the number of asylum applications from Bosnians decreased in 1994. Both of these reductions are explained by the introduction of visa restrictions on Kosovans in 1992 and on Bosnians in 1993. Böcker and

Havinga (1998:85) go on to suggest however that "the introduction of a visa requirement generally has only a temporary effect, in part because other countries often implement visa requirements as well".

Border control

Border control may be regarded as an entry procedure, rather than pre-entry in the sense used above. It is therefore a transitional category between pre-entry and in-country measures. A variety of regional policy instruments have been involved here, including the Dublin Convention, the safe third country concept, the safe country of origin concept (both subject to non-binding resolutions) and the concept of manifestly unfounded applications. The Council of Europe (1999) regards these measures as pre-entry restrictions that broadly affect access to a territory. They therefore include visa restrictions, carrier sanctions and safe third country, first country of asylum and safe country of origin principles within this broad category of access controls.

Of these policy instruments Guild (1999:319) has written that "in the development of the EU's asylum policy, the Dublin Convention can be seen as setting the framework which has since been elaborated and provides the theoretical foundation of all subsequent work".

The Convention follows directly from the abolition of internal borders in a Single Europe and was designed "to prevent asylum seekers from applying for asylum in more than one state" (Guild 1999:318) by (broadly speaking) conferring responsibility for determining an asylum claim with the state through which the applicant had first entered the EU. A streamlining of administration and processing of asylum claims was one of the principal intended benefits of the Convention. According to many commentators the impacts of the Dublin Convention and associated policy instruments including the safe third country concept have been highly ambiguous. Edminster (2000: 7) notes the following:

- The transfer of asylum seekers from one Member State to another is costly and administratively cumbersome;
- There are substantial difficulties in establishing the travel routes of asylum seekers, particularly in cases where documentation has been destroyed or is not available;
- Where the Dublin Convention or the safe third country principle are enforced strictly this often encourages illegal entry, with subsequent applications for asylum in-country, by which time travel routes may be harder to establish; and
- EU states which act as entry points, typically on the EU's eastern and southern borders, bear a disproportionate responsibility under the Convention.

Although the Tampere Conclusions call for measures to make the Dublin Convention more effective, the wider impact of the Dublin Convention according to Guild (1999:320) has been to establish new form of territorial limitation on the right to seek asylum, most clearly illustrated in the case of asylum seekers originating from countries where there is no direct flight to a Member State in which the application is finally made. For many commentators, the resultant 'regionalisation' of asylum to countries adjacent to the country of origin is one highly significant indirect impact of current EU policies (Edminster 2000; Council of Europe 1999), a factor which is in direct conflict with the general ethos of burden sharing.

In relation to Member States' policies, the following can be noted from the literature.

Issues of periodisation may have been particularly important in the implementation and consequent impact of asylum policy, as is suggested in the recommendations for further study. For example, Denmark was ahead of many other EU states in introducing a variety of border control methods in the 1980s. This followed an early rise in applications from 4,310 in 1984, which doubled to over 9,300 in 1986 (UNHCR). The Aliens Act of that year introduced visa regulations and carrier sanctions in addition to the already operating safe third country rule. Commentators have suggested that the introduction of these measures in the mid 1980s acted as an effective deterrent to further asylum migration (DRC 1986; Hjarno 1999). France instituted restrictive border practices in the late 1980s following increased applications during the 1980s. The peak in applications occurred in 1990 in France following earlier administrative reform in 1985 (de Wenden 1997) and by 1989 the de facto introduction of 'administrative zones' at border points for those without valid documents. Accelerated decision-making, increased staffing at OPFRA, the use of finger-printing to determine multiple applications, were some of the reforms implemented at this stage. In effect, as in the case of Denmark, France entered the 1990s with an armoury of restrictive policy and practice already in place.

Austria introduced a safe country principle in its 1992 Aliens Act, such that asylum seekers arriving from a safe country are dealt with under accelerated procedures. According to Fassman (1999) the 1992 legislation was effective in reducing applications, although it followed earlier restrictions relating to the withdrawal of social benefits for asylum seekers in 1991. The decline in applications in Austria preceded the introduction of the safe country principle in the Aliens Act. The apparent success of these combined measures in reducing applications does not explain the recent sharp increase in applications which has taken place since 1997, which has largely consisted of applications from the former Yugoslavia, followed by Iraq and Iran (USCR Austria 1999). More recently, applications from Afghanistan and India increased by 90 per cent and 179 per cent respectively between 1999 and 2000, putting Afghanistan into first place and India into third place in 2000 (UNHCR 2001).

Following in chronological sequence, Germany is often presented in the literature as the classic instance of the tightening of border controls with the implementation of the Constitutional Amendment in 1993, which allowed Germany to apply a safe third country principle to all of its surrounding states. Although asylum applications have declined dramatically in Germany since 1992 (and prior to the introduction of the safe third country rule), there is ambiguity in the literature about the role of the safe third country rule, notably in relation to other legislative changes which were introduced prior to and after the introduction of the Constitutional Amendment (see Chapter 3). In particular, the relative importance of other measures including accelerated decision–making prior to the introduction of the safe third country rule appear to have been a salient factor.

The geographical location of states may also have been a factor in the type and extent of border control, its mode of implementation and degree of impact. Germany and Austria in the east and Spain, Portugal, Greece and Italy in the south are the clearest instances where geographical location has been a key policy consideration. As a response to the mass influx of Albanians in 1990, in Greece, Law 1975/1991 introduced the principle that a claim for asylum has to be made upon arrival at the border with the possibility of expulsion for those who entered illegally. The asylum seeker must also have arrived directly from a country where his or her freedom or life was threatened or face expulsion at the border. Although this ruling was modified in 1996 and the Ministry of Public Order had ceased to make admissibility determinations at the border during 1998, stepped-up border controls and expulsions continued throughout that year. According to the USCR (Greece 1998) this had most likely resulted in the fall in applications during 1998. As the gateway from the Middle East to the EU the management of illegal migration is a top policy priority in Greece. Sitaropoulos (2000:114) contends that the unofficial practice of deportation and expulsion continues despite legislative change. The relatively undeveloped character of the asylum regime in Greece, coupled with an absence of public scrutiny in relation to border practices, may be important factors in explaining the efficacy of asylum policy in Greece. On the other hand, the impact of policies upon applications is difficult to assess given the fact that the majority of asylum seekers enter Greece illegally via Turkey, according to the DRC (2000:126).

Spain and Italy are other cases where border control has been a high policy priority. As noted above, Italy implemented border control in the 1990 Martelli Law, which amongst other conditions deemed applications to be inadmissible if the applicant had arrived from a safe third country. The effects of border control (apart from the evidence on expulsions mentioned above) are difficult to estimate for the reasons given above in relation to Greece. In addition, asylum flows to Italy are characterised by sporadic and crisis-driven influxes from specific nationalities, as in the case of Albanians and Romanians in 1991 and 1992,

a second wave of Albanians in 1997 and the increasing number of arrivals from Turkey and Iraq in 1998-1999 (IGC 2000). In Spain, under the 1994 Refugee Law, accelerated procedures are in operation for border applicants from safe third countries. In particular, given its geographical proximity to north Africa, intensified border control has been introduced in response to the increasing numbers of illegal entrants from the north African Spanish enclaves of Melilla and Cueta. In 1998 two parallel fences armed with sensors and cameras were installed there to prevent illegal entrants from attempting to cross the border from north Africa. Given the decline in applications since the peak in 1993 – the increase was partially due to deflection of asylum seekers from France according to Böcker and Havinga (1998: 262) – the 1994 legislation would appear, from the literature, to have had some impact on applications. Romanians and Algerians largely account for the general increase in applications in Spain since 1997, although there appears to be no explanation for this rise in the literature.

Status determination

Who is protected

In relation to standards of protection it has been suggested that far from harmonisation being the norm "asylum policy in Europe has become more disparate" (Joly 1999:347). Throughout the 1990s there has been a general trend towards the reduction in use of Convention status and the substitution of a range of lesser statuses, such as de facto and humanitarian status. According to Joly "Convention status is limited to a small percentage of asylum applicants, less than 10 per cent in 1996" (1999:347).[8] The lesser statuses include C, F and VVTV status in the Netherlands, Duldung (tolerated status) in Germany and exceptional leave to remain in the UK. The increasing use of temporary protection status as an alternative to Convention status is discussed below.

The following issues are raised by an analysis of the literature.

It is contended by some researchers that the grant of particular statuses and differences in recognition rates may act as pull factors to particular states (Joly 1999; Böcker and Havinga 1998). In the absence of systematic data on this subject it is possible only to point to several illustrations. To take the case of the Somalis in the Netherlands and the UK (discussed in Böcker and Havinga 1998: 257), although the Netherlands was the principal destination country for Somalis in the EU until 1994, this situation was reversed in the latter half of the

8. This figure is based upon estimates supplied by the IGC in its Report on Asylum Procedures: overview of policies and practices in IGC participating states (IGC 1997:418-419). Estimates for the issue of Convention status in the EU in 1996 were 14.2 per cent according to UNHCR.

1990s, with the majority of Somalis in the EU going to the UK. Based on IGC figures, between 1992 and 1994 (inclusive) the acceptance rate in the Netherlands (both Geneva Convention and humanitarian status) in Somali cases was only 41 per cent of total decisions. The UK 'acceptance rate' for 1992-3 was 90 per cent. This high recognition rate continued – from 91 per cent (1994), 92 per cent (1995), 94 per cent (1996), 87 per cent (1997) to 96 per cent (1998). With regards to the granting of VVTV status to Somalis in the Netherlands, the available IGC figures for grant of non-Geneva, humanitarian status are 33 per cent (1992), 19 per cent (1993), 27 per cent (1994), 21 per cent (1995), 31 per cent (1996), 39 per cent (1997), 40 per cent (1998), therefore rising in the late 1990s. The greater attractiveness of the UK as a country of destination may be due, only in part therefore, to the discrepancies between recognition rates illustrated here. This conclusion is conjectural and open to further investigation (see Chapter 6). On the other hand, the rise in Somali applications in the Netherlands in 1994 has been attributed to the grant of residence permits to Somalis in an effort to eliminate backlogs by the Dutch authorities (Böcker and Havinga 1998:261).

Turning to the qualitative research that has been conducted on the motivations of asylum seekers in their choice of destination, the evidence is inconclusive on the role of recognition rates in acting as a pull factor. According to Böcker and Havinga (1997:62) recognition rates may be significant in particular cases (for particular nationalities) but on the whole the blanket restrictionism across Europe has tended to curtail the element of choice between states. An important distinction, made by a recently commissioned report by the Dutch Ministry of Justice (2000) relates to the different expectations and knowledge of trafficked and 'spontaneous' asylum seekers. According to the Dutch document, the former are more likely to have a well-developed awareness of the procedural conditions obtaining in a particular state, whereas the latter are motivated more by conditions in the country of origin and by family networks in the country of destination. Although valuable research has already been conducted in this area (Koser 2000; Koser and Pinkerton 2002; and Robinson and Segrott 2002), there is a clear need for more research on the motivations of asylum seekers and the role of asylum networks, as suggested in the recommendations.

Significant differences exist in the interpretation of the 1951 Geneva Convention between Member States relating to the issue of the origin of persecution. While in the case of persecution by state authorities all Member States may award refugee status, in the case of persecution by non-state agents there is a wide spectrum of policy and practice (EP 2000:11). An essential distinction in terms of policy impacts is the position, maintained in the EU by Germany and France, that the word persecution in Article IA of the Convention "includes only human rights abuses that originate with, or are encouraged or tolerated by,

governments or 'state-like' authorities" (Edminster 2000:1). This restrictive interpretation of the Convention directly impacts upon:

- asylum seekers who are the victims of persecution committed by opposition groups in civil wars, as in the case of Algeria;
- persecuted individuals from conditions of protracted state collapse, as in the case of Somalia; and
- countries such as Afghanistan where the de facto authorities are not recognised by the international community.

While an assessment of the terminological dispute around 'agents of persecution' is beyond the scope of this study, the interpretation of persecution has clear impacts in relation to the recognition and refusal rates and the variable standards of protection between EU Member States. As Edminster (2000:8-10) documents in detail, both the German and to a lesser extent French interpretations have resulted in higher refusal rates for specific nationalities and to the increased use of expulsion orders for Algerian asylum seekers in particular. In this instance, a restrictive interpretation of refugee status directly impacts upon the grant of asylum and the possibility of receiving protection for asylum seekers of specific nationalities. More recently, gender and sexuality have also been included in the definition of persecution as understood in the 1951 Convention (UNHCR 2000:163). Variable policy and practice between states, therefore, is a material factor in the likelihood of claims for refugee status being successful.

The increased saliency and use of temporary protection measures is commonly presented in the literature as one of the most significant developments of the 1990s, introduced principally by UNHCR and the EU as a 'reactive response' to the war in former Yugoslavia (Joly 1999:346; UNHCR 1997, 2000; Edminster 2000; Guild 1999). Again, although the introduction of temporary protection has been widespread, there has also been considerable variation in the type and implementation of temporary protection measures across EU Member States. As Schuster (2000) notes, Germany and Italy were amongst the first to grant temporary protection to refugees from the former Yugoslavia in the early 1990s, thereby taking them out of the normal asylum channels. This practice was quickly followed by other EU states and repeated under the Humanitarian Evacuation Programme (HEP) launched as a response to the flight of Kosovo Albanians in May and June 1999. While the direct impact of these measures is to "reduce the number of asylum seekers by removing large numbers of them from the asylum process" (Schuster 2000:124), variable indirect impacts follow from the different entitlements – in terms of family reunion, welfare benefits and length of residence permit for example – which temporary protection offers in relation to Convention and other statuses.

In some instances the rights of those with temporary protection are better than those of normal asylum seekers. Italy, for example, confers the right to work for those with temporary protection (Vincenzi 2000). On the whole, fewer rights are attached to those with temporary status in comparison to those with Convention status. Joly (1999:346) cites the example of Denmark, where those granted temporary status in 1995 were kept in a camp where they were not taught the host country's language or encouraged to participate in the host society.

Limited length of stay with a view to eventual return is the distinguishing feature of temporary protection measures, although in several instances temporary protection may well be a prelude to permanent settlement. For a number of commentators (Joly 1999; Guild 1999; Edminster 2000; Schuster 2000) the most significant impact of temporary protection measures relates, as Joly (1999:344) argues, to the introduction of "group determination in a positive sense but with a strictly defined brief, restricted to specific events, times and places. Temporary protection introduces a qualitatively different approach, which negates the premise of the Geneva Convention".

It is important to emphasise that this forceful renunciation of the impact of temporary protection measures which is generally prevalent in the literature is not wholly shared by UNHCR (2000:168).

Accelerated procedures

According to the Working Group on Asylum Procedures accelerated procedures offer an effective response to the arrival of large numbers of asylum seekers: "They make possible expeditious rejection or recognition of refugees which finally results in reducing costs and delays in the procedure. The accelerated procedures however in practice may also result in limitations of procedural rights of asylum seekers" (Second Conference of International Association of Refugee Law Judges, Nijmegen 1997:2).

The application of accelerated procedures has been both widespread and extremely diverse in character. As the EP (2000) points out, accelerated procedures may refer to shorter time limits for decision-making, limited procedural safeguards, or an accelerated appeals procedure. It may in this sense be preferable to refer to simplified procedures in some instances. According to the Working Group on Asylum Procedures, accelerated procedures are used in cases where "an asylum seeker comes from a safe country, or because of his infringement or failure to observe certain requirements of the procedure" (1997:4).

Given the variations in practical application it is difficult to assess the impacts of accelerated procedures in terms of exact, comparative standards. No readily available research literature has attempted to do this. This is a major omission in the literature that needs to be rectified by substantive investigation as suggested in the recommendations for further research. One consistent feature, however, is the association of accelerated procedures with the concept of manifestly unfounded claims. In this respect the EP (2000:17), notes that the Resolution on Manifestly Unfounded Applications sets out the two principal conditions under which an application may be regarded as manifestly unfounded – that there is no substance to the claim to fear persecution, and that there is a deliberate attempt to abuse the asylum procedure. From the review of literature it is generally the case that accelerated procedures most often occur in relation to manifestly unfounded claims.

Concerning the impacts of these diverse practices there is a degree of consensus in the literature (Guild 1999; Joly 1999; Working Group on Asylum Procedures 1997) only in relation to two factors: the practical reduction in safeguards which accelerated procedures of any type are seen to pose, and the value of a speedier determination process both for the asylum seeker and in order to preserve the integrity of the asylum procedure (Dutch Ministry of Justice 2000).

In relation to the literature, the following points can be made.

To cite some examples, the 1992 legislation in Austria introduced accelerated procedures for safe third country applicants. Asylum applications to Austria were 22,789 in 1990 and 27,306 in 1991, an increase of 20 per cent. Following the introduction of the legislation the following year the figure dropped to 16,238 suggesting the measures had an impact although there appears to be no research to substantiate that assertion. Significantly, the introduction of accelerated procedures in the 1997 amendment to the Aliens Act for manifestly unfounded claims and those from a designated safe country of origin was not accompanied by a decline in applications but rather an overall increase. In this, as in other cases where no apparent correlation between policy and impact can be observed, research is required to determine whether accelerated procedures affect specific nationalities differentially. According to Böcker and Havinga (1997:85) it may well be the case that different nationalities are affected in different ways by accelerated procedures, an outcome which may be caused by specific country of origin factors or related to the nature of the asylum wave in question. In either case, the authors conclude that "an accelerated procedure may be an important but not sufficient reason for a drop in applications" (Böcker and Havinga 1997:86).

The most commonly cited example in the literature is the case of Germany and the introduction of accelerated procedures under the 1991 Aliens Act and the June 1992 amendments, both of which came into operation in 1993. This case is discussed in more detail in Chapter 3. Clearly, Germany is the one unambiguous 'success story' in the EU context, having reduced its applications since 1992 to below 1987 levels (German Ministry of the Interior 2000). Bosswick (1995) amongst others has pointed to the significance of accelerated procedures in reducing applications before the introduction of the Constitutional Amendment in 1993. It is important to note here that the German case is characterised by the rapid introduction of extensive and mutually reinforcing restrictive policy. In addition to the amendment of Article 16 of the Constitution, the benchmark year of 1993 also saw the introduction of accelerated procedures at the airports for unfounded claims. Of the latter Bosswick (2000) has claimed that few applicants have been affected by the legislation and therefore its impact may be assumed to be minimal. As was noted in earlier, it may be the intensity of the legislative response rather than the effectiveness of a particular policy, which has been important in explaining the relative success or failure of apparently identical policy instruments across EU Member States.

The point also made repeatedly above – that policy instruments do not operate in isolation – clearly applies in this case. Austria, France, Germany and the other examples cited above illustrate the complex and multifaceted character of policy implementation. In the absence of detailed research there is no available evidence to indicate that accelerated procedures have had independent causal effects on the overall application rate, although as in the case of visa regulations there is some evidence that specific nationalities may have been affected by the introduction of accelerated procedures (Böcker and Havinga 1997: 85). This may suggest that accelerated procedures have been effective in the short-term targeting of specific groups or nationalities but that their long-term effects require further investigation.

Port and in-country applications

Most Member States will differentiate between applications lodged at the border and those made in-country, although only in a limited number of cases does this have any significant impact in relation to the determination process. In instances where an accelerated procedure or safe third country rule operates at the border may result in illegal entry and the lodging of claims for asylum in-country. According to the DRC (2000) this is particularly the case in relation to Austria and Germany. Belgium's border admissibility procedure also results in a high rejection rate – only 27 per cent of claims have been deemed admissible at the border since 1988 according to USCR (Belgium 2000:3) – and consequent illegal entry. In many other cases there is no specific distinction between in-country and at port applications other than the accelerated procedures operating at the border for certain types of asylum application.

The following can be noted from the literature.

Prior to the Presidential Decree 61/1999 in Greece all applications for asylum had to be made at the border or be subject to expulsion. This was introduced in the 1991 legislation which included a range of restrictive measures at the border. For reasons given earlier it is difficult to estimate the impact of this legislation given the sporadic and crisis-driven nature of asylum flows to Greece and the high levels of illegal immigration.

Only in the case of the UK was a specific legal instrument introduced to differentiate port-of-entry and in-country applications in the 1996 Asylum and Immigration Act. The distinctive feature of this legislation was the withdrawal of social benefits for those who applied in-country, a measure which was intended to reduce the number of asylum seekers who applied for asylum once inside the country (the majority of asylum claimants). The impact of this legislation is discussed in Chapter 5. There is evidence to suggest that the introduction of DSS benefit restrictions in February 1996 led to a fall in applications (Koser and Salazar 1999). However, the unintended impacts of the legislation were particularly acute in relation to the growing number of destitute asylum seekers which followed the implementation of the Act, with consequential impacts upon local authorities and NGOs.

Appeals

According to the IGC (1997: 25) a "final negative decision and removal action is often delayed or impeded by rejected asylum seekers seeking to exercise further claims or appeal initial decisions".

The streamlining of appeals procedures is one way of dealing with this problem and may be affected by the rationalisation of the procedure, reduction of time limits for decision-making, the establishment of accelerated procedures for manifestly unfounded cases, the withdrawal of suspensive effect, and so on. The tension between the presumed deterrent effects of streamlined appeals procedures and the rights of asylum seekers to a fair and uniform appeals procedure is a recurrent theme in the literature. Guild (1999) notes that the lack of common standards and practices in relation to appeals procedures across the EU has serious implications for asylum seekers affected by the Dublin Convention. As she argues: "Without 'equivalence' in the way in which asylum procedures are determined and in judicial remedies with a supervisory appellate structure to ensure consistency across the Member States... the protection against refoulement... may not be fulfilled" (Guild 1999:321).

One significant impact of the variation in appeals procedures between states is the access of an asylum seeker to a fair and efficient process of law, a factor that largely depends upon the Member State of arrival in the EU.

The following can be noted from the literature.

The current diversity in appeals procedures is the most striking feature from a review of the literature (CBCH 1999). While all Member States allow appeal against a negative decision in the regular determination procedure, the nature of appeal bodies differs considerably across the EU (EP 2000:23).

The practice with regard to suspensive effect, although granted in first instance appeals, also differs between States. Appeals in accelerated procedures also differ considerably between Member States (EP 2000:24). Notable here is the practice in Denmark and Finland of allowing appeals in the accelerated procedure only when a second body disagrees with the decision on manifestly unfounded applications. This would appear to increase the transparency and accountability of the procedures.

Similar variations apply in the case of appeals in border procedures, where most Member States allow appeals (although this is curtailed in the case of Germany for safe third country cases) although with considerable variation in the degree of suspensive effect.

There is no available literature of a comparative kind to indicate that variations in appeals procedures have particular impacts upon applications, either in terms of numbers or patterns of applications. A central issue for further research is the role of national variations in legal codes, institutions and proceedings and their impact upon asylum determination procedures.

Specific instances of the 'fine-tuning' of appeals procedures often appear to have had contradictory implications, particularly in relation to their intended impacts. For example, the introduction of a 48-hour time limit for appeals in the case of manifestly unfounded cases which was introduced in the 1997 legislation in Austria. Although clearly intended to be deterrent in effect, it was accompanied by the establishment of an independent board of asylum appeals. In other instances the exercise of the right to appeal would appear to be associated with negative sanctions. In Portugal, according to the DRC (2000) in the normal determination procedure those on appeal are subject to removal of social support. In the UK under the 1996 Asylum and Immigration Act those on appeal were placed on the same level as in-country applicants in being removed from social support. In Belgium under the 1993 Aliens Law asylum seekers were detained if they had been rejected in the first phase

and were awaiting a decision on appeal. In all of these instances the negative sanctions imposed upon those under appeal proceedings were accompanied by other measures and had no discernible independent impact upon asylum applications.

According to Guild (1999:329), who cites the removal of the right of appeal against return to a safe third country introduced in the 1996 UK Asylum and Immigration Act, the expectation of the right to appeal with suspensive effect "is increasingly under attack in the Member States". In a similar vein, the new Aliens Act in the Netherlands, in operation from April 2001, aims to significantly curtail the capacity of individuals to lodge appeals against decisions under the new determination procedure. Under the new legislation there will be a common residency permit to all asylum seekers for a period of three years, after which time an indefinite residence permit may be granted if conditions are met by the applicant (Chapter 4). Although it is too early to assess the impact of the new Act the reduction in administration (time and costs) that the curtailment of the right to appeal allows is one of the principal benefits of the legislation, according to the Dutch Ministry of Justice (2000).

Detention

There is a growing, albeit largely critical literature on the detention of asylum seekers in the EU and in particular the UK. The position taken by UNHCR, for example, is that the detention of asylum seekers 'is inherently undesirable', a position reiterated by ECRE (1999). As a consequence, much of the literature on the detention of asylum seekers focuses on the negative impact of detention, specifically in relation to the violation of the human rights of those detained. It is also clear from the literature that detention is conceived both in terms of its impact on administrative efficiency (in controlling absconders) and as a potential deterrent to further asylum migration.

In its Summary of State Practice (1994:53) ECRE notes that 'hardly any' countries were able to provide reliable statistics on the number of asylum seekers detained, due to a variety of factors, including in many cases:

- the failure to differentiate asylum seekers from other types of detainee;
- the failure to distinguish between rejected asylum seekers and those waiting expulsion for other reasons;
- differences in the interpretation of detention across EU Member States; and
- the failure to register detention for short periods prior to expulsion at the border.

In general, ECRE (1994:54) maintain that detention "is not usually used as a measure against in-country applicants but predominantly against border, port or airport applicants". According to data provided by UNHCR (1995) there has been a general increase in the use of detention, particularly as this is shown in increased powers of detention and in the establishment of detention centres. The increased use of detention has been explained in terms of the tendency for asylum seekers to disappear from the determination process, although detention has also been assumed to have a deterrent effect in relation to the rate of applicants entering a particular Member State. One significant impact of the growing use of detention is that "the use of restrictive measures (of which increased recourse to detention is one) may themselves contribute to a hardened climate in which persons in need of protection are inadequately distinguished from illegal aliens generally" (UNHCR 1995: 4).

In relation to detention, as in other areas, there is considerable variation across the EU in terms of policy and practice, both in relation to the reasons for detention, length and conditions of detention and the procedural safeguards that accompany detention for asylum seekers. This report is not concerned with the character of these variations but with the available evidence on the impact of detention upon application rates.

The following can be noted from the literature.

As in other cases, the use of detention is commonly combined with other deterrent measures. For example, in Austria detention is used under the admissibility procedure at the border while a decision is reached or in the case of illegal entry. According to the EP (2000:37) at least 13 per cent of all asylum seekers are held in detention in Austria. Belgium applies a similar procedure of detention during the admissibility phase for insufficiently documented asylum seekers. Detention in the 'transit zones' of international airports was instituted in France in 1992 and later replicated in other EU Member States. In these and other cases the specific deterrent effects of detention upon applications have not been demonstrated in the literature and have been assessed largely in terms of the more general climate of restrictionism affecting asylum seekers in the EU.

The most readily available literature on detention refers to the situation in the UK. The increased use of detention in the UK dates from the mid-1980s and a change in the pattern of asylum applications and in particular an increase in applications made at port of entry, following the imposition of visa regimes on nationals of a number of refugee producing countries in 1985 and 1986 (most notably Sri Lanka). Cohen's (1989) research examines the increased use of detention in the UK in terms of legal process, political context, institutional arrangements, and the perspectives of detainees and the Home Office and concludes with practical recommendations for institutional reform. Later reports have set the

increased use of detention in the UK in the context of growing EU restrictionism (Opendo and Harrell-Bond 1995). On the impact of detention as a deterrent measure, qualitative research conducted by Pourgourides et al. (1996:43), into the mental health implications of detention concluded that "detention as deterrence does not work". Misinformation concerning detention practices was commonplace amongst facilitators according to respondents in the report, suggesting that the possibility of detention was seldom a consideration for asylum seekers. It is clear that this conclusion requires substantiation as highlighted in the recommendations for further research. Campaigning and refugee advocacy literature on the human rights implications of UK detention policy is also commonplace in the literature (Ghaleigh 2000).

Recent research by Hughes and Field (1998) suggests that the administrative benefits of detention in overcoming non-compliance in the UK are minimal and may be overridden by the financial costs involved in maintaining detention centres. Hassan (2000) has similarly cast doubt on the efficacy of detention as a deterrent measure in the UK, arguing that the principal impact of detention may be to deter all claimants rather than the abusive claimants that are the target of Government policy. Even here, however, no evidence is presented to suggest that detention has resulted in a fall in applications, either in general or in relation to specific nationalities. The qualitative research conducted by Pourgourides et al., (1996) and Böcker and Havinga (1997) suggest on the contrary that disinformation by traffickers or the existence of established networks in the country of destination may work against the effectiveness of detention as a potential deterrent measure.

Removal

There is a lack of research on the impacts of removal policies on asylum application rates. Further research is needed to understand the extent of any causal relationship.

Reception process

Referring back to the framework of Policy and Practice Indicators (Box 1.3, Chapter 1), the term Reception Process in this context refers to practices and procedures which governments adopt to locate and accommodate asylum seekers either initially, on arrival, or in-country while a status decision is being reached. The Reception Process operates closely alongside Entitlements, Welfare and Support Services (see below) and in parallel with Status Determination Procedures (see above).

As Muus (1997:80) suggests, "while the decision about legal status is still pending, the person in question resides legally in the receiving country". The policy dilemma noted by Muus concerns the degree to which integration measures should be introduced for asylum seekers upon arrival. Although this would facilitate reception procedures it runs counter to the stated need to make reception conditions 'unattractive' to potential asylum seekers as an effective means of deterrence. It is a common theme in the literature that reception procedures have on the whole become less congenial for asylum seekers throughout the EU. Joly (1999:346) alludes to an explicit policy of 'non-integration' for asylum seekers, when she maintains that "conditions of reception are often designed adversely with the clear purpose of deterring arrivals of applications". As she goes on to argue, although there is a significant body of literature on reception and settlement policies in the EU, little attention has been paid to the social consequences of non-integration policies for asylum seekers (Joly 1999:347).

The following conclusions related to reception policies and processes can be noted.

The first significant point from a review of the literature is the considerable variation in reception policy and practice in Member States. As Fardoouee (1997) notes, specific EU states such as Greece, Italy and Portugal are characterised by ad hoc or negligible provision for the reception of asylum seekers. Until recently this was also the case in Ireland and to a lesser degree in the UK, which prior to the 1999 Immigration and Asylum Act had relied upon voluntary organisations and NGOs for the initial reception of asylum seekers. In part a function of the recent arrival of large numbers of asylum seekers (Duke et al., 1999:110) particularly in the case of Ireland since 1997, reception facilities are also closely related to the welfare traditions and mores of particular EU states, including different conceptions of citizenship (Joly 1996). A common theme in the literature refers to the distinctive reception procedures of the 'Scandinavian' countries, respectively referred to as the Swedish, Danish or Dutch models, although there is considerable variation across these countries. France and Germany have both long adopted centralised reception procedures with dispersal to reception centres across the country (Joly 1996).

Reception procedures also vary according to the degree of choice allowed the asylum seeker in terms of accommodation and place of residence (Fardouee 1997:2). The advantages and disadvantages of the use of reception centres has been a recurrent theme (Fardouee 1997; Refugee Council 1997). In the UK context, specific studies of reception policies have focused on the distinction between reception for quota or allowed refugees (Robinson 1993) and that for spontaneous asylum seekers. Debates about the effectiveness of housing-led dispersal or the 'clustering' of asylum seekers exist in the literature on reception (Joly 1996; Zetter and Pearl 1999).

In assessing the impacts of reception policies the question of periodisation is again relevant. Both France and Germany, as noted above, had introduced centralised reception for asylum seekers in the 1980s, although these are organised in radically different fashions (Joly 1996). Sweden similarly had introduced reception and dispersal policies in 1985 (Hammar 1993) and Denmark in the 1980s. The absence of choice in the case of Germany in relation to the Länder to which the asylum seeker is consigned is a distinctive feature and, though assumed to have a deterrent effect, there is no convincing evidence that this is the case. Given the increase in asylum applications throughout the 1980s, which continued to 1992, there is little to indicate that Germany's approach to reception has had an independent effect in relation to applications. The Länder system also leads to a degree of variation across Germany in terms of reception standards that may have significant practical consequences (see Chapter 5).

Other states, as noted above, have negligible or non-existent reception facilities. One impact of this in the case of southern states which act as points of entry for inward migration to the EU – Portugal, Italy and Greece in particular – may have been to encourage illegal stay, further inward migration into the EU or the disappearance of asylum seekers into the informal economy (Black 1992).

In other states, notably Ireland which has experienced a significant intake of asylum seekers since 1997, a major overhaul of reception procedures has only recently taken place. Under legislation passed in 1999 and implemented in 2000 Ireland has adopted a UK style approach to reception, with organised dispersal and the provision of benefits through alternative means than those used for the usually resident population. In this case the impact of the change in reception policy is clearly difficult to assess, as yet. The same evidently applies to the case of the UK.

Concerning the low-intake states in the EU, Finland has recently (1999) introduced an Integration Act which places responsibility for reception with the Ministry of Labour (Koivukangas 1999:135). Apart from its impact on refugees (Valtonen 1998) there is no indication in the literature of the impact of these policies on asylum seekers or applications. Visa regulations and accelerated procedures for specific nationalities have been Finland's preferred policy and practice in recent years.

Of the major receiving states in the EU only the Netherlands, in addition to the UK, supplies an instance of a particularly significant overhaul of reception in terms of its possible impacts and within the period covered here (1990-1999). The 1994 Aliens Act introduced major changes to the reception system established in 1987, the so-called ROA or Regulation on

the Reception of Asylum Seekers (Muus 1997). Although the provisions of the Act are discussed in more detail in Chapter 4, the introduction of Application Centres (ACs) under the legislation, where asylum seekers were screened and manifestly unfounded applications processed under accelerated procedures, was a major innovation. According to Muus (1997:92) in his assessment of the introduction of ACs, "statistics concerning asylum requests show a significant decrease in the number of requests since the ACs became effective in 1995". It is difficult in this context to extricate the impact of the ACs in the reception procedure from the use of accelerated procedures more generally. As discussed in Chapter 5, the reception procedure has gone through further changes in the late 1990s and is now subject to another complete overhaul in the Aliens Act 2000 introduced in April 2001.

Dispersal of asylum seekers away from locations where they would tend to freely settle to designated locations, as already implied, is a growing feature of reception policies in many EU Member States. The rationale for, and the precise form of policy and practice in relation to the dispersal of asylum seekers varies widely across the EU. As Duke et al. (1999:122) note, most EU states "have reception centres which can accommodate at least some asylum seekers on arrival", although this is only minimally the case in relation to Portugal, Italy and Greece.

The following can be noted from the literature.

Austria disperses asylum seekers to specific provinces which vary widely as to their levels of provision and support. Dispersal (and social support) only applies to the approximately 30 per cent of asylum seekers under Federal Care (DRC 2000), with the remainder free to move within the country. Belgium assigns asylum seekers to an allocated borough according to a waiting list register (Cruz 1999:100) under legislation implemented in 1997. Germany is the most pronounced example of dispersal on a quota basis to Länder after a three month period in a reception centre. Asylum seekers are only free to move within the Länder to which they have been assigned. In practice there is wide variation between Länder according to the types of social benefits which may be provided (see Welfare and Support below).

Patterns of variation of this type are the norm across the EU. In terms of their intended impacts – either in relation to improving administrative efficiency, in alleviating pressure on specific locations of settlement or in acting as deterrents to further asylum migration – there is little systematic evidence which suggests that one system of dispersal is preferable to another. Of comparative research, Joly (1996) has pointed to the advantages of the French

system over the dispersal of quota refugees in the UK under the Vietnamese and Chilean programmes of the 1970s and 1980s.[9] Research in Sweden (Hammar 1993) has pointed to the shortcomings of the dispersal system which was introduced in 1985, while Muss (1997:85) has noted the significance of the ROA system (which also withdrew welfare benefits for asylum seekers) in alleviating housing pressure in the major areas of reception in the Netherlands. As Muus further indicates (1997:85) the long-term success of the ROA system depended upon the availability of housing in the municipalities. Within a few years the ROA system had become overburdened. Secondary migration is pointed to as a persistent failure of dispersal policy, with asylum seekers tending to gravitate towards the principal areas of refugee community settlement.[10]

Since the 1999 Immigration and Asylum Act, the UK Government has embarked on an organised dispersal policy in order to limit asylum seekers from settling in the south-east of the country, where pressures on housing stock are greatest, and to locate them in regions where surplus housing may be available and support services can be provided in a coordinated framework. On the impact of the legislation there is, as yet, little systematic evidence from which to draw conclusions concerning impacts in alleviating the housing burden in London and the south-east or in acting as a disincentive to further asylum flows (Audit Commission 2000). Anticipating the impact of dispersal, Zetter and Pearl (1999; 2000) are sceptical as to the potential success of dispersal policies; but it is too soon for conclusive evidence.

The Dutch example is noteworthy for the complexity of its approach to reception and dispersal. Under the 1994 Aliens Act (prior to the introduction of the Aliens Act 2000) asylum seekers in the Netherlands, once past the initial AC stage are allocated to one of the Investigation Centres (OCs) dispersed around the country. Here the initial decision on an application is

9. In France, a permanent structure consisting of the Ministries of Health, Labour, Finance and NGOs, in addition to UNHCR and the Office Francais de Protection des Refugies et Apatrides (OFPRA) coordinates reception policies. The current dispersal system was initiated in the 1970s under the Chilean and Vietnamese Programmes and is coordinated by France Terre d'Asile (FTDA). According to Joly (1996) the long-term, coordinated approach to reception and dispersal in France stands in contrast to the more de-centralised approach favoured in the UK under the dispersal system for Vietnamese quota refugees in the 1970s. Here, there was a greater reliance on 'front-loaded' dispersal to areas of surplus housing, with less attention to the requirements of long-term settlement. In the case of Ugandan, Vietnamese and Chilean programmes in the UK (Refugee Council 1997:17) there was also a heavy reliance on voluntary organisations and NGOs to provide support to refugees in the dispersal areas. A critique of the earlier Ugandan and Vietnamese programmes in the UK is provided by Robinson (1985).
10. Hammar (1993) has noted the development of the 'Sweden-wide' strategy of dispersal in 1985. Initially conceived in terms of providing accommodation in suitable areas of refugee community settlement, it was extended to cover all of Sweden's municipalities. Of the limited evidence available, it would appear that secondary migration has occurred from areas of initial placement to the major cities (Hammar 1993:110). Concentration of ethnic groups in the major cities has increased since 1994 when asylum seekers were allowed to arrange their own housing outside the residential centres (Ornbrant 1999).

made after which asylum seekers are moved to the Asylum Seeker Centres (AZCs) – again dispersed around the country – until a final decision is made on their application for asylum. Upon receipt of a status the individual is moved to one of the municipalities for integration. This staggered approach to reception is regarded by many commentators as effective administratively as well as allowing the authorities to maintain regular surveillance of asylum seekers as they progress through the determination procedure[11]. In practice, however, as in the case of the German Länder there are many practical exceptions to what may appear to be unusually well-ordered reception procedures[12]. It is these (internal) variations in practice which make generalisation and comparison problematic across EU Member States. As is suggested in the case studies and in the recommendations for further study, the disjuncture between policy formulation and the practical implementation of policy by front-line institutions and personnel is a key consideration in evaluating the impacts of policies.

Welfare and support services

Welfare support

According to the IGC (1997:26), "the pull factor for abusive claimants was often perceived as the availability of social assistance to asylum seekers at the same level as for nationals. Participating States have withdrawn or reduced ancillary advantages to asylum seekers which may act as a pull factor for unjustified claims".

A variety of measures have correspondingly been introduced including the removal of social assistance to applicants who apply in-country, providing benefits in kind rather than cash form, restricted rights to housing and the withdrawal of the right to work. In addition to eliminating a pull factor for asylum migration there are economic considerations in play, with the likely reduction in welfare bills forming one important consideration. As Schuster (2000:123) suggests, "the logical conclusion of this train of argument is to cut welfare benefits (and bills), thus ending the incentive to asylum seekers".

There has been a pronounced tightening of welfare and social support in all EU Member States. The following can be noted from a review of the literature.

Minderhoud (1999) in his comparative study of the Dutch, UK, Belgian and German social security and welfare systems has indicated a growing emphasis upon exclusion and enforcement, the latter term adopted from the Dutch 'pursuit of enforcement' in relation to

11. Interview with Philip Muus, University of Utrecht, January 2001 – see Chapter 5.
12. Interview with Joachim Ruffer, German Red Cross, Berlin, January 2001 – see Chapter 4.

reduced welfare rights for asylum seekers. Although Minderhoud (1999:145) pinpoints an identical tendency in each state towards the use of social security policy as an 'instrument of asylum policy', it should be noted that there is considerable variation in the welfare rights attached to different statuses with the result that blanket assertions concerning an overall reduction in standards are seldom possible to maintain. In general, those with lesser statuses – temporary protection, ELR in the UK, VVTV in the Netherlands or those with Duldung in Germany – have fewer welfare entitlements. One clear tendency is the increasing separation of asylum seekers from the social security system available to citizens of a state. This is a central feature of the German, Dutch and UK asylum regimes and is explored in detail in Chapters 3-6. The impact of such a separation in terms of reduced applications has yet to be evaluated systematically, although Schuster (2000:123) contends that "though Germany has for some time been very restrictive in terms of the benefits it gives asylum seekers, it continues to receive large numbers. On the other hand France, which is very niggardly in this respect, saw the numbers of asylum seekers steadily decline until 1997".

More typical in the literature is a growing interest in the impact of welfare restrictions as a whole upon asylum seekers themselves, in terms of their livelihood strategies and their potential social exclusion from mainstream social relations. Here again, there is as yet little systematic research into this area (apart from the occasional work of refugee advocacy groups) in any of the principal receiving states in the EU, although there is some documentation of the impact of asylum policies on livelihood strategies in relation to Greece (Black 1994) and an emerging literature in the UK (Zetter and Pearl 2000 and 2000a). The broader impact of welfare restrictions and social exclusion upon the maintenance of harmonious race relations is also a common theme in the literature (Zetter and Pearl 2000 and 2000a).

Cash/benefits-in-kind

As already indicated, there is great disparity in terms of the reception and welfare support provided for asylum seekers in the EU, although recent research by the Swiss Forum for Migration Studies (Efionayi-Mäder 1999) has indicated that the level of benefits varies only slightly between comparable welfare assistance regimes. A Working Paper by ECRE (1998) has similarly calculated that social security expenditure across the EU is comparable across Member States with similar levels of GNP per capita. There would therefore appear to be little to differentiate Member States (the core states of Germany, the Netherlands, France and the UK for example) in terms of their welfare benefits 'pull factor'. Where there is substantial variation is in the type of assistance and in particular whether this takes the form of cash benefits or payment in kind. Clearly, in some cases, no form of social support, cash or otherwise is provided for asylum seekers. These are necessarily exempt from the following discussion.

In Belgium, as in other cases, there is a distinction between the type of support (cash or in kind) depending upon whether an individual is in a reception centre (board and lodging and no cash) or living outside in private accommodation (a small cash allowance). Withdrawal of cash payments for all asylum seekers was introduced under the new Act of January 2001 in response to the sharp rise in applications which Belgium has experienced since 1997 (UNHCR 2001). The fact of internal variations in practice in a number of EU Member States – due to the Federal structure of a Member State or its degree of organisational competence – is again important in comparative EU terms. Germany, under the 1993 Asylum Seekers Benefit Act withdrew all forms of cash payments, following the introduction of restrictions on welfare payments which had occurred in the 1980s (Schönwälder 1996). In the German case there are substantial variations in practice between Länder, with some areas retaining cash payments for asylum seekers depending on the political complexion of a particular State, city or town (Minderhoud 1999; interview with Joachim Rüeffer, German Red Cross, Berlin, January 2001). Ireland, again in response to rising numbers, has followed the UK's 1999 Immigration and Asylum Act in substituting vouchers for cash payment under its 1999 reforms (see Volume II). In all of these cases, the economic advantage of substituting payment in kind for cash benefits is open to question. As discussed in further detail in Chapter 5, the UK Home Office has itself noted the costliness of the new system (Home Office 1998) although the presumed benefits are held to be long-term and therefore difficult to assess at this point in time.

On the whole, there is a need for further research to gauge more accurately the impact of the substitution of benefits in kind, or the reduction in benefit levels upon the asylum application rate of particular Member States. Anecdotal evidence suggests that perceptions as much as the reality may be key here. Thus the UK's perceived availability of welfare support coupled with the perceived opportunities for economic livelihood may have acted as significant pull factors, at least in the short term.

As Schuster (2000:123-4) concludes "it is widely acknowledged that the substitution of benefits in kind is more expensive than cash benefits and that cuts in benefits are not necessarily (if at all) followed by a reduction in numbers. While it may not be possible to say that the level of welfare benefits has no impact on the numbers claiming asylum, there is certainly no conclusive evidence… that it has any impact".

Employment

The right to work is another significant potential economic pull factor that EU Member States have sought to constrain in order to deter unfounded claims for asylum. In this instance,

many states have either eliminated the right to work or severely reduced work entitlements. Where entitlements to work exist they are often qualified in terms of time limits, i.e. a permission to work may be granted to asylum seekers after six months under a concession outside the immigration rules (UK), in terms of the type of employment, i.e. with a specific employer (Finland) and the degree to which an asylum seeker may be in direct competition with a national or member of another EU state in seeking employment (Germany, under certain conditions) (DRC 2000). Where permission to work is granted there are often considerable de facto limitations on an asylum seeker's ability to pursue employment, either in terms of the non-recognition of qualifications, the existence of language barriers or forms of indirect discrimination. The imposition of sanctions upon employers for the employment of undocumented workers – as in the 1996 Asylum and Immigration Act in the UK – has also been cited in the literature as a potential discriminatory measure (Refugee Council 1997) which indirectly discourages the employment of those belonging to visible minorities. No evidence has been found to assess whether this has had an impact on asylum seeking. Indeed it could be inferred from both the continuing rise of applications in the UK since 1996, and from anecdotal evidence, that overall economic prosperity has been a sufficiently strong pull factor to override the constraints of employment controls.

In the major receiving states there is substantial variation in policy and practice. France introduced a bar on the right to work for asylum seekers in 1991 (de Wenden 1997) as part of a broader range of restrictive legislation. The position in Germany is more complex, with a distinction made between those arriving before and after May 1997. Briefly, those arriving after that date have no right to work during the determination procedure (Bosswick 2000). In the Netherlands asylum seekers do not have an unconditional right to work, although since 1998 it has been possible for asylum seekers to work for a limited period, a practice which is likely to be extended in the future (Minderhoud 1999). Asylum seekers are allowed to request permission to work after four months in Sweden and after six months in the UK.

No evidence has been found in the literature however to assess whether employment entitlements have had an impact on asylum seeking. Nevertheless it should be noted that applications in France had begun to decline prior to the introduction of the work ban and there is no independent research to indicate that the further decline from 1992 to 1996 was directly associated with this ban. Limitations on the right to work had been introduced in Germany in the 1980s alongside welfare restrictions. Despite this, applications continued to climb until the peak of 1992. Moreover, there have been no further (major) restrictions on work entitlements in Germany that might have contributed to the dramatic decline in applications which has occurred since 1993.

Housing

The provision of housing is an integral part of the reception process for asylum seekers and is central to the overall integration of refugees (Carey-Wood et al. 1995; Zetter and Pearl 1999; Duke et al. 1999). Changes in the provision of housing for asylum seekers have generally taken place in conjunction with broader changes affecting welfare rights, as in the case of the UK in its 1993, 1996 and 1999 asylum and immigration legislation (see Chapter 6). As in other areas, there is evidence of great diversity in the provision of housing for asylum seekers, a factor which is closely connected to the general character of the reception procedures that exist in a particular Member State. Broadly speaking, Member States fall into the following categories:

- Those with minimal or no housing provision, including Austria, Greece, Portugal and Italy.
- Those which operate a three phase procedure. Under this, in the admissibility phase the asylum seeker is housed in a reception centre and later transferred to accommodation in the municipalities in the normal determination procedure. When a status has been decided the individual may then be transferred to other accommodation in the same or another municipality. In the case of the Netherlands, prior to the introduction of the Aliens Act (2000) the allocation of housing was directly related to the different stages of the determination procedure (Muus 1997). Most EU states appear to belong to this second category.
- The case of the new system in the UK, after the 1999 legislation, which offers a streamlined version of the second model, is discussed in Chapter 5. Under these provisions asylum seekers are dispersed to areas of surplus housing provided by local authorities and private contractors. After a positive decision there is a short ‘turn-around’ period. During this time alternative accommodation has to be found by the former asylum seeker.

The literature on accommodation for asylum seekers has tended to focus on general housing conditions, the effects of social isolation and disempowerment and the potentially negative consequences of restrictions on freedom of movement (Zetter and Pearl 1999). This is certainly the case in relation to the system in Germany (where very little freedom of movement is allowed) and in the current literature on the housing situation in the UK (Zetter and Pearl 2000). While it is widely assumed that restriction of movement or the limitation of choice in accommodation are deterrent measures there is little in the literature to indicate that changes in housing provision, as such, affect applications. The restriction on housing rights for asylum seekers, which have been progressively introduced in the UK since 1993, has not been accompanied by a fall in applications. On the contrary, applications in the UK have tended to rise in conjunction with, or slightly in anticipation of, the introduction of new legislation (see Chapter 5).

Administration

The role of central and local government has proven difficult to examine within the context of this study. In the absence of a distinctive literature in this area further primary research clearly needs to be conducted, a task which is already underway to some degree in the UK (Zetter and Pearl 2000).

The following observations are drawn from an examination of the available literature and point to issues that warrant further examination.

There is clear evidence in several Member States that the federal, provincial or regional administration of asylum policies have directly impacted upon their implementation and overall effectiveness. This theme is further developed in the case-study on Germany (see Chapter 3).

The issue of the unintended impact of asylum policies is clearly raised in this context. Policy formulation at the central administrative level is translated in different ways at the local, federal or regional levels. The contradictory impact of the housing provisions of the 1996 UK Asylum and Immigration Act, the implementation of the Asylum Seekers' Benefit Act in Germany in 1993 and the withdrawal of social support for individuals facing expulsion in the Netherlands from 1998 are discussed in the case-studies which follow this chapter.

The organisational capacity of a Member State to control its provinces and local administration – notably in the case of Italy, Greece and Portugal – is a central factor influencing the implementation and effectiveness of asylum policy. Even where there is no formal federalist structure, the absence of an effective organisational infrastructure may adversely affect policy implementation.

'Frontline' institutions in all Member States, i.e. bodies which deal directly with asylum seekers, may have a substantial degree of independence in the way they implement or act upon policy decisions which have been made at the 'centre'. The personnel and decision-making processes in these institutions are an integral part of the multi-level governance which informs the implementation of asylum policies in Member States.

In summary, the role of administrative procedures in relation to the political structures of Member States – federal, regional and provincial – the unintended impacts which occur at the local level, the organisational capacity of the Member State and the relation between 'frontline' and 'centre' in the implementation of asylum policy are all areas of great interest which urgently require further primary investigation.

Concluding commentary

It is important to reiterate that the majority of commentators regard pre-entry controls as amongst the most significant in redirecting or stemming asylum flows. This is despite the fact that the complex character of policy implementation – with the simultaneous operation of a variety of measures – makes the extraction of simple cause and effect relationships between policy and outcome difficult to establish with any degree of certainty. The following points appear to be the most relevant from the review of pre-entry. However, it is important to emphasise that these conclusions are based upon a survey of the literature and preliminary fieldwork and that there is a clear need for substantive research to clarify the role of pre-entry measures in relation to asylum applications.

- Commentators agree, with some qualifications, that pre-entry controls have been amongst the most effective in stemming or redirecting asylum flows.
- Pre-entry controls have not operated in isolation. More attention needs to be paid to the specific combination of policies operating within a state at a particular time in order to assess impacts more clearly.
- The periodisation of policies may have been a significant factor in explaining the subsequent impacts of policies and the long-term capacity of a state to manage asylum flows. The stabilisation of asylum flows in France during the 1990s may be a partial result of the earlier administrative and legislative response to increasing asylum flows from the latter half of the 1980s onwards.

The distinction between the short-term and long-term effects of policies needs to be borne in mind when assessing the impacts of policies. Visa regulation in particular, although most effective in controlling the flows of particular nationalities, has also been prone to short-term effects and to indirect impacts in the redistribution of asylum flows to other Member States.

In reviewing the literature on asylum procedures and their impacts on applications, the following conclusions can be drawn:

- Far from the harmonisation of asylum procedures there is evidence of considerable diversity across Member States. The proliferation of statuses and in particular differing interpretations of persecution under the Geneva Convention, has impacted directly upon the grant of asylum in Member States.
- There is a large degree of variation in the definition and use of accelerated procedures across Member States. Despite this, there is some evidence that the targeted application of accelerated procedures for specific nationalities may have been effective in reducing applications over the short term.

- In relation to appeals procedures, the evidence suggests that the streamlining of the right of appeal has had contradictory impacts: on the one hand reducing legal safeguards for applicants while at the same time increasing the administrative efficiency of asylum procedures in Member States.
- The use of detention is condemned by refugee advocacy organisations for its impact upon the mental health of asylum seekers, and the cost effectiveness of detention is also questioned. As to the overall impact of detention on asylum applications, no clear evidence was found, and further research is recommended to determine the impacts.
- There is a lack of research on the impacts of removal policies on asylum application rates. Further research is needed to understand the extent of any causal relationship.
- In all of these cases, discrete policy measures are difficult to isolate from the broader policy package of which they are an integral part.

Concerning the impact of changes in reception procedures and dispersal the following can be noted:

- The diversity of practice in relation to reception procedures is striking. In general, across Member States where reception provision already exists, there has been a move towards curtailing the potential for integration by asylum seekers. Reception is conceived in deterrent terms and as a means of limiting access by asylum seekers from mainstream social relations.
- The importance assigned to reception procedures varies across Member States. The Netherlands, in particular, has modified its reception procedures several times in order to more effectively monitor and control the asylum population as it moves through the different stages of the determination process.
- There has been little research conducted on whether differences in overall application rates vary with changes in reception policies and practice. It should be noted, however, there is little evidence to indicate that reception policy in Germany, which is often assumed to have a deterrent effect, has had an independent effect in relation to applications.
- The adoption of policies dispersing asylum seekers is widespread among EU Member States; no conclusive evidence exists to demonstrate the impact of dispersal on the patterns and processes of asylum seeking.

3. Germany

Introduction

Between 1984 and 1993 nearly 3.5 million asylum applications were made in Europe, and approximately half of that number were registered in Germany. In 1992, when asylum applications were at their height in Europe, over 438,000 applications were made in Germany, more than 75 per cent of the total for the EU (UNHCR 1995).

As the principal country of asylum throughout the 1990s Germany warrants detailed investigation. This is particularly the case given the dramatic reduction in asylum applications that occurred there since 1993. As the UK has overtaken Germany as the main destination country in the EU, what are the lessons which can be learnt from the German case and what are the broader implications for asylum policy in the EU?

Historical and political context of asylum policy

German immigration and asylum policy in the post-war period was characterised by the conflict between the economic and demographic demand for immigration and the sustained political opposition to the acknowledgement that Germany was indeed a 'country of immigration' (Castles and Miller 1998; Heckmann and Bosswick 1995; Martin 1994). The dependence of the German 'economic miracle' on the Gastarbeiter (guest worker) migrant labour system from 1950 to 1973 is well documented in the literature (see e.g., Martin 1994; Rotte 2000). With the ending of the Gastarbeiter system in 1973 a new phase of family reunion took place with the establishment of settled ethnic communities, particularly amongst Yugoslavs and Turks (Castles et al.,1984). From approximately the middle of the 1970s with the halting to primary economic migration, the asylum route was the only available option for migrants attempting to enter Germany. The increase in civil war, state collapse and population displacement which was taking place in parts of Africa, Asia and Latin America at this time (ICIHI 1986) was an additional factor encouraging asylum flows to Germany, although the geographical proximity of Germany to sending areas in Central Europe may have been equally significant for the character of asylum flows.

The period from 1974 to 1982 marked a transition to more restrictive asylum policies in Germany with the introduction of accelerated procedures, the limitation of the right to work (Bosswick 2000:45) and a reduction in welfare benefits. This corresponded to a significant increase in numbers in the 1977-8 period largely from outside Europe. Schönwälder (1999) has argued that the increase in asylum seekers in the late 1970s resulted in growing public hostility and the construction of the Asylanten problem by sections of the administration and media. It is significant that the terms Scheinasylanten (bogus asylum seeker) and Asylantenflut (flood of asylum seekers) enter public discourse at this time (Bosswick 2000). The 1980 military coup in Turkey resulted in an additional 92,000 asylum applications according to Bosswick (2000). Since 1982 asylum seekers have been housed in mass accommodation and issued with residence permits which restricted them to the Länder in which they were housed. As early as 1983 UNHCR criticised Germany for its restrictive policies (Schönwälder 1999:79). Rising applications resulted in further restrictions with the introduction of carrier sanctions in 1987.

On the political front, by 1987 a declining recognition rate was taken as evidence that the majority of asylum claims were unfounded. The call for more restrictive asylum policies which followed and in particular the demand for an amendment to Article 16 (2) of the Basic Law which guaranteed the right to asylum for those fleeing political persecution, came at this time from the Christian Democratic Union (CDU) and Christian Social Union (CSU). The challenge to the ethnic basis of German citizenship which unregulated migration posed was another central factor in the reaction to the increase in asylum applications (Cesarami and Fulbrook 1996). The asylum crisis reached a head with an increase in asylum applications from 57,379 in 1987 to 103,076 in 1988 (Bosswick 2000:47). The collapse of the Berlin Wall in 1989 and the onset of the German reunification in 1990 opened the gates to new streams of migration from central Europe.

Two significant factors stand out here. Firstly, by the late 1980s Germany had already experienced the mass arrival of asylum seekers, a factor which was itself exceptional in the European context at this time. Secondly, Germany had already begun to deploy an impressive range of restrictive asylum policies by the beginning of the 1990s. In the first half of the 1990s Germany was the main destination for asylum seekers in Europe. The upsurge in applications in 1992 (examined in detail below) resulted in a crisis for those wishing to maintain Germany's constitutional guarantee of the right to asylum which was enshrined in Article 16 (2) of the Basic Law (Bosswick 2000:44). The crux of the debate in Germany was that Article 16 (2) viewed asylum as an individual human right over and against the state's right to limit entry. According to many commentators, a significant number of asylum seekers were excluded under Article 16 (2) because it referred to individual persecution by the state

and not for other reasons. The Geneva Convention filled in these 'other cases'. Article 16 (2) primarily referred to Zolberg et al.'s (1989) group of 'activist' refugees, those fleeing state persecution because of their political beliefs. Zolberg et al.'s 'target' and 'victim' groups were not covered by Article 16 (2), although the former were protected under the UN Convention and the latter by humanitarian assistance.

To summarise, by the beginning of the period under review, Germany had experienced mass asylum migration and had already begun to implement a range of restrictive asylum policies. In addition, growing numbers of asylum applications in the late 1980s renewed debates over the constitutional right to asylum which many commentators viewed as central to the German democratic ideal. The collapse of the Berlin wall and the onset of German reunification, the return of Aussiedler (ethnic Germans) from central Europe, the general opening-up of central Europe to outward migration and the beginnings of the war in former Yugoslavia, all meant that by 1991 Germany was facing an unprecedented challenge to its territorial integrity. This historical context is vital to an understanding of German asylum policy in the 1990s and to an assessment of the subsequent impact of these policies upon applications.

Asylum applications and patterns of change

1990-1992: There was a notable increase in applications during 1990 with Romania and Yugoslavia heading the league of applications. The rise in applications from 193,063 in 1990 to 256,112 in 1991 (IGC 2000) was largely accounted for by increases in these two nationalities. The particularly significant increase occurred between 1991 and 1992 (see Figure 3.1 and Table 3.1), reaching a total of 438,840 applications in 1992 (IGC). The number of FRY increased from 74,854 in 1991 to 115,578 in 1992, an increase of 30 per cent, while the number of Romanians more than doubled. The number of Bulgarian applications on the other hand increased nearly three-fold in this period from 12,056 in 1991 to 31,553 in 1992 (IGC 2000).

Figure 3.1: Asylum applications and trends in Germany 1988-2000

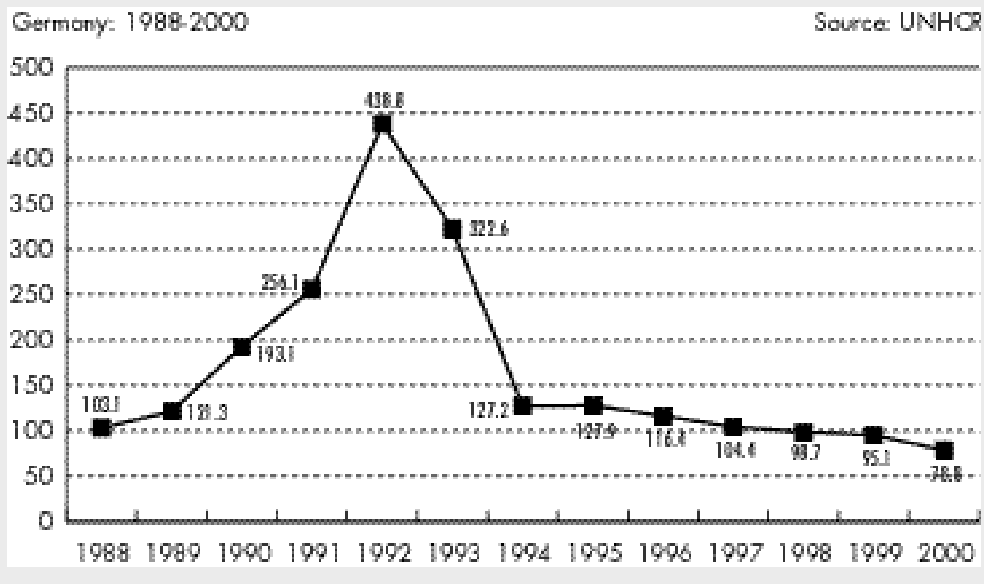


Table 3.1: Asylum applications to Germany by source nationality, 1991-2000(1)(2)

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
FRY	74,55	115,395	73,475	30,405	26,225	18,085	15,410	34,980	31.45	11.12
Romania	40,505	103,785	73,715	9,580	3,520	1,395	795	340	220	175
Turkey	23,875	28,325	19,105	19,120	25,515	23,815	16,840	11,755	9,065	8,970
Iraq	-	1,485	1,245	2,065	6,880	10,840	14,090	7,435	8,660	11,600
Bulgaria	12,055	31,540	22,545	3,365	1,150	940	760	170	90	70
Afghanistan	7,335	6,350	5,505	5,640	7,515	5,665	4,735	3,770	4,460	5,380
Bosnia-Herz	-	6,195	21,240	7,295	4,930	1,940	1,670	1,535	1,755	1,640
VietNam	8,135	12,260	10,960	3,425	2,620	1,130	1,495	2,990	2,425	2,300
Iran	9	3,835	2,665	3,445	3,910	4,810	3,840	2,955	3,405	4,800
Sri Lanka	-	5,305	3,280	4,815	6,050	4,980	3,990	1,980	1,255	1,170
Algeria	-	7,670	11,260	2,785	1,445	1,415	1,585	1,570	1,475	1,380
India	-	5,800	3,805	1,770	2,690	2,770	1,860	1,490	1,500	1,825
Armenia	-	910	6,470	2,125	3.385	3,510	2,490	1,655	2,385	905
Pakistan	-	5,215	2,755	2,030	3,115	2,595	2,315	1,520	1,725	1,505
Russia	-	3,970	5,280	1,305	1,435	1,345	-	-	2,095	2,765
Unknown	-	3,225	-	1,145	1,895	2,750	2,540	2,010	2,395	2,150
Zaire	-	8,305	2,895	1,580	2,545	2,970	1,920	-	-	0
Nigeria	8,360	10,485	1,085	840	1,165	1,685	1,135	665	305	420
Togo	-	4,050	2,890	3,490	995	960	1,075	720	850	750
China	-	2,565	4,395	630	675	1,125	1,620	870	1,235	2,070
Top 20	-	366,665	274,580	106,850	107,660	94,730	80,160	78,415	76,755	61,105
Others	-	71,525	46,165	20,360	20,275	21,635	24,190	20,230	18,360	17.46
Total	256,110	438,840	322,599	127,210	127,935	116,365	104,355	98,645	94,115	78,565

Source - IGC Secretariat
(1) Provisional figures rounded to the nearest 5
(2) "-" indicates no data available

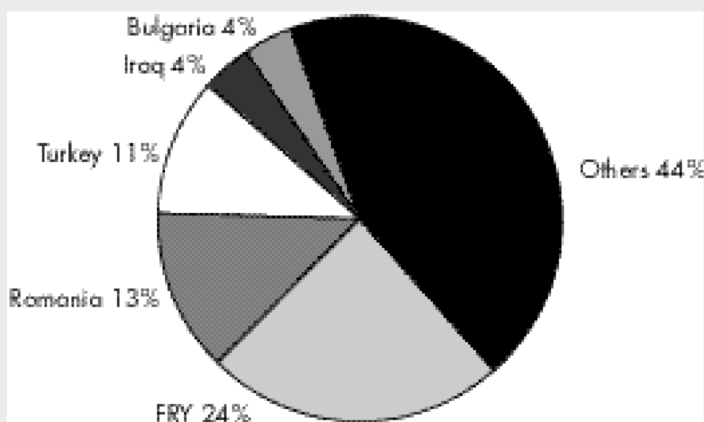
1992-1994: The decrease in applications between 1992 and 1993 was no less dramatic, falling to 322, 599 in 1993 and further sharply declining to 127,210 in 1994. The largest decrease in the 1992-4 period was in the major asylum nationalities, the FRY, Romania and Bulgaria but a third of the decrease was spread across a wide range of nationalities. Applications from the FRY on the other hand remained consistently high throughout the latter half of the 1990s. The explanation of this dramatic decline is discussed in the next section.

1994-1999: The period from 1994 to the end of the decade can be characterised as one of gradual decline and the stabilisation of applications (see Figure 3.1 and Table 3.1). Despite

the gradual decrease in this period some increases occurred in specific nationalities, particularly Iraq and Afghanistan. Since 1994 applicants from the FRY and Turkey were the top two nationalities, accounting for over one third of all applications. Up until 1996 applications from Turkey remained at over 19,000, declining after that date to under 10,000 in 1999. Applicants from the FRY remained relatively stable, decreasing slightly from 34,979 in 1998 to 31,826 in 1999. It should also be noted that both Yugoslavs and Turks had well established migrant communities in Germany, a legacy from the earlier Gastarbeiter system that ended in 1973. See Figure 3.2 for the top five source nationalities applying for asylum in Germany for the period 1991 and 2000.

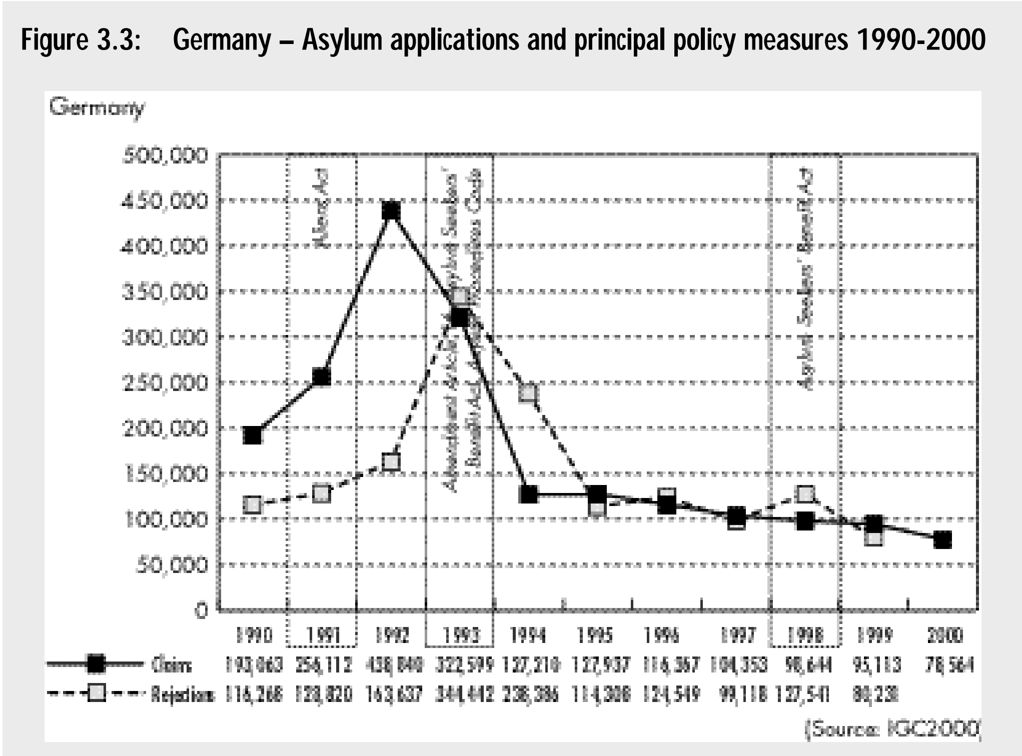
The statistics provide us with a broad picture of the overall change in asylum applications and patterns throughout the 1990s. In order to assess the significance of policy interventions and other factors in explaining these patterns it is necessary to again turn to the legislative response which occurred in Germany, in the first place in the period from 1991 to 1993.

Figure 3.2: Asylum applications to Germany – top five source nationalities 1991-2000



Evaluating the policy impacts

Figure 3.3: Germany – Asylum applications and principal policy measures 1990-2000



In terms of the legislative response of 1991-3, the following conclusions can be made.

It is important to place policy interventions in the context of the growing social unrest which accompanied the arrival of increasing numbers of asylum seekers in Germany in this period, particularly in the former east German Länder (Bosswick 2000:48). It was in this context that a new Aliens Act was passed in 1991 that introduced accelerated procedures for all applications, reducing the time for decisions from the previous six months to six weeks and with immediate expulsion upon a negative decision. This was not to be implemented until April 1993. At the same time the BAFI (Federal Office for the Recognition of Refugees) was made responsible for determining refugee status, whereas this was previously the responsibility of the local foreigners' authorities. Staffing levels at the BAFI were also substantially increased in this period. The accelerated procedures were further buttressed by the June 1992 amendments to the Aliens Act, which again only came fully into operation in April 1993. The chronology of these legislative reforms is of great importance in assessing the impact of particular policies.

On the political front the constitutional debate was won by the CDU/CSU coalition with the Social Democratic Party (SPD) agreeing to a constitutional compromise on asylum. Article 16 (2) of the Constitution – 'persons persecuted on political grounds enjoy the right to asylum' – was retained but was now hedged around by qualifications. The most significant was that states which provided protection under the Geneva Convention and the Human Rights Convention (all of Germany's surrounding states) were declared safe third countries. In safe third country cases, unless an individual could give good reasons why they were fleeing individual persecution their claim would be ruled inadmissible (Bosswick 1997: 65). The Constitutional amendment was passed on the 26 May and came into effect on July 1 1993.

Although the subsequent decline in applications, which began in 1992 and accelerated sharply during 1993, could be attributed to the introduction of the safe third country rule, there is debate as to the particular effects of this measure and limited hard evidence. Recalling the chronology of events, it is clear that both the accelerated procedures of the 1991 Act and the provisions of the 1992 amendment came into effect in April 1993, before the introduction of the safe third country rule in July of that year. In discussions with Roland Schilling[13] (see also Schilling 1995) the point was made that asylum applications had begun to decline in Germany prior to the constitutional changes. Schilling maintained that Germany had operated a de facto policy of return at the border before the introduction of the safe third country rule. In this instance, he singled out the importance of the accelerated procedures, the signing of readmission agreements with Romania and Bulgaria which facilitated the return of asylum seekers, increased staffing levels at the BAFI and the reduction in backlogs as particularly important factors.

According to Schilling of these, the acceleration of decision-making appeared as the most relevant factor in explaining the decline in applications, although again there is little firm evidence on this. Bosswick (2000:50), who similarly queried the importance of the safe third country rule, shared this viewpoint. As he argued, the main reduction after 1993 was in applications from Romania, Bulgaria and the FRY (Bosswick 1997:67). Prior to the introduction of the accelerated procedures these nationalities would have worked during the relatively long processing time taken for a decision to be made. After April 1993 this option was not available to them. The improvement in finger-printing techniques also revealed a number of multiple applications at this time (Bosswick 2000). The targeting of Romanian and Bulgarian asylum seekers, amongst whom could have been a sizeable number of disguised economic migrants, may account for their virtual elimination from the asylum statistics from this date onwards.

13. Interview at UNHCR, Berlin January 2001.

In addition to these legislative changes in the earlier part of 1993, other reforms were introduced. In July a new Asylum Procedures Code came into effect introducing a special accelerated procedure at the airports (Flughafenverfahrren) modelled after regulations already in place in France, the Netherlands and Denmark. This concerned asylum seekers arriving by air without a valid passport or coming from a safe country of origin. In these cases the asylum procedure had to be performed before a decision on entry to the country was taken, provided the asylum seeker could be accommodated at the airport and their claim could be decided within a very short period of time (maximum 19 days). The Federal Office could only decide within the airport proceedings if the application could be rejected as manifestly unfounded. In November, the Asylum Seekers' Benefit Act (ASBA – Asylbewerberleistungsgestz) was introduced separating asylum seekers from the mainstream benefits system and substituting benefits in kind for cash payments. As noted above, readmission agreements with Romania and Bulgaria were signed in 1993 to ease the process of returning asylum seekers to those countries. In reviewing these changes, what was particularly notable was the intensity of legislative response in this period, a factor which may have dissuaded a number of would-be asylum seekers from even trying to enter Germany.[14]

Of the immediate impact of the changes Bosswick (1997:71) noted that "in the second half of 1993, only 805 applicants were allowed to enter Germany and go through a regular asylum procedure and only 12 asylum seekers were acknowledged in the airport procedures".

According to a number of sources (USCR Germany 1997; Bosswick 1995, 1997, 2000; UNHCR 1995b) both the implementation of border controls and the accelerated procedures at the airport accounted for only a small number of applications and rejections. In most cases, as UNHCR (1995b) noted, entry to Germany was accomplished illegally and a claim for asylum registered later by concealing or conveniently 'forgetting' the entry route, thereby overcoming the safe third country rule. Of the positive administrative results of the changes, UNHCR (1995b:2) noted the reduction in backlogs (from half a million in the summer of 1993 to around 80,000 in the second quarter of 1995) and an increase in the recognition rate from 3.2 per cent in 1993 to around 10 per cent in the early months of 1995.

In discussion with informants in Germany, the most relevant factors concerning the 1993 legislative changes and in particular the safe third country rule, concerned their broader impact within the EU context. For Schilling[15], the most significant impact of the changes was to promote a generalised process of restrictionism throughout the EU. While Germany called

14. Interview with Hans Venske, Commissioner for Refugees and Migrants in Berlin-Brandenburg, Protestant Church, Berlin-Brandenburg, January 2001.
15. Interview at UNHCR Berlin, January 2001.

for burden sharing in the early 1990s, the reality imposed upon the rest of the EU by Germany's unilateral action was to encourage burden shifting (Kumin 2000). The position of refugee-advocacy organisations in Germany is discussed in the next section. From a governmental position, although the Regierungsdirektor for European harmonisation in the Ministry of the Interior[16] initially asserted that the safe third country rule had proven effective, he himself expressed doubts as to its general impact. There was, he suggested, little evidence to suggest that it had produced the fall in applications in Germany since 1993, rather than other factors, such as changes in the country of origin. Although these observations were anecdotal in character, they reinforced the general point that the safe third country rule may well not have produced its intended effects but that other factors, the introduction of accelerated procedures and the overall intensity of the legislative assault may have been equally important.

In terms of the unintended impacts of the 1993 legislative changes in Germany, the following are noted:

- A tightening of asylum controls in other EU Member States – a spate of new legislation was introduced across the EU in 1993 and 1994 (see Table 1.1).

- The displacement of asylum seeker flows to neighbouring states. This position was advocated by Böcker and Havinga (1998) and Uçarer and Puchala (1997:289-90) who pointed to a corresponding rise in applications in the Netherlands in 1994 as a result of the 1993 changes in Germany and the reduction in applications which occurred there. But to qualify that conclusion, it is also important to note the rise in the Netherlands before the 1993 German legislation from 20,346 (1992) to 35,399 (1993). According to sources in the Netherlands, the 'defection' explanation for the rise in applications in 1994 may therefore only be partially true (see Netherlands case study). More generally the safe third country rule "might therefore divert or defer the problem of irregular migration, but it seems unlikely to resolve it" (UNHCR 1995b:3).

- The escalation of illegal entry and trafficking as asylum seekers were denied access from safe states (Martin 1994; Koser 2000; Black 1993). Bosswick (2000:51) calculated that in Germany "in more than 98 per cent of all cases, access to the right of asylum is only possible by entering illegally and concealing the access route. Due to intensified border controls this is possible only with the help of professional smugglers".

16. Interview, Berlin, January 2001.

- The encouragement of further unilateral action by other Member States, resulting in a downward spiral of restriction and containment (UNHCR 1997).

- Chain deportation as other states refused asylum seekers returned under the safe third country rule. UNHCR in particular has opposed this on the grounds of de facto refoulement.

The two issues commonly raised in the literature are: (1) whether the 1993 reforms actually achieved what was intended; and (2) the degree to which their negative consequences (in terms of increased illegal entry amongst other factors) outweighed the advantages of reduced asylum applications. Martin (1994) supported the latter position, making a strong claim for policy failure. Brubaker (1994:229) was equally clear that the changes in asylum policy introduced in Germany since 1993 were evidence of the capacity of the German 'political class' to act effectively, when united around an issue of common concern. Although beyond the scope of this study, these issues warrant further investigation, particularly in the light of the decisive shift of asylum applications toward the UK in the late 1990s which (if family dependents are included in the asylum figures) became the principal receiving state in the EU.

As regards in-country deterrence between 1993 and 1998 the following points are significant.

If the period from 1991-1993 was characterised by pre-entry and procedural changes, most notably the safe third country rule and the introduction of accelerated decision-making, the main policy focus from late 1993 to 1998 was post-entry controls, more specifically in-country deterrence measures that affected the welfare and social conditions of asylum seekers. In conjunction with this shift in emphasis, or rather reinforcement of earlier restrictions, Germany maintained and in many cases tightened its pre-entry controls. These developments are discussed in the next section.

In November 1993 Germany introduced the ASBA. The main effect of the ASBA was to separate welfare provision for asylum seekers from mainstream benefits, substituting benefits in kind for cash payments. Pocket money and a clothing allowance was granted and in exceptional cases cash payment, which was set at 20 per cent below the normal National Assistance levels (Minderhoud 1999: 141). As Minderhoud (1999:141) notes, according to the Government, by 1995 the ASBA had resulted in a reduction in asylum applications, although the precise evidence drawn upon here was unclear, particularly in relation to the tranche of legislation introduced since 1991.

From its introduction, more conservative Länder such as Bavaria, began to push for an extension of the ASBA to those under temporary protection. Although the SPD dominated Bundesrat (Upper House) managed to overturn a revision of the ASBA in this direction in 1996, by 1997 a compromise was reached with the extension of the ASBA to civil war refugees and to all asylum seekers for a period of three years. Further amendments to the ASBA in 1998 reduced provision for those under Duldung (tolerated residence due to practical obstacles to removal) to that of 'bare necessities' (German Federal Ministry of Health, November 1999).

The impact of these changes upon asylum seekers and other groups was documented in the literature produced by refugee advocacy organisations and NGOs in Germany (Pro Asyl 1998). According to FIAN International (October 1998) the ASBA as amended in 1998 was in violation of the Rights enshrined in the International Covenant on Economic, Social and Cultural Rights. Groups whose subsistence was reduced to a bare minimum by the Act include: Civil war refugees, asylum seekers awaiting a decision, rejected asylum seekers and those rejected for a variety of reasons but who could not be deported (Duldung). The main provisions of the Act were a 20 per cent reduction in the level of benefits compared to the Federal Social Assistance level and the substitution of benefits in kind (i.e. goods and parcels rather than cash – coupons could also be used).

In practice, it is important to note the considerable variation across Länder in the way in which the Act was interpreted and implemented. In part this was a reflection of the different political complexion of the Länder, with SPD and Green coalition states tending to adopt a more lenient interpretation of the Act (Minderhoud 1999:142). In discussion with German NGO and Church organisations in Berlin, the point was also made that the political character of a city or town may have impacted upon the way in which policy was implemented. According to Joachim Rüeffer[17], Berlin-Brandenburg in particular was affected by large numbers of those under Duldung (Kosovo Albanians were allowed entry in 1993-4) and had consequently adopted a hard-line approach to this group. The reduction in social support for this group had meant that the communities themselves had to provide their own support mechanisms. Other Länder continued to provide cash support for those under the ASBA, with the Social Offices which administer the system having a large degree of flexibility in the way they issued payments. The more general research issue which this raised concerned the role which 'front-line' institutions played in the implementation of policy and the effects that these may have had on the overall impact of specific policies. This issue is addressed in the recommendations for further research.

17. Interview at German Red Cross, Berlin, January 2001.

According to NGO sources in Berlin, the principal impact of the ASBA was to encourage the further social marginalisation and exclusion of asylum seekers from mainstream German society. Hans Venske[18] noted that the legislation "has an effect to exclude refugees from society". The substitution of benefits in kind, in conjunction with the accommodation of asylum seekers in collective hostels outside Berlin resulted in a situation of the "virtual exclusion of foreigners from the streets". A recent internal Audit Commission report for Berlin concluded that the system as a whole was 'vastly uneconomic'. Representatives from the German Red Cross similarly concluded that the principal impact of the ABAS was to encourage social exclusion and the growth of xenophobia and racism in Germany. Further reforms introduced in 1999 reduced to a bare minimum any form of assistance to refused asylum seekers who tried to avoid deportation (Rotte 2000: 380) a practice then prevalent in the Netherlands and incorporated into the new Dutch Aliens Act (2000).

Further restrictions on work entitlements were introduced in May 1997. All asylum seekers arriving after this date were barred from working "regardless of how long they wait for a decision or appeal on their application" (Migration News, August 2000). In a relaxation of the ruling by January 2001 the German Government decided to allow asylum seekers to apply for work after they lived in Germany for one year (Migration News November 2000). The volatility in decision-making in this area may have been due to the intense debate in Germany concerning the conflict between the economic and demographic requirement for foreign labour and the continued political opposition to immigration. There was a growing awareness of the need for foreign labour and of the often counter productive effects of restrictive immigration and asylum policies in deterring inward foreign investment to Germany (The Economist May 6th 2000). The establishment of an independent Immigration Commission in 2000 was an indication of the importance that the Government attached to this issue. The commission reported its findings to the German parliament in the summer of 2001 and led to the publication of an Immigration Bill later in the year.

Germany in the EU context

From a comparative perspective it is important to note the way in which restrictions introduced in one EU Member State often result in the implementation of similar measures in other countries. France, for example, introduced restrictions in 1991 relating to work entitlements for asylum seekers, which were later emulated in the German legislation of 1993. A similar case applied in relation to the introduction of accelerated procedures at the

18. Interview with Commissioner for Refugees and Migrants, Berlin-Brandenburg Protestant Church, Berlin January 2001.

airports: France, the Netherlands and Denmark had all introduced airport legislation before its introduction in Germany in 1993. Kumin (2000) has referred to this as a process of policy 'chain reaction', citing the introduction of asylum legislation in Italy, Denmark and the Netherlands in 1994 following the 1993 changes in Germany. In turn, the introduction of restrictions in one Member State may have resulted in the displacement of asylum flows to neighbouring states, as was believed to be the case in relation to France and Germany between 1991-2 and Germany and the Netherlands in 1993-1994 (Rotte et al., 1996 cited in Bosswick 2000).

According to Bosswick (2000:54) Germany led the EU trend to policy restrictionism since the Luxembourg summit of 1991. In this section the more significant German initiatives are briefly summarised.

Readmission agreements and border control

As noted above, readmission agreements with Romania and Bulgaria played a key role in the changes introduced in 1993. Under the terms of readmission agreements (either bilateral or multilateral) "asylum seekers can be deported from their country of final destination to their preceding country of transit, often in return for some form of financial assistance" (UNHCR 1997:4). Since 1993 Germany signed readmission agreements with a wide range of states (USCR Germany 1999:5) often deploying other diplomatic measures in order to enforce them. A significant number of individuals of different nationalities have been returned under these agreements, according to the USCR (Germany 1996). Alongside readmission agreements, Germany progressively tightened its border controls, technically upgrading the Federal Border Police and increasing its already weighty budget allowance (Rotte 2000:377). In terms of the detection of illegal immigrants these measures appeared to have been a success, although there was no indication that the scale of illegal immigration had decreased as a result (Rotte 2000:377).

Temporary protection and repatriation

During 1997 Germany began its drive to repatriate the 320,000 to 350,000 Bosnian refugees to whom it had given temporary protection during the war (Bosswick 2000:52; USCR Germany 1997: 7). By the autumn of 1998 the repatriation programme had resulted in the return of about 250,000 refugees to Bosnia–Herzegovina. The repatriation policy had received a great deal of criticism at the time that it was implemented (USCR Germany, 1997, 1998).

Non-state agents of persecution

The importance of Germany's restrictive interpretation of the Geneva Convention definition of persecution was discussed by Edminster (2000). It is important to note that Germany, along with France, remained in a minority in the EU on this issue. The consequences of the German position were apparent in the recognition rates accorded to individuals from countries where effective government had ceased to exist. As Edminster notes, "of the 1,417 Algerians whose cases were decided in 1997, the (BAFI) recognised only 49 applicants as refugees, or 3.6 per cent of the caseload" (Edminster 2000:7). By way of contrast, recognition rates for Algerians in comparable states were considerably higher – 90 per cent in the UK in 1998 according to Edminster (2000: 7).[19] After the conclusion of a readmission agreement with Algeria in February 1997 Germany stepped up its campaign to deport rejected Algerian asylum seekers. According to Edminster (2000: 10) "Germany forcibly repatriated 504 Algerians in 1997 and an additional 93 during the first three months of 1998" (BAFI statistics, Aktuelle Situation und Rechtsprechungsuerbersicht , Nuernberg, June 1998:41).

Conclusions

In the period from 1993-8 the reinforcement of in-country deterrence measures may be said to be secondary or supplementary to the principal legislative changes, which occurred in the 1991-3 period. As noted above these concerned pre-entry and procedural measures. After 1994 applications stabilised, tending towards a gradual decrease towards the end of the decade. The exceptional increase to 439,000 applications in 1992 and subsequent fall to 127,000 applications in 1994 which occurred in Germany (see Table 3.1) was the product of a number of preceding historical factors which, viewed in hindsight, represent a unique conjunction of events. The opening up of central and eastern Europe in the wake of the collapsed communist regimes there and the onset of war in former Yugoslavia were the principal reasons for the increase in asylum applications in this period (UNHCR 1995). The rapid and intense legislative response of the recently reunited German Government to an unprecedented onslaught on its territorial integrity and national identity was probably partially responsible for the subsequent decline in applications from 1993 onwards. The main specific measures were the accelerated procedures for decision making, readmission agreements with Romania and Bulgaria (two of the main four nationalities involved) and application of the safe third country rule. Changes in the countries of origin of asylum seekers may also have been partially responsible for falling applications. Of the indirect impacts of the changes introduced in this period, the fall-out in the rest of the EU may well be the more enduring legacy.

19. The Home Office estimate of the recognition rate of Algerians is 61 per cent in 1998 (Home Office 1999).

4. The Netherlands

Introduction

The Netherlands ranked third in the EU in terms of asylum applications in the 1990-2000 period and was fourth in terms of asylum applications per capita. Between 1990 and 1999, 322,218 applications for asylum were made in the Netherlands. In contrast to Germany and the UK, the top two receiving states for asylum seekers in the period from 1990-1999, the Netherlands was characterised by its small population size. Like them, it has a strong tradition of immigration, in particular from Surinam and Indonesia.

Dutch asylum law is based on the 1965 Aliens Law, which underwent some minor amendments in 1987. The Netherlands moved from an ad hoc admissions procedure in the 1970s to a quota system for invited refugees between 1977-1987. In common with the majority of European countries Dutch asylum policy may be characterised as essentially reactive in character, changing as new asylum seekers entered the country. The rise in spontaneous asylum seekers from the middle of the 1980s onwards was met by increasingly restrictive policies, as was the case in the majority of European states at the time.

Historical and political context of asylum policy

By 1981 an 'in-house' model of refugee reception was being operated by the Government for 'invited refugees', while the small number of spontaneous asylum seekers were housed on an ad hoc basis in private accommodation. This was not to prove a problem until the mid 1980s when the arrival of large numbers of asylum seekers placed increasing pressure on housing stocks and the concentration of asylum seekers in run-down areas (Muus 1997:81). According to Muus (1997) the introduction of the Regulation on the Reception of Asylum Seekers (ROA) in 1987 marked a watershed in Dutch asylum policy. With the increase in asylum applications, largely of Tamils after 1985, a greater emphasis was placed on the management of reception policies: the external regulation of asylum applicants was to be buttressed by the separation of support for asylum seekers from the mainstream welfare system. Under the ROA housing support and financial allowances were directed from central government to localities based upon the number of asylum seekers that they accommodated. The municipalities received government funds based on a per capita calculation and asylum seekers a modest personal allowance. In addition to these

restrictions upon housing and welfare, no access to work was allowed for asylum seekers during the determination period. The major innovation of the ROA was the introduction of Centres for Asylum Seekers or AZCs (Asielzoekers Centra) for those individuals who were unable to be housed in the municipalities.

It is important to emphasise that by the time the first major increases occurred in asylum applications between 1988-1990 (a threefold increase) and 1993-1994, the Netherlands had already undergone considerable legislative reform, with the introduction of the ROA in 1987. Prior to 1985 there was no organised reception policy for spontaneous asylum seekers. The 1987 legislation was a response to the arrival of large numbers of Tamil asylum seekers in 1985 and the over-burdening of municipalities which bore the brunt of housing the new arrivals. Organised reception, the divorce of welfare provision for asylum seekers from mainstream social security and a ban on work entitlements were all in place by the time the further legislative reforms of the 1990s were introduced. In a comparative perspective, this set the case of the Netherlands apart from that of the UK, which experienced a substantial (percentage) increase in asylum applications only in 1989 and has tended to implement asylum reform in a more incremental fashion, only gradually introducing restrictions on welfare rights for example and a system of organised reception for asylum seekers as late as 2000 (see next chapter). The comparison with Germany is also important, in so far as policies and practice similar to those in the Netherlands were in place there by 1990, specifically in relation to reception procedures and reductions in welfare rights.

Asylum applications and patterns of change

1990-1992: This period was characterised by the stability of asylum applications (at around 21,000), following a rapid increase over the preceding three years, and a slight redistribution between the principal asylum nationalities towards increasing numbers of applications from the FRY.

1993-1994: The sizeable increase in applications, from 20,346 in 1992 to 35,399 in 1993 (IGC 2000:11) was largely accounted for by the growth in applications from: Bosnia-Herzegovina; Iraq; Iran and Sri Lanka. Somali applications remained relatively stable at this stage, as did applications from the FRY. The dramatic increase in applications that occurred in 1994 was largely due to the doubling of applications from Bosnia-Herzegovina, from 4,938 in 1993 to 8,635 in 1994 and the virtual tripling in applications from Iran. Somali applications increased only slightly in this period. Romanians again doubled in size, from 1,085 in 1993 to 2,762 in 1994, while those from the FRY decreased slightly (IGC 2000).

1995-1996: An equally dramatic decline in applications occurred in 1995 (see Table 4.1 and Figure 4.2), largely accounted for by falls in applications from Bosnia-Herzegovina, Iran and Somalia. Applications declined from Somalis until 1998 when applications again rise from this nationality. From 1996 to the end of the decade Afghan and Iraqi applications were the top of the league in the Netherlands, with some fluctuations in Bosnians and FRY and Somalis, all of which were fewer in number than in the 1992-1995 period. By 1996 applications were reduced to near 1990 standards at 22,857, notably accounted for by the virtual disappearance of Bosnia-Herzegovina from the figures. From 1996 new nationalities began to assume prominence in the statistics, in particular Afghans in 1995 increasing to 3,019 in 1996 from 1,912 in 1995 and Iraqis to 4,378 in 1996 from 2,431 in 1995 (IGC 2000).

1997-1999: The period towards the end of the decade was characterised by episodic flows of asylum seekers and rising and falling patterns (see Figure 4.1 and Table 4.1). Most notably, the number of Iraqi asylum seekers more than doubled in 1996-1997 from 4,378 to 9,641 applications. The sharp increase in overall applications in 1998 was due to the rise in the number of asylum seekers from FRY, Bosnia-Herzegovena, and Somalis. Applications from the Sudan also increased. Applications from Iraq and Afghan decreased between 1997-1999, although it is important to note that applications from Afghanistan reached their highest point in 1998 for the decade as a whole (7,118 – which is a 20% increase on 1997). The reduction in 1999 was largely accounted for by declines in the number of applicants from Bosnia-Herzegovena, Iraq and Afghanistan. Figure 4.2 shows the top five source nationalities claiming asylum in the Netherlands for the period 1991 to 2000.

Figure 4.1: The Netherlands – Asylum applications and patterns of change 1988 - 2000

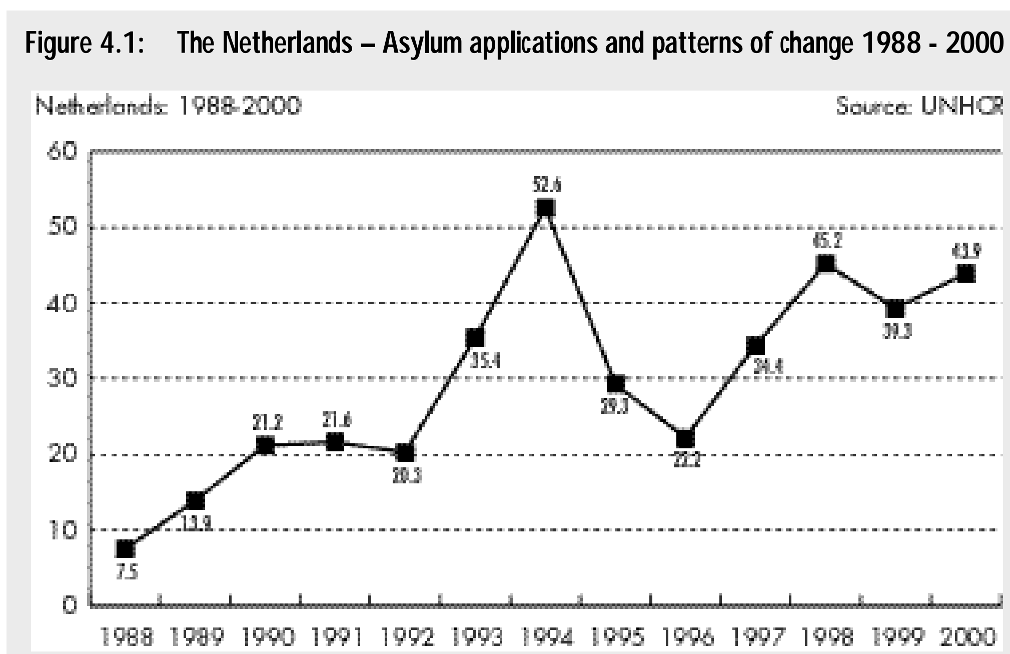
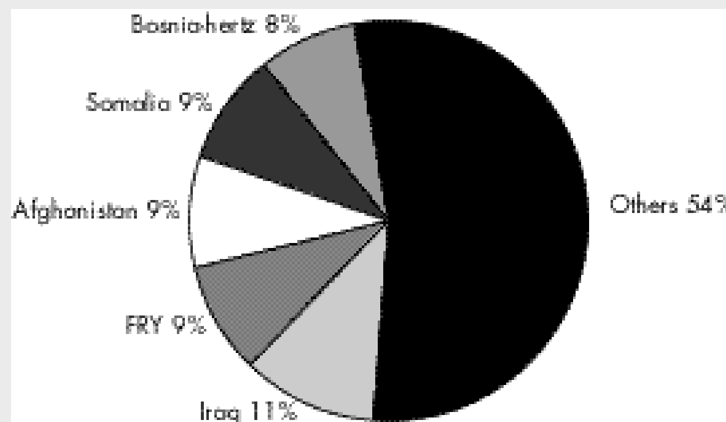


Table 4.1: Asylum applications to the Netherlands by source nationality, 1991- 2000(1)(2)

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Iraq	-	770	3,320	2,860	2,430	4,380	9,640	8,300	3,705	2,775
FRY	2,735	4,770	4,690	4,105	1,555	795	1,650	4,290	3,690	3.850
Afghanistan	-	350	1,505	2,525	1,910	3,020	5,920	7,120	4,400	5,055
Somalia	1,710	4,245	4,330	5,395	3,975	1,460	1,280	2,775	2,730	2,110
Bosnia-herz	-	815	4,940	8,635	4,225	985	1,970	3,700	1,170	1,650
Iran	1,725	1,300	2,610	6,075	2,700	1,520	1,255	1,680	1,525	2,545
Sri Lanka	1,820	1,035	1,900	1,810	1,315	1,485	1,495	1,050	855	975
Turkey	915	720	635	620	700	690	1,135	1,220	1,490	2,275
China	1,310	225	895	875	475	470	1,160	915	1,245	1,400
Angola	-	120	540	1,375	740	420	375	610	1,585	2,195
Sudan	-	95	160	260	605	660	680	1,875	1,695	1,425
Romania	1,660	960	1,085	2,760	380	130	75	60	80	65
Russia	-	215	455	1,105	615	550	460	520	960	1,015
Zaire	-	475	1,305	2,180	770	435	590	-	-	-
Azerbaijan	-	10	25	105	130	185	315	1,270	2,450	1,165
Armenia	-	40	350	1,080	360	365	430	710	1,250	810
Algeria	-	145	345	1,320	650	440	525	820	635	420
Sierra Leone	-	30	100	85	390	250	390	480	1,280	2,025
Stateless	-	160	635	435	680	295	395	700	735	765
Syria	-	235	265	390	255	305	460	830	850	1,075
Top 20	-	16,715	30,000	43,990	24,865	18,835	30,200	38,985	32,335	33,600
Others	-	3,630	5,400	8,585	4,395	4,020	4,245	6,230	6,965	10,295
Total	21,615	20,345	35,400	52,575	29,260	22,855	34,445	45,215	39,300	43,895

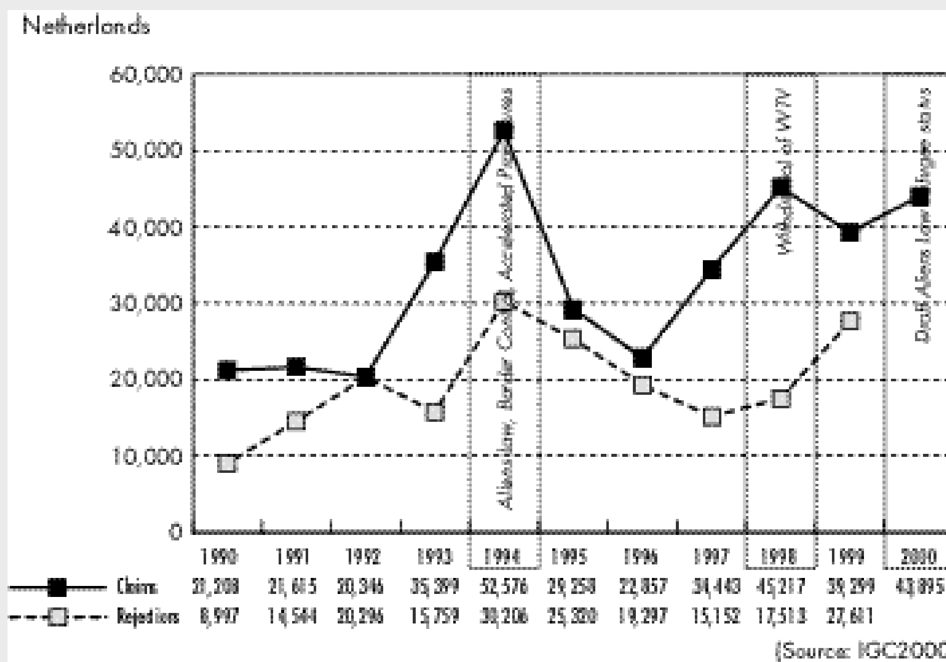
Source - IGC Secretariat
(1) Provisional figures rounded to the nearest 5.
(2) "-" indicates no data available.

Figure 4.2: Asylum applications to the Netherlands – top five source nationalities for the period 1991 to 2000



Evaluating the policy impacts

Figure 4.3: The Netherlands – Asylum applications and principal policy measures 1990-2000



Policy measures

The context of the 1994 Aliens Act and its impact

It is important to note that the fine-tuning of reception procedures was characteristic of the Dutch approach. As Muus (1997:83) argued, the management of reception was designed to "support the restrictive external element of admission policy, as well as to get a grip on a growing internal societal problem", i.e. the rise in asylum applications. Although this emphasis upon reception procedures was characteristic of later legislation, notably the 1994 Aliens Act, a range of regulatory policy and practices was adopted by the Netherlands in response to the fluctuation in numbers which characterised the 1990s, particular in the period from 1995-1999.

Prior to the increase in applications in 1993-4, in 1992 a new reception procedure was introduced with the NTOM scheme (Het Nieuwe Toelatings en Opvangmodel voor Asielzoekers). The new procedure was based on the need to investigate all new asylum claims for their well-foundedness. Hence, Investigation Centres or OCs (Onderzoeks Centrum) were set up to accommodate all asylum seekers for an initial period of six weeks. Afterwards, the claims deemed admissible were sent to the AZCs, while others remained in the OCs pending rejection. Although this system underwent further change, it illustrated one of the more significant features of Dutch asylum policy in this period, which was the differentiation, in terms of their accommodation, of individuals at different stages of the determination process (Muus 1997). This was later developed in the reception system introduced under the 1994 Aliens Act, which is discussed below (van Selm 2000: 76).

The increase in asylum applications in the 1993-1994 period was explained in a number of ways by Böcker and Havinga (1998:62), according to whom "the influx of asylum seekers from Somalia, Sri Lanka and Iran increased rapidly after the Dutch authorities, in an operation to eliminate backlogs, had granted large numbers of residence permits to earlier arrivals from those countries". Closer examination suggested that the three specified nationalities accounted for only 15 per cent of the total increase between 1992-3 and 26 per cent of the total increase between 1993-4. Further factors were therefore involved in the overall rise in applications in this period.

The authors note that in the years 1992-4 the Netherlands received the highest number of Somali asylum seekers in the EU. The granting of residence permits, VVTV or conditional stay permits (voorwaardelijke vergunning tot verblijf) for victims of civil war implied that many Somalis were unlikely to be returned home. According to qualitative research conducted by the Böcker and Havinga (1997) this news filtered back to other Somalis in different countries and at home and may partially explain the rise in Somali applications in this period.

Another factor behind the particularly significant rise in number of asylum applications from Eastern Europe and the Middle East in this period was the ongoing unrest in the FRY, Bosnia-Herzegovina, Iraq and Iran. Applications from nationals of Bosnia increased by 507 per cent between 1992-1993 (813 to 4,938). Applications from nationals of Iraq increased by 319 per cent in the same period, from 770 to 3,229.

A third factor was that decreasing numbers in the rest of the EU, and more particularly in Germany after the 1993 legislative reforms, may have been a key to the rise in applications in the Netherlands. Although a positive recognition rate for certain nationalities has been used to explain the increase in applications in those cases (Böcker and Havinga 1998) the overall rise in 1994 might have been attributable to the fact that legislation in the Netherlands (prior to 1994) was more lenient than in Germany. Germany had introduced its safe third country rule and accelerated procedures during the course of 1993. Although links between the German legislation and events in the Netherlands were not researched at the time of this study, the context of growing harmonisation of measures across the EU Member States suggests that this created an environment for the increasingly regulatory stance in other EU Member States. The modalities of harmonisation and their impact on EU policy and practice with regard to asylum seekers are a significant area for future research.

The legislative response to the rise in applications came with the 1994 Aliens Act. This introduced a safe third country rule and instigated accelerated procedures at the beginning of the determination procedure. The aim was to separate well-founded from apparently unfounded claims. In order to do this, a further innovation in reception procedures was introduced with the development of Application Centres or ACs (aanmeldcentra). Hence the triadic reception structure was now in place.

- AZCs – Centres for Asylum Seekers
- OCs – Investigation Centres and
- ACs – Application or Registration Centres

In the ACs asylum seekers were held at the border (or at Schipol airport) where safe third country and safe country of origin claims were rejected. Only asylum seekers with apparently well-founded claims went on to the OCs. If these received a positive decision, they went to the AZCs and other forms of accommodation such as hostels and private houses in the municipalities.

According to the majority of commentators, the introduction of accelerated procedures in the ACs led to a direct fall in applications. As Muus (1997:92) noted, "statistics concerning asylum requests show a significant decrease in the number of requests since the ACs became effective in 1995". In discussion with representatives from the Dutch Refugee Council (DRC), academics and Government officials in the Netherlands in January 2001[20], the picture that emerged was indeed more complex. While all of them agreed on the importance of the 1994 reforms, considerable doubt was cast on the overall efficiency of the system introduced in 1994. Poor staffing levels and deficiencies in the training of staff were amongst the key factors mentioned. In practice, the accelerated procedures were seldom accomplished within the allotted 48 hours but took considerably longer according to the DRC. High staff turnover and an increase in backlogs accompanied the introduction of the new reception procedure in the Netherlands. As a member of the Immigration and Naturalisation Service (IND) which became operational under the 1994 Act, remarked in discussion[21], it was 'quite difficult' to establish direct links between policy and outcomes in this instance, particularly given the fact that the war in Yugoslavia was coming to an end at the time of the legislative reforms in 1994-5. As noted above, the fall in applications in 1995 was largely accounted for by the reduction in the numbers of applicants from Bosnia-Herzegovina.

Although there is some disagreement on the impact of the 1994 legislation, it reflected the central tendency in the Dutch asylum model to increase the monitoring and surveillance of asylum seekers as they progressed through the determination procedure. This point was reinforced by Muus[22], when he highlighted the tight control which the authorities attempted to maintain over asylum seekers through the use of identity checks. Despite this concerted effort at centralisation and control, as Muus noted in 1996 (ERCOMER, SOPEMI:14) with the introduction of restrictive policies the number of illegals and those resisting expulsion also increased, with many individuals going into hiding, often with the aid of church and other organisations. The issue of expulsion is discussed in more detail below. It raised some fundamental issues concerning the relation between 'frontline' and 'centre' in the implementation of asylum policy.

With regard to the targeting of policy between 1996-1999, the following impacts can be noted.

As noted above, the number of asylum applications continued to decline in 1996, reaching a figure of 22,857 (IGC 2000:11). By 1997 the picture was somewhat different, with an

20. Interviews in the Netherlands January 2001.
21. Ministry of Justice, the Hague, January 2001.
22. Interview at University of Utrecht, January 2001.

increase to 34,443 applications in that year, much of which was accounted for by a rise in applications from Afghanistan and Iraq (monthly applications in Muus 1997:9, ERCOMER, SOPEMI). Briefly stated, the Netherlands prior to the introduction of the Aliens Act 2000, recognised C status or Convention Refugees, A status or humanitarian cases and VVTV or permit to stay on civil war grounds. As Muus (ibid:13) noted: "Nearly 80 per cent of A statuses granted in 1996 concerned Iraqis, Bosnians and Afghans…Somalians received mainly conditional or humanitarian status". Given these facts, the rise in Afghan and Iraqi applications in 1996-1997 appeared to bear out the role of a secure refugee status as a pull factor for these nationalities.

The official response was to attempt to combat the growth in asylum applications through the development and application of targeted policies. Examples of these are the following:

- repatriation schemes for Somalia, Ethiopia, Eritrea and Angola (Ministry of Justice Press release 3.6.97);
- mandatory departures – with 62000 individual affected in 1997 – (Sopemi 1999);
- encouragement of voluntary return schemes for overstayers;
- the establishment of a task force to deal with trafficking (Sopemi 1999:182);
- extension of pre-flight checks and visa requirements; and
- revocation of conditional permit to stay for selected nationals.

As regards repatriation and expulsions as a key policy issue, the main findings were as follows.

A central theme in the press releases of the Dutch Ministry of Justice, apparent as early as December 1996 was the focus on the repatriation of individuals who had exhausted their legal remedies. Voluntary repatriation schemes were also introduced at this point, involving coordinated action by the Ministries of Development, Foreign Affairs and Development Cooperation (Ministry of Justice Press release, Developments in Repatriation Policy 20.11.97).

As Muus noted (see ERCOMER, SOPEMI 1996), the issue of illegal stay in the Netherlands for those facing expulsion had "led to heated but unresolved debate in Parliament and society at large". As an indication of the seriousness of the authorities, it can be noted that there was an increase in the expulsion of non-Dutch nationals from 7,000 in 1986 to 51,000 in 1996 (Muus 1997:14, ERCOMER, SOPEMI). Although this figure included an unspecified number of asylum seekers, the difficulty involved in expelling asylum seekers was emphasised by the fact that the majority of those facing expulsion left their place of residence and went into hiding, where they were supported by their own communities and refugee advocacy groups. Ter Apel in Groningen, was entirely devoted to the housing of failed asylum seekers prior to their removal from the country. The annual running costs were high, at nine million euro, and the numbers returned small – 65 people were expelled from Ter Apel in 1998 (van Selm 2000:80).

Firmer rules on removals were prepared by the Ministry of Justice (press release, 25.06.99) with the removal of social support for those individuals who failed to comply with a removal order within four weeks and increased powers to detain those awaiting expulsion. These measures were incorporated in Section 45 of the new Aliens Act 2000 and became law in April 2001. In discussion with Philip Muus[23], it was clear that these measures had wider ramifications. Although the central administration aimed to withdraw support for illegal overstayers, in practice it was the local authorities who bore the responsibility for these groups. As a result, there was growing tension between the Government and the municipalities over this issue. Front-line organisations, such as the Central Reception of Asylum Seekers (COA), often failed to comply with Ministry of Justice rulings on this issue. They simply 'don't do what is expected', according to Muus. Church organisations and the 10,000 strong network of volunteers under the DRC similarly provided support for these groups of illegals. With grassroots organisations and 'civil society stepping in to bridge the gap', it was difficult to forecast the success of these new measures at the time of this study. More generally, this illustrated the tension between policy formation at the centre and the often contradictory effects this may have had once implemented. As suggested in the recommendations for further study, the impact of policies cannot be deduced from their formal content alone. A detailed analysis of their modes of implementation is also required.

Facilitated repatriation programmes to Angola, Ethiopia and Eritrea which began in 1997 with a sizeable budget allowance for that year of 2,368,000 euro (van Selm 2000:80) have not proved successful. By May 1999 only a handful of individuals had returned under these schemes. Evidence from Muus and Muller (1999) further corroborated that voluntary

23. Interview at University of Utrecht, January 2001.

repatriation schemes were not popular with asylum seekers. In additional legislation, the Act on Undocumented Persons, which became active on the 1 February 1999, it was determined that an application for admission as a refugee could be deemed inadmissible on the grounds of absence of documents unless the alien could make a plausible case to the effect that he could not be held responsible for his lack of documents.

Smuggling

In its press releases, the Ministry of Justice suggested that the growth in smuggling was responsible for the increase in Iraqi and Afghan applications in 1997. The official viewpoint was that the increase in asylum applications was not due to any worsening conditions in the country of origin in these cases, but to the grant of residence permits to those particular nationalities. As a consequence, the Ministry of Justice decided to set up a smuggling task force, introducing tighter embassy control in sending countries, and intensified border control in 1997. In addition, border control was intensified after the visit of the Schengen Evaluation Commission. Muus (ERCOMER, SOPEMI 1999:51,) notes that the Centre on Information and Analysis of the Smuggling of Human Beings (IAM) in conjunction with the police and the IND, became operative in 1998.

Pre-flight checks and visa requirements

Pre-boarding checks continued to be carried out. In 1998, Karachi was added to the list of points of departure. Also in 1998, a start was made to appoint Immigration Control Officers at foreign points of departure which were seen as ‘problematic’. In 1998 visa restrictions were introduced for Iraqi nationals.

Country-based approach.

In line with the targeting of the increase in Iraqi and Afghan applications, Country Desks were established for these two countries in 1998. This was part of a broader country-based approach introduced at this time, focusing on conditions in the country of origin and the implementation of measures to tackle increases as they occurred (Ministry of Justice press release, 14.04.98). Given the increase in asylum applications in 1998, 100 per cent higher than in 1996 according to the IND Annual Report (Ministry of Justice press release, 9.7.99) ‘radical measures’ were introduced by the Ministry of Justice (press release, 9.10.98) including the possibility of ‘safe return’ of certain classes of Iraqi and Somali asylum seeker.

Revocation of conditional permit to stay

As a result of the country-based approach it was decided to withdraw conditional residence permits (VVTV) for certain categories of asylum seekers who had passed through third countries. In particular, this was used to target Iraqis who had spent time in northern Iraq

and Somalis who had stayed in 'safe areas' en route to the West. VVTV was no longer be given to individuals from those areas and withdrawn from those individuals who were already resident in the Netherlands (Ministry of Justice press release, 20.11.98). Assessing the impact of these measures in 1999 with a fall in applications in that year to 39,299 (Ministry of Justice press release, 4.02.00) it was possible to conclude that changes to the country-based asylum policy resulted in a sharp fall in the number of holders of a provisional residence permit. As a result, the percentage of people granted residence status at the time of this study was significantly lower than in previous years. Sudanese, Iraqi and certain categories of Somali asylum seekers were no longer eligible for a provisional residence permit. In particular, the fall in applications in 1999 was almost entirely due to reductions in the number of the two principal asylum nationalities, Iraq and Afghanistan (IGC 2000:11).

The Netherlands in the EU context

Reviewing the research literature on the type of policy tools characteristic of the Dutch approach, it was evident that the implementation of reception policy was a central feature from the introduction of the ROA in 1987 to the three-stage reception procedure under the 1994 Aliens Act. The Aliens Act 2000 introduced a uniform status for all asylum seekers for the first three years of their application. Reception procedures were a significant component in managing asylum flows. In addition to the focus on reception, the Netherlands drew upon direct policy measures to regulate the flow of potential asylum seekers, including the safe third country rule in 1994, accelerated procedures for unfounded claims, and, within the country, modifications to welfare and work entitlements. The period since 1996 was characterised by the introduction of targeted measures to address increases in asylum applications. These measures included deportation, increased border control and the introduction of a country-based approach that aimed to increase background knowledge and the efficiency of decision-making. These measures appeared to have reduced asylum applications in comparison with the earlier increase in applications in the 1993-4 period. Although asylum policies may have been significant in reducing applications the end to the war in former Yugoslavia may also have been a central factor. In general, the efficacy of asylum policy in the Netherlands was conditioned by the relationship between the central formulation of policy and the implementation of policy at the frontline. Thus for example, policies, particularly those about the expulsion of overstayers, appeared to be countered by the activities of church and grassroots organisations and the support networks within the refugee communities themselves.

Concerning the new 2000 Aliens Act, although it was too early to comment upon its impact at the time of this study, its main provisions were:

- the introduction of a single status, three year residency permit for all asylum seekers, at the end of which the individual was granted 'unlimited status' if return was impossible and specific conditions were met by the applicant;

- the limitation of the right to appeal against a negative decision. There was no objection stage in asylum cases, although an individual could have applied to the courts for judicial review with suspensive effect, or for an Appeal to the Council of State without suspensive effect (Ministry of Justice, New Aliens Legislation 2000); and

- the obligation on the rejected asylum seeker to leave the Netherlands within a fixed period.

These provisions received a mixed response from refugee advocacy groups and academics. The DRC were broadly supportive, while UNHCR voiced reservations about the erosion of Convention status. As van Selm (2000:87) argued, "by abandoning Convention status as such, the Dutch Government is fundamentally altering the EU asylum and immigration 'playing field'". Part of the Tampere short-term goals included harmonisation on the Geneva Convention definition of the refugee. In this respect it was difficult to see how the new 2000 Dutch approach fitted into the broader EU perspective at the time of this study. As to the impact of the new policy upon asylum applications, representatives from the IND,[24] voiced a concern that the new one-status policy may act as a potential pull factor for asylum seekers. It remains to be seen how far this will prove to be the case.

The evidence base

The Ministry of Justice, in line with their country-based approach, encouraged research into a wide range of policy areas. Academics were actively incorporated into researching the historical, cultural and linguistic background of the principal asylum nationalities. Interestingly, there was an apparent move from research into the causal efficacy of asylum policies in terms of applications, to an emphasis upon qualitative research into the motivations of asylum seekers in seeking asylum in the Netherlands. The report Motieven van asielzoekers om naar Nederland te komen (Bijleveld and Taselaar, 2000) commissioned by the Ministry of Justice, undertook an investigation of the processes leading asylum seekers to go to the Netherlands. Combining qualitative and quantitative methods, this research was a useful indicator of the direction which government-funded research into asylum might take at the time of this study.

24. Interview at IND the Hague, January 2001.

Conclusions

Factors associated with the large increase in applications between 1992 and 1994 were likely to have included:

- ongoing unrest in the FRY, Bosnia, Iraq and Iran;
- displacement to the Netherlands from Germany where a much more restrictive policy had been implemented; and
- a pull factor element arising from interventions to grant residence permits to a backlog of Somali, Sri Lankan and Iranian asylum seekers, and similar policy towards victims of civil war affecting numbers of Somalis.

The substantial legislation in 1994 is likely to have been a factor in the substantial fall in applications in the following two years:

- accelerated procedures for the initial phase of the determination; and
- combined with the introduction of the reception centres, application centres and registration centres.

In the period up to 1996 the number of expulsions of non-Dutch nationals increased to 51,000 (including an unspecified number of asylum seekers) but because of implementation difficulties, it was difficult to assess the impact of expulsion action in terms of removals.

Up to 1998 humanitarian status was granted for civil war cases including many Iraqis, Somalis and Bosnians, and the rise in applications suggested it may have acted as a pull factor. This was changed by the 2000 legislation.

Also in 1998, conditional residence permits were withdrawn for certain categories of asylum seekers who had passed through third countries, targeted at Somalis and Iraqis. This was associated with a fall in applications in 1999 from these countries.

5. United Kingdom

Introduction

The last of the major case studies in this report is the UK. The UK was a relative newcomer to the management of asylum flows. Unlike the other principal cases examined, the UK had only recently introduced organised reception and dispersal procedures for asylum seekers at the time of the study. This was in marked contrast to the extensive experience in the dispersal of quota refugees in the UK, in the Ugandan Asian, Vietnamese and Chilean programmes in the 1970s and 1980s (Robinson 1985; Joly 1996) and the Bosnian and Kosovan programmes in the 1990s (Bloch 2000). The UK's general approach up until the 1999 Immigration and Asylum Act was largely decentralised and was characterised by an incremental approach to asylum reform. These themes are developed in the case study that follows and in the concluding remarks in which Germany, the Netherlands and the UK are compared.

The UK's long history of providing asylum was based upon a number of pragmatic considerations. For Cohen (1994: 69-71) foreign policy and economic interest, demographic pressures or demands and ethnic affinity were the most significant factors. During the 1980s and well into the 1990s, the UK approach could be said to have been essentially reactive in character. As Cohen (1994:81) remarked, "contemporary British refugee policy is predicated not so much on any plans for future quota refugees… rather (it) is framed as a reaction to the arrivals at port of entry claiming asylum and the post-entry admissions". This statement was appropriate until the introduction of the 1999 Immigration and Asylum Act, which marked a radical point of departure in UK asylum policy. In part, the decentralised approach to asylum in the UK was based upon distinctive national traditions of cooperation between the Community Relations Unit (now the Race Equality Unit) of the Home Office and voluntary bodies and NGO's (Carey-Wood et al., 1995; Kaye 1992). The pressure of rising numbers during the 1990s and increased demands upon housing and welfare facilities in the major areas of settlement necessitated the introduction of a coordinated approach to asylum (Home Office 1998).

In distinction to the other principal receiving states in the EU, the UK was characterised by the comparative slowness of its legislative response throughout the 1990s, although the piecemeal character of reform was in line with most other EU Member States. This may have had important implications for the impact of asylum policies in the UK, compared to the other principal receiving states in the EU.

Historical and political context of asylum policy

The largest groups of refugees to arrive in the UK during the 1970s were the quota or programme refugees from Uganda, Chile and Vietnam (Robinson 1985, 1993; Joly 1996). From the late 1970s Iranians leaving because of the Islamic revolution confirmed the changing profile of asylum seekers coming to the UK – from the earlier refugees fleeing persecution in Hungary and Poland, to those escaping situations of generalised violence and conflict in the 'third world'. Two central features stood out in the subsequent history of asylum in the UK: a continuing reluctance on the part of the Government to formulate an integrated approach to asylum, combined with the growing climate of restrictionism from at least the 1970s onwards (Kaye 1992). Other factors which Kaye (1992) noted in the period from the mid-1980s onwards was the marginalisation of NGOs in the refugee field as a result of the growth in intergovernmental bodies dealing with refugee and asylum issues and the Europeanisation of refugee controls (Joly 1996; Miles and Thranhardt 1996).

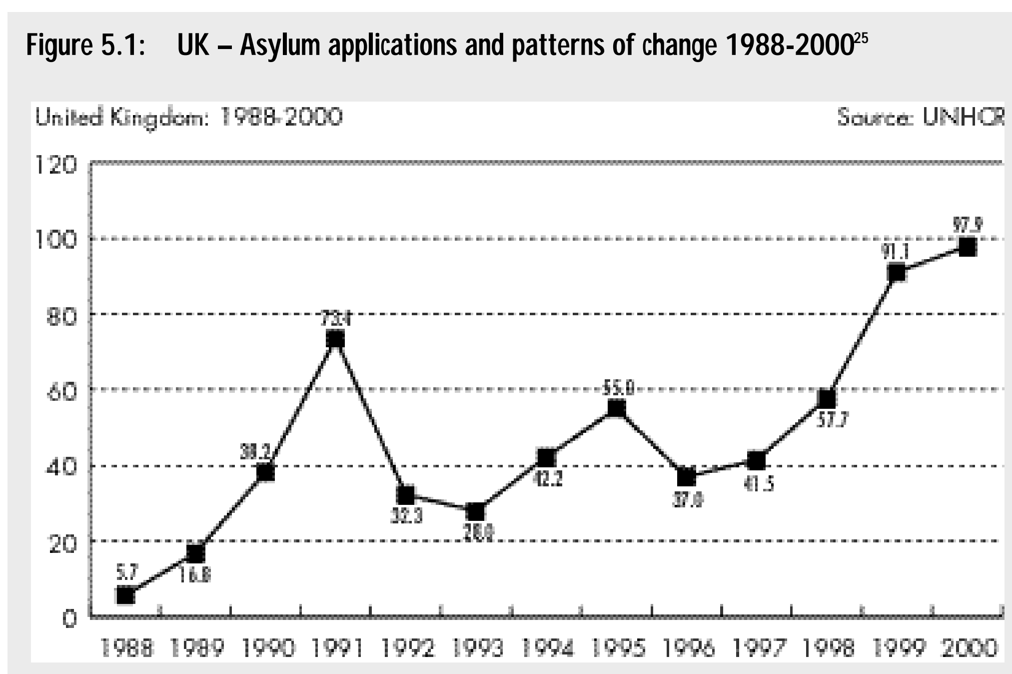
The early signs of an increase in asylum applications in the UK dated from around 1981 with 2,425 applications and reached an early peak of 5,444 applications in 1985 (Kaye 1992; Cohen 1994:81). In that year visa controls were introduced for the principal groups claiming asylum – Sri Lankans, Indians, Bangladeshis, Ghanaians, Nigerians and Pakistanis (Cohen 1994:83). As several authors noted (Kaye 1994; R. Cohen 1994; S. Cohen 1988) the treatment of the Tamils (and later the Kurds) – with the use of deportation, detention and the courts to curtail asylum claims – clearly broadcasted the nature of the new asylum regime in the UK. For Kaye (1994:149) the case of the Tamils signalled that "control of refugee influxes was placed on the political agenda".

The introduction of the Carriers Liability Act in 1987 imposed fines on airlines carrying asylum seekers without valid documentation. The well-publicised resistance of the Tamils to deportation in 1987 and later the Kurds in 1989, became test cases for the Government's approach to asylum. In the UK context it is important to recall that between 1980 and 1988 there were 37,685 applications for asylum, an average of 4,000 per year (BRC 1989). As the British Refugee Council (1989:3) indicated at the time, "the number of people claiming asylum here – is still very small compared with other European countries and the rest of the world". The rate of increase of asylum applications from the 1988-9 period onwards was therefore unprecedented.

Asylum applications and patterns of change

1990-1991:The rise in applications from 38,195 in 1990 to 73,400 in 1991, represented a 71 per cent increase over the year (Refugee Council 1996) due in part to a particularly large growth in Zairean and Angolan asylum seekers, and substantial increases in applications from Pakistan and Ghana (IGC 2000:16).

Figure 5.1: UK – Asylum applications and patterns of change 1988-2000[25]



25. According to the Home Office, 80,815 asylum applications (excluding dependants) were made in 2000. The UNHCR figures reported here are provisional and include dependants.

Table 5.1: Asylum applications to the UK by source nationality, 1991-2000[1][2]

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Somalia	1,995	1,575	1,465	1,840	3,465	1,780	2,730	4,685	7,495	5,020
Sri Lanka	3,765	2,085	1,965	2,350	2,070	1,340	1,830	3,505	5,130	6,395
FRY	-	-	-	-	-	400	1,865	7,395	11,465	6,070
Pakistan	3,245	1,700	1,125	1,810	2,915	1,915	1,615	1,975	2,615	3,165
Turkey	2,110	1,865	1,480	2,045	1,820	1,495	1,445	2,015	2,850	3,990
Nigeria	335	615	1,665	4,340	5,825	2,900	1,480	1,380	945	835
India	2,075	1,450	1,275	2,030	3,255	2,220	1,285	1,030	1,365	2,120
Other Former Yugo	320	5,635	1,830	1,385	1,565	620	375	535	2,625	2,200
Iraq	915	700	495	550	930	965	1,075	1,295	1,800	7,475
Afghanistan	210	270	315	325	580	675	1,085	2,395	3,975	5,555
China	525	330	215	425	790	820	1,945	1,925	2,625	4,000
Other Former USSR	245	270	385	595	795	960	1,345	2,260	2,640	2,505
Ghana	2,405	1,600	1,785	2,035	1,915	780	350	225	195	285
Iran	530	405	365	520	615	585	585	745	1,320	5,610
Other Africa	4,015	230	395	605	835	705	600	470	710	1,025
Algeria	45	150	275	995	1,865	715	715	1,260	1,385	1,635
Other Middle East	1,095	875	655	910	755	600	675	745	145	1,330
Romania	555	305	370	355	770	455	605	1,015	1,985	2,160
Sierra Leone	75	325	1,050	1,810	855	395	815	565	1,125	1,330
Poland	20	90	155	360	1,210	900	565	1,585	1,860	1,015
Top 20	24,480	20,475	17,285	25,285	32,820	21,220	22,990	37,005	55,155	63,720
Others	20,360	4,130	5,105	7,545	11,145	8,420	9,510	9,010	16,005	16,595
Total excluding (dependents)	44,840	24,605	22,370	32,830	43,965	29,640	32,500	46,015	71,160	80,315
Total including (dependents)[3]	73,400	32,300	28,000	42,200	55,000	37,000	41,500	58,500	91,200	98,900

Source - Home Office
(1) Provisional figures rounded to the nearest 5
(2) "-" indicates no data available
(3) Total figures include an estimate for dependants to make the figures more comparable with other EU countries

1992-1995: There was a decrease in applications in 1992, which continued through to 1993. The overall decrease in 1992 took Zairean and Angolan applications out of the top sending countries. After this date applications again rose in 1994, due to a large increase in the number of Nigerian asylum seekers following the annulment of the presidential elections in

Nigeria (Refugee Council 1996:1). Other nationalities in the top ten sending countries (Sri Lanka, Somalia, Turkey, Ghana and India) increased slightly in 1994. Indeed, the stability in size of these countries or their tendency to slight increase was characteristic of asylum applications in this period. The increase followed through to 1995, with another rise in Nigerian applications and a stabilisation or increase in other nationalities. The role of former colonial linkages in this process is highlighted in the recommendations for further research.

1996-1999: The drop in applications from 1995 to 1996 to 37,000 (including dependants) was accounted for by a fall in all of the major sending countries. According to Home Office statistics, 85 per cent of the fall was among in-country applicants. Since that time, applications climbed steadily, reaching an all-time high of 97,860 in 2000, including dependants (UNHCR 2001). Applications from Somalia, Sri Lanka, Pakistan, Turkey increased notably from 1997, in particular. At the same time, Nigeria was no longer one of the top ten sending countries, whilst other nationalities, notably the FRY, Afghanistan and China made an appearance in the list of top ten countries, with the FRY heading the league in 1998 and 1999.

Evident in the principal countries of origin data was the fact that applications tended to be less concentrated amongst relatively few nationalities than in some other EU countries. Somali applicants increased towards the end of the 1990s, whilst Sri Lankan Tamils were consistent in volume but also increased towards the end of the decade. In earlier periods, Nigerian asylum seekers were more numerous, the largest national group from 1994-1996. From 1998-1999 applications from FRY constituted the largest group.

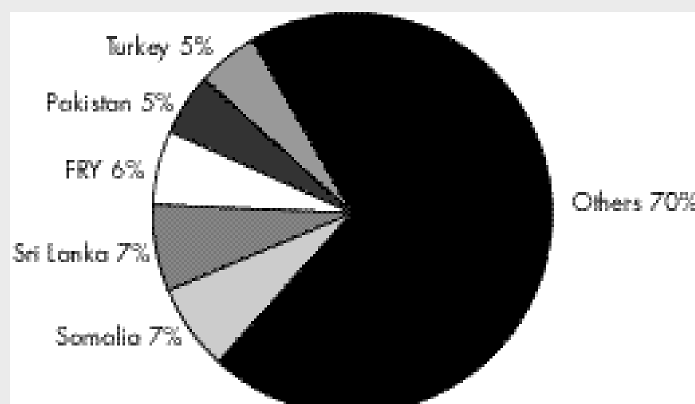
The top five asylum groups only represented 26 per cent of all claims in the UK between 1990-1999. This contrasted with the Netherlands, which was more concentrated at 46 per cent and Germany at 56 per cent (IGC 2000). Therefore, the overall spread of nationalities appeared to be wider than was the case in the Netherlands or Germany. On the other hand, the resilience of a few core states in the asylum statistics throughout the 1990s was remarkable. Somalia, Sri Lanka, Pakistan, Nigeria and India made a showing throughout (although Nigeria and India dropped out from 1998 to 1999). The resilience of these core states warrants further investigation. The existence of settled communities in the UK in nearly all of these cases may have been an important factor.

A few states, Sri Lanka, Somalia, India, Pakistan and Nigeria (all of which have former colonial links to the UK) consistently supplied the steady flow of asylum applications throughout the 1990s. This is not to deny the significance of increases from particular regions such as eastern Europe. For example, there was a significant increase in particular

nationalities, e.g. applications from the former USSR increased from 245 in 1991 to 1,400 in 1996 and those from Poland from 20 in 1991 to 890 in 1996 (RC 1997 Asylum statistics 1986-1996). Applications from Europe increased from 8 per cent of total applications to 23 per cent of applications from 1991-96 (RC 1997). Broad patterns amongst the top sending states were nevertheless discernible and warrant further investigation. There were, in addition, episodic increases in particular nationalities as a response to the onset of an emergency situation, such as occurred with the FRY in 1992 and again in 1998 through to 2000. The situation in the country of origin was important both in the case of the core sending states, which were characterised by state collapse and civil war and in relation to sudden increases in applications which resulted from episodic crises, such as those which occurred in the FRY. In many instances the statistics appeared to show a closer correlation with events in the country of origin than with the introduction of specific policy measures. This issue is discussed further in the recommendations for further study.

It may not be coincidental that all the core sending states had established or growing communities in the UK. Some of these communities dated back to the nineteenth century as in the case of Somali seamen in the ports of Cardiff and London, while others are more recent. All of these core states were at one time colonies of the British Empire. The role of established ethnic communities, often consisting of a mixture of migrant labour and refugees may have acted as a significant pull factor for further inward migration to the UK (Robinson and Segrott 2002). Figure 5.2 shows the top five source countries that claimed asylum in the UK for the period 1991 to 2000.

Figure 5.2: Asylum applications to the UK– top five source nationalities for the period 1991-2000



Evaluating the policy impacts

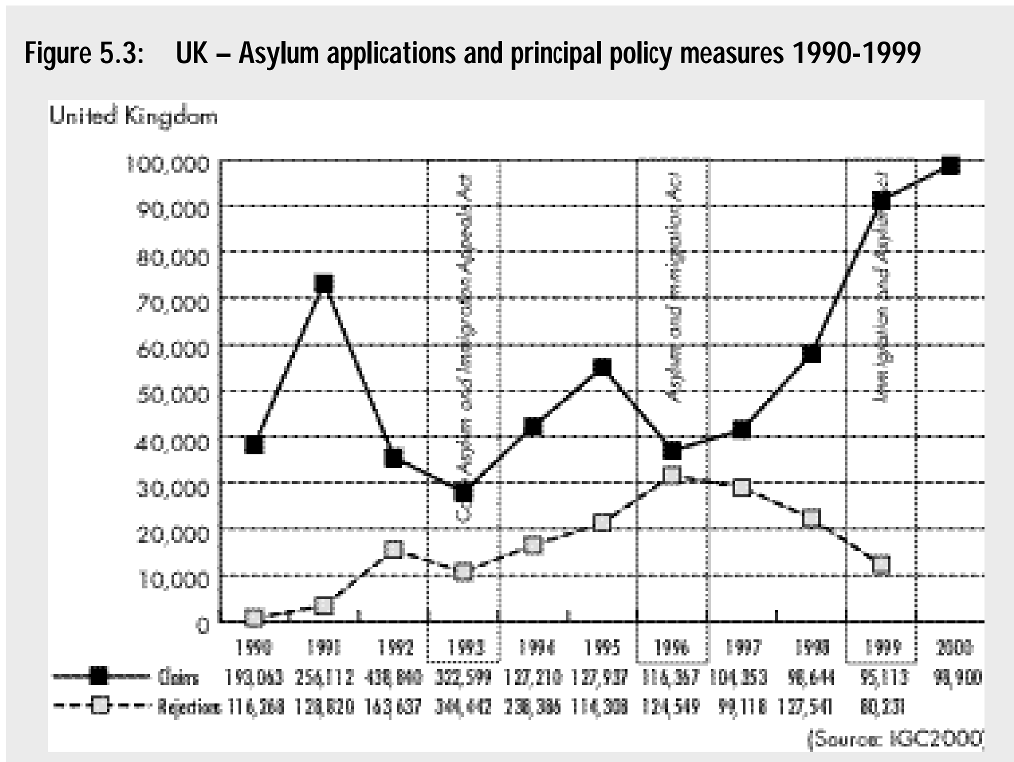
The pattern for asylum applications throughout the 1990s was one of two peaks – in 1991 and 1995 – and succeeding troughs, combined with a steady increase in applications after 1995.

Legislation was introduced after each of these high points (see figure 5.3) in the trough of applications rather than at their height, suggesting that an essentially reactive approach to asylum applications was occurring in the UK. The first peak in asylum applications occurred in 1991 with 73,400 applications. It was in this context that restrictions were introduced in November 1991 to deter multiple and other fraudulent applications (Home Office 1998:8). The subsequent fall in applications may have been due to the effect of these measures although there is no evidence to confirm this. The decline in Zairean and Angolan applications in this period may also have been due to country of origin factors, or other variables which require further investigation.

The 1993 Asylum and Immigration Appeals Act and its impact

As Bloch (2000:30) remarks, "in 1993 the Asylum and Immigration Appeals Act became the first piece of primary legislation dealing specifically with asylum to be introduced into UK law". The Act's introduction coincided with the major legislative changes introduced in Germany, although it is important to recall that the latter had been managing asylum pressures since the late 1970s and had already introduced major asylum legislation by this time. Similarly, in the case of the Netherlands, major reform had been implemented in the 1987 overhaul of reception procedures as discussed in the previous case study.

Figure 5.3: UK – Asylum applications and principal policy measures 1990-1999



The 1993 UK Asylum and Immigration Appeals Act, passed in July of that year, was designed to deal with the backlog of asylum cases and aimed to introduce a streamlined approach to hasten decision making. The principal features of the Act were:

- strengthening of the Carriers' Liability legislation with the introduction of transit visas. Asylum seekers intercepted from a 'safe third country' were denied entry to the asylum procedures;
- introduction of finger-printing for asylum seekers;
- rights to housing were reduced – homeless asylum seekers were no longer automatically entitled to housing by local authorities;
- failure to apply for asylum on arrival was to condition subsequent procedures for the applicant under draft immigration rules – a measure which anticipated the 'in-country' clauses in the 1996 Act; and

- introduction of right of appeal for asylum seekers against an Immigration Officer's (IO) decision, with a 48 hour time limit for those individuals processed under accelerated procedures. This was regarded as an unrealistically short time in which to lodge an appeal by refugee advocacy groups.

The new right of appeal had long-lasting effects including increased costs, litigation and administration. It was also noted that the housing clauses of the Act immediately began to "deprive asylum seekers of decent secure housing" according to the Housing Association Charitable Trust (HACT 1994:4). In addition, there was a rise in asylum seekers supported by local authority social services departments (ALG 1996). This was particularly significant given the central role of housing in the settlement of refugees and asylum seekers (Carey-Wood et al., 1995: 96). However, in terms of overall applications, the Act had no discernible impact. Indeed, applications almost doubled from 28,000 in 1993 to 54,988 in 1995 (IGC 2000), largely, as noted above, due to the increase in Nigerian asylum seekers in this period. Significantly, however, grants of ELR (Exceptional Leave to Remain) fell substantially after the introduction of the Act. In 1993, 48 per cent of initial decisions were to grant ERL and 46 per cent were refused asylum. In 1995, 16 per cent were granted ELR while 79 per cent were refused (Home Office 1997). This suggests that although applications increased rapidly, despite the Act, the claims for asylum were increasingly determined to be unfounded.

The 1996 Asylum and Immigration Appeals Act and its impact

The 1996 Asylum and Immigration Act succeeded the 1993 Act and the key conclusions on impacts are as follows.

Although the new Asylum and Immigration Bill was formally announced in the Queen's speech on 15 November 1995, its contents (detailed below) were known well in advance. What was to prove one of the most far-reaching of the Bill's clauses, that concerning the withdrawal of benefits for those claiming in-country or on appeal, was first suggested independently on 15 Oct 1995 under the Social Security (Persons From Abroad) Miscellaneous Amendment Regulations. This came into effect on 5 February 1996 before the passing of the Asylum and Immigration Act in July 1996, and although overturned by the Court of Appeal was incorporated into the Act under clause nine. The main provisions of the Act were:

- extension of 'fast-track' procedures for asylum seekers from designated 'safe countries' – the so-called 'white list';

- safe third country rule removed the right of appeal against return to a safe third country through which the asylum seeker had travelled en route to Britain;

- new criminal offences were introduced relating to attempts to enter the UK by deception and employer liability for employing workers without leave to enter or remain in the UK; and

- withdrawal of benefits for in-country and on-appeal asylum seekers. Asylum seekers were also excluded from local authority housing lists, a clause which was reinforced by the 1996 Housing Act. In addition there was to be a withdrawal of child benefit for all asylum seekers.

As indicated, the benefits clause had the most immediate impact on housing and the system of welfare support for asylum seekers. The increase in the number of destitute asylum seekers (Medical Foundation 1997; ALG 1996) and the consequent strain on London boroughs resulted in a number of high profile appeals lodged on behalf of asylum seekers by NGOs. The Court of Appeal ruled in February 1997 that local authorities had a duty under the National Assistance Act 1948 (NAA48) to provide housing and sustenance to homeless asylum seekers. As a result, overall responsibility for asylum seekers affected by the Act shifted from housing to social services departments. In May 1997 the High Court ruled that local authorities had a duty to provide both food and accommodation under the NAA48. A further ruling by the High Court in July 1997 established that cash payments were ultra vires, although cash payment was still available under the Children Act 1989. The effects in London were of an increasing number of asylum seekers supported under the NAA48, a worsening housing shortage, and competition for bed and breakfast accommodation. London was characterised by a range of ad hoc responses and the absence of coordinated support measures across boroughs (Medical Foundation 1997).

According to the UK Home Office (1996:3) "an important factor in the fall in applications in 1996 was the introduction, in February 1996, of DSS benefit restrictions to asylum seekers". This statement was supported by Koser and Salazar (1999:327) who remarked that the fall in applications "could be related to the decrease in government benefits in 1996". This appears to have been a reasonable deduction, particularly given that the proportion of applications made in-country also decreased from 65 per cent in 1995 to 40 per cent in early 1997 (Home Office 1996:4). A more detailed examination showed that applications fell from 4,715 in November 1995 to 2,850 in February 1996 (Home Office 1996) and remained below the 1995 peak for the following two years. This may have represented specific evidence for the efficacy of indirect measures on asylum applications,

although it needs to be emphasised that these effects were relatively short-term in character, an argument that is in keeping with the general conclusion of this report. Rising applications in 1997 and the worsening housing situation in London and the south-east then followed.

Summarising policy changes to this point, it should be noted that the 1993 legislation, although the first major legislation, was specifically concerned with asylum in the UK. It introduced:

- a series of measures which reinforced earlier legislation – carriers' sanctions and other pre-entry controls; and

- other discrete measures, including accelerated procedures, and began the staggered withdrawal of asylum seekers from mainstream welfare provision.

The 1996 legislation significantly increased the regulatory framework designed to regulate more closely the flow of asylum seekers and the claims for asylum, but also continued the incremental approach to the withdrawal of asylum seekers from mainstream welfare provision, the reinforcement of pre-entry controls and the rationalisation of the asylum procedures. In neither case was there the significant overhaul of the asylum system, which had occurred in comparable EU states such as Germany and the Netherlands.

These issues aside, it is also clear from the evidence that asylum applications in the UK were closely correlated to events in the principal countries of origin – including Somalia, Sri Lanka, Pakistan and Nigeria. This issue is discussed further below.

White Paper review of policy and the 1999 Immigration and Asylum Act

The refugee destitution and housing crisis, mainly in London, was the context for the Labour Government review of the asylum system, which began shortly after their taking office and continued to October 1997. In the event, the Government published its White Paper, Fairer, Faster, Firmer: a Modern Approach to Immigration and Asylum, in June 1998. The main provisions of the White Paper were reproduced in the Immigration and Asylum Bill of February 1999, which became law towards the end of 1999. Specific provisions of the Act only became operative at particular stages during 2000 and 2001.[26] Some of the principal changes included:

- extension of carriers' liability, including new measures to refuse entry to undocumented passengers;

26. For example, June to September 2000, Carrier's Liability Part II was introduced; from October 2000 a single comprehensive appeals process under Parts IV and I and the finger printing provisions of Part VII; from April 2001, the code of practice on restriction on employment in Part I, changes in immigration control in Part I, Bail provisions in Part III and the full implementation of the scheme to regulate immigration advisors and immigration providers under Part V.

- detention of asylum seekers who made false statements in their applications;
- abolition of the White List but a continued fast-tracking of those with 'manifestly unfounded claims' based upon the safe country of origin principle;
- removal of social security benefits for all new asylum seekers. A centralised system of support through provision of accommodation and a voucher system was instigated and operational from April 2000;
- dispersal of asylum seekers to designated areas of surplus housing under the National Asylum Support Service (NASS); and
- increased powers of entry, search and arrest for immigration officers.

Bloch (2000:39) suggested that the Act reinforced the earlier emphasis on pre-entry control and the restriction of welfare rights. Other measures were reinforced, including the posting of more Airline Liaison Officers, the imposition of visa controls, the attempted elimination of backlogs and a reduction in processing time for applications. The major innovations in the Act were the separation of asylum seeker support from mainstream welfare provision and organised reception procedures under NASS.

From 1 April 2000 NASS had statutory responsibility for providing support and shelter for destitute asylum seekers who were unable to make alternative arrangements for themselves. This centred largely on the introduction and implementation of the dispersal policy, which involved establishing designated reception areas and coordinating the establishment of the associated reception and support infrastructure. The nature of this support took the form of accommodation, provided on a no-choice basis, together with subsistence. This latter element was provided predominantly through a voucher system (see below), with a small supplement in cash. However, for those asylum seekers with alternative accommodation arrangements, only subsistence was paid. NASS liaised with reception assistants, usually from the voluntary sector, to ascertain whether new asylum applicants were eligible for support while their claim was considered.

NASS was also charged with the task of contracting with landlords, in the public and private sectors, the latter in the form of regional consortia, to ensure the availability of sufficient suitable accommodation.

The voucher scheme was introduced as an integral component of the new cash-less system of dispersal. Destitute asylum seekers were provided with vouchers, the value of which

represented 70 per cent of the benefit levels for adults and 100 per cent for children. The vouchers were exchangeable for food or clothing in a number of predetermined retail outlets arranged by the administrating company, Sodhexo Pass. In addition to vouchers, NASS-supported asylum seekers received free, furnished accommodation, equipped with utensils, bedding, etc. and all their utility bills were paid by NASS. After six months, NASS supported asylum seekers were eligible for a single additional payment of £50. According to the Home Office, taken as a package, the value of NASS support was broadly equivalent to the support provided to asylum seekers under the previous cash-based system.

Concerns were raised by the Refugee Council, amongst other refugee advocacy organisations, that the scheme was inflexible because of the limited number of participating stores, together with the fact that no change was allowed on the voucher denomination. The Government announced at the end of 2000 that a review of the voucher system would be conducted.

In parallel with eliminating the perceived incentives for economic migration, the removal of asylum seekers from welfare support and the introduction of compulsory dispersal also had other objectives. Much of the existing activity was highly concentrated and the diversion of asylum seekers away from London and the south-east was intended to reduce the burden of demand and financial commitment of already pressurised resources.

From 4 April 2000 NASS started with 11 areas to which people were dispersed (known as clusters). NASS then announced a total of 58 clusters that could be used during April, May and June. Their use depended on demand and the language spoken by asylum seekers. By the end of 2000 NASS had dispersed asylum seekers to 49 clusters. As at the end of December 2000 there were 13,535 asylum seekers including dependents (figures rounded to the nearest 5) who were being supported in NASS accommodation. By March 2001 this had increased to 19,540 asylum seekers including dependents supported in NASS accommodation.

There is no authoritative evidence, but anecdotal reports suggested that of the households allocated dispersed accommodation, some chose not to accept it, or chose to accept a voucher-only support option. There was some evidence of asylum seekers continuing to remain in London, often directly impacting on local services. Statistics produced by LASC (the London Asylum Seekers Consortium) indicated that the number of households supported by the London boroughs increased from 62,000 asylum seekers to 64,000 between February 2000 and February 2001. Informal evidence from the LASC, corroborated by a number of boroughs, was of increasing levels of overcrowding in social housing tenancies, as the result of fresh asylum seeker arrivals.

A further cause for concern over performance was the standard and location of dispersed accommodation. The Government indicated from the outset that in implementing dispersal, its intention was to "avoid adding to the problems of social exclusion" and to "avoid creating racial tension" (Home Office, Asylum Seekers Support, 1999). However, the blueprint set out for developing sustainable cluster areas for dispersal appeared not to have been fully adopted. Procurement of accommodation appeared to have been geared more towards the priority of housing provision for those in need rather than based upon other social and ethnic criteria. This was evidenced in a number of instances where local communities reacted negatively to the prospect of having asylum seekers placed in their area (Refugee Council, 2001). Ideally, cluster areas were located where there was suitable accommodation and where it was possible to link existing communities and to develop the support of voluntary and community groups. In practice, the allocation of asylum seekers to cluster areas was determined by the main priority of providing housing to those in need. According to NASS, there was a full consultation process in place with regional consortia, voluntary groups and other organisations with an interest about the identification of cluster areas.

As regards the impact of the 1999 Act upon asylum applications, it was unclear by the end of 2000 (which marks the end of the period of interest here) whether the 1999 Act had made any substantive impact on the total number of asylum applications in the UK. The average number of monthly applications throughout 2000 remained in excess of 6,000, representing an increase over applications during the first half of 1999. The total number of applications during 2000 was 80,315 (excluding dependants) an increase of 13 per cent over the previous year. However, in 1999 applications increased by 55 per cent over the previous year. Bearing this in mind, it can be concluded that the rate of increase was in fact declining and the overall application rate levelling off in the UK (Home Office 2001). At the time of writing it was too early to assess the impacts of the 1999 Act on this reduction with any degree of certainty.

The UK in the EU context

In the context of asylum policy it is seldom possible to show a direct link between policy and outcome. The unintended outcomes of policy, as in the case of the housing and welfare provisions of the 1996 Act, often outweighed their supposed benefits. In instances where policies could be shown to be effective, the effects were often short-lived or difficult to isolate from other co-occurring variables. Asylum policy implementation appears to have occurred as the inflows were already well established or already in decline. Both the 1993 and 1996 legislation in the UK were passed in trough periods for applications due to the lead

times for implementation of policy. Although there was a two-year fall in applications after the introduction of the 1996 Act, asylum applications rose dramatically after 1997 and continued unabated after the introduction of the 1999 legislation. In 2000 the UK was top of the league in asylum applications in the EU.

Referring back to the Table 1.1 (Chapter 1), which compares Germany, the Netherlands and the UK, the following conclusions can be noted in the context of the EU.

In contrast to the UK, both Germany and the Netherlands experienced their first major intake of asylum seekers in the early to middle 1980s. Both states initiated organised reception and the beginnings of the separation of asylum seekers from mainstream welfare provision by the end of the 1980s. The immediate response in the UK to rising applications from 1985 onwards was to impose visa restrictions and introduce carrier sanctions. Given the relatively small numbers involved at this time, an organised reception policy was not perhaps considered necessary. A lack of institutional memory was also cited as a contributory factor, with successive governments 're-inventing the wheel' by treating each successive wave of asylum seekers as a unique event that did not require a centralised approach (Robinson 1998).

Although Germany and the UK both introduced major legislation in 1993, the German legislation was more extensive in scope, combining revision of the constitution involving the construction of a cordon sanitaire around Germany of 'safe states'; the divorce of asylum seekers from mainstream welfare provision and the introduction of accelerated procedures and detention at the border and airports. The political signal arising from the constitutional debates and the legislative changes of the time was very clear. There was no equivalent political crisis around asylum in the UK, nor was the scale of the problem comparable. The UK legislation, on the contrary, continued the incremental approach to regulating the flow of asylum seekers, the procedures for determination, and the entitlements in-country. Until 1999, this had fallen far short of the wholesale revision adopted in Germany. The implication here is that it may have been the comprehensiveness with which legislation was introduced to regulate asylum seeking, which produced the greatest impact. Differences between the political response of nation-states to asylum flows may therefore have impacted upon policy formulation and implementation with long-term consequences for the scale and character of asylum migration.

The Netherlands, as noted above, focused on changes in reception procedures as a means of controlling and monitoring asylum populations. The 1994 Aliens Act arose as a response to the German initiatives in 1993 and increasing numbers of asylum applications. Again,

the changes were more comprehensive than was the case in the UK. On the contrary, here again the 1996 Act in the UK continued the process of a gradual removal of previously available entitlements and the increase in more searching procedures for claiming asylum. Withdrawal of benefits also took place in a more haphazard form than was the case in comparable EU Member States. The negative fall-out of the housing and welfare provisions of the 1996 Act continued to the time of this study, particularly in over-burdened London boroughs and the south-east (Zetter and Pearl 2000).

The relative slowness of legislative change in the UK may also have had more long-term implications. Although there was evidence that asylum networks acted as powerful pull factors in most receiving states, it was particularly notable that the top nationalities in UK asylum applications, apart from the FRY, all had established or emergent ethnic communities already resident in the UK. More research clearly needs to be conducted on the role of asylum networks in acting as pull factors to particular member states in the EU.

Finally, in addition to legislation and asylum networks, it was also clear that asylum flows in all of the major receiving states were heavily conditioned by changes in the countries of origin. The war in former Yugoslavia, continuing and episodic crises in Somalia, Sri Lanka, Iraq and Afghanistan were major contributory factors to the generation of asylum flows. A comprehensive asylum policy would need to give these factors their due weight. The Tampere Conclusions took a welcome lead in this respect.

Conclusions

The intake doubled to 73,400 between 1990 and 1991 and reduced to 34,500 by 1992. Legislation targeting multiple and fraudulent applications along with possible source country factors were thought to have played a part though direct evidence is not available. The 1993 legislation as the first major piece of UK legislation on asylum included a range of measures on carriers' liabilities, finger printing of asylum seekers, introduced a right of appeal for asylum seekers, and reduced their rights to local authority housing. However there appeared to be little impact on the intake, which was slightly lower at 28,000 in 1993. Further legislation was passed in 1996 following rises in the intake to 55,000 in 1995. The legislation included: extending "fast track" procedures for asylum seekers from designated safe third countries; removal of the right of appeal against removal to safe third countries; and new criminal offences. In addition the social security legislation was amended withdrawing access to benefits for those claiming asylum in country or on appeal and this was implemented in February 1996. This was subsequently overturned in the courts

and local authorities were required to provide support under the National Assistance Act 1948. The fall in in-country applications in early 1996 provided evidence that the measure had had an effect; however the level of intake rose again after two years from 37,000 in 1996 and 41,500 in 1997 to 58,000 in 1998. Further legislation followed in 1999: extending carriers' liability; the detention of asylum seekers who made false statements in their applications; the removal of social security benefits for all new asylum seekers, replacing them by an new centralised system of support through vouchers and housing provision; dispersal to areas of surplus housing under the National Asylum Support Service; and increased powers of entry search and arrest for immigration officers. There was little evidence available about the impact of the measures though the intake that had been rising rapidly up to 1999 levelled off in 2000.

6. Sweden and Italy

Sweden

Introduction

In the last three decades Sweden changed from an ethnically homogenous country into a multicultural society with settled ethnic communities and a growing number of second-generation migrants.[27] Between 1970 and 1995 the foreign-born population grew by 400,000 persons, an increase of 75 per cent (Ornbrandt 1999: 311). In contrast to the UK and the Netherlands, there was no large-scale immigration as a result of the existence of former colonial ties. Similarly, Sweden did not employ a guest-worker system in the post-war period along the lines of Germany. Rather, the bulk of immigration up to the 1980s was inter-Nordic in character. This reflected the traditions of inter-Nordic trade, Social Democratic hegemony under the Socialdemokratiska arbetarpartiet and the central economic role of Trades Unions which had lent Sweden a strongly corporatist character in the post-war period. In addition, the Labour Forces Commission started from 1947 onwards to recruit workers from Italy, Hungary and Austria and migrant workers from West Germany. Workers from the Netherlands and Belgium were recruited by private companies in the 1950s. However, the increase in asylum flows from the early 1980s onwards resulted in an increasing reformulation of Sweden's traditionally liberal refugee and asylum policies.

Historical and political context of asylum policy

Sweden experienced a steady stream of asylum seekers from the early 1980s, rising from 7,050 in 1983 to over 12,000 in 1984. According to Hammar (1993) between 1950-85 some 90,000 asylum seekers were recognised as refugees in Sweden. An additional 32,250 asylum seekers were granted asylum in the six-year period from 1985 to 1991. The response to the increase was two-fold. In 1985 an organised system of reception of asylum seekers was initiated, dispersing asylum seekers to municipalities across the country. As in other cases of organised dispersal, this resulted in

27. Sweden in 2000 – A Country of Migration, Past, Present and Future (Regeringskansleit, 2000) provides an overview.

the concentration of refugees in the larger cities and the formation of ethnic enclaves (Hammar 1993; Ornbrandt 1999:315). At the same time in 1985, Sweden initiated the Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia – the IGC (Abiri 2000: 26). The internationalist perspective which was to dominate Swedish policy documents throughout the 1990s was therefore clearly in evidence in this period.

The major change in asylum policy occurred with the Aliens Act in December 1989, which was introduced due to a 50 per cent rise in asylum applications in that year. The main effect was to restrict the grant of asylum to convention refugees under special emergency provisions. By the end of the decade the principle of 'first country of asylum' and carrier sanctions were also in place (Abiri 2000:14). By the end of the 1990s – under the provisions of the 1997 Amendments to the 1989 Aliens Act – there were four possible statuses for asylum seekers: Convention, de facto, humanitarian and war objectors. According to Abiri (2000), however, in effect this was narrowed down to two main categories.[28] Despite the series of official policy documents produced from 1990 onwards, with their strong accent on the development of a comprehensive and integrated approach to asylum, Sweden fell in line with the prevalent restrictionism which characterised the EU in the 1990s.

Asylum applications and patterns of change

Figure 6.1: Sweden – asylum applications and patterns of change

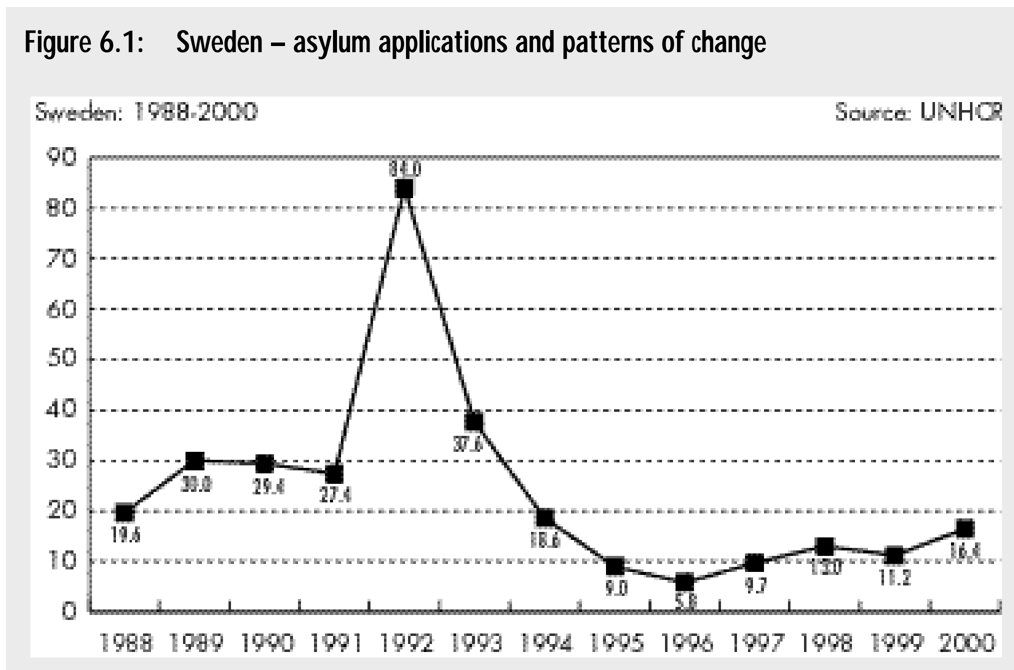


Table 6.1: Asylum applications to Sweden by source nationality, 1991- 2000[1][2]

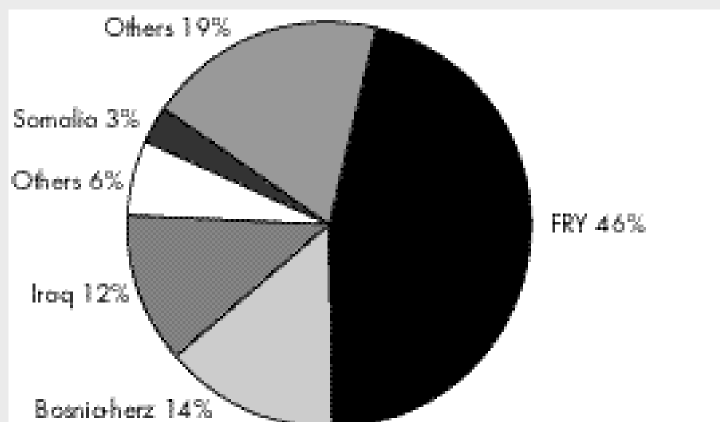
	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
FRY	13,225	68,830	3,705	10,595	1,010	635	2,125	3,445	1,810	2,055
Bosnia-Herz	-	-	25,110	-	1,060	265	730	1,330	485	4,245
Iraq	2,240	3,165	2,325	1,670	1,785	1,555	3,065	3,845	3,575	3,500
Others	3,525	3,760	2,530	1,800	-	1,140	10	15	10	20
Somalia	1,330	2,635	740	935	870	430	370	230	290	260
Iran	1,270	745	340	380	450	400	350	615	855	740
Stateless	605	525	-	240	205	135	140	245	295	410
Peru	530	775	460	310	355	110	35	45	50	100
Russia	-	-	-	260	325	205	240	230	450	590
Afghanistan	-	-	-	310	325	150	175	330	350	375
Turkey	-	-	-	305	270	185	205	280	220	230
Cuba	-	-	-	1,150	275	-	5	10	25	20
Syria	-	-	-	-	135	100	125	225	305	335
Colombia	-	-	-	-	85	150	305	55	55	1,425
Croatia	-	-	-	-	275	115	160	55	40	85
Lebanon	-	-	-	170	55	-	75	125	175	125
Armenia	-	-	-	-	120	75	90	40	155	215
Pakistan	-	-	-	-	80	-	65	120	210	185
Ukraine	-	-	-	-	45	40	75	55	70	110
Belarus	-	-	-	-	10	-	35	35	85	230
Top 20	-	-	-	18,120	7,730	5,630	8,220	11,575	9,515	13,885
Others	-	-	-	520	1,315	145	1,400	1,270	1,715	2,395
Total	27,350	84,020	37,580	18,640	9,045	5,775	9,620	12,845	11,230	16,285

Source - IGC Secretariat
(1) Provisional figures rounded to the nearest 5
(2) "-" indicates no data available

28. Apart from Geneva Convention status as before, another category of those 'otherwise in need of protection' was introduced. This subdivides into persons who have left the country of his nationality because:
   1 Of a well-founded fear of being sentenced to death or other severe punishments,
   2. Due to an internal or external conflict or environmental disaster cannot return to the country of origin,
   3. Because of his/her sex or homosexuality has a well-founded fear of persecution.

   Furthermore, Sweden has a single asylum procedure under which the asylum seeker can apply under each of these types or persecution, if relevant to their particular case.

Figure 6.2: Asylum applications to Sweden – top five source nationalities for the period 1991-2000



1990-1992: Taking 1989 as a base year, when over 30,000 applications for asylum were made in Sweden (Abiri 2000: 13) it is clear that a slight decrease in applications carried through to 1991 when 27,351 applications were registered (IGC 2000:14). The jump to 84,020 applications in 1992 was almost entirely accounted for by asylum seekers from the former Yugoslavia (68,832) (see Figure 6.1 and Table 6.1), most of whom were Kosovans. As in the case of Germany in 1992, this was an unprecedented increase, representing the largest influx of asylum seekers in Sweden since the Second World War.

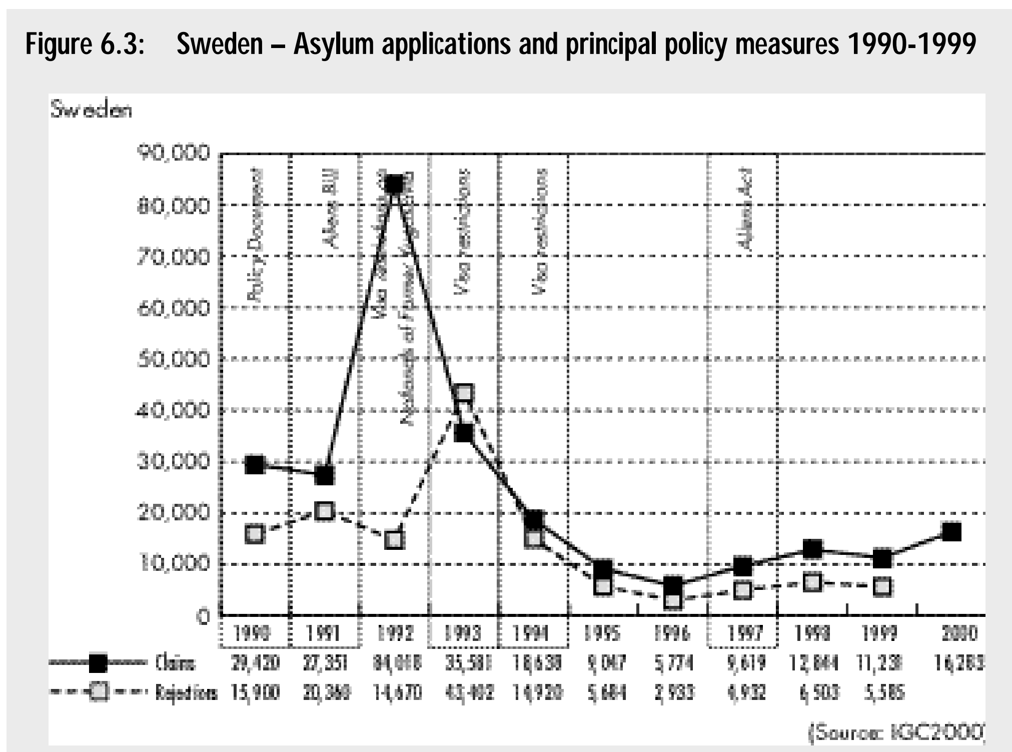
1993-1996: The fall back to 37,580 applications in 1993 was accounted for almost entirely by the disappearance of former Yugoslavs (Kosovans) from the asylum statistics. The increase in Bosnian applications in 1993 similarly fell back in 1994. Both of these reductions are explained by the introduction of visa restrictions on Kosovans in 1992 and on Bosnians in 1993. The reduction continued through to a low point in 1996 of 5,775 applications.

1997-1999: From a point significantly lower than the 1984 figure of 12,000 applications, asylum figures again rose in 1997, but only beginning to approach 1984 levels by the end of the decade. This marginal rise in numbers was almost wholly due to increased applications from Iraq and corresponded to rising numbers from this group across the EU more generally (UNHCR 2001). Figure 6.2 illustrates the top five source nationalities applying for asylum in Sweden for the period 1991 to 2000.

Evaluating the policy impacts

According to the Swedish Human Rights Watch (1996), visa restrictions were particularly important in accounting for the reduction in applications that followed the dramatic increase in applications in 1992. In October 1992 visa requirements for Yugoslavs were introduced, targeting the Kosovans who formed the bulk of applicants (Abiri 2000). According to Abiri (2000:20) "the visa obligation put an end to the arrival of Kosovars". At this point, the crisis in Yugoslavia was far from over. With a worsening in the situation in Bosnia-Herzegovina, there was a dramatic increase in applications from this group. Sweden imposed visa restrictions on Bosnians in June 1993 to quell rising numbers. In the words of the Swedish Human Rights Watch, "the number of Bosnian asylum seekers immediately plummeted to 1,500 per month, compared with 7,000 per month earlier. Whereas Sweden received 25,110 asylum applications from citizens of Bosnia-Herzegovina in 1993, the number fell to 2,649 in 1994" (1996:6). Although visa policy was not regarded as a part of Swedish refugee policy, its impact upon applications appeared from this instance at least to have been starkly effective.

Figure 6.3: Sweden – Asylum applications and principal policy measures 1990-1999



In addition to visa restrictions, the use of accelerated procedures in the case of manifestly unfounded applications was also a deterrent, according to several sources. Thus, the

introduction of the concept of manifestly unfounded applications, based upon safe country of origin or safe third country principles was particularly effective according to Swedish Human Rights Watch (1996:9) in quelling asylum applications. The use of detention, according to a variety of conditions (1989/97 Aliens Act) was also used. Indefinite in law if not in practice prior to expulsion at the border for rejected claims, this was also strongly criticised by human rights and refugee advocacy groups for its deterrent effects upon asylum seekers.

The implementation of the Amendment to the Aliens Act in 1997 had no discernible impact upon asylum applications. Indeed, applications increased slightly since its introduction. The simplification of categories that it introduced, from the previous four statuses to Convention status and Others in need of protection, was given a mixed reception by refugee advocacy groups. Given that Sweden employed a restrictive interpretation of the Geneva Convention, with particularly low recognition rates for Convention Refugees (averaging less than 2 per cent between 1992-1996 although rising towards the end of the decade – IGC 2000), the concern was that the elimination of other categories would lead to a reduction in the "number of people who will be allowed to stay in Sweden" (Swedish Human Rights Watch 1996:2). In the event, the proportion of individuals granted Convention status declined from 9.8 per cent in 1997 to 6.8 per cent in 1998, while the percentage of those granted a form of humanitarian status remained stable at around 30 per cent (IGC 2000).

Above all, it is the targeted use of visa policies that appeared to explain the reduction in applications occurring in Sweden between 1993 and 1997. Whether the reduction in applications would have occurred to a similar extent as a result of the eventual cessation of conflict in the Balkans is unknown. Although research evidence is lacking, increases in applications after this point suggested that visa policies, as in other instances, had short-lived effects. Equally the flow of asylum seekers and the impacts of policy measures must be contextualised within a wider framework of variables as suggested in Chapter 7 of this report.

Sweden in the EU context

Broadly comparable to several other EU Member States, Sweden in the period immediately after 1992 significantly reduced its intake of asylum seekers. Although applications stabilised to 1996 they rose steeply towards the end of the decade. Applications rose by 45 per cent between 1999-2000, with 16,285 applications in 2000. Amongst the most significant nationalities, applications from nationals of Bosnia-Herzegovina increased by 773 per cent between 1999 and 2000, putting Bosnia into first place for applications to Sweden (UNHCR 2001).

In 1995 the publication of Swedish Refugee Policy in Global Perspective (SOU 1995) represented an integrated approach to asylum linking international cooperation with the causes of forced migration. In this document, Sweden formally committed itself to alleviating the global causes of refugee flight. It advocated "an active preventive policy linking up development cooperation, trade and security policy measures and refugee and migration policy initiatives" (SOU 1995:75). Its general thrust was well received by NGOs (Crisp and van Hear 1998).

As with other official policy documents, the 1995 policy statement was closely associated with changes in government that occurred at the time. As a result, it reiterated many of the points raised in earlier policy documents from 1990 onwards. It also coincided with Sweden's entry to the EU and was therefore important in establishing Sweden's credentials in the new political arena and moving towards better harmonisation compared to other member states. The publication of the Government Bill 'Swedish Migration Policy in Global Perspective' in 1996 was based upon the 1995 document and led to the implementation of the Amended Aliens Act in 1997. As indicated above, the main provision of the Act, despite the call for an integrated, global approach to asylum, was to limit the number of available statuses for asylum seekers entering Sweden. Despite Sweden's long-standing commitment to a comprehensive humanitarian approach to asylum, more restrictive practice, as in other EU Member States, typically proved the more powerful factor.

Italy

Introduction

Traditionally a country of transit for asylum seekers, Italy provides a useful contrast to the other case studies examined here. Until the 1970s Italy was a country of emigration, with inward migration and asylum a low priority for policy makers. Under the Constitution of the Italian Republic – 22 December 1947, Article 10 (3) – any alien debarred in his own country from the effective exercise of the democratic liberties guaranteed by the Italian Constitution had the right to claim asylum. Although this provision was achieved by individual programmes, it was reinforced by Italy's ratification of the UN Convention in

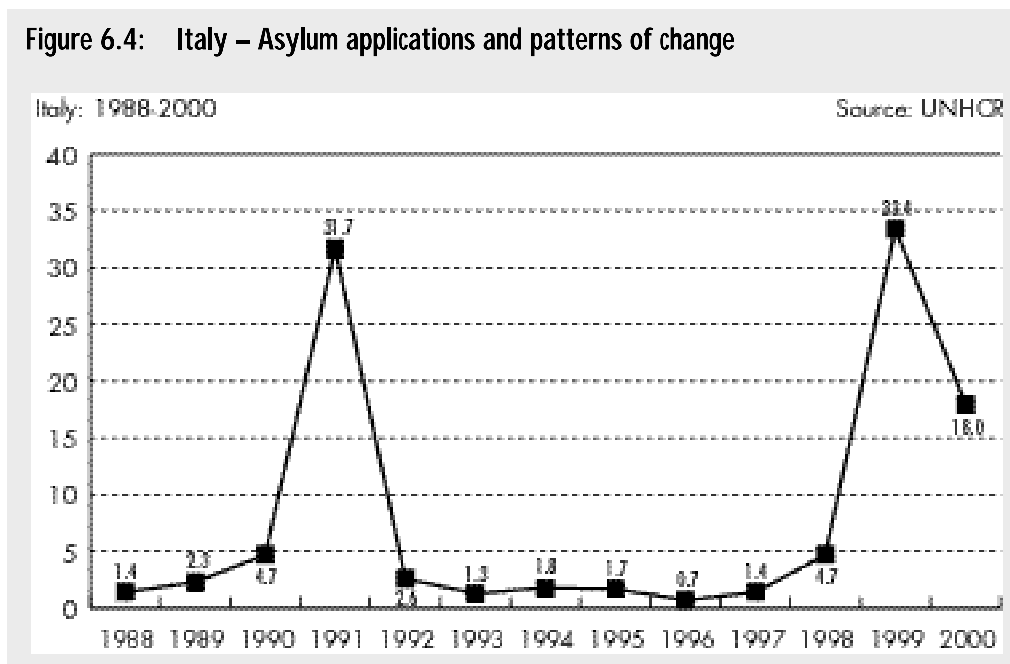
1954. Despite signing the 1967 Protocol on refugees in 1970, Italy continued to observe the geographical restriction of the Convention – to 'events in Europe' – until 1990. Low settlement rates for acknowledged refugees were accompanied by high rates of emigration to other countries – thereby justifying Italy's status as a 'country of transit' (Delle Donne 1997). As a consequence, until the 1990s there was little perceived need for an integrated policy for the reception and resettlement of asylum seekers and refugees in Italy.

Historical and political context of asylum policy

A sharp rise in inward migration from north and sub-Saharan Africa in the 1980s onwards meant that Italy had to adjust to its new role as a country of immigration. (Vincenzi 2000). Considering asylum, in the 37 years from 1952 to 1989 Italy received only 122,000 asylum applications, representing less than half of the number registered in Germany in 1991 alone (ISTAT 1999). It is only at the end of the 1980s that Italy began to formulate immigration laws in order to tackle the growing problem of illegal immigration. The permeability of Italy's borders became a key issue for an EC keen to harmonise its policies on border control. The spontaneous arrival of large numbers of 'non-Europeans' led to the repeal of the geographical restriction on asylum seekers in 1990 with the introduction of the so-called 'Martelli Law'. Although successful in implementing restrictions on numbers, the Martelli Law was followed by the mass arrival of Albanians in 1991, of Yugoslavs in 1992, a second wave of Albanians in 1997, and the arrival of Kurds and Kosovans in 1998 and 1999 respectively. Attempts to restrict numbers had typically resulted in an expansion of the massive pool of illegal migrants entering and working in Italy (Foot 1996).

Asylum applications and patterns of change

Figure 6.4: Italy – Asylum applications and patterns of change



1990-1991: The rise from 4,700 applications in 1990 to over 31,700 in 1991 (UNHCR 2000) was almost wholly accounted for by the rapid influx of Albanians. The exceptional character of the peak in 1991 (see Figure 6.4) was reinforced by the consistently low level of applications in subsequent years and the virtual disappearance of Albanians from the top ten sending countries (IGC 2000).

1992-1997: Applications, although small in absolute terms compared to major EU recipient states, fluctuated widely in this period, from 2,589 in 1992 to 681 in 1996. Amongst nationalities of applicants, Romania dominated until 1996. The numbers for most nationalities were small, only increasing in the case of Albanians in 1997 to over 800 asylum applications. The much larger number of Albanians arriving in Italy in 1997 was due to the onset of financial crisis in the pyramid investment schemes that had absorbed the savings of the majority of the Albanian population (USCR Italy 1997:1).

1998-1999: There was a significant discrepancy between the statistics supplied by UNHCR and IGC, with UNHCR indicating a rise in applications to an estimated 33,360 in 1999 (UNHCR 2001) while the IGC reported a figure of 3,268. Furthermore, no breakdown of nationalities was available for this period.

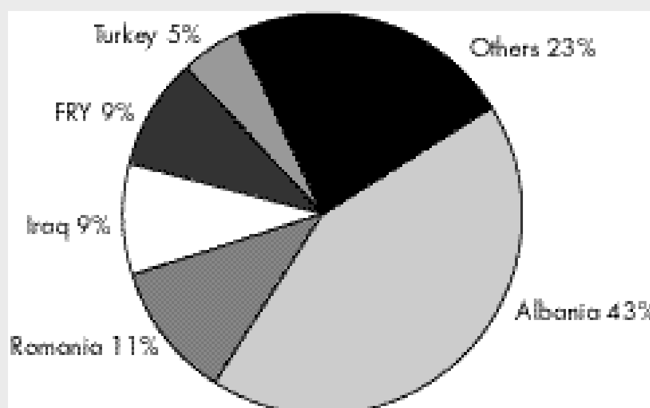
Summarising the trends in applications in this period, it was apparent that the pattern of applications in Italy mainly reflected the onset of episodic crises in neighbouring states. The largest applicants in recent years were from the former Yugoslavia and Iraq (see Table 6.2). Figure 6.5 illustrates the top five source nationalities applying for asylum in Italy for the period 1991 to 2000.

Table 6.2: Asylum applications to Italy by source nationality, 1991- 2000(1)(2)

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Albania	17,760	170	65	50	20	10	865	80	-	-
Romania	2,090	945	560	780	410	10	25	125	-	-
Iraq	85	30	30	40	180	150	280	3,165	-	-
FRY	65	85	55	70	55	15	25	3,515	-	-
Turkey	-	20	50	20	70	15	85	1,745	-	-
Ethiopia	525	360	335	155	105	75	40	35		
Somalia	-	375	35	10	20	10	10	25	-	-
Sudan	-	10	35	125	170	35	30	20	-	-
Bulgaria	-	300	70	25	10	5	5	0	-	-
Iran	-	15	30	95	105	40	50	60	-	-
Sri Lanka	125	45	25	20	5	0	10	90	-	-
Pakistan	-	20	40	30	55	5	20	55	-	-
Zaire	-	25	30	30	35	45	55	-	-	-
Angola	35	5	45	45	40	25	10	10	-	-
Rwanda	-	5	5	20	70	35	25	25	-	-
Liberia	-	10	10	90	55	5	5	5	-	-
Algeria	-	0	10	20	35	30	20	55	-	-
Sierra Leone	-	-	-	0	5	5	15	110	-	-
Congo (Dem. Rep.of)								105		
Afghanistan	-	10	0	5	25	20	-	40		
Top 20	-	2,440	1,430	1,640	1,475	540	1,565	9,270		
Others	-	150	140	205	275	140	145	245	-	-
Total	24,490	2,590	1,570	1,845	1,750	680	1,710	9,515	33,360(3)	18,000(3)

Source - IGC Secretariat
(1) Provisional figures rounded to the nearest 5.
(2) "-" indicates no data available.
(3) Estimates provided by the Government of Italy to UNHCR, subject to revision.

Figure 6.5: Asylum applications to Italy – top five source nationalities for the period 1991-2000



Evaluating the policy impacts

Italy was unprepared for the mass arrivals of the 1990s (Foot 1996:135). The issue of border control in Italy was particularly pressing for the rest of the EU. The intensification of border control under the Martelli Law of 1990, which allowed for rejection of applicants at the border under the safe third country rule may have been partially responsible for the drop in numbers after 1991. To further placate its EU partners Italy reinforced interdiction at sea during 1995 to 1996. According to USCR (Italy 1996:2b) in 1996 "the authorities in the southern region of Puglia arrested and expelled about 21,000 Albanians directly upon arrival". With the mass arrival of Albanians throughout 1997 there was a further tightening of patrols at sea and the return of Albanians.

In response to the arrival of Kurdish refugees from Turkey and Iraq in 1998-1999, the 1998 Aliens Act introduced detention for a maximum thirty days for undocumented aliens at the border prior to expulsion. According to USCR (Italy 2000:3), "the change had dramatic results. Expulsions from Italy increased by a factor of 10, between 4,000 and 5,000 in previous years to 54,000 in 1998. In 1999, the number of expulsions increased yet again to an estimated 65,000".

Italy in the EU context

Although Italy is a signatory to Schengen (1998) the issue of effective policing of borders was at the heart of EU concerns for its southern flank. The undeveloped nature of the asylum regime in Italy was the main sticking point in this respect. Surveying the 1990s, it is clear that Italy implemented only two significant immigration laws: the Martelli Law of 1990 and Legge Turco-Napolitano Act No 40/1998, the 1998 Aliens Act. These, in conjunction with other provisions under the "Testo Unico sull'immigrazione" were the main sources of asylum law in Italy. What was striking was the absence of a specific law for the regulation of asylum. Developments in March 2001 meant that although a new Bill was approved by the Senate, the Camera did not have time to debate it before the July 2001 Elections and the bill did not become law. However a new law, the Bossi-Fini Law was approved on 11 May 2002 and came into force on 10 September 2002.

The new law establishes Territorial Commissions that decide on asylum claims. Asylum seekers not falling under accelerated procedure are to be interviewed by the Territorial Commission within 30 days from the acquisition of the application by the Questure. A decision shall be taken within the following three days. These decisions can be appealed before the Civil Courts within 15 days. The framework of the law has been heavily criticised by the UNHCR and NGOs because of fears that it will put genuine asylum-seekers at severe risk of being rejected, given the rapidity of the procedure and the difficulty for NGOs advisors to intervene at that stage.

The absorption of the asylum issue within the broader public debate over illegal immigration prevented the formulation of a coherent and integrated approach to asylum in Italy at the time of this study. Although the public response to the first Albanian 'boat people' to reach the Italian coast was sympathetic, this was quickly transformed into the language of 'invasion' and the influx of 'illegal immigrants'. In general, during the 1990s the Italian Government responded to the rapid onset of large scale asylum flows by emergency legislation which has lacked a coherent, overall rationale. The mass nature of asylum flows was not catered for by the 'individualistic' basis of persecution under the Geneva Convention. As a consequence, special legislation was introduced to regularise those cases where "asylum" (as defined by the constitution) could not be encompassed by the definition of refugee. The provision of asylum was made on an ad hoc basis (e.g. for nationals of a specific country and through a decree 'decreto legge' [decree-law] and not a specific law as such.

The difficulty confronting Italy was that of creating an asylum policy de novo and without a clear track record in the management of the asylum issue (Vincenzi 2000:103). Continuing unrest in the Balkans and in northern Iraq and the Kurdish areas of Turkey, indicated that

Italy continued to form a central entry point for asylum seekers and other migrants to the EU. As in the case of Greece and to a lesser extent Spain, the length and porosity of borders was a decisive issue for the effective control of immigration. The proximity to sending areas in the Balkans and the Middle East was another factor that increased Italy's vulnerability to migration flows. The continued arrival of Kosovo Albanians and Roma in 1999 prompted other Schengen member states, in particular Germany, to pressurise Italy to maintain its coastline and restrict access to illegal entrants. Italy went some way to reinforcing its border control by deploying additional border police in January 1999 and signing bilateral agreements with Morocco, Tunisia and Albania in an effort to prevent undocumented travellers leaving for Italy (USCR Italy 2000:4). For the future, the full implementation of Schengen may well involve an increase in the number of claims to be processed and an administrative overload for which Italy is ill prepared.

Sweden and Italy compared

The cases of Sweden and Italy illustrate the variation between EU Member States outside the core receiving states of Germany, the Netherlands and the UK. There were many potential avenues of comparison, including the geographical location, migration histories, economic characteristics and welfare structures of the two states examined in this section. Along all of these axes there were clear distinctions to be made. Amongst the most significant, geographical location on the southern periphery of the EU was a key consideration in relation to Italy, as is its transformation to a country of immigration and the relatively undeveloped character of its welfare provision in comparison to that of Sweden.

Angenendt (1999) suggested a model of EU Member States according to the degree to which they had integrated asylum within their broader approach to immigration or developed a separate asylum regime. The absence of a coherent and distinctive approach to asylum is again peculiar to the case of Italy but may have been due to the increased importance of illegal immigration, stemming from its geographical proximity to sending areas and the greater porosity of borders. Policy instruments and the nature of impacts were therefore likely to be distinctive in either case. Sweden relied upon visa regulation and the panoply of EU restrictive measures to control asylum flows throughout the 1990s. In addition to an earlier increase in the late 1980s and a one-off peak in 1992 which was almost wholly accounted for by the war in Yugoslavia, asylum applications stabilised in Sweden between 1993-1997, with significant increases only after that date. Italy, on the other hand, appeared to be particularly vulnerable to rapid, large scale asylum and migration flows which largely originated in neighbouring states or in the Middle East (Kurds from Iraq and

Turkey). Although Italy appeared to have focused upon intensified border control, the outcomes appeared to be less susceptible to control than was the case, until recently, in Sweden. Here the smaller numbers involved and the relative predictability of flows may have allowed for more effective policy intervention.

7. Impact of asylum policies in Europe: conclusions

Introduction

This chapter draws together the findings of the assessment of policy impacts, reinforces the qualifications and difficulties in drawing conclusive findings from the available evidence, and recommends ways in which policy measures could be contextualised within a wider understanding of the processes which determine the flow of asylum seekers.

Evidence from the EU-wide overview and the case studies demonstrated the extensive scope and complexity of policy making about asylum seeking which developed in the last decade (the 1990s). At an intergovernmental level, the increased harmonisation of measures created the situation where most EU Member States had a relatively similar portfolio of instruments.

This same evidence is problematic however, because, as this report demonstrates, caution is needed in asserting direct links between policy and impacts in each. Moreover, where linkage can be established in one country, similar instruments and policies do not always produce similar impacts in other EU Member States. The consistent theme of this study was the muted relationship between policy and impacts, and the difficulty of attributing, from the available research literature and statistics, direct causal relationships between policy and outcomes.

Asylum policy impacts – an overview

The substantial rise in asylum applications towards the end of the 1980s and the continued high numbers in the nineties drove policy change in EU Member States. However taking the EU as a whole, and given the exceptional peaking of claims resulting from the crisis in FRY in 1991/2, the year-on-year figures for the decade consistently fluctuated between about 200,000-400,000 applications per annum. To this extent at least, whilst asylum claims remained at historically high levels, policy and legislative frameworks of EU Member States might have succeeded in maintaining applications within this range. In addition, by the end of the decade applications had levelled off, indicating that despite the lack of a full harmonisation of measures, the convergence of policy interventions may have kept asylum applications in check.

It is, of course, impossible to assess how application rates would have varied with a different range of policy instruments, nor indeed the consequences of much more limited intervention by EU Member States. A combination of other factors underpins this pattern in asylum applications in Europe between the start and end of the last decade – for example, the relative absence of on-going complex emergencies on the borders of the EU – may have been significant in this respect. At the same time, other contextual factors accounted for the variation in the scale and processes of asylum seeking such that policy impacts inevitably tended to be partial and fragmented. Moreover, it is difficult to attribute direct causal relationships between policy and outcomes.

Much of the literature on asylum seeking flows and processes is ambivalent on the impact of the measures. This ambiguity became more apparent as the EU-wide survey and the case studies showed. The impacts were not clear-cut. Thus, turning to the main recipient states,[29] if the aggregate picture illustrated some broadly discernable impacts, the picture at member state level was less clear-cut from the available research evidence. Whilst most, but not all of the principal recipient countries followed the trends for the EU as a whole (with a rise in claims for asylum at the start and of the decade and a more variable upturn at the end) there were significant variations through time within each of the countries and between the various countries. Two general patterns were evident amongst the case-study examples. For Germany and Sweden (and also France although this was not one of the case studies), there was general downward trend after the early years of the decade and some stability after the middle of the decade. By contrast in the UK and the Netherlands (and also Belgium, again not one of the case studies), the number of asylum seekers rose more rapidly than in other European member states and was characterised by a cyclical pattern of peaks and troughs.

At the country level, the decade-long time series of claims for asylum plotted against the introduction of policy measures also revealed several contrasting patterns. Recalling the data in Figure 1.2, of the six principal recipient countries, overall in Germany, Sweden, the Netherlands and France policy measures and impacts appeared to be co-related with a reduced overall number of claimants and sustained over a period of time. Only in the UK did there appear to be no relationship between the two sets of variables. Perversely, policy change occurred in the two trough periods of the decade and was followed on each occasion by a rise in applications. For Belgium, initial reduction in claimants by policy measures introduced in 1993, was subsequently followed by a relentless upward trend in the second half of the decade, apparently immune to the adoption of policies designed to regulate the inflow. Thus in some instances where policies were shown to be effective in regulating asylum applications, this report showed that the effects may have been often

29. Belgium, France, Germany, the Netherlands, Sweden, the UK (see Figure 1.1 and Figure 1.2).

short-lived. This is the case in the UK, Belgium and the Netherlands. Equally the impacts were difficult to isolate from other co-occurring variables.

Again with the exceptions of the UK and Belgium, asylum applications in general continued to decline after policy and legislative changes. Whether these trends would have continued irrespective of policy changes, or, conversely, whether policy changes tended to reinforce the decline in asylum applications anyway, are conjectural.

Furthermore, on the relationship between policy measures and the statistics on applications, as Figure 1.2 illustrated, policies sometimes occurred in reaction to flows which were already well established or already in decline. Thus assumptions about, for example, whether 'early warning' of new legislation led to increased numbers of asylum seekers wanting to gain entry in advance of new restrictive measures, were untested. In an aside, Böcker and Havinga observed that, "it is not often the asylum policy as such but rumours about the policy that lead asylum seekers to go to a particular country of destination" (1997:84).

Many other factors determined an asylum seeker's timing and choice of country of asylum. But the variability in trends and the greater or lesser susceptibility of these trends to change by policy measures, referred us to the role of asylum networks in disseminating information about a particular policy regime, an area which as Koser (2000) noted is significantly undeveloped in the refugee literature (see also Koser and Pinkerton 2002). The significance of social networks in informing the migration strategies of asylum seekers was crucial and is reviewed below and in the recommendations.

A perhaps significant pointer to policy impacts was that countries which had been 'first in the field' and had sustained the introduction of new policy measures year-on-year, may have produced the greater impact on limiting claims for asylum. Recalling the data displayed in Figure 1.2, Sweden, Germany and France entered a period of sustained and reinforcing legislative and policy reform from 1990-4 – Germany less intense but more fundamental by virtue of the 1991 Aliens Act – the impacts of which appeared to have induced a substantial decline in applications and continued stability at lower levels of claim. Conversely, the UK, the Netherlands and Belgium entered a period of policy reform and the introduction of new measures later than other major reception countries, and the progress of reform was fragmented rather than continuous and comprehensive. This report suggests that it was a combination of measures that may have had the most impact. Plausible though this contention may appear, the evidence to confirm it was not available in the literature.

It appeared that policy impacts experienced in one country may not necessarily have been repeated in another, because of country-specific determinants such as migration history and geographical location. It may, therefore, be notable that a number of EU Member States, at least in the first part of the last decade, introduced similar policy measures but in a unilateral mode. Thus, noting that the post-1993 fall in applications was steeper in Germany than in other countries, Böcker and Havanga (1998:259) observed, "although similar measures were introduced in most EU Member States, the drop in other EU countries was less sharp than in Germany". System adjustment appeared to take place again, as already noted in the previous paragraph. Although research into system adjustment was sparse, it is conceivable that asylum seekers may have adapted their migration strategies, their routes and means of entry to a country according to policy shifts. This suggested that convergence, though far short of harmonisation, would be necessary but may arrive too late to impact on complex and well-established trends.

It has been noted that research pointed to the fact that, it was not so much the characteristics of the receiving state that may have determined asylum destination, as the situation in the country of origin. If this was the case, it implied that direct measures were likely to more successfully achieve the aim of regulating the volume of claimants. Interestingly, one conclusion on which there was research consensus was that some direct measures, such as pre-entry and in-country/port of entry procedures, appeared to be more effective in reducing claims for asylum – whether well founded or not. Even so, these measures, such as visa controls, may have only limited numbers for particular nationalities for a limited time period, after which numbers again started to grow. In this context, follow-up measures, such as accelerated procedures and detention have been adopted.

The central thrust of policy measures has been to impact on the scale of asylum seeking, by distinguishing between well-founded and unjustified claims for asylum: the evidence is ambiguous. A second consequence of policy measures was on the distribution of asylum seekers in the EU. In this respect, some researchers suggested that while regulatory policies did appear to have had a generalised effect on the number of applications of particular groups at specific conjunctures, this may have resulted in displacement to neighbouring countries with more liberal asylum regimes rather than an overall reduction in numbers. As was shown in Chapter 3, the post-1993 fall in applications in Germany was assumed to have caused the rise in applications elsewhere in Europe, especially the Netherlands. There was, however, no reliable statistical or empirical evidence to support this assumption on displacement effects. Again, other factors may have been salient – for example perceptions by asylum seekers, as much as the actuality of entry and reception procedures. On the whole, to the extent that there was a displacement effect, visa restrictions appeared to be more significant than other policy instruments.

The displacement tendency was evident in other respects. The tightening of EU policy also displaced migration flows to central and eastern Europe with policy restrictions tending to cancel each other out as successive European union member states introduce identical measures. There was the burgeoning number of readmission agreements with central and eastern European states that displaced the flow of asylum migration further eastwards. Another example was the way in which traditional transit countries in southern Europe became areas of inward migration as a result of increasingly regulatory practices in the core states of western Europe.

There was some evidence to suggest that the packaging of direct and indirect measures at particular stages, which has characterised most asylum policy making in Europe over the last decade, produced other unanticipated outcomes. In this respect, an additional area of concern, and amongst significant gaps in research, was the experiences of trafficked asylum seekers. Amongst others, Morrison and Crossland (2000) and Koser's (2000) broad conclusions, were that trafficking became an unintended consequence of restrictive asylum policies and that there was a need for asylum policy to take account of trafficking and ameliorate its effects. On this point, Crisp and van Hear (1998:10) concluded that "there is now a growing consensus that the restrictive asylum practices introduced by many of the industrialised states have converted what was a relatively visible and quantifiable flow of asylum seekers into a covert movement of irregular migrants that is even more difficult for states to count and control".

Consequently, it was difficult to isolate policy variables both from each other and from more general trends in the pattern of asylum seeking. The argument here is that the success of policies might have been enhanced by addressing more precisely some of the structural factors that underpin asylum processes and patterns.

In these respects as this report has stressed, caution is needed in asserting the positive link between policy and impacts, even in the four countries where there superficially appeared to be correlation. The thrust of this report and the research evidence which was assessed indicated that essentially similar EU policies and processes concealed considerable detailed national variation. Thus, at a national level, the conjuncture of domestic political circumstances, specific legal contexts, historical factors and the perceptions of humanitarian need, tended to create unique conditions such that similar policies may have had differential impacts in different countries and may be less efficacious. This was a consistent theme in the case study country analysis.

Taken together these factors implied that an individual country's legislative regime may have had only a limited direct or immediate impact; but the policy regime may have been significant

in particular conjunctures. The range of factors operating indicated that the asylum seeking process was not particularly amenable to policy change in a precise or predictable way.

Overall, the following conclusions summarise the research evidence available at the time of the study:

- Causal links between policies and impacts were tenuous.
- A conjuncture of factors, only some of which were the policy related, impacted on asylum flows and processes.
- Direct measures – i.e. pre-entry – appeared to have the greatest impact on the number of asylum claimants.
- Countries which adopted measures earlier in the current phase of asylum policy making, appeared to be more successful in regulating the flow of asylum seekers.
- Combinations of measures also appeared to have greater impact, as did sustained application of policy measures.
- Impacts of policy measures in one country were not necessarily replicated when those policies were introduced in other countries.
- Policies may have induce displacement of asylum claimants to other countries.
- Policy measures appeared to have a transient impact, as the asylum seeking processes adjusted to the new system framework.

Policy constraints

The unpredictable, though limited success of policy instruments at a country level, raised the question of why the causal links between policy and impacts were weak. Two perspectives helped to explain this which are discussed in the following two sections. First, the policy-making environment and process are addressed; then in the following section attention turns to some of the contextual and structural factors that may have explained the processes and patterns of asylum seeking.

There is a useful discussion of the constraints that acted upon EU asylum and immigration policy by Geddes (2000:24-5), who maintained that policy implementation, and by implication the impacts of policy, were constrained by the following factors:

- physical extent of borders and the scale of mass migrations;
- administrative capacity of states new to policy implementation, the case of southern European states for example;

- funding capacity at national and sub-national levels;
- no valid theory of cause and effect. For example, restrictionism may have led to illegal migration and trafficking;
- length of the policy chain in decision-making;
- recalcitrance of particular states to implement agreed policy;
- related to the former, divergence in national interests in relation to asylum; and
- absence of clear chains of command and implementation.

Contextual factors

Beyond an explanation of policy constraints such as procedural and institutional capacity, the evidence presented in this report suggested that the ambiguous impact of policies to date could only partially be attributed to the specific character of the policy instruments and legislative changes. Insufficient weight was given to contextual factors that determine the flow of asylum seekers and highlight why asylum seeking has been, to a large extent, 'policy resistant' in the last decade. Indeed, as Geddes (2000) indicated above, limited appreciation of the wider framework of determinants hampered policy development and constrained the impacts. This led to some of the perverse and adverse impacts outlined in the report. At the same time, without this wider conceptualisation, the protection of refugees and asylum seekers – the core of a humanitarian policy – may have been damaged if there was a failure to appreciate the well-foundedness of claims amidst the prevailing trends to greater regulation. Drawing in part on Geddes' agenda above, four factors were identified that are discussed below.

Changing nature of humanitarian crises

Most refugees in EU member states in the last decade have been Europeans – from the FRY. However, an important reason why asylum seeking was resistant to tighter regulatory policies was the changing nature of humanitarian crises and the growth, in the last decade, of so-called complex emergencies and non-state agents of persecution. These had very different characteristics from more conventional refugee generating situations. Protracted rather than episodic and crisis driven, there was a steady stream of spontaneous asylum seekers, rather than a mass exodus concentrated in time and with the majority typically remaining in region. Complex emergencies were also characterised by civil war and state collapse resulting in long periods of intra-state violence (e.g. Sri Lanka, Angola, Sierra Leone, Somalia), rather than inter-state violence, by the failure or inability of states to protect their citizens, by the vulnerability of populations to non-state agents such as war-lord economies (e.g. Somalia) and human rights suppression (e.g. Kurds in Turkey and Iraq).

Most significantly, in complex emergencies armed aggression was explicitly directed against civilian populations, targeted as victims, rather than the 'by-product' of violence – a characteristic that reinforced successive waves of asylum seekers. In these circumstances, asylum seekers may have been more likely to fit Kunz's (1973) typography of the 'anticipatory refugee', more predisposed to target their asylum seeking, rather than being impelled across a border to a neighbouring state and contained in region.

Post-conflict peace and reconciliation strategies were only partially successful and so there was a continuous flow of asylum seekers from post-conflict situations as well. Finally, the globalisation of the refugee problem and the global mobility to which refugees have access was a well-documented phenomenon of the last decade.

Consequently, asylum seeking which was more continuous in its pattern, derived from protracted instability and conflict, and global in its scale, may well have been less susceptible to the range of policy instruments which were effective in the past. From the point of view of European countries, regulatory policies would have been likely to be more successful if a) they acknowledged more fully the complexity of asylum seeker flows, and b) recognised the need for constant reinforcement and redesign of policies in response to the evolving characteristics of humanitarian crises. And although many of the violent circumstances leading to exodus could be clearly condemned for their impact on civilian populations, they did not easily fit the 'state agency' model that underpins the Convention definition of persecution. This introduced uncertainty about to who was a 'genuine' asylum seeker.

Historical legacy and asylum networks

Borrowing from the more general field of migration, the concept of social networks was applied in the field of refugee studies (Koser 1997). It appeared to be a useful concept, especially in the context of this study, because it investigated what appeared to be sustained patterns of linkage between asylum migration from countries of origin to countries of asylum. Recommendations are made for further study on this concept in the following chapter.

Some of the evidence cited in this report suggested that asylum seeking may have been strongly tied to the migration patterns and histories (not necessarily by asylum seekers in the early stages) of EU states. Once in place, asylum migration networks acted as the basis for further asylum migration, by providing information flows back to countries of exile and well-developed support structures in the country of asylum. Historical legacy was not the sole determinant, and its significance may have declined or evolved through time; but there was evidence of asylum targeting through historical affinity. Thus, in the UK, the existence of

Somali communities in London for over a century provided a foothold and community support structure for later generations who came as refugees and asylum seekers rather than labour migrants. Just as with immigration patterns, so too with asylum seekers, there was a strong tendency to target the former colonial links. This feature characterised the pattern of asylum seeking in the UK, France and the Netherlands for example; the reasons for this were obvious. In a rather different way, the same process was illustrated by the vast majority of exiles from the former Yugoslavia seeking asylum in Germany with whom there were historical, cultural and economic ties. Proximity was also a key factor. Kurdish asylum seekers to Germany presented a more recent example of this phenomenon – the transformation from earlier labour migration processes.

In this context, and demonstrated earlier, the unilateral adoption of restrictionist measures by EU states appeared to have displacement effects which may have undermined the historic legacy. The increase in asylum seekers from Francophone Africa in the UK, where there were no historic ties, may have been the consequence of policies that restricted claims for asylum in the former colonial host in France.

Reinforcing the complex processes that impel people to flee, historical affinity implied that long standing historic ties may not have been easily susceptible to what were relatively short term measures to curb asylum seeking. These ties were declining and, combined with the differential impact of restrictionist measures, this suggested that asylum seekers may have been less inclined to target on the basis of affinity. The example from France suggested that in the medium term such policies may have simply diverted rather than deterred asylum seekers.

Geographical location

Increasingly, the interplay between the geography of asylum policies and the geography of asylum flows was a material factor in the impact of restrictive measures. Angenendt (1999), amongst other commentators, described the emergence of an inner and outer core of European member states with regard to their asylum policies. Generally speaking, northern countries adopted and consolidated a comprehensive range of measures over the last decade. Conversely, the outer core of southern member states – Spain and notably Italy and Greece – lacked coherent asylum regimes and possessed physically permeable borders particularly vulnerable to the growing scale migration and determination of migrants to gain entry. The consequence of this configuration was to reconstruct asylum seeking pressures, pushing them to the periphery where the outer core of countries served as a reception and transit route to the 'more desirable' destinations of the northern member states. Southern Europe became the conduit for inward migration mainly as a result of restrictive practices in the northern core.

The asylum geography of concentric rings, of a highly regulated core extending to an unregulated periphery, was further compounded by the collapse of the communist states of eastern and especially south eastern Europe. The expansion of readmission agreements with these states displaced asylum migration further eastwards. Role reversal was the outcome of this geographical reconfiguration. No longer were these countries the bulwark against immigration to western Europe; they were a growing source of, and transit countries for, asylum seekers. The proximity of the southern member states to the countries of origin, combined with their own weak asylum regimes accentuated these trends.

The implications for the efficacy of asylum policies in individual member states and for the EU as a whole were profound. On the one hand this asylum geography reinforced the view that unilateral action was unlikely to provide more than a short-term response to the objective of restricting asylum seeking to the EU. Policies needed to be developed in concert. On the other hand, the contrasting geographies of an inner core, an outer core and a non-EU periphery, begged the question as to whether harmonisation of itself – the objective of the Treaty of Amsterdam – would be likely to provide a lasting solution either. Indeed, as has already been noted, the adoption of common policy measures by member states tended to produce dissimilar outcomes. Especially given the contrasting geographical pattern of asylum policies and asylum processes – not to mention divergent national political contexts within which asylum policy fitted, and constrained administrative capacity – a complex blend of state-driven measures combined with the differential adoption of EU-wide measures may have been a way forward. Interestingly, the protracted negotiations on harmonising asylum policies reflected, probably more by accident than intention, the realisation that a balance of intergovernmental and supranational measures was a potentially sounder means of achieving a robust and durable policy framework.

Policy encoding, design, timing and implementation

This report already highlighted how the timing and impact of policy measures was significantly affected by the conjuncture of domestic variables producing the asylum regime within each Member State. In this context it is worth reinforcing some of these conclusions since they enrich the political understanding of why the measures may not always have achieved their intended outcomes.

The periodisation of policies – the timing, staging and chronology of the asylum policy regime in specific countries – was one variable. Unilateral action and early entry to policy-making were factors that may have explained the subsequent (ambivalent) impact of policies and the long-term capacity of a country to manage asylum flows. Noted already were the

transnational outcomes of policies, the probable deflection impacts from countries that first adopted restrictive instruments. Arguably, the fact that the UK was later in the arena, especially with regard to packages of direct measures, may help explain the more limited impact of restrictive policies. Harmonisation would help to smooth some of the distorting effects of independent action, and disjointed timing. Equally, as was suggested above in the case of the contrasting geographies of asylum regimes, uniformity of measures and timing may not be the answer in itself. A more sophisticated and more complex approach to the politics of unilateral and multilateral action may be a more effective way forward.

The political presentation of policies – their encoding for domestic contexts – was also a salient variable. In the UK, the political imperative for regulating asylum applications was conceptualised in terms of domestic priorities for limiting pressure on housing and access to welfare benefits. In the background was the enduring sensitivity of the immigration agenda and norms of citizenship. By contrast, in Germany the challenge was conceptualised and presented in the latter terms, of rights and norms, but set within a debate about Germany's constitutional responsibilities with regard to the international (rather than the domestic) issue of asylum. In the former case the encoding produced greater emphasis on indirect measures; in the latter case emphasis was placed on direct measures which were consistently assessed to be the more effective. The point here is that, given the different political contexts, policy measures could not necessarily have been expected to achieve similar outcomes, nor could they be easily detached from domestic encoding.

This bears on Geddes' (2000) point about the length of the policy chains in command and implementation. In this context, encoding, as detailed in the country case studies, may have dramatically effected policy outcomes. Thus in the Netherlands, the role of voluntary agencies, including the church, to 'frustrate' policy objectives of in-country regulation provided one example of the encoding of the asylum issue. In the UK, it could be argued that successful legal challenges to the 1993 and 1996 Acts on behalf of asylum seekers and the continuing support of asylum seekers by local authorities against the policy intentions of the Government, demonstrated again how this encoding could be played out in the domestic arena. In the UK the consequence was greater central coordination of policy and asylum seeker entitlements under the 1999 Act to limit the discretion available to local authorities.

The question therefore is not so much why asylum patterns and processes were not especially susceptible to policy measures which worked in other member states. Rather, the political context within which policy was encoded, the timescale within which policies were expected to achieve their outcomes, the administrative capacity to manage chains of command, were all crucial variables. As a result, policy measures could not be treated in isolation, relying on a unidirectional cause and effect.

8. Recommendations for future research

Introduction

In the absence of sufficient evidence about the efficacy of specific policies, other than in relation to short-term measures (such as visas and accelerated procedures), future research might focus on a range of factors. Two principal lines of research are presented. The first considers policy instruments, procedural and institutional factors whilst the second addresses some of the underlying structural factors which the report has highlighted. Whilst a number of areas have been identified, there is overlap between them and thus potential for amalgamation.

Policy instruments, procedures and institutional frameworks

Indicators and impact assessment

This research has piloted and made some progress in identifying and elaborating indicators of changing policy and practice as a systematic tool to measure impacts. Where this has been less successful has been in being able to make a rigorous assessment of the impacts beyond overall application rates, patterns of application and distribution of asylum seekers within country. The application has been difficult for two reasons. Inevitably applying this typology to secondary data and information has limitations. Second, to the extent that it is difficult to isolate the impact of specific initiatives from co-occurring variables this has also limited the scope for attributing impacts to changing policies. This methodology is the first attempt to design and implement a systematic framework of impact indicators.

It is recommended that more detailed research, based on primary data collection and field based evidence, should be developed which will establish more clearly the efficacy of specific policy measures and the intended and unintended impacts. In particular the distinction between long and short-term impacts is consistently raised in the literature. A key question here is why impacts are predominantly short-term. Is this related to the nature of the instruments, the difficulty of sustaining their implementation, or is it contingent on some of the structural factors which have been identified and recommended for further research? The latter include the power of social networks and social processes embedded in asylum seeker communities which develop patterns and processes of adaptation to changing policy measures.

Direct measures and intensity of response

An assessment of policy instruments suggested that it was direct measures that were most effective, at least in the short term, in restricting and regulating the flow of asylum applications. Research evidence consistently reported these impacts in several EU countries. Whilst the evidence was plausible, more detailed research is needed on the effectiveness of direct measures. Two qualifying factors in particular need further investigation in this context. First, the extent to which their success was achieved through potentially unique conjunctures of events in particular countries – for example, asylum seeking from countries which have historic links with the country of asylum that may be more or less susceptible to direct control measures, and the episodic nature of humanitarian emergencies. This raises questions of transferability. Second, whether their effectiveness could be isolated from other policy instruments which were often introduced at the same time – for example was detention more effective than visa control and other pre-entry requirements? Indeed, a more fruitful line of enquiry may be to examine policy 'packages' and their effectiveness rather than to treat policies in isolation, effectively seeking unidirectional cause-effect relationships between policy and outcome.

Illegal entry

There is strong circumstantial evidence, though little authoritative research, that restrictionism – and most probably direct measures – led to growing trafficking and illegal entry of both bona fide asylum seekers and economic migrants. Since this issue is of increasing saliency in many EU states, almost more so than the asylum seeker issue itself, a key research need is to investigate the extent to which illegal entry and trafficking are correlated to expansion of restrictionism in the last decade. It is likely that many other factors are at play here; understanding of the causal factors and remedies to a growing humanitarian issue is still very limited. In this context, more research is needed into the indirect impacts of the main measures to restrict in-migration.

Periodisation

Issues of periodisation appear to have been particularly important in the development and implementation of asylum measures. Amongst those countries which have introduced the more effective policy instruments, in general it appeared that it is those countries which first designed and implemented particular sets of policy instruments that were the more successful. Whilst the evidence pointed to this outcome, the explanation of it was not clear, although some reasons might reasonably be inferred. Further research might shed more light on this phenomenon. This might have particular significance in respect of bolstering arguments for the harmonisation of asylum policy in the EU, particularly since individual states are still generating policy responses independently with 'first in the field' benefits from this.

National variations in legal codes and processes

Research cited in this report indicated substantial inter-state variation in the application of essentially similar policy measures. It appeared, although evidence was not conclusive, that these variations contributed to different recognition rates and thus had an impact on overall asylum seeker applications. The study highlighted the existence of these variations but more research is needed to establish why variation exists around essentially similar instruments and objectives. One factor may have been the different legislative histories of the countries with regard to immigration and asylum policies, as well as different constitutional and legal protocols. Again in the context of harmonisation, the validity of closer understanding of these variations, the tensions between sovereign and communitarian policy objectives, and the likely benefits and limitations of harmonisation to fulfil a common set of policy objectives, should be explored.

Country of origin approach

The Netherlands adopted a country profile approach since the late 1990s, improving its knowledge of the situation in particular countries of origin and introducing sophisticated means of checking the language of asylum applicants according to the region of origin, their knowledge of particular towns and so on. This had a bearing on safe country of origin policies and the development of visa controls to limit asylum access. Apart from the immediate pragmatic gains (in detecting false claimants) a focus on country of origin conditions was highlighted in the Tampere Conclusions and was openly advocated amongst others by the UK Home Secretary (Feb 2001). Given the developing focus of policy on targeting measures to particular countries of origin, further research should investigate the value of these initiatives. This links into some of the recommendations for structural research, notably the role of asylum networks in reinforcing asylum flows from certain countries of origin.

Structural factors

The marked absence of qualitative research into the motivations – impulsion and attraction – of asylum seekers was perhaps the most striking feature in reviewing the literature. Although policy was largely predicated upon the assumption that restrictive measures were 'dissuasive' in effect or act as 'deterrents' – both of which concepts assumed an impact upon the motivation of asylum seekers – there was little in the literature to substantiate the character and extent of the impact of policies upon the principal actors concerned, the asylum seekers themselves. Statistical deductions were indicative only and clearly needed to be supplemented by more rigorous qualitative research. This was a major omission and would need to be rectified in future research. The following approaches might be developed.

Asylum networks

The strategies of migrants, including asylum seekers, in negotiating asylum policies and the other constraints that they may encounter is a potentially rich and fruitful area for policy research. The topic incorporates a range of critical variables in the pattern of asylum flows in the EU – targeting, historical baselines, in-country survival illegal trafficking. For example, research has indicated that 'backward linkages' through asylum seeker social networks (Koser and Pinkerton 2002) played a central role in influencing the motives and choice of country of destination. Social networks allowed asylum seekers to deploy alternative 'migration strategies' in response to the changing asylum policies of particular countries, based on the information flows that traverse these networks. Investigation of 'forward linkages' in the host country may also provide useful insights. Evidence suggests that these networks played an essential role in constructing a social and economic safety net to facilitate the entry and reception of asylum seekers, enabling them to establish livelihood strategies. It was also noted how enduring historic patterns of immigration and asylum – another dimension of social networks – appeared to be resistant to short-term policy measures.

The assumptions and the dynamics that underpin social networks need further elaboration and understanding. If the assumptions hold, then social networks may have undermined the efficacy of direct measures, resulting in limited deterrence and redirected flows, because of the transference of information along networks. Social networks might also have undermined indirect measures designed to deter asylum seekers by enabling them to survive independently despite EU-wide policies to limit access to welfare and other support. Given the current high profile of illegal migration and trafficking in the EU, an asylum networks approach may be an important research tool for future policy formulation in this regard. A closer investigation of the motivations of asylum seekers is implied by this approach and has also been actively pursued by the Dutch Ministry of Justice (2000).

Social processes

Closely linked to social networks is the notion of social processes. In many EU countries, notably in the UK, there was a distinction between policy formulation at the 'centre' and its implementation at the 'frontline'. It was difficult to deduce impacts simply by reviewing the formal content of policy and policy instruments since modes of implementation were major determinants of the efficacy of policies. Thus in the Netherlands, policies relating to the expulsion of overstayers were often countered at the grass roots by local organisations. In the UK the issue was the difficulty of organising the decentralised front-line delivery of accommodation under the provisions of the 1999 Immigration and Asylum Act. There was a growing interest in the social processes involved in the implementation of asylum policy and, in part, this linked to the earlier proposal related to asylum networks. The key question here concerns the way in which the institutions and personnel involved in policy implementation affected policy outcomes.

Protection and norms of citizenship

It was suggested in this report that practice varies across the EU as to perceptions of rights to asylum based on a range of factors including, interpretations of the Convention, assessment of agents of persecution, the level of protection which an asylum seeker may receive contingent on assessment of safe country of origin and safe third country. Thus the role of different norms governing status determination, linked as they were to broader concepts of citizenship and nationality (Cesarami and Fulbrook 1996; Bloch and Levy 1999), may have been important factors in the eventual choice of asylum destination. These norms and precepts, and how they were politicised also determined the models of social inclusion and welfare entitlement operating in particular countries, including perceptions of support that should be afforded to different statuses of asylum seeker.

Clearly these variations in the perception of rights are critical to the harmonisation of EU asylum policy in the medium-term but were also crucial to the short-term efficacy of policy instruments. An attempt to elaborate and explain these variations would be a fruitful area for further research.

Policy in a contextual framework

This report illustrated how asylum seeking patterns and processes could not be isolated from a fuller identification of contextual factors determining asylum seeking. It is further suggested that the limitations of asylum policies in achieving their aims of deterrence and control could partially be explained by the failure to address a cluster of structural factors. Structural factors that should inform the formation of national policies on asylum include, historical ties underpinning immigration, geographical location, the extent to which asylum seeking is conceptualised as a domestic policy issue related to welfare rights or a foreign policy related to country of origin. In addition, structural factors are linked to ethical factors including human rights and international conventions. Although this may appear to be the territory primarily for academic research, it is suggested that the limited impact of policy derives from government failure to set the aims and instruments within the wider context. Moreover research in this area would also help to explain how policy and legislation differ across the EU and thus the challenges of harmonisation.

Asylum policy and international development

The integration of asylum policy with other policy fields, including Foreign Affairs and Development, was long advocated by Sweden (1990) and was an integral part of an early warning, pre-emptive approach to the management of asylum flows (Zetter 2000). This research indicated that most policy instruments were reactive and remedial, rather than

durable solutions to the evolving world of humanitarian and refugee emergencies and the inexorable rise in the demand for immigration to the EU. Although somewhat conjectural and, on the face of it, having little immediate policy output, it was suggested that the link between asylum policy and longer term development policies was poorly articulated in most EU countries. That there is a long-term link between the two and that this link is the more likely to produce durable solutions are uncontested. More research into how asylum seeking might be regulated by tackling the root causes in-country offers the potential for developing more sustainable, proactive and longer term solutions to the asylum challenge in the EU.

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