The 1990s in historical perspective

A golden period for asylum seeking in Europe?

Migration Working Group, Robert Schuman Centre, EUI, 25-02-09

Irial Glynn

(Work in progress. Please do not quote)*

No paradox of contemporary politics is filled with a more poignant irony than the discrepancy between the efforts of well-meaning idealists who stubbornly insist on regarding as “inalienable” those human rights which are enjoyed only by citizens of the most prosperous and civilised countries, and the situation of the rightless themselves.

Hannah Arendt (1951)¹

Throughout the 1990s, European governments’ formed increasingly restrictive asylum policies. Yet, the vast majority of those who sought asylum in Europe managed to remain because of the effectiveness of pro-asylum actors in promoting asylum seekers’ rights and hampering governments’ ability to implement tougher deportation policies. Accordingly, this paper asserts that the disparity between the efforts of the well-meaning idealists from the 1930s that Arendt refers to the situation of the rightless in search of asylum narrowed considerably by the 1990s to herald in a golden age for people seeking asylum in Europe.

To expound and justify this claim, the paper will be split into three parts. First some theoretical musings on “well-meaning idealists,” termed here as pro-asylum actors, and their involvement in the formation and implementation of asylum policy in the 1990s will be proposed. Thereafter, a short history of these actors’ involvement in asylum policy throughout the twentieth century will be provided. The third section will discuss the role of pro-asylum actors in affecting asylum policy in the 1990s.

* Comments are welcome to irial.glynn@eui.eu.

Finally some of the contemporary and future challenges facing pro-asylum actors will be presented.

1. Asylum actors and asylum policies

Democratic states are made up of a number of competing actors. A bargaining process ensues between these competing actors when new policies are being formed. As Fritz Scharpf contends, ‘it is unlikely, if not impossible, that public policy of any significance could result from the choice process of any single unified actor. Policy formulation and policy implementation are inevitably the result of interactions among a plurality of separate actors with separate interests, goals and strategies’.²

A simple model set out here situates actors involved in contesting asylum policy into two broad groups, or, to borrow once more from Scharpf, into two “hypothetical coalitions.”³ One group is made up of pro-asylum actors that encouraged generous and open asylum policies by referencing humanitarian ideals. The other broad group is made up of restrictionist actors that endorsed parsimonious asylum policies by representing asylum seekers as cultural, physical and economic threats to natives.

Problems arose in asylum policy in the 1990s because of the significant difference between these actors over how to interpret asylum claims. Much of this concerned the interpretation of the definition of a refugee. The Geneva Convention, which most West European governments used to assess applications for asylum, emphasised ‘persecution’ as the primary factor in asylum claims. But as Michael Teitelbaum notes, this definition meant that a person fleeing a natural disaster or war could not qualify as a refugee unless they had been persecuted or had “a well-founded fear of persecution.”⁴ Many pro-asylum actors felt this definition was overly specific and instead agreed with the more generous proposals put forward by Andrew Shacknove, Artistide Zolberg et al. and Matthew Gibney, which advocated refugee

---

³ As Scharpf explains, creating hypothetical coalitions ‘implies that we divide a given population of actors into two potential groups, each of whose members share a common interest in a certain potentially salient aspect of the expected outcomes of policy interactions.’ Fritz Scharpf, Games Real Actors Play. Actor-Centered Institutionlism in Policy Research, Boulder Colorado: Westview, 1997, p. 81.
⁴ See Michael Teitelbaum, ‘Political Asylum in Theory and Practice’ Public Interest, 76, Summer 1984, pp. 74-86, p. 75.
status for people whose state failed to provide the basic safety and subsistence needs necessary to survive.\(^5\)

Some pro-asylum actors went even further by advocating refugee status for certain economic asylum seekers, supporting Michael Dummett’s claim that ‘all conditions that deny someone the ability to live where he is in minimal conditions for a decent human life ought to be grounds for claiming refuge elsewhere’ or Ambalavaner Sivanandan’s assertion that ‘resistance to economic immiseration is inseparable from resistance to political persecution’, meaning that the ‘economic migrant is also the political refugee’.\(^6\) Restrictionist actors rarely agreed with such expansive conceptions and instead sought to interpret the Geneva Convention’s definition as narrowly as possible. They maintained restrictive views, supporting Walzer’s assertion that ‘if we offered a refuge to everyone in the world who could plausibly say that he needed it, we might be overwhelmed. … [T]he right to restrain the flow remains a feature of communal self-determination.’\(^7\)

Stratham and Geddes’ recent study of asylum policy in the UK concluded that majoritarian restrictive actors dominated asylum debates and accordingly succeeded in implementing restrictive asylum policies.\(^8\) In doing so, Stratham and Geddes presumed that states and governments were indistinguishable. But the state remained separate from government. Instead it represented a stage for various actors to pursue their roles and to communicate their goals. Court cases overseen by the state demonstrated this most clearly. Moreover, Stratham and Geddes, after discussing asylum debates and asylum policy formation neglected to determine whether restrictive policies were properly implemented or not. This paper contends that though restrictionist actors were pre-eminent in asylum debates in the 1990s, they frequently failed to enforce deportation policies they formed because of the ability of pro-asylum actors to utilise international and domestic law to derail and hinder

---


asylum policy initiatives. European governments’ inability to sometimes enforce policy changes because of uncompromising sender states, large costs and inefficient bureaucracy further complicated efforts to impose restrictive asylum policies. The end result was that those who applied for asylum in Europe stayed in Europe, thus marking the epitome for pro-asylum actors in their efforts to effect asylum policy throughout the twentieth century.

2. A short history of asylum in the 20th century

Political theorists, philosophers, international relations experts and legal authorities have all written extensively on western asylum policies in recent years. Regrettably, few historians have followed suit despite H. Stuart Hughes’s observation nearly half a century ago that historians who see no incompatibility between their different roles in the humanities and social sciences are uniquely equipped to illuminate the era in which we live. Too often, discussions of contemporary asylum policy fail to sufficiently contextualise asylum trends. Furthermore, by looking solely at one period without first extensively setting the scene, scholars often fail to discover crucial developments. By analysing asylum from a longue durée perspective this paper seeks to highlight the vital influence of pro-asylum actors in European asylum policy in the 1990s when compared to previous decades.

Of course, the 1990s was not the first decade pro-asylum actors successfully influenced European asylum policies. Indeed, Bernard Porter writes that it was the

---


great ‘vigilance and effort’ of pro-asylum actors that enabled all foreigners in search of protection to find asylum in the UK between 1823 and 1906.\textsuperscript{11} What occurred after 1906 in Britain, however, symbolised the replacement of economic liberalism with economic protectionism. As John Torpey chronicled, ‘the booming of the guns of August 1914 brought to a sudden close the era during which foreigners were relatively free to traverse borders’.\textsuperscript{12} Instead of lifting these bellicose measures after the end of the First World War, states reinforced them. Crucially, this included many of the traditional settler-states, such as the United States, which had until then presided over a generous and open immigration for European migrants.

The consequences of increases in passport control, as well as the popular support for the ethnic state in a period Hobsbawm refers to as the ‘apogee of nationalism’ meant that entry – and stay – in foreign countries became more difficult to attain for asylum seekers and economic migrants alike.\textsuperscript{13} But even as states’ “expropriation of the legitimate means of movement”\textsuperscript{14} gained more verisimilitude, people continued to move on a massive scale. Approximately one to two million ethnic Poles migrated to Poland; one million ethnic Germans to Germany; 300,000 ethnic Hungarians to Hungary; and the newly formed Balkan states welcomed tens of thousands of its ethnic countrymen and women.\textsuperscript{15} Following the end of the Greco-Turkish Wars (1919-22), vast numbers of Turkish, Greek and Bulgarian migrants moved en masse; often in opposite directions.\textsuperscript{16}

Fortunately, most of these people moved to newly formed nation-states that welcomed them. But some people that fled from their homelands had no allegiance to the state they escaped to, as the experiences of the over one million Russians refugees that flowed out of the Soviet Union during and after the Russian Civil War underlined.\textsuperscript{17} It was the president of a particularly prevalent pro-asylum group,

\begin{itemize}
\item \textsuperscript{11} Bernard Porter, \textit{The refugee question in mid-Victorian Politics}, Cambridge: Cambridge University Press, 1979, p. 8.
\item \textsuperscript{15} Claudena Skran, \textit{Refugees in Inter-war Europe}, pp. 31-2.
\item \textsuperscript{17} Gilbert Jaeger and Claudena Skran record that estimates vary considerably over the amount of Russian refugees produced during and after the civil war. The League of Nations High Commissioner for Russian Refugees, Fridjhof Nansen, estimated in 1922 that there were 1.5m Russian Refugees,
International Committee of the Red Cross, who brought the position of the stranded Russians to international attention in early 1921:

These people are without legal protection and without any well-defined legal status. The majority of them are without any legal means of subsistence, and one must particularly draw attention to the position of the young and the youths amongst them who are growing up in an-ever increasing misery. \(^{18}\)

Gustave Ador ended his letter to the newly formed League of Nations by recommending the appointment of a High Commissioner for the Russian refugees. \(^{19}\) French and British diplomats, who felt enmity with the Russian refugees that they had backed in the fight against the Bolsheviks, also canvassed for the appointment. Soon after, the League of Nations named the Norwegian Fridjhof Nansen as the first High Commissioner for Russian Refugees later in 1921.

The Russian refugees benefited from several factors. First, the 1920s was a period of significant economic growth in Europe, particularly after 1924. Second, because of the support for the White Russians in their battle with the Bolsheviks, many European countries, most notably France and Britain, felt obliged to help the Russian refugees stranded outside their home state. Third, France’s desire to increase its population after the deaths of so many of its young males in the First World War meant that the 1920s represented a period of substantial immigration for the country, with approximately 400,000 refugees arriving throughout the decade. \(^{20}\) Fourth, the Soviet Union’s international isolation meant that League of Nation members felt that helping these refugees placed no pressure on their international relations with other League of Nations members.

Despite refugees numbering far less in the 1930s, contrasting economic conditions emanating from the 1929 Great Crash meant refugees fleeing Nazi persecution received more hostile treatment at the hands of European states.

\(^{19}\) Ibid.
\(^{20}\) Vicki Caron, *Uneasy Asylum: France and the Jewish Refugee Crisis, 1933-1942*, p. 6.
Furthermore, these same countries’ efforts to appease Germany meant they repeatedly saw refugees as potential troublemakers.\textsuperscript{21} Nonetheless, prominent pro-asylum actors consistently mitigated the severity of restrictive asylum policies. In France, for example, substantial sections of the Communist and Socialist Parties, the League of Rights of Man and Citizen, the Catholic left and several Jewish bodies continued to promote more generous policies, resulting in the Popular Front’s slackening of immigration restrictions in 1936.\textsuperscript{22} In the United Kingdom, pro-asylum opinion caused the British government to repeal its restrictive policies brought in after the Anschluss of 1938.\textsuperscript{23} Responding to increasing domestic pressure in the United States over the mounting numbers of Jewish refugees fleeing the Nazi regime, the American President Franklin Roosevelt organised a conference in Evian, France, in July 1938.

But pro-asylum groups in the 1930s, represented most vocally by Jewish organisations, rarely exuded enough power to sway governments to allow refugees fleeing Nazi persecution to shelter in their territories for significant periods. Resembling most of the other European countries, Roosevelt was against liberalising immigration laws and hence set out very defined terms for discussion at the Evian conference. In Michael Marrus’s words, ‘Evian simply underscored the unwillingness of the Western countries to receive Jewish refugees’ with ‘one delegate after another read[ing] statements into the record, justifying existing restrictive policies and congratulating themselves on how much had already been accomplished for refugees’.\textsuperscript{24} Hungary and Yugoslavia closed their frontiers, Italy announced its 1938 anti-Jewish decrees, and Holland, Belgium and Switzerland reinforced their borders to restrict the entry of refugees.\textsuperscript{25} When, in December 1942, the Nazi atrocities against Jews came to light, pro-asylum groups placed the United States government under severe public pressure to act. Nevertheless, the 1943 Bermuda Conference saw America maintain its immigration restrictions and Britain continue to disallow any increase in Jewish settlement to Palestine.\textsuperscript{26}

\textsuperscript{21} Michael R. Marrus, \textit{The Unwanted}, p. 113.
\textsuperscript{22} Vicki Caron, \textit{Uneasy Asylum: France and the Jewish Refugee Crisis, 1933-1942}, p. 9 and p. 357.
\textsuperscript{23} Michael R. Marrus, \textit{The Unwanted}, p. 153.
\textsuperscript{24} See Michael R. Marrus, \textit{The Unwanted}, pp. 170-2.
\textsuperscript{25} Michael R. Marrus, \textit{The Unwanted}, p. 169.
In contrast to the 1930s, the atmosphere towards refugees became considerably more benevolent after the Second World War, with many countries intent on codifying the millions of displaced persons in Europe who were unwilling or unable to return to their own countries after 1945. The reasons for this were multiple. It was a way of legalising these people, thereby enabling governments to attain a sense of control over the situation. It also transferred considerable power back to states after the interstate coordination of the immediate post-war years. And of course, guilt was also a factor; according to David Martin, the UN Convention Relating to the Status of Refugees, or Geneva Convention, adopted in 1951, was an attempt by a world ‘that did far too little for refugees and potential refugees in the 1930s’ to ‘show that [it] had learned its lesson’. Additionally, it served to clarify the newly formed UNHCR’s role.

Gil Loescher has written that the 1951 Convention was ‘made to fit a Western interpretation of asylum seekers’ that principally referred to political refugees stemming from Eastern Europe because of the ‘adoption of persecution as the central characteristic of the refugee’. Hence, the main flow of refugees in the 1950s and 1960s came from Cold War Europe to Western Europe and the traditional settler societies, such as the United States. Apart from the large exodus that migrated to West Germany before the erection of the Berlin Wall in 1961 and the 200,000 that fled Hungary in 1956, numbers remained relatively small and politically convenient, leading these people to be ‘endowed with protection and assistance that went far beyond the international obligations imposed on receiving states’.

Throughout the 1960s, and especially in the wake of the appearance of the Berlin Wall, escape from Eastern Europe became more difficult. As a consequence, the number of people seeking asylum from Eastern Europe decreased steadily. It was from Africa that most of the world’s refugees in the 1960s came from, although it was also to neighbouring African countries that nearly all of those refugees fled. Because of the time and geographical limits imposed by the 1951 UN Convention on

Refugees, the UNHCR sought, and eventually succeeded, in adding a protocol in 1967 to the original Convention that led to the abolishment of both. This meant that the UNHCR could work throughout Africa and other continents. Fortunately for the UNHCR, numerous countries that never signed up to the original Convention, such as the United States, signed the protocol enabling the UNHCR to expand its operations in Africa.31

Throughout much of the 1960s and 1970s, West European governments allowed the UNHCR to dictate their asylum policies. Consequently, social and legal conditions for refugees improved throughout these decades.32 Since most of those seeking protection came from communist Europe, they received refugee status relatively easily. Conversely, when non-Europeans began to arrive from the late 1970s onwards seeking asylum from non-communist regimes it caused various degrees of confusion and anxiety amongst western European states. These were not the intended recipients of the privileged refugee countries had agreed to protect. To check such a development the first signs of a recognisable “asylum” system became identifiable. In order to decide whether these new people deserved to attain refugee status and all the rights that came with it, these people became categorised as “asylum seekers” because, for the first time, doubt was cast over whether they were entitled to such a status.33

The number of people seeking asylum in the West began to rise as labour migration became restricted and conflict in the Developing World increased. The availability of commercial transport also meant global migration became more accessible. West Germany presented a typical example of the changing character and

---

31 The eagerness of western governments to sign the protocol was, according to Gil Loescher, at least partly motivated by the attempts of the African Union’s precursor to conceptualise a more sympathetic definition of a refugee that included those fleeing from colonial and post-colonial conflicts. The prospect of this competing with the already familiar UN model, combined with the small numbers applying for asylum in the West encouraged western countries to sign the protocol.

Two years later the Organisation of African Unity (now known as the African Union) did issue its own declaration on refugees, which was more lenient in its understandings than the West. The Convention on Refugee Problems in Africa regarded refugees by the same definition as the UN Convention although it felt compelled to add that it also applied to any person ‘who owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality’, Article 1, The Convention Governing the Specific Aspects of Refugee Problems in Africa 1969. See also, Gil Loescher, Beyond Charity, p. 80.

profile of people applying for protection from the late 1970s onwards. Numbers rose from 16,000 in 1977 to 108,000 in 1980.34 This increase included Turks, who had previously gained access to Germany as part of the Gastarbeiter programme that ceased soon after the 1973 Oil Crisis, and large numbers of Ethiopians fleeing their homeland.35 Before, these Ethiopians might have escaped to neighbouring countries but transport developments meant that some sought protection further afield. Although measures were taken by countries to stem this flow, the upsurge of asylum seekers arriving in the West continued throughout the 1980s, causing the UNHCR High Commissioner at the time to describe the arrivals as “jet-age refugees”36 because of their commercially facilitated entrance.

During the 1980s, asylum applications in Europe, North America and Australia, increased by more than nine-fold.37 Susanne Schmeidl records that in 1975 there were 2.5 million refugees worldwide. By 1980 this had risen to six million and by 1990 the number climbed to 17 million. Similarly, the number of refugee-producing countries went from twenty-five to fifty between 1970 and 1990.38

35 Ibid.
3. Asylum seeking in the 1990s

The small flow of Soviet defectors seeking asylum in the Western Europe between 1951, when the Geneva Convention was established, and 1989 meant that western states’ post Second World War commitments to asylum were rarely tested. Conversely, the end of the Cold War meant Western European governments gained limited political benefits from accepting the large numbers fleeing the fallout from the collapse of Europe’s communist regimes. Moreover, they acquired neither ideological nor economic advantages from assisting the large numbers of those fleeing from conflicts in the Developing World from the early 1990s onwards. In effect, the upsurge in applications challenged Western Europe’s dormant declarations on asylum. Did it react as it had done repeatedly in the 1930s by rejecting these people’s pleas or did it react with sympathy and compassion, thus reflecting the dawn of a new, humanitarian age?

Whereas refugees that arrived in western democracies after the Second World War came to countries with considerable labour shortages, asylum seekers in the 1990s appeared at a time of considerable economic uncertainty. For many European
countries that had not established recognisable refugee or asylum systems during the Cold War period, economic factors such as unemployment rates and economic growth played important roles in asylum debates, largely due to the fusion of asylum and immigration issues. With asylum seekers entitled, in some countries, to relatively generous welfare provisions and housing, public hostility towards asylum seekers rose. Although NGOs and religious groups often appealed to the public’s moral conscience in promoting the hospitable treatment of asylum seekers, references to the large use of taxpayer money and welfare funds often met with more receptive audiences than the former. This was even true in countries such as Ireland, which consistently recorded unprecedented unemployment rate lows and a booming economy from the mid 1990s onwards. Other, more prejudiced attitudes towards asylum seekers also developed relating to their perceived cultural and racial differences from the host population, reflecting the varied origins of asylum seekers in the 1990s.

Restrictionist actors increasingly dominated asylum policy debates throughout the 1990s. Correspondingly, governing political parties also inclined towards the formation of more restrictive asylum policies, vowing to impose stricter deportation measures to return rejected asylum seekers. But there was often a sizeable gap between deportation policies and their implementation. As Fasano and Zucchini muse, ‘laws, like ideas, walk with men’s legs. The latter can go where the law seemed to want to go, they can stand still, or they can go elsewhere entirely.’ Rejected asylum seekers continued to reside in Western European countries. Of the approximately 3.8 million asylum seekers that applied for asylum in the EU15, only 21 per cent received refugee status. But only a tiny minority of the approximately 3

---


40 Gibson terms this identity-based opposition while Messina terms it “subjective opposition.”


million who failed to receive refugee status were deported. Unfortunately, it is difficult to quote exact numbers of those deported from the EU because, as Liza Schuster acknowledges, ‘[s]tatistics on deportation are not compiled systematically, are frequently incomplete and often it is difficult to work out exactly what or who is being counted’. Nonetheless, statistics are available for some countries, such as Ireland, where only 13 per cent of the 68,000 people who applied for asylum between 1992 and 2005 received refugee status. Conversely, less than 6,000, or 8 per cent, were successfully removed from the state during the same period through deportations, voluntary repatriations and Dublin Convention orders. Most others managed to remain because pro-asylum actors ability to utilise the Irish Constitution to halt deportations of rejected asylum seekers and allow asylum seekers with an Irish-born child to remain in the country.

Western governments encountered enormous difficulties trying to deport those people deemed undeserving of protection. The inherent human rights principles enshrined in states’ laws and constitutions had the potential to scupper many governments’ asylum policies because the state and the government were not one entity. As situated previously, the state represented an arena for actors to engage in – not an actor in itself. The growth of inherently liberal principles in many western states throughout the second half of the twentieth century made it increasingly difficult for governments to exercise complete control over asylum seekers. From the mid 1970s onwards, domestic high courts were used more regularly in liberal societies to challenge regulatory changes and the excesses some felt administrative discretion were procuring. This coincided with the growth of NGOs involved in issues of migration. When it came to new asylum legislation in the 1990s, NGOs and human rights lawyers repeatedly called upon judiciaries to decide the legality of

46 Ireland closed off this legal loophole with the Irish Nationality and Citizenship (Amendment) Act 2004.
48 Virginie Guiraudon, Policy Changes Behind Gilded Doors, p. 234.
49 Although the term ‘NGO’ has been used to describe a large variety of organisations, Peter Willetts’ definition seems apt to capture the groups involved in promoting the interest of asylum seekers. According to him, an NGO is ‘an independent voluntary association of people acting together on a continuous basis, for some common purpose, other than achieving government office, making money or [partaking in] illegal activities.’ Peter Willetts, ‘Non-Governmental Organizations’, UNESCO Encyclopaedia of Life Support Systems, Section 1 Institutional and Infrastructure Resource Issues, Article 1.44.3.7, November 2001.
these changes. In Ireland, for example, the right to deport rejected asylum seekers was successfully disputed by human rights lawyers.\textsuperscript{50} Often, drawing on constitutional and legal precedents, judiciaries decided in favour of the asylum seekers in question, and in so doing challenged the validity of government changes. To mitigate this trend, NGOs were sometimes represented in policy discussions. When Irish and Italian governments formed immigration and asylum policies in the 1990s, for example, they sometimes deemed it necessary to consult with NGOs, which had by then firmly established themselves as intrinsic ingredients of civil society. This trend was particularly evident in the Italian 1990 \textit{Martelli} law and the 1997 \textit{Turco-Napolitano} law, and the Irish 1996 \textit{Refugee Act}.

International organisations provided guidance for many national and international NGOs on states’ treatment of those seeking asylum. The most prominent amongst them was the UNHCR. The \textit{non-refoulement} principle enshrined in the Geneva Convention remained the backbone of pro-asylum arguments for regularly challenging deportation orders for rejected asylum seekers. Moreover, because one of the UNHCR’s key objectives was to safeguard the right to claim asylum in another state, the UNHCR frequently reiterated western states’ responsibility to allow asylum seekers to claim such a right when this privilege appeared threatened. The Council of Europe also had the power to influence national asylum policies by regularly reminding European states of their commitment to the \textit{European Convention of Human Rights}. Article 3, for example, which prohibited ‘inhuman or degrading treatment or punishment’ was often interpreted as applying to conditions of detention and as further reason to enforce the \textit{non-refoulement} principle if potential deportees faced the possibility of facing maltreatment in their home country.\textsuperscript{51}

\textsuperscript{50} Laurentiu v Minister for Justice, Equality and Law Reform, Ireland and the Attorney General, High Court, 22 Jan 1999.
\textsuperscript{51} When it came to asylum policy, the European Union was more inter-governmental than supranational. It was not the European Commission in Brussels that developed EU asylum policy initiatives but trans-governmental working groups comprised of government ministers of member states with responsibility for asylum that aligned asylum policy. As Timothy Hatton and Jeffrey Williamson explained, asylum numbers were ‘too high’ and politically explosive for most countries’ governments to give up national competency. Timothy Hatton & Jeffrey Williamson, ‘Refugees, asylum seekers and policy in Europe’, National Bureau of Economic Research Working Paper Series, 2004, \url{http://www.nber.org/papers/w10680}. See p. 25 and p. 32.
Conclusion
The strength of pro-asylum actors in affecting European asylum policies in the 1990s symbolised a remarkable turnaround in the fortunes of pro-asylum actors when compared to previous decades in the twentieth century. In the 1920s, economic, demographic and diplomatic conditions ensured the relative success of pro-asylum groups in influencing European asylum policies. Guilt associated with the enmity shown towards Jewish refugees fleeing Nazi persecution in the 1930s and the desire to gain political kudos by accepting a small amount of Communist defectors from Eastern Europe meant pro-asylum groups managed to increase refugees’ rights from the 1950s to the 1980s. But it was in the 1990s that the strength of pro-asylum actors was really tested due to the enormous increase in asylum applications from people that provided limited political and economic returns for receiver states. Although governments attempted to return these people by forming increasingly tough deportation policies, their efforts failed because of the ability of pro-asylum actors to obstruct the implementation of these initiatives. Despite various European countries’ attempts to detain asylum seekers and reduce their entitlements, thereby creating a disconnected, disenfranchised and ostracised minority, most asylum seekers ultimately stayed in Europe. In effect, it was asylum by default but asylum nonetheless.

Acknowledging the difficulties associated with deporting asylum seekers, European governments in the 2000s emphasised the virtues of disallowing potential asylum seekers from ever applying for protection in their countries by externalising the asylum procedure. In effect, their goal was to circumvent many of the channels pro-asylum actors relied upon in the 1990s to protect asylum seekers from the potential damages of restrictive asylum policy changes. Carrier sanctions, visa requirements, increased border control and bilateral agreements with sending states meant reaching western countries to apply for asylum became more difficult to achieve. Many potential asylum seekers were forced to rely on human traffickers in order to enter western states. This often led to asylum seekers undergoing perilous journeys across seas in rarely seaworthy boats or concealed travel in truck and ship cargoes. Though many governments defended these policy changes by stating their goal was to stem “bogus asylum seekers” and “economic refugees,” these changes affected all asylum seekers in equal measure.
Pro-asylum actors have successfully managed to curtail these initiatives in some instances. The European Court of Human Rights (ECHR), for example, ordered Italy to suspend the repatriation of individuals to Libya because of the inadequate response of Italian authorities to its queries regarding how people were identified, whether they had applied for asylum or not, and on what grounds Italian authorities had decided to repatriate them. The effectiveness some countries have had in decreasing asylum applications by externalising asylum policy though, most notably Australia with its 2001 Pacific Solution, means that EU countries will continue to deny asylum seekers the opportunity to seek protection in their states if it means reducing asylum numbers. The challenge for pro-asylum actors today is to adapt to offset such a development although the current economic crisis unfortunately makes this an even more arduous and difficult task to grapple with.

52 ECHR 11593/05 présentée par Mohamed SALEM et soixante-dix-huit autres requérants contre l’Italie, 11 May 2006