Asylum Policy and Illegal Immigration: Perspectives and Challenges[1]

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Restrictive immigration policies, and difficulties in enforcing them have led many destination countries to harbor large swathes of people who have crossed national borders in ways that violate their immigration laws (Facchini and Testa 2016; Casarico, Facchini and Frattini 2015). These individuals are commonly referred to as "illegal", "irregular" or "undocumented" immigrants.

There are three main pathways into irregular migration. First, foreign nationals might remain in the destination country longer than their visa legally entitles them to (visa over-stayers). Second, individuals might succeed in covertly crossing national borders, often aided by professional smugglers. Third, foreigners might seek asylum in a country, and when their claim is refused, not leave it. We will refer to this population as failed asylum seekers.

Estimating the number of undocumented migrants living in any given country presents an array of challenges, as clearly discussed by Hanson (2006). Identifying the relative importance of the three pathways into illegal immigration highlighted above is even more challenging. Several observers, however, have forcefully argued (Gordon et al. 2009; Triandafyllidou 2009; Hatton 2011) that, in the case of many Western destinations, failed asylum seekers represent a large proportion of illegal flows, and in many European countries they are the main addition to the existing stock of undocumented immigrants.

Our goal in this article is to study the link between asylum policy and illegal immigration. We will start by reviewing the process whereby populations at risk can file for protection under the rules laid out in the 1951 Geneva Convention on Refugees. We will then present descriptive evidence on the flows of asylum applications filed in Western destination countries between 1985 and 2014, and on protected status recognition rates, focusing on the rejection decision over time and across the main destination countries. We will finally review what happens to rejected asylum applicants, i.e. we will investigate to what extent the lack of recognition translates into removals. The last section concludes by providing a series of policy recommendations to break the link between asylum applications and illegal immigration.

Asylum seeking under the Geneva Convention

In the aftermath of the Second World War, based on Article 14 of the 1948 Universal Declaration of Human Rights, which recognizes the right of persons to seek asylum from persecution in other countries, the United Nations Geneva Convention Relating to the Status of Refugees provided a clear definition of a refugee, of his/her broad rights and of the member country's obligations. Initially intended to cover individuals fleeing persecution in Europe up to 1 January 1951, the provisions of the Convention were made permanent and universal with the 1967 Protocol.

According to the Convention a refugee is someone who *"owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it"*. Thanks to the non-refoulement provision (art. 33), host countries are prevented from returning a refugee against his/her will to a territory where s/he fears threats to his/her life or freedom.
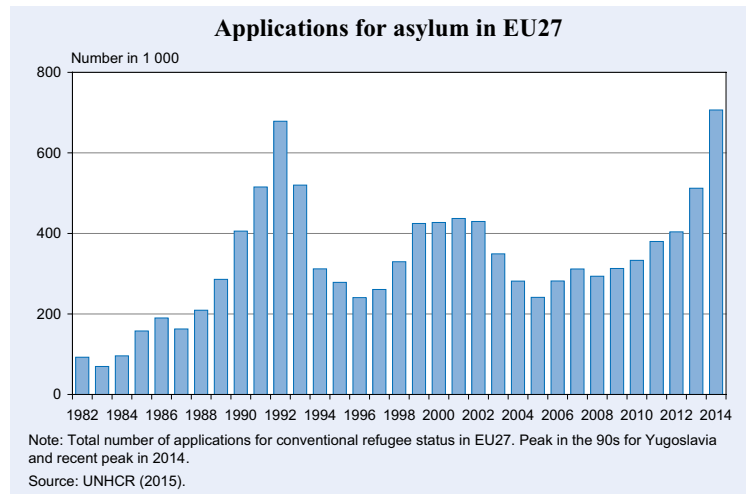
While this international agreement introduced some important general principles, the actual recognition of protected status is left to the individual signatories. Furthermore, several European countries, to deal with large, sudden inflows of applicants (e.g. as a result of conflict in the former Yugoslavia during the 1990s), have also introduced a series of temporary/subsidiary protection measures, which typically resulted in groups of displaced individuals being granted protection, but without any guarantee of permanent asylum. Moreover, to avoid "asylum shopping" (see Facchini, Lorz and Willmann 2006), the Dublin convention agreed by EU member countries in 1990 – and its subsequent incarnations – established the principle that the application for asylum should be dealt with by one state only, usually that where an asylum seeker's fingerprints have been stored and s/he has lodged an asylum application. This principle, however, has recently come under pressure, as EU border countries have allowed asylum applicants to transit through their territory, without fingerprinting potential asylum applicants not intending to remain in their territory.

To understand the link between asylum policy and illegal immigration, it is important to review the process whereby a displaced individual can apply for protection (for more details, see Dustmann et al. 2016). We can distinguish two main routes that are available to someone who has been forced to leave his/her country of origin. First, s/he can look for protection in a neighboring country – often a developing country. Once there, s/he can remain in this "first asylum country" with some "refugee like" status – typically in large camps, under fairly basic living conditions. If s/he is lucky, refugee status may instead be recognized by UNHCR, and the individual can then be resettled in a third country, willing to accept him/her. The resettled population is very small though: on average between 1982 and 2014 only slightly over 4,100 individuals per year were resettled to EU countries, whereas large numbers of asylum seekers remain in camps in first asylum countries, often for very long periods of time.

A second route – which has been at the forefront of media attention in Europe over the past few years – instead

Figure 1

Applications for asylum in EU27

Number in 1 000

Note: Total number of applications for conventional refugee status in EU27. Peak in the 90s for Yugoslavia and recent peak in 2014.
Source: UNHCR (2015).

involves trying to reach a more advanced destination country immediately (typically a rich signatory of the Geneva Convention) and apply for asylum there. If the application is successful, the individual will be granted some protected status, and will be entitled to various welfare state benefits. If the application is not successful, the individual will turn into what we will call a "failed asylum seeker", and is not legally entitled to remain in the country. As discussed before, failed asylum seekers often represent a large proportion of the undocumented immigrants living in a destination country.
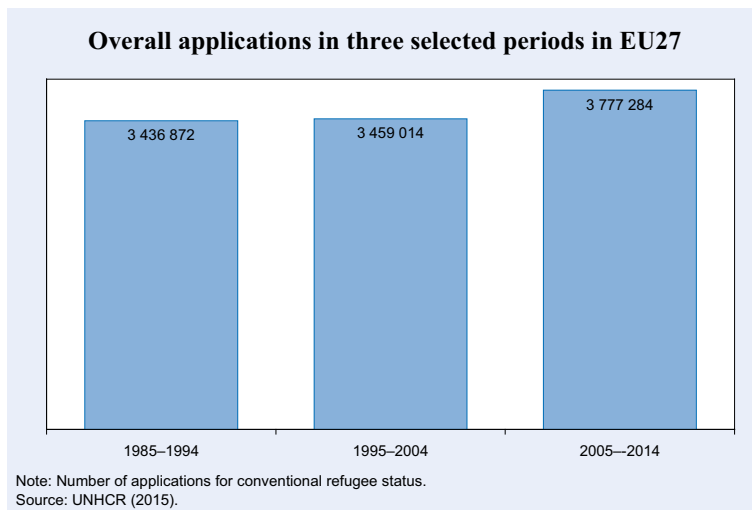
Asylum applications in Europe

Figure 1, based on our calculations using data taken from the UNHCR Statistical Yearbook, describes the evolution of asylum applications to the EU 27 countries between 1982 and 2014, the last year for which systematic, consistent information is available.[5] As we can immediately see, the number of applications exhibits substantial volatility over the period, from a minimum of 70,000 in 1983, to a maximum of 706,000 in 2014, a figure that exceeds the previous peak registered in 1992 at 678,000.

Looking at the data by decade (see Figure 2), the figures appear more stable: between 1985 and 1994 3.4 million applications were lodged, and a similar number was also filed between 1995 and 2004. Between 2005 and 2014

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[5] For Eastern European countries data are only available from 1990 onwards. UNHCR population statistics also provides data for 2015, but the series from the UNHCR statistical yearbook and from the UNHCR population statistics are not fully consistent over the time period considered.

Figure 2

Overall applications in three selected periods in EU27

3 436 872	3 459 014	3 777 284
1985–1994	1995–2004	2005–2014

Note: Number of applications for conventional refugee status.
Source: UNHCR (2015).

Figure 3

Applications for asylum by country of destination

Number in 1 000

Legend: Belgium, Germany, Sweden, France, Italy, United Kingdom

Note: First six receivers of applications for asylum in 2014.
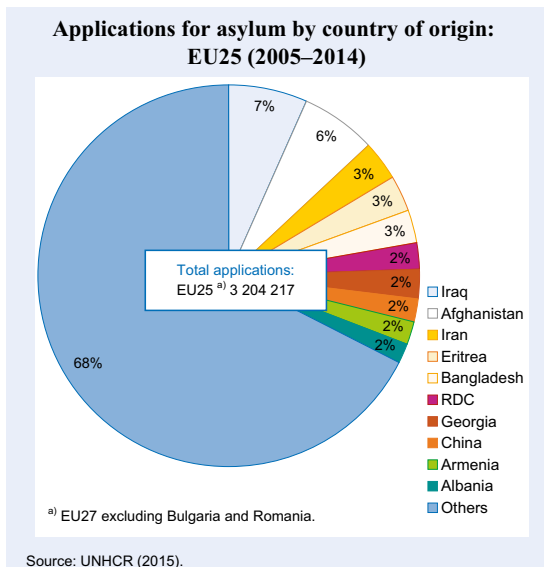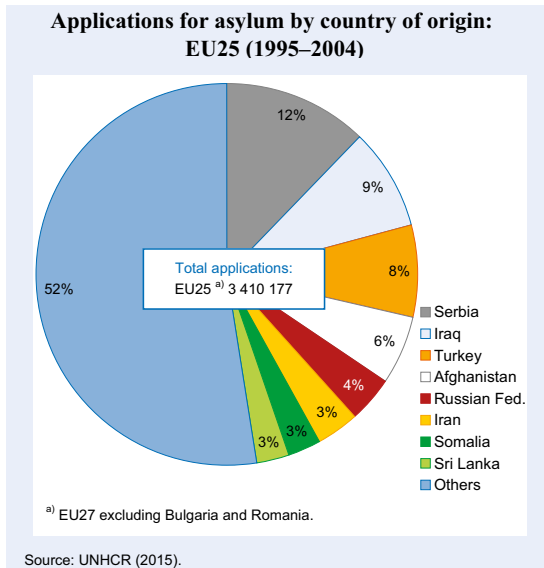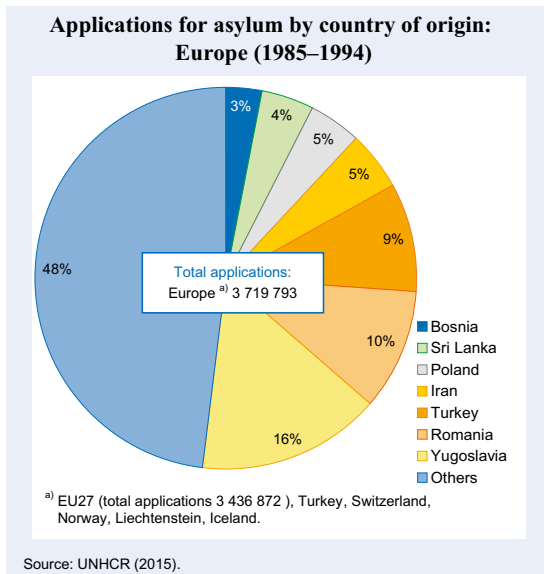Source: UNHCR (2015).

the figure increased to 3.7 million, although as reported by the media, further large inflows took place in 2015 and 2016. As shown in Figure 3, throughout most of the period under consideration, Germany was the main destination of asylum applicants (on average slightly over 103,000 per year). France and the United Kingdom received instead approximately 46,000 and 40,000 respectively. Sweden received only 28,000 applications per year, but in per capita terms, was by far the first destination of asylum seekers.

Applicants typically originate in countries that have experienced violence, conflict, wars or natural disasters. As a result, over the three decades considered in our analysis, we can observe some important changes in the source countries. As shown in Figures 4a-4c, be-

tween 1985 and 1994, the main sources were in Eastern Europe (Yugoslavia, Romania, Poland and Bosnia) and Asia (Turkey, Iran and Sri Lanka). Non-European sources, by contrast, became more important between 1995 and 2004, with Iraq, Turkey, Afghanistan, Iran, Somalia and Sri Lanka playing a key role. This trend was further reinforced between 2005 and 2014, and accompanied by a growing fractionalization among origin countries.

Recognition patterns vary over time and across countries
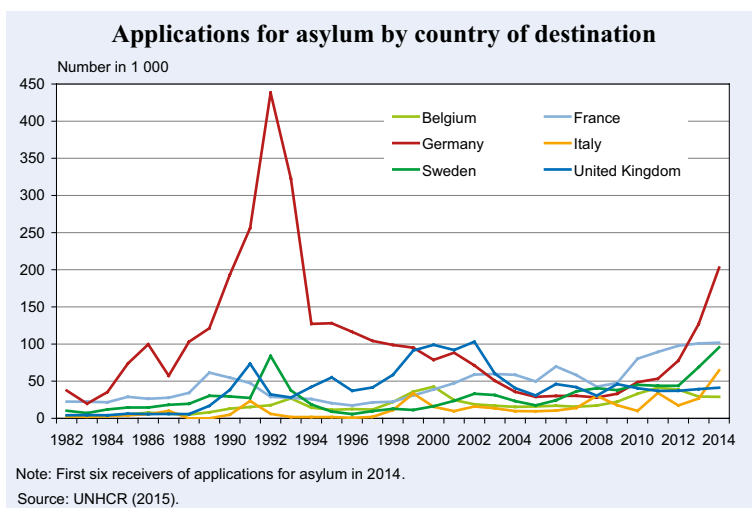
As pointed out previously, the Geneva Convention details the attributes of a refugee, highlighting the basic requirements that an individual should fulfill in order to be granted protected status. At the same time, large discretion is left to the receiving countries when it comes to the process through which asylum applications are examined.

The granting of protected status is often a long and uncertain process, which can involve several stages. The UNHCR collects detailed information on decisions reached in any given year. In Figure 5 we illustrate the average number of months required to process applications between 1982–2014, computed using information on applications and decisions in a given year. As we can see, there is large variation across countries. While for several countries the average processing time is well above a year, reaching a peak of almost two years in Belgium; in others – like France and the Netherlands – applications are processed more promptly with an average waiting time of about eight months.

What is the typical outcome of the asylum application process? The first interesting observation to be made is that the variability in the number of asylum seekers highlighted in the previous section is only partly matched by the variability in the number of individ-
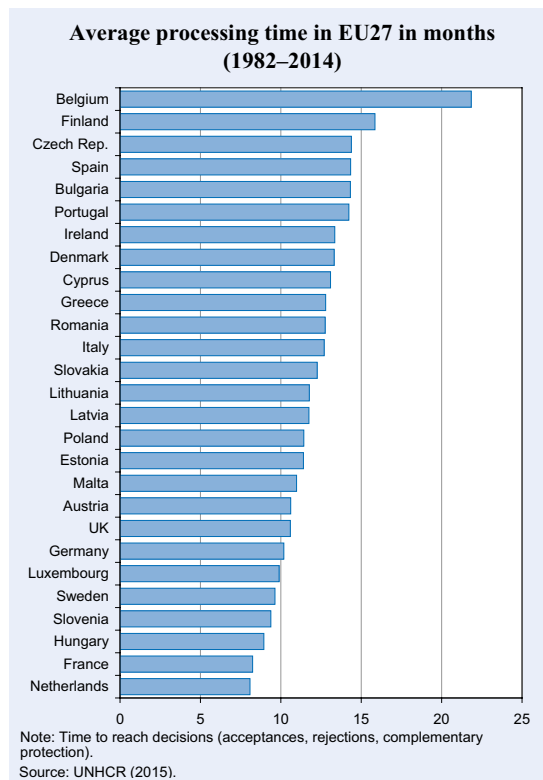
Figures 4a, 4b, 4c

**Applications for asylum by country of origin:
Europe (1985–1994)**

Total applications:
Europe a) 3 719 793

- Bosnia 3%
- Sri Lanka 4%
- Poland 5%
- Iran 5%
- Turkey 9%
- Romania 10%
- Yugoslavia 16%
- Others 48%

a) EU27 (total applications 3 436 872), Turkey, Switzerland,
Norway, Liechtenstein, Iceland.

Source: UNHCR (2015).

**Applications for asylum by country of origin:
EU25 (1995–2004)**

Total applications:
EU25 a) 3 410 177

- Serbia 12%
- Iraq 9%
- Turkey 8%
- Afghanistan 6%
- Russian Fed. 4%
- Iran 3%
- Somalia 3%
- Sri Lanka 3%
- Others 52%

a) EU27 excluding Bulgaria and Romania.

Source: UNHCR (2015).

**Applications for asylum by country of origin:
EU25 (2005–2014)**

Total applications:
EU25 a) 3 204 217

- Iraq 7%
- Afghanistan 6%
- Iran 3%
- Eritrea 3%
- Bangladesh 3%
- RDC 2%
- Georgia 2%
- China 2%
- Armenia 2%
- Albania 2%
- Others 68%

a) EU27 excluding Bulgaria and Romania.

Source: UNHCR (2015).

uals granted asylum or complementary protection. In fact, while the fraction of cases where individuals are allowed to remain under asylum or complementary protection is relatively stable over time, we can observe larger fluctuations among the shares of negative decisions (see Figure 6). The result is that rejection rates have varied substantially over time, from a bottom of 36 percent in 2005, to a peak of 78 percent in 1990 (see Figure 7). This outcome may be due to one of two reasons: first, the characteristics of individual asylum seekers may vary over time, and make rejection rates fluctuate accordingly. Under this scenario rejection rates increase when there is, for instance, an increase in the number of economic migrants who try to use the humanitarian channel to enter rich destination countries. Alternatively, destination countries may actually vary the extent of their commitment to the principles of the Geneva Convention, depending, for instance, on the overall flow of applications they receive; and/or on domestic political economy factors, that little have to do with the altruistic nature of the principles spelled out in the Universal Declaration of Human Rights.

The extent to which destination country specific factors are at work becomes apparent when we look at rejection rates for the six main destination countries in the EU 27 (see Figure 8). According to the UNHCR Statistical Yearbook data, France has implemented the strictest policy stance, with on average three quarters of the applications being rejected between 1982 and 2014. The United Kingdom, on the other hand, has been more generous, and on average 45 percent of the asylum applications filed in that country received some sort of positive response. Germany and Sweden have average rejection rates in the 50–60 percent range, whereas Italy and Belgium make it more difficult to obtain protected status, with rejection rates between 60 and 70 percent. Interestingly, acceptance rates have fluctuated significantly over time, within the same country (see Figure 9). In the early 1990s the UK had an almost open door to asylum applicants, with rejection rates in the single digit range. By 2004 a much stricter policy stance was in place, with rejection rates reaching over 70 percent. Less extreme, but substantial fluctuations can also be observed in France, where rejection rates in the early 1980s were fairly low, ranging between 30 and 40 percent, but where starting from the mid-1980s onwards, they have consistently exceeded 70 percent, and peaked at 88 percent both in 1990 and in 2012.

Figure 5

Average processing time in EU27 in months (1982–2014)

Note: Time to reach decisions (acceptances, rejections, complementary protection).
Source: UNHCR (2015).

Rejected asylum seekers

What happens to rejected asylum applicants? This is a key question if we wish to understand the link between asylum policy and irregular immigration.

As mentioned above, the time taken to reach a decision on an asylum case varies substantially across countries.

Figure 6

Composition of total decisions in EU27

Source: UNHCR (2015).
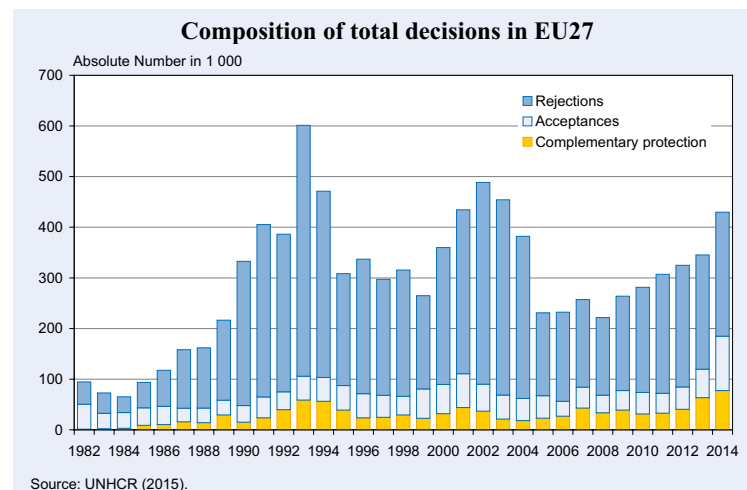
The same holds true for the rights enjoyed by an asylum applicant in the destination country while his/her case is being scrutinized (OECD 2016). Time spent in the host country, and access to the labor market, are likely to play an important role in shaping the ability to enforce the asylum policy stance. In particular, the timeliness of the asylum decision process is crucial, since the longer it takes for an application to be examined, the less likely the removal of unsuccessful applicants becomes (Facchini and Testa 2016).

If a final negative decision is reached on a given case, the rejected asylum applicant should leave the country where the asylum claim has been filed. How often does this happen? Data on involuntary repatriations is sparse. The very fact that destination countries do not systematically publish information on the enforcement of asylum decisions (Facchini and Testa 2016) suggests that this is a very controversial issue. For the few cases for which information is available, the stylized fact is that rejection decisions are poorly enforced, if at all. For example, Gibney and Hansen (2003) report the number of involuntary returns for Germany over the period from 1993 to 2000 and for the United Kingdom between 1996 and 2000. Strikingly, only 22 percent of rejected asylum seekers in Germany faced deportation. In the United Kingdom the share was even lower at four percent. Even after accounting also for voluntary repatriations, Hatton (2011) finds that less than 20 percent of the rejected claimants left the country between 1997 and 2001, and the same holds true for just over a third between 2002 and 2006.

The result of poor enforcement is that failed asylum seekers are very likely to end up adding to the stock of illegal immigrants, and in many cases failed asylum represents the most important pathway into undocumented immigration. Gordon et al. (2009), for example, estimate that failed asylum seekers accounted for two thirds of the illegal migrants present in the UK in 2001.

Breaking the link between asylum and illegal immigration

Our short review of asylum seeking has highlighted several

important stylized facts. First, European countries have convoluted processes in place to assess asylum claims; second, they reject a large majority of asylum claims; and third, they are fairly secretive when it comes to reporting what happens to failed asylum seekers. The existing evidence for the few hosts who publish data on policy enforcement indicates that the latter is less than perfect. The result is a strong link between asylum seeking and illegal immigration in many host countries. This is hardly a sustainable situation in a world where, on the one hand, conflict is widespread, and on the other, many destination countries are facing a huge political backlash against globalization in general, and immigration in particular. In the light of these considerations, what kind of policies could help address this *impasse*?

First, policy makers should draw a clear distinction between asylum seeking and economic migration, and design and implement different policies to tackle the two issues. The main goal of asylum policy should be that of offering protection to individuals whose life is at risk in the origin country because of temporary, well-defined "shocks". This is a moral obligation the Western World has assumed and should be considered as such. It is important to keep this moral obligation distinct from short-term economic considerations. In other words, asylum policy should not be a means of recruiting workers whose skills are not available in the destination country's job market. Statements like "German companies see refugees as an opportunity"[6] are likely to be counterproductive, as they tend to mix economic and moral arguments.

Asylum countries should be generous in granting protection, and should make an assessment of the objective conditions of the applicants in the source country. Domestic political economy considerations should
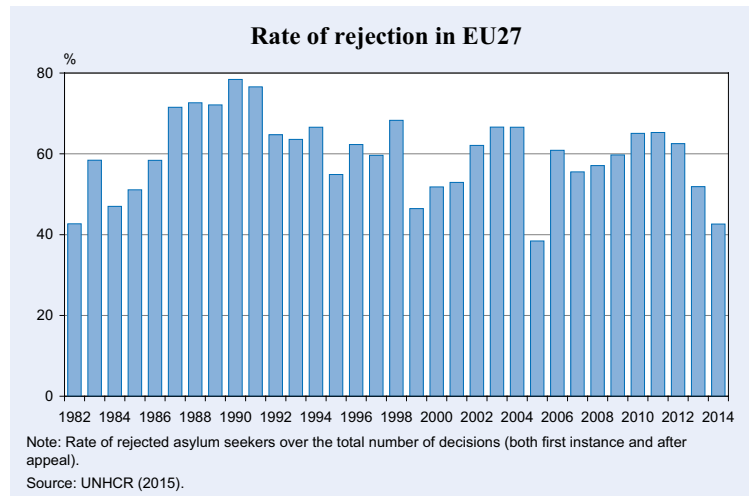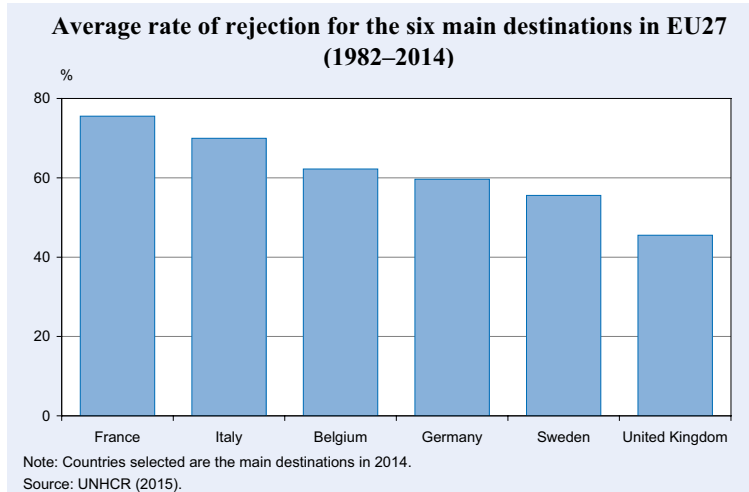
Figure 7

Rate of rejection in EU27

Note: Rate of rejected asylum seekers over the total number of decisions (both first instance and after appeal).
Source: UNHCR (2015).

Figure 8

Average rate of rejection for the six main destinations in EU27 (1982–2014)

Note: Countries selected are the main destinations in 2014.
Source: UNHCR (2015).

instead not be at the center of the decision making process. The examination of applications should also be carried out swiftly. Long waiting in a legal limbo is bad for applicants, but it is also bad for the destination country, which will face growing difficulties in enforcing asylum policy (and possible rejection decisions) if cases drag on for years.

Coordination among European countries must be prioritized. The current "beggar your neighbor approach" undermines trust among European countries and could shake the very foundations of the European project. All European countries, including the most recent members of the EU, must accept the idea that asylum policy has to be designed as a European policy: the economic and long-run political arguments supporting this case are too strong to be neglected due to short-term concerns.

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6   See Dettmer (2015).

Last but not least, the outcome of the asylum assessment process must be enforced. As discussed, forced repatriations are very uncommon. Removing a failed asylum seeker is very costly from the point of view of the host country, and the result is that financially constrained enforcement agencies simply omit to carry out their mandates. This creates perverse incentives, as economic migrants end up abusing and undermining the asylum system to set foot into a rich country to try to better their position. A more open economic migration policy may instead address this issue.

Figure 9

Rate of rejection for the six main countries of destination in 2014

Source: UNHCR (2015).
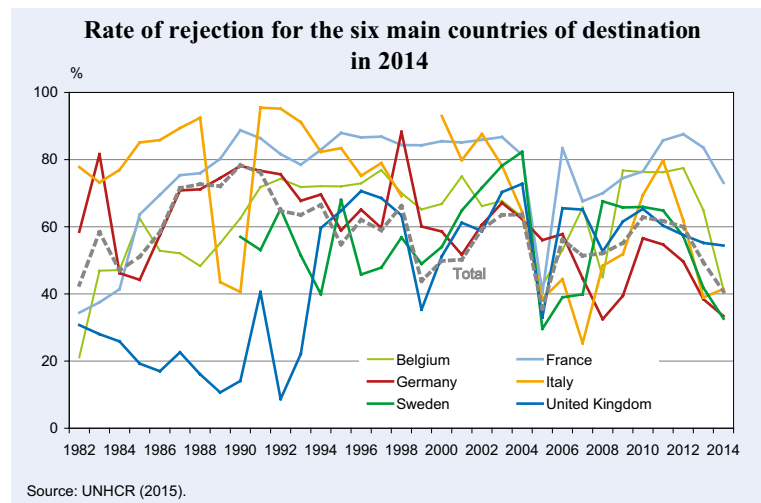
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