

# **NEW ISSUES IN REFUGEE RESEARCH**

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## **Global migration trends and asylum**

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## **Introduction**

International migration is at record levels and is unlikely to slow in the near future. An estimated 150 million persons reside outside of their country of birth or nationality. This number does not include the additional millions of people who make short visits as tourists or business travellers to other countries.

Longer-term international migrants belong to two broad groups: voluntary migrants and forced migrants. Fuelled by a combination of push factors in source countries and pull factors in receiving countries, voluntary migration is sustained by well-developed networks that link the supply of labour with the demand of businesses for both highly skilled and unskilled workers. Forced migration is fuelled by conflicts, human rights abuses and political repression that displace people from their home communities.

Although just stated in simple terms, distinguishing between voluntary and forced migrants can be difficult. Voluntary migrants may feel compelled to seek new homes because of pressing problems at home; forced migrants may choose a particular refuge because of family and community ties or economic opportunities. Moreover, one form of migration often leads to another. Forced migrants who settle in a new country may then bring family members to join them. Voluntary migrants may find that situations change in their home countries, preventing their repatriation and making them into forced migrants.

Despite the difficulty of categorising different types of migrants, the process is more than an exercise in semantics. Countries have different responsibilities towards different types of migrants. For example, more than 130 countries have signed the UN Convention Relating to the Status of Refugees and recognise that they are obliged not to return refugees to where they have a well-founded fear of persecution and to provide assistance and protection to refugees whom they admit. No similar legal obligation extends towards other international migrants although international human rights law, national laws and International Labour Organisation conventions relating to conditions of recruitment and employment protect their rights in destination countries.

It is the complicated relationship between voluntary and forced migration that challenges the asylum systems adopted by States to distinguish between refugees and other migrants. Many governments have established sometimes elaborate and costly asylum adjudication procedures to make these determinations. In some cases, where other immigration avenues are restrictive, these procedures are the only or principal means through which migrants are able to gain admission, regardless of their reasons for emigration or the circumstances they would face on return. Fearing uncontrolled migration, States have imposed such mechanisms as visa requirements and carrier sanctions to limit access to their territory.

Too often, however, these mechanisms fail to make distinctions between refugees and other migrants and limit the protection afforded to persons who, failing to find asylum elsewhere, will find themselves endangered. In some cases, they are also self-defeating, as would-be migrants, including bona fide refugees, turn to increasingly more sophisticated smuggling and trafficking operations that are able to circumvent the

immigration controls. A vicious cycle then develops, with governments imposing new restrictions while smugglers find new ways to get around them.

This cycle presents particular challenges to the UN High Commissioner for Refugees (UNHCR), the international organisation mandated to protect refugees. Although refugees are only a segment of the total migrant population, measures designed to manage migration and control unauthorised movements often have disproportionate effects on them. Unlike voluntary migrants, refugees and other forced migrants may be seriously harmed if immigration policies and procedures prevent them from emigrating to escape persecution or force them to return to dangerous conditions at home.

This paper assesses trends in global migration that have particular import for the asylum system. It begins with a review of the scale of international migration today, with particular focus on the interface between asylum and other forms of migration. It continues with a discussion of major trends and influences on migration patterns. The importance of these trends for asylum policies and practices are then discussed in greater detail. The paper concludes with areas where further policy development is required and, in accordance with the terms of reference, suggests options for strengthening UNHCR's role and preserving refugee space for refugee protection within international migration management efforts.

### **Scale and nature of international migration<sup>1</sup>**

The number of long-term international migrants (that is, those residing in foreign countries for more than one year) has grown steadily in the past four decades. According to the UN Population Division, in 1965, only 75 million persons fit the definition, rising to 84 million by 1975 and 105 million by 1985. There were an estimated 120 million international migrants in 1990, the last year for which detailed international statistics are available. An examination of data from selected countries of in-migration indicates that international migration continued with about the same rate of growth in the 1990s. As of the year 2000, according to estimates prepared by this author for the International Organisation for Migration, there are 150 million international migrants.

Between 1965 and 1975, the growth in international migration (1.16% per year) did not keep pace with the growth in global population (2.04% per year). However, overall population growth began to decline in the 1980s while international migration continued to increase significantly. During the period from 1985 to 1990, global population growth increased by about 1.7 percent per year, whereas the total population of international migrants increased by 2.59 percent per year.

Even with the numbers of international migrants large and growing, it is important to keep in mind that fewer than three percent of the world's population have been living

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<sup>1</sup> The description of the scale and nature of international migration and the global trends affecting migration patterns and policy responses are drawn from work that the author undertook for the International Organization for Migration that will appear in the *World Migration Report: 2000*.

outside of their home countries for a year or longer.<sup>2</sup> The propensity to move internationally, particularly in the absence of compelling reasons such as wars, is limited to a small proportion of humans.

International migrants come from all parts of the world and they go to all parts of the world. In fact, few countries are unaffected by international migration. Many countries are sources of international flows, while others are net receivers and still others are transit countries through which migrants reach receiving countries. Such countries as Mexico experience migration in all three capacities, as source, receiving and transit countries.

Migration tends to be within regions, with migrants often remaining within the same continent. More than half of international migrants traditionally have moved from one developing country to another. In recent years, however, migration from poorer to richer countries has increased significantly. While the traditional immigration countries – the United States, Canada and Australia – continue to see large-scale movements, as a result of labour recruitment that began in the 1960s and 1970s, Europe, the oil rich Persian Gulf states and the “economic tigers” of east and Southeast Asia are now also major destinations for international migrants.

The industrialised countries belonging to the Organisation for Economic Cooperation and Development (OECD) experienced significant growth in their immigrant population during the 1990s. In 1986/87, about 36 million international migrants (some of whom subsequently naturalised) lived in the US, France, Germany, Canada, Australia and the United Kingdom. A decade later, more than 46 million international migrants were reported to be living in these same countries, more than a 25 percent increase.

The most rapid growth in the number of international migrants tends to occur as a result of refugee crises. Massive numbers of refugees may cross a border within a very short time, often into areas with little prior immigration. The more than 800,000 refugees who fled from Kosovo to Albania and the former Yugoslav Republic of Macedonia in 1999 represents one of the most recent manifestations of this phenomenon.

One of the most significant trends has been the feminisation of migration streams that had heretofore been primarily male. Significantly, many of the new female migrants relocate as principal wage earners, rather than as accompanying family members. Whereas Orlando Patterson could write in 1978 that “the greater propensity of women to move is a pattern peculiar to the New World,” by the 1990s, Stephen Castles and Mark Miller’s observation about Asian migration could be applied more generally: “A key development in recent years has been the increasing feminisation of migration: about 1.5 million Asian women were working abroad by the mid-1990s, and in many migratory movements they outnumber men.” For example, more than 60 percent of migrants from Sri Lanka are women, employed primarily in domestic service. Women heads of household are also disproportionately represented in many refugee contexts.

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<sup>2</sup> With an estimated global population of six billion, the estimated 150 million international migrants represent 2.5 percent of the world’s population.

As stated above, migrants generally fall into two, though sometimes overlapping, categories: voluntary and forced migrants.

### **Voluntary migration**

There are two major groupings of voluntary migrants: labour migrants and family members of prior migrants.

#### *Labour Migrants*

Many of today's international migration streams began with the recruitment and employment of foreign workers. During the 1940s to 1960s, the United States operated a guest worker program with Mexico, called the Bracero Program. In the 1960s and 1970s, many European countries instituted their own guest worker programs, bringing in labour from Turkey, northern Africa, and southern Europe. During the same period, oil-rich Libya and Persian Gulf states recruited workers from other Muslim countries, as well as south, east and Southeast Asia. South Africa recruited migrants from Mozambique and Lesotho to work in the mining industry.

Some migrants were recruited for seasonal work, often in agriculture. Others filled short-term labour shortages in a wider range of industries produced by burgeoning economies. Often, the international migrants were hired to perform jobs that natives would not do, particularly for the low wages or poor working conditions offered. In some situations – the oil producing regions, for example – they provided technical skills not readily available within the native population.

Even after active labour recruitment ended, labour migration often continued. European countries withdrew their labour contracts after the 1973 oil crisis and resulting recession, but many of their guest workers remained. Employers who were pleased with the performance of their existing staff did not want to train new workers to fill posts held by guest workers; many employees who had established roots did not want to return to their home countries. When the Bracero Program ended in 1965, migration patterns shifted towards unauthorised routes. During the more recent financial crisis in Southeast Asia, governments found it difficult to terminate temporary work programs that had been in operation for years.

Today, labour migration is highly complex. Several distinct categories of workers migrate, differentiated by their skills, the permanence of their residence in the host country and their legal status. At the lower end of the skills spectrum, international migrants pick fruits and vegetables, manufacture garments and other items, process meat and poultry, work as nursing home and hospital aides, clean restaurants and hotels, do gardening and construction, take care of children and the elderly, and provide myriad other services. They provide these types of services in a wide range of receiving countries in almost all parts of the globe.

At the higher end of the skill spectrum, international migrants engage in equally diverse activities. They fill jobs requiring specialised skills, run multinational corporations, teach in universities, provide research and development expertise to industry and academia, practice medicine, and design, build and program computers, to name only a few activities. Again, they can be found undertaking such assignments throughout the world.

In most countries, migrants are admitted as temporary workers and they are granted work authorisation for specified periods. They have no right to remain in the destination country beyond the period of authorised employment. This is particularly true in the Persian gulf states and East and Southeast Asia. In some cases, particularly in Europe, if a permit is renewed several times, the international migrant is allowed to remain indefinitely. The traditional immigration countries, the U.S., Canada and Australia, also have mechanisms for direct admission of foreign workers for permanent settlement.

In addition to legal avenues of entry for labour migrants is unauthorised migration. Statistics on unauthorised migration are hard to find in most countries since these movements are generally clandestine, but it appears that the numbers are substantial. Unauthorised workers can be found in almost as diverse a range of jobs and industries as authorised workers, with agricultural and food processing jobs, light manufacturing, construction and service jobs being the most common types of employment. In many cases, unauthorised migrants are smuggled into countries by professional rings that specialise in human trafficking.

### *Family reunification*

The second major type of voluntary migration is for family reunification. Governments often permit close family members of those already in the country to enter through legal channels although this policy is found more frequently in the traditional immigration countries than in those authorising contract labourers only. The anchor relative in the host country may have been married and had children at the time of arrival but left his or her family members behind. Having determined to remain in the host country, he or she petitions for family reunification. Alternately, a citizen or international migrant already living in the host country marries a foreign national and seeks his or her admission.

The willingness of states to authorise family reunification is supported by international human rights law. Article 16(3) of the Universal Declaration of Human Rights states clearly that “the family is the natural and fundamental group unit of society and is entitled to protection by the society and the state.” Splitting families apart deprives each member of the fundamental right to respect of his or her family life. Since the family unit is often the principal support to its members, separating families also undermines other rights. Children and women, in particular, become vulnerable to exploitation when they are separated from their relatives.

Family reunion is often seen to be a consequence of labour migration. For example, in the years after guest worker programs ended in Europe, most officially sanctioned

international migration consisted of family reunion as former guest workers brought their relatives to join them. Similarly, a substantial share of the migration into the United States in the past decade has been the family members of unauthorised migrants who gained legal status through the Immigration Reform and Control Act of 1986.

Family reunion is also a cause of still further migration. Many would-be labour migrants learn of employment prospects through their family members in other countries and then seek authorised or, in some cases, unauthorised entry to take the jobs. Moreover, once family members obtain residence status in a new country, they are often able to bring in additional relatives through family reunification programs. This process is called chain migration. Although few countries permit legal immigration of extended family members, some migration systems do authorise admission of parents and adult siblings of already resident immigrants. To take one scenario, an international migrant with long-term residence sponsors his new spouse for admission; they then sponsor each of their parents, who in turn, sponsor their other children who enter with their spouses, who in turn sponsor their parents, and the chain continues.

Aside from its strong humanitarian basis and despite the potential for chain migration, host countries value family reunification because it is generally an effective mechanism for helping immigrants adapt to their new society. Already resident family members help new arrivals find jobs, housing, and other needed assistance. New immigrants may add their earnings to augment household income. Parents of immigrants often take care of young grandchildren, thereby allowing both spouses to be gainfully employed. Families pool their savings to open businesses. At the same time, however, family migration may result in fiscal costs for the host society. Aged parents may require health services or income support that immigrant families cannot afford. Immigrants often have more children than natives and the children may have special need for language or other instruction, increasing costs for public education. These costs may be an investment in the future but they are also a current expenditure.

Eligibility for family reunification is not universal, however. Many contract labour arrangements preclude admission of family members. Admission rules often restrict family reunification for asylum seekers and those granted temporary protection, even in traditional immigration countries.

### **Forced migrants**

A large number of international migrants have been forced to leave their home countries and seek refuge in other nations. Many leave because of persecution, human rights violations, repression or conflict. They depart on their own initiative to escape these life-threatening situations although in a growing number of cases, they are driven from their homes by governments and insurgent groups intent on depopulating or shifting the ethnic, religious or other composition of an area. In other cases, migrants are forced to move by environmental degradation and natural and human-made disasters that make their homes inhabitable for at least some period. Because the legal frameworks for responding to these forms of forced migration differ, the two groups will be discussed separately.

Refugees have a special status in international law. A refugee is defined by the 1951 UN Convention Relating to the Status of Refugees as “a person who, owing to 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.” Refugee status has been applied more broadly, however, to include others persons who are outside their country of origin because of armed conflict, generalised violence, foreign aggression or other circumstances which have seriously disturbed public order, and who, therefore, require international protection.

Environmental degradation and natural disasters uproot another type of forced migrant. Unlike the refugees described above, environmental migrants do not need protection from persecution or violence, but like refugees, they are unable to return to now uninhabitable communities. Most environmental migrants move internally, some relocating temporarily until they are able to rebuild their homes and others seeking permanent new homes. Some environmental migrants, however, cross national boundaries.

The specific environmental factors that precipitate movements vary. Mass migration may result from such natural phenomena as earthquakes, volcanic eruptions, flooding, hurricanes and other events that destroy housing, disrupt agriculture, and otherwise make it difficult for inhabitants to stay within their communities, particularly until reconstruction is completed. For example, periodic floods in Bangladesh have uprooted hundreds of thousands of persons. Hurricanes Georg and Mitch provoked massive displacement in the Caribbean and Central America, respectively. While most of these flood victims are internally displaced, the recurrent environmental problems provide an impetus for external movements as well.

Man-made disasters also precipitate mass movements. Large-scale industrial and nuclear accidents, such as those that occurred in Bophal and Chernobyl, can displace thousands of people within a very short period. Other manmade environmental problems lead to more gradual movements. Global warming, acid rain, pollution of rivers, depletion of resources, soil erosion and desertification all hold the potential to uproot millions of people who can no longer reside or earn a living in their home communities. While some of this environmental degradation may be reversible, the most severe problems will require sustained attention and significant resources for reclamation. In the meantime, both internal and international migration can be expected.

### **Global trends in international migration**

Seven principal trends now affect international migration and global responses, including asylum policies and practices:

- growing economic integration and globalisation;
- changing geo-political interests in the post-Cold War era;



- changing demographic trends and gender roles;
- increasing transnationalism as migrants are able to live effectively in two or more countries at the same time;
- increasing technological innovation;
- growing reliance on smugglers, traffickers and other intermediaries; and
- harmonisation of migration policies through regional and international mechanisms.

### **Economic globalisation and economic integration**

Economic globalisation is not new. Nor is the role of international migration in stimulating and being affected by global markets. More than 500 years ago, European exploration, conquest and colonisation of continents with rich natural resources were connected integrally with the growth of a new mercantile, capitalist economy. Supported by new technologies that made circumnavigation of the earth possible, migration played a critical role in the expansion of global trade. Europeans settled new territories where, too often, they used migrants as well as indigenous populations as slave labour to mine minerals, grow agricultural products, cut down trees or engage in other activities that would fuel growing manufacturing sectors.

Today's economic globalisation, however, gives new meaning to this old phenomenon. The growth in communications and transportation technologies, combined with the willingness of states to enter into binding trade commitments and businesses to establish multinational entities, has permitted an integration of economies that had heretofore operated in separate, differentiated spaces.

The ramifications of economic globalisation and integration for international migration are considerable as is the role that migration plays in furthering globalisation. As Saskia Sassen has written, "Immigration is, in my reading, one of the constitutive processes of globalisation today, even though not recognised or represented as such in mainstream accounts of the global economy."<sup>3</sup> Movement of labour within the global economy, by definition, requires new thinking about the role of states in regulating migration as well as the rules and regulations that govern entry and exit. Russell and Teitelbaum make the point that "international migration is not only a factor in the competitive production of manufactures for trade, international migration is central to international trade in services."<sup>4</sup>

Economic trends influence migration patterns in a number of ways. The growth in multinational corporations, for example, has put pressure on governments to facilitate the inter-country movements of executives, managers and other personnel. Similarly, corporations use contingent labour and contract out assignments at an unprecedented rate. In manufacturing, it is not unusual for components of a single product to be made in several different countries. The corporate interest in moving its labour force to meet

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<sup>3</sup> Saskia Sassen, *Globalisation and its Discontents*, New York: New Press, 1998.

<sup>4</sup> Michael S. Teitelbaum and Sharon Stanton Russell, *International Migration and International Trade*, Washington, D.C.: World Bank, 1992.

the demands of this type of scheduling often runs into conflict with immigration policies.<sup>5</sup>

Bilateral, regional and international trade regimes are beginning to have a profound effect on migration. The European Union's evolution of a harmonised migration regime to serve as a counterpart to its customs union is but one example. The Asia-Pacific Economic Cooperation (APEC) Committee on Trade and Investment, spurred by the Business Advisory Council, has overseen exchange of information on business visa requirements and is identifying mechanisms for regional co-operation to facilitate mobility. The North American Free Trade Agreement (NAFTA) includes potentially important migration-related provisions permitting freer movement of professionals, executives, and others providing international services from signatory countries. Although movements of lesser-skilled workers are not regulated by NAFTA, the issue is likely to be revisited as economic integration grows. The General Agreement on Trade in Services (GATS) is another example of trade negotiations affecting migration policy. To give one example, in GATS, the US guaranteed a minimum of 65,000 visas per year for admission of foreign professionals who are authorised to remain in the US for up to three-year stays.

The growth in global trade and investment has import for major source countries of migration as well as the receiving countries. The issues raised in this connection are far more difficult because they relate to the often-unauthorised movements of unskilled workers. It has long been held that economic development, spurred by access to global markets and capital, is the best long-term solution to emigration pressures in poor countries. While negotiating NAFTA, former President Salinas of Mexico described his hope that “more jobs will mean higher wages in Mexico, and this in turn will mean fewer migrants to the United States and Canada. We want to export goods, not people.”<sup>6</sup> In more colourful language, Salinas cited his preference for Mexico to export tomatoes instead of tomato pickers.

Academicians exploring the relationship between economic development and emigration tend to agree that improving the economic opportunities for people in source countries is the best long-term solution to illegal migration. Almost uniformly, however, they caution that emigration pressures are likely to remain and, possibly, increase before the long-term benefits accrue: “The transformations intrinsic to the development process are at first destabilising. They initially promote rather than impede migration. Better communications and transportation and other improvements in the quality of life of people working hard to make a living raise expectations and enhance their ability to migrate.”<sup>7</sup> Several researchers posit what economist Philip Martin refers to as an

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<sup>5</sup> In a far less benign manner, international smuggling operations function as multi-national corporations influencing migration patterns by determining where migrants go, how they enter and what (clandestine) work they will do to pay off their smuggling fees (which may be as high as \$50,000 per person). See below for more information on smuggling and trafficking operations.

<sup>6</sup> Philip L. Martin, *Trade and Migration: NAFTA and Agriculture*, Washington, DC: Institute for International Economics, 1993.

<sup>7</sup> U.S. Commission for the Study of International Migration and Cooperative Economic Development, *Unauthorized Migration: An Economic Development Response*, Washington, D.C.: Government Printing Office, 1990.

“immigration hump.” As levels of income rise, emigration would at first increase, then peak and decline.<sup>8</sup> The experience of such countries as Italy and Korea in transitioning from emigration to immigration countries gives credence to this theory.

### **Changing geo-political interests**

The post Cold War era presents new opportunities as well as new challenges for migration regimes. The effects are most profound with regard to treatment of forced migration. Most current refugee and asylum policy was formulated following World War II with the lessons of the Nazi era in mind and tensions between East and West growing. To a large degree, refugee policy was seen as an instrument of foreign policy at both international and domestic levels. Admission of refugees for permanent resettlement, asylum for victims of persecution and repression, and international aid to victims of surrogate Cold War fights (Central America, Ethiopia, Vietnam, etc.) were all part of the fight against communism.

The Cold War also made all but impossible some of the solutions to refugee crises, whether defined as attacking root causes or promoting return of refugees. With the end of the Cold War, new opportunities emerged. Many decades-old civil wars came to an end. Democratisation and increased respect for human rights took hold in numerous countries throughout the globe. As a result, repatriation became a possibility for millions of refugees who had been displaced for years.

One of the most significant changes in recent years has been in the willingness of countries to intervene on behalf of internally displaced persons and others in need of assistance and protection within their home countries. Classic notions of sovereignty, which formerly precluded such intervention, are under considerable pressure. International human rights and humanitarian law have growing salience in defining sovereignty to include responsibility for the welfare of the residents of one territory.

Intervention may be expected when the actions of a sovereign state threaten the security of another state. What is new is the recognition that actions that prompt mass exodus into a neighbouring territory threaten international security. In a number of cases, beginning with Resolution 688 that authorised intervention in northern Iraq, the Security Council has determined that the way to reduce the threat to a neighbouring state is to provide assistance and protection within the territory of the offending state.<sup>9</sup>

The changing geo-political scene is a two-edged sword, however. The need for humanitarian intervention also is linked to the end of the Cold War. Rabid nationalism has replaced communism in some countries, while others have so destabilised that no

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<sup>8</sup> Wayne A. Cornelius and Philip L. Martin, *The Uncertain Connection: Free Trade and Mexico-U.S. Migration*, San Diego: Center for U.S.-Mexican Studies, University of California, San Diego, 1993

<sup>9</sup> The changing context for humanitarian action also affects the roles and responsibilities of international organizations with regard to forced migrants. Formerly, most responsibility for handling forced migration crises went to UNHCR, which mobilized resources from sister agencies. Today, new sets of actors drawn from security, military, human rights and development communities have growing involvement, particularly in situations involving internal displacement.

government exists to protect the civilian population. Addressing these new situations is made all the more challenging now that the ideological supports for generous refugee responses have unravelled. That the principles of asylum and non-refoulement (non-return to places of persecution) appear to be under growing attack in Europe and North America is one manifestation of this issue. Further, as the failure of the international community to protect the so-called safe havens in Bosnia showed, humanitarian interests alone are often an insufficient substitute for political will.

### **Demographic and gender trends**

Additional global trends affecting future migration pertain to demography and gender roles. World-wide, fertility rates are falling although many countries in the developing world continue to see rapid population growth. In most developed countries, fertility levels are well below replacement rates – that is, couples are having fewer than two children. These countries can foresee a time in which total population will decrease, leading some demographers to refer to a looming population implosion.

They can also expect an ageing population. The United Nations Population Division projects that the number of persons aged 60 or older will increase from 600 million in the late 1990s to 2 billion in 2050.<sup>10</sup> The population of older persons will exceed that of children for the first time in history. At the same time, the number of working age persons per each older person will decline.

Along with these changes in population growth and age distribution are changes in the role of women within society. Women are increasingly pursuing educational opportunities, working outside of the home and participating in civil society. The 1994 Cairo Conference on Population and Development recognised that women's education and ability to generate income are essential elements of any strategy to restrain rapid population growth. Not surprisingly, as women gain greater autonomy through education and work, they are also migrating not just as reunifying spouses but also as principal applicants for work visas.

Demographic trends affect international migration in two respects. First, they are an important factor in explaining emigration pressures in many countries. Societies with rapid population growth often are unable to generate sufficient employment to keep pace with new entries into the labour force. Environmental degradation may also result, particularly when land use policies do not protect fragile eco-systems. Such natural phenomena as hurricanes and earthquakes often have disproportionately negative effects on densely populated areas, particularly in poor countries, with large numbers displaced from homes destroyed by these events.

Second, demographic trends influence the receptivity towards and impact of migration on countries of destination. The direction of these effects is not necessarily straightforward, however. For example, a country with low fertility rates and an ageing

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<sup>10</sup> UN Population Division (1999), Population Ageing 1999. United Nations publication, (ST/ESA/SER.A/179)

population may benefit from the admission of working-age international migrants, but as the migrant population becomes a larger share of total population, there may be a backlash against the newcomers. This pattern is seen particularly where the migrants are of a different race, ethnicity or religion than the native population.

### **Trans-nationalism**

A fourth trend affecting migration is trans-nationalism. Partly because of the technological revolution of the second half of the 19<sup>th</sup> century, migrants can far more easily today live in two societies at the same time. While circular migration has been a notable aspect of migration for much of the past century, when travel was more difficult, migrants tended to live sequentially in one country or the other. Now they can maintain two homes, shuttling easily between them. This phenomenon can be seen in migration from north Africa and Turkey into Europe; Mexico, Central America and the Caribbean into the United States; China into Canada, Australia and the United States; and Mozambique and Lesotho into South Africa.

Money flows between immigrants and those who remain at home is another important aspect of trans-nationalism. Remittances often exceed any other form of trade, investment or foreign aid available to the source countries of migrants. According to the International Monetary Fund, an estimated \$77 billion was remitted in 1997. The decision to remit and the amount remitted varies depending on the location of family members, earnings abroad, costs of migration and destination country living expenses, duration of stay, and other similar factors. Maintaining the flow of these resources is often an important consideration in immigration policy-making.

Perhaps the most visible aspect of trans-nationalism is the growing acceptance of dual nationality. Several major emigration countries, including Mexico and the Dominican Republic, have shifted from opposition to dual nationality to active support for it. A change in Mexican law permits nationals who naturalise in another country to retain their Mexican nationality. Making a distinction between nationality and citizenship, Mexico does not, however, intend to permit naturalised citizens to vote in Mexican elections. By contrast, the Dominican Republic, which also recognises dual nationality, permits absentee voting by Dominicans who naturalise elsewhere.

### **Technological innovations**

The communications, information and transportation revolutions transforming society are likely to have mixed effects on migration trends. On the one hand, travel is cheaper and easier than ever before, increasing the likelihood that migrants can move far distances. Similarly, global communications systems enable would-be migrants to monitor the economic, social and political situations in distant countries and determine whether and where they wish to relocate. Inexpensive transport and telephone systems also permit migrants to remain in touch with their families at home, making migration a less radical step than it was in earlier periods. These factors contribute not only to increased migration but also to the trans-nationalism discussed above.

On the other hand, such innovations as the Internet will permit people to obtain good paying jobs without moving long distances. Although a certain portion of even high-tech information technology jobs require physical proximity to other workers, other positions can be filled at long distances. Moving such jobs to companies in developing countries is far less expensive, in financial and social terms, than moving workers to the jobs. At the same time, as the economies of developing countries improve with investment of this type, the economic incentives for migration should diminish. The process will take time, however, to be measured in generations in some cases.

More immediately, technological innovations may reduce the demand for inexpensive unskilled labour in some industries. In the United States, for example, the growers of sugar cane had been highly dependent on temporary foreign workers admitted from Caribbean states. Mechanisation of the sugar cane harvest, though, sharply reduced the need for this labour. At present, the availability of foreign workers often acts as a disincentive to make technological investments because it can take several years to amortise these costs. As the cost of technology reduces, however, the interest in a steady supply of foreign workers may well diminish.

### **Human smuggling and trafficking**

It has long been recognised that three factors must be present for international migration to occur: demand/pull from receiving countries; supply/push from source countries; and networks to link the supply with the demand. The networks explain why certain migrants move to certain locations. They also explain why the same set of push or pull factors in different countries lead to very different migration experiences. If the networks are not functioning, the supply and demand never find each other.

Networks are often familial or community-based. Migrants tend to go to places in which their relatives, friends and community members are already located. Those already settled in the new country provide many needed services, not least of which is finding jobs or helping the newcomer obtain other sources of support. Sometimes, labour contractors serve this purpose. Working on behalf of companies in receiving countries, they seek out labourers and facilitate their migration. Certainly, the large-scale migration of Mexicans to the United States or migrants from North Africa to Europe began with such labour recruitment.

A particularly troubling trend in recent years has been the emergence of professional smuggling and trafficking operations as such facilitators of migration. Smuggling is, of course, one of the world's oldest professions. When nation states established borders and sought to regulate traffic across them, they created markets for the smuggling of humans as well as goods. What is new is the scale of smuggling, measured in both numbers and profits, as well as an emerging pattern of increasing professionalisation. This pattern may vary by the type and location of the smuggling.

At the most informal levels, aliens are helped by individuals whom they know to traverse the border. At a slightly more organised level, local agents may be used to link migrants to more formal smuggling operations. The local contacts, who are generally

well known to the migrants, tell them who to contact at the border to help them gain entry into the receiving country.

Several types of services may be offered: assistance in crossing without inspection; houses in which they can hide from the authorities; transportation to interior locations; links to employers. Smugglers may sell or rent fraudulent documents to be used in obtaining entry and to verify eligibility for lawful employment or receipt of services. The use of the types of smuggling operations varies by gender and financial resources. Often, smugglers act like legitimate business people, guaranteeing their services and agreeing to receive final payment when the migrant reaches the final destination.

Other smuggling/trafficking operations are far less benign. Smugglers pack large numbers of migrants into small, unventilated spaces to cross borders or reach ports. Fearing apprehension by border authorities, smugglers have left migrants without water or protection from the hot sun.

The most troubling form of smuggling involves human trafficking, where the smugglers not only bring migrants across borders but exploit and abuse their labour in the process. As smuggling fees increase, and migrants find it difficult to pay all costs at once, smugglers “sell” migrants to businesses who cover the fees in exchange for indentured labour. This can amount to virtual slavery, particularly for women and children forced into sexually exploitive occupations.

Another new element is the cost of smuggling and the profits derived from it. Migrants smuggled from the Fujian province of China reportedly pay upwards of \$50,000 per person, often finding that it takes several years to repay their debt. These operations may yield profits of as much as \$5-7 billion per year.

Smugglers have the advantage over governments at the moment because of the lack of an international migration regime in which governments co-operate to prohibit and prosecute smugglers of humans. Smugglers can easily exploit the gaps in the institutional structures of international co-operation as well as the fragmentation of domestic government law enforcement efforts. It is also to their advantage that except for the violence they may inflict their basic service of supplying cheap labour for receiving countries is widely tolerated even though illegal. Their advantage over migrants is the migrants’ dependence, ignorance and lack of recourse when agreements are not fulfilled.

### **Harmonisation through new regional and international mechanisms**

Historically, states have seen immigration policy as a matter of national interest, often adopting unilateral policies aimed at regulating entry and exit. Nations treat the admission of immigrants and control of unauthorised migration as quintessential matters of sovereignty. After all, immigration policy deals with fundamental issues of national identity as well as national security. The protection of one’s borders is key to a state’s definition of itself.

While few would question that states do, in fact, have both the authority and the responsibility for making decisions regarding immigration, there is increasing recognition that sovereignty limits the ability of states to address the realities of today's international migration. In 1995, the UN General Assembly asked the Secretary General to report on the feasibility and desirability of convening an international conference on international migration and development. After consulting with member governments, the Secretary General concluded that there was insufficient consensus about what could be accomplished at such a conference: "The disparate experiences of countries or sub-regions with regard to international migration suggest that, if practical solutions are to be found, they are likely to arise from the consideration of the particular situation of groups of countries sharing similar positions or concerns with the global international migration system... In the light of this, it may be expedient to pursue regional or sub-regional approaches whenever possible."<sup>11</sup>

During the past decade, regional mechanisms have been established in the Americas, Europe, East Asia, Africa, and elsewhere, in which receiving, source and transit countries address issues of mutual concern. The European Union has had the longest experience in this respect. Free movement of labour within the European Community first came into force in 1968. During recent years, however, discussions turned to broader themes raised by a common immigration policy. Debate about visa policy is a case in point. The intergovernmental Schengen Agreement, originally signed among five EU members in 1985, called for the abolition of internal borders between member states, largely to facilitate trade by reducing long waits at border crossings. The agreement contained the first provisions for the establishment of a single "Schengen visa" for travel throughout most of Western Europe. The 1991 Maastricht Treaty on the European Union defined a common, European visa policy as essential for the realisation of the Union's long-term goal of establishing a single market in goods, capital, and labour. The later Amsterdam Treaty (1997) included the Schengen Agreement into the EU's formal political architecture. Five years after the treaty's entry into force,<sup>12</sup> it is envisioned that decisions on visa issuance will be decided by majority vote.

Less developed multilateral approaches to migration are to be found in other regions, some arising from the migration ramifications of economic integration and others focusing on alien trafficking, illegal migration, mass migration emergencies, and other security concerns related to large-scale movements of people. The Regional Migration Conference, referred to as the "Puebla Group", brings together all the countries of Central and North America for regular, constructive dialogue on migration issues, including an annual session at the vice-ministerial level. The Plan of Action calls for co-operation in exchanging information on migration policy, exploring the links between development and migration, combating migrant trafficking, returning extra-regional migrants, and ensuring full respect for the human rights of migrants, and reintegrating

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<sup>11</sup> UN Secretary General, International Migration and Development, including the convening of a United Nations Conference on International Migration and Development, A/52/314, 18 September 1997.

<sup>12</sup> The Amsterdam Treaty entered into force on May 1, 1999. Consequently, sweeping changes in European migration policy are expected to take place by 2004, the close of the initial five-year test period envisioned in the treaty. This includes majority vote in the Council of Ministers on all areas of migration and asylum policy, as well as the acquisition by the European Commission of the sole right of initiative to introduce migration-related legislation.



repatriated migrants within the region, equipping and modernising immigration control systems, and training officials in migration policy and procedures. An early and continuing issue on the agenda is averting movements of extra-regional migrants through Central America, Mexico and the Caribbean to the United States and Canada.

In East and Southeast Asia, two regional migration consultation processes, are ongoing. One, known as the “Manila Process”, is co-ordinated by IOM and focuses on irregular migration and trafficking in East and Southeast Asia. Since 1996, it has brought together each year seventeen countries for regular exchange of information. The second Asian regional process, known as the Asia-Pacific Consultations (APC), is co-sponsored by IOM and UNHCR. It provides for consultations amongst governments in Asia and Oceania on a broad range of population movements in the region. Both of these ongoing dialogues were strengthened by the ministerial-level International Symposium on Migration that the Royal Thai Government hosted in Bangkok. The search for solutions to the many migration-related problems affecting the region becomes of particular relevance in light of the economic crisis affecting parts of Asia.

Other such processes are in the making in the Southern Cone of South America, in southern Africa and in the Mediterranean. They intend to bring together the governments of all countries involved in the migration process, origin, transit and receiving.

To date, much of the harmonisation sought through these regional mechanisms pertains to management of unauthorised migration. Among the policies adopted through or supported by these mechanisms are: mandatory visa requirements, sanctions against carriers transporting improperly documented migrants, pre-inspection clearance programs, interdiction of vessels, diversion of arrivals to transit countries (e.g., safe third countries), exclusion from future admission, and detention. Although broadly applied to all unauthorised migrants, some of these mechanisms have been targeted at persons who would be likely to apply for asylum if granted admission. For example, States have invoked visa requirements on nationals of certain countries because of increases in asylum applications.

### **Implications for refugee protection**

The global trends described above have particular importance for the refugee protection system. The trends are clearer regarding numbers and destinations than they are in predicting policy responses. All States can expect to see significant levels of international migration in the future. Some of this migration will be among the wealthier countries, as multinational corporations adopt global labour policies and countries follow the lead of the European Union in facilitating such practices. Other migration will continue within the developing world and particularly within States, as the poorest migrants and refugees find themselves unwilling or unable to move long distances or even cross borders for either work or protection. However, as has been the case in the past few decades, an increasing proportion of migration will be from developing to developed countries. Technological innovation, growing economic integration and increasingly more effective networks (including smugglers) will permit people with

some capital, transnational contacts or willingness to indenture themselves the opportunity to move across vast distances as well as within economically-joined regions.

Most of the trends described above affect forced migrants as well as those moving voluntarily for economic reasons. Economic integration and development is occurring even among and within countries with vastly different political systems, protection of human rights, and demographic trends. Persons able to find economic opportunities in wealthier partner countries because of economic integration and slowing population growth may be motivated to leave or remain outside of their countries because of repression and violations of rights. Certainly, many forced migrants will be as likely as economic migrants to take advantage of inexpensive transportation and communications, be members of transnational communities and have access to or even be recruited by smugglers and traffickers.

The global trend that will have the most impact on forced migration is the changing geo-political relations discussed above. At present, there appears to be little prospect of a slowing down in the type of nationalist and religious conflicts that generated millions of refugees and internally displaced in the 1990s. Instability in the Balkans, Caucuses and Central Asian republics of the former Soviet Union continues. Religious fundamentalism continues to take hold in countries, in some cases precipitating the mass flight of religious minorities and secularists. Wars of liberation gave way to surrogate Cold War conflicts in parts of Africa, Latin America and Asia, which are now giving way to sometimes prolonged civil conflicts fuelled by illicit sales of diamonds, drugs and other commodities. All of these developments herald likely continued forced migration.

This is not to say that migration is inevitable nor that once begun, migration will not stop. The economic trends discussed above may well result in reduced movements from many countries. Formerly emigration countries such as Italy and Ireland, having significantly improved economies, have transformed themselves into immigration countries. Demographic and economic projections for such current emigration countries as Mexico, Morocco and the Philippines demonstrate that a similar process is underway. However, it is likely to take at least a generation, if not longer, for economic development to progress to a point where migration patterns are reversed. In fact, if generally agreed upon theories are correct, one can expect increased migration to occur as the economies grow before the expected reduction takes place. Similarly, democratisation and greater respect for human rights may well lead to increased migration as previously repressive governments loosen restrictions on their citizens and permit greater contact with other societies.

Will increased migration of both forced and voluntary migrants necessarily lead to increased demands for asylum or other forms of protection? There the evidence is less clear and may be determined not by the interest of individual migrants but instead by the actions of States and such intermediaries as smugglers and traffickers. Let us take four scenarios that reflect the same broad trends. The first two reduce the number of asylum applications. However, the first scenario is beneficial to the bona fide refugee seeking protection while the second places the same refugee in some jeopardy. A third

scenario shows relatively little change in asylum applications and leaves refugees in much the same situation as today. A fourth scenario shifts course and examines State responses to forced migration in the context of geo-political relations rather than economic and demographic trends.

*Scenario 1:* To take perhaps the more rosy scenario, some trends, such as economic integration and decreasing population growth in wealthier countries, may encourage States to provide alternative avenues of admission for migrants whose only option now is to apply for asylum. Recognising that many now unauthorised migrants could fill jobs that may otherwise be unfilled because of labour shortages or the unwillingness of native workers to take the positions at prevailing wages or working conditions, the receiving States legalise at least part of the flow of migrants. Migrants whether voluntary or forced who also seek economic opportunities may avail themselves of these new options. States feeling less pressure on their asylum systems, particularly from those with weaker claims, may then be more willing to provide adequate protection to the presumably smaller number of applicants for asylum.

*Scenario 2:* A less promising scenario could also flow, however, from these same trends. Rather than increase legal avenues for admission, States tolerate unauthorised migration because of presumed labour shortages as long as the migrants are willing to work at lower wages or under less desirable working conditions. It would be fair to say that this response has occurred in the United States, which has taken steps in the context of very low unemployment to reduce the level of enforcement of sanctions against employers hiring unauthorised workers. Some smuggling operations that now encourage migrants to apply for asylum, as the only mechanism for admission, instead develop contacts with employers willing to pay the smuggling fees in exchange for inexpensive labour. Bona fide refugees who may have prevailed in asylum determinations are indentured to employers in order to pay off their smuggling fees. The State sees a reduction in asylum applications, but the number of unauthorised migrants does not change – or even increases to include new migrants drawn by the employment magnet and able to migrate because of the smuggling networks. Of course, there are costs to the State as well as the migrants in this scenario. The credibility of the State to manage migration is undermined; moreover, its ability to control unauthorised migration in the event of changing economic conditions is severely impaired.

*Scenario 3:* Under the third scenario, as in the first, States increase legal immigration opportunities in response to economic integration and declining population growth. However, the new admission categories give preference to migrants with certain specified skills and/or who come from countries that are trading partners. Even with broad admission criteria and generous quotas or ceilings, neither full employer demand nor full migrant supply is likely to be met. Would-be migrants from other countries or without specified skills do not qualify for admission, but they may well have the networks and capacity to migrate. In fact, the new admission categories may soon become oversubscribed; in the meantime, they may have raised expectations and created new networks that encourage qualified applicants to circumvent processing and attempt unauthorised entry. Some of those admitted, for example for seasonal work, may find that moving into unauthorised work in urban areas provides them more lucrative full-time, all-year opportunities. The lesson here is that legal immigration, which may offer

many advantages for a receiving country, will not necessarily serve as a substitute for unauthorised migration and, under certain conditions, may even increase unauthorised movements. To the extent that asylum applicants in particular do not meet the criteria for legal admission, there is no reason to assume that increased legal immigration will divert them from the asylum system.

*Scenario 4:* The likelihood that forced migration pressures will increase or reduce asylum applications could be profoundly affected by future decisions to intervene or not intervene in source countries of conflict and repression. (The same could be said of economic migration; decisions regarding foreign trade, aid and investment will affect economic development in source countries and, hence, migration responses over time.) Hints as to future trends can already be seen in decisions to intervene militarily in northern Iraq, Haiti, East Timor and the Balkans. Since Resolution 688 explicitly referenced that forced movements into Turkey and Iran presented a threat to international peace and security, countries have been debating the circumstances under which Chapter VII intervention is appropriate and politically and militarily feasible. To the extent that States opt to follow the northern Iraq precedent, requests for asylum and other forms of protection may decline significantly. States are also looking towards less intrusive ways to protect persons still inside home countries or neighbouring countries. Examples include safe havens (presumably with greater protection than has been the case in Bosnia and other places where they have been tried), regional protection centres, in-country processing for admission as refugees, and enhanced use of refugee resettlement, particularly for those with strong ties in more developed countries or no prospect for local integration or repatriation.

### **Policy lessons and recommendations**

As this brief description of scenarios indicates, States can exert considerable control over migration even in the face of increased migration pressures and opportunities. One of the most surprising things about migration is how few people move, not how many people move. Push, pull and network factors affect far more people than those who actually migrate. State policy has much, though not all, to do with whether migration occurs and, even more so, in what manner it occurs. This is a point worth emphasising because too often governments choose draconian measures to control movements because they fear they are impotent to manage migration otherwise.

A second point is that refugee protection, far from being at odds with immigration control, is an essential element in managing migration flows. As this review of the scale and nature of migration has shown, whether and where migrants go is affected by complex factors: push, pull and networks. It is important to emphasise that being pulled or smuggled to Western Europe or other highly developed countries does not negate that the push factor may well be persecution, torture or conflict. While these causes do not necessarily obligate a State to admit someone for permanent settlement, they do generally prevent them from returning the individual to the country where they would be endangered. In some cases, the States have a legal obligation (i.e., under the Refugee Convention and Convention Against Torture); in other cases, the practical barriers to repatriation – particularly to conflict areas or to countries without stable governments –

are formidable. When States dismiss all migration as unauthorised movements, without giving recognition that there may be valid grounds to permit certain migrants to remain within their territory, the credibility of their immigration policies come under attack. At the same time, policies that make it harder for asylum seekers to exit their countries or to reach their destination merely shifts responsibility from one State to another, or to the broader international community, without solving the basic problem of refugee protection.

It is essential that governments have multiple tools to deal with complex flows of people. If the asylum system is the only avenue to provide protection, it will appear to be flawed since many, if not most, of those who cannot return home fall outside of the 1951 Refugee Convention definition of persecution. Even more so, if asylum is the only avenue of entry for those seeking economic opportunities, ensuring the credibility of the asylum system is made all the more difficult. Smugglers and others will take advantage of any weaknesses in the asylum system in order to ensure that their clients reach the intended destination. In the meantime, if States find it difficult to keep up with the asylum applications, those with bona fide claims to refugee status may find themselves waiting an inordinately long time to gain recognition.

Having said that States need multiple tools in their immigration and asylum systems, it is also important to emphasise that there are no easy or quick fixes in managing migration or protecting refugees. Those who argue that increasing access to legal immigration will solve unauthorised migration are bound to be disappointed. Only if borders were totally open, and governments placed no numerical or qualitative barriers (e.g., public health, welfare or criminal grounds) to entry, would legal immigration substitute perfectly for unauthorised movements. Since it is unlikely that States will take such action, there will continue to be would-be migrants who do not fit the criteria for entry and attempt to by-pass lawful immigration procedures.

Those who recommend ratcheting up control mechanisms should equally recognise that these policies and practices often have unintended consequences that make migration management all the more difficult. The U.S. experience in border control is a case in point. Since 1994, the United States has increased the presence of the Border Patrol and taken other steps to make it more difficult for migrants to cross without authorisation into urban areas along the border. The new policies shifted crossings into more difficult terrain, resulted in multiple apprehensions before a successful crossing and inadvertently increased reliance on professional smuggling operations. All of these raised the costs but did not stop unauthorised migration. An unintended consequence has been that unauthorised migrants remain for longer periods in the United States. Another unintended consequence has been an increase in deaths along the border as migrants continue to try to cross but face much more difficult terrain as well as smugglers willing to leave them behind if apprehension of the whole group is at risk.

What are the elements of a comprehensive approach to migration that will most effectively promote refugee protection? And, what role can UNHCR most effectively take in this regard? Four aspects must be considered: ameliorating the causes of unauthorised migration, with particular focus on forced movements; strengthening mechanisms that enhance protection while minimising abuses; managing all forms of

migration flows and doing so in a manner that involves source, transit and receiving countries; and resolving the longer-term status of migrants.

### *Ameliorating the causes of unauthorised migration*

Ultimately, reducing the push and pull factors is the most sensible way to address increasing migration pressures. Peace, respect for human rights, and reduction in income differentials between rich and poor countries are the best long-term solutions to uncontrolled migration. Given the large number of people fleeing internal conflict and insecurity, and as Sadako Ogata said before the Carnegie Commission on Preventing Deadly Conflict, UNHCR “has an obvious interest in the prevention or mitigation of deadly conflict. Not only are we in direct contact with the suffering of those who manage to escape persecution and mass violence, but we also witness the shrinking willingness to offer them sanctuary.”

The role that UNHCR can play regarding prevention is a limited but important one. Clearly, UNHCR has not the resources nor the capacity to prevent conflict, ensure human rights or promote economic security. The agency can, however, 1) advocate alleviation of the causes of forced migration; 2) stimulate early warning of and response to refugee emergencies to prevent displacements and mitigate longer-term impacts; 3) utilise humanitarian assistance in a manner that reduces tensions, stabilises communities, limits the potential for its diversion to military purposes, and reaches those in need without unnecessarily requiring their movement towards the aid; and 4) encourage safe and orderly repatriation in a manner that supports peace and reconciliation. At the same time, UNHCR must continue to reiterate that prevention does *not* mean preventing people from seeking safety and protection abroad.

### *Strengthening mechanisms that promote protection*

UNHCR generally defines its protection role in relationship to the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol. The core, fundamental precepts of protection are: non-refoulement, including non-rejection of asylum seekers at the frontier; admission to safety; access to fair and efficient procedures for determination of refugee status; basic standards of treatment that accord with human dignity and integrity; and appropriate lasting solutions. Key to ensuring such protection is UNHCR’s unhindered access to asylum-seekers and refugees to monitor their situation and treatment.

Reinforcing these protection principles is one of UNHCR’s principal responsibilities. Given that numerous countries have not yet signed the refugee Convention nor implemented policies and procedures to protect refugees, UNHCR should continue to encourage signatories. UNHCR should also continue to work with States to develop and implement policies and procedures that are consistent with the protection precepts described above. Further, UNHCR should continue to encourage the broadest application of the Convention , particularly to include persecution by non-State actors

and in collapsed States with no functioning government and persecution based on gender – two areas where State practices vary greatly.

Even with full accordance to the 1951 Convention, however, gaps in international protection will be seen. The Convention definition is narrow in scope, referencing a well-founded fear of persecution on specific grounds. Persons who flee generalised conflict, violence and abuses do not necessarily fit the 1951 Convention definition. Although the OAU Convention and the Cartagena Declaration widen the scope to include those fleeing such situations, and UNHCR considers them to be of concern, States do not consistently apply the broader criteria.

Moreover, the Convention refers only to those who are already out of their countries of origin. It does not pertain to those who are still at home, even if they are subject to the type of conditions that would make them refugees if they left. In effect, the refugee system presents a fundamental dilemma for UNHCR and States concerned with protection: only those who manage to flee are covered by the refugee Convention, but flight often requires refugees to break immigration laws and to subject themselves to danger and sometimes exploitation at the hands of smugglers and traffickers.

A challenge for UNHCR is to broaden the scope of refugee protection to fill these gaps, and to do so in a manner that ensures the continued integrity of asylum while protecting the broadened system from potential abuse. A number of different approaches could be considered: Encourage adoption of forms of protection that complement asylum, with these complementary protection regimes focusing in particular on persons who flee generalised conflict and violence.

UNHCR should work with States to set out minimum standards of treatment for those granted the complementary status, encouraging States to afford similar protections to those spelled out in the Convention. The principal obligation of States should be non-return of migrants to conditions in which they would be endangered. If such conditions continue for some time, however, States should be encouraged to permit those granted the complementary status to remain permanently.

Complementary statuses serve not only to protect the large number of asylum seekers who flee conflict rather than persecution, they also facilitate both the appearance and reality of migration control. At present, it appears as if States have less control over their asylum systems than is the case. Although a sometimes small minority of applicants are accorded asylum, a much larger number are permitted to remain on other humanitarian grounds. Because the policies are framed solely as asylum policies, however, these other forms of relief tend to be disregarded. They do have value, apart from their humanitarian one, in allowing States to keep track of persons within their territory, determine what rights accrue to specific statuses, and require return if conditions permit.

Encourage development of mechanisms for in-country protection to minimise the negative effects of such migration controls as visa requirements and carrier sanctions. In particular, UNHCR should explore the feasibility of establishing procedures through which would-be asylum seekers can request protection prior to departure. Several

options should be considered: creating special “refugee” visas that embassies and consulates would grant to persons who do not qualify for regular visas but who can demonstrate that they are or will be endangered if they do not leave their home countries; establishing UNHCR offices in countries of origin where would-be asylum seekers could request protection, with the understanding that they would be evacuated to countries willing and able to receive them; and broadening the responsibilities of pre-inspection personnel and other immigration officials assigned to overseas locations so that they can assess the asylum claims of persons seeking to board aircraft and other carriers without proper documentation.

These various mechanisms are largely untried, and they certainly are not substitutes for a functioning asylum system. The experience with in-country processing for refugee resettlement has been mixed, to say the least, for both refugee protection and migration management. For example, the Orderly Departure Program (ODP) from Vietnam and Cuba at least partially stemmed large-scale departures in unseaworthy boats, saving lives and providing a safer avenue for departure. The departures were stemmed, however, because both governments agreed to halt the movements. Bona fide refugees who were afraid to apply for orderly departure, thereby making themselves known to the government, had even more limited options for flight. In Haiti, in particular, the presence of in-country processing was used by the United States as a reason to return interdicted boats directly to Haiti without affording passengers the opportunity to apply for asylum. From the immigration management vantage, ODP arrangements could hinder the capacity of the receiving country to set its own priorities for admission. In the Vietnamese ODP, for example, the U.S. established lists of persons who sought entry and met minimal criteria for admission, and Vietnam set lists of those it would grant exit permission. Generally, only those who were on both lists were able to leave, but these individuals may not have been as high priorities as were other applicants. Despite these problems, and the necessity for UNHCR continually to reinforce that in-country procedures cannot be a substitute for asylum, they hold one overriding advantage: they provide opportunities for victims of persecution and other abuses to find safety without resort to subterfuge and further violation of their rights.

Explore the feasibility of establishing regional protection mechanisms. Regional protection holds promise for helping States balance twin interests: providing protection to refugees without providing admission to persons who do not otherwise qualify for entry. As discussed above, international migration generally requires both push and pull factors. In the case of refugees seeking entry into the highly developed countries of North America and Europe, the push may be persecution or conflict, but the pull is generally better economic opportunities. Regional protection – that is, protection in neighbouring or nearby countries with similar economies to those of the country of origin – offers safety without the potential magnet for unauthorised migration presented by admission to wealthier nations. It also presumably facilitates repatriation when conditions permit because the economic advantages of remaining outside of one’s country are reduced.

Regional protection is hardly a new concept. The vast majority of refugees have always found asylum within their regions of origin, generally in neighbouring countries. What



is new is the interest of European and North American States in redirecting movements towards regional centres.

This approach was pioneered in Southeast Asia, when a processing centre was established in Bataan, the Philippines, to receive refugees admitted to Thailand, Malaysia, Singapore, and Hong Kong for temporary asylum before they were resettled elsewhere. Because the numbers seeking entry outpaced the resettlement capacity, the processing centre relieved the pressure on first asylum countries, keeping the door opened for protection, and allowed the resettlement countries to examine applications carefully to determine who was admissible. The processing centre effectively served both protection and migration management ends.

A different form of regional protection was used in 1994 to address an increasing number of boat departures from Haiti. In this case, regional protection was offered as an alternative to admission into the United States. Fearing that access to U.S. territory would serve as a magnet to further flight, the U.S. instead offered safe haven at Guantanamo Naval Base and, through a regional agreement, in Panama and the Turks and Caico Islands – but emphasised that there would be no admission to the U.S. The implementation of this policy led to an abrupt decline in boat departures, but not before about 40,000 Haitians afforded themselves of this regional protection. The need for safe haven lessened considerably when international pressure and the threat of military intervention led to a restoration of the elected government and the presence of peacekeeping forces. The vast majority of those offered protection chose to return home when conditions permitted. A small number were permitted entry into the U.S. to pursue asylum claims or to seek medical attention.

A third example of regional protection, supplemented by humanitarian evacuation to preserve first asylum, occurred during the Kosovo crisis. By far the largest number of refugees from Kosovo remained in the neighbouring countries of Albania and the former Yugoslav Republic of Macedonia. However, to ensure that first asylum was maintained, and in recognition of Macedonia's concern about its own security, other States agreed to accept some refugees for temporary protection or resettlement. A regional approach was hence sustained by international responsibility-sharing.

This brief review of the experience with regional protection shows it has utility, but it reinforces that regional protection must be accompanied by mechanisms for broader responsibility sharing – in both the costs of maintaining regional protection as well as the resettlement or relocation of at least a portion of those requiring protection.

### *Migration management regime*

While UNHCR's principal focus is on forced migrants who require international protection, it is in UNHCR's interest that a more fully developed migration regime evolve. At present, State obligations towards refugees are spelled out more clearly than are their responsibilities towards other migrants. For a variety of reasons, governments, advocates on behalf of migrants and the migrants themselves have an interest in defining migratory patterns, regardless of cause, as refugee movements. There are

policies for handling asylum claims even in countries that routinely deny that they have immigration and, hence, the need for immigration policies. If found to be a refugee, the migrant has far more rights than accrue to others who move across international boundaries. This works two ways. In some cases, the UNHCR's very presence makes it desirable to label migrants as refugees since some of the responsibility for assisting and protecting the individuals coming through the asylum/refugee system can be shared. In other cases, States refuse to label any migrants as refugees, fearing that they will then be asked to admit them permanently.

Either of these blurring of distinctions between voluntary migrants and forced migrants needing protection makes it difficult for UNHCR to argue for special attention to the populations within its mandate (refugees and those in refugee-like situations). UNHCR could contribute towards solving this problem in two ways: by encouraging adoption of more comprehensive and transparent immigration policies; and by encouraging and supporting the establishment of a global migration regime to address movements of people who do not fit within UNHCR's mandate.

As discussed above, a fuller range of immigration policies will not necessarily reduce pressures on the asylum systems of receiving countries. Such countries as the United States, Canada and Australia, whose categories for admission of immigrants and temporary workers are well developed and broadly conceived, nevertheless also see significant applications for asylum from individuals with weak claims. When countries have comprehensive and transparent immigration systems, though, the ability to make distinctions among different applicants for admission or relief from removal is enhanced. So too is the ability to place migrants in appropriate categories that reflect their reasons for migrating. And, in the final analysis, decisions to remove those who fit no category – family, employment or humanitarian – are more readily justified. In turn, if UNHCR has greater confidence that all avenues of protection and admission have been explored, the organisation can more readily support such removals.

The development of a global migration regime would be useful as well. Such a regime would include international agreements to govern movements of people and mechanisms for determining the responsibilities of States towards different categories of migrants. Through negotiations, such a regime would likely take into account the interests of all parties to migration, including source, transit and receiving countries as well as the migrants themselves. The international community is at some distance, however, from having such agreements. The various regional fora for discussion of migration issues, such as the Puebla Group discussed above, are useful vehicles for moving along debate about the rights and responsibilities of migrants and States. UNHCR's active participation in these regional mechanisms, along with the International Organization for Migration, which is serving as secretariat to a number of them, is essential not only to ensuring that refugee issues are properly addressed but to encourage a more comprehensive approach to migration management.

## *Resolving the status of migrants*

States increasingly are turning towards temporary mechanisms to address migration flows. The growing interest in temporary protection policies, along with the increased use even in traditional immigration countries of temporary work provisions, lead to many situations in which the longer-term status of migrants, including forced ones, remains in doubt for sometimes lengthy periods. There are two likely resolutions to these situations: return of migrants to their home countries or more permanent integration into their new communities. Third country resettlement is a less frequent, though often important, alternative for migrants in some type of temporary status.

At present, mechanisms for determining which solution is appropriate are sorely lacking. States have no agreed upon criteria for determining whether conditions justify return, particularly in the aftermath of conflict. Even in the case of voluntary migration, States differ as to the extent that they should take such considerations as brain drain into account in requiring return. Similarly, there is little agreement as to the circumstances under which local integration should be permitted or encouraged. Should temporary migrants who remain outside of their country for a specific period (let us say five years), be permitted to adjust to a permanent status because they have established roots and developed equities in the destination country? Should there be different criteria for those granted temporary protection versus those with temporary work permits? Should there be assistance towards return and/or integration? These are all questions that now beg adequate answers.

Resolving status is particularly important if temporary protection mechanisms are to work towards giving refuge to the largest number of persons needing such protection. If governments fear that temporary protection is merely and always a way station towards permanent admission, they may be less likely to be generous in its grant. On the other hand, if governments persist in arguing that all of those granted temporary protection should return regardless of how long it takes for home country conditions to change, they are fighting against the realities of the equities that long-term migrants develop over time. More transparent policies that provide criteria for determining when and how return or adjustment to permanent status will occur will help to resolve some of the most difficult dilemmas now seen in temporary protection policies.

## **Conclusion**

While presenting special issues and challenges, not the least of which is the need for protection, refugee movements cannot be addressed in isolation from broader migration trends. This paper has attempted to set out approaches to migration management that take into account the protection needs of refugees and others of humanitarian concern to the UNHCR. Rather than seeing protection as being at odds with migration management, the paper argues that migration management cannot work without appropriate mechanisms to protect not only refugees under the 1951 Convention but also others who would be endangered because of conflict and violence in their home countries. Similarly, asylum policies will not function properly in the absence of more

comprehensive migration policies that permit States to distinguish among different categories of migrants and find solutions appropriate to their specific circumstances.