



UNHCR

United Nations
High Commissioner
for Refugees

THE STATE OF THE WORLD'S REFUGEES

A Humanitarian Agenda



5. The Asylum Dilemma

Since the middle of the 1980s, more than five million people have submitted requests for refugee status in Western Europe, North America, Japan and Australasia. They have not received a particularly warm welcome. Confronted with growing social problems at home, and claiming that many of these asylum seekers are actually economic migrants, the governments of the industrialized states have introduced an array of different measures intended to prevent or deter people from seeking refuge on their territory.

Superficially, these measures appear to be having their intended effect; the total number of asylum applications submitted in the wealthier regions of the world has diminished quite significantly in the past few years, even though the global scale of forced displacement has continued to grow. But this outcome has been achieved at considerable cost: a decline in the standard of protection available to refugees; the diversion of the asylum flow to other parts of the world; and a substantial increase in the scale of human trafficking.

There is an evident tension between the right of people to seek and to enjoy asylum in another country and the right of states to regulate the arrival and admission of foreign nationals. While that tension is not easily resolved, it could at least be mitigated. This chapter identifies some of the ways in which states and other actors could address the asylum dilemma, focusing particularly on the notion of temporary protection. The analysis stresses the need for initiatives in this area to be consistent with humanitarian standards. The human rights of asylum seekers, it argues, must always be respected, whatever the validity of their claim to refugee status.

ASYLUM FLOWS: RECENT PATTERNS AND TRENDS

The term 'asylum seeker' refers to a person who requests refugee status in another state, normally on the grounds that they have a well-founded fear of persecution in their country of origin, or because their life and liberty is threatened by armed conflict and violence. The countries which receive the largest number of individual asylum applications are to be found primarily in the more affluent regions of the world: Western Europe and North America. But many states in Central and Eastern Europe, South-East Asia, Latin America, the Middle East and Africa are also in the process of establishing structures and procedures that will allow them to examine the asylum applications of people who arrive individually or in small numbers.

While the terms are frequently used synonymously, 'arrivals' and 'applications' should actually be differentiated. In many situations, people submit claims to refugee status in countries where they are already resident, whether as a student, businessperson, tourist, migrant worker or illegal

immigrant. The total number of asylum applications received by any country in a given year is thus invariably larger than the number of people who request refugee status upon arrival there.

The category of 'asylum seeker' is a somewhat ambiguous one, in the sense that it includes some people who will ultimately be recognized as refugees, some whose claim will be rejected, and others who will be given some kind of residence permit, even if they are not formally granted refugee status. Until their claim has been examined all asylum seekers must be considered as 'presumptive refugees'. They are consequently protected by the principle of non-refoulement, which forbids states from returning people to countries where they might be at risk of persecution. Those asylum seekers who have passed through a refugee status determination procedure and whose claims have been definitively rejected, however, become subject to the normal immigration regulations of the state concerned.

The category of asylum seeker is also ambiguous in the sense that people who may automatically be considered as refugees if they moved to a neighbouring state might be regarded as asylum seekers when they travel further afield and seek admission to a country with individual asylum procedures. Thus the 750,000 Liberians who have crossed the border into Côte d'Ivoire and Guinea have all been granted refugee status on a *prima facie* basis. But of the 20,347 Liberians who applied for asylum in 15 Western European states between 1991 and 1995, only 214 were accorded refugee status.¹

In some situations, changes in official admissions policy may convert what was once considered to be a refugee flow into a movement of asylum seekers. Throughout the first half of the 1980s, for example, the countries of South-East Asia automatically granted refugee status to the Vietnamese boat people arriving on their territory. In the second half of the decade, however, those countries introduced 'screening' procedures, requiring new Vietnamese arrivals to prove that they had a well-founded fear of persecution in their homeland.

Asylum applications: some facts and figures

As mentioned earlier, between 1985 and 1995, more than five million asylum applications were registered in the industrialized states. At the end of this period, at least 900,000 of them still had pending claims to refugee status, with the USA accounting for about half of the cases awaiting adjudication. It seems doubtful that such high figures will be maintained in the future, however, as the total number of asylum applications submitted in the industrialized states has dropped significantly since 1992, when it reached a peak of over 800,000.²

In order to gain a better understanding of recent asylum trends, it is necessary to examine the figures on a regional basis (see Figures [5.1](#), [5.2](#), [5.3](#) and [5.4](#)). Turning first to Western Europe, the number of asylum applications grew from under 170,000 in 1985 to more than 690,000 in 1992. The numbers have steadily declined since 1993, however, reaching about 250,000 in 1996. While the number of applications submitted in Germany has declined from its peak in 1992, when some 438,000 claims were lodged, the country continues to receive about half of all the asylum applications in Western Europe.

As far as North America is concerned, the number of asylum applications in the region shows a generally upward trend: from 28,000 in 1985 to 173,000 in 1995. The USA accounted for most of this number, with asylum requests going up from 20,000 in 1985 to nearly 148,000 in 1995. The trend is different again in Asia and Oceania. After peaking in 1991 at 17,000, the number of asylum applications submitted in Australia has since stabilized at around 4,000 or 5,000 a year. New Zealand received just 343 asylum applications in 1993, but this figure had increased to 1,310 by 1996. Of all the world's major industrialized states, Japan deals with the smallest number of asylum applications: around 150 in 1996.

Recognition rates

The notion of the 'recognition rate' refers to the proportion of asylum seekers who are actually granted refugee status. Between 1991 and 1995, 2.4 million applications for asylum were made in Europe. Of this number, some 212,000 – around 11 per cent of the cases decided – were successful. An almost identical proportion were allowed to remain for humanitarian reasons. In all, therefore, just over 20 per cent of asylum seekers in Europe were granted some form of protection between 1991 and 1995. In North America, the recognition rate has been much higher than the European average. It was about 70 per cent in Canada in 1994 and 1995 and just over 20 per cent in the USA in 1995.

The relatively small proportion of asylum seekers who are granted either refugee status or humanitarian status – particularly in Europe – has given rise to conflicting interpretations (see [Figure 5.5](#)). For those who wish to impose stricter immigration controls, the low and declining recognition rate in the industrialized states is evidence of large-scale abuse of the asylum system. According to this belief, the majority of asylum applications are fraudulent, submitted by people who wish to migrate for economic reasons but who have no other means of gaining admission to these states. For many humanitarian organizations and analysts, however, the current recognition rates are a reflection of the increasingly restrictive refugee and immigration policies pursued by the world's most affluent societies.

As suggested already, asylum seekers are not found exclusively in the industrialized states. Throughout most of the world, UNHCR and the national authorities have to respond to the arrival of individuals or small groups of people from other countries who want to claim refugee status: Angolans in Brazil, Afghans in India, Iranians in Thailand and Iraqis in Jordan, to give just a few examples.

With the dismantling of the apartheid regime, South Africa has become one of the most important destinations for asylum seekers amongst the low and middle-income countries. In early 1997, between 750 and 1,000 people were submitting claims for refugee status in the country each month, the largest numbers from Argentina, India, Nigeria, Somalia, Pakistan and Senegal. By May 1997, the country had a backlog of around 13,000 applications waiting to be processed. Of the 10,600 claims examined during the previous three years, only six had been granted full refugee status, while an additional 3,300 had been granted temporary residence permits.³

STATE RESPONSES TO THE ASYLUM ISSUE

In the 1950s and 1960s, relatively few asylum seekers and refugees from the low-income countries made their way to the world's wealthier states. The only large-scale movements into Western Europe, for example, took place as a result of the Hungarian uprising in 1956 and the Czechoslovak crisis of 1968. As a result of the post-war economic boom, moreover, foreign labour was in high demand, allowing large numbers of people from poorer countries to move to the wealthier states.

While much larger numbers of non-European refugees arrived in the industrialized states in the second half of the 1970s, primarily from countries in Indo-China and South America, most of them were admitted by means of organized resettlement programmes. It was not until the early 1980s that asylum seekers from countries in Africa, Asia, the Middle East and Central America began to arrive independently and in significant numbers. At around the same time, growing numbers of asylum seekers from the communist countries of Central and Eastern Europe also began to arrive in the west. Confronted with these flows, by the middle of the 1980s, almost all of the

industrialized states expressed the opinion that they were experiencing an 'asylum crisis', often overlooking the fact that the real asylum crisis was to be found in the world's poorer regions, where the refugee population was increasing at an unprecedented rate.

The migratory context

To understand why the industrialized states reacted with such alarm, the broader migratory context has to be taken into account. The increased scale of the asylum flow which began in the late 1970s came just at a time when many of these countries were taking steps to curtail immigration. The long period of economic growth which followed the second world war had come to an end. As a result, the demand for unskilled and migrant workers was falling, while domestic unemployment was growing. It was also becoming increasingly clear at this time that those migrants who had been recruited from other parts of the world – even those recruited on a temporary basis such as the Turkish guest-workers in Germany – were unlikely to go home. Indeed, they were being joined by their family members.

The situation in traditional settlement countries such as the USA, Canada and Australia was somewhat different, in the sense that these states continued to admit large numbers of foreign nationals, both through regular immigration programmes and by means of special refugee and humanitarian quotas. Even so, such states were also perturbed by the growing number of people who were arriving on their territory in a spontaneous and independent manner, and who were able to jump the usual immigration queue by submitting claims to refugee status.

If the opportunities for immigration were diminishing in the 1980s, then the pressures to migrate from the world's poorer countries were mounting. In many such states, economic stagnation or decline went hand in hand with political instability, social violence and armed conflict. At the same time, the rapid expansion of the global communications network, the declining cost of international air transport and the presence of diaspora communities in the wealthier states gave a growing number of people both an incentive and the means to leave their own country and to seek asylum in another part of the world.

In the circumstances described above, it was becoming increasingly difficult to make a clear distinction between those asylum seekers who were fleeing from threats to their life and liberty and those who wanted to escape the poverty of their homeland. By the second half of the 1980s, asylum seekers had become increasingly confused with other immigrants in the official and public mind – a situation that was assiduously exploited by governments and political parties wishing to increase their electoral support.

The fear of mass immigration was reinforced in the final years of the decade, when the collapse of communism led to a belief that massive numbers of people would move out of the former Soviet bloc. In the event, such fears proved to be unfounded, due in large part to the lack of a westward migratory tradition in many of the communist states and the consequent absence of the social networks which made it relatively easy for many Africans, Asians and Central Americans to take up residence in the industrialized states. The importance of such networks was underlined after 1992, when large numbers of asylum seekers from former Yugoslavia began to arrive in Western Europe. It was no coincidence that many made their way to Germany, a country which in previous years had employed substantial numbers of Yugoslav migrant workers.

The world's more prosperous countries were thus left with a substantial problem on their hands. Throughout the 1980s, these states had struggled – and largely failed – to keep pace with the growing number of asylum applications which they received. The cost of processing these applications, and the sums of money involved in providing housing, social services and welfare benefits to asylum seekers, also became a growing concern to many governments. According to one estimate, the major industrialized states spent around \$7 billion on these functions in 1991

alone.⁴ At a time of budgetary austerity, the desire of governments to reduce such expenditure competed very strongly with their commitment to the principles of refugee protection.

RESTRICTIVE ASYLUM PRACTICES

Since the beginning of the 1980s, the industrialized states have individually and collectively introduced a wide range of measures relating to the arrival, admission and entitlements of people who wish to claim refugee status on their territory.

In an attempt to limit the number of asylum seekers at source, the governments of the industrialized states have extended visa requirements to the nationals of many countries that produce – or which threaten to produce – significant numbers of asylum seekers and irregular migrants. Sanctions, usually in the form of fines, levied on a *per capita* basis, have also been imposed upon airlines and shipping companies responsible for the arrival of passengers who lack the necessary papers (see [Box 5.1](#)). In an associated initiative, stringent pre-boarding documentation checks have been introduced in countries of origin and transit, focusing again on travellers from countries that produce significant numbers of asylum seekers. At the same time, asylum seekers leaving their own country by boat (Cubans, Haitians and Albanians being the most prominent examples) have been interdicted at sea and returned to their country of origin, or held on another territory until their status has been determined.

A further battery of measures has been introduced in relation to travellers who have managed to reach their intended destination. In some cases, new arrivals have been prevented from disembarking and have been sent straight back to their own or another country. Certain states have established detention centres at international airports, erroneously claiming that people who are held in such facilities have never been admitted to their territory. More commonly, governments have introduced fast-track asylum procedures with limited or non-existent rights of appeal, intended to facilitate the speedy removal of people who are deemed to have ‘fraudulent’ or ‘manifestly unfounded’ claims to refugee status.

States have devised the notion of ‘safe countries of origin’ in order to assist with the identification of asylum seekers who have manifestly unfounded claims and to channel them into accelerated asylum procedures. Acting again on both an individual and collective basis, governments in Western Europe have determined that the citizens of certain countries are unlikely to have a genuine claim to refugee status because persecution is rare in those states.

This is not to be confused with the ‘safe third country’ concept, whereby a state assumes the right to refuse admission to an asylum seeker if he or she has arrived via a country where their claim to refugee status might have been submitted.⁵ An associated initiative is to be seen in the introduction of ‘readmission agreements’.⁶ Under the terms of these agreements, asylum seekers can be deported from their country of final destination to their preceding country of transit, often in return for some form of financial assistance. Such accords do not generally include a commitment that the merits of an asylum seeker’s claim will be considered upon readmission.

Germany is a prominent protagonist of this approach, having concluded readmission agreements with Bulgaria and Romania in 1992, with Poland in 1993 and with the Czech Republic in 1994. Now that Germany has declared all of its neighbours to be either safe countries of origin or safe third countries, it has effectively renounced responsibility for considering the asylum request of any person arriving in the country by land without a valid visa.

Other measures have been introduced in relation to people who have already entered the asylum procedure, often with the effect of discouraging them from pursuing their claim. Practices such as the withdrawal of social welfare and legal aid entitlements, the introduction of restrictions on the right to work and education, and the protracted detention or imprisonment of asylum seekers all fall into this category.

Finally, the last decade has witnessed a growing tendency for governments (and even the courts) to interpret the criteria for refugee status in an increasingly restrictive manner. In some instances, it has been argued that asylum seekers should not be granted refugee status on the grounds that they had an 'internal flight alternative'. In other words, rather than leaving their homeland in order to seek asylum abroad, they should have sought safety in another part of their own country. In other instances, asylum seekers have been denied refugee status on the grounds that only states (rather than non-state actors such as warlords, rebel movements and unofficial militias) can be agents of persecution.

Most commonly of all, the industrialized countries have tended to insist that asylum seekers must demonstrate that they have been singled out for persecution if they are to be granted refugee status, and have used this principle to deny recognition to claimants originating from countries that are affected by more generalized forms of violence. As UNHCR has pointed out before, the drafters of the 1951 UN Refugee Convention did not intend the refugee definition to be interpreted in this restricted manner.⁷

THE HIDDEN COSTS OF CONTROL

As the statistics presented earlier suggest, the restrictive measures introduced by the industrialized states over the past decade appear to have had their intended effect. During that period, the problem of forced displacement has generally grown in scale and the number of international migrants has increased. And yet the world's wealthier states seem to have succeeded in limiting – and in many cases reducing – the number of asylum seekers arriving on their territory.

As a later part of this section will argue, while superficially successful, the measures introduced by governments in the more affluent states have had a number of negative consequences. Before going on to elaborate this critique, it is first necessary to make some general observations about the nature of the asylum dilemma.

First, as UNHCR has pointed out elsewhere, "the starting point for any serious approach to this issue must be that states and societies have a legitimate interest in regulating the movement of people into their territory."⁸ The crux of the matter, therefore, is not whether governments have a right to impose controls on the arrival and admission of foreign nationals, but the extent to which those controls are consistent with international refugee law and humanitarian norms.

Second, it would be unfair to give the impression that the industrialized states are uniformly hostile to asylum seekers and refugees, and equally inaccurate to suggest that the institution of asylum has been irrevocably undermined in those countries. Canada, for example, has pursued a notably progressive refugee policy in recent years, as manifested in the country's recognition of claims to persecution on the basis of gender (see [Box 5.2](#)). As explained in Chapter Two, the Nordic countries and Switzerland have played a leading role in the resettlement of refugees with special needs and who, for one reason or another, cannot remain safely in their first country of asylum. And while Germany's decision to insist on the early return of Bosnian refugees has been criticized by UNHCR and other organizations, that country's generosity in providing temporary

protection to well over 300,000 people from former Yugoslavia (far more than any other country) must be recognized.

More generally, it should be noted, large numbers of people continue to find some kind of asylum in the industrialized states. Indeed, the number of asylum seekers who were granted refugee status or some other form of protection in 1996 – around 140,000 – is very similar to the figure recorded in 1985, although the proportion of applicants being granted asylum has evidently declined.

Third, a critique of recent state policies in the area of asylum policy should not be read as an endorsement of the status quo ante. By the late 1980s, the asylum systems of the industrialized countries were evidently in need of reform. Considerable numbers of people without any need for international protection were clearly seeking entry to such states by submitting claims for refugee status. Existing structures and procedures were failing to cope with the demands made upon them. Abuses were certainly taking place. In Western Europe, for example, irregular migrants were able to go ‘forum shopping’ or ‘asylum shopping’, phrases used to describe the actions of people who moved from country to country, submitting successive (and in some cases simultaneous) claims to refugee status. It had also become evident by this time that only a small proportion of the applicants whose claims had been fairly rejected actually went back to their country of origin. Public confidence in the asylum procedure was consequently very low, a situation which did no favours at all for either asylum seekers or refugees. Both were regarded with suspicion.

Threatening human security

While the preceding considerations are sometimes overlooked by participants in the asylum debate, they do not detract from the fact that the restrictive measures introduced by the world’s wealthier countries have had a number of negative consequences for the protection of refugees. In certain respects, moreover, in attempting to limit the number of asylum seekers arriving and remaining on their territory, these states have actually damaged their own interests.

First and foremost, the actions of the industrialized states have jeopardized the security of actual and potential asylum seekers. Visas, carrier sanctions and pre-boarding checks are blunt instruments. As well as impeding the movement of illegal and irregular migrants, they have almost certainly obstructed the flight of people who have a genuine fear of persecution in their own country and who are unable or unlikely to obtain refuge in a neighbouring state.

The measures introduced to impede movement after departure and to obstruct admission to the wealthier countries have also had negative effects. One disturbing feature of the current scenario is that of ‘refugees in orbit’ – asylum seekers who are shuttled from one country to another, trying to find a state which will assume responsibility for examining their claim to refugee status. It had been claimed that the safe third country notion would put a stop to this problem by making a single state – the first ‘safe country’ reached by the asylum seeker – responsible for examining their application. The evidence, however, suggests that the recent panoply of restrictive measures has not only failed to eliminate this relatively longstanding problem but has also created a new one in the form of ‘chain deportations’: the repeated removal of an asylum seeker from one state to another, on the grounds that he or she could have submitted a claim to refugee status in the previous country of transit.

Such incidents evidently add to the physical and psychological strain experienced by asylum seekers and place them at risk of being deported to their country of origin or to another country where they might be at risk. At the same time, the chain deportation phenomenon increases the total amount of time, effort and resources which states are obliged to expend on their asylum systems – precisely the opposite intention of the countries concerned.⁹

While one of the usual criteria for deeming a third country 'safe' is its accession to the 1951 UN Refugee Convention, it is also clear that the countries to which asylum seekers have been deported are not often as well equipped to consider claims to refugee status as those from which they have been removed. As the European Council on Refugees and Exiles has pointed out, "the complex web of readmission agreements is currently transferring much of the responsibility for assisting persons in need of protection to Central, Eastern and Southern Europe, where mechanisms of refugee protection and assistance are often less well developed."¹⁰ In May 1997, for example, the Open Society Institute reported that Lithuania and Belarus were negotiating a readmission agreement which would enable the return of asylum seekers from the former to the latter state, even though Belarus was not a signatory to the international refugee conventions.¹¹

Even if they are not prevented from leaving their homeland, and even if they are not turned back when they seek admission to their intended country of refuge, asylum seekers continue to experience unnecessarily high levels of insecurity. Much of this insecurity is of a psychological nature, derived from the length of time it takes for states to examine an asylum request. In Western Europe, for example, the procedure takes an average of three years, during which time the asylum seeker is obliged to live in a legal and social limbo.¹²

Increasingly, however, the insecurity experienced by asylum applicants is also assuming physical and material forms. As indicated earlier, even if they are not detained or imprisoned with common criminals – as too many asylum seekers are – then they are liable to find that their access to basic needs such as shelter, food and medical care is severely restricted. In the UK, for example, the withdrawal of welfare entitlements in 1996 caused widespread public disquiet and was challenged in the courts. In the course of these legal proceedings, one judge stated: "I find it impossible to believe that parliament intended that an asylum seeker, who was lawfully here and could not lawfully be removed from the country, should be left destitute, starving and at risk of grave illness and even death because he could find no-one to provide him with the bare necessities of life."¹³

Displacing the problem

The restrictive measures introduced by the world's more prosperous states have not resolved the asylum problem, but have merely diverted it. Initially, such diversions tended to take place from one of these countries to another. Thus in 1994, when the introduction of new asylum regulations caused a 60 per cent drop in the number of applications submitted in Germany, the number submitted in neighbouring Netherlands increased by around 50 per cent.

Now that all of the industrialized states have introduced stricter refugee policies, the asylum problem is resurfacing in other parts of the world. On one hand, as indicated earlier, UNHCR offices in low and middle-income countries which are readily accessible by air report a steady increase in the number of asylum seekers arriving from other continents. On the other hand, the combination of tight admission controls and readmission agreements has led to a substantial increase in the number of asylum seekers who have gone to – and who are frequently stranded in – the countries of the former Soviet bloc.

According to some estimates, there are now around 700,000 illegal and transit migrants in the Commonwealth of Independent States (CIS), of whom 500,000 are to be found in the Russian Federation alone. Of this number, around 180,000 are believed to be living in the Moscow area. Only a small proportion of this number, however, have approached UNHCR with a request for refugee status (see [Box 5.3](#)).

Encouragingly, some CIS countries and, more recently, the Baltic states of Estonia and Lithuania, have ratified the 1951 UN Refugee Convention and have passed national refugee legislation. But the institutional capacity to implement this legislation is underdeveloped and frequently imperfect.

As a result, asylum-seekers from outside the CIS region often lack protection, have no legal status, do not benefit from social welfare services and may not even have access to refugee status determination procedures.

The growth of human trafficking

There is now a growing consensus that the restrictive asylum practices introduced by many of the industrialized states have converted what was a relatively visible and quantifiable flow of asylum seekers into a covert movement of irregular migrants that is even more difficult for states to count and control. There is also widespread agreement that such irregular movements are increasingly arranged and organized by professional traffickers.¹⁴ These developments are intimately related to the geographical diversion discussed in the preceding section; it is no coincidence that the routes which traffickers use most frequently include those states in which large numbers of asylum seekers and other migrants find themselves stranded.

Traffickers are active in most parts of the world, primarily helping people to move to Western Europe, North America and Japan. Migrants from Asia, Africa and the Middle East are generally moved by ship, plane and truck to relatively 'soft' entry points in Western Europe: from Morocco into Spain, from Albania into Italy or Greece, from the Czech Republic into Germany, and from the Baltic States into Scandinavia. The main gateways to the USA and Canada are through Central America, Mexico and the Caribbean, while Taiwan and Thailand are amongst the principal entry routes for irregular migrants being trafficked to Japan, Europe and North America.

China appears to be the most important single source of trafficked migrants, followed by South Asia. Afghanistan, Iraq, Nigeria, Somalia, Sri Lanka and Sudan are among the countries whose nationals are most regularly trafficked. Significantly, all of these countries are affected by violence and human rights abuses and all of them feature prominently in the list of countries whose citizens seek asylum in Western Europe and North America. Indeed, recent studies of the trafficking business indicate that many, if not most, of the migrants concerned intend to apply for asylum on reaching their intended destinations.¹⁵

For the clients of these trafficking organizations, physical insecurity and financial exploitation are constant risks. As the penalties for trafficking have grown, the conditions for migrants have worsened. Having paid a substantial sum of money to move illegally across international borders, people are kept confined in ships' holds for long voyages, penned up in unsanitary conditions with little food or water. Drownings in unseaworthy boats, and suffocation in containers or hidden compartments in trucks, are among the harrowing stories that are increasingly reported from almost every part of the world.

The covert nature of trafficking inevitably means that it is drawn into the criminal world. Stealing and forging travel documents, work and residence permits have become an important industry. To get people across borders, it is often necessary to pay bribes to the police, immigration officers and local government officials. Migrants who manage to reach their intended destinations, usually after much exploitation and many privations, often find that they have to turn to crime to pay off their debts to traffickers; this may mean transporting or selling drugs for criminal organizations. The trafficking of women and children for prostitution is another clear link between the criminal underworld and the irregular movement of people.

The restrictive measures of the industrialized states have thus driven migration underground, prompting it to assume forms that pose a growing threat to the very societies that such practices were intended to protect. While precise statistics on this issue are inherently difficult to collect, there is reason to believe that people who would have a perfectly good claim to refugee status now no longer bother to submit an asylum application, fearing that they might be apprehended, detained and ultimately deported. The net result of the asylum and migration policies discussed

above has thus been an expansion of the marginalized, excluded and criminalized underclass in so-called developed societies.

Hostility to refugees and asylum seekers

Although it is difficult to measure, there can be little doubt that public hostility to refugees has increased in much of the industrialized world. When asylum seekers are routinely labelled as 'bogus' by politicians and the press, and when would-be refugees are obliged to make use of irregular and illegal migration routes, then it is hardly surprising that they should be regarded with a degree of suspicion and hostility by the societies in which they hope to settle. Such sentiments have found expression in a host of different ways: from everyday prejudice and discrimination to murderous attacks on hostels inhabited by asylum seekers. According to some commentators, the constant suggestion that asylum seekers are illegal immigrants and 'welfare cheats' has created a fortress mentality in the industrialized states, legitimizing intolerance towards all ethnic minorities and marginalized groups.¹⁶

As well as reinforcing the inherent insecurity experienced by most asylum seekers, such hostility has also blighted the prospects of those who are eventually recognized as refugees. With such a difficult start in their adopted society, it is hardly surprising that many refugees find themselves socially and economically marginalized. Some states – the Nordic countries and the Netherlands, for example – have certainly made strenuous efforts to equip refugees with the skills they need to become productive members of their new society. But in too many of the industrialized states, they have been left to sink or swim.

One of the most troubling aspects of the restrictive asylum policies pursued by the industrialized states is to be found in their impact on refugee protection standards in other parts of the world. The countries of Europe and North America, it must be emphasized, were largely responsible for establishing UNHCR and for drafting the 1951 UN Refugee Convention. Such countries also continue to think of themselves as the standard-bearers for human rights principles and humanitarian standards. And yet these very same countries have taken a lead in challenging the spirit – if not the letter – of the 1948 Universal Declaration of Human Rights, which states that everyone has the right to seek and to enjoy asylum from persecution. In June 1997, for example, the European Union (EU) accepted a Spanish proposal, which could make it impossible for the citizen of one EU state to seek asylum in another, an initiative which has been criticized by UNHCR.

These developments have not gone unnoticed in the world's poorer countries, where the overwhelming majority of refugees and displaced people are to be found. Indeed, as Chapter Two pointed out, the governments of such countries now routinely refer to the asylum policies of the industrialized states as a means of legitimizing their own efforts to restrict the number of people seeking refuge on their territory.

ASYLUM RIGHTS AND TEMPORARY PROTECTION

What can be done to address the asylum dilemma? Introducing additional restrictive practices (if such remain to be invented) is evidently not the way forward. As the preceding section explained, the impact of such measures is simply too negative, whether seen in terms of the security of refugees or the security of states. A more constructive approach is required, addressing the whole range of issues involved in the movement of asylum seekers from one part of the world to another. The real test of such an approach must be the extent to which such measures safeguard

human rights and are consistent with humanitarian standards – rather than the extent to which they reduce the number of people submitting claims to refugee status.

It must be acknowledged at the outset of this discussion that there are no easy means of resolving the asylum dilemma. Few if any of the policy proposals presented in the final sections of this chapter are new, and all of them are characterized by problems and limitations. If implemented in a consistent and coordinated manner, however, this package of measures would go some way towards improving the current situation.

Refugee protection principles

"It was in Europe that the institution of refugee protection was born, and it is in Europe today that the adequacy of that system is being tested," the UN High Commissioner for Refugees has observed.¹⁷ As authors of the international law relating to refugees, governments in Europe and other affluent regions have a historical and a moral responsibility to uphold the right of asylum. If they do not, then protection standards in other parts of the world will almost inevitably decline.

A similar point has been made by another refugee expert. "Although no right to receive asylum yet exists in international, regional or municipal law," he writes, "a willingness to provide asylum is the litmus test for the commitment by affluent states to human rights. Affluent states cannot expect other, more vulnerable nations to execute demanding reforms or improve human rights conditions and at the same time claim that it is beyond their own substantial means to sustain a commitment to asylum."¹⁸

In practice, this entails much more than simply giving rhetorical support to the principles of international refugee and human rights law. First, it means eschewing restrictive interpretations of the 1951 UN Refugee Convention, such as the proposition that only states can act as agents of persecution.

Upholding access to asylum procedures is a second precondition for upholding the principle of asylum. As described earlier in this chapter, a great deal of effort has been expended by the industrialized states in the attempt to prevent asylum seekers from even setting foot on their territory. Technically, it is true, some of the measures employed to reach this objective are not specifically banned by the international refugee instruments. But as restrictive practices of this kind make no distinction between legitimate and unfounded claimants, they are clearly contrary to the spirit of the 1951 Refugee Convention.

A third area where reforms are required concerns the notions of safe countries of origin and safe third countries, as well as the related question of responsibility for examining asylum requests. The safe country of origin notion is an inherently dangerous one, as there is an evident potential for persecution to occur in any state, however democratic its constitution. The notion of safe countries of origin is also susceptible to political manipulation. Once they have established a list of nations which fall into this category, the world's more affluent states may be tempted to include their closest allies and most important trading partners.

As far as safe third countries are concerned, there is an evident value in arrangements which limit the ability of asylum seekers to apply for refugee status in one country after another. Governments have argued – and some legal experts agree – that asylum seekers should in principle submit their claim to refugee status in the first country they reach which has fair and effective determination procedures. But this should not take precedence over every other consideration.

Some asylum seekers have substantive connections with a particular country, whether through past residence, the presence of family members or through linguistic or cultural ties. Such

connections, which in general are quite easy to verify, may make integration much easier for asylum applicants who are eventually granted refugee status. They may also help to reduce the social welfare costs incurred by the receiving state. As one commentary has suggested, "in sum, between the two extremes of allowing claimants multiple or unlimited choice of where to apply for asylum and providing them with no choice whatsoever, lies a middle ground that allows asylum seekers a single choice based on their ability to demonstrate pre-existing links."¹⁹

If asylum seekers are to be turned away from certain states on the grounds that they failed to apply for asylum in their previous country of transit, then it is imperative to ensure that high standards of protection are available in the place to which they are returned. It is certainly not acceptable to deport an asylum seeker to another country on the simple grounds that it has acceded to the 1951 UN Refugee Convention. The state concerned must also have demonstrated the capacity to fully implement that convention and to respect the international human rights instruments.

Asylum procedures

Turning next to the situation of people who have entered the refugee determination procedure, states should place much greater emphasis on the quality of the first instance interview and decision which they grant to asylum seekers. If these are of a high standard, undertaken fairly and thoroughly by properly qualified personnel, then there is likely to be less need for states and asylum seekers to become involved in lengthy appeals and legal proceedings. Regrettably, the 'front-line' staff employed by many governments – the officials whom asylum seekers first encounter when submitting their application for refugee status – are not always adequately equipped or trained to make such important decisions. States should take immediate steps to remedy this problem.

Decisions on asylum applications should also be made on the basis of an accurate understanding of conditions in countries of origin. It is for this reason that UNHCR's Centre for Documentation and Research has developed *Refworld*, a regularly updated CD-Rom and website, containing a huge quantity of information about the political and human rights situation in most countries of the world.²⁰ There is also a need for states to develop their own human rights information centres, such as those which exist in Canada and the USA, which have established publicly verifiable databases of information, drawn from a broad range of official and other sources. Making the information used in decision-making available to all of the parties involved would enhance the quality, speed and perceived fairness of the process.

During the past decade, states have regularly copied each other in the formulation and implementation of new restrictive measures. In fact, they have established a multitude of intergovernmental fora with precisely this purpose in mind. Regrettably, much less attention has been paid to identifying examples of good state practice which might usefully be replicated in other countries.

In this respect, some particularly useful lessons can be learned from examples such as the Danish asylum model.²¹ Since the mid-1980s, Denmark has introduced a succession of useful reforms to its refugee determination procedures. Responsibility for initial asylum interviews was reallocated from the border police to a civilian body, the Aliens Directorate. The impartiality of the procedure was strengthened by authorizing a non-governmental organization, the Danish Refugee Council (DRC), to interview asylum seekers who were deemed by the Directorate to have manifestly unfounded claims. The DRC was authorized to veto the Directorate's decision, thus enabling the applicant concerned to enter the asylum procedure. Accuracy of interpretation and a better record of gathering case information were also improved through the employment of different interpreters by the DRC and the Directorate.

As a result of these reforms, both the government and refugee advocates agree, the impartiality and efficiency of Denmark's asylum procedures have been enhanced. The DRC's participation has helped to shield asylum decisions from foreign policy concerns, and has facilitated the identification of people who are at special risk. At the same time, the direct involvement of an independent body has legitimized the asylum procedure and has made it easier for the authorities to remove those people whose applications are manifestly unfounded.

While other states may balk at the idea of involving a non-governmental organization in an area which touches very directly on the issue of national sovereignty, such an approach clearly merits a much wider consideration. Indeed, systematic efforts should be made to ensure that the best practices of states with well-established asylum systems are emulated in countries which are now dealing with refugee issues for the first time. It is for this reason that a growing proportion of UNHCR's activities in low and middle-income countries are devoted to the establishment and reinforcement of national determination procedures by means of training programmes, the dissemination of information and other capacity-building measures.

While thoroughness should never be sacrificed to speed, all of the parties to any asylum decision have an interest in it being taken with the minimum of delay. Indeed, the so-called asylum crisis could probably have been avoided if the industrialized states had taken much earlier steps to establish effective and expeditious determination procedures. In this respect, there could be useful lessons to learn from the USA, where the Immigration and Naturalization Service has recently succeeded in reducing the waiting period for asylum decisions and has made substantial inroads into the country's huge backlog of pending cases.

Standards of treatment

When the 1951 UN Refugee Convention was established, little thought was given to the situation of people with pending claims to refugee status. Indeed, the Convention focuses almost exclusively on the rights and obligations of recognized refugees. It is for this amongst other reasons that asylum seekers in the industrialized states receive widely differing standards of treatment with regard to social welfare benefits, access to public services, the right to work, housing entitlements and conditions of detention.

To address this neglected problem, UNHCR, the states concerned and other interested parties should develop a set of agreed standards, applicable to people who are waiting for their status to be determined. Such standards should evidently discourage governments from introducing some of the more oppressive restrictive measures witnessed in recent years, particularly the withdrawal of social welfare benefits and the detention of asylum seekers. With regard to the latter issue, for example, bond or bail systems might be explored as an alternative to detention. Similarly, the establishment of relatively open but monitored reception centres might be considered as an alternative to the imprisonment of asylum applicants who are thought likely to abscond.

The heavy demands that asylum seekers can make on public resources and services should not be discounted, particularly in those lower-income countries which are beginning to receive substantial numbers of asylum seekers for the first time. But again there are alternatives that might be explored. Particular efforts could be made to determine whether non-governmental organizations, voluntary agencies, religious institutions and refugee community groups could make a contribution in this area, freeing state resources for those asylum seekers whose needs cannot be met in any other way. To facilitate such an approach, the official structures dealing with asylum issues should hold regular consultations with the institutions of civil society. In too many states, opinions on the refugee question have become dangerously polarized and politicized. This situation is in the interests of no-one, except, perhaps, those who would impose further restrictions on the right of asylum.

The role of temporary protection

There is nothing in international refugee law that obliges states to accommodate refugees if the circumstances which forced them to leave their homeland have been eradicated. As one expert on this issue has written, "protection is linked with the persistence of the causes of persecution. It is provided for a limited period of time."²² On the basis of this principle, many developing countries admit refugees to their territory on a temporary basis, making it clear that the people concerned will be expected to go home when it is safe for them to do so. This has, for example, always been the position of the Pakistani authorities with regard to the exiled Afghans on its territory, for many years the largest refugee population in the world.

Until quite recently, people who have been granted refugee status in the industrialized states have normally been allowed to stay and settle permanently in their country of asylum, even if there has been a fundamental and durable improvement to the human rights situation in their homeland. There was a tentative move away from this approach in the 1980s, when the industrialized states began to grant various forms of 'humanitarian status' to asylum seekers who were in need of international protection, giving them a temporary right to remain in the country. This arrangement, it was felt, might facilitate the eventual repatriation of the people concerned. In practice, however, most of the people who were granted humanitarian status have been allowed to stay in their country of asylum on a long-term basis, often because of their inability or unwillingness to go home and the reluctance of the industrialized states to initiate deportation proceedings against people who had started to integrate in their society.

The policies pursued by the industrialized states took a decisive turn as a result of events in former Yugoslavia. In 1992, the number of asylum applications submitted in Western Europe reached an all-time high, placing heavy pressure on the asylum procedures of the countries concerned. At precisely the same time, substantial numbers of people from former Yugoslavia began to arrive in the region, escaping from the escalating war in the Balkans.

It was against this background that in July 1992, the UN High Commissioner for Refugees urged states to grant temporary protection to asylum seekers from former Yugoslavia, pending the time when the war had come to an end and they could go back to their own country. In the period which followed the High Commissioner's request, around 15 states, primarily in Western Europe, agreed to implement the temporary protection proposal. Altogether, more than half a million people have benefited from this arrangement, the largest number of them in Germany (see [Figure 5.6](#)).

Perhaps the most important benefit of the temporary protection approach has been that it provided immediate security to a large number of people whose lives and liberty were at risk, and spared them the anxiety associated with a long and complex refugee status determination procedure. Given the traumatic circumstances that forced people to flee from former Yugoslavia, the advantage of this arrangement cannot be overestimated.

At the same time, the temporary protection proposal has relieved states of the need to examine many thousands of individual asylum applications – a time-consuming and expensive process – and has enabled them to adopt a more generous asylum policy than might otherwise have been the case. Publicly and politically, the admission of former Yugoslav citizens became more acceptable because of the understanding that they would repatriate once conditions had improved at home. In this sense, as the UN High Commissioner for Refugees has observed, "temporary protection is an instrument which balances the protection needs of people with the interests of states receiving them."²³

The temporary protection principle has also had some broader benefits in terms of defending the principles of international protection in a situation of mass influx. As indicated earlier, the

industrialized states have in recent years tended to apply restrictive definitions of the refugee concept. People from countries affected by war and generalized violence, those states have argued, should be granted protection only if they can demonstrate that they have been singled out for persecution. With the introduction of temporary protection, however, those same states have acknowledged a broader humanitarian obligation to provide a place of safety to people who have fled from a war-torn state.

Finally, temporary protection has helped to reassert the principle of international responsibility sharing. By admitting a substantial number of refugees from former Yugoslavia, the countries of Western Europe provided a concrete demonstration of their commitment to the principle of international protection and thereby provided a positive example to actual and potential host countries in other parts of the world. If the European states had not provided protection to people from Bosnia and other parts of former Yugoslavia, the whole of the international refugee regime would have been seriously undermined.

A number of important lessons can be learned from the international community's experience with asylum seekers from former Yugoslavia. First, it is evident that temporary protection is not in itself a solution to refugee problems and that this approach should not be applied in an isolated manner. If it is to have a real value, temporary protection must form part of a comprehensive international strategy, designed to deal with both the causes and the consequences of a refugee-producing conflict. In practice, this means that states must make vigorous and collective efforts to bring that conflict to an end, including, if necessary, the introduction of economic sanctions, the deployment of multinational forces and, when all other efforts have failed, coercive military action. At the same time, a comprehensive approach requires the effective provision of protection and assistance to those war-affected populations who are unable to leave the conflict zone and, once the conflict has come to an end, a properly coordinated and generously funded effort to promote reconstruction, reconciliation and justice in the country of origin.

A second lesson to be learned from recent experience is that people with temporary protection must be treated in a manner which is compatible with internationally accepted human rights principles and humanitarian standards. Although temporary protection is intended to be provisional and essentially short-term, people who benefit from this arrangement should evidently be granted a formal legal status, clearly defined residence rights, as well as access to adequate housing, welfare benefits, health care, psycho-social support and family reunification arrangements. The children of asylum seekers who have been granted temporary protection must receive a proper education, including mother-tongue language classes, during their time in exile.

The rights and benefits accorded to people with temporary protection must be progressively improved if it becomes necessary for them to stay longer in their country of asylum than was initially expected. Housing, welfare and work entitlements that are suitable for a few weeks or months, for example, may not be appropriate for a stay of several years. Such improvements do not necessarily contradict the principle that people with temporary protection should eventually go back to their own country. According to one school of thought, refugees who have been able to earn some money, receive an education and live a relatively normal life in their country of asylum may actually be better equipped and more prepared to repatriate than those who have been left in limbo for a protracted period of time.

As its name suggests, temporary protection should not be extended indefinitely. At a certain point in time, alternative long-term options must be examined for people who are unable to go back to their country of origin. As UNHCR has suggested in a paper submitted to its Executive Committee, "if return remains impossible after a prolonged stay of no more than five years, states should review the situation of temporarily protected persons, with a view to reducing their psychological uncertainty and to identifying long-term solutions for them."²⁴ Such solutions might include integration in the country of asylum, resettlement in a third country, or voluntary relocation to a secure area in the country of origin.

The third conclusion to be drawn about the temporary protection approach is that great care is needed in facilitating or encouraging the return of populations with temporary protection, not least because a proportion (and in the case of the Bosnians, a majority) of the people concerned might have qualified for refugee status if they had been able to apply for it on an individual basis. Both legally and ethically, therefore, such people must benefit from the principle of non-refoulement. It is for this reason that UNHCR has argued against the involuntary return of Bosnians originating from areas of the country where they would be a member of the ethnic minority.

Temporary protection should be brought to an end if there is a fundamental change in the circumstances that caused people to flee. But even then, repatriation should initially proceed on a voluntary basis. Any individual still claiming to have a fear of persecution, or who has been so traumatized by past events that he or she feels unable to go home, must be given an opportunity to present their case to the authorities. Individuals who require continued protection in their country of asylum must evidently be allowed to remain for as long as necessary.

While the temporary protection approach does not exclude the involuntary repatriation of people who no longer need to seek safety in another country, considerable caution must be exercised in this area. As UNHCR has affirmed in relation to the deportation of Bosnians with temporary protection, it is impermissible for people to be returned to places where their lives or liberty would be at risk, where violence and human rights violations are still occurring and where the necessities of life are unavailable.²⁵ In situations where forms of ethnic cleansing have taken place, moreover, it may eventually be necessary for people to go back to a new location within their country of origin, rather than their previous place of residence. Relocations of this type should be undertaken with the consent of the people concerned and with adequate preparation in the areas where they have opted to settle.

UNHCR's caution in relation to the involuntary return of people with temporary protection also derives from the organization's awareness that such repatriation movements are likely to act as a destabilizing factor in war-torn societies. This issue has arisen not only in Bosnia, but also in relation to the US government's efforts to repatriate Central American asylum seekers whose temporary right of residence has expired. El Salvador, for example, receives an estimated 12 per cent of its gross national product – its largest single source of income – from the remittances of people living in the USA.

According to the Salvadoran government, the mass repatriation of its citizens would not only deprive the country of this income, but would also create a massive and socially explosive unemployment problem. Clearly, the industrialized states would be ill-advised to insist upon the return of people with temporary protection if such a repatriation movement were to lead to renewed unrest in the country of origin and further population displacements.

ASYLUM AND MIGRATION: THE BROADER ISSUES

The effort to protect the right of asylum in the industrialized states must start with the rights of asylum seekers. This was the message conveyed by the UN High Commissioner for Refugees when she spoke at Washington's Holocaust Memorial Museum in April 1997. "Speak up for human rights," she told the audience. "Insist that the rights of refugees and asylum seekers are respected. Work against the imprisonment of asylum seekers. Maintain social services for refugees."²⁶

In addition to these activities, which impinge directly on the rights and welfare of asylum seekers, there are a number of broader tasks which must be accomplished if the asylum dilemma is to be

effectively addressed. This section examines those tasks, focusing on issues such as the role of public opinion, the return of rejected cases, the regularization of migration flows and the reduction of migration pressures in countries of origin.

Changing public opinion

The so-called asylum crisis in the industrialized states is to a large extent rooted in ignorance and fear. Politicians and the public in such countries often fail to make any distinction between refugees, asylum seekers, legal and illegal immigrants. They feel that their societies are being flooded by people who make little or no contribution to the life of their country. And, despite all of the restrictive measures introduced in recent years, the public seems to have lost confidence in the efficacy of the asylum systems established by their governments.

This phenomenon is not just a characteristic of the industrialized states. In South Africa, for example, there is a significant backlash against the arrival of people from other countries. "There is," one commentator writes, "a blunt and increasingly bellicose mythology targeted at non-South Africans living in the country." In the popular imagination, they "take jobs, commit crimes, depress wages, spread AIDS, and smuggle arms and drugs."²⁷

Credible public information has an important part to play in puncturing some of the commonly held myths about refugees, thereby de-dramatizing and depoliticizing the asylum debate. The public in receiving countries should be properly informed about the number of asylum seekers arriving on their territory. The concern that these numbers are unmanageable should be dispelled. To begin with, it would be helpful to point out that the granting of refugee status to some 10 per cent of all applicants does not mean that the remaining 90 per cent are 'bogus', as many commentators and politicians maintain. As discussed earlier, a substantial proportion of asylum seekers are granted some kind of humanitarian status even if they are not recognized as refugees.

More could be done to make the public aware of the positive contribution that refugees can make to their host country, not just economically, but also socially and culturally. Care has to be exercised on this issue, however, if the distinction between refugees and other migrants is to be maintained: asylum seekers should be admitted to countries because they are in fear of their lives and in need of protection, not because of the economic contribution they may make to the society where they settle. As a further means of building public support for generous asylum policies, steps should be taken to explain the principle of responsibility sharing, pointing out that the world's poorest states continue to provide refuge to the vast majority of forcibly displaced people.

A more sympathetic environment could also be established by means of measures to promote the social and economic integration of recognized refugees. The idea that refugees are unproductive and a drain on public resources is in many senses a self-fulfilling prophecy. If, in the interests of economy, refugees are deprived of the means to adapt to their new country (language skills, vocational training, employment counselling and secure housing) then it is hardly surprising that they should encounter problems in becoming full and self-supporting members of society. In this respect, there is a particularly important (but too often neglected) role to be played by the refugee associations and community organizations which invariably spring up in cities with exiled and immigrant populations.²⁸

The return of rejected cases

Better procedures for the repatriation of unsuccessful asylum seekers must also be developed if politicians and the public are to have greater confidence in the systems used to examine claims to refugee status. The treatment of rejected cases is undoubtedly problematic, even in situations

where asylum seekers have had their cases examined in a fair and thorough manner, and where it is evident that they have no compelling reason to remain in their intended country of refuge.

According to some commentators, up to 80 per cent of rejected asylum seekers in the industrialized states stay on after the rejection of their claims, often because the authorities consider that it is too costly or difficult to apprehend and deport them.²⁹ Without legal status or a legitimate means of livelihood, such people cannot help but be propelled into the underworld of illegal employment and crime. Other observers dispute the suggestion that states are shying away from the deportation of rejected cases, pointing to the example of Germany, which deported more than 33,500 people in 1994, a year in which the country received just over 127,000 new asylum applications for refugee status.³⁰ The treatment of rejected cases is thus another dimension of the asylum issue in which state practice varies considerably from country to country.

Wherever the truth lies in this matter, the treatment of rejected cases is an important factor in establishing the legitimacy of refugee determination procedures. If such individuals are allowed to remain in the country where their application has been turned down, public confidence will inevitably be undermined. As a result, *bona fide* claimants may suffer. In cases where the return of rejected cases is warranted, the procedure employed to remove them should evidently be as safe, humane and transparent as possible. An unsuccessful asylum seeker has no fewer human rights than any other person, and no less an entitlement to be treated in a dignified manner. Regrettably, these principles have not always been respected by the affluent states.

There is a good humanitarian case to be made for providing a very modest amount of assistance to rejected asylum seekers who are deported to their country of origin or who return voluntarily to their homeland. In fact, receiving states might offer a slightly more generous sum of money to those who go back of their own accord, and who therefore spare the state the considerable expense involved in involuntary removals.

In order to allay the fears which are frequently expressed by asylum seekers and human rights organizations, arrangements should be made to monitor the welfare of rejected cases once they have gone back to their homes. UNHCR has, for example, played an extensive role with regard to unsuccessful asylum seekers who have returned to Viet Nam, an arrangement established in the context of the Comprehensive Plan of Action for Indo-Chinese Refugees (CPA).³¹ UNHCR has also played a more limited role in relation to rejected asylum seekers who have been returned from Switzerland to Sri Lanka. While such activities are inherently sensitive in nature and fall somewhat beyond the organization's usual mandate, they have an important part to play in resolving the asylum dilemma.

Finally, it must be emphasized that countries of origin have an obligation to facilitate the return of nationals who have unsuccessfully sought asylum in another country. Unfortunately, there have been too many recent cases in which governments have refused to accept this responsibility (often on quite spurious grounds) thereby making it even more difficult to address the asylum question.

Regularizing population movements

Many commentators hold the view that the increase in asylum claims during the 1980s and early 1990s resulted largely from the closure or curtailment of regular migration channels into the industrialized states.³² If that is correct, then it follows that an orderly reopening of such channels might relieve some of the migration pressure which exists in less developed states and help to disentangle asylum seekers from the flow of economic migrants. Other commentators, however, challenge such assertions. Some asylum advocates dispute the notion that substantial numbers of economic migrants have been using the asylum door as a means of entry, pointing to the fact

that many refugee claimants come from countries which are not only poor, but which are also affected by violence and human rights violations.³³

Others suggest that the people who have been seeking asylum in the industrialized states – whether or not they have well-founded claims to refugee status – are not the kind of migrants who would or could successfully make use of regular migration channels. The experience of countries such as the USA, Canada and Australia, which continue to have relatively large immigration programmes, lends weight to the latter argument, as the volume of asylum applications in those countries has followed broadly the same trend as in Europe.³⁴ Despite such reservations, the regularization of migration is increasingly regarded as a useful means of tackling the asylum question. Indeed, UNHCR has played a leading role in developing the notion of ‘migration management’, and has already put this principle into practice in several different parts of the world.³⁵

Perhaps the earliest form of migration management undertaken by UNHCR is to be seen in the Vietnamese Orderly Departure Programme (ODP) which dates back to the late 1970s. In brief, the purpose of the ODP has been to provide Vietnamese citizens with a safe and legal means of leaving their own country, thereby averting the need for them to embark upon a risky and expensive boat journey to other states in the region. Well over half a million people have participated in the programme, most of them going to the USA and Australia. The migration agreement signed between the USA and Cuba in 1994 represents another form of orderly departure programme, although UNHCR has not been involved in this initiative (see [Box 5.4](#)).

Both the Vietnamese ODP and the US-Cuba migration agreement have been somewhat neglected by refugee and migration scholars, a somewhat surprising omission given their innovative character. A systematic examination of the orderly departure notion, focusing particularly on the implications of such an approach for the principles of refugee protection, would be of considerable value.

At the same time, additional thought should be given to the idea of processing asylum applications within countries of origin, as the USA has done to a limited extent in Haiti. The potential problems of such a system are quite evident. To what extent will people who have a well-founded fear of persecution be prepared to make themselves known to a foreign embassy or international processing centre? How many people without any need for international protection would attempt to take advantage of such arrangements? And how many states would be prepared to tolerate the establishment of in-country processing systems, which are tantamount to an admission that persecution is taking place on their territory? Despite such obvious difficulties, a more detailed review of this approach to the asylum issue is also overdue.

A final means of regularizing the transnational and transcontinental movement of people is to be found in the form of information campaigns, targeted at potential migrants and asylum seekers. The impetus to migrate is often based on ill-founded perceptions of the conditions and opportunities that exist in the world’s more affluent countries, as well as a poor grasp of the risks that migration (particularly in its irregular forms) often entails. Information programmes can help to dispel such misconceptions.

More specifically, such initiatives can fulfill a number of different functions: informing potential migrants about any regular migration opportunities that exist; warning them about the dangers they may face if they put their fate into the hands of traffickers; advising them about changes in the refugee and asylum policies of receiving countries; and providing them with details of the likely consequences of submitting a manifestly unfounded claim to refugee status. Information campaigns of this kind are a modest antidote to the rosy images of life in the affluent states which are disseminated by the mass communications industry. They should not be used as a means of preventing the flight of people who have a genuine need for international protection, and must therefore be honest, impartial and accurate in their content.

Information campaigns of this type have already been pursued by UNHCR and the International Organization for Migration (IOM), primarily in countries such as Albania, Romania and Viet Nam, where earlier movements of refugees have been succeeded by the departure of irregular migrants. Radio, television, newspapers and posters have been amongst the media used. It is difficult to assess the impact of such campaigns as their success can only be determined by the absence of migration, a phenomenon which is impossible to measure. Even so, in terms of their cost-effectiveness, not to mention their consistency with humanitarian principles, programmes of this kind have some evident advantages over the interdiction, detention and deportation of unsuccessful asylum seekers.

Action in countries of origin

International efforts to address the 'root causes' of forced and voluntary migration from the lower-income countries have a long and somewhat chequered history. While the record of achievement in this area might not be particularly impressive, serious attempts are evidently required to deal with the political, economic and environmental problems that prompt people to leave their own country and to seek asylum elsewhere. The intention should not be to dissuade or prevent people from moving to another country; historically, migration has proven to be one of the most powerful and positive forces in human development. But action is required to render people more secure in their own society, so that they migrate out of choice, rather than necessity.

Common sense suggests that an improvement in the economic performance of countries of origin should help to remove or at least diminish some of the pressures which induce people to migrate and to submit an asylum application in another state. Well directed investment, more liberal trading arrangements, a reduction of the debt burden and intelligently used aid can all help to raise living standards and provide the people of low-income countries with better public services.

Even so, such strategies do not represent a panacea to the asylum and migration issue. There is now considerable evidence to suggest that economic growth raises expectations and provides people with the resources which they need to migrate. Such short-term outcomes do not invalidate the 'development in place of migration' strategy, but they do point to the need for this strategy to be pursued over a considerable period of time.

Analysts differ on the question of how long it takes for increased living standards to be reflected in declining rates of international migration. One of the more optimistic commentaries suggests that "immigration countries should be comforted by how little – not how much – wage and job gaps must be narrowed to deter migration." Once the wage differential is down to a factor of four or five, and once there is a popular expectation that income differentials will continue to narrow, then, "economically-motivated migration practically ceases."³⁶ While this conclusion may seem over sanguine, recent evidence from countries in South and South-East Asia suggests that states with good rates of economic growth can be transformed very rapidly from countries of emigration to countries of immigration.

If there is some ambivalence about the positive impact of economic interventions on the propensity of people to migrate, there is little doubt about the negative consequences of the economic policies which have been imposed on many low and middle-income states. The policies of structural adjustment and economic liberalization advocated by many industrialized states and the international financial institutions have undoubtedly prompted migratory movements throughout Africa, Asia, Latin America and the former communist bloc.

The unintended consequences of macro-economic policy clearly need to be more firmly grasped by decision-makers whose main concern lies outside the realm of migration and asylum policy. In fact, there are already signs that this is happening. A recent study undertaken by the IOM and the UN Conference on Trade and Development (UNCTAD), for example, recommends that

governments should undertake 'migration audits' before making decisions about overseas investment, trade and development. The report also makes the sensible suggestion that research should be undertaken in countries that have made the transition from being migrant-sending to migrant-receiving states, so as to identify the forms of economic intervention which have the greatest impact on people's propensity to move.

Just as economic interventions are now being considered more carefully with regard to their migratory consequences, so too are international efforts in the areas of human rights and conflict prevention. Again, however, the evidence of success is mixed. The process of democratization in the former communist states and other regions – the declared foreign policy objective of the western powers during the cold war years – has in its early stages been accompanied by declining levels of human security for the populations concerned.

This outcome should not, of course, discourage efforts to promote democracy and the improvement of human rights standards; indeed, such efforts must form the centrepiece of any attempt to avert and resolve situations of forced displacement. The international community should be aware, however, that democratization does not usually proceed in a unilinear fashion, and that in the short term at least, it may involve crises which generate new population movements.

States which receive significant numbers of refugee claimants could make far greater efforts to ensure that actions which they take in other policy domains are consistent with their approach to the asylum issue. To give one obvious example, if the richer states really want to make it possible for people in the less developed regions to live safely in their own country, then they should not sell arms to regimes which are intent on persecuting their citizens and expelling minority groups.

An interesting example of this more coordinated approach can be seen in Sweden, where an all-party commission was established with the precise purpose of examining the linkages between the country's refugee, immigration, development cooperation and foreign policies. "One overall objective for a cohesive global refugee policy," the Refugee Policy Commission reported, "should be that international cooperation actively contributes to the underlying causes of refugee movements and forced emigration." "At the same time," it observed, "those who are compelled to take flight must receive protection and assistance."³⁷

The impetus to seek asylum is inevitable in a world where people experience vastly different levels of physical and material security. While those disparities persist, people will continue to move – by whatever means possible and whatever obstacles are placed in their way – from poorer and less stable states to countries where their basic rights are more likely to be protected. It is for this reason that the institution of asylum must be scrupulously upheld.

NOTES

1 J. Kumin, 'Harmonization of refugee law: can the protection gap be closed?', address to the International Bar Association, Berlin, October 1996.

2 The statistics in this section are taken primarily from bulletins produced by Eurostat and the Secretariat of the Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia. See also *Populations of Concern to UNHCR: A Statistical Overview*, published annually by UNHCR, and the *World Refugee Survey*, published annually by the US Committee for Refugees.

3 L. Williams, 'Thousands seek asylum in South Africa', Panafican News Agency despatch, 15 May 1997; 'South Africa: refugees and workers', *Migration News*, vol. 4, no. 5, 1997.

4 UNHCR, *The State of the World's Refugees: In Search of Solutions*, Oxford University Press, Oxford, 1995, p. 199.

5 E. Kjaergaard, 'The concept of 'safe third country' in contemporary European refugee law', *International Journal of Refugee Law*, vol. 6, no. 4, 1994.

6 *Overview of Readmission Agreements in Central Europe*, UNHCR, Geneva, 1993.

7 'Note on International Protection', UNHCR Executive Committee document no. A/AC.96/830, September 1994, on *Refworld* CD-Rom, UNHCR, Geneva, 1997.

8 *The State of the World's Refugees*, *op cit*, p. 201.

9 European Council on Refugees and Exiles, *Safe Third Countries: Myths and Realities*, London, 1995, pp. 7-9.

10 European Council on Refugees and Exiles, 'Position of ECRE on sharing the responsibility: protecting refugees and displaced persons in the context of large-scale arrivals', ECRE, London, 1996, para. 14.

11 *Forced Migration Alert*, no. 30, 27 May 1997.

12 C. Berthiaume, 'Asylum under threat', *Refugees*, no. 101, 1995.

13 *The Financial Times*, 12 January 1997.

14 For information on the subject of trafficking, see the newsletter *Trafficking in Migrants*, published by the International Organization for Migration. See also F. del Mundo, 'Trafficking in human lives', *Refugees*, no. 101, 1995.

15 *ibid.*

16 V. Crowe, 'Short report on Wilton Park Conference 497: Migration: prevention, control and management', April 1997.

17 S. Ogata, statement on the occasion of the publication of *The State of the World's Refugees* in German, Bonn, June 1994, on *Refworld* CD-Rom, *op cit*.

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19 R. Byrne and A. Shacknove, *ibid.*

20 *Refworld*, *op cit*. See also <<http://www.unhcr.org>>.

21 This example is drawn from A. Shacknove, *op cit*, and from R. Byrne and A. Shacknove, *op cit*, pp. 225-6.

22 M. Kjaerum, 'Temporary protection in Europe in the 1990s', *International Journal of Refugee Law*, vol. 6, no. 3, 1994.

23 S. Ogata, statement at the Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia, Washington DC, May 1997.

24 'Progress report on informal consultations on the provision of international protection to all those who need it', UNHCR document no. EC/47/SC/CRP.27, Geneva, May 1997.

25 See, for example, S. Ogata, 'Preventing future genocide and protecting refugees', address at the Holocaust Memorial Museum, Washington DC, April 1997: "We should work to prevent the deportation of Bosnian refugees who cannot yet return to their own homes. It is wishful thinking to assume that my Office can make repatriation possible if political leaders in Bosnia are allowed to pursue their heinous policies of ethnic cleansing and if shelter is not reconstructed more quickly."

26 *ibid.*

27 J. Crush, 'A bad neighbour policy? Migrant labour and the new South Africa', *Southern Africa Report*, vol. 12, no.1, 1996.

28 D. Joly, 'An agenda for reception and integration: the Western European experience and Central Europe', paper prepared for the Third International Symposium on the Protection of Refugees in Central Europe, Budapest, April 1997.

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30 'Asylum in Europe and the return of rejected asylum seekers', internal UNHCR memorandum, 1 December 1995.

31 For a concise analysis of the CPA and its achievements, see *The State of the World's Refugees, op cit*, pp. 208-209.

32 C. Berthiaume, *op cit*.

33 This point has been made for many years. See, for example, Independent Commission on International Humanitarian Issues, *Refugees: The Dynamics of Displacement*, Zed Books, London, 1986, p. 41.

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36 P. Martin and J. Taylor, 'Managing migration: the role of economic policy', International Center for Migration, Ethnicity and Citizenship, New York, 1996, p. 31.

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Box 5.1

Carrier sanctions

There is nothing new about the notion of imposing financial penalties and other sanctions on transport companies which disembark passengers who lack a valid passport or visa. Traditional countries of immigration such as Australia, Canada and the USA, for example, have had such legislation in place since the 1950s. In recent years, however, this practice has been extended to many other parts of the world.

The countries of Western Europe began to introduce carrier sanctions in the second half of the 1980s, at a time when the number of asylum applications submitted in those states was growing rapidly. By 1997, all the European Union (EU) member states except Ireland had introduced carriers' liability legislation of some sort or another, as had Switzerland.

Two European conventions actually stipulate that signatory states must implement carriers' liability legislation: the Schengen Convention on the abolition of checks at common frontiers, which came into force in March 1995 and which has been signed by all EU countries except Denmark, Ireland and the UK; and the Draft Convention on the Crossing of External Borders, which has yet to be opened for signature.

Carrier sanctions are not, however, a purely western or a northern phenomenon. In fact, they have now been introduced by countries in every part of the world: Argentina, Croatia, Dominican Republic, Guatemala, Iran, South Korea, Oman, the Philippines, South Africa, Turkey and the United Arab Emirates, to name just a few. Many other states which have not yet introduced formal carrier sanctions schemes nevertheless oblige transport companies to meet the costs of detaining or deporting passengers who arrive without proper documentation.

Immigration control

One effect of carriers' liability legislation has been to draw airline companies and their ground staff into the process of immigration control – a function for which they were initially not well prepared. In order to address this problem, and to help airline companies avoid the financial penalties which they were incurring, the national immigration authorities of several states have provided training and technical support to airline personnel. As a result, carriers now subject travellers and their documents to more rigorous and frequent scrutiny, not only when they check in but also immediately before boarding an aircraft.

Although airlines have long protested that it is inappropriate and unfair to impose such tasks upon them, they have been obliged to accept these responsibilities as the price of doing business in those countries which have introduced carrier sanctions. Given the penalties which they can incur, the airlines also have a strong financial incentive to prevent the embarkation of anyone who lacks the necessary passport or visa. The sums of money involved are substantial. The British

government, for example, imposes a per capita fine of around \$1,600 for passengers with incorrect papers. Between 1987 and 1995, airlines and other transport companies were charged a total of \$140 million by the UK authorities, of which \$85 million was actually paid.

States which have introduced carriers' liability legislation generally maintain that without such laws, the number of people arriving on their territory without valid documents would have been much higher. In that sense, carrier sanctions have had their intended effect. At the same time, however, these sanctions have had negative consequences for the principles of refugee protection and human rights standards more generally.

Victims of persecution

First, states have a legitimate interest in controlling the movement of people onto their territory and have a right to curtail those forms of migration which assume illegal and irregular forms. But this right is tempered by obligations towards the victims of persecution, set out in international conventions such as the 1951 UN Refugee Convention and its 1967 Protocol, as well as the 1984 Convention against Torture. Carrier sanctions, which have been consciously employed by states as a means of avoiding those obligations, are not consistent with international refugee and human rights law.

Airline companies are neither qualified nor permitted to judge whether potential passengers are leaving their own country because their life or liberty is at risk, and yet people in this situation may well have to flee at short notice and without the necessary papers. As a report to the Council of Europe commented in relation to the British legislation, "the Carriers' Liability Act has made it more difficult for asylum seekers to reach the United Kingdom, since it is in most cases impossible for a person fleeing persecution to obtain a valid passport and other legal documents."

Second, carrier sanctions have led to a growth in the production and use of forged documents. Indeed, the demand for such documents has helped to finance the burgeoning industry of human trafficking. In many cases, moreover, travellers who succeed in boarding a plane with forged documents destroy them during the flight so that they cannot be returned to their place of departure, thereby creating additional problems for the immigration authorities in the country of destination. In 1996, more than half of all the fines imposed on the Dutch airline KLM involved travellers who had destroyed their documents.

Third, as a result of carrier sanctions, a growing number of people who have managed to leave their own country have nevertheless found themselves trapped halfway through their journey. The Sheremetyevo-2 transit zone at Moscow airport, for example, has held up to 20 passengers at any one time over the past five years, all of them prevented from boarding an aircraft to their intended destination because they do not possess the necessary papers. Given the nationalities of the people who have found themselves in this situation - most of them are from Somalia, Afghanistan, Iraq, Angola and Zaire - there is a very good chance that their number has included people with a valid claim to refugee status.

Finally, as well as the inconvenience which they involve for airline staff and travellers, carrier sanctions lead inevitably to discrimination. While white passengers from the major industrialized states may be assumed to possess valid documents, members of ethnic minorities and citizens of developing and refugee-producing countries are far more likely to be treated with suspicion.

It is now highly unlikely that those states which have introduced carrier sanctions will choose to abolish them. Efforts must therefore be made to ensure that such controls are implemented in as equitable a manner as possible. At the very least, states should apply sanctions only if the carrier

has shown negligence in checking documents, and should impose no fine at all in relation to passengers who submit an asylum claim which is subsequently accepted for consideration.

Box 5.2

Gender-related persecution

Under the terms of the 1951 UN Refugee Convention, asylum seekers can be granted refugee status if they are able to demonstrate a well-founded fear of persecution in their country of origin “for reasons of race, religion, nationality, membership of a particular social group or political opinion.” Persecution related to a person’s gender or sexuality is therefore not explicitly mentioned in the principal international refugee instrument.

Over the past 15 years, however, there has been an increased recognition of the need to interpret the notion of persecution in a manner which is sensitive to issues of gender. In 1985, for example, the European Parliament called on states to grant refugee status “to women who suffer cruel and inhuman treatment because they have violated the moral or ethical rules of their society.” According to the European Parliament, women who have been treated in this manner constitute a “particular social group” and should therefore be granted asylum under the 1951 Convention. While the issue has not received the same degree of attention, there is also a growing awareness that men who transgress the norms of their society – homosexuals in certain countries being the obvious example – can also be persecuted on the grounds of being a member of a particular social group.

Obstacles to protection

Female asylum seekers who have experienced gender-related persecution are confronted with some significant obstacles in their efforts to obtain international protection. In their asylum interviews, women who have been subjected to abuse may find it too embarrassing and humiliating to discuss with strangers, especially if they are men. The government officials who conduct such interviews may be primarily concerned with ‘traditional’ forms of persecution and be inadequately sensitive to gender-related issues such as sexual violence and forced marriages.

In contrast to those experienced by most men, the threats and dangers which confront many women tend to take place within a domestic context – a ‘private’ area which is sometimes regarded as being beyond the reach of international law. A closely related problem derives from the common belief that certain practices affecting women are sanctioned by culture or religion and therefore cannot constitute persecution, even if they violate universal human rights standards. It is therefore of some significance that the UN Declaration on the Elimination of Violence against Women requires states to exercise due diligence to prevent, investigate and punish acts of violence against women, perpetrated not only by the state, but also by “private persons.”

On the basis of recent legal cases involving asylum seekers, gender-based persecution can be said to assume six principal forms. The first and perhaps best established can be described as harsh or inhuman treatment for the transgression of social norms. A woman who transgresses the

norms of her society may do so out of choice and as a result of deeply-held convictions. But such transgressions can also take place in circumstances over which the woman has no control. A rape victim who is threatened with prosecution and punishment for adultery would constitute such a case.

Second, persecution can take the form of sexual violence. Although women are particularly exposed to this form of persecution, both male and female children, as well as male prisoners, can be terrorized in this way. In Bosnia, for example, sexual violence was used as a systematic weapon of war, intended to intimidate and punish certain sections of society and to provoke their flight.

A third and somewhat controversial form of gender-related persecution is that of female genital mutilation or excision. Genital mutilation is a practice which few females seek to resist or flee, largely, perhaps, because it usually involves pre-pubertal girls. Obviously, the question of persecution does not arise in situations where women embrace or even tolerate a particular practice, however abhorrent it may appear. But in situations where it is imposed on a woman against her will and where the authorities are unable or unwilling to provide that person with protection, then female genital mutilation could provide the basis for a claim to refugee status.

Fourth, on the issue of birth control, UNHCR has taken the view that national family planning policies cannot be regarded as inherently persecutory. When such policies are implemented in a non-discriminatory manner, when they are promoted on the basis of common welfare, and when respect for human rights is maintained, they can be considered as a legitimate state practice. However, as recognized in the Programme of Action from the 1994 Cairo Population Conference, all couples and individuals have a basic right “to make decisions concerning reproduction free of discrimination, coercion and violence.”

The existence of family planning policies must therefore be distinguished from the methods used to implement them. Compliance may be sought by persuasion, through methods such as education, publicity campaigns and economic incentives. But where coercive and intrusive methods are used, including forced abortions and involuntary sterilizations, a woman or man might legitimately claim to have a fear of persecution.

Sexual orientation

The punishment and mistreatment of people on the basis of their homosexuality has come to be regarded as a fifth form of gender-related persecution as it pertains to the roles which men and women are expected to play in society. Indeed, UNHCR has long held the view that a well-founded fear of persecution due to homosexuality can be a basis for the recognition of refugee status. Homosexuals are manifestly a “particular social group” in the meaning of the 1951 Convention, as a person’s sexual orientation is a fundamental and arguably unchangeable part of his or her identity.

A sixth area of gender-related refugee jurisprudence is that of domestic violence, although this is a relatively new issue, which has formed the basis for successful asylum requests in only a small number of countries. Domestic violence becomes an asylum issue primarily in situations where the abuse attains a certain level of severity, and where the authorities are unable or unwilling to provide any protection to the person or people concerned.

In recent years, a number of countries, most notably Australia, Canada and the USA, have introduced guidelines for the assessment of asylum requests involving gender-related persecution. The intention of these guidelines is not to create new grounds upon which refugee status can be sought, but to clarify the interpretation of the refugee definition, not least by recognizing the specific forms of persecution encountered by women.

Box 5.3

Asylum seekers in the Russian Federation

During the past five years, more than three million people have made their way to the Russian Federation from other states. This influx consists of a number of different groups: Russian-speakers returning to their ancestral homeland, primarily from countries in Central Asia; non-Russians from the 'near abroad' (former Soviet states) many of them fleeing from armed conflicts in the Caucasus; illegal immigrants and transit migrants, the largest number of them from China; and asylum seekers from Africa, Asia, the Middle East and other parts of the world, known to the Russian people as the 'far abroad'.

During the past five years, around 40,000 asylum seekers from the far abroad have approached the UNHCR office in Moscow for advice and assistance. Around 2,300 new cases were registered in 1996. By far the largest number – around 65 per cent of the total – are from Afghanistan, many of them people who were associated with the Soviet-backed regime which governed Afghanistan throughout the 1980s. In general, they have been educated in Russia and are familiar with the Russian language and culture. In that respect they differ from most of the other asylum seekers: around 7,000 people from countries such as Angola, Ethiopia, Iraq, Rwanda, Somalia, Sri Lanka and Zaire. Around 70 per cent of the asylum seekers registered by UNHCR in Moscow are adult males, and most are to be found in either Moscow or St Petersburg.

It is almost certainly true to say that few of these asylum seekers wanted or intended to remain in Russia for any length of time. Most arrived with the intention of moving on to Western Europe or North America, either legally or by using the services of a trafficker. In practice, however, the increasingly restrictive admission policies of the industrialized states often makes it impossible for them to fulfill this ambition. As a result, a growing number of people who intended simply to transit through Russia find that they are obliged to remain there for a protracted period.

Law on refugees

In principle, the Russian Federation has taken some important steps towards the establishment of a legal and administrative structure related to the refugee and asylum issue. The country acceded to the 1951 UN Refugee Convention in 1992 and in the following year introduced a law on refugees, dealing with non-Russian nationals, and a law on forcibly displaced persons, pertaining to people with a claim to Russian citizenship. In 1993, the Russian government established a Federal Migration Service to deal with refugee-related issues, and in 1995, a presidential decree was issued, giving effect to a constitutional provision on the granting of asylum to victims of persecution.

In practice, however, the impact of these laws and structures has been limited. Since the beginning of 1994, asylum seekers from the Commonwealth of Independent States and Baltic States have been able to register their requests for refugee status. In 1996, almost 20,000 people

were recognized as refugees. Asylum seekers from the far abroad, however, have been treated somewhat differently.

Russia is not well placed to respond to the recent arrival of asylum seekers from other parts of the world. The country has never had to cope with such people before and its citizens are unused to having foreigners living in their midst. Russia has a host of domestic problems to deal with, not least of them the influx of ethnic Russians from the former Soviet states, as well as an acute shortage of resources.

Government officials readily acknowledge, moreover, that the country's original intention in signing the 1951 Refugee Convention was to attract international assistance for the incoming ethnic Russians, rather than to assume responsibility for asylum seekers from Africa, Asia and the Middle East. The fact that many of the new arrivals do not even want to stay in Russia, and the fact that many of the Afghan asylum seekers are thought to have communist sympathies, reinforces the tendency for their problems to be ignored.

Those problems are numerous. Once they get into the country, asylum seekers are rarely deported, largely because the authorities lack the resources required to carry out deportations. But asylum seekers have been refused admission at Moscow's Sheremetyevo-2 airport, and have either been sent back to their country of origin or to their last port of call.

Identity documents

In general, citizens of countries in the far abroad have not been able to register an asylum application with the Russian authorities. As a result, they cannot regularize their status in the country, gain access to public services, obtain a temporary residence permit or an identity document. They are consequently at a grave disadvantage when apprehended by the Moscow police, who are known to target foreigners and dark-skinned people during their patrols of the city.

Most asylum seekers who come into contact with the authorities are also hindered by the fact that they speak little Russian, do not understand the country's complex legal and administrative system, and do not have access to the network of voluntary agencies, lawyers and human rights organizations that are found in the states of Western Europe. Not surprisingly in these circumstances, very few asylum seekers from the far abroad have been granted refugee status in Russia: around 80 people in total, most of them from Afghanistan and Ethiopia.

Since establishing a Moscow office in 1992, UNHCR has been assisting the Russian authorities to cope with the different population influxes which the country has experienced. In addition, the organization has provided assistance to people displaced within the Russian Federation as a result of the Chechnya conflict.

With regard to asylum seekers from the far abroad, UNHCR had had three primary concerns: to encourage and assist the government to establish a properly functioning procedure for the examination of asylum claims; to develop a network of lawyers, human rights organizations and non-governmental organizations which can provide advice and support to people who are submitting an asylum request; and to offer practical forms of assistance to individual asylum seekers, especially those who are least able to cope with the difficulties of life in Russia.

Despite such efforts, the situation of asylum seekers in the Russian Federation seems unlikely to change substantially in the immediate future. In a society which is still trying to come to terms with the tumultuous political and economic changes of the past decade, and in a state which is preoccupied with other forms of migration and mass displacement, new arrivals from the far abroad are not a very high priority. Moreover, with the increasingly restrictive asylum and

immigration controls introduced by states to the west, including new efforts to combat human trafficking, the opportunities for asylum seekers to move on from Russia and to seek refugee status elsewhere could well diminish.

Box 5.4

Cuban and Haitian asylum seekers

For asylum seekers wishing to leave authoritarian and poverty-stricken states in the Caribbean, the USA represents a natural and nearby place of refuge. As the following analysis indicates, the USA has in recent years responded to the arrival of such asylum seekers with a wide variety of measures: interdiction at sea and involuntary return, in-country and shipboard asylum processing procedures, the establishment of 'regional safe havens' and migration management agreements with countries of origin. The objective of all these different measures has been largely the same, however: to limit the number of people arriving spontaneously on US territory and seeking admission there.

The case of Cuba

For most of the past three decades, Cubans have sought – and received – refuge in the USA. From 1959 until 1994, the USA operated a more or less open-door policy towards asylum seekers from Cuba, reflecting Washington's deep hostility to the communist government of Fidel Castro.

In the past few years, a number of developments have prompted the US government to abandon this longstanding policy: the end of the cold war and the consequent disappearance of the communist threat; a growing sense that the USA is losing control of the immigration and asylum problem; and a recognition by Washington that the authorities in Havana have the capacity to create substantial problems for the USA by the simple means of allowing large numbers of Cuban citizens to set sail for Florida.

All of these considerations came into play in 1994, when, as a result of deteriorating economic conditions, the number of Cubans making their way to the USA by boat and raft (commonly known as *balseros*) increased very rapidly. Many of the rafters were intercepted by the Cuban authorities, a policy which led to the drowning of several *balseros*, a number of violent boat hijackings and to anti-government riots. When the Cuban government responded to these events by lifting its restrictions on departure from the island, large numbers of people began to prepare for the hazardous journey to Florida.

Faced with an impending influx of Cuban rafters, the US government announced in August 1994 that those who were picked up at sea by the Coast Guard would no longer be taken to Florida. Instead, they would be held at the US naval base in Guantanamo Bay, which is located on the same island as Cuba, and at another holding centre in the Panama canal zone.

The following month, US and Cuban negotiators reached an agreement on measures to stem the number of people trying to reach US territory by sea. The agreement contained four main provisions. First, the US confirmed its earlier decision to end the longstanding practice of allowing

automatic entry to Cubans arriving on its shores. Second, the two countries agreed that the Cuban authorities would take action “to prevent unsafe departures using mainly persuasive means.” Third, the Clinton and Castro administrations expressed a joint commitment to take effective measures against Cubans involved in the hijacking of ships and aircraft. Finally, the US government agreed to issue entry visas to 20,000 Cubans a year, thereby allowing them to leave their homeland by regular means. While it was not written into the agreement, it is widely believed that the two countries also reached an understanding that the longstanding US trade embargo enforced upon Cuba might be eased if Havana introduced political and economic reforms.

Welcoming the agreement, President Bill Clinton observed that it would “help to ensure that the massive flow of dangerous and illegal migration will be replaced by a safer, legal and more orderly process.” In this sense, the US-Cuba accord epitomized the current concerns of the industrialized states in relation to asylum and migration issues: their fear of uncontrolled population flows; their desire to channel ‘irregular’ and ‘spontaneous’ migration into more predictable and organized movements; and their belief that countries of origin should themselves play a part in the management of international migration.

By the beginning of 1995, the number of departures from Cuba by sea had fallen dramatically, but more than 30,000 rafters were still being held at Guantanamo Bay and in Panama. In May 1995, the US and Cuban governments agreed that most of the rafters still held at Guantanamo would be admitted to USA – reversing the earlier decision that they would not be allowed to enter. Despite objections from parts of the Cuban-American community, the Clinton administration also announced that in future, rafters who were rescued or intercepted at sea would normally be returned to Cuba following a brief onboard screening procedure. Cubans who wished to enter the USA would then have to participate in the regular migration programme established by the 1994 accord, or approach the US Interests Section in Havana to apply for refugee status.

In late 1996, after another deterioration in relations between the two states had led to a suspension of negotiations, an understanding was reached over the return of those Cubans who succeeded in making their own way to US territory without a valid visa. From December 1996, they were to be treated like other illegal immigrants and would be subject to deportation.

US refugee and human rights organizations have been highly critical of the treatment of Cuban asylum seekers and the implications of the migration agreement, particularly the continuing restrictions on departure from Cuba and Havana’s refusal to allow humanitarian organizations to monitor the treatment of rafters who have been returned to the country. Such concerns were reinforced in early 1997, when six Cubans who had been intercepted by the US Coast Guard and handed over to the Cuban authorities were sentenced to long prison terms for trying to leave the country in a hijacked boat. The Cuban authorities, however, pointed out that the prison sentences were justified by the violent nature of the hijacking – the type of incident that the agreement with the USA was specifically designed to eliminate. By early 1997, more than 500 Cubans had been sent back to their homeland under the terms of the 1994 accord.

Haitian boat people

Haitian boat people, who have been arriving by boat on the shores of Florida since the early 1970s, have traditionally been treated differently from the Cuban balseros. Unlike the Cubans, who were until recently welcomed as refugees from a communist regime, consistent efforts have been made to interdict the boat people at sea, to deny them asylum in the USA, and to return them to Haiti.

Such policies can be explained by reference to a number of factors: Haiti’s traditional support for US foreign policy and its role in the containment of Cuban communism; the belief that Haitians

were leaving their homeland for economic rather than political reasons; the relative ease with which Haitian boat people could be intercepted and returned, unlike the much larger movement of asylum seekers and migrants across the Mexican border; and, according to many commentators, racism. Unlike the Cuban asylum seekers, a racially mixed group of people, the Haitian boat people were almost exclusively black.

In September 1981, an agreement was established between the USA and the government of Haiti, establishing a cooperative programme of interception and return. Interdictions by the US Coast Guard began almost immediately, and continued after the fall of the Duvalier regime in 1986. By September 1991, when the democratically elected government of President Aristide was overthrown, the Coast Guard had intercepted 443 vessels and interdicted 23,551 Haitians, of whom just 28 were admitted to the USA and allowed to apply for asylum.

The number of departures declined considerably during Aristide's brief tenure of office, but the outflow of Haitians increased in 1991 after the military coup that overthrew him. With the political, human rights, economic and environmental situation in the country deteriorating, nearly 10,000 Haitians were interdicted by the Coast Guard in 1991 and another 31,400 in 1992. Up to 30,000 more fled across the border to the Dominican Republic. In November 1991 the US courts placed a temporary restraint on repatriation and a screening facility was set up at Guantanamo Bay. In the six months which followed, 34,000 Haitians were interdicted at sea and taken to the naval base. Some 10,500 were found to have a plausible asylum claim and were taken to the USA.

In May 1992, with the presidential election approaching, Washington issued an order ending asylum screenings and directing the repatriation of all Haitians who were interdicted at sea. The only recourse for Haitian asylum seekers was now to be an in-country refugee processing programme. Around 1,300 of the many Haitians who subsequently submitted applications to this programme were admitted to the USA. UNHCR was critical of the interdiction and return policy, pointing to the violence and human rights abuses which had taken place in Haiti since the overthrow of Aristide, and the dangers to which Haitians would be exposed if they were returned to their own country.

Despite such criticisms, direct returns to Haiti continued until May 1994, when another change of policy was prompted by the continuing outflow of boat people (nearly 25,000 were apprehended by the US in 1994), the renunciation of the 1981 migration accord by president-in-exile Aristide, and continuing criticism of the interdiction policy within the USA. In June 1994, the US started to process the asylum applications of Haitians on board a hospital ship moored in Kingston, Jamaica. But when 11,000 Haitians were interdicted in a fortnight, the new facility was almost immediately overwhelmed.

This development prompted another policy shift, with the US government declaring that Haitians who were intercepted at sea would again be sent to the 'safe haven' at Guantanamo Bay. More than 21,000 Haitians were accommodated there from July 1994, until the US-led military intervention in Haiti in September 1994, which removed the military junta and restored President Aristide to power. After Aristide's return from exile in October 1994, 17,000 Haitians repatriated voluntarily from Guantanamo Bay to Haiti, and 4,000 others were sent back against their will. Since that time, the number of Haitians making their way to the USA by boat has declined considerably. In the last six months of 1996, for example, only 13 were intercepted.

As the preceding narrative indicates, US policy towards Cuban and Haitian asylum seekers has undergone a succession of rapid changes. On many occasions, it would appear, the government has found itself caught between a number of divergent pressures: the nature of its relations with the states concerned, its obligations under international refugee law; and the competing demands of different domestic constituencies. Ultimately, however, the most important determinant of recent policy towards the Cubans and Haitians has been the country's desire to prevent the unpredictable and irregular arrival of people upon its shores. As US migration experts Michael

Teitelbaum and Myron Weiner have observed, “with the end of the cold war, many Americans have come to regard the prevention of illegal migration and large-scale refugee flows as a major foreign policy objective.”

Map L
Cuban and Haitian asylum seekers



Fig 5.1

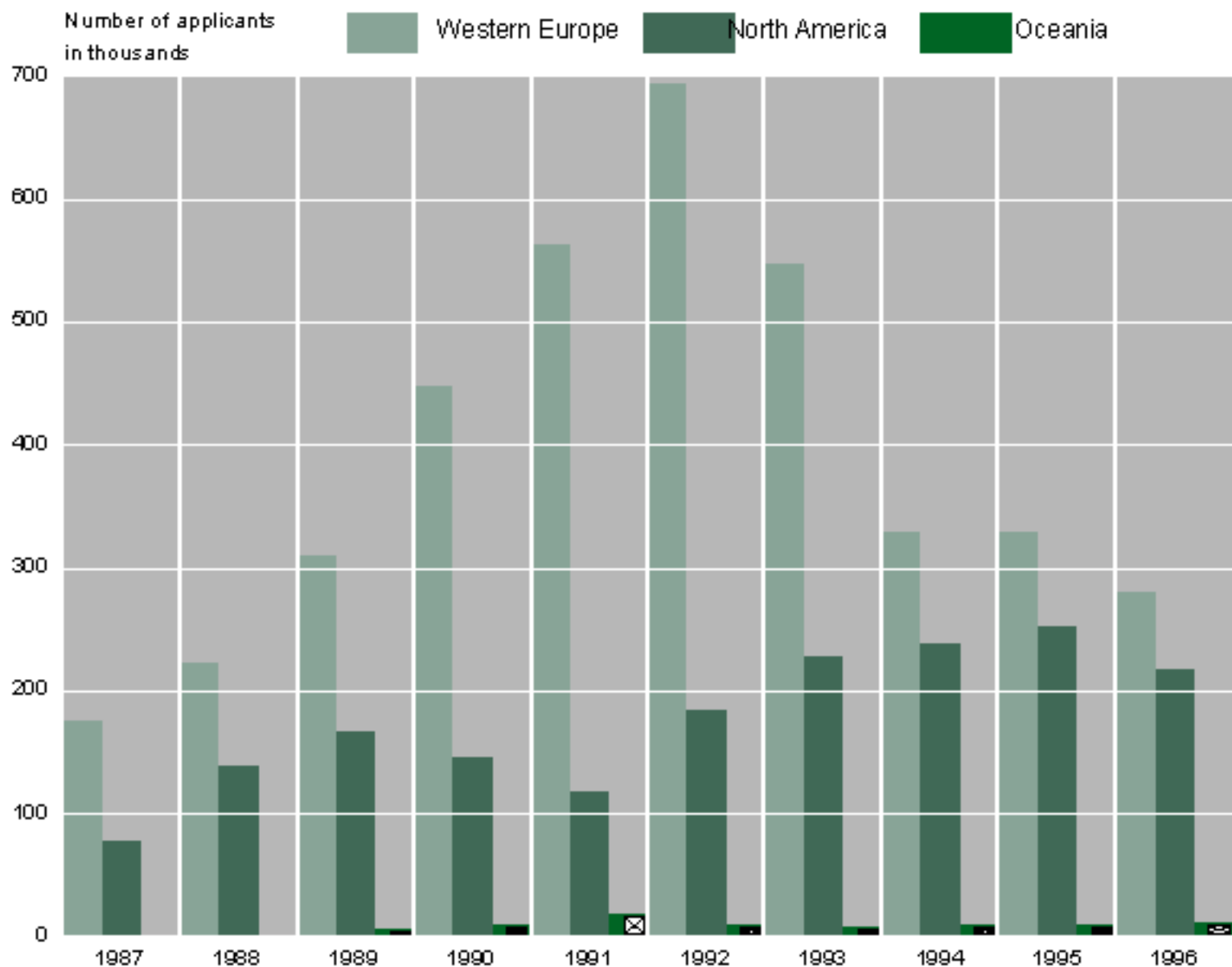
Asylum applications in Western Europe, North America and Oceania, 1987-96

Fig 5.2

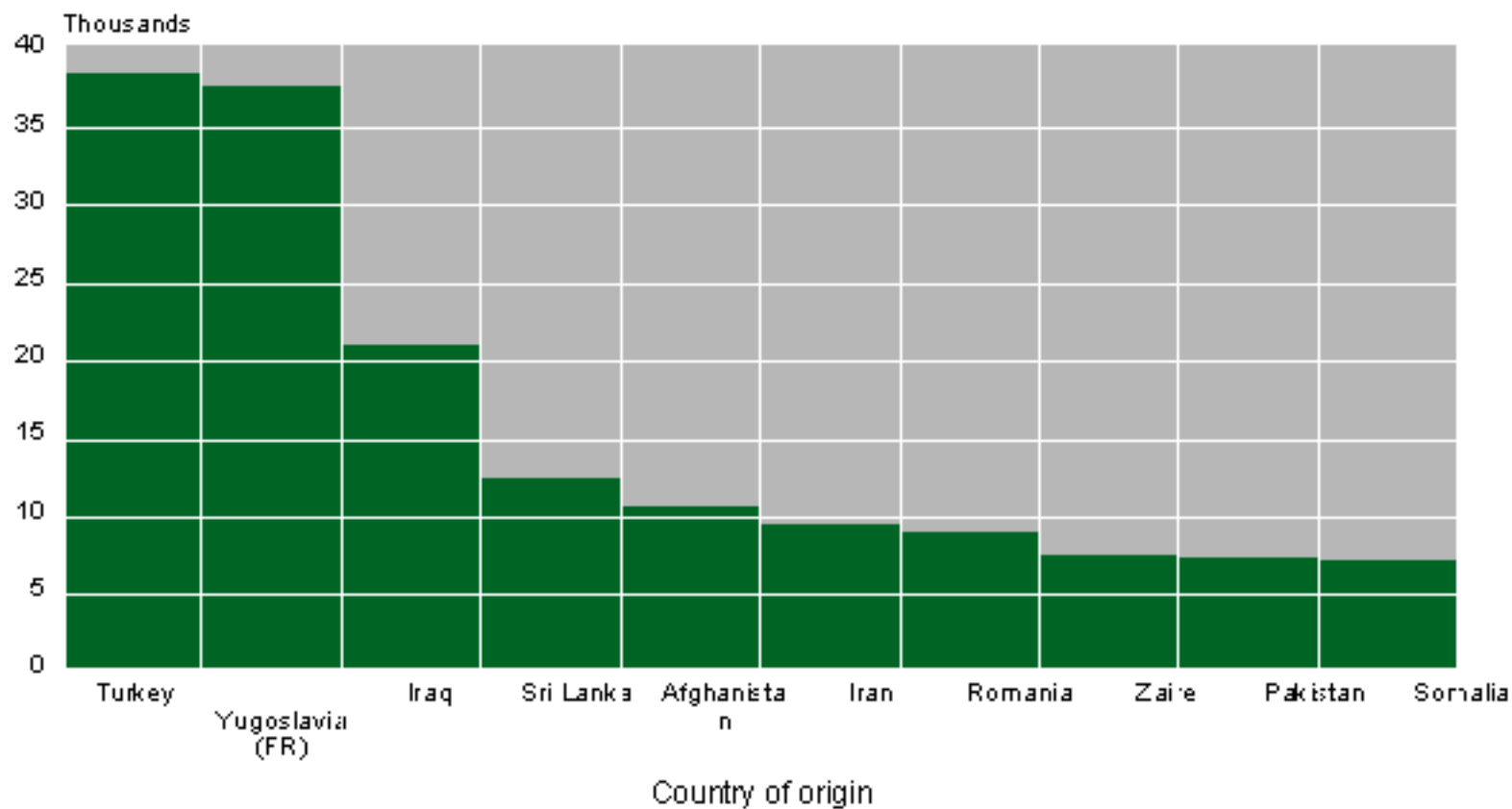
**Asylum applications in Western Europe
by country of origin in 1996**

Fig 5.3

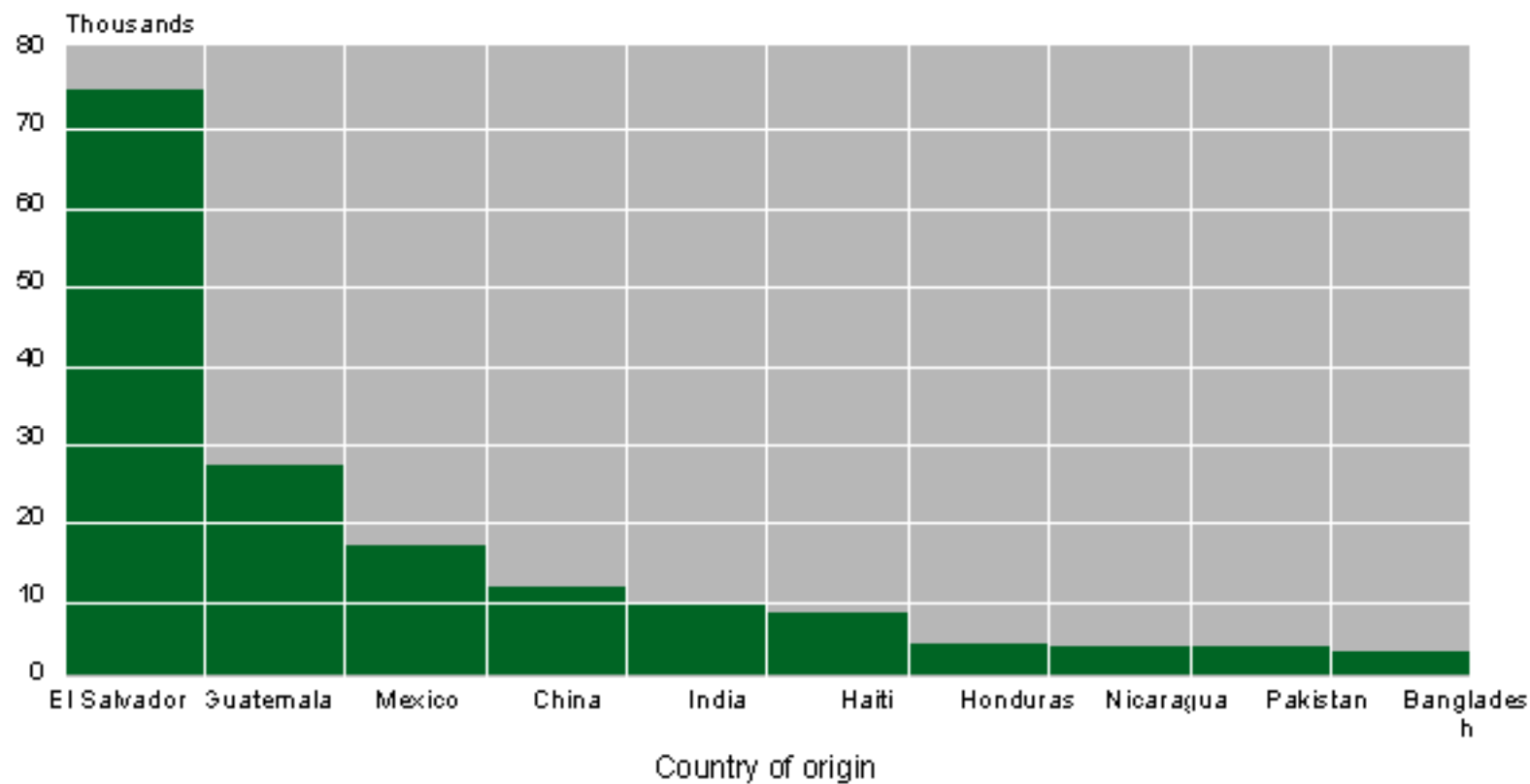
Asylum applications in North America by country of origin in 1996

Fig. 5.4

Asylum applications: major receiving countries in 1996

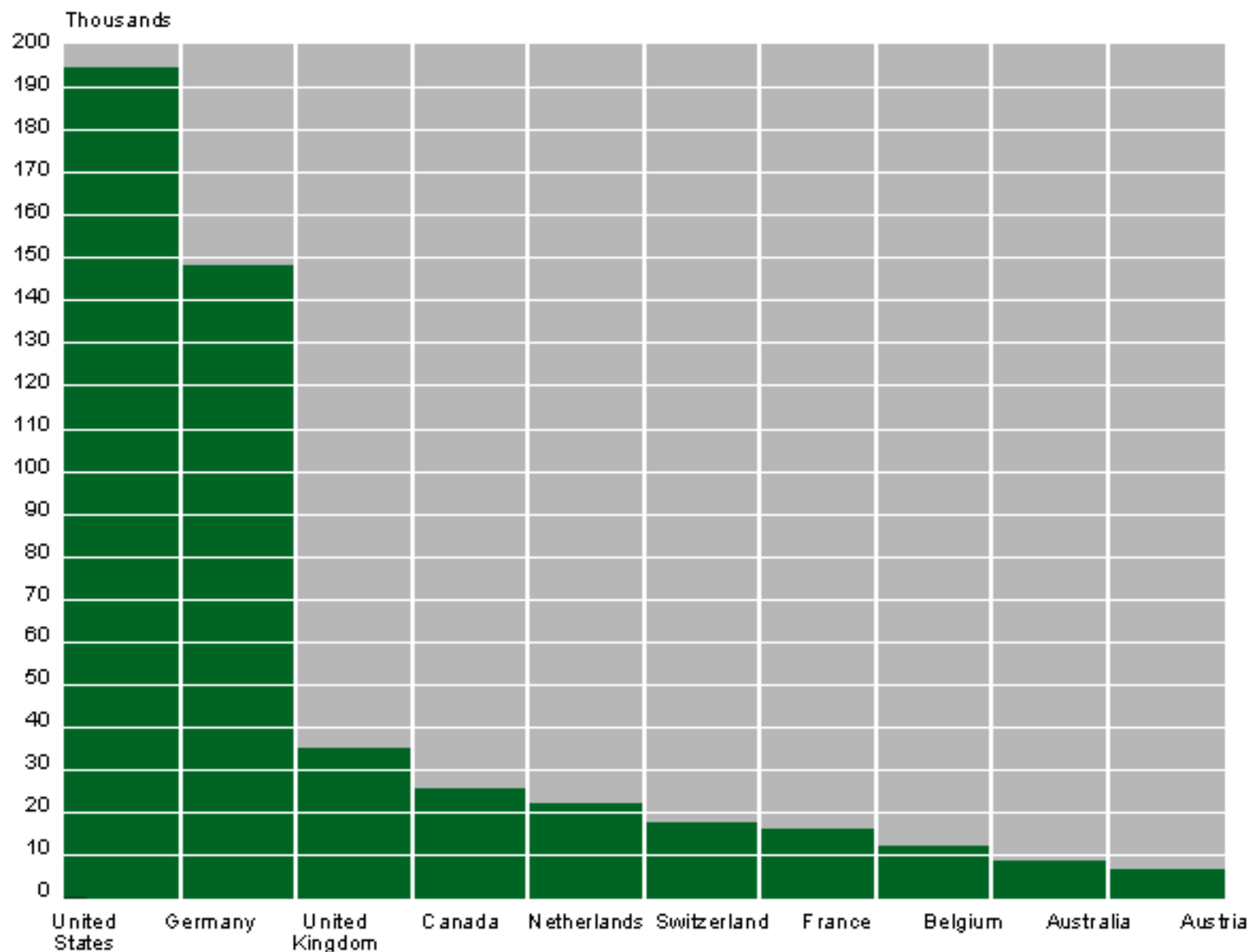


Fig. 5.5

Refugee recognition rate: selected European countries, 1987-96

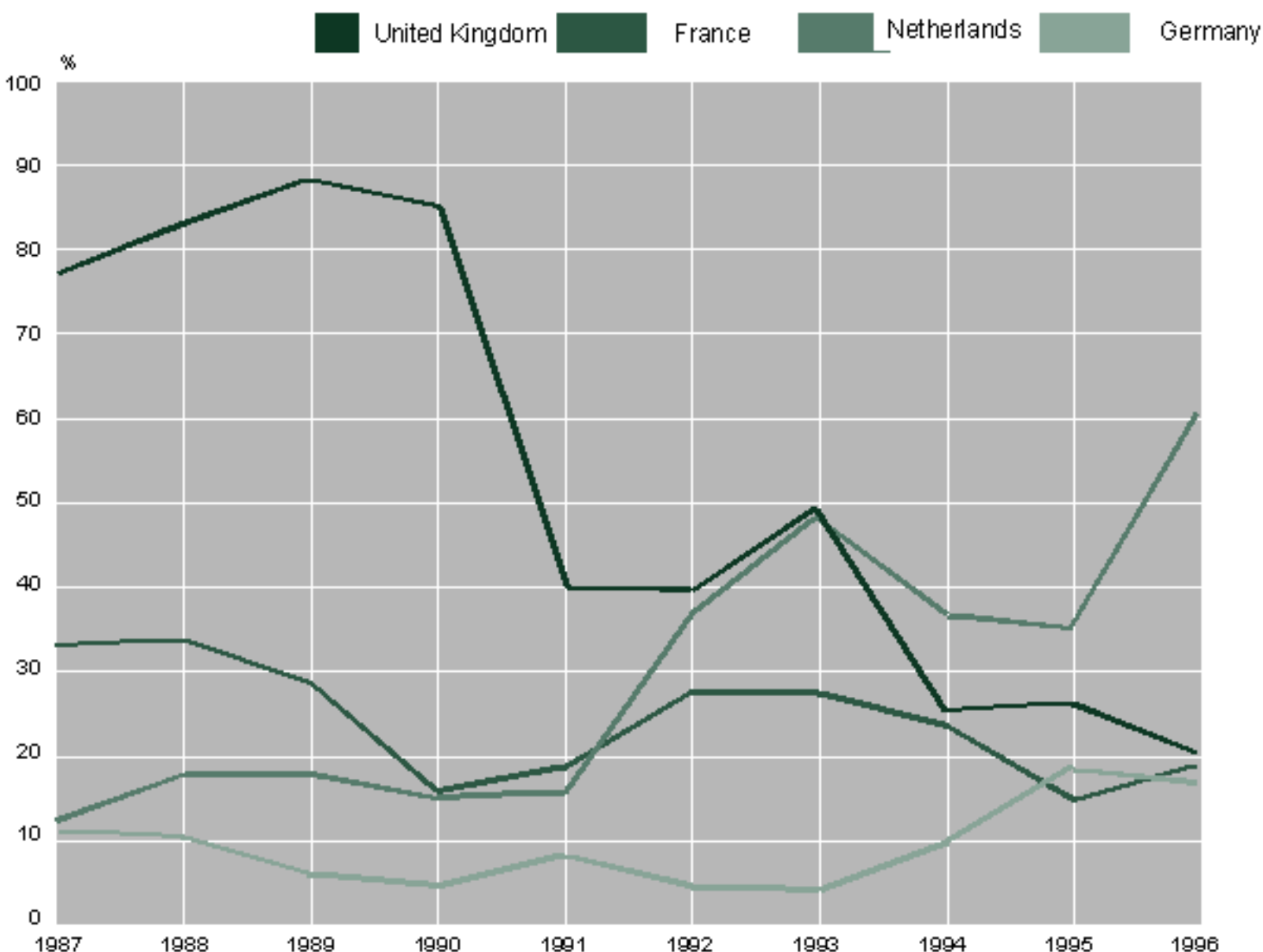


Figure shows total recognition rate for asylum applicants, including 1951 Convention recognition rate and humanitarian status. Figure does not include former Yugoslav citizens granted temporary protection

Fig. 5.6

Refugees from Bosnia and Herzegovina by host country

Host country	Number of refugees
Germany	345,000
Yugoslavia (FR)	253,377
Croatia	288,000
Austria	80,012
Sweden	63,530
United States	38,000
Canada*	38,000
Slovenia	33,370
Switzerland	26,667
Australia**	24,000
Netherlands	23,500
Denmark	22,810
France	15,000
Norway	12,000
Italy	8,430
Macedonia (FYR)	7,210
United Kingdom	6,000
Belgium	5,884
Czech Republic	5,360

Statistics at March 1997

Table includes only host countries with more than 5,000 refugees

* This figure includes persons resettled from other countries in the region

** As at 31 December 1996