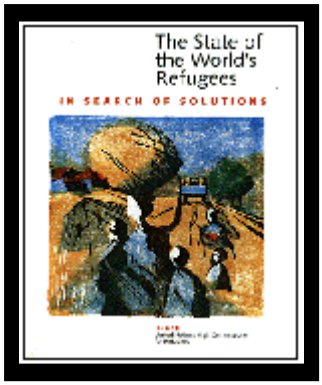

The State of The World's Refugees
in search of solutions

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5 Managing migration

Orderly Departure Programme, Ho Chi Minh City, Viet Nam, May 1995.
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A hoarding in London's Heathrow Airport proudly proclaims that 'nowhere is more than 18 hours from this airport.' It is a startling declaration, which, like many other advertisements, should be taken with a pinch of salt. But even allowing for some poetic licence, the claim gives some measure of the ease with which the globe can now be crossed. In 1994, 51 million people went through the turnstiles at Heathrow alone, a third of whom were in transit, connecting with flights to other destinations.

The expansion of the global travel and communications industry has contributed substantially to the world's wealth and has provided people with opportunities that would have been unimaginable to previous generations. At the same time, however, these developments have played an important part in the evolution of an intractable international issue: the uncontrolled and in many cases unwanted movement of people from relatively poor and insecure countries to more prosperous and stable states. This problem has been exacerbated by the increasingly complex nature of such population movements. The conventional dichotomy between voluntary and involuntary migration, between refugees and economic migrants, has become blurred. People are now leaving their own country and seeking admission to other states as the result of a mixture of fears, hopes and ambitions which can be difficult, if not impossible, to unravel.

The changing nature of international migration has confronted the international community with a triple challenge: to manage population movements in a way which upholds human rights and humanitarian principles, particularly the institution of asylum; to protect the legitimate interests of the countries and communities which are affected by these population flows; and to remove or reduce the pressures which are prompting so many people to seek a more secure and prosperous future beyond the borders of their own country. As this chapter explains, the search for solutions to refugee problems depends to a significant extent on the successful realization of these objectives.

People on the move

'Chinese boat people sent home from Mexico'. 'Norway prepares to deport Tamils'. 'US to cut immigration by a third'. 'Germany closes door to asylum seekers'. 'Gabon expels clandestine workers'. 'More Vietnamese to be sent back from Hong Kong'. 'Australia moves towards tougher refugee law'. As these recent newspaper headlines suggest, the issue of international migration has risen to the top of the political agenda in every part of the world. In the north and south, east and west, states of every ideological persuasion and stage of development are expressing concern about the movement of people across their borders.

During the past few years, migration issues have also featured much more prominently in governmental discussions at the regional and international levels. In December 1992, for example, a European Union summit meeting noted that 'the pressure on member states resulting from migratory movements' was 'an issue of major concern, and one which is likely to continue into the next decade.' In the same year, an intergovernmental discussion document observed that 'migration is now

seen as a priority issue, equal in weight to other global challenges, such as the environment, population growth and economic imbalances between regions.'

According to one scholar, these developments are all symptomatic of the 'global migration crisis' which is now taking place. And this sense of crisis, he insists, is shared by politicians and the general public. 'Citizens have become fearful that they are now being invaded, not by armies and tanks, but by migrants who speak other languages, worship other gods and belong to other cultures, and who, they fear, will take their jobs, occupy their land, live off the welfare system and threaten their way of life.'

The scale and scope of international migration

While the scale and scope of international migration is growing, its pattern is also becoming more complex.

The final decades of the 20th century have been marked by increasingly large movements of people, criss-crossing the globe. As previous chapters have explained, the worldwide refugee population has risen substantially over the past 30 years: from under two million in 1965 to some 15 million today, a figure that does not include several million Palestinians, Bosnians and other displaced groups who have not been formally recognized as refugees.

But those people who have left their own country to escape from political terror, armed conflict and human rights abuses constitute only one portion of the global migrant population. While the available statistics are somewhat inconsistent, the number of people living outside of their country of birth or citizenship appears to have increased from around 75 million in 1965 to a figure of at least 120 million today.

The growing scale of international migration has been manifested geographically as well as numerically. Indeed, since the end of the Cold War, almost every country in the world has been affected by this phenomenon. Less than a decade ago, scholars of international migration were able to joke that they would be redundant if every country were like Albania (which refused to allow any of its citizens to leave) or like Japan (which maintained tight immigration controls). But in recent years, even these societies have experienced major migratory movements.

According to the International Labour Organization (ILO), Japan's net annual inflow of foreign nationals, for example, jumped from less than 60,000 in 1987 to over 160,000 in 1990, while the number of people remaining in the country after the expiry of their visas increased from under 50,000 in 1987 to more than 250,000 in 1992. And the movement of people from Albania to Italy (which involves not only Albanian citizens, but also illegal immigrants from as far afield as China) has been such that the authorities in both countries have felt obliged to launch military operations to stop the traffic across the Adriatic Sea.

The movement of people, therefore, has become a genuinely global phenomenon. The ILO suggests that more than 100 states can now be categorized as countries of major inward or outward migration. And around a quarter of those countries both send and receive substantial numbers of migrants, a phenomenon which has broken down the longstanding distinction between countries of emigration, immigration and transit. Thus while the scale and scope of international migration is growing, its pattern is also becoming more complex.

This trend seems certain to continue. In terms of destination, the traditional migrant destinations of North America, Western Europe and Australia have already been joined by the oil-producing states of the Middle East and, more recently, by the economic hothouses of East Asia. Within the less-developed regions, migratory flows are also shifting in response to changes in the relative prosperity and stability of different states. South Africa, for example, is now attracting a growing number of migrants and asylum seekers from other parts of the continent, a development which has already caused some difficulties for the country's new government (see Box 5.1).

Significant changes are also taking place at the point of supply. The much heralded exodus from the former Soviet Union has been far smaller than many commentators predicted at the beginning of the decade. Nevertheless, the combination of political instability, armed conflict and economic disruption experienced by many of the newly independent states can only increase their potential for major population movements. The momentous social and economic changes taking place in China have already been manifested in a massive outflow of illegal immigrants - at least 600,000 people according to many estimates. And even if states such as Algeria, Egypt, Haiti and Sri Lanka are able to avoid an escalation of the political violence which they have experienced in recent years, the economic and demographic difficulties afflicting these countries, coupled with their proximity to much wealthier regions of the world, seems likely to prompt many more of their citizens to seek a future abroad.

Why do people migrate?

In a world where income differentials are widening, where the population is expanding much faster than the number of wage-earning opportunities, where more civil wars are being fought than at any other time in modern history, and where human rights violations are still legion, it can hardly be a surprise that a growing number of people are on the move from one part of the globe to another. Migration flows cannot, however, be plotted or predicted simply by enumerating the pressures which 'push' people out of one country and 'pull' them to another. Disparities in wealth, opportunity and security obviously form the basis of any decision to migrate. But a proper explanation of the increasing scale and scope of international migration must also take account of several intervening variables.

The recent expansion of the global communications network - telephone connections, satellite dishes and video rental stores - has already had a profound effect on the consciousness of the world's less prosperous societies. Horizons have been broadened, expectations raised and cultural differences diminished. The images conveyed by such media may be largely false. Nevertheless, they convey a potent message about the advantages experienced by people living in the developed states.

Improvements in mass transportation are also having a determinant impact on the scale, scope and direction of international migration. People do not take up residence in another country simply because the means exist to do so. But the ease with which they can travel from one side of the globe to the other has created its own opportunities and aspirations, particularly for the many people who, for lack of a passport or an exit permit, have hitherto been unable to leave their homeland.

For those who aspire to live and work in another country, help may be at hand. Many international migrants are supported by a social network of friends, relatives and compatriots who have already settled in other states, and who are able to provide them with accommodation, work, cash advances and other forms of assistance. Others make use of the services provided by professional agents and traffickers, whose job is to deliver aspirant migrants to their preferred destination, whether or not their presence is welcome by the authorities of that state (see Box 5.2). As the following section explains, it frequently is not.

The migration window and the asylum door

All of the world's more affluent countries keep their doors open to migrants from other parts of the world - as long as they have skills which are in short supply, substantial amounts of capital to invest or close family links with the state concerned. For the person who lacks such attributes, however, the opportunities for admission are extremely limited. As one analyst bluntly states, in the industrialized states, 'the need for mass immigration is gone and will not return.'

It is not difficult to explain why. During the 30-year economic boom which followed the Second World War, the industrialized states of North America, Western Europe and Oceania required additional labour and actively recruited immigrants and 'guest-workers' from regions such as North Africa, Southern Europe, the Indian sub-continent and the Caribbean. In the early part of this period, they also admitted large numbers of foreigners through refugee resettlement programmes, many of them from parts of Eastern Europe which had fallen under communist control.

This phase came to abrupt end in the mid-1970s, however, when a number of different trends converged to remove the need for primary immigration, particularly in Western Europe. These included:

- the end of the post-war boom and the consequent reduction in rates of economic growth;
- the decline of traditional, labour-intensive industries, and the introduction of new, capital-intensive technology, reducing the demand for manual workers;
- the growth of domestic unemployment levels and the ability of employers to meet their remaining unskilled labour by hiring women, as well as informal and illegal employees; and,
- the inability of governments to repatriate migrant workers who had been recruited on a short-term basis, coupled with the arrival of new immigrants on the basis of family reunion.

As a result of these and other considerations, during the 1970s and 1980s, most of the industrialized states halted the recruitment of unskilled migrants, introduced increasingly restrictive immigration laws, and in some cases provided incentives for foreign workers to go back home. At precisely the same time, however, the

migration pressures in the world's poorer countries - economic stagnation, demographic growth, increased unemployment, social violence and political instability, as well as the expansion of mass communications and transport - have been mounting. As the UN Research Institute for Social Development suggests, 'a potent cocktail of increased pressure to migrate, set against hardening barriers to immigration is developing. More and more potential migrants are emerging, but there is nowhere for them to go.'

Figure 5.1 **Asylum applications in Germany and other Western European states, 1983-1994**

Figure 5.2 **Asylum applications in Australia, Canada and the USA, 1983-1994**

Illegal and irregular movements

If the history of international migration has taught us anything, it is that there are few limits to the ingenuity and fortitude of people who are determined to leave their own country. However serious the geographical, political and financial obstacles they encounter, a proportion of the men and women who would like to move to another, more prosperous and stable society, invariably succeed in doing so. It is therefore not surprising that substantial numbers of people have been able to find their way through and around the immigration controls which the industrialized states have established over the past 20 years.

They have achieved this objective in a number of different ways. Some migrants who in previous years may have made their way to Western Europe, North America or Australia have moved instead to those areas where there is a greater demand for their services: the Middle and Far East, as well as regional poles of economic growth such as South Africa, Côte d'Ivoire, Mexico and Venezuela. Others, primarily those with the necessary skills, resources or family connections, have been able to gain entry to the industrialized states through regular immigration programmes.

For potential migrants without such assets, two choices have remained: to enter or remain in another country illegally; or to by-pass the normal immigration controls by claiming refugee status. Over the past two decades, a growing number of people from the world's low and middle-income countries have exercised these two options (which are not, of course, mutually exclusive; many asylum applications are submitted by people once they have entered a country, whether legally or not).

Accurate statistics on illegal immigration are, by definition, difficult to collect, but the ILO suggests that the number of people falling into this category could be as high as 30 million, with up to 4.5 million of this total in the USA alone. Substantial populations of illegal immigrants are also to be found in Germany, Italy and Spain (500,000 each), Japan (up to 300,000), France (200,000) the Republic of Korea and Taiwan (100,000 each), Australia and New Zealand (up to 100,000 in total).

The number of people seeking asylum in the industrialized states can be calculated with much greater precision. According to statistics collected by UNHCR, the figure climbed from just over 100,000 in 1983, to around 240,000 in 1986, 470,000 in 1989 and 849,000 in 1992. Only in the past two or three years has this figure started to decline: to around 700,000 in 1993 and 500,000 in 1994. In total, some

five million asylum applications have been received by the industrialized states since the beginning of the 1980s.

While the number of asylum applications has, until very recently, moved progressively upwards, the proportion of claimants actually granted refugee status has moved in the opposite direction. In Western Europe, for example, the recognition rate for asylum seekers stood at 42 per cent in 1984. By 1993, however, it had slumped to under 10 per cent.

Distinguishing refugees and economic migrants

From the figures presented above, it would be easy to conclude that many refugee claimants in the industrialized states are actually economic migrants, using the asylum channel to gain entry to countries from which they would otherwise be excluded. It would also be foolish to deny that there is some truth to this argument. In the words of the UN High Commissioner for Refugees, 'for would-be migrants who do not qualify for immigrant visas, asylum procedures seem to offer a chance to secure admission and improve their lives in a new land. In the absence of a migration window, people who are seeking jobs and a better future try to get in through the asylum door.'

If every application for refugee status could be neatly categorized as either 'genuine' or 'false', then little additional analysis would be needed. But the complexity of this issue is such that this simple categorization cannot be sustained.

For the 30 years which followed the establishment of the 1951 UN Refugee Convention, the task of distinguishing refugees from economic migrants did not present serious problems. Throughout most of this period, the number of individuals seeking asylum in the industrialized states remained quite small. A large proportion of these people, moreover, came from communist states, where the threat of persecution was deemed to be self-evident by the governments of the receiving countries.

Although the number of refugees in Africa, Asia and Latin America began to grow in the 1960s and 1970s, the vast majority remained within their own region. And because of the plentiful immigration opportunities offered by the western states at this time, people who wished to leave their own country and region as a result of persecution or political violence were not always obliged to request refugee status in order to take up residence in those countries. Today, economic migrants may use the asylum door rather than the immigration window. At that time, however, people who might have qualified for refugee status were able to emigrate quite easily. As a result, some of the difficulties now encountered in the determination of refugee status were not so apparent.

What exactly are these difficulties? UNHCR and other refugee organizations have traditionally had little to say about this issue, fearing that any dilution of the basic distinction between refugees and economic migrants might have an adverse impact on the people they seek to protect. More recently, however, the High Commissioner for Refugees has recognized that a more open approach to this question is required. 'The reality,' she argues, 'is that contemporary refugee movements are taking place against a background of larger and more complex migratory flows, blurring facile distinctions between refugees and migrants.'

The first and most widely recognized blurring of the refugee/migrant distinction derives from the way in which governments have interpreted the 1951 UN Refugee Convention, which describes a refugee as someone who has a 'well-founded fear of persecution' in their country of origin. Many African and Latin American states have extended this definition to include people who have fled from their homeland to escape from generalized violence, internal conflicts and serious disturbances to public order. But the industrialized states have generally preferred to insist upon the narrower meaning of the concept, and have in many instances denied refugee status to people falling within the broader definition.

In practice, however, those states have also recognized that even asylum seekers who fail to qualify for refugee status may find it impossible to return to a conflict-affected country without putting their life or liberty at risk. As a result, governments have been obliged to devise a range of alternative legal arrangements (commonly referred to as 'humanitarian status'), designed to provide such unsuccessful asylum seekers with at least temporary residence rights.

The substantial number of refugee claimants who have benefited from such arrangements casts a different and more positive light upon the rejection rates cited earlier in this chapter. Thus in 1993, for example, of the 685,000 asylum applications considered in Western Europe, only 45,000 were granted refugee status. But an additional 178,000 were allowed to stay on humanitarian and other grounds. Thus while the refugee recognition rate may have been under 10 per cent, more than 30 per cent were acknowledged to have legitimate reasons for remaining in the country where they had sought asylum. As these figures suggest, the proportion of refugee claimants who are actually economic migrants, seeking entry through the asylum door, is considerably smaller than may first appear.

The refugee/migrant distinction is further complicated by a number of other considerations. Armed conflict and political chaos almost invariably go hand in hand with economic failure. Countries which are affected by widespread violence are normally countries with low (or negative) rates of growth, declining social welfare standards, high inflation and mounting unemployment. In such circumstances, people may feel obliged to abandon their homeland for a combination of reasons, involving a desire to safeguard both their physical and economic security. It can therefore be difficult to make a clear distinction between what have traditionally been known as the 'root causes' of refugee movements and the 'migration pressures' identified earlier in this chapter. Today, more than ever, refugees are part of a complex migratory phenomenon, in which political, ethnic, economic, environmental and human rights factors combine and lead to population movements.

While certain asylum seekers may appear to be motivated by material hardship and the desire to establish a better standard of living, their poverty may itself be linked to discrimination or persecution on political, social or religious grounds. Unfortunately, there are still a number of countries where members of minority groups are excluded, with varying degrees of governmental involvement, from the normal life of their society. As a result, they may find it difficult to get a job, establish a business, purchase property, buy land or even move freely around their own country. The person who leaves migrates to escape from such wretched conditions might legitimately be considered as a refugee.

Recent political and economic developments in countries such as Albania, Cuba, Haiti and Viet Nam have also given rise to a phenomenon known as 'mixed migrations' - population movements which include some asylum seekers who have been obliged to leave their homeland for refugee-related reasons, and others who have chosen to move in order to improve their standard of living or to join their family members in another country.

Particular difficulties are likely to arise in the case of mixed migrations where the ratio of refugees to economic migrants undergoes a significant and objective change, and where a movement that was once perceived by the receiving countries as a refugee flow is redefined as a movement of economic migrants.

With regard to Viet Nam, for example, it is clear that in recent years, many of the boat people whose claim to refugee status has been rejected, and who are therefore expected to return home, would in earlier years have been described as refugees, and offered resettlement places in the industrialized states. The refugee/migrant distinction, therefore, is subject to changing interpretations by countries of asylum, dependent on the number of claimants involved and the political context of their departure takes place.

Figure 5.3 **Asylum decisions in Western Europe, 1989-1993**

Restrictive asylum practices: cause and effect

It would be inaccurate to suggest that the concepts of refugee and economic migrant have lost all of their intellectual validity. In some situations, the distinction may be easy enough to sustain. No-one would suggest that the 400,000 Liberians living in Guinea have gone there to improve their standard of living. Similarly, there is no real doubt that the estimated 1,000,000 Filipina domestic workers living outside of their own country are economic migrants. But in relation to Rwandese arriving in Belgium, Haitians who are making their way to the USA, Somalis travelling overland to South Africa and Vietnamese arriving by boat on the shores of Australia, then the issue becomes more complex. Moreover, once such people submit a request for asylum, they effectively become part of the refugee problem, even if their applications are ultimately rejected.

As far as the industrialized states are concerned, that problem has assumed a number of dimensions. First, in a period when governments have sought to limit the level of primary immigration and to give priority to certain clearly defined groups, the spontaneous arrival of so many asylum seekers has signified a loss of autonomy. It would be wrong to suggest that the wealthier states are implacably or uniformly opposed to immigration. Indeed, countries such as Australia, Canada and the USA, nations of immigrants themselves, continue to see a virtue in the arrival and absorption of foreign nationals. But the industrialized states and their citizens wish to regulate that process and to feel that they retain some control over the number and nature of the people admitted to their territory.

Second, at a time when many of the developed countries have been confronted with significant budget deficits and mounting demands for public expenditure, the recent influx of asylum seekers has represented an unwelcome financial burden. According

to one estimate, the cost of administering asylum procedures and providing social welfare benefits to refugee claimants in 13 of the major industrialized states increased from around US$500 million in 1983 to some US$7 billion in 1991. In 1994, Switzerland alone is thought to have disbursed some US$400 million in asylum-related expenditures.

A third and more sinister problem associated with the arrival of asylum seekers in the industrialized states is to be found in the growth of xenophobic attitudes within the host communities - a trend which has been encouraged and exploited by extremist political parties. Appealing to a much broader electorate than the disaffected urban youth most visibly associated with racist organizations, such parties have been able to exercise a significant influence on the political agenda in many European states. To retain public support, even the more liberal governments have been led to look for ways of closing the asylum door.

Prevention and deterrence

During the past decade, the industrialized states have been involved in a constant flurry of efforts to prevent or deter asylum seekers from arriving on their territory and to accelerate the procedures employed to examine their claims to refugee status. These measures have included:

- the extension of visa requirements to the citizens of countries which are producing (or have the potential to produce) significant numbers of asylum seekers, as well as the imposition of fines on transport companies carrying passengers without valid documents;
- the interdiction of asylum seekers on the high seas, followed by their summary repatriation or their transfer to a location other than the country where they hope to claim refugee status;
- the summary rejection of asylum seekers at border posts and ports of entry, and the introduction of 'fast-track' asylum procedures to enable the speedy deportation of people with fraudulent or frivolous claims;
- the return of asylum seekers to countries through which they had transited and where their claim to refugee status might have been submitted, facilitated in many instances by the establishment of readmission or deportation agreements between the countries concerned;
- the use of restrictive interpretations of the refugee definition contained in the 1951 UN Refugee Convention, thereby requiring higher standards of proof from people who claim to have a well-founded fear of persecution in their homeland;
- the detention of asylum seekers in prison-like conditions, as well as the withdrawal or reduction of their right to work and their social welfare entitlements; and,
- the conclusion of intergovernmental agreements, preventing unsuccessful asylum seekers from submitting further applications for refugee status in other countries.

What has been the impact of these measures? In a narrow sense, they appear to have had their intended result. For as indicated earlier, after an uninterrupted period of growth since 1983, the number of asylum applications submitted in the industrialized states has dropped in the past two years. In Germany alone, which has

received a much larger number of asylum seekers that any other European country, applications dropped by no less than 60 per cent in 1993-94 (see Box 5.3).

According to many governments and a number of independent commentators, the restrictive practices of recent years can be justified on other, more constructive grounds. Only by preventing large numbers of economic migrants from entering through the asylum door, it has been suggested, can public support be preserved for the admission of refugees and the institution of asylum. The imposition of such restrictions may also be the price which has to be paid to safeguard the welfare of established immigrant communities and to promote harmonious ethnic relations. As one analyst has stated, 'the prospect of successfully incorporating the present generation of migrants and their children into the political, social and economic life of the countries in the European Community are substantially greater if members of the Community feel that they have effective control over entry than if the flows are unregulated.'

These are serious arguments, and a valuable corrective to the notion, still espoused by some advocacy groups, that immigration controls are morally wrong and that requests for refugee status should normally be taken at face value. 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. Nevertheless, there is considerable evidence to suggest that the measures which governments have introduced to control the admission of foreign nationals have had some negative consequences for refugees and the institution of asylum.

Protection implications

The measures which governments have introduced to control the admission of foreign nationals have had some negative consequences for refugees and the institution of asylum.

'As states, particularly in the industrialized world, intensify and coordinate their efforts to curb irregular migration, there is a danger that the legal and administrative measures adopted, including measures to expedite asylum procedures and to shift the responsibility for considering asylum requests to other countries, may have the effect of placing refugees in situations that could ultimately lead to their return to a country where their life or freedom would be threatened.' As this statement by UNHCR's Division of International Protection suggests, the increasingly tough and ingenious methods of immigration control adopted by the world's wealthier states have in some cases threatened the fundamental principles of refugee protection.

In recent years, for example, UNHCR field offices have reported a growing number of instances in which asylum seekers have been refused admission to a state and returned to the last country through which they had transited. Rather than examining their asylum request, however, the country of transit has summarily deported the individuals concerned, either to their country of origin, or to another country where their safety could not be guaranteed.

In one example of this trend, six Somali nationals, a woman and five children, were removed from Belgium to the Czech Republic, and were subsequently deported from the Czech Republic to Slovakia, and from Slovakia to Ukraine (a country which is not a signatory to the 1951 UN Refugee Convention) where they could no longer be traced. According to the European Council for Refugees and Exiles (ECRE), thousands of asylum seekers every month are now affected by such 'chain deportations' to the former communist states, countries which have very little experience of dealing with refugee issues and which lack the means to meet the social welfare needs of asylum seekers.

A second and equally serious threat to protection principles is to be found in the contention that international refugee law is not binding on a state outside of its own territory. Asylum seekers who are travelling by boat or raft and who are interdicted in international waters can therefore, it is claimed, be summarily returned to their country of origin, even if they are at risk of persecution there. As the High Commissioner for Refugees has commented, 'this claim is clearly inconsistent with the purpose, and is contrary to the spirit, of the UN Refugee Convention.'

A final example of the way in which restrictive asylum practices have threatened the protection of refugees is to be found in the summary deportation of asylum seekers who arrive in a country without a valid passport or visa. In some countries, the authorities have even undertaken document checks on board incoming aircraft, a practice which enables them to claim (quite erroneously) that any passenger who is subsequently deported has not been admitted to the territory of that state, and is therefore not in a position to request asylum there. Unfortunately, UNHCR knows of instances where the victims of such deportations have been imprisoned or tortured on arrival in the country to which they were returned.

A number of other reservations can be expressed with regard to the way in which the industrialized states have sought to curb irregular migration and limit the number of people seeking asylum on their territory.

First, although the number of asylum applications received by the more prosperous states has dropped in the past two years, previous experience suggests that restrictive measures tend to divert the flow of would-be refugees, without necessarily reducing the total volume of applications. It may therefore not be coincidental that in 1994, when the number of asylum applications in Germany dropped by around 60 per cent, the number submitted in neighbouring Netherlands increased by just under 50 per cent.

UNHCR offices in countries such as India, Nigeria, Thailand and South Africa, not to mention the states of Eastern Europe, also report a growth in the number of asylum applications submitted by people who in earlier years might have made their way to one of the industrialized societies. Furthermore, there are indications that with the asylum door shutting ever tighter, more people are resorting to illegal immigration - a trend welcomed only by the traffickers and criminal syndicates who control this growing industry.

Second, while it would be nice to believe that tight immigration and asylum controls can contribute to racial harmony and the social integration of minority groups, there is little evidence to suggest that this is actually the case. Indeed, one of the most disturbing features of the asylum debate in many developed countries is the extent

to which it has been conducted in the language of crisis. Politicians who talk about their country being 'swamped by bogus refugees', 'flooded by foreigners' and 'deluged with illegal immigrants' have succeeded in creating an environment in which there is all too little sympathy for migrants and minority groups, whatever their legal status.

Third and finally, it is essential to remember that despite the recent drop in numbers (which, of course, may not even be sustained) the problem of irregular migration has by no means been resolved. Thousands of asylum seekers continue to arrive in the industrialized states every month, obliged to live a life in limbo (or even in prison) while they wait for their applications to be processed. Governments are still pouring billions of dollars into border patrols, asylum procedures and detention facilities, while the resources committed to development and the promotion of human rights in countries of origin have been frozen or reduced.

As the Director General of the International Organization for Migration (IOM) has argued, this situation calls for an urgent re-examination of priorities. 'Think back to the last media reports you can recall concerning asylum seekers,' he suggested in a recent speech. 'Remember the focus on the numbers of people involved and the difficulties encountered by the migrant-receiving countries. Isn't it time to focus instead on the reasons behind such large movements of people claiming asylum, many of whom know that they cannot sustain such a claim but submit it anyway? Isn't it time to recognize that this huge number of unfounded asylum requests largely reflects the absence of other measures to address migration pressures? Isn't it time to address the causes in a proactive way?'

The migration management notion

One of the most interesting concepts to emerge from the effort to adopt more constructive approaches to the asylum issue is that of 'migration management', a notion which has quickly found its way into the vocabulary of analysts and practitioners in this field. 'To be effective,' writes the Director of the US Immigration and Naturalization Service (INS), 'policy must go beyond conventional control and humanitarian measures, so that managing migration pressures become a part of countries' economic, political and security objectives.' 'The effective management of migration,' one scholar has observed, 'requires a long-term view and an active stance which allows for the positive engagement of policy in what is an extremely complex and ultimately unavoidable feature of the modern world.'

The UN High Commissioner for Refugees has also made use of this concept in a number of recent statements on the interface between refugee and migration issues. 'The challenge now,' she has observed, 'is not how to build barriers to keep people out of the richer countries, but how to manage refugee and migratory movements in a way that upholds human rights and humanitarian principles, while addressing the legitimate concerns of states and receiving communities.'

The first chapter of this book explained how traditional approaches to the problem of human displacement - described as being reactive, exile-oriented and refugee-specific - were giving way to an alternative paradigm, characterized as being proactive, homeland-oriented and holistic. The notion of migration management is an evident manifestation of this intellectual progression.

While it remains underdeveloped in both theory and practice, the migration management approach can be said to recognize four basic needs in any effort to deal with irregular population movements:

- the need to address the causes of migratory outflows from the world's poorer and less stable countries, as well as their consequences for the industrialized states;
- the need to balance the rights of migrants, asylum seekers and refugees with those of receiving states and societies, and to recognize (if not to resolve) the moral dilemmas arising from this imperative;
- the need to replace ad hoc, unilateral and short-term responses to irregular population flows with coordinated and forward-looking strategies, intended to render migratory movements more orderly and predictable; and,
- the need for states and regional organizations to consider more systematically the migration implications of the policies which they pursue at home and abroad, and to ensure that the debate on irregular movements is conducted in a calm and transparent manner.

Despite the recent appearance of the migration management concept, efforts to elaborate and operationalize the underlying principles of this approach can be traced back a number of years. One of the earliest and most successful initiatives taken in this respect is to be found in the Comprehensive Plan of Action for Indo-Chinese Refugees (CPA), which was established in 1989 with the primary objective of finding a solution to the mixed migration of refugees and economic migrants from Viet Nam (see Box 5.4). Elements of the migration management approach can also be found in UNHCR's operations in countries such as Albania, Haiti, Romania and Sri Lanka, and in the organization's evolving partnership with institutions such as the International Labour Office and International Organization for Migration.

Drawing upon these and other examples, the remaining pages of this chapter examine the various activities which might be incorporated into a comprehensive programme of migration management. They are divided into three groups: measures intended to reduce migratory pressures in countries of origin; initiatives designed to promote orderly and legal forms of migration; and efforts to maintain refugee protection standards while preventing the misuse of asylum procedures.

Migratory pressures: the scope for action in countries of origin

Asylum and immigration policies will not eradicate the pressures which are prompting so many people to leave the low and middle-income countries.

Asylum and immigration policies, however well conceived, will not eradicate the pressures which are prompting so many people to leave the low and middle-income countries: poor levels of economic growth, an absence of income-generating opportunities, the unequal distribution of wealth, as well as social and political violence. The most effective form of migration management is therefore to be found

in measures which address the migration issue at source, making it possible for people to meet their needs and realize their aspirations within their country of origin.

This is not, of course, an original notion. Indeed, the past few years have witnessed a plethora of efforts to examine the measures which can be taken to reduce migration pressures. In 1992, for example, UNHCR convened a joint conference with ILO on 'international aid as a means to reduce the need for emigration'. Two years later, UNHCR, ILO and IOM collaborated on a publication entitled *Migrants, refugees and international cooperation*, which also addressed this issue. Migration, it concluded, should be a free and planned choice, taking place by legal and orderly means. It should not be the desperate act of people who are too poor and insecure to stay within their own country. 'In today's world,' the publication stated, 'no human being should be forced to migrate in order to survive.' In this sense, the refugee's 'right to remain in safety', discussed in Chapter Two, can be complemented with the economic migrant's 'right to remain in conditions of material security'.

How exactly can this right be realized? There is a growing body of literature on this subject, much of which arrives at the same conclusion: that migration pressures in the poorer countries should be reduced by promoting economic growth, creating new employment opportunities and by improving public services. Such objectives, it has been argued, could be pursued in four principal ways:

- reforming international trade and tarriff policies, so as to improve the export opportunities for less affluent states and to increase the revenue which they receive for their commodities;
- targeting official development assistance programmes to address human priority concerns in countries and communities affected by high levels of out-migration;
- increasing the level of direct foreign investment in low and middle-income states, with the purpose of creating new wage-earning opportunities for the local population; and,
- creating regional groupings of states, and reducing the level of irregular migration within those areas through the abolition of trade barriers and the legalization of labour migration.

Unfortunately, recent research on the effort to curb migration through economic growth suggests that the four elements of this approach are all confronted with significant obstacles. Trade and tarriff policies, for example, have to be devised within the tight constraints of domestic politics. And as one analysis suggests, 'few politicians are willing to confront their own farmers, workers or industrialists, particularly in times of economic recession.' According to other studies, official development assistance has generally not been sufficiently large in quantity or high in quality to have a substantial impact on employment levels and living standards in the world's poorer countries, and has in many cases been undermined by the impact of the debt burden and structural adjustment programmes.

Direct foreign investment, a strategy pursued with some vigour by Japan, has not shielded that country from the migration pressures which have built up in other Asian states. Indeed, some of the countries which provide the largest number of Japan's illegal immigrants are precisely those where the country's industrial enterprises have invested most heavily. Nor is it a tool over which governments have much control. Investment decisions are made on the basis of potential returns, and

foreign capital is normally directed to countries where the economic prospects are brightest, rather than those affected by chronic instability and the highest levels of unemployment and emigration.

Turning to the use of regional integration as a means of migration management, several scholars have pointed out that the creation of free-trade areas normally takes place in areas such as Western Europe, where the member states are comparable in terms of development levels and rates of economic growth. In situations where they are not - as in the US and Mexican membership of the North American Free Trade Agreement, for example - the movement of labour has been specifically excluded from the terms of the treaty.

Finally, there is now a widespread consensus that in the short term at least, economic growth stimulates international migration rather than inhibiting it. An exhaustive study of this issue, undertaken by a US government commission, points out that the development process simultaneously raises expectations and provides people with the means to leave their own country.

This is not to suggest that the effort to reduce migratory pressures through development-related strategies is doomed to failure and should be abandoned. Experience has demonstrated that in the long term, people will remain at home and go back to their own country if the conditions and opportunities there are sufficiently attractive. It does mean, however, that such initiatives must be pursued over a period of several decades, and in the knowledge that their immediate effect may be the opposite of that which is intended.

At the same time, the migration implications of the trade, aid and foreign policies of the industrialized states must be considered much more seriously if the problem of irregular movements is to be addressed. The US commission which examined this issue, for example, concluded that 'no effort is made by the government's foreign affairs, trade or financial communities to assess the migration consequences of their decisions.' As one commentator has suggested, 'similar comments could fairly be addressed to the governments of other OECD countries, the European Community and the World Bank.'

While these are important issues, it is also true to say that the discussion of migration pressures has hitherto been excessively economistic in nature. While the role of trade, aid and investment has been examined at length, much less attention has been given to issues such as conflict resolution, the protection of human rights, the promotion of good governance and political pluralism.

Such issues have a dual significance. On one hand, it must be recognized that the pressures which prompt people to leave their own country are not purely economic in nature. As suggested earlier in this chapter, people become international migrants for a complex mixture of concerns, including their material security, their physical safety, their ability to participate in the political and social life of their country, and the degree of respect which the state gives to their interests and ideas. Any effort to reduce migratory pressures in countries of origin must address these concerns in a comprehensive manner.

On the other hand, the world's less affluent countries are unlikely to benefit from more advantageous aid, trade and investment relationships if they prove unwilling to

tackle the political, social and human rights problems with which so many are afflicted. As the President of the World Bank pointed out in July 1995, it is easy to suggest that more private capital should be directed towards the low-income states. But the investment of private capital normally requires certain conditions to be met: 'stable government, a secure financial and social environment, and long-term prospects that give rise to confidence.'

UN Secretary-General Boutros Boutros-Ghali has made a similar observation. 'Democracy and development are linked in fundamental ways,' he writes. 'Democracy provides the only long-term basis for managing competing ethnic, religious and cultural interests. Democracy is inherently attached to the question of governance, which impacts all aspects of development efforts. Governance may be the single most important development variable within the control of individual states.'

Orderly migration alternatives

> It is the sense that migration is out of control, and the fact that it assumes irregular forms, which frightens the richer countries so much.

The backlash against asylum seekers and other migrants in the world's wealthier countries can be attributed to a number of different factors: economic uncertainty, fear of unfamiliar cultures, racism, as well as political expediency. But as suggested already, such states and societies are not implacably opposed to migration as such. It is the sense that the phenomenon is out of control, and that it assumes irregular and illegal forms, which frightens them so much. If governments and their electorates can be convinced that movements of a more orderly nature are possible, then a less crisis-oriented approach to the question of international migration might become feasible.

Some evidence for this assertion can be found in Australia and Canada, states which have made good progress in negotiating what might be termed an 'immigration contract' with their citizens. Under the terms of this arrangement, immigration is carefully controlled, but allowed on the basis of openly-stated criteria: family reunion, labour requirements, educational and professional qualifications, linguistic competence and employment-creating capital.

Contracts of this sort have been denounced by some commentators as 'immigration shopping', sweeping up the most skilled, educated and wealthy people on the international labour market, leaving the poor and persecuted behind. While there is an element of truth in this accusation, the condemnation is often made too quickly. By treating immigration as an asset and by demonstrating that migrants bring valuable skills to their adopted country, these states have been able to negotiate an agreement with the public which allows a substantial quota of refugee admissions, including some of the more 'difficult' cases. It is no coincidence, for example, that in addition to their regular refugee resettlement efforts, both Australia and Canada have established special programmes for the admission of refugee women who have

been victims of violence - people who would probably be placed at the back of any ordinary immigration queue.

Recognizing the value of such contracts, the Director General of IOM has argued that 'central to the solution we should be pursuing, as a matter of urgent priority, is the promotion of orderly migration processes throughout the world.' 'Because of increased predictability,' he continues, 'states would have a greater interest and capacity to offer emergency and humanitarian migration opportunities when such solutions are required.'

Three types of orderly migration have a specific bearing on the effort to resolve refugee problems. The first, and perhaps the least promising, consists of matching potential migrants in low-income countries with employment opportunities in the industrialized states, thereby averting the need for them to seek entry through the asylum door.

Proponents of this approach frequently point out that the developed countries, particularly those in Western Europe, have low birth rates and an ageing population. Eventually, it is argued, they will be confronted with a shortage of labour, particularly in the '3-D' jobs (dirty, demanding and dangerous) which the indigenous population is usually keen to avoid. One study, for example, has concluded that Belgium alone, a country with a population of less than 10 million, will need a net migrant intake of some 40,000 people a year by 2025.

This approach should not be entirely discounted. Proposals have been advanced in Japan, for example, to establish migrant worker and training schemes which would meet the country's labour shortage (much of which is now filled by illegal immigrants), and at the same time facilitate the transfer of skills and technology to the countries from which the migrants originate. In many other ways, however, the scope for such initiatives appears limited. As one migration expert has written, 'it seems eccentric to propose the resumption of immigration for low-grade labour, when there are 15 million unemployed in Europe, most under the age of 25 and many themselves immigrants, especially since future demand for labour will emphasize high skills.'

As other analysts have pointed out, with growing automation and the relocation of industrial production to areas such as South and South-East Asia, there is a high probability that unemployment levels in the industrialized states will continue to rise and that the number of 3-D jobs available will decline. Furthermore, it has been argued, if labour shortages do appear at some point in the future, it will be easy enough for the developed countries to 'turn on the immigration tap'. To do so now would simply add to the migration pressures which already exist in the less affluent states.

Albania and Viet Nam

A second form of orderly migration, more relevant in many ways to the search for solutions to refugee problems, is to be found in arrangements which provide potential asylum seekers with legal emigration opportunities based on family reunion or humanitarian criteria.

UNHCR and IOM have found in Albania, for example, that a substantial number of people have relatives living abroad, and may be entitled to join them by means of family reunion programmes. But in many instances the people concerned are not aware of this possibility, or they have no idea of the procedures which must be followed to emigrate. Providing such people with appropriate advice and information, a task undertaken by a joint IOM/UNHCR unit in Tirana, has had a two-fold effect: it has enabled a number of people who might be tempted to emigrate by irregular means to go through the formal channels; and it has helped to establish a climate in which emigration is a more normal activity, rather than the 'forbidden fruit' to which everyone should aspire.

Such efforts can also take place on a much larger scale if suitable departure and admission arrangements can be established with countries of origin and destination. In Viet Nam, for example, UNHCR has been assisting for the past 15 years with an initiative known as the Orderly Departure Programme, which has helped some 570,000 people with relatives abroad, former re-education camp internees and other special groups to emigrate legally, most of them going to the USA and Australia. Without this programme, there is a high probability that the people concerned might have been tempted to leave the country by boat and to have joined the substantial number of Vietnamese asylum seekers held in camps and detention centres throughout South-East Asia.

Recognizing the need to promote orderly migration and to safeguard the principle of asylum, some commentators have also proposed the establishment of 'in-country processing schemes', enabling people to claim international protection while they are still in their homeland, and, if that claim is recognized, to move to a country which has agreed to admit them. A number of governments have also expressed interest in such initiatives, appreciating the greater degree of control which it would provide in the selection of deserving cases.

Recent experience in Haiti, however, where a scheme of this nature was established by the US government in 1992, has not been particularly encouraging. For in a country where human rights violations are taking place, people with a well-founded fear of persecution may be unwilling to make the necessary approach to a foreign embassy or processing centre. At the same time, people without such a fear may have fewer inhibitions about submitting a fraudulent request for protection, in the hope that they will be allowed to emigrate.

Photo **Whitehead detention centre for Vietnamese asylum seekers, Hong Kong, April 1995**

Photo **Haitian asylum seekers at Miami Beach, USA, 1994**

Informing prospective migrants

Many of the migrants who seek admission to other states by submitting claims for refugee status know little about the social and economic conditions prevailing in their potential country of asylum and their chances of being allowed to take up residence there. Encouraged to leave their homeland by unrealistic perceptions of life in the

world's more prosperous countries, and lacking any understanding of the asylum procedures employed by such states, they may also have been deliberately misinformed by professional traffickers, eager to gain another client for their services.

Such false hopes can have serious consequences for asylum seekers and their families. They cause the individuals concerned to put their scarce resources, their liberty - and sometimes even their lives - at risk. In many cases, migrants borrow the money which they need to pay for their journey (sometimes from the very trafficker who is arranging their transport) in the expectation that they will be able to repay the loan when have reached their final destination and found a job. Such loans still have to be repaid, of course, even when the asylum seeker discovers that he or she is not allowed to work and has been refused refugee status.

Over the past few years, UNHCR and IOM have responded to this problem by organizing information programmes in countries of out-migration, intended to provide prospective asylum seekers and migrants with an accurate impression of the likely consequences of their departure. Making extensive use of media outlets such as television programmes, radio broadcasts and newspaper articles, such programmes have also been used to let people know of any regular channels which they might use to migrate to other countries.

The aim of such initiatives is not, it should be emphasized, to prevent or deter the departure of people who have a genuine fear of persecution. Nor is it an appropriate tool in situations where people are fleeing from armed conflict and other life-threatening situations. It is targeted instead at individuals who wish to migrate for primarily economic reasons, and who have no chance of being recognized as refugees. By dissuading economic migrants from misusing the asylum channel, and thereby reducing the pressure on receiving states, such information programmes can legitimately be described as an instrument of refugee protection.

The experience gained by UNHCR and IOM in countries such as Albania, Romania and Viet Nam has demonstrated that a number of conditions must be met if the impact of such efforts is to be maximized.

First, information programmes must be based on a detailed understanding of the socio-economic, ethnic, educational and occupational profile of the potential migrant population in any country of origin, as well as an appreciation of their aspirations and the pressures which are prompting them to leave. Only with this knowledge at hand is it possible to ensure that information efforts are given an appropriate form and content.

Second, programmes of this nature rely heavily upon the accuracy of the information provided, the sources from which it is drawn and the credibility of the media used in the dissemination process. This is of particular importance in countries which have little experience of open government. As IOM has observed, 'it is not sufficient that the information be objective and reliable; it must also be perceived by the public and the potential migrant to be so.' In addition, such information must be rooted in reality and correspond with the personal experience of the target audience. It is futile to suggest that potential migrants should remain in their homeland and learn a new skill or establish a small business if the training and credit facilities needed to realize those goals simply do not exist.

Third and finally, therefore, information programmes cannot simply stand alone, but must be accompanied by complementary measures which give the potential migrant some incentive to remain in his or her own country. 'Our experience indicates that credible information can influence the decision as to whether or not to migrate', IOM concludes. 'But such activities can only be successful if the economic and social situation at home is not completely without hope.'

In Albania, for example, the launch of the UNHCR/IOM information programme in 1992 coincided with the distribution of foodstuffs provided by Italy, an initiative designed to reduce the climate of panic that was prompting large numbers of people to leave the country by irregular means. And in Viet Nam, UNHCR's multi-media information campaign has been supported by a US$6 million programme of micro-projects, designed to improve local living conditions by upgrading basic services in areas such as health, education, vocational training and income-generation.

The return of unsuccessful asylum seekers

> The public have drawn the conclusion that there is little real difference between an asylum seeker and an illegal immigrant..

During the past few years, UNHCR and its partners have taken a growing interest in a third form of orderly migration: the repatriation of asylum seekers who, after an exhaustive examination of their claim, have been proven not to qualify for refugee status and to be in no need of international protection.

The reason for this interest is quite clear. Despite the very large number of asylum seekers whose applications are rejected, governments have generally been unable or unwilling to remove them from their territory. In some cases, the unsuccessful applicants have gone underground or moved on to another country. Elsewhere, rejected asylum seekers have been able to find work, and the authorities have turned a blind eye to their presence. And in many situations, governments have simply been reluctant to bear the financial and political costs of organizing large-scale deportation programmes. Thus according to several estimates, only 20 to 25 per cent of the unsuccessful asylum seekers in Western Europe go back to their homeland voluntarily or under the auspices of the receiving state.

While there is some evidence that removal rates have increased in recent years (the figure for Germany grew from 5,583 in 1990 to 35,915 in 1993) the damage has already been done. Politicians and the public have lost confidence in the asylum procedure, and have drawn the conclusion that there is little real difference between an asylum seeker, a refugee and an illegal immigrant. Genuine refugees and other people in need of protection have paid the price for this backlash.

Refugee advocates must share some of the responsibility for this situation. For in their eagerness to safeguard the right of asylum and to uphold humanitarian

standards, some supporters of the refugee cause have found it difficult to admit that any claimant should be rejected and asked to return to his or her own country.

Such sentiments are now fortunately less in evidence, enabling a more serious discussion to take place with regard to the tricky issue of compulsory repatriation. There is now an emerging consensus that people who do not need international protection should, in normal circumstances, be asked to go back to their own country. But how can this be achieved without resorting to draconian measures which contribute to the negative public perception of refugees and asylum seekers, and which, in multiracial societies, threaten to disturb ethnic relations?

There are no easy answers to this question. Some countries have responded to the problem by declaring amnesties and allowing illegal residents to regularize their status on a periodic basis. But this approach simply adds to the attractions of irregular migration. Ultimately, the question of asylum determination is one of inclusion and rejection. And as the situation of the 'screened-out' Vietnamese asylum seekers in Hong Kong has demonstrated, when unsuccessful applicants refuse to accept their rejection and repatriation, the question of compulsory deportation inevitably arises.

Coercion, therefore, may not be completely avoidable. Nevertheless, there would also appear to be scope for the introduction of 'assisted voluntary return programmes' of a type proposed and already established by IOM. Under such arrangements, rejected asylum applicants would be offered the opportunity to go back to their homeland voluntarily, and with a modest amount of assistance in the period after their return. Should an unsuccessful asylum seeker opt to stay beyond the deadline set by the authorities, however, the entitlement to such assistance would be withdrawn, and the person would be subject to the usual deportation proceedings.

Given the wholly voluntary nature of these assisted return programmes, refugee, migration and development agencies might be willing to consider an involvement in such initiatives. In principle, rejected asylum seekers have no need of international protection, and so the question of monitoring their welfare once they have gone home should not arise. In Viet Nam, however, UNHCR has recognized the need to undertake such monitoring, so as to reassure rejected cases that it is safe for them to return. Again, however, the need for a comprehensive approach to the problem of irregular migration must be emphasized. Unsuccessful asylum seekers cannot be expected to return voluntarily to their own country if nothing is done to reduce the migration pressures which originally prompted them to leave.

Countering the traffic in migrants

Finally, if international migration is to assume more orderly and less threatening forms, then efforts must be made to halt the expansion of the migrant trafficking industry. There is, of course, a moral dilemma associated with this component of the migration management strategy. For it cannot be denied that some asylum seekers with a genuine need of protection employ the services of professional agents. This should not, however, become an excuse for inaction, as the negative effects of trafficking for both asylum seekers and refugees are such that its curtailment is essential.

Migrant trafficking entails the violation of national and international laws. It is often associated with other kinds of smuggling and criminal activity, and frequently assumes forms which place the life, liberty and the resources of the migrant at risk. The promises made by traffickers and the services which they provide add to the migration pressures found in the world's less prosperous countries, and at the same time fuel the fear of unregulated influxes in the industrialized states. For every refugee who finds protection by employing a professional trafficker, many more are excluded by the restrictive practices which governments have introduced to limit irregular movements.

A more vigorous approach to the investigation and prosecution of traffickers would certainly help to curtail this industry, particularly if such activities were to be properly coordinated by the sending, receiving and transit states. Some analysts have suggested that the traffic in human beings could also be countered by means of more rigorous passport and visa controls at ports of entry, greater internal surveillance and the imposition of sanctions on employers who hire illegal immigrants. Measures of this type, however, have worrying implications for the civil liberties of ordinary citizens and legitimate travellers, as well as the human rights of refugees. As the World Council of Churches has argued, 'a regime to combat illegal trafficking can only be successful if it combines enforcement with protection... Particular attention must be given to allowing the presentation and consideration of asylum claims submitted by smuggled migrants who have a well-founded fear of persecution.'

At the same time, efforts to tackle the problem of migrant trafficking must be integrated with other elements of the migration management strategy. People who are eager to leave their own country will continue to use the services of smugglers if they have not been informed of the risks and dangers involved. Potential migrants are also more likely to remain at home if they know from personal experience that asylum seekers are likely to be repatriated if their application has proved unsuccessful.

Refugee protection and irregular population movements

It is in the direct interest of refugees that governments continue to make a distinction between people who need protection and other types of migrant.

The task of developing a comprehensive migration management strategy is confronted with an acute moral and practical dilemma: how to prevent the misuse of asylum procedures by economic migrants while simultaneously maintaining the highest standards of refugee protection. This is an issue which is unlikely to be resolved in the immediate future, as the steps which can be taken to reduce migration pressures are primarily of a long-term nature. In the immediate future at least, it would be naive to expect anything other than a world which is characterized by growing economic and social disparities, mounting demographic imbalances, as well as high levels of social and political conflict.

In these circumstances, it is imperative that states reaffirm their commitment to the institution of asylum and their readiness to provide protection to people in need of it. And such a commitment requires, in turn, a scrupulous respect for the provisions of the 1951 UN Refugee Convention and the other instruments of international refugee law. The problems facing the world's wealthier countries - budget deficits, unemployment, ethnic tensions and urban unrest - may be growing. But they must not be used as a justification for the erosion of long-established humanitarian principles, codified in large part by the industrialized states themselves.

Such fine sentiments, however, leave some difficult questions unanswered. How, for example, do we determine exactly who is in need of international protection? In a world that is characterized by 'mixed migrations', in which people leave their own country for a complex mixture of reasons, does the refugee concept still have any meaning?

The answer is provided by one migration expert. 'It is essential that we persist,' he writes. 'For if we, the friends of the world's refugees, do not make working distinctions between good and bad claims for refugee status, between refugees and other migrants, then we know what the alternative will be: more arbitrary, less informed and probably less friendly distinctions will have to made by those who manage migration on the ground - by immigration officers, interior ministries, police forces and airline employees. We have some precious legal foundations for our definitions, generally accepted for many years. To be sure, they have been sapped and undermined by the extent and complexity of subsequent migratory movements, but we need initially to stand firm on them.'

The UN High Commissioner for Refugees makes a very similar point. 'While the distinction may not always be clear in practice,' she observes, 'international law nevertheless makes a sharp distinction between refugees, who are entitled to international protection, and other migrants, who are deemed to enjoy the protection of their own governments, however compelling may be their reasons for leaving home.' 'Given the restrictions on immigration that now prevail in most regions of the world,' the High Commissioner adds, 'it is in the direct interest of refugees that governments continue to distinguish people who need protection, because they are fleeing from persecution and violence, from other types of migrant.'

If this objective is to be achieved, then asylum seekers must have access to fair and effective asylum procedures. At the same time, the intentional misuse of those procedures must be actively discouraged. For a significant minority of asylum applications, often described as 'manifestly unfounded cases', are essentially frivolous or fraudulent in nature. The challenge, therefore, is to limit the possibilities for abuse while ensuring that no refugee is returned to a situation of danger.

Given the long delays which often occur between the filing of an application for refugee status and a final decision on the claim (delays which may themselves provide an incentive for the submission of manifestly unfounded claims) efforts must be made to enable an expeditious consideration of all asylum requests. One method, and an admittedly costly one, is to increase the resources and number of personnel allocated to the asylum procedure. Another approach, which has in some countries been associated with a decline in protection standards, involves the introduction of 'accelerated procedures', reducing the opportunity of asylum seekers with manifestly unfounded cases to appeal against negative decisions.

To meet the requirements of international protection, a careful and impartial examination of each asylum claim by a knowledgeable decision-maker is of fundamental importance. Given the tragic consequences that might result from a wrong decision, the benefit of any doubt should always be given to the claimant. For the same reason, the opportunity for an independent review of a negative decision is required to reduce the risk of errors. To assist in these procedures, UNHCR has invested considerable resources in the collection and dissemination of accurate information about the human rights situation in countries of origin, as well as precedent-setting asylum decisions by national and international courts.

Training and institution building

Despite the restrictive measures introduced in recent years, refugee claimants whose applications are submitted in the industrialized states continue to enjoy certain safeguards. On one hand, such countries generally allow asylum seekers to appeal against negative decisions, and permit some rejected cases to remain in the country on humanitarian grounds, even if they have not been granted refugee status. On the other hand, asylum seekers in the more affluent states can turn for help and support to a substantial network of legal advisors, advocacy groups, human rights organizations and refugee community groups. The same cannot be said, however, of the transit countries to which, as a result of readmission or deportation agreements, many asylum seekers are now being returned.

Under international law, it is quite clear that states are not obliged to grant admission or asylum to a person who has obtained effective protection in another country. In such circumstances, it is also permissable in principle for the asylum seeker concerned to be returned to that other state. But as demonstrated by the earlier example of the Somali family deported from Belgium, serious dangers exist in situations where refugee claimants are returned from states which have well-established asylum procedures and social welfare services to countries which lack the experience and resources required to cope with asylum seekers.

A fundamental requirement of any effort to combat irregular migration while maintaining protection standards must therefore be to develop appropriate expertise and institutions in countries which are now, for the first time, obliged to deal with asylum issues. One initiative of this type is to be found in a joint UNHCR/ECRE training project, which has allowed hundreds of people in the countries of Eastern and Central Europe to acquire a deeper knowledge of refugee law and protection problems (see Box 5.5).

Mixed migrations and regional safe havens

New forms of protection may also be required if the international community is to manage the increasingly complex migratory movements taking place in the world today. In the industrialized states, the granting of asylum has traditionally been understood to imply permanent settlement. In other words, people who are granted refugee status have normally been allowed and expected to take up long-term residence in their country of asylum, to become socially and economically integrated there, and, if they so desire, to become naturalized citizens of that state.

With the growth in the number of asylum seekers, however, and the expectation that peaceful conditions might quickly be restored to their countries of origin, such

assumptions have been reconsidered. One manifestation of this trend, examined at length in Chapter Two, can be found in the concept of 'temporary protection', an arrangement devised in relation to the movement of refugees from former Yugoslavia. A second example of this new orientation can be found in the notion of 'regional safe havens', established in response to recent mixed migrations from Cuba and Haiti.

Following the 1991 military coup in Haiti, mounting human rights abuses and an international economic embargo prompted nearly 30,000 people to leave the country by boat. After considerable pressure at home abroad, in May 1994, the US government abandoned its controversial policy of interdicting and returning the Haitian boat people to their homeland, announcing that it would examine their cases fully and grant residence rights to those who were recognized as refugees. This prospect was so attractive, however, that it prompted a dramatic increase in the number of departures.

In response, the administration introduced a new policy, whereby all Haitian boat people were accommodated in 'safe havens' outside of the USA, primarily at the Guantanamo naval base on Cuba. Meanwhile, pressure on the military regime to abide by the results of the 1991 election culminated in Security Council Resolution 940, which paved the way for the departure of Haiti's military rulers, the deployment of a multinational force under US command and the reinstatement of the deposed president. Following this sequence of events, the majority of Haitians in the regional safe havens agreed to go back home. Most of the remaining 4,000, however, were sent back against their will.

The summer of 1994 also witnessed the departure of around 36,000 Cuban *balseros*, people who set to sea on boats and flimsy rafts, in the hope of reaching the Florida coast. To deter such departures, the US picked up such people at sea and transferred them to Guantanamo, while negotiations were opened with the authorities in Havana. In September 1994, an accord was signed, 'to ensure that migration between the two countries is safe, legal and orderly.' As well as introducing measures to facilitate regular emigration to the USA, the Cuban authorities agreed 'to take effective measures... to prevent unsafe departures using mainly persuasive methods.' Despite an initial announcement that the Cubans housed at Guantanamo would not be allowed to enter the USA, that position was being reconsidered in mid-1995.

Do regional safe havens have a role to play in the search for solutions to refugee problems? Opinions are sharply divided. Some commentators have argued that while specific problems arose in the cases described above (the enforced return of the 4,000 Haitians has been the subject of particular criticism), the underlying principle of the safe haven strategy is sound. In the words of one legal expert, 'temporary protection and repatriation to safe conditions is always the best solution to a refugee crisis.'

Other observers, while recognizing that safe havens are preferable to a policy of interdiction and summary return, nevertheless regard this innovation as a potentially dangerous one. Safe havens, they suggest, can be used as a means of keeping asylum seekers out of the state where they wish to claim refugee status, denying them access to the normal asylum procedures used by that country.

While the issues arising from the Haitian and Cuban cases remain to be fully examined, there is a degree of consensus that safe havens have a role to play in situations where people are displaced by a temporary disturbance, and where the number of asylum seekers involved is too large to allow the examination of individual applications.

A number of other conditions for the establishment of regional safe havens might also be advanced. First, the conditions in which people are accommodated during their time in a safe haven must be consistent with humanitarian standards. Otherwise, the safe haven approach threatens to become just another form of deterrence.

Second, like temporary protection, the use of safe havens must be strictly limited in duration. Finding solutions to refugee problems is ultimately about the reintegration of uprooted people, whether in their own country or another society. Safe havens, however, are based on the principle of exclusion, and must therefore not be allowed to persist indefinitely.

Third, while the use of safe havens may be appropriate in situations where people are leaving their own country by boat and are rescued on the high seas, much more serious issues of principle would be raised if refugee claimants were to be transferred to extra-territorial safe havens after arriving in a country and expressing their desire to seek asylum there.

Fourth, if safe havens are to be established, then safeguards are required to ensure that people are not returned to their country of origin without a proper examination of their continuing need for international protection. In the case of the 4,000 involuntary Haitian returnees, for example, UNHCR expressed its concern that such procedures had not been fully respected.

Fifth and finally, the safe haven approach, like temporary protection, must be combined with efforts to bring about a speedy resolution of the problems which exist in the country of origin. In Haiti, the establishment of Security Council Resolution 940 and the subsequent deployment of a multinational force enabled that condition to be fulfilled, even if the 'safe and stable environment' which the UN mission is mandated to establish has not yet been fully achieved.

The situation in Cuba is somewhat different. As a result of the agreement signed in 1994, a larger number of people should now be able to leave the country and settle in the USA by safe and legal means. In other respects, however, the intense migration pressures which exist in that country have not been addressed.

Educating public opinion

> The political agenda has been set for too long by people whose main preoccupation is simply to keep the number of immigrants down.

The countries of North America, Western Europe, East Asia and Oceania have never had it so good. Despite recession, inflation and unemployment, living standards in the industrialized world are still on an upward trend. While ready to reach into their pockets when disaster strikes in a country such as Ethiopia or Rwanda, the citizens of such countries are unwilling to share their comfortable lifestyle with anyone else - particularly if they have a skin colour, culture, religion or language which is different from their own.

That is one way of understanding the current public backlash against refugees and asylum seekers. But perhaps that judgement is too harsh. Perhaps we need to be more understanding of the people living in the industrialized states, especially those at the bottom of the social hierarchy and those who are living in deprived urban areas, where immigrant populations are largest, most visible and make the greatest demands upon limited public services. Unable to comprehend the changing composition of their own society, perhaps they have a genuine fear of the unfamiliar and unknown.

Whether we accord more or less sympathy to their circumstances, and whether we describe such attitudes as xenophobia or racism, the outcome is no different. In the minds of many people living in the industrialized states, there is little or no difference between a refugee and an economic migrant. They are both, quite literally, 'alien'. Paradoxically, such views have a particular potency in democratic societies, where freedom of speech is respected, and where unscrupulous politicians are at liberty to mobilize support by scapegoating ethnic minorities.

If the debate on asylum is to be conducted in a rational manner, and if governments are to adopt anything except an unthinkingly restrictionist approach to the immigration question, then steps must be taken to inform and educate public opinion. The political agenda has been set for too long by people whose main preoccupation is simply to keep the number of immigrants down. Those citizens who would like their countries to adopt a more far-sighted and humanitarian approach have been effectively marginalized.

The number of techniques which can be used to inform and educate the public is unlimited. As organizations such as Amnesty International and Greenpeace have demonstrated, imagination is the key ingredient. But effective public awareness campaigns must also be based upon some clear (and even controversial) messages.

Traditionally, asylum advocates have sought to emphasize the distinction which exists between a refugee and an economic migrant - to the extent that the former have been accorded a much higher moral value than the latter. Perhaps unconsciously, some supporters of the refugee cause appear to have internalized the curious idea that there is something dishonourable about the desire to improve one's standard of living.

At a time when asylum seekers and refugees are (whether we like it or not) perceived as being little different from other immigrant groups, a change of strategy is required. On one hand, we must continue to stress that refugees are a special case, their treatment being governed not only by domestic immigration law, but also by international protection principles. On the other hand, we must counter the notion that international migration has reached unmanageable proportions. For it is

precisely that notion which has led governments to challenge, in deeds if not in words, the institution of asylum.

As the High Commissioner has observed, 'we cannot stand by while legal principles and international instruments that have protected refugees for over 40 years are eroded.' Efforts to halt that process of erosion by informing and educating public opinion might take into consideration some of the following themes.

Migration remains manageable. There have certainly been a number of migration *crises* in recent years (such as the exodus of foreign workers from Iraq in 1991 and the Cuban and Haitian outflows in 1994). But the notion of an international migration *crisis* is unnecessarily alarmist and runs the risk of becoming a self-fulfilling prophecy. Effective and equitable responses to the migration problem issues will only be found if discussions of the issue are conducted in a calm and rational manner.

The scale of international migration is modest. Given the economic, political and demographic pressures which have built up in many low and middle-income countries, the surprising thing is not how many people migrate, but how few. The overwhelming majority of people in the world do not leave their own country. And when they do migrate, they are much more likely to move from one low-income country to another than to seek entry to one of the industrialized states. At first sight, the statistics appear to show that the scale of international migration has grown substantially in recent years. In relation to the world's growing population, however, the number of people on the move today is not unusually large.

It is natural for people to move. International migration is not an aberration which must be eliminated, but a natural and inevitable characteristic of human life. While the evolution of the nation state has encouraged us to believe that there is a natural identity between particular peoples and particular places, all modern nations have themselves been shaped by migratory movements. People are bound to move when they perceive an advantage in doing so, and when conditions in their normal place of residence become excessively insecure. For many years, Europe provided a large proportion of the world's refugees and economic migrants, many of whom left the region to settle in other parts of the world. Only in the past two or three decades has the direction of the movement been reversed.

All migrants have a contribution to make. While it is scarcely an original point, it is worth repeating that migrants, whatever their legal status, can make a contribution to their adopted societies, both in economic and cultural terms. Stereotypes should be discarded. The image of the unemployed and welfare-dependent refugee is as mythical as that of the risk-taking and entrepreneurial immigrant. Most of the people who move from one country to another, whether they are fleeing from life-threatening situations or looking for greater economic security, simply want to live a more peaceful and productive life, and to provide their offspring with opportunities which they did not enjoy themselves. Like anyone else, refugees produce goods, provide services, spend their wages and pay taxes, contributing to the wealth and diversity of the countries where they settle.

The refugee issue is a human rights issue. States which preach the virtues of human rights abroad and which consider themselves to be the custodians of humanitarian principles cannot be surprised if they are asked to respect the same norms at home. Refugees are characterized by their well-founded fear of persecution

and the failure of their own state to safeguard their human rights. The states to which they turn for asylum have a continuing obligation - and one which they have freely taken upon themselves - to provide the protection they need.

Migration management: an imperfect but necessary approach

As the preceding sections have suggested, there is no panacea to the problem of international and irregular migration. Restrictive measures alone will not work, and yet all of the alternative approaches are confronted with their own limitations and constraints. If international migration is to be managed, the industrialized states and societies will have to come to terms with this fact, establishing an ethic which recognizes the value of racial and cultural diversity, rather than perceiving it as a threat.

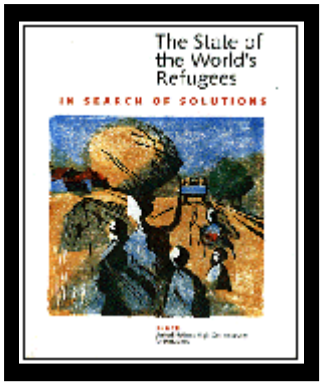
At the same time, governments which publicly subscribe to the notion of migration management should acknowledge the gaps which exist between rhetoric and reality.

First, while there is now a widespread recognition that migratory movements can only be managed through coordinated multilateral action, states have continued to link this issue to the question of national sovereignty and identity. To the extent that there has been any coordination, it has taken place almost exclusively amongst receiving countries, such as the member states of the European Union. In future, the industrialized states must engage in a more meaningful dialogue with migrant-producing countries, many of which have a vested interest in high levels of emigration. According to some estimates, for example, such states currently receive around US$60 billion a year in migrant remittances, considerably more than they are granted in official development assistance. Hitherto, this issue has been largely ignored by the receiving states.

Second, the world's wealthier countries have now acknowledged that their aid, trade, investment and foreign policies all have an impact on the scale and nature of international migration. In reality, however, they have been reluctant to consider the radical policy changes required to address the migration issue at source. As one analyst has observed, 'although the new emphasis on tackling migration pressure is ever present in the rhetoric, there has as yet emerged almost nothing in the way of clear policy objectives in this area... If anything, the new sense of urgency is resulting in greater and greater emphasis on old forms of control.'

Finally, as the preceding statement suggests, there is a danger that the notion of migration management will simply become a euphemism for increasingly restrictive asylum practices. Thus according to one commentator, the effort to manage migration in Western Europe should be strictly based on the requirements of the domestic labour market, an objective which can be achieved in two ways: 'First, allow immigrants with valuable human resources to come to Europe, thereby benefiting native Europeans. Second, find a means to stop the mass immigration of lower qualified people, refugees and asylum seekers.'

This approach, which has been echoed by the statements of politicians in many industrialized states, must be unequivocally rejected. In the words of the UN High Commissioner for Refugees, 'asylum for those who are forced to flee must be preserved. But the current scale and nature of the refugee problem and the limits to the absorption capacity of asylum countries means that traditional methods of protection are no longer sufficient. They must be complemented by flexible approaches that respond to the present period of upheaval and transition in world affairs.'



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Box 5.1 South Africa's immigration issue

Migrant workers have been making their way to South Africa for more than 100 years, leaving neighbouring and nearby states in order to find employment in the country's gold mines, diamond industry and commercial farms. Today, with the abolition of apartheid and the birth of a new political order, South Africa is experiencing a new influx of migrants and asylum seekers.

Only a small proportion of the new arrivals in South Africa have made formal requests for refugee status. According to the Department of Home Affairs, 3,664 asylum applications had been received by May 1995, of which 383 had been approved and 512 rejected. Many of these asylum seekers come from impoverished and war-torn countries beyond the Southern African region: Zaire, Rwanda, Somalia, Ethiopia, Liberia and even former Yugoslavia.

Such asylum seekers are drawn to South Africa by a number of factors: the democratic nature of the post-apartheid government; the growing tendency of other African states to place asylum seekers in isolated settlements or reception centres; and the economic and educational opportunities which are available in the country, by far the most prosperous in sub-Saharan Africa. Flight from persecution and violence therefore overlaps with the search for a better standard of living, making it difficult to draw a sharp distinction between refugees and economic migrants.

These distinctions have been further blurred by the large number of people entering or remaining in South Africa without authorization, some of whom might qualify for refugee status if they were to request it. The Department of Home Affairs suggests that the number of illegal immigrants in the country could now be as high as two million, many of them unskilled or semi-skilled workers who provide cheap and non-unionised labour to willing employers in mines, farms, factories, shops and private homes. An enterprising few are self-employed, and are usually to be found on street corners, hawking a variety of goods and providing all kinds of services.

Negative responses

The increasingly visible presence of foreigners in South Africa has provoked some negative responses from the local population, since the new arrivals are perceived to be providing unfair competition for scarce jobs, educational opportunities and social welfare services. Having fought and abolished the apartheid state, often at great personal cost, many South Africans are now reluctant to share the fruits of their struggle with people from other countries.

As far as many South Africans are concerned, all foreigners are illegal immigrants. The press and media run stories suggesting that the country is being submerged by an endless tide of aliens, and accuses them of drug-trafficking, gun-running and other criminal activities. At a time when the country is experiencing a disturbing increase in violent crime, the new arrivals from other parts of the continent provide a convenient scapegoat. Some community leaders and politicians have publicly expressed racist and xenophobic sentiments, while the number of assaults on migrants has risen considerably in 1995. In January, for example, armed gangs in Alexandra, a Johannesburg township, launched a violent campaign to rid the township of illegal immigrants by throwing them out of their homes and by helping the police to round up suspects. Ironically, the leader of the campaign was himself a refugee during the apartheid years, and was amongst the thousands of South African exiles who returned to their own country with UNCR assistance in 1993.

Official action is also being taken to curb the inflow of migrants. Police in some border regions have established special units to apprehend illegal aliens, while the authorities in the newly-created province of Eastern Transvaal have deployed a team of armed civilians along the Mozambican border. New immigration legislation is to be introduced by the national government, which will restrict the granting of work permits to foreigners and impose tougher penalties on employers who hire illegal workers. In 1994 alone, the authorities deported 90,692 illegal immigrants to 63 countries throughout the world, primarily to Mozambique, Zimbabwe and Lesotho.

Public debate

As a result of these developments, the immigration question has become a topic of considerable pubic debate. A recent report on immigrants, refugees and displaced people, issued by the Southern African Catholic Bishops Conference, alleged that immigrants and asylum seekers were being subjected to ill-treatment and denied access to justice. The report expressed its concern about the rising tide of xenophobia amongst South African citizens, and called for closer checks on the behaviour of government officials dealing with immigration issues.

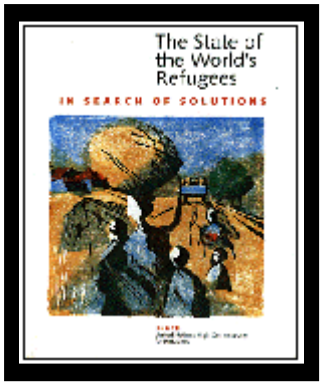
Another organization which has taken a public stand on the immigration issue is the influential Congress of South African Trade Unions (COSATU). In a policy paper issued in April 1995, COSATU condemned the way in which migrants were being singled out for abuse. 'Workers and trade unions stand to gain nothing from these campaigns' it said. 'The emergence of xenophobia and ethnic hatred would, in South Africa, as in the rest of the world, be a disaster for working people.' According to COSATU, South Africa's unemployment problem is not the result of immigration, but of structural economic difficulties which must be addressed at the regional level. 'South Africa could never achieve prosperity while its neighbours were wrecked by

poverty. No amount of electric fences could prevent people from fleeing poverty and starvation.'

To avert the need for such draconian controls, COSATU has recommended a package of alternative measures. Illegal immigrants, it suggests, should be allowed to regularize their status or be assisted to go home on a voluntary basis. Immigration quotas should be negotiated with other Southern African countries, while a reconstruction and development programme should be established to create new wage-earning and income-generating opportunities for people throughout the region.

Government leaders have also cautioned the public against the dangers of xenophobia. Speaking in parliament in February 1995, President Nelson Mandela stated that 'we must treat this matter with all due sensitivity, conscious of the history of the region, including the destruction caused by the policy of aggression and destabilization carried out by the previous regime... The fundamental objective we must pursue is friendship, cooperation and solidarity among the peoples of our region.'

UNHCR is assisting in this task. Although not yet party to the 1951 UN Refugee Convention or its 1967 Protocol, South Africa seeks to abide by these treaties and is working in close collaboration with UNHCR's Regional Office in Johannesburg. Over the past two years, UNHCR has provided training in international refugee law, asylum adjudication and human rights to almost 400 immigration, police and army officers throughout the country. The Ministry of Home Affairs has established a special unit to deal with refugee issues, and the structures and procedures required to examine individual asylum applications have now been put in place. Given the relative peace and prosperity which South Africa now enjoys, it would not be surprising if the number of people claiming refugee status in the country were now to increase.



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Box 5.2 Migrant trafficking: the Sri Lankan experience

Migratory movements vary considerably in their degree of planning and organization. In some situations, unexpected and life-threatening circumstances may force people to abandon their homes at short notice, and to move as quickly as possible across the nearest international border. In prolonged conflicts, however, the fighting may fluctuate in intensity and shift from one location to another, providing periods of relative calm in which individuals and groups can arrange their departure. As recent experience in Sri Lanka suggests, such circumstances also provide migrant traffickers with a ready market for their services.

Sri Lankan Tamils have been leaving their homes in the north and east of the country for more than a decade, their departure prompted by a violent conflict between government and rebel forces and the economic disruption which has resulted from this conflict. Some have moved to more secure areas in the south of the island, many have taken refuge in southern India, while others have sought asylum in the industrialized states.

The migration options available to Sri Lankan Tamils who wish to leave their country of origin are not, of course, identical. A number of different variables come into play, including the cash and other assets available to the individual or family concerned, their proximity to areas of active conflict and their access to transport routes, as well as the contacts which they maintain with people in other parts of Sri Lanka and elsewhere in the world. For a well-educated Tamil living in the city of Jaffna, for example, it might be possible to go to Canada or Switzerland and seek asylum there. But Tamils from a poor fishing family on the north coast of the island might find it almost impossible to move anywhere, particularly if their boat has been seized or destroyed in the civil war.

Friends and relatives

Since the conflict broke out in 1983, it has become increasingly difficult and expensive for Sri Lankans to make their way to the West. For the first four or five years of the war, the overwhelming majority of Tamils seeking asylum in Europe and North America were members of the professional and middle classes, who could count on the support of friends and relatives who had already settled overseas,

whether as refugees or regular immigrants. During this period, the only real cost involved in the journey was the air ticket out of Colombo. As a result, many families were able to find sufficient money to send at least one son abroad without having to borrow money or sell off their possessions.

In the late 1980s, however, the situation changed. The war intensified, the local economy slumped, the rebel forces began to requisition land and property, and eventually took control of the northern peninsula. Much larger numbers of people, irrespective of education and class, now began to look for ways of leaving the country. Thus in 1988, just over 8,000 Sri Lankans submitted asylum applications in Western Europe. By 1991, the figure had increased to almost 24,000.

As the number of Tamils wishing to leave their homeland grew, and as the industrialized states introduced progressively stricter controls on the arrival of Sri Lankan asylum seekers, it became more costly and complex to leave the island. In 1985, an individual could get to Europe or North America for around 25,000 rupees, around US$ 1,000 at that time. By 1995, this figure had increased to some 500,000 rupees, an amount equivalent to some US$ 10,000.

Exit taxes

A significant proportion of the increased cost has been due to the imposition of 'exit taxes' by the rebel groups. According to recent research undertaken amongst asylum seekers in Europe, no individual, family or group of people can leave a rebel-controlled area until this payment had been made, either in cash or kind. The level of this tax has in many cases been related to the earning potential of the would-be refugee. A Tamil wishing to join relatives who have already taken up residence and employment in Switzerland, for example, could expect to pay more than someone embarking upon a more speculative journey.

Once in the capital city of Colombo, potential asylum seekers cannot simply purchase a ticket to the destination of their choice. With the introduction of visa requirements, carrier sanctions and preboarding checks by the West, additional help is required. This is provided by professional agents, many of them entrepreneurs who had previously been involved in the recruitment of Sri Lankan migrant workers for the Middle East, and who switched to the trafficking of asylum seekers when the demand for unskilled labour in the Gulf States declined.

As well as acting as an information link between Sri Lanka and the industrialized states, these agents provide a number of other services: lending money to would-be migrants, making flight reservations on circuitous routes from Sri Lanka to other countries, informing their customers how to get on board a flight without the necessary documentation, and how best to avoid deportation once they have arrived at their intended destination.

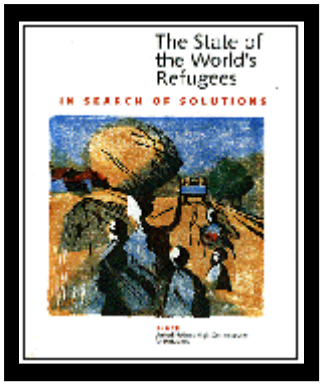
With the tightening of immigration and asylum controls in the richer states, the agents have also been able to diversify their business activities, providing would-be refugees with false documents and ready-made atrocity stories, intended to prove that the asylum seeker has a genuine fear of persecution at home. In addition, the Sri Lanka-based agents have developed links with traffickers in Europe (commonly known as 'schleppers' or 'people smugglers'), whose function is to get would-be refugees from the countries of Eastern and Central Europe, where entry regulations

are relatively lax, into the states of Western Europe, where the arrival of foreign nationals is more strictly controlled. The techniques which such smugglers use to deliver their human cargo are often extremely dangerous. On a number of occasions, for example, Sri Lankan Tamils have been found drifting in dinghies and life rafts in the Baltic Sea, near the Danish coast, apparently dropped off by Polish, Estonian and Latvian fishing vessels.

Place of safety

The Sri Lankan case provides a good illustration of the International Organization for Migration's recent statement that 'migrant trafficking is a growing and global activity with negative implications for virtually all touched by the practice.' It involves illegal activities. It requires migrants and their families to make huge sacrifices and to run substantial risks. And it can provoke negative attitudes towards asylum seekers amongst host governments and communities, thereby weakening the protection available to genuine refugees.

At the same time, however, it is difficult to deny that some of the people who use the services of traffickers are in need of protection and may have no other way of moving to a place of safety. While it is difficult to know how many Sri Lankan asylum seekers have left their homeland with the help of professional traffickers, statistics provided by the governments of Western Europe show that between 1989 and 1993, some 34 per cent of all asylum applications submitted by Sri Lankans were approved, compared to an overall acceptance rate of just 11 per cent. The argument advanced by some European politicians that irregular migrants cannot be genuine refugees is therefore without foundation.



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Box 5.3 Asylum in Germany

'Politically persecuted enjoy the right to asylum.' This simple sentence, part of Article 16 of the German constitution, has been the focus of one of the longest and most heated debates in the Federal Republic's history.

For many years, anyone who arrived at the German border and requested asylum there had to be admitted to the country and allowed to submit an application for refugee status. On 26 May 1993, however, parliament voted by the necessary two-thirds majority to change this provision of the constitution.

From 1 July 1993, anyone who arrived in Germany from a country that was deemed to be 'safe' by the federal authorities could legally be denied the opportunity to submit an asylum request. And as all nine states which share a land border with Germany were placed in this category, the amendment effectively established a buffer zone around the Federal Republic. Henceforth, many commentators predicted, neighbouring states such as Poland and the Czech Republic, traditional countries of transit for asylum seekers en route to Germany, would be flooded with people who had been turned away by the Federal Republic.

New arrivals

Between 1984 and 1993, around 3.5 million asylum applications were submitted in Europe, and nearly half of that number were registered in Germany. The number of asylum applications peaked in 1992, when some 438,000 claims were submitted, more than 75 per cent of the total for the European Union. Almost 65 per cent of this number came from the countries of Eastern and Central Europe, with Yugoslavia, Romania and Bulgaria accounting for some 258,000 applications.

These asylum seekers were not the only people who wanted to start a new life in the Federal Republic. Between 1988 and 1993, around 1.4 million 'aussiedler' - individuals and families of German origin - were admitted to the country, primarily from the former Soviet Union, Poland and Romania. In addition, some 350,000 former Yugoslav citizens have been allowed to remain in the country under temporary protection arrangements

As UNHCR's Representative in Germany explains, the change in the country's refugee policy was directly linked to these developments. 'The asylum system was overwhelmed, xenophobic acts multiplied, and with no prospect of a European burden-sharing arrangement in sight, Germany amended its constitution.' At the same time, legislation was introduced to exclude asylum seekers coming from designated 'safe countries of origin', to speed up the asylum procedure at airports and to intensify the country's border patrols.

The change only came about, however, after an intense public debate. Those who rejected the need for the amendment described Article 16 as a 'constitutional statue of liberty', symbolizing the country's commitment to human rights. At the same time, they pointed out that under the existing constitution, steps had already been taken to deter the arrival of asylum seekers, such as the withdrawal of the right to work, the reduction of social welfare benefits and the use of restrictive interpretations of the criteria for refugee status. Thus the recognition rate for asylum seekers in Germany, which stood at over 29 per cent in 1985, had slumped to just 3.2 per cent in 1993, compared to a Western European average of around 9 per cent.

As in other European countries, the fact that only a small proportion of asylum seekers were being granted refugee status failed to convince the country that the asylum issue was under control. On one hand, it was well known that refugee claimants often remained in the asylum procedure for several years, and that even after a final rejection of their application, many remained in the Federal Republic. On the other hand, with the rising costs of reunification, there was mounting public concern about the cost of examining so many asylum requests - some eight billion deutschmarks (almost US$ 5 billion) in 1993 alone. By the time of the parliamentary vote, there was a growing belief throughout Germany that without a constitutional amendment, the asylum problem would assume unmanageable proportions.

Reduced numbers and backlogs

What has been the effect of Germany new asylum legislation? First, as discussed elsewhere in this chapter, the number of asylum applications has decreased substantially - a 60 per cent drop in 1994 and a further decrease anticipated in 1995, with the largest reductions being registered amongst Romanians and Bulgarians. Second, the backlog of asylum requests has been cut down. In the summer of 1993, around half a million applications were waiting for a decision from the federal authorities. By the second quarter of 1985, this figure had dropped to less than 80,000. Third, recognition rates have increased: from only 3.2 per cent in 1993, to 7.3 per cent in 1994, and around ten per cent in the early months of 1995.

The number of people being turned back at the border or expelled to a neighbouring state is lower than many analysts anticipated partly because these countries are not always willing to readmit the asylum seekers that Germany wishes to turn away, and partly because it can be difficult for the authorities to establish how a refugee claimant arrived in the Federal Republic. As one journalist has written 'the safe third country provision has resulted in sharp increases in amnesia and mendacity. Asylum seekers contend that they were spirited into Germany by smugglers, and are uncertain of the route taken.' Even so, more than 37,000 people were refused entry to Germany from Poland, the Czech Republic and Austria in 1994, while a further 15,000 were returned to neighbouring states after being apprehended in the border

area. It is not known how many of these 52,000 people intended to submit asylum applications in Germany.

According to UNHCR's Representative in Bonn, these developments cannot be interpreted as a collapse in refugee protection standards. 'In general,' she writes, 'the reality since July 1993 has not come close to the fears of the critics of the German legislation.' Large numbers of persons still manage to gain access to the asylum procedure. The number of people who are returned to a 'safe third country' after entering the procedure is small - just 1.5 per cent of applicants in 1994. And in practice, the German authorities appear to undertake an examination of the claim when removal to a 'safe country' is not possible, although such applicants are entitled only to protection against return to their country of origin, rather than refugee status.

Nevertheless, a number of issues arising from Germany's new asylum legislation still have to be resolved. First, for example, there is a risk that the safe third country principle will lead to a phenomenon known as 'chain deportations', in which each state passes an asylum seeker back to the previous country of transit without looking into the merits of the claim, until the person arrives back in his or her own country or in another state which cannot offer adequate protection to refugees.

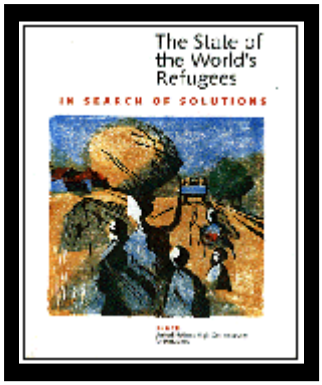
It is for this reason that UNHCR has cautioned against automatic exclusions, and has suggested that asylum seekers should only be returned to another country once it has been established that their claim to refugee status will be properly examined there. Unfortunately, experience has demonstrated this is not always the case in the countries of Eastern and Central Europe. Even when someone wishes to apply for asylum in such states, it can be difficult for them to gain access to the procedure, especially at border points.

Second, it is clear that most of the asylum seekers who are returned from or unable to enter Germany do not want to claim refugee status in Eastern and Central Europe. In 1994, for example, the Czech Republic, Poland and Slovakia registered a combined total of under 2,000 applications, while the number of illegal immigrants in those countries is estimated to be in the hundreds of thousands.

As these statistics suggest, asylum seekers and migrants who are turned away from the Federal Republic as a result of the safe third country principle are very likely to try their chance again or seek entry to another Western European state, rather than remaining in the central or eastern part of the continent. There is also evidence to suggest that with the tightening of Germany's asylum procedures and an increase in the number of rejected cases who are expelled from the country (a threefold increase in the past two years), growing numbers of foreigners are entering and remaining in the country illegally. Germany's new refugee policy might therefore divert or defer the problem of irregular migration, but it seems unlikely to resolve it.

Third, while the debate on the safe third country principle has subsided in Germany, attention has shifted to the situation of asylum seekers who fail to gain refugee status but who are nevertheless in need of protection. Article 16a of the amended German constitution stipulates that anyone who is persecuted on political grounds has the right to asylum, the word 'political' referring to actions taken by states and directed at individuals. Asylum seekers fleeing from armed conflict and situations of generalized violence are therefore likely to have their applications rejected, and must

apply for a 'temporary tolerance permit'. While this arrangement excludes expulsion for a limited period, it does not provide such people with a secure legal status, a situation which can become particularly problematic when they are obliged to remain outside of their own country because of continuing conflict and violence.



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Box 5.4 Vietnamese boat people: the end of the story

Ha Manh Dung was a nine year-old child in 1989, when he left Viet Nam with his parents and younger brother on board a fishing boat. He returned at the age of 15, almost a man, after spending six years in a detention centre. Neither the Hong Kong government nor UNHCR considered that the Ha family had any claim to refugee status, and they had exhausted every appeal. So the family faced facts. Unwanted in Hong Kong and with nowhere else to go, they decided to go home and to rebuild their lives in Viet Nam.

By the end of 1995, almost all of the 840,000 refugees and asylum seekers who have left Viet Nam since 1975 should have found a solution to their plight. The vast majority of that number - some three-quarters of a million people - have been resettled in other parts of the world, primarily in the USA, Australia, Canada, France, the UK and Germany. The remainder (those who remain in the camps of South-East Asia and who have not been recognized as refugees) will, like the Ha family, go back to Viet Nam. And with that, one of the most elaborate and expensive refugee programmes in modern history will come to a close.

Endless stream

With the US withdrawal from Viet Nam in 1975 and the fall of the Saigon government, an apparently endless stream of boat people began to leave their own country and to land in the states and territories of South-East Asia: primarily Hong Kong, Indonesia, Malaysia, the Philippines, Singapore and Thailand. In the exceptional circumstances which gave rise to this movement, including the risk that these first asylum countries would push the boat people back to sea, the world's more prosperous countries agreed to provide resettlement places for Vietnamese who succeded in leaving their homeland.

By the end of the 1980s, the Vietnamese were still leaving. By now, however, 14 years after the end of the war, it had become increasingly clear that not all of the boat people had a valid claim to refugee status. Hundreds of thousands had already been resettled, and the promise of prosperity in California or Canada, coupled with the poverty of their own country, acted as a powerful incentive to leave. In many

cases, the desire for a better life, rather than a fear of persecution, had become a primary motivation in the decision to leave Viet Nam.

In 1989, an international conference was convened to seek a solution to this problem. The result was the CPA - the Comprehensive Plan of Action for Indo-Chinese Refugees - a package of measures intended to reduce the flow of economic migrants from Viet Nam, while providing protection to those who had a valid claim to refugee status.

Within Viet Nam, boat departures were reduced by means of a mass information campaign, designed to persuade people of the dangers of clandestine migration, coupled with the expansion of an organized emigration programme to a number of resettlement countries. At the same time, a credit and community development programme, funded primarily by the European Union, was established in Viet Nam, with the purpose of 'anchoring' would-be exiles in their own community and promoting the reintegration of Vietnamese who opted to return from the first asylum countries of South-East Asia.

Within those countries, procedures were introduced to determine which of the Vietnamese qualified for refugee status. Those who were accepted, the so-called 'screened-in', would be offered resettlement places, while those who were rejected, known as the 'screened-out', would be expected to return to Viet Nam with assistance from UNHCR. Counselling campaigns were launched in the camps and detention centres of South-East Asia, encouraging unsuccessful asylum seekers to go home voluntarily and with support from UNHCR. The organization also established a programme within Viet Nam, in order to monitor the welfare of these returnees and to encourage the return of those who had been screened out.

Impact of the CPA

The CPA has undoubtedly worked. In 1989, more than 70,000 Vietnamese arrived in South-East Asia. This stream has now been reduced to an insignificant trickle. Some 80,000 Vietnamese have been resettled during the past six years, while 72,000 have returned safely to their homeland. The camp population, which stood at 113,000 at the beginning of 1991, has been reduced to 50,000. More than half a million people have been able to emigrate from Viet Nam in a legal manner. While the screening procedures introduced in the first asylum countries have been subjected to some criticism, nowhere in the world have asylum seekers benefited from such close UNHCR monitoring and such extensive rights of appeal.

This is not to suggest that CPA has been a simple or trauma-free exercise. Many of the Vietnamese have had to live in very difficult conditions while waiting for their status to be determined. Having staked everything on the bid to leave their own country, it has often been hard for those who are screened out to accept that they will have to go home. A hard core of unsuccessful asylum seekers have refused point-blank to volunteer for repatriation, and have use violent means to press their case for resettlement. Finally, in March 1995, the Steering Committee of the CPA recognized that 'orderly repatriation' - in other words involuntary return - was an 'appropriate' means of breaking the deadlock.

As a matter of policy, UNHCR does not participate in actions which involve the use or threat of force. Within Viet Nam, however, the organization monitors the welfare of

involuntary returnees as well as those asylum seekers who have chosen to return. To date, most of the complaints which returnees have brought to UNHCR's attention stem from economic and bureaucratic difficulties, and delays in the payment of repatriation grants. With a growth rate of nine per cent in 1994 and the resumption of full trade and diplomatic relations with all of the industrialized states in 1995, the economic prospects for the Vietnamese population now seem particularly positive.

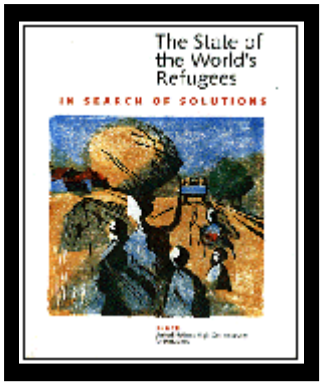
There is now a broad consensus that the blanket resettlement of the boat people went on for too long, and was sustained more by political than humanitarian imperatives. As a result, the policy helped to fuel migratory pressures within Viet Nam. But in the political and humanitarian context of the initial Vietnamese exodus, the distinction between refugees and economic migrants was not a relevant consideration.

As a senior UNHCR official explains, 'the flood of people; the pushbacks; the piracy; the attacks; the robbery; the killing; the rape; the machine-gunning of boats; the breakdown of the obligation to rescue people at risk on high seas; the threats of closure of territorial waters - we faced a problem so peculiar, so specific and so dramatic that we had to act in this way.' 'However,' he continues, 'there was certainly no emergency in Viet Nam by 1989, and conditions there no longer justified the automatic recognition and resettlement of any person leaving the country.'

Some actors in the Vietnamese situation continue to challenge the validity of the latter remark. In the resettlement countries, overseas Vietnamese communities continue to lobby against the CPA and in favour of indiscriminate resettlement. Furthermore, recent moves in the US Congress to re-screen the rejected cases and to make additional resettlement places available have reduced the number of volunteers for repatriation and damaged the prospects of completing the programme by the end of 1995. Even so, the CPA has provided a striking demonstration of the way in which a concerted package of measures, based on migration management principles, can be used to resolve a longstanding and apparently intractable refugee problem.

Map K
Vietnamese camp population and returnees

Statistics dated March 1995.



The State of The World's Refugees
in search of solutions

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Box 5.5 Central Europe: transit and training

Central Europe's proximity to the continent's more affluent states, coupled with the relatively lax entry and residence regulations maintained by many countries in the region, is leading a growing number of people to make their way to this part of the world. While the majority are from nearby areas such as former Yugoslavia and the former Soviet Union, they have been joined by migrants and asylum seekers from the Middle East, Africa and Asia. Only a small proportion of these new arrivals wish to remain in Central Europe; most would like to move on to the countries of Western Europe and to North America.

Frustrated hopes

The majority of the migrants who hope to transit through Central Europe are likely to find their hopes frustrated. As described elsewhere in this chapter (see Box 5.2), Germany and other countries in Western Europe have tightened their border controls, and are now returning asylum seekers to the Central European countries on the grounds that they could have requested refugee status while they were there. The result of these developments has been that the Central European states, which just a few years ago were producing refugee and asylum seekers, have now been obliged to manage an inward migratory movement. According to the International Organization for Migration, there could now be as many as 100,000 transit migrants in Poland alone.

One of the more positive features of this situation has been the willingness of the Central European states (Albania, Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia) to accede to the basic instruments of international refugee and human rights law. All of the countries in the region have now signed the 1951 UN Refugee Convention, while many are in the process of drafting national refugee legislation and establishing the structures and procedures required to examine asylum requests.

Despite these manifestations of political will, the social and economic environment in Central Europe is hardly propitious for the arrival and integration of refugees.

Unemployment has risen sharply since the demise of the communist bloc, and high rates of inflation have put even basic commodities beyond the reach of many people.

The resulting poverty and uncertainty have contributed to the rise of political extremism. All of the countries concerned have significant minority groups, some of whom are confronted with hostility by the majority population. Anti-foreigner and racist feelings are freely expressed in public, a result of historical antagonisms, coupled with the unfamiliarity of these societies with people from other parts of the world. Migrants and asylum seekers are quite open about the fact that they would rather be in a western country, thereby adding to resentment of the local population.

Civil society

Having established democratic systems of government only in the past few years, the countries of Central Europe also lack the institutions of an active civil society: non-governmental organizations, voluntary associations, legal networks and advocacy groups. At present, there are few human rights or humanitarian organizations which are active in the refugee field, and those which do exist tend to rely quite heavily on support from UNHCR. Asylum seekers are consequently not always able to get the advice and support they require. The task of these organizations is further complicated by the complex nature of the movement into Central Europe. In a situation where asylum seekers and refugees are mixed with much larger numbers of economic migrants, it is difficult for local organizations to target their activities to those new arrivals who are in need of protection.

Responding to this situation, UNHCR has in recent years established a much stronger presence in Central Europe, with offices in all of the capital cities in the region. At the same time, the organization has established a joint training programme with the European Council on Refugees and Exiles (ECRE), an NGO umbrella group with some 50 member agencies throughout the continent.

Initiated in 1992, the programme is intended to promote an awareness and understanding of international refugee protection principles amongst NGOs, lawyers, judges and governmental officials, and to support the development of local refugee-related agencies. More specifically, by conducting a series of seminars and workshops in the region, and by establishing a system of staff exchanges and internships, ECRE is enabling the fledgling refugee organizations and legal networks of Central Europe to develop expertise in areas such as public and political advocacy, policy development, fund-raising, as well as social and legal counselling.

According to ECRE's own evaluation, this initiative has had some mutually beneficial consequences. 'Participants have either learnt for the first time about international refugee law or enhanced their knowledge in this area. They have got to know each other better and to understand more fully the developments in refugee work in their countries. ECRE personnel have also learnt a great deal about the refugee situation in each country, about the social and political context in which policy is developing, and about the needs and aspirations of local NGOs.'

While much more training and institution-building remains to be done in Central Europe itself, the emerging refugee problem in the region cannot be addressed in isolation. On one hand, similar activities are required in the newly independent states to the east, such as Belarus, the Russian Federation, Ukraine and the Baltic States,

which form part of the same migratory system, both as countries of origin and transit.

On the other hand, the longstanding campaign to safeguard refugee protection principles in the countries of Western Europe must be sustained, given the important example which these states play in establishing standards for the continent as a whole. As ECRE observes, 'restrictive policies from Western European states will have a direct and negative impact on the refugee policies of Central and Eastern European states. Conversely, generous policies based on human rights principles and solidarity will ease the plight of the persecuted and lead to a true partnership between all European states.'

Fig. 5.1
Asylum applications in Germany and other Western European states, 1983-1994

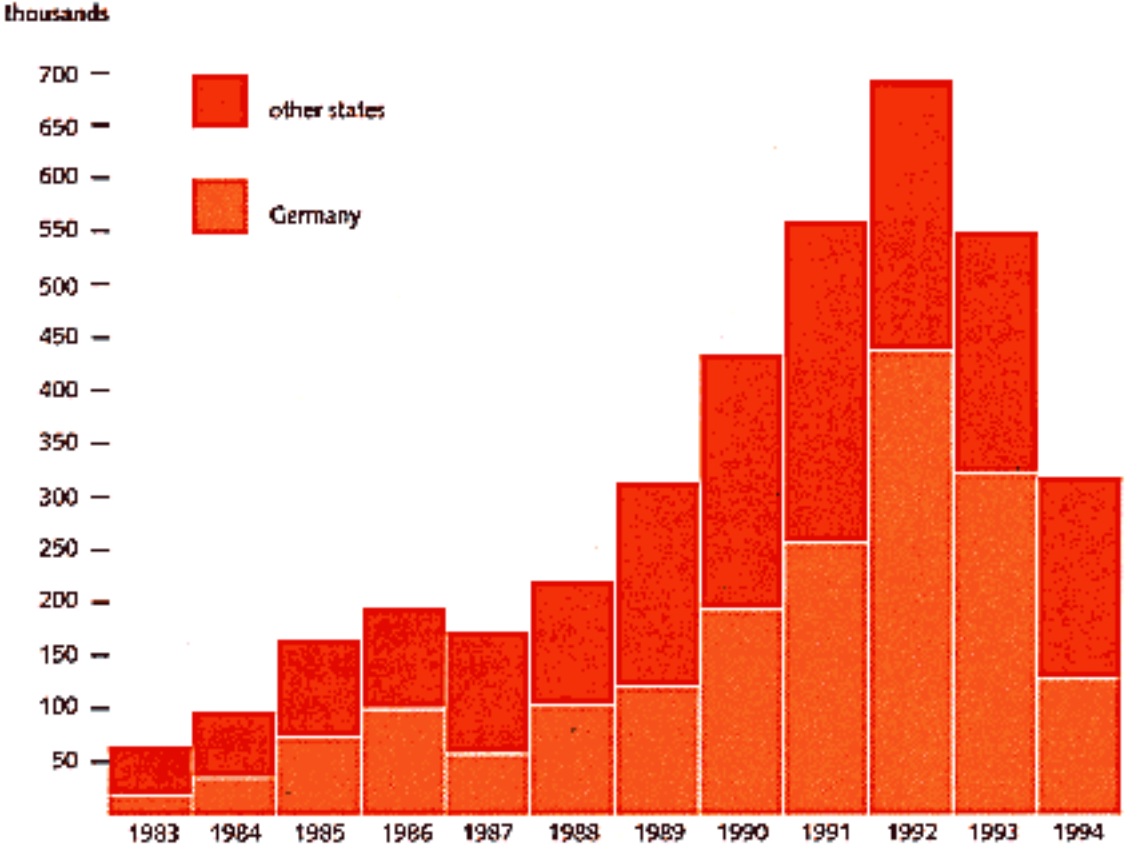


Fig. 5.2
Asylum applications in Australia, Canada and the USA, 1983-1994

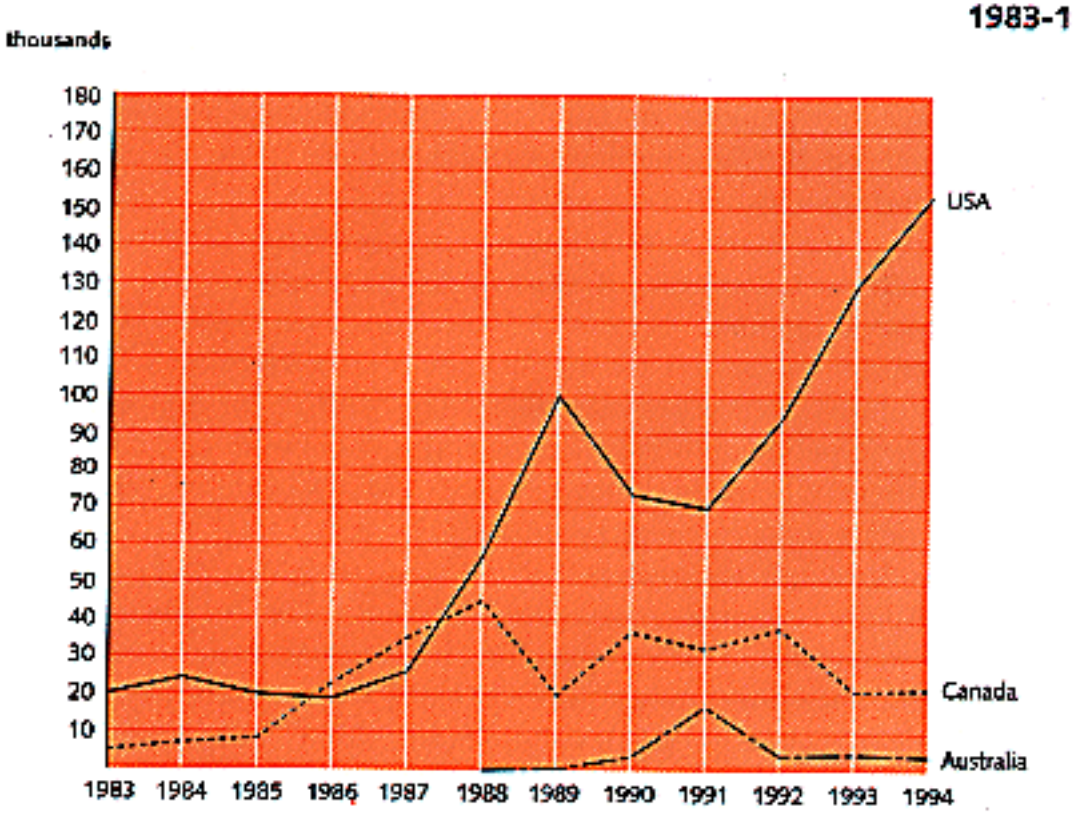
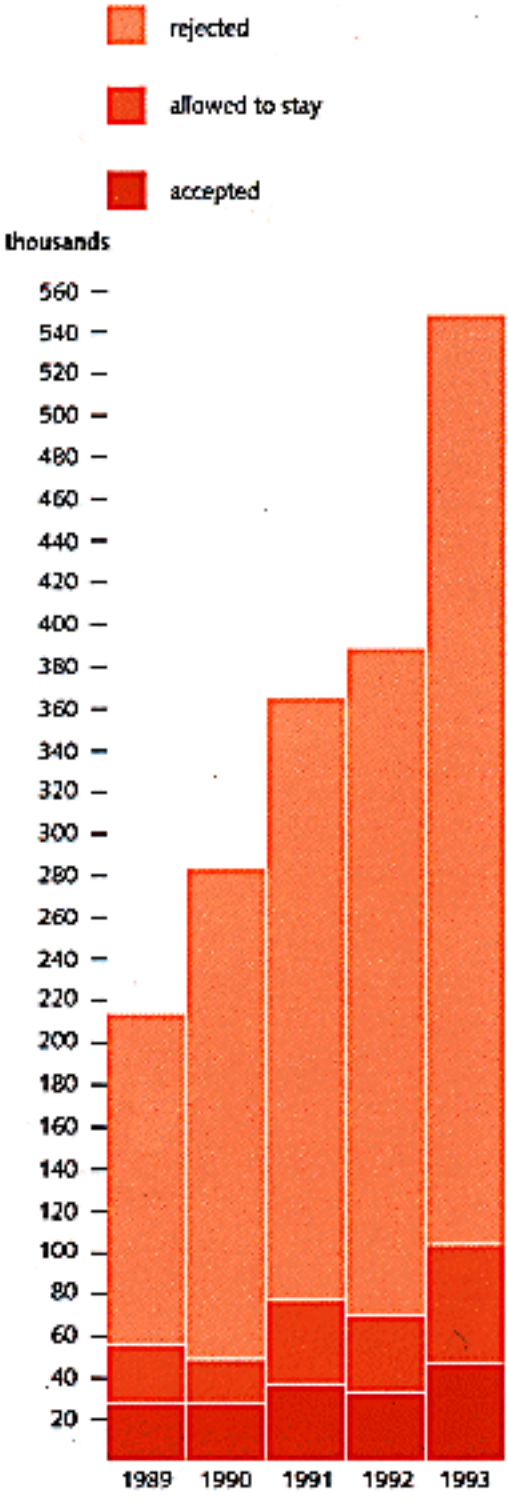


Fig. 5.3
Asylum decisions in Western Europe, 1989-1993



Whitehead detention centre for Vietnamese asylum seekers, Hong Kong, April 1995.
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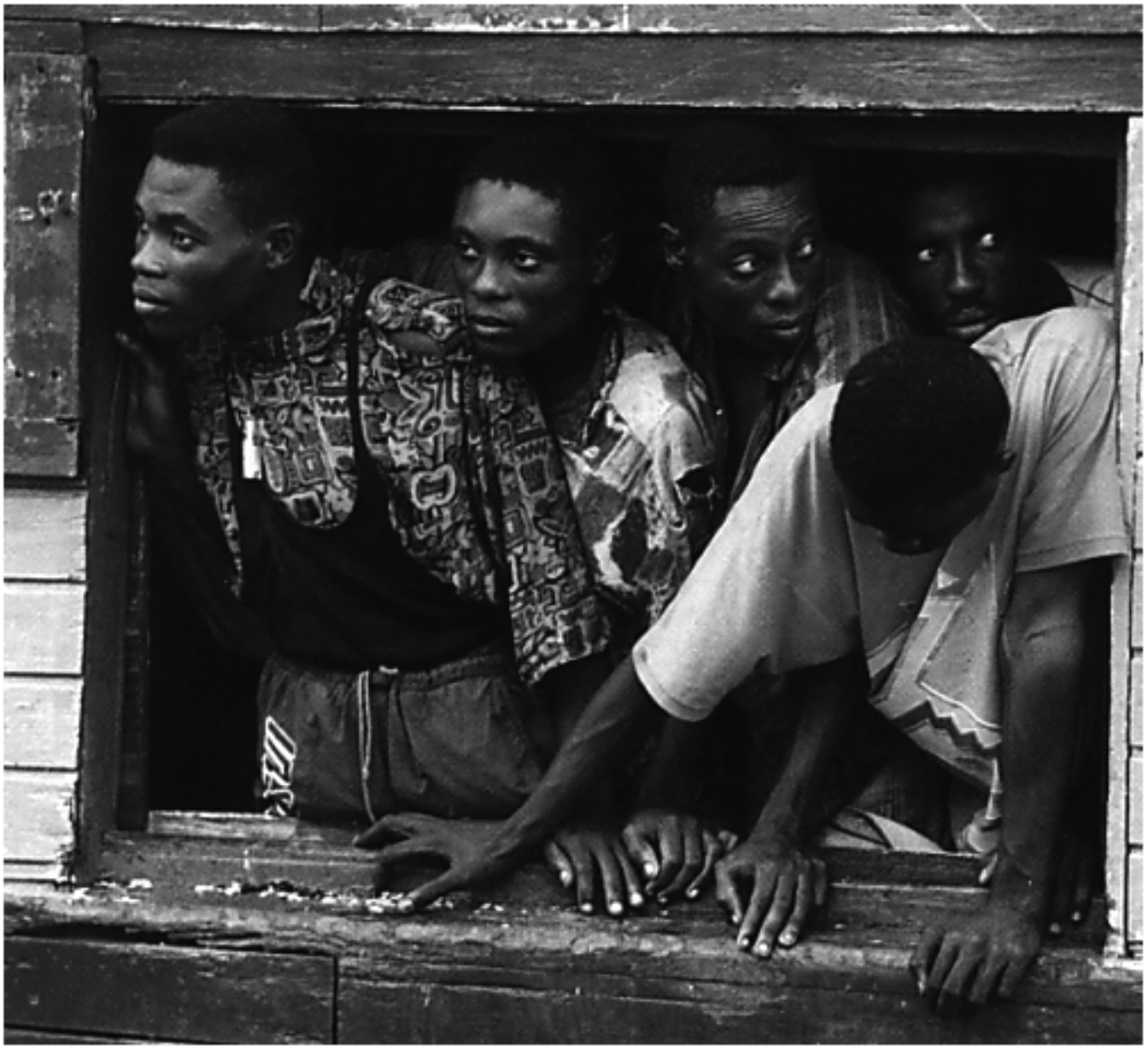

Haitian asylum seekers at Miami Beach, USA, 1994.
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