International Migration Policies

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NOTE

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The designations "developed" and "developing" economies are intended for statistical convenience and do not necessarily express a judgement about the stage reached by a particular country or area in the development process.

The term "country" as used in the text of this publication also refers, as appropriate, to territories or areas.

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PREFACE

The present study is an attempt to give an overview of current international migration policies in both developed and developing countries. The study is based on the information which has been collected and updated by the Population Division of the United Nations Secretariat on a regular basis since it received, following the adoption of the World Population Plan of Action by the United Nations World Population Conference held at Bucharest in 1974, the task of monitoring population policies.

Part one of the study is devoted to three major policy issues in international migration: (*a*) family reunification; (*b*) citizenship, nationality and naturalization; and (*c*) social, political, economic and cultural integration of migrants. Part two reviews policies and programmes targeting specific types of migration as well as relevant national, regional and global instruments in regard to permanent migration, labour migration, refugees and undocumented migrants.

Responsibility for this report rests with the United Nations Secretariat. The assessment was facilitated to a great extent, however, by the close cooperation among the United Nations bodies. Acknowledgement is due to the United Nations Population Fund, which partially funded this study. The assistance of experts who reviewed early sections of this report and provided additional information is greatly appreciated.

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Symbols of United Nations documents are composed of capital letters combined with figures.

The following symbols have been used in the tables:

Two dots (..) indicate that data are not available or are not separately reported.
An em dash (—) indicates that the amount is nil or negligible.
A hyphen (-) indicates that the item is not applicable.
A minus sign (-) before a number indicates a deficit or decrease, except as indicated.
Use of a hyphen (-) between dates representing years (e.g., 1994-1995) indicates the full period involved, including the beginning and end years; a slash (e.g., 1994/95) indicates a financial year, school or crop year.
A point (.) is used to indicate decimals.

Details and percentages in tables do not necessarily add to totals because of rounding.

Reference to "dollars" ($) indicates United States dollars, unless otherwise stated.

Reference to "tons" indicates metric tons, unless otherwise stated.

The term "billion" signifies a thousand million.

The following abbreviations have been used in this report:

AFTA	ASEAN Free Trade Area
APEC	Asia-Pacific Economic Cooperation Council
ASEAN	Association of South-East Asian Nations
CARICOM	Caribbean Community
CARIFTA	Caribbean Free Trade Association
CEDEAO	Communauté économique des États de l'Afrique de l'ouest
CELAD	European Committee to Combat Drugs
CELADE	Centro Latinoamericano de Demografia
CFE	Federal Commission for Foreigners (Switzerland)
CGT	General Confederation of Labour
CIMAL	Information Centre on Migration in Latin America
CIREFCA	International Conference on Central American Refugees
CIS	Commonwealth of Independent States
COMESA	Common Market for Eastern and Southern Africa
COMG	Steering Committee on Intra-European Migration
DGB	German Confederation of Trade Unions
EAC	East African Community
EC	European Community
ECA	Economic Commission for Africa
ECE	Economic Commission for Europe
ECOWAS	Economic Community of West African States
EDU	European Drugs Unit
EEA	European Economic Area
EEC	European Economic Community
EPC	European Political Cooperation Group
EU	European Union
FAS	Fonds d'action sociale pour les travailleurs immigrés et leurs familles (France)
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Cooperation Council
ILO	International Labour Organization
IMILA	International Migration in Latin America
IOM	International Organization for Migration
IRCA	Immigration Reform and Control Act of 1986 (United States of America)

MAG	Mutual Assistance Group
MERCOSUR	Southern Cone Common Market
MIES	Mediterranean Information Exchange System on International Migration and Employment
NAFTA	North American Free Trade Agreement
NIEs	newly industrialized economies
NUMAS	Numerically-weighted Multi-factor Assessment System
OAU	Organization of African Unity
OECD	Organisation for Economic Co-operation and Development
ONI	Office national d'immigration
OWWA	Overseas Workers' Welfare Administration
PADS	Port and Airport Development Scheme
POEA	Philippine Overseas Employment Administration
QIP	Quick Impact Project
SADC	Southern African Development Community
SIS/EIS	Schengen/European Information System
SOPEMI	Continuous Reporting System on Migration
SSAS	Structured Selection Assessment System
UDEAC	Union douanière et économique de l'Afrique centrale
UNDP	United Nations Development Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNOCHA	United Nations Office for the Coordination of Humanitarian Assistance to Afghanistan
UNRRA	United Nations Relief and Rehabilitation Administration
UNRWA	United Nations Relief and Works Agency for Palestine Refugees in the Near East
UNTAC	United Nations Transitionai Authority in Cambodia

INTRODUCTION

The movement of people across international borders is an important policy issue for Governments and researchers in countries all over the world. It touches the lives of people in areas as different as the rural regions of developing countries and the great metropolises of the industrialized countries. Economic decisions are based on the availability and cost of labour, which is sometimes imported from the opposite side of the world. The social fabric of many nations is influenced by immigrant groups with widely varying customs and cultures.

There are many reasons for the increased activity in international migration. The persistent disparity in wealth and resources between rich countries and poor countries motivates people in developing countries to migrate and participate, at least temporarily, in the labour forces of developed countries. Even when receiving countries stop accepting legal labour migrants, movement may continue, involving undocumented migrants and trafficking across unpatrolled borders.

Earlier labour immigration, as well as former colonial relationships, created long-distance networks between countries, which continue to be used by new generations of workers. Communication systems carry information about jobs around the world, enlarging the pool of prospective employees and making the labour market an increasingly international concept. At the same time, inexpensive transportation networks move workers to areas where there are labour shortages, and move them home again after temporary employment or on to the next job.

Against a background of widening economic disparities and political change, international migration has increasingly become an issue of major policy concern in almost all parts of the developed and developing world. In the late 1980s and early 1990s, the opening of borders in Eastern Europe, the disintegration of the former Soviet Union and the former Yugoslavia, the Gulf crisis and the ethnic strife in Rwanda resulted in large and unexpected international displacements of population which significantly contributed to the growing political salience of international migration on both the international and domestic scenes. Immigration in general has become more politicized and the issue of undocumented migrants has been placed in the forefront of immigration debates. The progress made towards regional economic integration, in particular the dismantling of internal borders within the European Union, has also modified the political and institutional context in which international migration issues are addressed.

A. THE UNITED NATIONS AND MIGRATION POLICIES

The United Nations has a long-standing concern with population policies and has played a major role in increasing the worldwide awareness of population problems. The first World Population Conference sponsored by the United Nations and the International Union for the Scientific Study of Population was held in Rome in 1954, and subsequent conferences have been conducted once each decade. The population issues that dominated the early conferences centred on the consequences of population growth and on strategies for promoting family planning programmes. Eventually, however, the relationship between population growth and economic development gained acceptance. The role of international migration as an intrinsic part of the development process also began to be recognized, and Governments in both sending and receiving countries began to address the complications associated with labour migration, refugees and undocumented workers.

The most recent International Conference on Population and Development, held at Cairo in 1994, devoted considerable attention to the issue of international migration, noting that the factors underlying population movement are as diverse as economic imbalances between nations, poverty, environmental degradation, conditions that threaten peace and security, human rights violations and the lack of judicial and democratic institutions. Objectives in the Conference's Programme of Action included reducing the root causes of migration, especially poverty; encouraging cooperation and dialogue between sending and receiving countries so that migration had positive consequences for all countries; and facilitating the reintegration of returning migrants. It acknowledged that such efforts

implied a long-term solution to immigration problems, and it conceded that migration would undoubtedly continue in the short term. Therefore, Governments were encouraged to adopt policies to manage migration flows and programmes to improve the skills of migrants. They were also invited to ratify the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; that document specifies the rights and treatment of foreign workers, but it has yet to be ratified by most Member States.

Additional recommendations were approved to address the needs of documented migrants, undocumented migrants, and refugees, asylum-seekers and displaced persons. Governments were urged to ensure that all documented migrants and their families enjoyed the same treatment accorded to their own nationals with regard to basic human rights, and that all forms of discrimination on the basis of nationality be eliminated. With regard to undocumented migrants, the recommendations focused on reducing the causes of undocumented migration as well as respecting the basic human rights of irregular migrants. Sanctions against traffickers and the prevention of abuse and exploitation of undocumented migrants were also endorsed.

The International Conference on Population and Development recognized that the institution of asylum was in danger of erosion, given the unusual number of applicants for asylum and the misuse of the system by many without legitimate claims for asylum. Governments were urged to abide by international law with regard to refugees; to refrain from policies or practices that force people to flee; to consider at least temporary protection for asylum-seekers who arrive in their territories; and to support regional and international efforts to assist and protect refugees.

Since the United Nations World Population Conference held at Bucharest in 1974, the Population Division of the Department of Economic and Social Affairs of the United Nations Secretariat has monitored Governments' perceptions of immigration and emigration levels, whether they wish to intervene in these matters and, if so, the direction of their policies—i.e., whether to raise, maintain or lower migration flows. In examining the evolution of the Governments' perceptions and policies over the past 20 years, some definite trends appear.

When the monitoring of Governments' views and perceptions began in 1976, international migration was a topic of secondary concern for many Governments, and their intervention was mostly confined to the administrative regulation of national borders. Only a minority of Governments had explicit policies to raise or lower migration flows: 13 per cent of countries had a policy to raise or lower immigration and 17 per cent to raise or lower emigration. Today, the situation has changed significantly. International migration has become a prominent issue of national and international concern. Many more Governments consider migration and its consequences to be significant for their country. By 1995, approximately 40 per cent of countries had developed policies to raise or lower immigration and 24 per cent to raise or lower emigration (see tables 1 and 2).

Major changes in Governments' perceptions of migration trends took place during the second half of the 1970s and the early 1980s. In the context of economic recession which followed the first oil shock, Governments' concerns over the consequences of both immigration and emigration suddenly increased, particularly in developed countries. While in 1976, only 6 per cent of Governments viewed immigration as too high, this percentage rose to 13 per cent in 1980 and reached 19 per cent in 1983 (see table 3). Although less striking, changes in the perception of emigration were also significant: 20 per cent of Governments found the level of emigration too high in 1983 versus 13 per cent in 1976 (see table 4). Remarkably, Governments' perceptions of both immigration and emigration levels have remained virtually unchanged since 1983. On the other hand, the number of Governments adopting measures to control and often reduce these flows kept growing until recently. The percentage of countries with policies to lower immigration steadily increased from 6 per cent in 1976 to 19 per cent in 1986, jumped to 32 per cent by 1989 and reached 35 per cent by 1993 (see table 1). In 1995, the percentage fell to 33 per cent. A reversal occurred after 1989 with respect to emigration policies. The percentage of countries seeking to lower emigration, which had increased from 13 to 25 per cent between 1976 and 1989, fell to 20 per cent in 1993 (see table 2).

While the developed countries show the strongest inclination towards restricting immigration, the

TABLE 1. GOVERNMENTS' POLICIES TOWARDS THE LEVEL OF IMMIGRATION, 1976-1995

(Percentage of countries)

Year	*Raise*	*Maintain or no-intervention*	*Lower*	*Total*	*Number of countries*
1976	7	87	6	100	156
1978	6	84	10	100	158
1980	6	79	15	100	165
1983	5	78	17	100	168
1986	4	77	19	100	170
1989	5	64	32	100	170
1993	4	61	35	100	190
1995	5	61	33	100	190

Source: The Population Policy Data Bank maintained by the Population Division of the United Nations Secretariat.

TABLE 2. GOVERNMENTS' POLICIES TOWARDS THE LEVEL OF EMIGRATION, 1976-1995

(Percentage of countries)

Year	*Raise*	*Maintain or no-intervention*	*Lower*	*Total*	*Number of countries*
1976	4	83	13	100.0	156
1978	4	80	16	100.0	158
1980	4	81	16	100.0	165
1983	5	75	20	100.0	168
1986	5	74	22	100.0	170
1989	3	72	25	100.0	170
1993	3	77	20	100.0	190
1995	4	76	20	100.0	158

Source: The Population Policy Data Bank maintained by the Population Division of the United Nations Secretariat.

TABLE 3. GOVERNMENTS' VIEWS OF THE LEVEL OF IMMIGRATION, 1976-1995

(Percentage of countries)

Year	*Too low*	*Satisfactory*	*Too high*	*Total*	*Number of countries*
1976	7	87	6	100	156
1978	8	87	5	100	158
1980	6	81	13	100	165
1983	7	74	19	100	168
1986	4	76	20	100	170
1989	3	76	21	100	170
1993	3	75	23	100	190
1995	2	77	21	100	190

Source: The Population Policy Data Bank maintained by the Population Division of the United Nations Secretariat.

TABLE 4. GOVERNMENTS' VIEWS OF THE LEVEL OF EMIGRATION, 1976-1995

(Percentage of countries)

Year	*Too low*	*Satisfactory*	*Too high*	*Total*	*Number of countries*
1976	4	83	13	100.0	156
1978	6	78	16	100.0	158
1980	5	79	15	100.0	165
1983	6	74	20	100.0	168
1986	5	75	19	100.0	170
1989	5	74	21	100.0	170
1993	3	75	22	100.0	190
1995	3	72	25	100.0	190

Source: The Population Policy Data Bank maintained by the Population Division of the United Nations Secretariat.

developing countries have been following the same trend. As of 1995, 29 per cent of the developed countries considered immigration levels to be too high, as did 18 per cent of the developing countries. These numbers signified a net increase over 1976, when only 8 per cent of the developed countries and 3 per cent of the developing countries viewed immigration levels as too high. With respect to policies, there has been a conspicuous drop in the number of countries choosing a policy of non-intervention among both the developed

and the developing countries. The percentage of Governments with a policy of non-intervention declined from 59 per cent in 1976 to 18 per cent in 1995 for the developed countries, and from 80 per cent in 1976 to 42 per cent in 1995 for the developing countries. Parallel to this, the percentage of Governments having a policy to reduce immigration increased from 26 per cent in 1976 to 43 per cent in 1995 for the developed countries, and from 3 per cent to 29 per cent for the developing countries over the same period.

Regional trends support the view that in all parts of the developed and developing worlds, a growing number of Governments have adopted policies aimed at influencing and, especially, lowering the immigration level. While in 1976, a majority of countries in Asia, Europe and Oceania had a policy of non-intervention towards immigration, the percentage of non-interventionist countries was down to about 15 per cent in each of these regions in 1995. In Latin America, the trend has been similar in direction and magnitude. However, almost half of the Governments had a policy of non-intervention towards immigration in 1996, down from about 9 out of 10 in 1976. The change in immigration policy was much slower in Africa, where the proportion of non-interventionist countries was slightly less than two thirds in 1995. The situation has remained basically unchanged in Northern America, where the Governments of Canada and the United States of America, both traditional receiving countries, have long had immigration policies.

In regard to emigration, both developed and developing countries show similar trends in the evolution of their views. Regarding their policies, however, a larger share of developed countries have chosen to intervene with an active policy compared with developing countries. The percentage of Governments opting for a policy of non- intervention decreased from 79 per cent in 1976 to 48 per cent in 1995 for developed countries and from 61 per cent to 55 per cent among developing countries. During the same period, however, both groups experienced a very similar increase in the percentage of Governments having a policy to lower emigration, from 15 to 23 per cent for developed countries and from 12 to 19 per cent for developing countries.

The analysis of regional trends generally parallels the changes at the global level. All regions show a similar increase in the number of Governments viewing emigration levels as too high, except for North America, where the positions of both Canada and the United States have remained unchanged since 1976. Also, with respect to policies, all regions show an increase in the number of Governments choosing to intervene to lower the level of emigration, with the exception of Latin America and the Caribbean, where the number of Governments having such a policy remained stable.

B. Major issues in international migration

In the final decade of the twentieth century, international migration has become a factor for more and more countries. Policy measures have economic, demographic, cultural and humanitarian consequences. Population movements have become more diversified, and it is increasingly difficult to identify discrete categories of movers, such as labour migrants or refugees and asylum-seekers. The large number of undocumented immigrants has raised questions about control of borders. Moreover, the process of integrating immigrants into the host society has highlighted cultural differences and provoked diverse responses from different segments of public opinion. Although regional movement still dominates the flow of migrants in many parts of the world, modern transportation and communication networks have facilitated the globalization of population movement. All these concerns have contributed to establishing international migration as a topic on the agenda for national and international scrutiny.

The present volume examines many of the issues surrounding immigration policies and practices from a wide range of perspectives. This study includes chapters that explore the history and origins of issues that are crucial to understanding current legislation and behaviour regarding immigration. The volume describes policies designed to influence international migration and traces changes in these policies over time. It outlines the efforts of the United Nations and other international organizations to respond to immigration problems and to harmonize immigration policies. Separate chapters address developments in immigration in the traditional categories: permanent settlers, labour migrants, refugees and asylum-seekers and undocumented migrants. The topics of the chapters are of interest to migration specialists and policy makers alike:

the practice of permitting the reunification of family members with emigrants; issues surrounding the questions of citizenship and nationality; and the social, political, economic and cultural integration of immigrants.

Part one of this volume contains three chapters, the first of which deals with the question of the reunification of relatives with a family member who has emigrated to another country. The majority of immigrants to such countries of permanent settlement as the United States of America are relatives of citizens or legal residents of the country. However, regional and international instruments concerning immigration do not establish family reunification as a right, so the ultimate arbiter of decisions about entry is the nation-State, which retains the sovereign right to admit foreigners to its territory. In Europe, the oil crises of the early 1970s ended most labour migration to industrialized countries, but family members of immigrants continued to arrive under the reunification programmes sponsored by most receiving countries. Indeed, family reunification remained one of the few legal ways for immigrants to be admitted to European countries that had previously welcomed workers. Increasing restrictions about which family members qualify for reunification and what conditions must be met have emerged as a type of immigration policy that affects thousands of potential immigrants.

Chapter II poses questions that are important in a world where more than 100 million people are estimated to be living outside their country of birth: how does an individual acquire citizenship in a nation-State and what rights and privileges does this status confer? The historical beginnings of the concept of nationality are traced, and the two main types of citizenship acquisition are defined—*jus soli* and *jus sanguinis*. Countries that accept the principle of *jus soli* generally grant citizenship to all who are born within the territorial limits of the nation-State, whereas countries that have adopted the principle of *jus sanguinis* usually require some kind of blood tie or family relationship before citizenship can be claimed. The distinction may seem subtle, but these principles still have profound implications for immigrants in the modern world and help to define who qualifies for nationality. In some countries, the children of immigrants who have lived in the country for as long as three generations may not acquire its nationality automatically at birth.

In Chapter III, an issue related to citizenship and national identity is addressed: what policies facilitate the integration of immigrants into the social and economic fabric of the adopted country? Integration can imbue a country's newest arrivals with a sense of national identity and include them in the larger society. When immigration policies leave an immigrant uncertain about his or her status and right to remain in a country permanently, the process of integration will be delayed or will have only limited success.

In part two of this volume, the main types of migration that have been recognized in earlier studies are discussed in separate chapters. The categories have been retained, even though it is acknowledged that the boundaries between them have become less distinct in recent years, as potential movers seek eligibility in any category for which they can qualify. Chapter IV, Permanent migration, focuses on the traditional countries of permanent migration—Australia, Canada, New Zealand and the United States of America. These nations often follow one another in making changes in immigration policies, and this has been occurring during the late 1980s and 1990s. The current trend is towards policies that are more selective in choosing immigrants and more reflective of the economic situation in the receiving country. In the current immigration climate, highly qualified, educated, well-off immigrants have the best chance of gaining admission for permanent settlement. Very few slots still exist for unskilled workers, unless they can qualify as relatives of an immigrant already granted the right to permanent residence. In Australia and Canada, the level of immigration is adjusted periodically to take into account such economic conditions as unemployment rates.

Economic criteria are also used to select a relatively small number of investors, or business immigrants, who bring capital and establish businesses that provide jobs for workers in the receiving country. All four countries of permanent migration now have programmes that allocate visas for investor immigrants.

Chapter V on labour migration encompasses an enormous number of movers and a wide variety of movements. Labour migration is the most inclusive category of population movement; indeed, most immigrants in all categories expect to participate in the labour force of the receiving country. Demand for

workers is correlated with economic conditions, which fluctuate with the economic cycle or become disrupted during wars or national emergencies. In the 1990s, both situations have occurred and have highlighted the predicament of workers in a foreign country. The general economic downturn in Europe in the early 1990s brought attention to the large population of foreigners who continued to live and work in European countries after the cessation of labour recruitment in the 1970s. Local workers may question continuing immigration flows when jobs are scarce. Moreover, foreign workers are hardest hit by economic recession; their unemployment rates are generally higher than those of natives.

Chapter VI deals with refugees and asylum-seekers. However, as is the case with other types of movers across international borders, this category is not always easy to define. In the early 1990s, hundreds of thousands of migrants claimed asylum status after migrating to countries in Europe. Many were economic migrants whose claim to asylum status was denied. However, their sheer numbers clogged the system of judicial review and delayed the processing of legitimate refugees. The situation required international cooperation and resulted in the Dublin Convention, a harmonization of policies that introduced modifications to the system. The adjudication process was streamlined; responsibility for each asylum applicant was assigned to a single country to prevent immigrants from "shopping" for asylum in the most sympathetic country; and visas were required from nationals of countries that had produced the largest number of unqualified asylum-seekers.

The United Nations High Commissioner for Refugees continues to assist in the search for solutions to refugee problems worldwide. The traditional responses are repatriation and reintegration of refugees in their country of origin when the emergency has passed; settlement and integration in the country where the refugee sought asylum; and resettlement in a third country that is willing to accept refugees. In the current environment, where opportunities for resettlement are limited, UNHCR has sought to devise new policies for the resolution of refugee problems. They include prevention of situations that are likely to cause people to become refugees; establishment of "safe areas" to protect civilians threatened by dangerous conditions; creation of a temporary protected status in the country of refuge, which provides a limited commitment to refugees during an emergency; and "Quick Impact" sustainable development projects in the country of origin to increase the chances that the reintegration of refugees will be successful.

The final chapter in this volume, chapter VII, discusses undocumented migrants, a type of immigration that is very difficult to quantify. Some countries estimate undocumented migrants by counting the number of illegal foreigners apprehended, but this measure depends on the resources allocated to enforcement of borders. Estimates of undocumented migrants have also been made from the number who apply for amnesty or regularization programmes, but many do not qualify for such programmes or prefer to retain their own nationalities and hold temporary jobs in the host country. Undocumented migrants may be border violators or visa overstayers, or they may be persons who do not observe the conditions of their residence in the foreign country—for example, they may take a job without having a work permit. Regardless of the ways they are counted, there is agreement among many immigration specialists that the number of undocumented migrants worldwide has increased.

Much of this increase can be attributed to activities in other areas of immigration. As opportunities to qualify for immigration as permanent settlers, workers and refugees become more scarce, especially for unskilled workers, the pressure to gain entry by illegal means will continue to mount. The production of fraudulent documents is already a large business, and trafficking in illegal immigrants is growing as international crime syndicates become involved in the smuggling of undocumented migrants.

Finally, extensive references follow each chapter of the study and reflect the considerable research and policy interest in various aspects of the topic of international migration. The bibliography includes both references cited and background material consulted in the preparation of the manuscript.

Part One

MAJOR ISSUES IN INTERNATIONAL MIGRATION

I. FAMILY REUNIFICATION: POLICIES AND ISSUES

Migration for family reunification is the major flow of legal migrants to some countries, but legal provisions allowing family reunification vary both between countries and over time for any given country. This chapter reviews the issue of family reunification. It examines how the interests of the State to regulate international migration may be reconciled with a citizen's or resident alien's interest to be joined by members of his or her family. Lastly, it evaluates broader implications.

International migration issues have been caught increasingly between the international and the national domain, between the individual's right to "leave any country, including his own", (Universal Declaration of Human Rights, article 13, paragraph 2) versus the right of the State to decide who shall enter its territory, and the conditions of citizenship. The right to leave one's country is generally recognized as a human right, but the corresponding right of a person to enter another country has not been established, since no State allows the unlimited crossing of its borders. Migration for family reunification represents a special case in this conflict; the interests of individuals and those of the State may not coincide, but there is the added consideration of the centrality of the family in society.

A. HISTORICAL AND CONCEPTUAL BACKGROUND

Theoretical and juridical distinctions based on the historical evolution of society inform the debate regarding the right of migrants to family reunification. At least since the fifteenth century, the school of natural law asserted that human rights were bound up with man's basic nature from which they derived. According to the most traditional conception of human rights, when humanity passed from the primitive state to the social state, human beings concluded a contract by which they transferred part of their rights to the social unit and thus, in a way, renounced them, while preserving certain basic natural rights such as the right to life, freedom and equality. These natural rights constituted eternal and inalienable rights, and every social and State system was obliged to respect them. Theoretically, human rights set limits on State power by preserving certain rights for men and preventing the State from interfering in the exercise of those rights. In practice (or in positive law), a State validates its contract with its citizens by enshrining human rights provisions in charters, bills, petitions, declarations and constitutions.

The modern archetype of human rights, the Declaration of the Rights of Man and the Citizen, which emerged from the French Revolution of 1789, reinforced the dichotomy between "man", imagined to exist outside and prior to society, and "citizen", subject to the State's authority. Following from this dichotomy, human rights were fundamental rights, existing before the State, whereas the rights of the citizen were subordinate to and depended upon them (Szabo, 1982, p. 15).

In the course of political and social development, the distinction between man and citizen has gradually become blurred, and the two categories have commonly been merged. In a more general sense, all rights recognized in national constitutions have become the rights of the citizen, whereas the rights of man have generally been delegated to international law. In this way, the interpretation of human rights has been reduced to the question of the relationship between two branches of law, a relationship in which constitutional law appears to be subordinate to international law (Vasak, 1982, p. 11). Within this framework, international law has embodied human rights, promoting the establishment of human living conditions and protecting the individual from the encroaching powers of the State, while national law has tended to safeguard the State.

Legal history has also emphasized the State's rights, especially the principle of sovereignty. The question of sovereignty existed even before the emergence of nation-States, when it was the sovereign's right to decide the religion of his subjects (Waever, 1995). Since 1945, State sovereignty has been institutionalized in the Charter of the United Nations. Accordingly, national supremacy is maintained over any other items in the Charter, and the State is free of intervention in matters "which are essentially within the domestic jurisdiction of any State" (United Nations Charter, article 2, paragraph 7).

The issue of family reunification may be best considered in the light of the rights of the individual and the rights of the State. Family reunification may be linked to two sets of legal principles: those relative to freedom of movement and those linked to the family as the basic unit of society. Both are conditioned by State sovereignty when the persons involved are not citizens.

The notion that "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State" (Universal Declaration of Human Rights, article 16, paragraph 3) is often claimed to derive from natural law, and is enshrined in international law (International Covenant on Economic, Social and Cultural Rights, article 10). Nevertheless, recognizing that the family is the basic social unit does not necessarily imply that families need to live together nor that States have an obligation to admit the families of all foreigners resident in their territories. Moreover, the definitions of "protection" and "family" are unclear.

There is no universally accepted definition of the family because cultural, social and religious norms influence the way families are constituted in different societies. Polygamous marriages, for example, are accepted in some countries and not in others. The nuclear family, constituted by a husband, wife and their minor children, is neither de facto nor *de jure* the most common family configuration.

The conditions of family "protection" are also ambiguous. International instruments prohibit the State from "arbitrary interference" with the family. According to article 12 of the Universal Declaration of Human Rights (General Assembly resolution 217 A (III)), "No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence." Article 17 of the 1966 International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI)) includes a similar statement. These clauses proscribe interference with the right to family life only when it is arbitrary, and may be used by opponents of family reunification as evidence that certain restrictions upon admission for the purposes of family reunion may indeed be imposed, as long as they are not arbitrary (Plender, 1988, p. 366).

The meaning of "protection" is also unclear in the light of the distinctions that may be made between the family as a group and its constituent members. The family as a unit of society cannot be protected to the detriment of its members, as illustrated by cases of child abuse or wife battery, where the State may intervene to protect individuals. Article 12 of the Universal Declaration of Human Rights is meant to protect families from "arbitrary interference" by the State, but the general orientation of the Declaration is towards the individual or the citizen. The pre-eminence of the human being is underscored by the individualistic approach adopted by international human rights instruments. While placing the human person in various social relationships (i.e., family, religious community, employment), provisions tend to be prefaced with "everyone has the right" (van Boven, 1982, p. 54).

Family reunification poses problems that go beyond the mere contraposition of the interests of individuals and those of a State. The non-interference of the State in family matters and the recognition of the family as the basic unit of society are presented from the perspective of a single State in human rights instruments; therefore, the issues raised by family reunification do not fit neatly into that framework, since family reunification usually involves several jurisdictions (at least two States) as well as individual and family interests. Moreover, individuals who are related to one another may not have the same country of citizenship.

Regardless of definition, it has been argued that respect for the family unit is not tantamount to family reunification. The former is understood to be a principle, while the latter is considered a means of implementation of such a principle. Thus, while in general it is agreed that the family unit should be protected, it does not necessarily follow that this should be achieved through migration. One example of this variance emerges in the case of temporary migration, where many States argue that the unit of the family should be restored in the country of origin at the end of the temporary stay. States can claim that they are not preventing family reunification of foreigners in their midst since, according to article 13 of the Universal Declaration of Human Rights, foreigners always have the option of returning to their own country. It can be argued that foreigners who willingly migrate are cognizant of the conditions for migration in advance and are free to move or not.

A problematic issue, however, may arise in the case of marriage of a foreigner with a citizen, particularly a female national. The 1957 Convention on the Nationality of Married Women (General Assembly resolution 1040 (XI) prescribes that "neither the celebration nor the dissolution of a marriage between one of its nationals and an alien shall ... automatically affect the nationality of the wife" (article 1). This provision was designed to prevent women from losing their citizenship as a result of marriage with foreigners. According to article 16 of the Universal Declaration, "Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family". The 1965 International Convention on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 2106 A (XX)) also guarantees without distinction as to race, colour, or national or ethnic origin, "the right to marriage and choice of spouse" (article 5 (d) (iv)). This "right of men and women of marriageable age to marry" is reiterated in article 23 of the International Covenant on Civil and Political Rights. Thus, while States cannot interfere with marriages involving persons of different nationalities, the place of residence of the married couple is not guaranteed.

Problematic cases also arise when the foreigners involved did not migrate freely, as in the case of refugees or other forced migrants. In the case of such migrants, the State cannot argue that they arrived voluntarily and may always return to their countries of origin. These cases suggest that important distinctions must be made with regard to which migrant groups (e.g., nationals, workers, permanent settlers, undocumented migrants, students, refugees) may be beneficiaries of family reunification.

The most relevant criterion for family reunification is the relationship of the family member to the State in which he or she resides. A relative's wish to be reunited with a member of his or her family in another State is contingent upon that member's lawful status in the country concerned. Undocumented migrants do not have the right to family reunification. Where provisions for family reunification exist, they are usually formulated in terms of the right of particular individuals, whose status as citizen or foreigner is paramount. In the case of foreigners, their specific status in terms of conditions of entry and residence usually determines the possibility and modalities of family reunification (Perruchoud, 1989, p. 513).

Members of the immediate family of a national of a State possess the strongest claim to enter a State's territory. If they are denied admission, the national is confronted with a choice between expatriation and disruption of the unity of the family (Plender, 1988, p. 367). As a minimum, where national provisions exist for family reunification, "immediate relatives" of nationals are always eligible. The definition of "immediate", however, varies; in some cases, this pertains to spouse and dependent or minor children only; in others, it includes parents or siblings. It is also worth noting that, while conditions for family admission depend on the individual's relationship to the person whom he or she wants to join, admission does not necessarily entitle family members to the same status as the person already residing in the country of destination (Perruchoud, 1989, p. 513).

B. International legal instruments

No international instrument has as yet established a universal right to family reunification, whether of citizens or foreigners. In the few cases where family reunification is mentioned explicitly, it is established only under certain conditions and is not granted as a right.

To the extent that human rights are embodied in international law, provisions regarding family reunification may be found in declarations, conventions and recommendations. These instruments vary in degree of commitment (that is, some are binding and others are not) and have, therefore, different implications for family reunification. The Charter of the United Nations, essentially establishing the constitution of the international Organization in 1945, provided a general reference to fundamental human rights. The United Nations adopted the Universal Declaration of Human Rights in 1948, clarifying specific human rights. Unlike conventions and covenants, which require State ratification and are binding on the contracting parties, declarations are not enforceable and have moral value rather than enforcement power. The Universal Declaration, the cornerstone of the United Nations Organization, is somewhat of an exception because it commands great

authority throughout the world; it has more weight than a mere "recommendation", but it remains, nevertheless, non-binding (Szabo, 1982, pp. 23 and 24).

As previously noted, citizens of a given State have the strongest claim to be joined by their foreign relatives. The Universal Declaration of Human Rights, the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, the 1966 International Covenant on Economic, Social and Cultural Rights and International Covenant on Civil and Political Rights all specifically deal with the rights of citizens. Because those instruments recognize the family as the natural unit of society, they lend weight to the claim of family reunification. Furthermore, those instruments all recognize the right to marry and to choose a spouse regardless of race, colour or religion; and they protect the individual from "arbitrary" interference with his family by the State. These more general human rights are normally framed in the context of an individual's dealing with his or her own State, although there are exceptions (i.e., the right to leave any country).

The Convention on the Nationality of Married Women (1957) also addresses sex biases in such cases as marriages of women with foreigners. As noted above, article 1 prohibits States from stripping women of their nationality as a result of marriage with a foreigner, a practice followed by some States. While this Convention is binding, it has been ratified by only 66 countries as of March 1997.

All these international instruments are influential as they are binding and have received widespread support. There were 135 parties to the International Covenant on Economic, Social and Cultural Rights and 136 parties to the International Covenant on Civil and Political Rights (General Assembly resolution 2200 A (XXI)) as of March 1997.

Although the majority of international instruments dealing with family reunification aim at citizens, some provisions have been made for foreigners. The predominant type of migrants which international instruments address are those who migrate for economic purposes (i.e., employment) and families of workers.

The International Labour Organization has adopted two conventions directed at States concerning migrant workers. Although these conventions mention family members of migrant workers, they do not impose any obligation on signatory States to permit family members to join the migrant worker. Convention No. 97 concerning Migration for Employment (Revised 1949) establishes that "a migrant for employment who has been admitted on a permanent basis and the members of his family who have been authorised to accompany or join him shall not be returned to their territory of origin because the migrant is unable to follow his occupation by reason of illness contracted or injury subsequent to entry" (article 8). Convention No. 143 of 1975 concerning Migrations in Abusive Conditions and the Promotion of Equality of Opportunity and Treatment of Migrant Workers (Supplementary Provisions, 1975) establishes that "A Member may take all necessary measures which fall within its competence and collaborate with other Members to facilitate the reunification of the families of all migrant workers legally residing in its territory." Family includes "spouse, dependent children, father and mother" (article 13).

In addition, some detailed recommendations encouraging family reunification are found in Recommendations 86 and 151. Recommendation 86 concerning Migration for Employment (Revised 1949) states that "provision should be made (by ILO member Parties) by agreement for authorization to be granted for a migrant for employment introduced on a permanent basis to be accompanied or joined by the members of his family" (section IV, paragraph 15.1). Family members are limited to wife and minor children of permanent migrants (section IV, paragraph 15.3). Recommendation 151 concerning Migrant Workers invites countries to take "all possible measures to facilitate the reunification of families of migrant workers as rapidly as possible" (part II, section A.13). Section II of the Recommendation, which accounts for 21 of the 34 paragraphs, deals with social policy, particularly in respect of family reunification. The general principle to be applied is that migrant workers and their families should be able to share in the advantages enjoyed by nationals of the host State, while "taking into account such special needs as they may have until they are adapted to the society of the country of employment" (paragraph 9). Although these provisions include "the spouse, dependent children, father and mother" of the migrant worker, they are contingent upon an important qualification. A prerequisite for reunification is the

arrangement by the worker to provide his family with "appropriate accommodation which meets the standards normally applicable to nationals of the country of employment" (paragraph 13).

These ILO conventions and recommendations are limited because they only *invite* member States to take appropriate measures in implementing family reunification. In addition, they have not been universally ratified. By June 1996, 40 countries were parties to ILO Convention No. 97, and only 17 had ratified Convention No. 143.

In 1990, the General Assembly of the United Nations adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (resolution 45/158). As its title implies, the Convention holds the State responsible to "take appropriate measures to ensure the protection of the unity of the families of migrant workers" (article 44, paragraph 1). The Convention, however, does not apply to all types of migrant workers. It does not apply to persons employed by international organizations, by a State outside its territory, investors, refugees and stateless persons, students, trainees, seafarers and workers on offshore installations (article 3). The Convention also stipulates that States parties "shall take measures that they deem appropriate and that fall within their competence to facilitate the reunification of migrant workers with their spouses or persons who have with the migrant worker a relationship that, according to applicable law, produces effects equivalent to marriage, as well as with their minor dependent unmarried children" (article 44, paragraph 2). This provision is, however, phrased as a recommendation and does not establish a right. Furthermore, this provision does not include parents among immediate relatives whose reunification should be encouraged. More importantly, although the Convention is binding, only four countries (Chile, Mexico, Morocco and the Philippines) had signed and eight (Bosnia and Herzegovina, Colombia, Egypt, Morocco, the Philippines, Seychelles, Sri Lanka and Uganda) had ratified it as of March 1997. Nearly all of these countries are generators of migrants.

While international instruments do make some, albeit limited, family provisions for persons migrating for economic purposes, they fail to do so for non-economic migrants. International instruments for families of refugees do not address reunification. In fact, the main instruments dealing with the protection of refugees such as the 1933 Convention relating to the International Status of Refugees and the 1951 Convention relating to the Status of Refugees and its related Protocol of 1967 did not provide for family reunification. This is particularly noteworthy since these binding humanitarian instruments have been so prominent and have received such widespread support (as of March 1997, 128 countries had ratified each). Consequently, those fleeing persecution may be forced to leave behind family members who in turn may face disadvantages (Plender, 1988, p. 372). Governments, however, were urged to take the necessary measures for the protection of the refugee's family in the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons (1951) (Plender, 1988, p. 372)' Those calls have been reinforced by the work of the United Nations High Commissioner for Refugees, which has played a coordinating role in promoting the reunion of separated refugee families through appropriate interventions with Governments and with intergovernmental and non-governmental organizations (Plender, 1988, pp. 373 and 374).

Some instruments of a more general nature have also addressed the issue of family reunification and have extended it beyond those persons who are related to the State specifically as citizens, migrant workers, or refugees. Thus, the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations in 1989 (resolution 44/25), established that "States Parties shall ensure that a child shall not be separated from his or her parents against their will" (article 9, paragraph 1) unless competent authorities determine that such separation is in the best interests of the child. It also established that "applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner" (article 10, paragraph 1). This text, however, is also a strong recommendation rather than a right to family reunification; to deal with applications in a positive way does not necessarily imply granting the applicant's request (Battistella, 1994, p. 6). Furthermore, the "the right to leave any country" is subject "to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (*ordre public*), public health or morals or the rights and

freedoms of others and are consistent with the other rights recognized in the present Convention" (article 10, paragraph 2).

The general applicability of the Convention on the Rights of the Child, transcending specific classes of persons (e.g., citizens or migrants), is unique as it provides for protection of the child whose parents may or may not be nationals. According to article 10, paragraph 2, "A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents. Towards that end ..., States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country". The fact that applications in general can be made by individual parents, and not by specific types of migrants, in effect widens the scope of those eligible for family reunification. The significance of this Convention is that it is binding, and that it has received widespread support. With 190 countries having ratified the Convention, it carries more authority than almost any other international instrument.

Recommendations supporting family reunification have also been made in specific plans and programmes of action. Thus, recommendation 49 adopted by the International Conference on Population in 1984[2] urged Governments of receiving countries to "consider adopting appropriate measures to promote the normalization of the family life of documented migrant workers in the receiving country concerned through family reunion". When migration emerged as a salient issue at the 1994 International Conference on Population and Development at Cairo, the question of family reunification was at the forefront of discussion. At the heart of the debate was whether or not family reunification existed as a fundamental human right. The controversy resulted in a Programme of Action,[3] which noted only that "the family reunification of documented migrants is an important factor in international migration" (paragraph 10.9), and further urged Governments, particularly those of receiving countries, to be consistent with article 10 of the Convention on the Rights of the Child, and to "recognize the vital importance of family reunification and promote its integration into their national legislation in order to ensure the protection of the unity of the families of documented migrants" (paragraph 10.12). The recommendations pertaining to family reunification were given more weight by tying them to the Convention on the Rights of the Child, which, as noted above, is uniquely weighty.

C. Regional instruments: the European case

Regional instruments have echoed international human rights instruments by reinforcing the view that the family has primacy as the basic social unit and by proscribing State interference with family life. Like international instruments on human rights, regional instruments, while entitling the family to protection, do not imply a right to family reunification.

At the regional level, the most extensive measures that address family reunification have been adopted in Europe. Nevertheless, progress there is indicative of the conditional nature of such rights. Although European instruments have gone further than other regional agreements by addressing family reunion explicitly, they too fail to make it a right.

Since its inception in 1949, the Council of Europe has made substantial efforts towards establishing common standards governing the status and treatment of aliens. The *raison d'être* of the Council was to safeguard the ideals and principles of the members' common heritage by "discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realisation of human rights and fundamental freedoms" (article 1, Statute of the Council of Europe, 1982). Although it was originally founded by 10 nations, today the Council of Europe has 39 member countries: Albania, Andorra, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine and United Kingdom of Great Britain and Northern Ireland. The two predominant organs of the Council are the Committee of Ministers, comprising the foreign ministers of the member countries, and the Parliamentary Assembly,

consisting of representatives appointed by the national parliaments. Other bodies, both permanent and temporary, have also been established by Council conventions or by decisions of the Committee of Ministers, and have considerably extended the Council's activities into a wide variety of fields.

The Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe on 4 November 1950, reiterated the general principles governing family rights set forth by the Universal Declaration of Human Rights. The Convention establishes that "Everyone has the right to respect for his private and family life, his home and his correspondence" (article 8, paragraph 1) and that "There shall be no interference by a public authority with the exercise of this right" except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others" (article 8, paragraph 2). Article 12 also stipulated that "Men and women of marriageable age have the right to marry and to found a family, according to the national laws governing the exercise of this right" (United Nations, *Treaty Series,* vol. 213, p. 221). While these clauses support family life, they leave States to adopt and implement family reunification policies as they deem fit. In this sense, they are also more restrictive than article 16 of the Universal Declaration establishing absolute rights to marry and found a family without discrimination.

The European Social Charter (1961) addresses family reunion specifically. Article 19, paragraph 6, provides for the contracting parties to "facilitate as far as possible the reunion of the family of a foreign worker permitted to establish himself in the territory". This clause, which is binding, has been positively compared to that used in the ILO Migrant Workers (Supplementary Provisions) Convention of 1975, which simply provides that a State party "*may* take measures to facilitate the reunification of families of migrant workers" (article 13). Nevertheless, since the obligation is qualified by the phrase "as far as possible", a State is not required to allow the families of migrant workers to enter and take up residence if the worker is unable to support the family.

In 1977, the Council of Europe adopted the European Convention on the Legal Status of Migrants, which entered into force in 1983. The language and conditions employed in the Convention reflect the generally qualified nature of family reunification rights. Under article 12 of the Convention, "the spouse of a migrant worker and the unmarried children thereof, as long as they are considered to be minors by the relevant law of the receiving State, who are dependent on the migrant worker are authorized to join the migrant worker in the territory of a Contracting Party, provided that the latter has available for the family housing considered as normal for national workers in the region where the migrant worker is employed". This authorization is contingent on several criteria: the migrant worker must be lawfully employed; and the children must be considered minors by the law of the receiving State and must be dependent on the migrant worker. The Convention only grants an authorization to family reunification which the individual can claim against the State; it does not guarantee a right (Battistella, 1994).

European Community instruments have also provided for families of migrant workers. Nevertheless, they have usually been limited to nationals of the member States, which now include Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. The right to freedom of movement was recognized in the three founding treaties of the European Communities: namely, the Treaty of Paris, establishing the European Coal and Steel Community in 1952; and the two Treaties of Rome, establishing the European Atomic Energy Community and the European Economic Community (EEC) in 1958. The underlying objectives of all of these treaties were geared to economic ambitions. The tasks of achieving the aims of the treaties have largely rested in the same institutions: the European Parliament (the legislative branch); the Council of Ministers and the Commission (both considered the dual executive); the Court of Justice and the Court of Auditors.

With increasing integration in different arenas and the addition of more countries, there has been progress on the family reunification front, but a general right is far from being established. The 1957 Treaty of Rome, the founding document of the European Communities,

established the free movement of workers within the context of economic integration. Free movement of workers, however, did not become a reality until 1968, when the first transitional period stipulated by article 48 on the free movement of workers and article 52 on the freedom of establishment of the Treaty of Rome culminated in the issuance of EEC regulation 1612/68 on freedom of movement for workers within the Community. Furthermore, the Treaty dealt only with migration of workers and self-employed citizens of the European member States and did not include nationals of a third country (EEC Treaty, Title III, article 48, paragraphs 2 and 3 and article 52).

The economic rationale of the European Community meant that rights of migrant workers from member States to be accompanied by close relatives would be addressed only by secondary law in the form of directives or regulations. Directives are considered binding on national authorities with respect to the aims of the legislation; implementation is left to national legislatures (Böhning, 1972, p. 19; Hovy and Zlotnik, 1994, p. 21). In comparison, regulations are substantially more influential, as they are binding in their entirety. They take direct effect in each member State, are applicable without the requirement of transformation into municipal law, and cannot be changed (even with regard to wording).

In 1964, EEC regulation No. 38/64 established the right of workers of a member State to be joined by family members, irrespective of the latter's citizenship. Family members included not only spouses and children under the age of 21, but also dependent parents and other descendants of the worker or his spouse (article 17, paragraph I.b). Admission of family members, however, was subject to the availability of "normal" housing. Regulation No. 1612/68 of 15 October 1968 reiterated the right of the worker of a member State to be joined by immediate relatives (defined in similar terms to those used in regulation No. 38/64), and again linked it to the availability of normal housing (article 10). It also granted family members the right to exercise an economic activity, even if they were not nationals of States members of the European Community (article 11). That same year, the Council issued directive No. 68/360 on the abolition of restrictions on movement and residence within the Community for workers of member States and their families. These rights were theoretically established by the Treaty of Rome itself, but progress had been slow because of the different national standards for professional qualifications and training.

After the adoption of the Single European Act of 1987, the European Community increased its efforts to establish a single internal market by the end of 1992, extending rights to free movement beyond workers and self-employed persons. On 28 June 1990, the Council extended similar rights to students and their immediate family members (directive No. 90/366/EEC). Students who were EC nationals were entitled to be joined by their spouses and dependent children, provided they had "sufficient resources to avoid becoming a burden on the social assistance system of the host Member State" (article 1). Both the students and their dependants were eligible for residence permits covering the duration of their course of studies, and the dependants were granted the right to take up employment, irrespective of their nationality. Similar rights were also extended to retirees who were citizens of States members of the European Community, and to their immediate relatives of whatever citizenship, provided that the relatives had sufficient resources on which to live and would not become charges to the host State (directives No. 90/365/EEC and No. 90/364/EEC).

While EC directives have gradually expanded the right to free movement to groups other than workers, they have not established completely free movement within the Community, nor have they made family reunification a general right. First, EC has not dealt with "third-country" nationals or nationals of non-member States of the European Community who have acquired the right to residence in a member State. Second, family reunion is contingent upon proof that the persons in question will not become a burden on the social services of the host member State. Third, not only are Community citizens wishing to relocate from one member State to another obliged to present proof of independent economic resources for their whole period of residence in the host member State, but they are also subject to considerable local control through the issuance of residence permits (Hovy and Zlotnik, 1994, p. 26). Most important, although the European Union grants a right to family reunification, it is a right of the primary migrant (who must be a national of a member State), not of the specific family members allowed to join that migrant (Battistella, 1994, p. 5).

The Treaty on European Union, signed at Maastricht in 1991 and effective in 1994, established further measures towards the harmonization of social and political policies of member States. In fact, the aim of the Treaty was to go beyond the economic motivations of the Treaty of Rome, which established the Economic Community, and create a European Union, integrated socially and politically. Nevertheless, the Maastricht Treaty has delegated migration matters largely to Ministers of Justice and Home Affairs. Article K specifically defines "matters of common interest" as asylum policy, visa policy, immigration policy, third-country nationals and illegal migration to be dealt with on an intergovernmental basis (Title VI, article K). This means that migration matters need not necessarily be dealt with by the Council of Ministers, nor are decisions automatically subject to judicial review by the Court of Justice. Article K.2 further leaves these issues outside of EU machinery as it notes that "the matters referred to in article K.1 shall be dealt with in compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Convention relating to the Status of Refugees of 28 July 1951 and having regard to the protection afforded by Member States to persons persecuted on political grounds".

In June 1993, an ad hoc group of Ministers of Immigration from the members of EU States met at Copenhagen and adopted a resolution calling for the harmonization of national policies on family reunification (*Harmonisation of National Policies on Family Reunification*, 1993).[4] The principles set forth in the resolution apply only to the family reunification of those who are "lawfully resident within the territory of a Member State on a basis which affords them an expectation of permanent or long-term settlement" (Bunyan and Webber, 1995, p. 17). According to the resolution, member States should normally grant admission to the spouse and the single, dependent children of qualified persons. Children will be variously defined as persons under age 16 or 18, depending on the decision of each member State. The resolution grants member States the right to impose waiting periods before allowing family reunion; the right to impose a primary purpose test for the admission of spouses and of adopted children; the right to refuse the admission of certain wives and children of polygamous marriages; and discretion as to the admission of stepchildren, adopted children, and other family members for "compelling" reasons. States must impose a visa requirement. They also have the right to impose conditions on adequate means of support, and the availability of proper accommodation and health insurance before dependants can be admitted. The State has the privilege of denying entry on security grounds, and it reserves the right to grant a work permit or not to family members admitted for family reunification.

The resolution adopted by the Ad Hoc Group sets out principles for family reunification which are not legally binding and thus afford no grounds for action by individuals. It codifies a minimum set of standards already in use, and as always with respect to family reunification, it is State-centric, validating the State's right to allow or deny the admission of foreigners for family reunification. The resolution has been seen to provide grounds for the adoption of more restrictive policies on family reunification than the ones now in place (Battistella, 1994, p. 12). The resolution has been criticized because the guidelines were set outside of EU institutional scrutiny. That is, deliberations were conducted in secret, behind closed doors, and lacked the normal democratic scrutiny of EU institutions.

Ministers of Immigration of the European Community have also taken measures on the status of refugees. On 15 June 1990, EC adopted the Dublin Convention, whose official title is the Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities. The Dublin Convention is based on the Geneva Convention, but it differs because it explicitly mentions "family" members of refugees. The aim of the Dublin Convention is to establish that only one EU State should be responsible for determining the validity of an asylum claim. The responsible State is defined as the one which first allowed the asylum-seeker into its territory (i.e., into EU territory), whether by granting a residence permit or a visa or by allowing the opportunity for illegal entry. The only exception to this principle may be applied in the case "where the applicant for asylum has a member of his family who has been recognized as having refugee status within the meaning of the Geneva Convention, as amended by the New York Protocol, in a Member State and is legally resident there"; in that case, "that State shall be responsible for examining the application, provided that

the persons concerned so desire" (article 4). The "family member in question may not be other than the spouse of the applicant for asylum or his or her unmarried child who is a minor of under 18 years, or his or her father or mother where the applicant for asylum is himself or herself an unmarried child who is a minor of under 18 years" (article 4). As of March 1997 the Convention had still not been ratified by Ireland and the Netherlands, or by the three new Member States (Austria, Finland and Sweden).

D. National instruments

While international and regional provisions fail to provide a general right to family reunification, they do establish a widespread acceptance of the principle that States should facilitate the admission to their territories of close members of the families of their own citizens or of foreigners who have acquired the right to long-term residence (Plender, 1988, p. 366). In this regard, international and regional instruments influence the content of bilateral agreements and domestic policies. Nevertheless, the determining factor in family reunification policy is ultimately national immigration law, which reflects the sovereign right of each country to determine the number and types of persons to be admitted to its territory.

At the State level, the main provisions governing family reunification are usually established by law. The legislature has the prerogative to promulgate regulations or rules through ordinances. The Executive may issue circulars, and administrative officials may give instructions, which are not always made public and which may be modified or revoked. As legislation frequently uses vague expressions such as "special reasons" and "particular circumstances", the administration has broad powers of interpretation (Perruchoud, 1989). In this framework, international agreements using similar wording may be implemented quite differently.

There are substantial disparities among nations with regard to family reunification and with regard to the persons to whom national instruments refer. As in the international domain, the most relevant determinant for the possibility of family reunification is the relationship of a person to the State in which he or she resides.

Citizens are most likely to have the right of being joined in their country by their spouses and minor children when the latter have a different nationality. Based on the international conventions on marriage, virtually all countries allow the admission of the foreign spouse of a citizen. Nevertheless, problems have arisen in some of the Eastern European countries where emigration was restricted. In the former Soviet Union, for example, while there were no legal prohibitions on the marriage of a Soviet citizen and a foreigner, registration of a marriage could take place only when the contracting parties were present in Soviet territory. Hence, marriages by "proxy" have been impossible and have been subject to administrative controls for admission into or departure from Soviet territory (Ginsburgs, 1992, p. 409). It has been argued that these administrative controls have amounted to attempts to prevent "mixed" marriages and thus reduce the possibility of emigration. Although in the 1990s exit restrictions have been relaxed, family migration has stayed the same, since it has been the legally acceptable form of emigration.

Family reunification issues related to marriage have also been affected by different State laws on nationality. In some countries, women can lose their nationality if they marry foreigners. In Egypt and Tunisia, for example, women who marry foreign husbands are legally unable to bestow their nationality on their children. This creates the anomalous situation of leaving legitimate children stateless (Cook, 1994) and dependent on family reunification policies.

Family reunification privileges for migrants vary substantially according to the conditions of entry and residence of the primary migrant. The debate on family reunification focuses predominantly on legally present foreigners with long-term residence rights. In traditional countries of immigration, foreigners can be admitted for resettlement as potential citizens. Despite differences in requirements and schemes, countries of permanent immigration (i.e., countries where an immigrant receives permanent residence status and no restriction on the type of work obtained) give preference to family units.

Comparisons between countries of permanent migration and those of temporary migration indicate that the rationale for each type of migration (immigration policy) is intricately related to immigrant policy (i.e.,

social integration concerns). Both types of policy motivations have a direct bearing on the rights established for family reunification.

Regardless of the disparate requirements, the positions of long-term immigration countries regarding intake of family migrants are inextricably linked to considerations of political and social integration. The logic dictates that, if immigrants arrive for permanent settlement, family reunification is an essential element of integration (Einspinner, 1993). When permanent migration is allowed, the aim of the receiving country is to normalize the migrant's situation. Family recomposition is conducive to integration, and thus reunification is facilitated.

Conversely, temporary migration is usually envisaged for the duration of employment or other specific activity. The temporary migrant is expected to return home once such activity ends, and family reunification is expected to occur in the country of origin. Family reunion in the receiving country is usually not allowed under these circumstances.

Immigration policy in the United States has traditionally emphasized family reunification. Nevertheless, family reunification has not been a right, but a preference. The Immigration Act of 26 May 1924 established a preference for "unmarried children under 21; parents; spouses of United States citizens aged 21 and over; and for quota immigrants aged 21 and over who are skilled in agriculture, together with their wives and dependent children under age 16" (United States of America, Department of Justice, Immigration and Naturalization Service, 1993). Changes with regard to family preferences appeared in the 1965 Act, which established "allocation of immigrant visas on a first come, first served basis, subject to a seven-category preference system for relatives of United States citizens and permanent resident aliens (for the reunification of families) and for persons with special occupational skills, abilities, or training" (United States of America, Department of Justice, Immigration and Naturalization Service, 1993). Two categories of immigrants were not subject to numerical restrictions: immediate relatives (spouses, children and parents) of United States citizens; and special immigrants, including certain persons who had lost citizenship (e.g., by marriage or by service in foreign armed forces).

According to the United States Immigration Act of 1990, beginning in 1995, the limit on family-sponsored immigrants was set at 480,000 or 71 per cent of the total ceiling of the immigration intake (United States, 1992 Immigration and Nationality Act, Title II, sections 201-203). Family-sponsored immigration consists of two major categories: immediate relatives (spouse, parents and minor children) of United States citizens; and relatives of United States citizens and permanent residents, subdivided in four categories. The number of the first category remains unlimited, whereas the number of the second is circumscribed by the first, although it has a minimum which cannot be breached (Battistella, 1994 p. 8; Jenks, 1992).

While the United States has a selection system based on preference categories, other countries of permanent migration have established provisions for family migration through the use of a points system. Since the late 1960s, both Canada and Australia introduced a version of a points system, which attaches numerical weights to factors such as education, training, occupation, language skills and family status. Aggregate weights assign passing or failing marks for entry.

Canada's Immigration Act of 1976 for the first time explicitly presented family reunion as one of the fundamental objectives of Canadian immigration law (Hawkins, 1989, p. 70). The Act and the related 1978 Immigration Regulations established three classes of immigrants to be admitted to Canada: (*a*) a family class which included immediate family and dependent children, and parents and grandparents over 60 (or under 60, if widowed or incapable of gainful employment, or parents of any age if sponsored by a Canadian citizen); (*b*) refugees; and (*c*) other applicants consisting of immigrants selected on the basis of the points system, including assisted relatives or more distant relatives sponsored by a family member in Canada. The 1978 Immigration Regulations excluded members of the family class from the points system and three of the 10 criteria for assisted relatives.

Currently, two family visa categories exist: family class visas for immediate relatives; and assisted relative visas for other members of the family, who are subject to a points system (based on skills, education, language proficiency and age). Immediate relatives may be sponsored by citizens and permanent residents, provided

they agree to support them for up to 10 years. Although no ceiling is placed on family class immigration, the general guideline is for 40 per cent of all immigrant visas to be allocated to family reunification (Battistella, 1994, p. 9; Jenks, 1992). Compared to the United States, the overall percentage of family immigration in Canada is lower, but the Canadian policy ensures equal treatment of relatives of citizens and permanent residents.

As in the case of the United States and Canada, Australia also gives priority to family migration. In 1970, Australia established a task force to consider adopting the Canadian system. The result was the creation of a Structured Selection Assessment System (SSAS), without numerical weights. This system was replaced in January 1979 by the Numerically-weighted Multi-factor Assessment System (NUMAS), which was essentially an amalgamation of the Canadian points system and the previous SSAS. Originally, all applicants for migrant entry were to be assessed under NUMAS except for refugees and spouses, dependent children, and aged parents of people already resident in Australia. Other relatives of Australian residents, not eligible for entry under family reunion policy, were not required to attain a minimum number of points on economic factors, but they were required to gain a minimum of 25 points on personal and settlement factors. They also were required to show that they would not become a charge on public funds if admitted to Australia. NUMAS was overhauled in the early 1980s, as Parliament outlined details for a new migrant selection system, closer to the Canadian points system, with more lenient conditions for family reunion (Hawkins, 1989, pp. 145 and 146).

The Australian 1992-1993 programme allotted over 55 per cent of immigration to family immigrants. It distinguished between a preferential category, which refers to immediate relatives, and a concessional category, which includes non-dependent children, siblings, nephews and nieces. In addition to being sponsored by relatives who have been residing in Australia for a minimum of two years and are able to provide them with accommodation and financial support, these immigrants (who consist of approximately 8 per cent of the overall ceiling) must also satisfy a points test (Jenks, 1992).

Changes to Australian immigration in 1996 included cuts in the number of family reunification immigrants, along with English proficiency tests for some categories of relatives. Moreover, people sponsoring close relatives for admission would henceforth be required to be Australian citizens, not foreigners with permanent residence status.

The comparative statistics on family migration in the permanent migration countries of the United States, Canada and Australia suggest that policy for family reunification may be most lenient in the United States, followed by Canada and Australia, respectively (see United Nations, 1992, pp. 173-176). In the period 1981-1989, immigrants admitted because of family preferences amounted to 70 per cent of the total legal immigrant population in the United States. In Canada, immigrants with family ties with citizens or with other immigrants already settled in the country accounted for nearly 52 per cent for the period 1981-1987. Only in Australia did immigration of close relatives account for a relatively small proportion of all immigration—approximately 23 per cent during 1986-1989. Nevertheless, the Australian definition of immigrant categories indicates that persons in the concessional category include brothers, sisters and adult children. Thus, if the concessional and family categories are considered together, nearly 48 per cent of all immigrants were admitted for family ties.

Although family migration is generally facilitated in countries of permanent migration, these policies were invariably questioned in the mid-1990s. As many countries are attempting to restrict and/or formulate more selective criteria for immigration, a renewed emphasis on language and other skills has begun to rival family ties.

In other long-term immigration countries, where persons are admitted under laws of "return", family reunification is also facilitated. Finland, Germany, Greece, Israel, Italy and Japan are among the countries that allow the admission of special groups of migrants who are either descendants of previous emigrants or can prove that their origin qualifies them for admission.

The case of legally present foreigners with only a temporary right to residence is different. Germany, for example, institutionalized a guest-worker (*Gastarbeiter*) programme in the late 1950s, emphasizing the temporary nature of labour recruitment. This system was originally

based on recruitment of mostly single male workers who were supposed to return to their country of origin once the contract was completed. There was no intention of permitting the settlement of dependants; however, the population of foreign workers and their families continues to grow.

Many of the East Asian economies which experienced labour shortages in the 1980s have also incorporated a version of the European guest-worker programme, in an attempt to dissuade permanent settlement. Most commonly, this has meant the limiting of migration to short-term contracts usually not renewable in the country of employment. Inherently, like the original idea underlying the European guest-worker programmes, these temporary contracts have tended to preclude family reunification and integration schemes.

Although, theoretically, there are general distinctions between countries of permanent migration and those with temporary labour migration, it is much more complicated in practice. First, there is great variety in the treatment of legally present foreigners (not all of whom are workers) with only a temporary right to residence. Second, as the European case indicates, temporary migration eventually leaves some residual permanent settlement. After the economic crises of 1974, most of the receiving countries closed their doors to new immigration, but maintained more lenient policies with regard to family migration. By the late 1980s, after increasing restrictions on immigration among receiving States, temporary labour migration had turned into permanent settlement under the impact of such factors as reunion. This has developed partly because countries of employment have attempted to attract a competitive labour force by granting improved benefits, and partly because of the demands of countries of origin. It has been argued that bilateral agreements ushered in family reunification in the hope of increasing the household earnings to speed the process of return, rather than for resettlement purposes (Castles, Booth and Wallace, 1984).

Typologies are further complicated by the fact that a single country admits several types of migrants at the same time. The United States, for example, is a traditional immigration country which admits both temporary immigration (i.e., students) and permanent migration. In general, skilled personnel are more apt to be granted the right to be accompanied by immediate family members, whereas unskilled workers, asylum-seekers, students, trainees and domestic workers face more restrictions in being joined by family members. Even in strict labour-migration countries, immediate relatives of migrants in high-level occupations (i.e., executives and managers) are often admitted. In the Arab oil-producing countries of Western Asia which became major recipients of labour migration in the early 1970s, a two-track system developed for Arab nationals and Asian migrant workers, who were subject to more restrictions. Only those Asians earning high salaries, for example, have been allowed to bring their families (Abella, 1994, p. 171). In Kuwait in the early 1980s, the issuance of family visas was limited to workers with a minimum monthly salary of 400 Kuwaiti dinars (Stanton Russell, 1995, p. 256). This high financial requirement had the virtual effect of preventing family reunification. Thus, the temporary nature of migration is typically not the only rationale constraining the possibility of family reunification. Economic requirements, the burden to the welfare system of the State, the large number of workers compared to managers, and the potential effect of chain migration are also considerations in family reunification policies (Battistella, 1994, p. 13).

When family provisions exist, there are also national differences of eligibility. Some receiving countries permit foreign law to determine whether or not the requisite family relationship has been established, but impose their own standards for the definition of family. The French case has shown that a monogamous State experiencing immigration from polygamous States does not necessarily, as a matter of public policy, decline to treat a polygamous wife as a spouse for the purposes of immigration. The French Conseil d'État has considered the resident alien's situation, the customs and law of his home country, and his religious beliefs in protecting the right to family reunification (Guendelsberger, 1988, p. 57). This practice, however, has been modified with the new 1993 French laws on entry and stay of foreigners. Accordingly, a foreigner who lives in France with a wife cannot bring his second wife, nor those children, unless she has lost her parental rights (Tribalat, 1994, p. 164).

While there is general agreement that the family comprises a spouse and minor children, this consensus

does not extend to the number of wives, or the age-limit of minor children. While legal provisions for family reunification exist in all of the European Union countries, definition of family dependants varies. Some States (i.e., Germany) set the children's age limit at 16; others (the majority of EU States) at 18. Denmark, Greece, Italy, Luxembourg, Portugal, Spain and the United Kingdom allow dependent parents to join their children; Belgium and France do not (Callovi, 1993). In the Nordic countries of Denmark and Sweden, cohabitants are eligible for residence permits.

National laws also vary with regard to such categories as stepchildren, adopted children, illegitimate children, concubines, common-law spouses and homosexual relationships. Some receiving countries find it difficult to accept families whose composition does not correspond to their own conceptualization.

The verification of family ties is complicated since, in some countries, births are not registered and kinship is not officially established. Another problem arises from what is referred to as "sham marriages". These are marriages of convenience, where access to immigration is the rationale for the marriage. In the United States, non-citizen parties to a sham marriage are liable to deportation (Immigration and Nationality Act 1952, section 212(a)(19)). When a spousal visa petition is filed, the Attorney General, through the Immigration and Naturalization Service, examines the marriage certificate's validity. Investigations involving personal interviews of the resident petitioner and the alien spouse may be conducted on a case-by-case basis to detect fraudulent relationships. Additionally, a marriage between a resident and an alien that breaks down within two years of the alien's admission to the United States may be considered to be a sham marriage (Immigration Marriage Fraud Amendments of November 10, 1986; Guendelsberger, 1988, pp. 57-59). In contrast, in Canada, a court decision held that a visa officer was precluded from inquiring into the purposes for which parties to a valid marriage entered into it. The decision suggested that a marriage intended as a genuine union of indefinite duration should not be treated as a sham by reason of motives (Plender, 1988, pp. 381 and 382). Although these types of marriages are generally not accepted, the onus of proof lies on the authorities of the immigration country.

E. Conclusion

To the extent that international instruments safeguard human rights, family reunification exists as a privilege granted to the individual, based on (*a*) the right to travel, and (*b*) the right to family life. To the extent that nations have the prerogative to decide who shall enter their territory, derived from principles of sovereignty, also reinforced by international agreements, implementation of family reunification is discretionary. No international instrument universally establishes family reunification as a fundamental right. However, international norms and agreements have posed some moral and political constraints on the State.

In general, migration trends have affected family reunification trends and policies little. In the Eastern European countries, where legal restrictions on exit have been relaxed substantially, family migration has not been affected because, to a large degree, this was always the primary acceptable purpose of emigration. The tendency towards restrictive immigration control in Western Europe has also influenced family reunion far less than it has affected other forms of migration. This is also the case with refugee policy. The European Union's Dublin Convention, which was based on the Geneva Convention, provided for a more restrictive refugee regime. Nevertheless, unlike the early Convention, it explicitly established the principle of respect for family.

Most of the principal States of immigration in the industrialized Western world have some basic provision for family reunification. There are, however, many variations of national rules, definitions of the family, and recipients of entitlement. Even among the 15 countries of the European Union, where regional instruments have most explicitly taken family reunification into account, these privileges vary substantially and are never made absolute.

The most substantial differences in family reunification practice exist not between countries as much as between eligible persons for whom provisions apply. Great disparities remain between beneficiaries of family reunification privileges. National and international instruments are favourable to the family unit and encourage family reunification for State nationals, without granting it as a right. Regional instruments,

namely among the EU States, are also favourable to families of EU member State nationals. However, the majority of controversies involve the rights of migrants and refugees to be joined by their families.

Notes

[1] The United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons was convened under General Assembly resolution 429 (V) of 14 December 1950. The Conference was held at Geneva from 2 to 25 July 1951. The Final Act was signed on 28 July 1951 (see Plender, 1988, footnote 55).

[2] *Report of the International Conference on Population, 1984, Mexico City, 6-14 August 1984* (United Nations publication, Sales No. E.84.XIII.8), chap. I, sect. B.

[3] *Report of the International Conference on Population and Development, Cairo, 5-13 September 1994* (United Nations publication, Sales No. 95.XIII.18), chap. I, resolution 1, annex.

[4] The Netherlands delegation expressed a parliamentary scrutiny reservation on the text.

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II. CITIZENSHIP, NATIONALITY AND NATURALIZATION: POLICIES AND ISSUES

Nationality and citizenship issues have become increasingly salient as territorial changes and large-scale migration have led to growing numbers of people caught between two States. These issues pose internal and external challenges to nation-States. On the one hand, in devising policies to respond to social and political problems which arise from migration and settlement, citizenship rules force each nation to consider traditional notions of national identity. On the other hand, citizenship issues affect States in the international system as they may raise conflicts of law among States, in areas ranging from military obligations and taxation to voting and inheritance rights.

Issues of nationality and citizenship are intricately related to migration. In international law, migration is a function of nationality; the duty to admit a person into the territory of a State is considered a right of nationality (Plender, 1988, p. 4). According to article 13, paragraph 2, of the 1948 Universal Declaration of Human Rights, "Everyone has the right to leave any country, including his own, and to return to his country". Bound to national policies on immigration and integration, rules on citizenship essentially define the boundaries between nationals and aliens. In order to identify which foreigners or immigrants shall be permitted entry, each State must first decide how to define its own citizens or nationals.

In almost all States, citizens enjoy some special rights and privileges—for example the right to leave, to re-enter, and to reside in the territory; to employment; and to vote in national elections. Other less universal but common rights and duties tied to citizenship include jury service, military service, treatment under the tax laws, eligibility for travel documents and procedures, access to public services and immigration privileges for family members. Based on political, social and economic considerations, States define their citizens differently and accord these distinctive rights and obligations to citizens and not to non-citizens. Clearly, gaining citizenship rights has profound effects on resident foreigners or aliens who do not have them.

Under the laws of most States, citizenship connotes full membership and is the most important policy instrument for the integration of immigrants. A stable legal status and the option of obtaining citizenship are essential to full participation in the new country of residence. In most cases, the primary issue for immigrants is not the specific content of citizenship, but how to obtain it, in order to achieve a legal status formally equal to that of other residents of a country.

Two predominant principles inform laws on citizenship, each of which derives from international agreements and norms. First, the protection of the individual is promoted in human rights law through efforts to eliminate statelessness. Second, the basic tenet of State sovereignty in international law means that States have complete jurisdiction within their own territory (Donner, 1994, p. 16). As such, each State has a fundamental right to decide who shall enter, reside and be recognized as a citizen in its territory. This means that national laws not only may vary as a result of national interests, but also may be contradictory.

This chapter addresses some of the complexities which characterize nationality and citizenship issues. It surveys the various national concepts and laws, and international norms governing nationality and citizenship. Finally, it identifies the direction of nationality legislation in the context of the dynamic migratory influxes of this decade and growing foreign concentrations in certain parts of the world.

A. HISTORICAL AND CONCEPTUAL FRAMEWORK

The concept of nationality denotes a specific legal relationship between an individual and international law. Nationality is a juridical and political link which unites an individual with a State, and it is that link which enables a State to afford protection against all other States (Sohn and Buergenthal, 1992, p. 39). Since the international community is composed of sovereign States, the individual is related to international law through his or her State of nationality. Thus, deriving

from the fundamental principle of State sovereignty, enshrined in international law, nationality rules have largely fallen within the reserved domain of domestic jurisdiction.

National laws on citizenship vary as they are rooted in historical, political and demographic exigencies. Linguistic differences reflect not only diverse national interests, but also different realms of law that continue to guide nationality legislation and norms. Although the two terms are often used interchangeably, "nationality" emphasizes the international while "citizenship"refers to the national dimension of State membership (Weis, 1979, p. 5).

The different terms used to capture territorial membership reflect the historical conception of a State and the relationship of the individual to it. The term "subject", for example, is traditionally used in Anglo-Saxon law and tends to reinforce the notion of nationality as a territorially determined relationship between subject and sovereign, by which the subject is tied to the king by the bond of allegiance. This conception differs from the one prevailing in States that derive their law from Roman law, where nationality is determined not by a territorial link, but rather by a personal relationship (Weis, 1979, p. 5). Nationality in this context is usually acquired by descent and connotes not a relationship to the sovereign but, rather, membership in the State, which itself is considered a corporation of member-individuals. These distinctions have been considered to account, in part, for the prevalence of *jus sanguinis* in Roman law countries and of *jus soli* in common law countries (Weis, 1979, p. 4).

In countries where religion has been the predominant basis of community, *jus sanguinis* has generally prevailed. The laws of many Arab countries, for example, go back to the Ottoman period, when nationality was intrinsically tied to religion. Based on a number of Koranic verses, Islam established religious and legal principles providing that all Muslims, irrespective of their territorial residence, constituted a single people, *Ummah*. Although after the first law of nationality issued by the Sultan in 1869 substituted the secular principles of *jus sanguinis* and *jus soli* (the latter, as an auxiliary principle), the view of the Arab States that Arabs constitute a single people still exists. This conviction is expressed in the preambles of the constitutions of the Syrian Arab Republic, Egypt, Jordan, Kuwait and the United Arab Emirates (Dib, 1978, p. 43). Nonetheless, religious membership differs from ethnicity because religion can be changed, and many of the Arab countries have also instituted *jus soli* means to modern citizenship. Religion is similarly a basis of nationality in Israel, which established the 1950 Law of Return, granting automatic citizenship to Jews throughout the world, including those who have at least one Jewish grandparent or who have converted to Judaism. In modern times, variations in national citizenship rules have been related to immigration and integration rationales, or openness of societies to ethnic or cultural diversity. In general, countries of permanent migration have a tendency to show preference for the criterion of citizenship right by place of birth, in order to integrate foreigners present within their territory. Australia, the United States and Canada are countries of permanent migration, and they have always aimed to make settlers into citizens. By contrast, countries of high emigration often make kinship primary as a way of maintaining links with their distant compatriots. Mother countries may also extend such ties of kinship towards the descendants of those who emigrated to settle colonies. Britain, the Netherlands and France all have traditions of granting citizenship to overseas-born people who have links to their colonial histories. Switzerland, Germany and Belgium follow more exclusionary policies consistent with their perception of immigrants as mainly temporary residents.

Regardless of national disparities, all States are premised on the idea of unity, whether defined in terms of common language, culture, religion, traditions or history; as they seek to secure their borders geographically, they also delineate their jurisdiction demographically (Koslowski, 1995, p. 7). Thus, the identification of the citizen with his State through nationality inherently presumes a bond of allegiance. This is traced back to the idea that the sovereign (historically, the king) could rely on his subjects for three types of political power: the military, revenue and the courts (Plender, 1988, p. 13). In exchange, the sovereign would protect his citizens and guarantee certain fundamental rights.

In this vein, citizenship constitutes and defines a political community, or an aggregation of members who have undertaken mutual governance commitments to one another by virtue of their common national affilia-

tion (Schuck, 1994, p. 4). For naturalized citizens, the consent is explicit in the naturalization oath. For birthright or other "automatic" citizens, the consent is implicit insofar as the citizen fails to renounce his or her citizenship in favour of another allegiance (where renunciation is permitted). Whether or not allegiance is explicit, citizenship cements a polity, enabling it to act authoritatively with respect to other States and those individuals who are subject to its jurisdiction.

Two anomalous situations, however, have arisen to challenge the logic of nationality theory. First, given national differences in citizenship laws, an individual could be a national of more than one State. Conversely, an individual could be a national of no State, and thus, stateless. These situations raise such questions as, Where does allegiance lie? Or, How is an individual protected by international law if he or she does not have a nationality?

In order to reduce possible cases of statelessness and dual nationality, as early as 1930 the Council of the League of Nations convened a conference for the codification of international law. The 1930 Hague Conference produced the Convention on Certain Questions relating to the Conflict of Nationality Laws with three Protocols, the Protocol relating to Military Obligations in Certain Cases of Double Nationality, the Protocol relating to a Certain Case of Statelessness, and the Special Protocol concerning Statelessness. All were signed on the same day and entered into force on 1 July 1937, with the exception of the third Protocol, which never came into force (Donner, 1994, p. 47). The Hague Convention has been ratified by only a few States, but it established a relevant framework for issues of nationality in an evolving international order, in both domestic and international law. On the one hand, it developed the norm in customary international law that everyone should belong to a State and preferably to only one State. On the other hand, the Conference essentially pledged the international community's commitment to defer questions of nationality to the State domain.

The first two articles of the 1930 Convention on Certain Questions relating to the Conflict of Nationality Laws reinforce State sovereignty. According to article 1, "It is for each State to determine under its own law who are its nationals" (League of Nations, *Treaty Series*, vol. 179, p. 89). Article 2 further states that "Any question as to whether a person possesses the nationality of a particular State shall be determined in accordance with the law of that State". Nevertheless, under the provision in article 1 stipulating that "This law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality", it was agreed that States do not have an obligation within international law to recognize foreign nationality legislation under certain conditions. By recognizing domestic jurisdiction and both *jus sanguinis* and *jus soli* as legitimate principles for the ascription of nationality, the Convention made it inevitable that cases of dual nationality and statelessness would occur.

In the aftermath of the Second World War, the issue of refugees, the emergence of human rights law and the rapid pace of decolonization led to a reassessment of the position of nationality in the international order (Chan, 1991, p. 2). Large-scale migration and settlement, in particular, have led to growing controversies and renewed interest in the subject of nationality. In principle, the nation-State continues to permit a single membership, but immigrants or their descendants may have a relationship to more than one State. They may be citizens of two States, or they may be a citizen of one State but live in another. Raising questions about "divided loyalties", large-scale settlement inevitably leads to a debate on citizenship (Castles and Miller, 1993, p. 38). In the context of domestic politics, international norms against dual nationality also generate conflict within countries, particularly in democratic societies, over the exclusion of growing numbers of a State's inhabitants. These dilemmas have precipitated active efforts on both the national and international levels to resolve growing contradictions.

B. National instruments

Whether or not a person is to be regarded as a national of a country is determined by its constitution and/or its nationality laws. From its conception, nationality has been envisaged as part of the reserved domain of domestic jurisdiction. This was firmly established by the 1930 Hague Convention (particularly articles 1 and 2) and reinforced in customary law. The development of international law on nationality has thus been largely State-oriented and dominated by States' interests.

In pursuit of their national interests, and as manifestations of their sovereignty, States have assumed substantially different approaches to nationality. The complexity of approaches to citizenship acquisition, compounded by the fact that one country may have several eligibility requirements, makes it difficult to devise a comparative scheme for analysis. In the United States, for example, citizenship may be determined either by birth or by naturalization, while in France it may be acquired through birth, by declaration, or through naturalization. In general, however, citizenship may be acquired in four ways, any combination of the four: by descent, or *jus sanguinis*; by birth, or *jus soli*; by naturalization; and by other means such as registration, declaration and restoration. In attempting to impart some coherence to the subject, the section below divides citizenship acquisition into two general time frameworks: (*a*) at birth; and (*b*) after birth. While most people obtain their citizenship at birth, an increasing number acquire a different citizenship or even an additional one later on during their lives (Reinans and Hammar, 1990, p. 1).

1. At birth

Citizenship attribution at birth generally refers to the situation that occurs automatically when certain criteria of birth or descent are met. It is also commonly known as "nationality of origin". While the majority of countries adopt one of the two principles for such nationality, they generally give greater weight to one or the other (see box 1).

The most common method of acquiring citizenship is by descent (Adams, 1993, p. 2). *Jus sanguinis*, which literally means "rights of blood", emphasizes a bond of descent. This principle generally prevails in nation-States that were historically influenced by experiences of kinship and tribalism. Although membership in this context is generally ethnically delineated, it has also served as the secular equivalent of communities based on religion. In its current application, *jus sanguinis* indicates that the national status of a person is considered to be the same as that of the parents, usually the father, at the time of birth, irrespective of the place of birth. In the case of an illegitimate child, the status is generally determined by the nationality of the mother at the time of birth. Increasingly, however, Western European countries have accorded equal weight to both parents, and those eligible for citizenship under this principle have been able to inherit both their father's and their mother's citizenship (Reinans and Hammar, 1990, p. 2).

In contrast, according to the principle of *jus soli* (soil), all persons born within the territory of a State acquire the nationality of that State at the time of birth. This principle emerged during the Norman feudal period, as William the Conqueror attempted to rule a kingdom peopled by several separate races, but unified by geography, military power and a feudal system that related the political hierarchy to land tenure (Plender, 1988, p. 13).

Acquiring citizenship by being born in a territory varies across countries. Some guarantee citizenship to anyone born in that country, regardless of the status of the parents (e.g., the United States, Canada, Ireland and New Zealand); other countries bestow citizenship only if one of the parents was born in the country (e.g., Austria or Spain). Though a subject of considerable controversy in the mid-1990s, the Fourteenth Amendment of the United States Constitution, for example, guarantees the automatic right of citizenship to anyone born in the United States; "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside" (section 1, clause 1). This includes children of parents who are in the country illegally or who are simply passing through on a tourist visa. Some countries refuse to grant nationality by reason of accidental birth in their territory. Others consider this to be a primary criterion, but one which must be supplemented by other elements, such as the fact that one of the parents is a national or has permanent residence (e.g., Australia, the United Kingdom).

In order to avoid statelessness, the principle of *jus soli* has also been extended to any child found abandoned within a country's territory, including on board ships or aircraft flying the national flag of that State. The rationale here has been based on the presumption that such a child was either born there or that its parents were nationals (Guimezanes, 1994). This application of the *jus soli* rule is accepted by all of the Organisation for Economic Co-operation and Development (OECD) countries (OECD, 1995, p. 159). The legislation of certain countries (e.g., France, Japan, Greece, Italy,

Box 1. Major criteria for determining the attribution of nationality at birth in OECD Countries

Country	*Born in the country (jus soli)*			*Descent (jus sanguinis)*	
	Citizenship automatically granted	*One parent must be a national or a permanent resident*	*Both parents must be nationals*	*One parent must be a national*	*One parent must be a national or have been born in the country*
Australia		✔			
Austria					✔
Belgium			✔		
Canada	✔				
Denmark				✔	
Finland				✔	
France					✔
Germany				✔	
Greece				✔	
Ireland	✔				
Italy				✔	
Japan				✔	
Luxembourg				✔	
Netherlands		✔			
New Zealand	✔				
Norway				✔	
Portugal			✔	✔	
Spain					✔
Sweden				✔	
Switzerland				✔	
Turkey					✔
United Kingdom		✔			
United States	✔				

Source: Organisation for Economic Co-operation and Development, *SOPEMI: Trends in International Migration; Continuous Reporting System on Migration. Annual Report, 1994* (Paris, 1995), table III.2.

Portugal and Spain) has specified that stateless children born within their territory have the right to nationality.

Both *jus sanguinis* and *jus soli* principles of nationality of origin may lead to anomalous situations. In the case of *jus soli* countries, the status of children of nationals who are born outside the country is tenuous. Similarly, in *jus sanguinis* countries, the status of natural or adopted children may be in question. Furthermore, owing to the prevalence of the *jus sanguinis* principle on the European continent, where large permanent alien populations reside, many children are not born into citizenship. This has created situations where children born and raised in a host society enjoy no special access to citizenship and are politically and socially marginalized (Ireland, 1994). These "second-generation", as they are known, are formally citizens of a country they may have never seen and can even be deported there in certain circumstances.

2. After birth

There are several ways of acquiring nationality after birth: automatically, by registration, by declaration, by marriage, by naturalization, or by restoration. In all cases, citizenship is contingent upon some tie to the country, whether it be familial or residential.

Automatic acquisition after birth is increasingly rare, though when it exists, it is usually an option for second- or third-generation immigrants. In Belgium, an Act of June 1991 granted Belgian citizenship automatically to third-generation immigrants aged under 18; second-generation migrants born in Belgium and aged under 12 can obtain Belgian nationality at the request of their parents (OECD, 1992, p. 36). France, until the 1993 Nationality Code reforms, granted automatic citizenship to children born of parents who themselves were not French (unless they declined it by declaration between the ages of 17 and 18). The practical and demographic implications were great, as the majority of the second- and third-generation immigrants, including children of parents born in Algeria before its independence in 1962, acquired citizenship in this way. In contrast, the new law of 22 July 1993 grants French citizenship to such persons only upon written request or declaration between the ages of 16 and 21. The absence of a declaration is tantamount to a refusal of French nationality (Tribalat, 1994, p. 171).

Although the French changes have great symbolic meaning for the direction of nationality procedures, in practice, the difference between automatic acquisition and registration or declaration may be small. Automatic acquisition takes place completely without request or other activity on the part of the individual. In some cases, no one knows whether an individual is or is not a citizen of the State until cases are tried by courts or examined in administrative appeals and decisions are made confirming or rejecting a citizen claim (Reinans and Hammar, 1990, p. 4). In contrast, registration is a formal annotation in a public register that a person is a citizen of the country; it is usually done only on request of this person. Declaration, as in the French case, is a procedure by which those who are eligible for French citizenship (e.g., those who are born in France to foreign parents) demonstrate their intention to become French between the ages of 16 and 21 by enrolling in the armed forces or formally applying for a certificate of French nationality. Italian law, as well, has made provisions for foreigners born in Italy to obtain citizenship by making a declaration when they come of age, given regular prior residence.

Citizenship can also be acquired after birth through marriage, either by means of declaration (i.e., the French case) or naturalization. In principle, marriage has no direct effect on the nationality of a foreign spouse, but in most countries, it makes it possible to simplify the naturalization procedure. In Turkey, only a foreign woman, and not a foreign man, has the option of taking Turkish nationality at the time of marriage. Most States require the marriage to have been of a certain duration or impose residence conditions. The 1993 French nationality reforms have recently extended the waiting period for eligibility from six months to two years (unless the couple has a child). In Ireland, a couple must be married three years. A number of countries require spouses to meet further conditions. In Australia, Canada and the United States, foreign spouses must demonstrate adequate assimilation, which includes command of the language. In Belgium, France, Italy, Luxembourg and Portugal, convictions for particularly serious offences are a bar to acquisition. In the OECD countries, annulment of the marriage does not generally entail the loss of a spouse's nationality. In some of the Western Asian countries, such as the Syrian Arab Republic, the United Arab Emirates and to some degree, Kuwait, divested citizenship may be extended to the

wife and minor children of the divestee (Dib, 1979, p. 16). In Kuwaiti law, three out of five cases of possible denaturalization extend the action to the wife and minor children: fraudulence; threat to the national interest and external security; and the promotion of subversive ideologies (Dib, 1979, p. 16).

Broadly speaking, automatic procedures, registration and declaration of nationality are established as rights of individuals. In contrast, citizenship may be applied for and acquired under certain conditions subsequent to birth by persons who are nationals of other States, or who are stateless, through the procedure of naturalization. This modality of acquiring nationality is recognized in almost all nationality laws, though the required qualifications vary from country to country. The essential requirements for naturalization are a person's enduring ties with the State, established through long continued residence or military service, and intention to make a permanent home in that country. Demonstration of basic knowledge of the language and governmental structure, and good moral standing are also generally necessary. In addition, some States require an oath of allegiance which may or may not demand that the person renounce any former citizenship.

Naturalization policies are intricately tied to the immigration and integration rationales of each country. The term "naturalization" is analogous to the process of biological adoption and is reflective of the idea of a community's efforts to recreate affiliation, or the process of making "natural" (Zolberg, 1995, p. 4). Citizenship status implies special rights, privileges and duties, and it is intended to motivate individuals to acquire certain civic competencies, virtues and behaviours that are functional for each State. In the United States, for example, public campaigns (e.g., the New York State Citizenship Campaign; Caribbean Women's Health Association) for naturalization aim to encourage and facilitate citizenship for those eligible. In addition to promoting a civic society, some countries look towards naturalization procedures as a means of adjusting their immigrant numbers. Changes of citizenship are reported as gains or losses in the total population of citizens of the country, and naturalization decreases the size of population of foreigners. Especially in Europe, where boundaries are changing and public outcry against immigrants is heightened, naturalization rates symbolically alter immigration rates. In this vein, the recent anti-immigrant sentiment and restrictive measures adopted in the United States concerning welfare eligibility for legal aliens and the barring of children of illegal migrants from public education have ironically contributed to the unprecedented number of naturalizations—1.1 million immigrants by the end of the 1996 fiscal year (*The New York Times*, 13 September 1996, p. A16).

The distinctions between *jus sanguinis* and *jus soli* principles greatly affect rules on naturalization. As *jus soli* creates and recreates a territorial community, anyone can essentially "become" an American or Canadian, because citizenship is the manifestation of political identity towards a territorial community and it is realized through taking on new political loyalties (Brubaker, 1989, p. 168). In contrast, *jus sanguinis* is a manifestation of an ethnically-based national identity; not everyone can "become" a German, Italian, Japanese or Greek in the same way because identity in these countries is ethnically delineated.

Naturalization procedures range from extremely liberal to highly protectionist, as each country has set different age, residence and integration requirements. In principle, naturalization is granted only to persons of legal age. However, the legislation of some countries does provide for the naturalization of minors in certain cases (e.g., Austria, Australia, Denmark, New Zealand, Norway). In France, the Nationality Act of July 1993 modified the age requirements so that children born in France of foreign parents are no longer entitled to French nationality while they are minors.

Almost all countries impose residence within their territory as a requirement for being able to seek naturalization. The duration of residence varies from country to country, but also within a country with regard to priorities given to specific groups. Shorter periods of residence may be accepted for spouses, children, stateless persons or refugees. A residence of three years is required in Canada and in New Zealand for an alien who has permanent resident status. Most commonly, residence duration of five years is required, as in Belgium, Finland, France, Japan, the Netherlands, Sweden, Turkey, the United Kingdom and the United States. The time requirement increases to 10 years in Austria, the Federal Republic of Germany, Italy, Luxembourg and Spain, and to 12 years in Switzerland.

In some countries, part of the requirement includes continuous residence prior to application (e.g., the 5 preceding years in Luxembourg, 3 years in Switzerland, two and a half years in the United States). In nearly all countries, a person must be resident in the country at the time of his/her application.

In some cases, countries institute fees for citizenship as a way of targeting distinct migrant groups (see *Migration World Magazine*, vol. XXI, 1993, pp. 7 and 8). Peru, for example, is hoping to attract foreign investment, and is thus offering Peruvian citizenship for $25,000 for the head of a family and $2,000 each for immediate family members. In Argentina, the Government gives investors permanent residence status if they deposit $30,000 with the central bank for 120 days. In Mexico, investors must invest $160,000 for permanent residence status and wait five years to apply for citizenship. Similarly, Canada grants permanent residence status for $500,000 of capital, and the United States accepts foreigners as residents who bring $1 million with them. Singapore grants permanent residence to anyone from Hong Kong, China investing $500,000, and then considers citizenship after five years.

Naturalization is generally further limited to those with good character or good conduct. In most cases, this condition refers only to the absence of serious convictions, but the definition of "good character" may again vary by country. Countries such as Germany, Denmark and Belgium require the absence of criminal offences, whereas in the Netherlands, Austria, Canada, Spain and Turkey, applicants must not have records of threatening the public order, morality or public health. Other countries consider the political behaviour of the alien. Japan requires that the alien not have planned or advocated the overthrow of the Constitution, the Government, or other Japanese institutions. The United States denies naturalization to persons who seek or propound the overthrow of the United States Government or who have recently been members of the Communist Party (OECD,1995, p. 164).

In keeping with the idea that citizenship be embedded in an integrated community, most countries require an adequate knowledge of the national language, and/or history, customs and institutions. To further promote integration, some countries (e.g., Austria, Denmark, Finland, Germany, Japan, Luxembourg, Norway and Sweden) require a foreigner to renounce his former nationality in order to acquire their nationality (unless it is impossible to do so). In addition, a number of countries require a naturalized alien to take an oath of allegiance (Australia, Canada, Greece, Italy, New Zealand, Switzerland, United Kingdom and United States), or to make a declaration of allegiance (Germany, Ireland).

Countries may also impose other requirements for naturalization. Besides fees, this may include possession of adequate means of livelihood to cover the individual's own needs and those of his dependants, no outstanding alimony in cases of divorce (e.g., Norway), or absence of contagious and hazardous diseases (e.g., Turkey).

Nationality attribution is complicated further by the fact that, as described above, requirements for certain groups may vary *within* countries. For example, in Germany, where the principle of *jus sanguinis* has predominated historically, naturalization is facilitated or granted as a right to persons of German ethnic origin. Article 116 of the 1949 Constitution or Basic Law of the Federal Republic of Germany attributes membership of the German nation not only to formal citizens but also to those refugees or displaced persons who are of German descent. This has meant that persons from former German territories, Eastern Europe and all the citizens of the German Democratic Republic have been immediately recognized as citizens by the Federal Republic, and discretionary competence has been forsaken. The Act of 9 July 1990 on aliens specifically extended naturalization to young foreigners (between the ages of 16 and 23) who have lived in Germany for at least 8 years and who wish to remain there (OECD, 1995, p. 178). In Austria, the wife or husband of an Austrian, stateless persons, and various specified categories are also entitled to naturalization by right (OECD,1995, p.166). Some countries provide for a simplified form of naturalization, in which some or all of the conditions normally required when applying for naturalization are relaxed. This is the case in Greece for persons of Greek origin from the Republics of the former Soviet Union, and in Japan and Switzerland for certain categories of people (generally, for descendants).

Although in traditional immigration countries, naturalization is normally encouraged and considered a matter of right for an immigrant, in the temporary labour migration countries of Western Europe, it is more commonly a matter of the State's discretion (Reinans and Hammar, 1990, p. 5).

Naturalization of an individual normally affects the status of children or dependants. In most countries, the naturalization of a parent confers nationality on his or her children if they are minors and single. This may occur automatically, as in the German case, to children below 10 years of age (provided that the parent has parental custody); by simplified conditions as in the United States, where children can obtain derived naturalization without having to fulfil the usual conditions of residence and physical presence; or by declaration, as in the Portuguese case. In most cases, naturalization has no effect on the spouse except to facilitate his or her naturalization. Turkey is an exception, as women (not men) may obtain citizenship by declaration at the time of marriage. Citizenship is not subject to marriage duration (OECD, 1995, p. 167).

The complexity of citizenship acquisition both within countries and between them obfuscates comparative analysis with regard to statistics on citizens and foreigners, and naturalization figures. The case of adopted children is illustrative of these anomalies; in the Netherlands, adopted children are given automatic Dutch citizenship, whereas they must apply for naturalization in Sweden (see Reinans and Hammar, 1990, p. 10). Other examples abound: in France, before the 1993 reforms, children born in France of foreign parents automatically acquired French nationality, so the statistics for naturalization and foreigners were skewed. In the Federal Republic of Germany, German immigrants from the German Democratic Republic have not been included in the statistics.

Rates of naturalization are affected not only by legal conditions of eligibility, but also by emotional and functional considerations. Moreover, many foreigners wishing to naturalize and gain citizenship in the new country they reside in must forfeit all types of privileges of the old country, not to mention some emotional ties. This may include the right to possess or inherit property, or to visit the country of origin (Reinans and Hammar, 1990, p. 20). Persons who have renounced their nationality or have voluntarily acquired the nationality of another State are not entitled to exercise the right of free entry or return in respect of the State of their original nationality; such persons are in the same position as aliens in regard to their entry into the territory of that State. This situation may arise because, in many cases, voluntarily acquiring the nationality of another State may be contingent upon renouncing the old. Dual nationality may be barred by either the new or the original State of citizenship. Article 9 of the Indian Constitution, for example, stipulates: "No person shall be a citizen of India ... if he has voluntarily acquired citizenship of any foreign State". Sweden demands that persons who do not automatically lose their previous citizenship apply for release from this citizenship before obtaining the Swedish citizenship (Reinans and Hammar, 1990, p. 22).

For most nations, the norm has been against dual nationality. The majority of Arab States do not support dual nationality. Although more than a million Palestinians in the West Bank hold two-year Jordanian passports granting them Jordanian citizenship, Jordan has adopted the resolutions of the League of Arab States, which do not permit dual nationality (Foreign Broadcasting Information Service, Near East and South Asia, 1995, p. 38). The Election and Recall Law, requiring dual citizens to renounce their foreign citizenship before taking oath of public office, reinforced a general law dating from 1929, barring all Chinese Government officials from holding foreign citizenship. This is not applicable to ordinary citizens, who are not prohibited from simultaneously holding another citizenship. In Austria, Germany, Italy, Malta, the Netherlands and, to some extent France and Spain, voluntary acquisition of a new nationality entails a loss of the former nationality. The Federal Republic of Germany and the Netherlands signed the 1963 Council of Europe Convention on the reduction of multiple nationality. In Denmark, Norway and Sweden, a person can be released from the nationality tie only on the condition that he acquire another country's nationality within a specified period of time. In great part, these conditions attempt to avoid statelessness. The general practice is to avoid multiple nationalities, but even in countries such as Germany, Switzerland, the Netherlands and Belgium, which hold strong objections against dual nationality, an increasing number of residents possess more than one citizenship.

Despite international norms and national preferences against dual or multiple nationality, several reasons account for its persistence, and even increase, in certain parts of the world (particularly Western Europe and North America). Most clearly, large-scale immigration makes the demand for dual nationality more likely. Most countries wish to avoid a long-term situation in which a large part of their population consists of resident non-citizens. Efforts to achieve long-term integration of immigrants necessitate opportunities to naturalize. Research has shown that the propensity to naturalize increases strongly as soon as dual citizenship is allowed (Reinans and Hammar, 1990, p. 24; Koslowski, 1995, p. 8). Legislation regarding a married woman's rights to keep her old citizenship when marrying a husband with another citizenship has also accounted for growing instances of multiple nationality. The 1957 Convention on the Nationality of Married Women allowed women married to foreign nationals to retain their original nationality at least until the time they choose to acquire the nationality of their husbands (article 1). New legislation according nationality through both father and mother has also undermined norms against dual nationality. In addition, demographic considerations, particularly in newer States, have left open some possibilities for dual nationality. For example, while article 3 of the 1991 Law on Citizenship of the Russian Federation requires renunciation of the existing foreign citizenship or subject status as a prerequisite to obtaining Russian citizenship, the Law adds that the existence of dual citizenship does not affect the rights of the *de cujus* or his fulfilment of the duties and obligations stemming from the Russian Federation (article 3, paragraph 3). With significant numbers of Russian citizens residing in other republics, the Law does not totally exclude the possibility of dual citizenship (Dmitrieva and Lukashuk, 1993, p. 271).

Changes in nationality may occur not only because of migration proper, or by some type of voluntary act on the part of the individual, but because of territorial changes. When new States are created through a division of a State, or through the separation of a part of it, as happened in the 1990s in Eastern Europe, the persons inhabiting the territory of the new State are usually given the right of option between the nationality of the new State and the nationality of the State with which they are connected by ethnic origin or religion. In such a case, they can either continue to reside as aliens in the area where they lived before the partition, or they are entitled to move to, and be admitted by, the State to which they are more closely linked. Nonetheless, systematic rules on the impact of territorial change on nationality have not been fully developed and remain a matter of considerable controversy (see Chan, 1991, p. 11).

The Latvian nationality code was a source of concern because it initially aimed to adjust its demographic equilibrium by restricting the number of "aliens" eligible to receive Latvian citizenship through the mechanics of State succession (Ginsburgs, 1993, p. 245). According to the 1990 census, Latvia had a population of 1.4 million Latvians, 900,000 Russians, 120,000 Belarusians and nearly 100,000 Ukrainians, making Latvians nearly a minority in their own country (*The New York Times*, 1994a). With intervention from the international community, and in order to qualify for membership in the Council of Europe, and eventually the European Union, the Government decided in 1994 to revise its initial code. In Estonia and Lithuania, as well, nationality policies have aimed to secure a dominant civic role for natives, and the leadership has attempted to devise a citizenship policy adapted to the needs of independent statehood. Lithuania, with nearly 80 per cent ethnic Lithuanians, naturalized all its residents without any requirements (*The New York Times*, 1994a). Estonia requires two years of residency and a language test for citizenship. As discussed in the following section, international law has largely delegated nationality matters relating to territorial changes to the State.

In some parts of the world, territorial changes have also raised the possibility of acquiring nationality by restoration. As nationality can be renounced or divested, it can, by the same token, be restored in conditions which are generally comparable to those of naturalization (Guimezanes, 1994, p. 26). Former Polish citizens and their children remaining in the pre-1939 territory of the State, and Poles who, between 1945 and 1989, emigrated to the West (and were stripped of their Polish citizenship) were able to acquire Polish citizenship by restoration.

Generally, this type of citizenship naturalization may take the form either of a specific declaration or of an application for naturalization. In the Russian Federa-

tion, depending on the reason for loss of citizenship, the 1991 Law on Citizenship established three procedures for restoration of nationality (article 20). Persons who were once involuntarily deprived of citizenship in the Russian Soviet Federal Socialist Republic by edicts of the Presidium of the Supreme Soviet of the USSR may have their citizenship restored virtually automatically. The second manner of acquiring citizenship by this method is through registration by the agencies of the Ministry of Internal Affairs or the Ministry of Foreign Affairs, depending on whether the given person is located in Russia or abroad. Such a procedure is normally prescribed for cases of loss of citizenship in connection with adoption or the imposition of trusteeship or guardianship. In all the remaining cases, restoration of citizenship occurs in the standard manner: by the decision of the President of the Russian Federation upon petition of the person (Dmitrieva and Lukashuk, 1993, p. 281).

Citizenship acquisition by restoration is possible not only in relation to territorial changes; most of the OECD countries have provisions for this type of acquisition (OECD, 1995, p. 167). In Greece, restoration of nationality by full right is provided for after residence in the country for two years for persons of Greek ethnic origin born in Greece whose nationality of origin was Greek (OECD, 1995, p. 167).

C. International Instruments

The project of codifying customary international rules began in 1925, when the League of Nations began to prepare for an international codification conference, and the regulation of nationality became the first of three areas under consideration in the 1930 Hague Convention. The Convention constituted the major areas of conflict of the time: the Convention on Certain Questions relating to the Conflict of Nationality Laws, the Protocol relating to Military Obligations in Certain Cases of Double Nationality, the Protocol relating to a Certain Case of Statelessness and the Special Protocol concerning Statelessness.

Following the precedent of the Hague Convention, nationality as the juridical link between the individual and the State, and hence international law, was firmly entrenched in the United Nations system. The 1948 Universal Declaration of Human Rights established for the first time in international law that "Everyone has the right to a nationality" (article 15, paragraph 1). This provision was consistent with the logic of international law, whose primary subjects were nationals. Since nationality formed an indispensable link between an individual and international law, absence of nationality logically excluded an individual from enjoying all the benefits conferred on him or her by international law (Chan, 1991, p. 3).

The Universal Declaration of Human Rights asserted that "No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality" (article 15, paragraph 2). These provisions are vague, however, given the failure to specify which State was required to grant nationality. Furthermore, "arbitrary" decisions tend to vary greatly from country to country. Moreover, the right to change nationality can be illusory where an individual's right to divest himself of his nationality is not linked to a corresponding right to acquire another nationality (Donner, 1994, p. 190). Nevertheless, while the Universal Declaration is not a binding instrument in international law, its widespread recognition and signature by the majority of States have given it considerable moral force.

To the extent that there are no international instruments that impose a duty on States to confer their nationality, statelessness is legally possible, albeit undesirable. A person may be stateless at birth, as a result of the fact that he/she did not acquire a nationality according to the law of any State (this is most common in countries that follow *jus sanguinis* or hereditary principles), or could become stateless subsequent to birth by losing his/her nationality without acquiring another. In the years following the Second World War, the issue of nationality arose in relation to statelessness which resulted from territorial adjustments made at the end of the war (Plender, 1988, p. 47). Two draft proposals were submitted to the General Assembly in 1954 for consideration: one on elimination of statelessness and one on reduction of statelessness. Substantial opposition to such conventions was raised on grounds of State sovereignty. This resulted in the adoption of the less ambitious Convention on the Reduction of Statelessness in 1961. The Convention did not come into force until 1975, and by March 1997, it had been ratified by only 19 countries.

Although the 1961 Convention on the Reduction of Statelessness was ratified by a small number of States, it provided substantive content to the right to have a nationality (Chan, 1991, p. 4). Whereas the earlier Hague Convention sought to avoid the occurrence of statelessness in consequence of the conflict of nationality laws, the 1961 Convention imposed on Contracting States a positive duty to confer their nationality upon those who have specified connections with such States and would otherwise be stateless (Plender, 1988, p. 47). Article 1 of the Convention provided that "A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless". Article 4 extended the obligation of the Contracting State "to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that State". Article 5 stipulated that "If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality".

Nonetheless, those provisions of the 1961 Convention do not absolutely prohibit States from "depriving" a person of his nationality. A Contracting State may retain the right to deprive a person of his nationality: when a naturalized person takes "residence abroad for a period, not less than seven consecutive years ... [and] if he fails to declare to the appropriate authority his intention to retain his nationality" (article 7, paragraph 4); "where the nationality has been obtained by misrepresentation or fraud" (article 8, paragraph 2 (b)); "on grounds existing in national law ... such as having rendered services to, or received emoluments from another State" (article 8, paragraph 3 (a) (ii)); having "conducted himself in a manner seriously prejudicial to the vital interests of the State (article 8, paragraph 3 (a) (ii)); by having taken "an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State" (article 8, paragraph 3 (b)). On an expanded interpretation of article 7 of the 1961 Convention on the Reduction of Statelessness, some countries have deprived individuals of nationality where permanent residence was established in excess of a designated period, or where no ties were maintained with the country of citizenship. This, however, runs counter to the internationally recognized right of a person to leave any country, including his own, and the right to choose freely a place of residence (Dmitrieva and Lukashuk, 1993, p. 271).

States are prohibited from acting "arbitrarily" in granting and depriving a person of nationality, however, by means of discrimination. Article 9 of the Convention on the Reduction of Statelessness established that "A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds". The 1965 International Convention on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 2106 A (XX)) further guaranteed everyone "without distinction as to race, colour, or national or ethnic origin" equality before the law and "the right to nationality" (article 5 (d) (iii)).

The 1957 Convention on the Nationality of Married Women dealt with issues of gender discrimination and plural nationality. It particularly addressed problems of statelessness and plural nationality arising from the marriage of women to foreign nationals. According to article 1, "Each Contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife". Similar provisions were secured by the Convention on the Elimination of All Forms of Discrimination against Women in 1979 (General Assembly resolution 34/180, annex). This Convention, which followed most closely the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, expanded the notion of equality. According to article 9, paragraph 2, of the Convention, "States Parties shall grant women equal rights with men with respect to the nationality of their children". This has been understood to mean that married as well as unmarried mothers may pass on their national status to their children (Donner, 1994, p. 200). The significance of this Convention lies in its applicability to "legal kidnapping" cases where a child is born of parents of different nationalities (Donner, 1994, p. 200). The 1979 Convention has received widespread support; by March 1997, 157 States were Parties to it.

Another specific category of persons protected by international instruments has been the child. While

dealing with more general civil and political rights, the International Covenant on Civil and Political Rights of 1966 (General Assembly resolution 2200 A (XXI)) only mentioned nationality rights as they pertained to children. It granted that "every child has the right to acquire a nationality" (article 24, paragraph 3). This provision, however, was widely criticized for narrowly addressing issues of statelessness and failing to grant a general right to nationality. Opponents argued that the problems relating to nationality were not exclusively peculiar to childhood (Chan, 1991, p. 5). Furthermore, while article 24, paragraph 3, protected the right of every child to acquire a nationality, it did not necessarily make it an obligation for States to give their nationality to every child born in their territory (Chan, 1991, p. 5).

In 1989, the United Nations adopted a more specific instrument, the Convention on the Rights of the Child, granting the child an independent right to a nationality. According to article 8, paragraph 1, it is "the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference". Unlike the International Covenant on Civil and Political Rights, the 1989 Convention addressed issues of statelessness at birth. Article 7 of the Convention provided the child with the right to acquire a nationality from birth and the right to acquire the nationality of the State of birth if he or she would otherwise be stateless at the time of birth. Adopted by the General Assembly in 1989, and entering into force by 1990, this Convention has been very significant. Not only is it binding, but by March 1997, it had been ratified by 190 countries.

In addition to international instruments pertaining to individual categories of persons, there are those dealing with specific issues arising from conflict with laws of nationality. A number of international agreements and bilateral treaties have been concluded to regulate the status of persons having dual nationality (also referred to as plural or multiple nationality). Issues of dual nationality pose fundamental dilemmas to international customs as they involve State conflicts of nationality practice and laws, giving rise to abnormal legal situations whereby a person is subject to the jurisdiction of different States and owes duties which may be contradictory. Since citizens are tied to the State through nationality, and sovereign States regulate matters of their citizens, the fact that a person may possess more than one nationality raises questions regarding what nationality law is to be ascribed, and what laws applied. The assumption that nationality is a relationship of allegiance between citizen and State has generally precluded the possibility for an individual to owe allegiance to two sovereigns at once. This has generally meant that an individual has been permitted to have only a single nationality.

Cases of dual or multiple nationality, however, have arisen when a married woman under the nationality laws of her State of origin has been allowed to retain that nationality even after her marriage to a foreign national and acquisition of his nationality. Dual nationality has also occurred when a naturalized person retained his or her old nationality, although many States consider voluntary acquisition of foreign nationality as an automatic renunciation of the old one. According to article 3 of the 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws, "a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses". Nonetheless, a State may, but does not have to, accept that person as its national (Sohn and Buergenthal, 1992, p. 45).

Most international instruments and bilateral treaties have attempted to discourage or eliminate plural nationality. The principle of "dominant nationality" has been normally applied when confronted with the necessity of having to determine the nationality of a person who is claimed as a national by more than one State. This principle is generally linked to domicile or residence status. The dominant nationality principle has been applied in order to prevent conflicts concerning the fulfilment of compulsory military service by dual nationals. The 1930 Protocol relating to Military Obligations in Certain Cases of Double Nationality provided, in article 1, that a person possessing two or more nationalities should be exempt from all military obligations in one of his countries of nationality if he habitually resides in the other and is in fact most closely connected with that country.

In the realm of dual nationality and military service, it has also become a widespread practice to conclude treaties, usually on a bilateral basis (Donner, 1994, p. 108). Norway, Denmark and Sweden signed an Agreement concerning the Relationship between

Compulsory Military Service and Nationality on 3 March 1956. Article 2 defines a dual national thus: "A person who is a national of more than one Contracting State shall ... be deemed to be a national only of the Contracting State in which he is domiciled or, if he is not domiciled in any of the States, of the State in which he was last domiciled" (United Nations, *Treaty Series*, vol. 243, p. 169). Israel, which grants automatic citizenship to Jews throughout the world, has forged agreements with other States, where many of their citizens reside. On 30 June 1959, the Governments of Israel and France signed a Convention "concerning the Military Service of Persons with Dual Nationality, which entered into force in May 1962. According to article 2, paragraph 1, of this Convention, "Dual nationals residing in one of the two Contracting States shall be required to perform their active military service in the State in which they have their permanent residence at the age of 18 years" (United Nations, *Treaty Series*, vol. 448, pp. 107 and 145). The Convention between the Netherlands and Italy concerning the Military Service of Persons with Dual Nationality came into force in October 1962. It established that dual nationals of the two Contracting States should fulfil their military obligations in the one of the two States in which they were habitually resident (United Nations, *Treaty Series*, vol. 450, p. 207). Most of these types of agreements have contained similar provisions of habitual residence. Nevertheless, as in the Netherlands, Italy Convention, they often fail to provide a definition of habitual residence (Donner, 1994, p. 109).

Multilateral conventions have also dealt with military obligations of plural nationality. In 1963, the Council of Europe sponsored a Convention on Reduction of Cases of Multiple Nationality (chapter I) and Military Obligations in Cases of Multiple Nationality (chapter II) (United Nations, *Treaty Series*, vol. 634, p. 221; and *European Treaty Series*, No. 43). Article 5 of chapter II provided that "Persons possessing the nationality of two or more Contracting Parties shall be required to fulfil their military obligations in relation to one of those Parties only". Article 6, paragraph 1 provided that "Any such person shall be subject to military obligations in relation to the Party in whose territory he is ordinarily resident". The Convention discouraged multiple nationality and stated in its preamble that "joint action to reduce as far as possible the number of cases of multiple nationality as between member States, corresponds to the aims of the Council of Europe". To this objective, it established that nationals of a Contracting State who acquired of their own free will the nationality of another Contracting State by means of naturalization, option or recovery should lose their former nationality (article 1). A person possessing the nationality of two or more Contracting States could renounce one or more of these nationalities with the consent of the State whose nationality he desired to renounce (article 2). A 1977 Protocol agreed that such consent would not be withheld by the Contracting State whose nationality a person of full age possessed, provided that the person had his ordinary residence outside the territory of that State (article 2, paragraph 2). The Convention of 1963 and the Protocol of 1977 made detailed provisions for the avoidance of duplication of military obligations in cases of plural nationality (Plender, 1988, p. 48). As of March 1993, 13 members of the Council of Europe were parties to the 1963 Convention and 8 were parties to the 1977 Protocol.

In the light of increasing numbers of permanent resident aliens, including those who did not have citizenship of their country of birth, the Council of Europe began to reconsider its position in the late 1980s. A Second Protocol amending the Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality was opened for signature in February 1993, and had received only the signatures of France and Italy by March of that year. The revised approach to dual nationality, however, was reflective of the changing interests of the international order.

The Council of Europe amended the 1963 Convention in 1993 with provisions that permit dual nationality in certain cases "to facilitate the acquisition by one spouse of the nationality of the other spouse and the acquisition by their children of the nationality of both parents, in order to encourage the unity of nationality within the same family" (Council of Europe, 1993). Emphasis on unity of nationality within the same family and on integration of migrant workers, and second-generation migrants who have settled permanently in the States members of the Council of Europe, encourages dual national status (Donner, 1994, p. 214). Article 1, paragraph 5, of the Second Protocol established that "Where a national of a Contracting Party acquires the nationality of another Contracting Party

on whose territory either he was born or is resident, or has been ordinarily resident for a period of time beginning before the age of 18, each of these Parties may provide that he retains the nationality of origin". Paragraph 6 similarly grants the nationality of origin to married persons, and paragraph 7 to minors whose parents are nationals of different Contracting Parties. These provisions essentially permit children and both partners of a marriage to retain their nationality of origin. They provide for retention of original nationality by each spouse, rather than a right to the nationality of the other (Donner, 1994, p. 215).

While international instruments have responded to changes in the world order, such as migration, they have not fully developed in response to increasing territorial changes. With the exception of treaty obligations to prevent statelessness, international law has failed to provide clarity. Article 10, paragraph 1, of the Convention on the Reduction of Statelessness (1961) states that "Every treaty ... providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer" (United Nations, *Treaty Series*, vol. 989, p. 175). According to some international legal scholars, in its present stage of development, international law does not impose any duty on successor States to grant nationality (O'Connell, 1967, p. 503). The result is that territorial changes and nationality issues are delegated to State competence to determine what constitutes a genuine and effective link in the conferment of its nationality, subject to the presumption of avoidance of statelessness and the duty not to enact or apply any law on a discriminatory basis (Chan, 1991, p. 12).

D. Nationality and migration

The discussion of national and international instruments in citizenship and nationality laws underscores the interrelationship between nationality rights and other fundamental rights. On the national level, the functions and privileges that accompany citizenship are evidenced by juridical conditions of the law (e.g., the residence criterion). In the international arena, the rights of citizens are established by instruments, which include provisions generally prefaced by "everyone has the right ...", meaning each State's nationals. Clearly, international instruments address the obligations of States to their nationals.

The functions inherent in the concept of nationality include the right to settle in, to reside in, to leave and to return to the territory of the State of nationality. International law provides for migration as a right of nationals. Several United Nations instruments recognize the duty of a State to admit its nationals. Article 13, paragraph 2, of the 1948 Universal Declaration of Human Rights stipulates: "Everyone has the right to leave any country, including his own, and to return to his country". The 1966 International Covenant on Civil and Political Rights further emphasized the obligation of States to avoid arbitrariness in granting these rights: "No one shall be arbitrarily deprived of the right to enter his own country" (article 12, paragraph 4). Article 5 of the 1965 International Convention on the Elimination of All Forms of Racial Discrimination gives substance to the meaning of arbitrariness by introducing the concept of discrimination. It also emphasizes the need to avoid discrimination in the treatment of State nationals wishing to cross its borders: "States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights ... The right to leave any country, including one's own, and to return to one's country" (article 5 (d) (ii)).

Clearly, one of the most established international limits on a State's authority regarding migration is the principle that a State must admit its own nationals to its territory. Conversely, there are no international rules on entry of non-citizens. Since even the most basic rules of customary international law governing migration are based upon the distinction between nationals and aliens, the identification of a State's nationals is crucial.

The converse to nationality rules are those related to immigration. The conflict over Cambodia's new immigration law is a good example of this relationship. In the absence of a nationality law to define the criteria for citizenship in Cambodia, observers are anticipating that the immigration law may be used to expel anyone who is not ethnic Khmer (*Far Eastern Economic Review*, 1994). Because they have sole jurisdiction over who its citizens are, States make decisions regarding who may or may not reside or enter.

For many immigrants, access to nationality and citizenship means more than the right of movement; it involves other fundamental rights and protections that States guarantee to their citizens. It is for this reason that naturalization is often seen as the most important legal instrument to facilitate the integration of resident immigrants and of subsequent generations (Baubock and Cinar, 1994, p. 192).

Under the laws of most States, citizenship connotes full membership. This entails political, social, economic, civic and residential rights and duties. Regardless of method of acquisition, citizenship engenders equal protection by the law of the State. Thus, for example, the Law on Citizenship in the Russian Federation emphasizes that those who have recently been admitted to Russian citizenship possess the same rights and duties as those who have obtained citizenship by birth and have always resided in Russia (article 2) (Dmitrieva and Lukashuk, 1993, p. 270).

Nonetheless, there are exceptions. Some States have enacted legislation postponing the exercise of certain fundamental rights by the naturalized citizen, leaving time for testing his or her loyalty to the new country. In the Syrian Arab Republic, Legislative Decree No. 5 of 13 August 1952 prohibits naturalized citizens from practising law until five years after naturalization (nationals of the Arab States excepted) (see Dib, 1979, p. 13). In Egypt, article 16 of Law No. 82 of 1958 states that aliens who have acquired Egyptian citizenship may not enjoy the fundamental rights of citizenship nor may they exercise any political rights until five years after the date of naturalization. In addition, naturalized citizens may not be elected or appointed to a representative body until 10 years after the date of naturalization. Lebanon, according to the electoral law promulgated on 26 April 1960, prohibits a naturalized citizen from being nominated for Parliament or from assuming a civil service job during the first 10 years after his naturalization. Furthermore, naturalized citizens may not exercise the legal profession for the first 10 years of naturalization (article 4 of the Law of 13 January 1945), or the medical profession during the first five years (article 2 of the Law of 26 December 1946).

Citizenship differentiation also exists in the more developed European countries. The European Union (EU) constitutes a supranational community, forcing policy makers and scholars to reassess the traditional notions of citizenship. The population of the EU countries is essentially divided into full citizens, quasi-citizens and foreigners (Castles and Miller, 1993, p. 40). People who move from one of the 15 member States to another enjoy important rights concerning employment, residence, legal status and so on, giving them an intermediate status. They are not full citizens, since they lack voting rights, but they are considerably more privileged than people from "third countries" (non-EU countries). However, the various EU countries also differentiate among 'third country' nationals. Some countries have granted special residence permits to some long-term immigrants which confer considerable advantages regarding security of residence and the right to work, compared with other immigrants. Thus, there are various forms of "quasi-citizenship", or what scholars have termed "denizenship" (Hammar, 1990, p. 12; Layton-Henry, 1990).

In the light of persisting migration, and increasing integration of a supranational community, increasing numbers of people are expected to have affiliations to more than one society. Corresponding to the trend towards multiple identity, dual or multiple nationality appears to be the alternative to excluding large concentrations of population from democratic societies. Some observers have argued that the consequence of multiple identities is that the meaning of citizenship is likely to change, and that the exclusive link to one nation-State will become more tenuous (Castles and Miller, 1993, p. 40). This could lead to some form of "transnational citizenship" (Baubock, 1991, p. 46).

E. Conclusion

As is clear from the discussion of nationality acquisition, States formulate citizenship policy based on their national interests, and generally according to historical experiences. In pursuit of these national interests, and as manifestations of their sovereignty, States have assumed substantially different approaches to nationality. In some cases, nationality laws of one State have been incompatible with those of another, and/or with human rights efforts to reduce or eliminate conflict. For example, conflicts between the *jus soli* principle and the *jus sanguinis* principle have occurred in connection with the status and rights of foreign-born

children of parents native to countries which only use the former; or those born to non-national parents in countries which confer citizenship by descent. The development of human rights in the post-war period in this context challenged the State's sole authority to conduct nationality legislation, and increasingly introduced nationality issues into the international law arena.

In the latter half of the twentieth century, growing pressures to international migration have given renewed vigour to issues of nationality and citizenship. As migration increases the number of permanent resident aliens, larger numbers of a State's inhabitants are excluded from the polity and thereby undermine its democratic inclusiveness (Koslowski, 1995, p. 8). For second- and third-generation immigrants, the institution of citizenship has emerged as most critical.

The new international order has led to reassessments of nationality and citizenship norms on both the national and international levels. Starting from different concepts of nationality, nation-States appear to be gradually converging in their views with respect to nationality law. The OECD countries and the newly emerging democracies of Eastern Europe are progressively modifying their legislation to take into account the considerable presence of foreign communities within their borders. International and regional instruments also seem to be reconciling principles of nationality with the trends towards multiple identities. This is evident by the reorientation of instruments regarding dual or multiple nationality.

It is unclear whether these changes will increase or alleviate conflicts of law among States. More clearly, however, are the effects these changes promise to introduce to the national arena. Citizenship changes imply gains and losses in the absolute and the relative size of the population of foreign citizens residing in a country. They bear substantial implications for the demographic structure of these populations with regard to age, sex, socio-economic status, religion and ethnicity. Finally, for the multitudes of permanent residents who lack legal status, citizenship is more than a possession of a passport; it is a mode of acquiring civil, political and social rights, or "normalizing" their situations.

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III. IMMIGRANT POLICIES: SOCIAL, POLITICAL, ECONOMIC AND CULTURAL INTEGRATION

Migration generates two related but distinct types of immigration policies: those that deal with the entry and regulation of foreign people across borders; and those that are designed to cope with foreigners once they have arrived. The latter is referred to as immigrant policy, as it involves the rights and living conditions of migrants who have come to settle. In some parts of the world, the issue of immigration has increasingly focused on immigrant policy, namely, integration or incorporation. Particularly in the developed countries where more restrictive policies towards entry of immigrants have been adopted in the latter part of the twentieth century, the major policy debate involves what to do about substantial numbers of foreigners, often lacking fundamental rights, who reside in a territory.

In the face of increasing diversity in many societies, immigration policy increasingly focuses on issues related to integration: to what extent should Governments assist migrants? What are the options for humane incorporation? Or, to what extent is it possible to incorporate minorities into the majority culture while preserving the minority culture? Furthermore, how can the success of immigrant policies be measured? This chapter attempts to give some clarity to the concept of integration, a term used vaguely, at best. It describes the evolution of integration issues, in the light of the globalization and changing nature of migration. Finally, it assesses modes of integration within national and international frameworks.

A. Models of integration: A conceptual framework

Although questions of integration have become increasingly salient to immigration policy makers and researchers, cross-national analysis remains problematic. In the first place, conceptual terms related to integration are vague, and models of integration tend to vary by country. Moreover, many migrants to whom integration programmes apply are not migrants themselves, but the children or even the grandchildren of migrants, commonly referred to as "second-generation" or "third-generation" (Layton-Henry, 1990, p. 6). They often retain the citizenship of their parents' country of origin and face many of the disadvantages and the discrimination suffered by their parents or grandparents. Similarly, the term "ethnic minority" is used in different contexts, generally when the established communities founded by post-war immigrants are being considered. In the United Kingdom, there is a tendency to refer to "race relations" policies rather than to integration. This is not only a form of unspoken integration policy, but it underscores the variety of terms that may be used in the spirit of integration (Coleman, 1994, p. 45).

The comparative assessment of the quality of migrant integration in host countries is problematic because measuring integration is often clouded by subjective and normative values. Models of integration not only vary by country, but since migration flows and stocks differ, it is difficult to reduce this complex set of social relationships into a few indicators such as employment, income level, education, residence, family situation and so on. Furthermore, as was suggested by a research group in the 1980s, no single option for relations between minorities and the larger society is an ideal to which all countries ought to aspire (Fried, 1983b, p. 283). On the contrary, the history and self-identification of each country sets limitations upon the options that are possible for that country; no one solution is best, or even possible, for all countries.

Broadly speaking, integration refers to arrangements which enable immigrants and minorities to participate in all aspects of a host society—i.e., social, economic and, eventually, political activity (Coleman, 1994, p. 43). Successful integration depends upon equality of individual opportunity within the whole society, free of discrimination based on grounds of national origin. It is also a two-way process, in which nationals and foreigners adjust their behaviour and attitudes to one another, implying an effort on the part of nationals of the host society to understand what is different, and the right of foreigners to maintain distinctive cultural features (Lebon and Falchi, 1980, p. 548). This process is also captured by the concept of "humane incorporation", which refers to the right of members of every

minority to be fully able to enjoy the shared status of equal citizens available to all without discrimination; "humane" in the sense that these members also enjoy the right to the special identity of membership in their own community (Shue and others, 1983, p. 284). This standard is often used as a guide for social policy, organizing society so that both equal participation in the larger society and full participation in the minority group are protected.

On the other side are the migrants themselves. Whether they are migrant workers, family members, refugees or asylum-seekers, if migrants do not want to integrate, policies aimed at them will fail (Böhning, 1991, p. 445). Generally, desire to integrate is contingent upon the migrant's sense of security with regard to his or her residence status and work permit. For example, immigrants who fear that they can be removed from their host society's territory on social or economic grounds, or because of some misdemeanour, may be reluctant to invest years of language or vocational training, savings, emotions or loyalties in the host society. Integration incentives for certain groups of migrants (e.g., guest workers, illegals), whose return home is encouraged, are obviously weak. In addition to legal security, migrant integration may be facilitated by informal networks, such as ethnic ties and personal relationships, which link settlers with the receiving populations.

For host societies, the incentives to integrate migrants are often more complex. Nations vary in the degree to which they have explicitly addressed issues of integration or incorporation. In theory, they can choose between leaving the immigrants to themselves and integrating or assimilating them in some form. Chosen strategies are based on a number of variables, namely, the historical conceptualization of the nation-State, institutional structures, types of migrants and, most important, immigration policy (meaning intake).

Integration policies are intricately related to immigration policies. The latter must answer questions regarding how many and what kinds of immigrants to admit. Often, the total number and the criteria for admission require consideration of how many people and who can be incorporated. From the "humane" point of view, incorporation should be in accordance with the dual requirement of protected opportunity for equality, and protected opportunity for social diversity (Shue and others, 1983, p. 284). Particularly in democratic or welfare States, Governments are considered to have major responsibilities for the social and economic security of their citizens. Since resources are normally finite, in order to provide the requisite level of economic and social security, Governments often aim to limit the number of people towards whom they bear these responsibilities. Furthermore, States attempt to control the composition of their populations to preserve their national identity and for cultural and security reasons.

In countries such as France, a "threshold" concept has been used, implying that a country or a local community can admit a new migrant population only up to a certain proportion of its own size. According to this argument, passing the threshold may lead to growing hostility, deterioration of education, changes in the character of housing areas, and "ghettoization". Although it has been argued that this theory is an oversimplification of a complex phenomenon, it does beg questions about how much cultural diversity receiving societies can handle at one time (Hammar and Lithman, 1987, p. 248).

In all cases, successful integration depends upon successful immigration controls (Werner, 1994, p. 45). Uncontrolled massive admission makes integration efforts more difficult. Competition between nationals and foreigners in the labour and housing markets, and overburdening of the educational and social security systems result in high costs, and are negatively perceived by the host society.

Integration policies may in turn affect immigration controls and immigration flows. It may be argued that if a receiving country offers reasonable housing, good schools and a low level of social discrimination, new immigrants may be encouraged to come and to stay permanently (Hammar and Lithman, 1987, p. 238). In other words, the more generous a country's integration policy, the stronger may be the efforts by people outside the country to circumvent even the most rigorous immigration controls.

A country's integration policy is related to attitudes not only towards immigration, but also to return (Hammar and Lithman,1987, p. 238). Countries where immigrants are expected to stay have much greater interest in integration than countries of temporary labour

migration, where it is assumed that migrants will eventually return. In contrast, a policy of rotation tends to keep foreign groups segregated from the broader society during their stay, subsidizes or even forces the departure of the group after a fixed period of time, and is ordinarily used to supply labour that is not available domestically at current wages (Shue and others, 1983, p. 286). Typically, persons who are subject to rotation do not enjoy equal membership in the society in which they labour.

A country's admissions (immigration) policy clearly relates to its vision of community and national identity, and to the way it defines membership, all of which have a direct bearing on integration policies. In Japan and throughout most of Western Europe, the nation-State has evolved over time around the same dominant language, ethnicity, and sometimes religion. This process has produced a high degree of cultural homogeneity that gives the nation-State coherence and sustains its identity. Public sentiment is thus strongly in favour of preserving and enhancing cultural homogeneity. In many countries, particularly in Europe, where the majority of immigrants arrived from ex-colonies in the third world during post-war years of rapid economic growth, opposition to continuous immigration is based on the perception of a threat to cultural homogeneity.

The prevailing concepts of the nation-State have, indeed, shaped policies on citizenship and naturalization, and set the approach that each State would adopt towards non-citizens. In the ideal form, four analytical models capture these conceptual distinctions: the imperial model, the folk or ethnic model, the republican model and the multicultural model (see Castles and Miller, 1993, p. 39).

In the imperial model, belonging to the nation is defined in terms of being a subject of one Power or ruler (the imperial). This model envisages the integration of peoples of multi-ethnic empires (e.g., the British, the Austro-Hungarian, the Ottoman), albeit with a particular group dominance. The folk or ethnic model, prevalent in Germany, defines belonging to the nation in terms of ethnicity, common descent, language and culture. This generally means exclusion of minorities from citizenship and from the community of the nation. The republican model defines the nation as a political community, based on a constitution, laws and citizenship, with the possibility of admitting newcomers to the community, providing they adhere to the political rules and are willing to adopt the national culture. Finally, the multicultural model embodies the same definition as the republican, but is distinguished by its willingness to simultaneously accept cultural difference and the formation of ethnic communities. Both of the latter two models are inclusive, although the first, predominantly French, is based on cultural acculturation while the second, generally American, relies on allegiance to the American ideal (Shue and others, 1983, p. 288). Thus, while in Europe the tension between hosts and immigrants has focused largely on the issue of religion, in the United States the use of different languages constitutes one of the most contested issues relating to migrant integration (Zolberg, 1995, p. 6).

Traditional conceptualizations of the nation-State have created two broad but distinct strategies of integration: assimilation and multiculturalism. A third and very different approach is that of non-integration or segregation. Assimilation may be defined as the process whereby foreigners adopt the characteristics and customs of the inhabitants of the host country and forfeit their own native way of life, eventually becoming part of the indigenous population (Lebon and Falchi, 1980, p. 548). The goal of assimilation is to eradicate cultural and linguistic differences, and leave behind what is referred to as "symbolic ethnicity" (Coleman, 1994, p. 43). One indicator of successful assimilation is a high level of intermarriage. Dating back to the French Revolution, the assimilationist approach essentially governs the republican-based community.

Another term, often used synonymously with assimilation, is acculturation. This denotes the process whereby members of an ethnic group acquire the habits, thought patterns and other attributes of the members of the larger society. In contrast to assimilation, acculturation tends to focus on cultural processes rather than structural relationships between different ethnic groups (Hammar and Lithman, 1987, p. 237). Both of these terms convey the impression of a one-way process that is essentially a cultural matter. The immigrant's self-definition, views of the family, society and the State progressively conform to and in the end identify with the views of the host society. In most of the developed countries that have received migrants of diverse religions and culture, assimilation currently is less prevalent. This

was inevitable, since culture encompasses not only shared values and shared language but also religious beliefs.

At the opposite end of the integration spectrum is the concept of multiculturalism. The pluralist or multicultural approach is relatively new, and is the norm in such societies as Australia, Canada, the United States and Sweden. Multiculturalism is based on the recognition that different groups in the community derive their identity and strength from different cultural traditions which should be recognized and permanently accommodated in law and administration (Coleman, 1994, p. 44).

A third strategy towards integration is its opposite, segregation. This strategy is generally adopted by countries that are unwilling to accept immigrants and their children as members of the nation. It is often accompanied by exclusionary immigration policies, especially the limitation of family reunion and refusal to grant secure residence status, and restrictive naturalization rules. Segregation generally refers to a system where some segments of the population are denied *de jure* or de facto access to the social, cultural, political and economic resources of the larger society (Hammar and Lithman, 1987, p. 236).

The diversity of solutions adopted in different countries depends on political philosophy, administrative structure and social policy traditions and complicates the measurement and assessment of integration policies. Often, this has led to the tendency to treat integration as a residual category of analysis in migration studies. In fact, integration policies can either be direct or indirect (Hammar and Lithman, 1987, p. 239). Special measures for integrating immigrants, such as language courses, housing and employment programmes, which do not apply to the non-immigrant population are *directly* aimed at the integration of immigrants. In contrast, a country's general public policy concerning economic, social, political and other programmes may be applied to all inhabitants of a country, but may have an *indirect* effect on the situation of immigrants. Some scholars have advocated the consideration of both special immigrant programmes and general public welfare policy in comparing basic approaches to integration (Hammar and Lithman, 1987, p. 240).

The substantive indicators of integration run the gamut from policies on naturalization and voting to those related to housing, schooling, health and employment. More clearly, migrant integration may be measured along three sets of fundamental rights, proposed by T. H. Marshall to be granted to citizens: civil, political and social (Marshall, 1964). Accordingly, rights are extended in stages to members of social entities that had previously been excluded from the polity, thus gradually transforming them into citizens. In the latter half of the twentieth century, human rights instruments have set a minimum standard by which citizens and foreigners alike could expect a number of these fundamental rights accorded to all individuals as members of the human race, "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Universal Declaration of Human Rights, 1948, article 2).

Civil rights generally concern those rights necessary for individual freedom, such as liberty of the person, freedom of speech, thought and faith, the right to own property, to conclude valid contracts, and to justice. Political rights refer to the right to participate in the exercise of political power and the decision-making process, such as voting in local and national elections. Finally, social rights involve the right to a minimum standard of living and to a share in the economic welfare and social security benefits. They also include the right to benefit from general educational and health provisions and to live the life of a civilized human being according to the standards prevailing in society. Some scholars have considered industrial rights to be another fundamental domain, particularly for migrant workers, whose major priority in migrating is to find, and maintain themselves in work (Layton-Henry, 1990, p. 12). Industrial rights include the right to belong to a trade union, to participate in elections for trade union offices, to participate in elections to companies' councils and the right to strike.

Although all of these privileges are normally reserved for citizens, integration necessarily includes efforts to redress inequalities and injustices on all levels. Increasingly, States seeking to incorporate their foreign populations have formulated policies similar to those they have created for their citizens. This is particularly

true for permanent residents. These foreign citizens with substantial rights and security have become so important that some commentators have proposed that their status should be recognized by a new term, "denizens" (Hammar, 1990). This term is meant to emphasize that the traditional sharp distinction between foreigner and citizen is eroding and that foreign citizens are gradually establishing close and secure relations with their country of residence (Layton-Henry, 1990, p. 12).

While it is true that integration efforts have increasingly bestowed on foreigners rights normally envisaged for citizens, these rights normally affect a small percentage of migrants. Large numbers of migrant workers, for example, who participate in the labour and housing markets of the host society are often excluded from political decision-making at both the local and national levels. Undocumented migrants, seasonal and temporary workers, asylum-seekers and refugees normally enjoy the fewest rights, if any at all. Often, the only rights these groups have are to seek entry, to be treated humanely, and to appeal against expulsion. In comparison, legally resident aliens or denizens are considered to have more security and legal protection, although they lack political rights such as the right to vote or to stand for public office. Moreover, while citizens are considered to have full rights, certain groups may be discriminated against legally or in practice. In some countries, even naturalized citizens may not hold certain political or security-sensitive offices. In the United States, for example, the President must be a native-born citizen, as must the Prime Minister in Sweden. Until 1993, Belgium had a distinction between *naturalisation ordinaire* and *grande naturalisation*, reserving voting rights to those who had passed the second admission procedure (Baubock, 1994, p. 222). Many citizens may continue to be regarded as "foreign" although they have acquired citizenship. In all States, there is some resentment towards foreigners as a group, whether they be illegals, as in the American case, or recent immigrants (many whom are entitled to citizenship as members of a colony or former colony), as in the European case. In a world of diminishing resources, resentment often focuses on the fact that foreigners are benefiting from the health and social security provisions that the modern welfare State bestows on its citizens.

While many countries have granted at least some basic rights to migrants, even in Western countries, where immigrant policies have been most developed, it is becoming apparent that these rights are not irreversible. As immigration has become a more salient public issue, the position of nearly all groups of migrants has been made more precarious. In the light of the debates in many developed countries concerning illegal migration, it is no longer necessarily the case that these migrants will be granted rights that derive from basic human rights instruments. In the United States for example, new welfare laws deeming permanent legal immigrants ineligible for social services and assistance in the United States have appeared to revitalize the distinctions between citizens and immigrants. Thus, a noteworthy trend concerning the direction of immigrant rights may be emerging in the 1990s.

Some caution must also be taken in regarding equal conditions for migrants and nationals as successful integration. A systematic implementation of the equality principle, in fact, may be counter-productive. In France, for example, the guideline for all measures designed to promote integration has been based on the principle of equality. The French experience with public housing in the 1960s revealed that the equality criterion can lead to marginalization and segregation. The policy of treating social housing primarily according to number of children and income led to an increased influx of traditionally large immigrant families. This, in turn, accelerated the exodus of nationals and resulted in segregation, accompanied by reduction in the quality of schooling and opportunities in the labour market (Werner, 1994, p.45).

On the other hand, special cultural or social policies for immigrants may also perpetuate distinctions and lead to the formation of ghettoes and separatist groups (Castles and Miller, 1993, p. 265). The United States Supreme Court in a 1954 landmark ruling of Brown *vs.* Board of Education, reinforced by the civil rights movement of the 1960s, established that separate could never be equal; that segregation hurt minorities no matter what the quality of particular segregated institutions.

Migrants face not only legal barriers to integration but subjective forms of discrimination. Often, migrant visibility coincides with ethnic or racial affiliations. The presence of South Koreans in Argentina, Ethiopians in Israel, Turks in Germany, or Maghrebians in France tends to lead to overestimated perceptions of numbers,

inciting public fears of cultural erosion. In some parts of the world, these fears have been manifested in nationalist movements, race riots, anti-immigrant violence, and a range of extra-parliamentary activities, such as the skinhead organizations found in Germany, Belgium, the Netherlands, the United Kingdom, Hungary and Poland (see *Report on the Findings of the Committee of Inquiry on Racism and Xenophobia*, The European Parliament, 1991). Indeed, immigration and the growing presence of foreigners have become salient issues in the political landscape of many industrialized nations. They figured prominently during the early 1990s in both national and local elections in Austria, France, Germany and Italy, as well as in California politics. Although immigration issues tend to be introduced to the political agenda by right-wing politicians, parties across the spectrum, including those in power, have reacted by demanding or implementing more stringent anti-immigrant policies.

B. National strategies towards integration

All sovereign States regulate the movement of people to and from their territory according to national immigration policies and/or treaties regulating movement. Furthermore, almost all States have nationality laws and are signatories of international instruments granting citizens rights. In contrast, very few States have well-articulated and tangible provisions for incorporating migrants into society. Integration strategies have more clearly, but not fully, developed in the industrialized countries, which are at a specific phase of the migration cycle.

There are several approaches to migrant integration. Countries of permanent migration—such as the United States, Canada, Australia and Sweden—which have pluralist traditions tend to be inclusionary, making it possible for immigrants to become citizens with full rights while maintaining distinct cultural identities. Others, namely the temporary labour countries of Europe, which did not intend to become immigration countries, generally grant citizenship and rights concomitant with cultural assimilation. Also, there are those countries which make it very difficult, if not impossible, for immigrants to become citizens with accompanied rights. Many countries in Western Asia espouse a dominant definition of the nation based on a community of birth and descent and are largely exclusionary in their approach to integration. Nevertheless, even in tribal-based communities, assimilation may occur naturally, as it has throughout Africa. Within each approach, however, there are great substantive differences.

A country's immigration tradition is of paramount consideration in determining whether a country or society can accept and integrate immigrants without social upheaval (Raskin, 1993, p. 10). Countries such as Canada, the United States and Australia, with long-standing immigration traditions, espouse a philosophy of "we are a nation of immigrants or children of immigrants" (Samuel, 1991, pp. 13 and 14). In contrast to temporary labour migration countries, in permanent migration countries, integration has been an initial premise of immigration and has therefore been encouraged.

The experiences of Western European countries underscore the differences in integration strategies when migration premises vary. In fact, the evolution of immigration in Western Europe captures what is often referred to as the "migratory chain", by which one can identify the emerging salience of integration issues. In many of these countries, the majority of migrants arrived as part of the demographic insufficiency and manpower shortages following the Second World War. Most receiving countries considered that they were dealing with labour migration of a temporary nature: the German term Gastarbeiter (guest worker) exemplifies this well. It was assumed that, after a certain period of working in the host country, migrants would naturally return to their countries of origin and be replaced by other migrant workers. This rationale, for the most part, led to a lack of organized social and economic accommodations for migrants.

With the economic crises of the early 1970s, most of the European countries began to shut their doors to large-scale migration. Forcible expulsion, which had been widely resorted to both in Europe and America during the Great Depression, became unacceptable because of human rights norms that had taken root in the receiving countries following the Second World War (Zolberg, 1995, p. 4). A number of countries offered incentives to encourage workers to return. Repatriation schemes

had limited success, and by the 1980s most of Europe's 15 million foreign residents had become permanent residents. By the time foreign recruitment was stopped, the foreign populations of many immigration countries were large; rather than returning to their country of origin after a few years, many migrant workers sent for members of their families. By this time, it became obvious that the nature of immigration had changed. The countries which had encouraged the temporary migration of workers in order to alleviate their manpower shortages had to assume the consequences of immigrant families settling permanently, even in the absence of integration incentives and social integration programmes.

The experiences of labour migration countries, therefore, underscore the nature of the "migratory cycle" and the interrelationship between immigration policy and immigrant policy: that is, migration is a process which, from the outset, contains within itself a certain sequence of events. First the migrant workers arrive, followed by members of the immigrants' families, and finally the wives and children of migrant workers enter the labour market (OECD, 1987, p. 44). Once family migration takes place and migrant communities become established, then access to social and political rights becomes more important (Layton-Henry, 1990, p. 15). To sum up, during the 1960s, few efforts were made at integrating migrants, who were generally kept apart from the native population; since the early 1970s, when Governments started to curb immigration, they began making efforts to improve the integration of foreigners. Whereas originally migrants were often housed in barracks-like conditions, restricted in their geographical and occupational mobility, and denied access to social welfare services, incremental measures for integration have been adopted in most of the receiving countries. As some observers have noted, this evolution was inevitable, since the issue of integration surfaced only after the workers had been present for a sufficient period of time to demonstrate that, in the absence of direct intervention, integration was not in fact occurring (Rist, 1979, p. 24). In Europe, integration policies thus most often came into play well after migrant arrival and, depending on the country's traditions, were generally geared towards specific target groups in the foreign population, such as ethnic minorities, women, young immigrants or second-generation immigrant children (OECD, 1995, p. 50).

In other parts of the world, temporary labour migration has been accompanied by more exclusionary integration strategies. In Western Asia, since the late 1960s, a regional labour market developed, naturally, as the oil-rich States embarked on their investment programmes. Many of these Arab countries relied on the maintenance of the *khafeel* system, a sponsorship system of recruitment, which operated mostly outside the sphere of conventional governmental controls. The origins of the foreign workforces reflected the political alliances of the period and the security concerns of the ruling groups in the countries of employment; in 1975, approximately 70 per cent of the total expatriate workforce of the Gulf Cooperation Council (GCC) States (Saudi Arabia, Oman, Kuwait, Bahrain, United Arab Emirates, Qatar) was from neighbouring Arab States (Birks and Sinclair, 1989; Abella, 1994, p. 167).

The *khafeel* system attracted foreign labour not only from the Arab countries, but also from Asia, where parallel systems developed for the efficient mobilization of needed workers. The progressive domination of this migration system by workers from Asian countries was in great part related to integration considerations, namely, lower social and economic costs. Under the guest worker policies of the Gulf States, Asian migrant workers have normally been recruited under one-year contracts with possibility of extension, during which time they are not allowed to shift from one employer to another. Only those earning high salaries are allowed to bring their families. In Saudi Arabia, migrant workers have had to secure special permission to travel internally. They have been prohibited from exercising their rights to join or organize unions, to strike, or to bargain collectively; and they could not leave their countries of employment without the written consent of their employers (Abella, 1994. p. 171).

In Africa, migration has been facilitated by the formation of economic unions such as the Economic Community of West African States (ECOWAS) (Adepoju, 1985). Integration has been an inherent result of the cultural affinity of communities split by artificial national boundaries. That is, migrants have been easily assimilated, because they often belong to the same tribes or ethnic groups as the population of the host country, speak the same language, and share common customs. Examples abound: the Ewes in Togo and Ghana; the Yoruba in south-west Nigeria and Benin; the Fulani

across the northern belt of virtually all West African countries; the Banyarwanda in Rwanda, Uganda and the Democratic Republic of the Congo; the Makonde in Mozambique and the United Republic of Tanzania; the Kakwa in Uganda, the Sudan and the Democratic Republic of the Congo; the Mende-speaking people, and the Vasi and Kroos in Liberia and Sierra Leone (Adepoju, 1991, p. 47). In West Africa, for example, the Fulani live in seven countries in the subregion: Nigeria, Mali, the Gambia, Côte d'Ivoire, Liberia, Guinea and Guinea-Bissau. Similarly, the Ashanti live in Ghana and Côte d'Ivoire, the Tuareg in the Niger and Mali; the Hausa in Nigeria and the Niger; and the Wolof in Senegal, the Gambia and Mauritania. Clearly, the closely interconnected distribution of ethnic groups within the region facilitates both migration and integration in the host country (Chukwura, 1984).

C. Integration and phases of immigration

The starting point of integration and immigrant rights is immigration regulation or policy. Since States have the sovereign right to regulate the movement of people to their territory, all prospective immigrants must pass the first restriction: that of admission. In this way, most States not only restrict the numbers of yearly immigrants, but also control the composition of immigration flows. Despite different immigration histories, a feature common to most developed countries is that immigration control takes place, in the first instance, at the embassies and consulates in the sending countries (Hammar and Lithman, 1987, p. 240). This means that, before leaving the country of origin, a candidate qualified for an immigrant visa receives immigrant status guaranteeing either permanent residence or free access to the labour market. In this way, the fundamental basis for future integration is laid, and even if few direct integration services are provided after arrival, this acknowledgement of immigrant status may be the most important promoter of integration that can be offered (Hammar and Lithman, 1987, p. 240).

Immigration regulation may foster a considerable degree of legal insecurity. Integration is facilitated when immigrants are given the right to remain permanently in a country, particularly at an early stage. In contrast, integration is hindered where foreigners feel that their status is insecure, with risks of permits not being extended and of possible deportation. Those allowed to enter for temporary work are normally subject to specific conditions restricting them to particular occupations and areas. They often have to report to the police and are not allowed to bring their wives and children. In general, temporary migrants have an insecure status, even when they comply with regulations. Breaking the conditions of entry by doing forbidden work, committing a criminal act or overstaying the period of residence can result in deportation.

1. Political rights

Migrants granted permanent residence have a more secure and freer status than other types of migrants and are apt to gain many civil, social and industrial rights enjoyed by citizens. In contrast to citizens, however, permanent foreign residents are generally deprived of political rights, especially voting rights in local and national elections. Often, they are also barred from being candidates in local and national elections and from belonging to political parties. None of the Western European countries allows non-citizens to vote in national elections, except the United Kingdom, where citizens of the Commonwealth and Ireland have a special status. New Zealand is another country where migrants are allowed to vote in national parliamentary elections (Hammar, 1990).

Since the 1970s, however, the extension of political rights, especially voting rights in local elections, has been on the agenda. Local voting rights were extended to non-citizens in Ireland in 1973 after six months' residence (Soysal, 1994, p. 127). In 1977, the Parliamentary Assembly of the Council of Europe urged the Committee of Ministers to consider voting rights for aliens at the level of local authorities (Hammar, 1990, p. 78). Denmark, the Netherlands, Norway, Sweden and two Swiss cantons (Neuchâtel and Jura) have granted resident foreigners voting rights in some local and regional elections. It has been argued that, in some instances (e.g., the Swedish case), local elections are more important than national elections to newly arrived immigrants, providing them an opportunity to voice their demands in regard to such issues as child care, schools and housing (Hammar, 1993, p. 253). Indeed, there is evidence in the Swedish case that an increasing number of foreign residents have become members of political parties and been elected to political positions and that local political parties have taken more interest in the

conditions of those living in their municipalities (Hammar, 1993, p. 253).

2. *Industrial rights*

The main avenues of political participation for non-citizens are indirect ones: foreigners' advisory committees at the national and local level, and unions and work councils in the workplace. Although participation in such groups is often considered an industrial right, in many countries, notably Germany and Sweden, where trade unions and work councils constitute important channels for political participation, it is difficult to differentiate between industrial and political rights (Soysal, 1994, p. 129). The migration of labour has made the role of trade unions particularly significant. Indeed, trade unions have been considered the first "welfare agency" for migrants and their first "political organization", defending their basic social and economic rights (Vranken, 1990, p. 47).

The developments in this area underscore the changing perspectives on political freedoms for migrants. Until shortly after the end of the Second World War, the tradition in most countries was to forbid foreign citizens to take part in political activity. As most States were concerned about external interference organized by other States, this rationale was based on the protection of national interest, public order and security (Layton-Henry, 1990, p. 78). The French law of 9 October 1981 replaced a law-decree of 1939, requiring that foreign associations in France obtain an authorization from the Minister of the Interior. The new law made foreign associations equal to all other associations, subject only to a notification to the Minister. Prior to May 1981 in France, foreign activists in trade unions could be expelled on the grounds that they had not "respected the political neutrality to which any foreigner residing on French territory is bound" (Wihtol de Wenden, 1992; Layton-Henry, 1990, p. 79). The basis for this was the general principle, still valid, that foreign citizens could be deported if they threatened the public order. Since "public order" is not precisely defined, interpretations have been contingent on different Governments and administrative agencies, leaving foreigners in somewhat precarious and uncertain situations.

Trade unions have varied in their approaches to migrant participation. Some unions exclude any organization of workers along national or ethnic lines because of ideological beliefs of internationalism, and the conviction that autonomous organizations would only stimulate the division of foreign and indigenous workers. Others accept the specificity of the migrant workers' position, and may even promote the establishment of their own associations within the trade union. In France, the General Confederation of Labour (Confédération générale du travail) opposes any autonomous migrant worker organization outside the regular factory and local union structure, although it has established language groups at the factory and departmental levels, and a National Immigrant Manpower Committee at the national level (Vranken, 1990, p. 64). The two major unions of the Schweizerische Gewerkschaftsbund (SGB), the Swiss Steel and Clockworkers' Union and the Construction Workers' Union, have foreign language groups to encourage migrant worker membership. The Construction Workers' Union, whose membership is 75 per cent foreign, has helped to change union by-laws to facilitate the unrestricted election of migrant workers to leading positions. The Swedish Confederation of Trade Unions (LO) has established a special consultative structure involving a central immigrant council in its administration, and immigrant district committees in about half of the 232 districts in which migrant workers constitute the majority (Vranken, 1990, p. 64). Similarly, the German Confederation of Trade Unions (DGB) established a special section for migrant workers on the level of its managing committee. Migrant shop stewards and foreign language groups have the opportunity to organize meetings parallel to regularly scheduled ones. DGB also offers counselling centres which serve as forums for the articulation of foreign workers' problems both with respect to DGB and public authorities.

3. *Civil rights*

Migrants have acquired the most extensive political freedoms in the domain of civil rights. Indeed, a prerequisite for political participation is legal protection of life and personal freedom, as well as protection against inhuman and degrading treatment or punishment (Hammar, 1993, p. 252). According to many scholars, civil rights, particularly the right to justice, are crucial, as they enable individuals to defend and assert themselves on terms of equality with others by due process of law (Marshall, 1964; Layton-Henry, 1990, p. 11;

Soysal, 1994, p. 130). In general, host States have found it much more difficult to deny civil and social rights, such as individual liberties and a minimum standard of living, to new groups of people, even if they do not belong to the formal national polity. This is a contrast to the right to vote, which has more to do with the national collectivity, still carries a symbolic meaning in terms of national sovereignty, and is largely reserved for nationals (Soysal, 1994, p. 131).

Civil rights are generally granted on equal footing to citizens and non-citizens alike. This has been reinforced by international human rights standards and domestic constitutional principles (as in Canada, the Netherlands and Sweden). Article 1 of the Netherlands Constitution declares that fundamental rights do differ according to nationality; foreigners have an equal claim to basic constitutional rights. The German Basic Law (article 3, paragraph 3) and the Belgian Constitution (article 6) define most rights and freedoms as equal for everyone, citizens and foreigners alike (Hammar, 1990). In France, the Constitutional Court ruled that article 2 providing that France "is an indivisible, secular, democratic and social republic ... ensuring equality before the law to all citizens without distinction as to race or religion", was applicable to foreigners (Constitutional Court, decision of 22 January 1990: C.C. 89.269). On the basis of the Declaration of the Rights of Man and the Citizen of 1789, and the Preamble of the 1946 Constitution, it was concluded that the constitutional principle of equality was based primarily on human rights and not on the rights of citizens (Zegers de Beijl, 1995, p. 26). In 1995, a federal court in the United States also reinforced the Constitution's First Amendment by ruling that freedom of speech is applicable for all people, foreigners and citizens alike (*The New York Times*, 1995c, p. 16).

The expansion of civil rights for migrants has coincided with the development of human rights instruments and the trend towards international standardization of the rights and status of non-citizens (Soysal, 1994, p. 131). In most European countries, although not in all countries of the world, foreign citizens have the right to liberty and security of the person. Resident foreign citizens enjoy freedom of speech, expression, the press, assembly and demonstration to the same extent as citizens. They are equal before the courts and enjoy the minimum guarantees given every citizen charged with a criminal offence. All migrants, including illegal workers, are granted the right to appeal deportation, to be treated humanely and, in the United States, to receive education and some social services. Furthermore, host countries, such as Belgium, the Netherlands, France, Spain, Italy and the United States, tend to regularize the status of illegal aliens periodically through official amnesties, rather than expel them. Some scholars argue that regularization of illegal aliens manifests an implicit recognition of claims to membership, legal status notwithstanding (Carens, 1989). Similar arguments have been made with regard to asylum applicants granted refugee status in Switzerland in 1988, and to those in other European countries whose requests for asylum were declined, but who were nevertheless allowed to stay (Soysal, 1994, p. 204).

Nonetheless, civil rights in some instances have been restricted. Short-term residence, work permits and discretionary decisions about renewal of permits serve as major hindrances to the political mobilization of foreign residents in host countries. Non-citizens may be prohibited from moving within a country's territory and from one employer or job to another, although freedom of movement is otherwise considered a fundamental right of everyone in the country. Moreover, decisions concerning residence status are often made by administrative authorities who have considerable discretion in interpreting such regulations. In most countries, the police are empowered to arrest foreign citizens and to keep them in custody for a short time in order to check their identity and permits, or perhaps to deport them or apply for their expulsion (Hammar, 1993, p. 252). Migrants' civil rights may also be constrained by "national security" considerations, especially in national emergencies when countries are at war or under threat of war (Hammar, 1993, p. 252). For the most part, exceptions to civil rights are caused by the need for an immigration control system, and they do not usually affect foreign citizens who have long-term or permanent residence permits and can easily prove their identity.

4. Social rights

Whereas civil rights are often equated to the rights of man, based on an innate idea of moral equality, and stemming from prerogatives that concern what is common to all human beings, social rights are more subject to individual nation-States (Granaglia, 1993, p. 234). Social rights, such as access to government

programmes—e.g., education in public schools, health benefits, welfare, and social insurance schemes—are quite extensive in liberal democratic countries. Inherently, they vary cross-nationally. In the Scandinavian countries, for example, social rights are conceived as equal distribution of services for all; in most other countries of Continental Europe, preferences concentrate the redistribution of resources to particular subgroups of the population (Granaglia, 1993, p. 233).

Foreigners' legal status and physical presence are even more important than formal citizenship in this domain, and thus legal migrants have access to a set of social services almost identical to those available to citizens (Soysal, 1994, p. 124). In most Western European countries, for example, migrants with temporary permits often have been accorded social rights similar to those granted to nationals. Asylum-seekers are usually entitled to free housing, health benefits, education and a small cash payment while their application is pending, before achieving resident status. In many countries, after their refugee status is approved, migrants gain welfare and educational benefits equal to those of nationals. In Switzerland, seasonal workers can work and receive unemployment compensation (Hoffmann-Nowotny, 1985). In the United States, public education and certain social welfare benefits have been traditionally available to all non-citizens, irrespective of their legal status. American medical programmes for the elderly and disabled similarly do not differentiate patients with regard to their immigration status. A 1985 United States federal law requires general hospitals to treat all critically ill and emergency patients, including non-citizens, thus providing illegal migrants with limited access to health care (Schuck, 1987). These privileges, however, have contributed to a recently growing anti-illegal migration sentiment among some Americans. With a new immigration bill that authorizes states to limit social services for non-citizens, the case of the United States in 1996 emphasizes the reversible nature of immigrant rights.

Education has been a crucial dimension of social integration for migrants, with particular ramifications for second-generation migrants. Both the level of schooling achieved and the diplomas obtained are determining factors of migrants' success in the labour market and in their integration into the host society (OECD, 1995, p. 47). In most OECD countries, support and orientation services are available for foreign pupils, particularly for new arrivals who are not immediately able to enter mainstream education. These include introductory classes, remedial classes and extra-curricular activities through associations. France has identified *zones d'éducation prioritaires*, or priority education zones, which target areas with high concentrations of immigrants and are geared to address specific problems of migrants, improve resources, and create better teaching conditions (e.g., through additional funds, tutoring and smaller classes) (OECD, 1995, p. 50). Education for the host population is also relevant to successful integration. In some countries, such as the United States, proposals for multicultural curricula are controversial. Many countries try to find a middle ground between the unifying effect of a common education system and ensuring that all pupils can understand and respect a wider variety of cultures and differences (Coleman, 1994, p. 57).

Language skills are also central facets of integration, since they affect all aspects of immigrants' lives. While instruction generally takes place in the language of the host country, the current debate concerns the issue of teaching the language of the country of origin. Proposals to teach immigrants' mother tongues are based on the premise that this would not only generate self-respect, but also facilitate host country language training (Coleman, 1994, p. 57). In countries such as Germany, Luxembourg and the Netherlands, immigrant children can receive instruction in their native language either in school or in classes given outside the school system. In contrast, France permits native language instruction only through private classes or within the general framework of foreign language instruction at the secondary level (OECD, 1995, p. 50). In the United States in 1996, some proposals to make English the only official language were used by some to eliminate bilingual education programmes.

Clearly, national conceptions of community affect tolerance of differences. The French "headscarves case" in 1990 exemplified the clash between French assumptions that immigrants should assimilate to French norms, and an Islamic community that wished to demonstrate its right to wear outward signs of religious identity. Whereas in France, Islamic girls were banned from wearing headscarves to school, in the United Kingdom, school governors changed the rules requiring the wearing

of uniforms to accommodate the needs of Muslims (Coleman, 1994, p. 57).

Within the realm of social integration, emphasis has also been placed on urban policy and access to housing. In general, non-citizens may acquire property on an equal footing with citizens; in Canada, Denmark, Switzerland and Sweden, a special permit is needed to buy real estate unless the person has resided in the country for a certain period of time.

While not strictly speaking part of integration policy, urban policy affects neighbourhoods with high concentrations of immigrants. Common patterns of migrant concentration of settlement and of occupation are found in many countries. Most immigrants have settled in large urban areas where there was originally a demand for relatively unskilled, low-wage labour and lack of technical qualifications (Coleman, 1994, p. 62). A number of European countries have attempted to enforce a wider distribution of immigrants to prevent the development of undesirable concentrations. Sweden has implemented dispersal policies to accommodate its refugee influx. Because of the rapid growth of asylum-seekers, municipalities were asked to limit refugees to 3 per 1,000 population (Coleman, 1994, p. 63). France and Germany have also instituted notions of "threshold" and "boundary", defining numerical limits beyond which integration is considered difficult.

Certain social benefits are contingent on the migrant's specific status (i.e., temporary or permanent residency), migrant group, time requirements and national factors. Differences in welfare provisions may also depend on the nation of origin, and on bilateral treaties between sending and host countries. Germany, for instance, has a preferential treatment agreement with Turkey, under which being unemployed or receiving welfare does not jeopardize Turkish migrants' resident status in Germany. Moreover, social and economic integration policy in Germany is geared towards certain social groups in the foreign population, such as literacy and German language classes for women, and language and training courses for workers. Time requirements may also be important to dependants of migrants, for example. In countries such as the United States, they may be excluded from welfare benefits until they satisfy certain residency requirements. The substance of social welfare also reflects variations in national social systems. These differences make the availability of social provisions to migrants unequal across host countries.

5. Economic rights

Economic rights are those that are the most contingent upon immigration laws. A person's specific legal status as a non-citizen is critical in determining the details of work or residence permits and in defining the principal constraints on the migrants' exercise of economic rights. Migrant status and waiting periods are often designed to control the inflow of foreign labour. They determine access to labour markets and the scope of non-citizens' engagement in professions and trades. In Denmark, Switzerland and the United Kingdom, dependants joining their families may not be allowed to work until after they have been in the country for some length of time. There may also be some restrictions on migrant involvement in certain sectors. In Sweden, citizenship is required in order to establish a company with shareholders (Soysal, 1994, p. 126). Civil service employment and professions that involve public authority, such as that of judge or lawyer, are often not open to non-citizens.

Unemployment is one of the most visible indicators of lagging migrant integration in the economic sphere. Studies have shown that unemployment rates for migrants are considerably higher than those for nationals (Böhning and Zegers de Beijl, 1995, p. 4; Werner, 1994, p. 8). Among the contributing factors are migrant overrepresentation in the more vulnerable unskilled and semi-skilled occupations (especially in manufacturing), limited access to further training and retraining, limited language skills and discrimination. In addition, in some countries, a high proportion of immigrants, especially illegal immigrants, are employed or self-employed (e.g., as peddlers) in the "informal" sector of the economy, thereby evading record keeping, taxes and national insurance contributions, and also regulations for their own and others' safety (Coleman, 1994, p. 55).

6. Other rights and modes of integration

Despite expansive rights for migrants which serve to narrow the gap between citizens and foreigners in many aspects of life, the final stage in the acquisition of rights by a new member of society is citizenship. For many migrants, naturalization is the most critical factor for

integration. With few exceptions, access to citizenship provides a stable legal status and guarantees full political, civil, social and industrial rights. The procedures for the acquisition of nationality vary from country to country, and they reflect national legal traditions and attitudes to foreigners. Some countries, such as Sweden, regard nationality as a step towards integration, while others, such as Germany and Switzerland, consider it a reward for the successful completion of integration and a sign of commitment to the new country. In Belgium, the Netherlands and Germany, reforms have made it easier for children and grandchildren of immigrants to become naturalized. In France, however, the reform of the nationality code in July 1993 made acquisition somewhat more restrictive. As noted elsewhere in this study, the prerequisites for naturalization vary according to national conceptions of community and immigration. In multicultural communities such as the United States, for example, political allegiance and basic language abilities are part of the naturalization process. In communities where membership is defined by descent, such as Germany, naturalization is much more difficult.

Policies related to family reunification also substantially impact migrant integration. In fact, it has been suggested that family reunification issues blur the lines between immigration regulation (numbers) and immigrant policies (integration) (Layton-Henry, 1992). Family immigration involves not only increasing the number of foreigners permitted to reside in a country, but the treatment of foreigners upon arrival.

Policies on family reunification are inextricably linked to both immigration and integration rationales. By restricting family migration, South Africa, for example, ensures that migrants can neither settle permanently nor integrate into the host community (Gordon, 1981; Adepoju, 1991, p. 50). Even when family reunification provisions exist, integration may be constrained by severe restrictions with regard to both residence and work permits. Policies may serve to make the spouse migrating later inordinately dependent upon the first migrant. This means that, for example, the dissolution of a marriage may lead to the loss of permits on the part of the dependant (Hammar and Lithman, 1987, p. 246). This has often been tied to more general integration problems faced by women.

Issues of family reunification are crucial for integration since, once it is permitted, access to social and political rights becomes much more important (Layton-Henry, 1990, p. 15). The presence of wives and children makes access to decent accommodation and housing, health care, social security and other welfare benefits a high priority. Migrant communities may seek more substantial places of worship, and access to educational institutions, and they may want to ensure that their children can be taught the customs and traditions of their native society. They may also require services, such as health care, to be more culturally sensitive.

Increasingly, immigrant communities have established their own associations and campaigns, often deriving support from churches, trade unions and political parties. Some organizations, such as the Islamic Foundation, the Union of Muslim Organisations and the Muslim Institute in the United Kingdom, receive substantial financial support from abroad, namely, Saudi Arabia and the Libyan Arab Jamahiriya (Coleman, 1994, p. 69). In countries such as Belgium, which until recently prohibited autonomous associations, migrants have belonged to "mixed associations" such as the Flemish Co-ordinating Committee on Migration or the Flemish High Council, with an equal number of migrant representatives and Belgians (Layton-Henry, 1990, p. 105). In contrast, in Sweden and the Netherlands, the formation of immigrant associations has been encouraged by State funding at both the local and national levels, in addition to consultation and representation. In Sweden, there are three multinational federations: the Immigrant Cultural Centre, the Immigrant National Federation and the International Federation of Immigrant Women. There are also two alliances of national federations: the Co-operating Immigrant Federation in Sweden; and the East European alliance, which is dominated by refugees from the Baltic States. In the Netherlands there are a large number of national federations, including the Federations of Surinamese Hindu organizations, Afro-Caribbean organizations, Antillean organizations and Democratic Mediterranean organizations. The Turks have three national federations covering sports organizations, sociocultural organizations and Muslim organizations. The Moluccans are also a very well-organised group, and they have an Advisory Council for Moluccans. Although immigrant associatons have been founded in order to preserve the ethnic

identity and culture of their members, they play a role contributing to their security and assisting settlement in the host society (Layton-Henry, 1990, p. 94).

Despite a growing convergence between migrant and citizen rights, increasing rates of naturalization, and the evolutionary role of foreigners to actors in host communities, integration may be substantially hindered by discrimination, racism and prejudice. In a rapidly changing world, growing insecurity has sometimes resulted in the scapegoating of foreigners. Mass immigration tends to raise fundamental questions about the future character of host societies. In addition, one cannot assume that integration is necessarily a unilinear process; that once migrants have gained legal rights, or have become naturalized citizens, their status is secure. In the United States, Proposition 187 reflected a possibility of reversal in basic rights guaranteed to all residents, including illegal migrants. This 1994 Californian initiative aimed to bar illegal aliens from the state's public education system (from kindergarten through university), non-emergency health care, cash assistance, and other services (*Migration News*, 1994, p. 1).

As a means of tackling discrimination, which may be both direct and indirect, many States have not only made it illegal, but have provided legal machinery by which individuals can pursue complaints. As noted earlier, many national constitutions prohibit discrimination. In the United Kingdom, where no written constitution exists, the Race Relations Act of 1976 was created to prohibit discrimination in employment, training and education, housing and the provision of goods, facilities, services and planning functions. Although the Act forms part of the civil code, provisions dealing with incitement to racial hatred are considered a criminal offence. Countries have also relied on the penal code and on civil law provisions to outlaw discrimination as both a criminal and civil offence. Since 1972, France has included legislative provisions in the penal code that forbid discrimination in housing, employment and the furnishing of goods and services. It also prohibits racist defamation and insults, incitement to racial hatred and computer storage of individual data concerning racial, ethnic or religious origins (Zegers de Beijl, 1995, p. 26). In Germany, prohibitions of employment-related discrimination are provided for in civil law. Article 75 of the Works' Constitution Act obliges employers and works' councils to ensure that there is no discrimination in individual companies against employees on the grounds of race, creed, origin or nationality. Often, however, recourse to civil remedies is hampered by the difficulty of proving discrimination (i.e., intent) and the financial risk involved in the legal procedure (Zegers de Beijl, 1995, p. 27).

To combat discrimination, other countries have enacted special measures specifically geared to foreigners. Belgium has instituted both legislative provisions against discrimination and special measures to promote equality of opportunity for migrants. In 1981, the Act to Suppress Racism and Xenophobia was adopted, making incitement to discrimination and discriminatory acts punishable offences where such behaviour was inspired by motives covering race, colour, descent or national or ethnic origin (article 1). Amendments were introduced in 1994 to prohibit all forms of discrimination in access to jobs and during employment. The United Kingdom, Canada and the Netherlands have also developed special redress mechanisms with a view to assisting victims of discrimination in claiming their rights. The 1976 Race Relations Act in the United Kingdom made it possible for individual victims to access civil courts and industrial tribunals directly in order to seek legal remedies against unlawful discrimination (Zegers de Beijl, 1995, p. 30). The Act also created the Commission for Racial Equality, an independent body which assists complainants in bringing their cases before a court or industrial tribunal, in employment-related complaints, or gives advice and refers complainants to specialized lawyers in other cases. The Canadians explicitly allow for positive action and reverse discrimination in the Charter of Rights and Freedoms of the Constitution Act of 1982. While section 15.1 proclaims that "everyone is equal before the law", according to section 15.2, this precludes "any law, programme, or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability". Despite legal prohibitions against discrimination, it is often argued that they are not sufficient in securing equal opportunities for migrants. Improving the qualifications and conditions of immigrants so that they can participate equally is also necessary to diminish the disadvantaged status of migrants.

Clearly, these issues in the context of increasing global migration have compelled most countries to address migrant integration directly. Indeed, in most of the developed countries, this has been marked by an institutionalization of integration issues, or the emergence of institutional arrangements to address migrants' concerns specifically. In Luxembourg, for example, legislation passed on 17 July 1993 introduced an active integration policy for foreigners, accompanied by the creation of an inter-ministerial body to coordinate policies for immigrants and to improve the consultation process, such as support for associations and consultative committees at the communal level (OECD, 1995, p. 50). Canada, which has constitutionally defined itself as a multicultural country (Constitution Act, Charter of Rights and Freedoms, section 27), has created a number of programmes that work towards the long-term integration of immigrants and ethnic minorities through the Department of Multiculturalism and Citizenship (Raskin, 1993, p. 12). The new OECD immigration countries have established new government agencies to promote the integration of foreigners. Spain, for example, created the Interministerial Commission for Foreigners, the Directorate for Migration, the Office of Foreigners and the Office for Refugees and Asylum-Seekers. In Greece, a National Foundation for the Reception and Settlement of Repatriated Greeks was set up in 1990, to aid immigrants of Greek ethnic origin establish themselves in Greece (primarily from Albania and the Pontian region of the former Soviet Union). In October 1993, the Italian Ministry of Social Affairs created a commission to evaluate the provisions required for new legislation on the living and residence conditions of foreigners that would be comparable with Italian conditions and European standards.

D. International strategies towards integration

Since the Second World War, international standards have been developed to safeguard the human and civil rights of minorities and migrant workers. These instruments have aimed at both specific types of migrants (e.g., workers) and more general individuals. As a minimum, international instruments establish humanitarian standards for equal and undiscriminatory treatment of all individuals, regardless of their membership status in a nation-State.

In the Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly on 10 December 1948 (resolution 217 (III)), a number of fundamental rights are accorded to all individuals as members of the human race, regardless of national origin or present citizenship. According to article 2, "Everyone is entitled to all the rights and freedoms set forth ... without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". In fact, the absence of the word "citizen" in the Universal Declaration leaves the distinctions between aliens' and citizens' rights vague, with considerable latitude for interpretation.

The International Covenant on Civil and Political Rights, adopted by the General Assembly in 1966 (resolution 2200 A (XXI)) does mention the word "citizen", but also guarantees certain basic rights to non-citizens. In keeping with the tradition of civil rights, this Covenant guarantees that: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. ... the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (article 26). In the spirit of integration, article 27 further guarantees minorities "the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language". In this way, all foreigners are granted the basic universal civil rights guaranteed to citizens.

Similar measures to protect civil liberties have been taken on a regional level. The Council of Europe adopted the European Convention for the Protection of Human Rights and Fundamental Freedoms in 1953. This Convention aims to protect individuals and groups against violations of their fundamental rights by the Contracting States. It establishes the right to liberty and security of person (article 5); the right to due process of the law (article 6); the right to freedom of thought and expression (articles 9 and 10); and the right to peaceful assembly, association, and to form and join trade unions (article 11). The Convention also provides migrants with legal protection on the basis of human rights, conferring on them a right to submit their complaints to the

European Commission of Human Rights. According to the European Convention, individual citizens of the Council of Europe countries, as well as non-governmental organizations or groups, can also appeal directly to the European Court of Human Rights, whose decisions are binding on member States (Soysal, 1994, p.150). Furthermore, article 4 of Protocol No. 4 prohibits the collective expulsion of aliens, essentially requiring States to carry out a reasonable and objective examination of cases on an individual basis. Nonetheless, not all States have ratified this Protocol, adopted in 1968, and there have been few cases dealing with these provisions (Churches Commission for Migrants in Europe, 1993, p. 7).

The European Social Charter, signed in 1961, protects the social and economic rights of all persons. The Preamble to the Charter insists that the enjoyment of social rights must be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin. Its provisions include the right to just conditions of work and safe and healthy working conditions; to organize and bargain collectively (including the right to strike); to vocational guidance, vocational training, protection of health, social security, and social and medical assistance; and to benefit from social welfare services. The right of migrant workers and their families to protection and assistance is specifically addressed in article 19.

In 1993, the Parliamentary Assembly of the Council of Europe further addressed integration by providing some policy solutions. Recommendation 1206 of 4 February suggested that policies should include a review of job training, combating illegal employment, promoting job creation at low skill levels, and ensuring equality of opportunity. It recommended positive action such as targets for migrant recruitment, encouraging members of immigrant communities to become teachers, and promoting adult education (EUROSTAT, 1994, p.11).

Part of defending the civil rights of minorities and promoting equal opportunity has been responding to racism. Instruments specifically dealing with discrimination include the 1963 United Nations Declaration on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 1904 (XVIII)), the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (General Assembly resolution 2106 A (XX)), and the 1979 Convention on the Elimination of All Forms of Discrimination against Women (General Assembly resolution 34/180). The UNESCO Declaration on Race and Racial Prejudice (1978) extends provisions for the cultural rights of migrants, such as the right to be different, to have one's cultural values respected, and to receive instruction in one's mother tongue (Soysal, 1994, p. 147). The European Community also adopted the Declaration of Human Rights in 1977 and the Declaration against Racism and Xenophobia in 1986. In the face of growing extreme-right movements in Europe, the European Parliament decided at the end of 1989 to establish the Committee of Inquiry on Racism and Xenophobia. Its report, published in 1991, makes extensive recommendations regarding the fight against racism and discrimination, and the promotion of migrants' rights. Most important, it represents a recognition that the fight against racism and xenophobia should be seen as part of the general question of protecting basic civil rights, which is one of the main aspects of European regional integration (European Parliament, 1991).

In addition to these codes of human rights, there have also been international instruments specifically aimed at migrants. Some of these were developed in the early 1950s, at the onset of large-scale labour migration. Over time, their span has expanded to include the rights to choice and security of employment, working conditions, vocational training and guidance, trade union and collective bargaining rights, social security, family reunification, education of migrant children and associative and participatory rights, as well as individual and collective freedoms (Soysal, 1994, p. 146). For the most part, they all aim to set standards for the "equitable" treatment of migrants and the elimination of disparities between nationals and migrants of different categories.

The International Labour Organization has especially worked to promote equality of opportunity and treatment of migrant workers. The Treaty of Versailles (1919), which gave rise to ILO, provided that "the standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein" (Zegers de Beijl, 1995, p. 2). Mentioned in the Preamble to its Constitution, the protection of migrant workers' interests was included among the priority aims of the organization. This principle has been put into

effect through a number of conventions and recommendations. The four main standards designed to protect migrant workers are the Migration for Employment Convention (Revised), 1949 (No. 97); the Equality of Treatment (Social Security) Convention, 1962 (No. 118); the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); and the Maintenance of Social Security Rights Convention, 1982 (No. 157). The key provisions of these conventions and their related recommendations aim at ensuring non-discrimination or equality of opportunity and treatment between national and non-national workers. According to the Convention of 1949, the Contracting States agree to treat migrant workers "without discrimination in respect of nationality, race, religion, or sex" regarding employment, conditions of work, trade union membership, collective bargaining, and accommodation. The 1975 Convention goes further, promoting the social and cultural rights of migrant workers and their families, in addition to provisions strictly concerned with labour. It explicitly states that the participating countries will take all steps to assist migrant workers and their families "to maintain their own culture" and to provide for their children "to learn their own mother tongue". Whereas Convention No. 97 essentially imposes constraints on countries in terms of statutory discrimination on grounds of nationality, race, religion or sex (article 6), Convention No. 143 (part II) encourages them to pursue national policies to promote equality of opportunity and treatment (Böhning, 1988).

Although ILO developed international standards for the protection of migrant workers and their families, the United Nations General Assembly decided that an international convention should be drafted, since protection of migrant workers involved action beyond the specialized field of competence of any one agency. Hence, a working group open to all Member States was established under General Assembly resolution 34/172 of 17 December 1979 to elaborate an international convention in this field. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families was adopted in 1990 (General Assembly resolution 45/158). The Convention guarantees minimum rights to every migrant, including women and undocumented aliens and their families, with additional rights provided to those who are in a regular situation (Hune, 1991, p. 808). Although this United Nations Convention stipulated that all migrant workers were entitled to treatment no less favourable than that of national workers in respect of conditions of work and terms of employment, its significance is still limited by the small number of countries that have signed it.

In Europe, the drive towards a regional common market has also made some major contributions to the integration of migrant workers. Since issuing its Action Programme for Migrant Workers and Their Families in 1976, the European Economic Community has focused on enhancing the free movement of EEC workers and their families and on finding ways of gradually eliminating unjustifiable limitations on their rights, as well as on improving the position of workers and their families. The European Union essentially guarantees citizens of member States the right to free movement, gainful employment, and residence within the boundaries of the Community. It prohibits discrimination based on nationality among workers of the member States with regard to employment, social security, trade union rights, living and working conditions, education and vocational training. One of the most fundamental achievements in establishing equal conditions for workers of all member countries has been the mutual recognition of training and qualifications by member States. Under the principle of mutual recognition, individuals holding the equivalent qualification from one member State are able to practise in the field of their expertise in another member State under the same conditions as individuals holding the relevant qualification of the latter State. In 1988, the Council of the European Communities adopted a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration (directive No. 89/48/EEC).

Furthermore, the Council of Europe, through its Steering Committee on Intra-European Migration (COMG), has sponsored projects dealing with language and vocational training, equivalency of professional and technical qualifications, occupational safety, equal treatment, Europa Centres and model work contracts. It has also formulated projects dealing with the problems of family reunion, low-cost housing, education of migrant workers' children, and social services for migrant workers. In 1977, the Council sponsored the European Convention on the Legal Status of Migrant Workers.

International instruments also address specific types of migrants other than migrant workers. Political refugees, for example, are protected by the Geneva Convention on the Legal Status of Refugees (1951). Accordingly, persons shall not be forced to return to their country of origin if they have a "well-founded fear of persecution" for reasons of race, religion, nationality, membership of a particular social group or political opinion. The Convention further guarantees treatment in the country of asylum equal with that of nationals in regard to religious freedom, acquisition of property, rights of association, and access to courts and public education. The 1989 Convention on the Rights of the Child grants migrant children the right to the same education as nationals, including those in irregular situations (articles 17, 28, 29). Article 31 further ensures respect for cultural identity.

The European Union has also extended its integration efforts beyond migrant workers. It has gone further to protect the rights of "third-country" nationals (non-EU nationals with permission to stay in one EU country), and to focus on the problems of second-generation migrants. EU has encouraged participation of migrants in all aspects of life. The Migrants Forum was created in 1991 as a result of a recommendation of the European Parliament's first Committee of Inquiry on Racism and Xenophobia Report (1986). The Forum has direct access to the decision-making bodies of EU, and it receives aid from the Community budget, while retaining its independence with its own statutes and secretariat. According to the Declaration adopted at its Constituent Assembly in Brussels on 3 October 1988, its work includes the monitoring of migrants' economic situation, trends in migration, administrative and legislative developments, and developing practical proposals for action to combat racism (*MIGREUROPE*, 1988; Harris, 1994, p. 216). The Treaty of Maastricht, which came into effect on 1 January 1994, created the status of Community citizenship in order to "strengthen the protection of the rights and interests of the nationals of its Member States". This establishment of European citizenship almost completely breaks the link between the status attached to citizenship and national territory (Soysal, 1994, p. 147).

The multitude and scope of international instruments protecting the rights of migrants and minorities are substantial. Indeed, they touch on all of the basic rights that T. H. Marshall referred to as citizenship rights—economic, civil and social rights. They have also covered industrial rights of migrants, and most strikingly have been extended to include cultural rights, such as the rights to an ethnic identity, culture, and use of one's native tongue.

E. Conclusion

The globalization of migration has meant unprecedented ethnic diversity. In the wake of this phenomenon, immigrant policies, or policies relating to conditions of resident migrants, have emerged to deal with and to influence immigration policies, or strategies related to the admission of non-citizens. While national approaches to integration vary in terminology, in historical and conceptual derivations, and in substance, on the whole, the most elaborate discussion of immigrant policies focuses on the industrialized nations, where strategies have been most developed.

A comparative analysis between countries of permanent migration and those of labour migration indicates that the rationale of each type of migration (immigration policy) is intricately related to immigrant policy (i.e., integration concerns). That is, when permanent migration is allowed, the aim of the receiving country is to normalize the migrant's situation effectively, and to incorporate him or her into the mainstream of society. Conversely, temporary migration is usually envisaged for the duration of employment or other specific activity. The temporary migrant is expected to return home once such activity ends. The experience of most European countries, however, has revealed that these assumptions were faulty; temporary migration can lead to substantial permanent settlement.

As noted previously, numerous and detailed provisions have been enacted to reduce the possibilities of discrimination against migrants. These include both direct and indirect immigrant policies, ranging from civil rights, where the greatest advances have been made in migrant integration, to industrial rights, which have facilitated political mobilization of migrants. International humanitarian instruments and the greater democratization of host societies in the post-Second World War period have empowered newcomers to a much greater extent than their predecessors of other waves (Zolberg, 1995, p. 6).

Nevertheless, serious problems remain. On the employment front, while migrants and their dependants now have freer access to the labour market, and improved fringe benefits, controversial questions continue to arise whether a migrant worker should have equal access to employment in relation to a local worker, or whether he or she should acquire such equality gradually according to the length of stay. Most problematic are the difficulties encountered by many of the second-generation migrants, which include language and sociocultural adjustment, division between two cultures, alienation from the civil and political life of the country in which they were born, and uncertainty as to where their future lies. Indeed, in many countries, an entire generation of youth has been growing up with hyphenated identities in countries that do not even have these concepts as part of their cultural framework.

Whereas recent policies aimed at the second-generation immigrants have focused on social rights, the area of political rights will probably be the last to be resolved. Although they have political rights at the local level in several countries, with few exceptions, foreign workers lack political rights at the national level. Nevertheless, there are improved prospects for naturalization, especially for migrants who were raised and educated in the host societies.

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Part Two

TYPES OF MIGRATION

IV. PERMANENT MIGRATION

Permanent migration in the current international context differs from earlier patterns that have characterized the redistribution of human populations. During the late nineteenth and early twentieth centuries, migration was dominated by mass movements of people from countries in Europe to the Americas. New nations recruited migrants for permanent settlement in vast unpopulated and largely unexplored regions. They sought to establish a presence in frontier areas and to develop land and natural resources. Immigrants were expected to join in the nation-building process, adapt to the culture of the receiving country and become citizens.

In the contemporary world, nation-building is seen to be largely complete, and liberal immigration policies do not enjoy popular support, especially during periods of economic recession. The policies of most countries are not favourable towards permanent migration, and countries which do accept permanent migrants have become increasingly selective in deciding which immigrants to admit. Some countries with large populations of foreigners, many of them resident for a generation or more, deny that they are countries of immigration and continue to make it difficult for foreign residents to acquire citizenship.

In the total picture of the international movement of persons, legal migration for permanent settlement accounts for a minority of movers. National immigration policies may consist of a mix of strategies that seek to control short-term and permanent movers, workers and other economic migrants, and illegal or undocumented migrants. Even refugees and asylum-seekers may not be automatically granted permission for permanent residence; in some cases, they are given temporary protected status that allows them to stay in a safe country until repatriation to their country of origin becomes possible.

The four nations that have traditionally been considered countries of permanent migration are Australia, Canada, New Zealand and the United States of America. All have histories of admitting foreign persons and granting them permanent residence and the right to apply for citizenship when certain requirements are met. These requirements may include a minimum duration of residence, proficiency in the language and knowledge about the history and government of the receiving country. The immigration policies and practices of these countries have changed over the years and continue to evolve. This chapter will review immigration trends in the traditional countries of immigration and the tendency towards greater selectivity of immigrants and increased emphasis on the economic needs and conditions in the receiving country.

The chapter also discusses other kinds of permanent migration, regardless of whether or not the settlers are acknowledged as permanent migrants. Such types of migration include de facto permanent migration, especially in several countries of Europe, where hundreds of thousands of foreigners have lived and worked since the period of industrial expansion following the Second World War. Foreigners have been permitted to bring family members to join them in the host country, and they have established communities and ethnic networks, but most are not allowed full participation in the social and political life of the host country.

Another type of permanent migration consists of repatriation of certain foreign residents who emigrated at some earlier time. The descendants of these emigrants may qualify for admission, even though they may be generations removed from the original emigrants. Proof of ethnic identification or national background may be required for admission. Some countries that accept immigrants according to ethnic origin are Finland, Germany, Greece, Italy and Japan. The practice of repatriating ethnic descendants has expanded in recent years, especially since the relaxation of constraints that regulated exit from the former Soviet Union.

A final category of permanent migrants consists of investors, or business immigrants, who bring capital to the country of destination. These individuals may be considered economic migrants, but they are not included in the labour category because they are not seeking jobs. Programmes in most traditional countries of immigration seek to attract investors and entrepreneurs, provided that they meet financial requirements and establish busi-

nesses that create jobs for native workers. So far, these programmes have been limited to small numbers of immigrants, such as Chinese from Hong Kong, China who invest in Canada or New Zealand. Some developing countries have also instituted plans for attracting wealthy foreigners, especially retirees with pension income. The Philippine Retirement Authority was established to administer a programme that provides resident retirees' visas to qualified immigrants.

During the second half of the decade of the 1990s, all the countries that traditionally receive immigrants have made adjustments in their immigration policies, often as a response to the popular perception that immigrants are a net cost to the receiving society. Most of the changes have reinforced the tendency to limit immigrant intakes. Some have imposed more selective admissions criteria; others have addressed qualifications for family reunification, either by limiting the categories of eligible relatives or by requiring family sponsors to accept more responsibility for their immigrating relatives.

In 1996, the Australian Government announced that it would cut immigration by nearly 11 per cent in 1996-1997, to about 74,000. In addition, cuts in the family reunification scheme were planned, and relatives would be tested for written and oral English language skills. People sponsoring close family members were required to be Australian citizens rather than foreigners with permanent resident status. The number of refugees was reduced from 15,000 to 14,000 for 1996-1997.

The only category for which an increase was planned was that of skilled migrants, whose number would rise by 5,000. According to Prime Minister John Howard, Australia would give preference to immigrants who could contribute quickly to the national welfare; proficiency in the English language and excellent work skills were considered important selection criteria (Timms, 1996).

Canada has also made changes in its rules for sponsoring family members for immigration. In December 1995, the Canadian Government announced its intention to identify residents who sponsored relatives for immigration to Canada and then failed to provide for them. Canadian residents are permitted to sponsor a spouse, fiancé, dependent children, parents and grandparents. In the future, residents will be prevented from sponsoring relatives if the Canadian resident has received social assistance during the last year, is in prison, or is facing trial on charges that could lead to deportation.

In the United States of America, a change in immigration policy resulted in legislation that would affect both legal and illegal immigration. A bill in August 1996 changed United States welfare laws to exclude legal immigrants who had not become citizens from a number of social insurance programmes, ranging from medical care and food stamps to supplemental income for the poor, elderly, blind and disabled (Golden, 1996, p. A12).

The general trend in the traditional countries of immigration is towards selectivity in admitting immigrants. Higher priority is being given to skilled, educated immigrants; fewer slots are available for unskilled workers. Even in the family reunification category, employability is becoming a more important consideration.

A. Traditional countries of immigration

1. Australia

Australia has a long tradition of admitting foreign settlers. Since the arrival of the first convicts in 1788, Australia has been the destination of many types of immigrants, including those who joined the gold rushes of the 1860s and refugees from war-ravaged countries in Europe in the mid-twentieth century (Carmichael, 1993). Immigration contributed more to population growth than did natural increase until the 1870s, mainly because the population of immigrants was predominantly male.

After the Second World War, Australia began a programme of extensive recruitment of immigrants. Australia had narrowly escaped invasion on its northern shore during the war, and its political leaders considered the size of the country's population too small to support a military force that could defend the country. They also felt that a larger population was required to build and maintain an adequate infrastructure (Appleyard, 1991, p. 73). The nation's leaders set a goal of increasing the Australian population from 7 million to 25 million by the end of the twentieth century, a target that would have

required an annual growth rate of 2 per cent. Natural increase could be expected to contribute no more than half that growth, so an immigration goal of 1 per cent of the population per year was established (Appleyard, 1991, p. 73).

Australian immigration policy has always stressed permanent settlement. Except for a few programmes during the nineteenth century, the country has not supported schemes for importing guest workers or short-term labourers (Price, 1993, p. 3). Australia concentrated its recruitment efforts on Europeans, particularly residents of the United Kingdom, who were offered assisted passage to settle in Australia. Between 1788 and 1939, some 2.5 million settlers arrived in Australia, nearly half of whom received government assistance. Almost all the assisted migrants were of British origin (Price, 1993, p. 4). Refugees from European countries were permitted to come to Australia, but only if they could pay their own passage, and non-Europeans were restricted from entry altogether.

The "White Australia Policy" continued in effect until 1973, when the Labour Government rejected the long-standing exclusionary policy in favour of a policy of non-discrimination. Since the new policy became law, nearly half the immigrants to Australia have been from Asia. Between 1975 and 1990, Australia became the new home of more than half a million settlers from China, India, Lebanon, the Pacific Islands and the Philippines. In addition, some 120,000 Indo-Chinese refugees were resettled there (Price, 1993, p. 12). In 1991-1992, seven of the 10 countries and territories providing the most immigrants to Australia were Asian. They were Hong Kong, China; Viet Nam; the Philippines; India; China; Malaysia; and Sri Lanka (McMahon, 1993).

In 1993, about one in five Australians (21 per cent) was foreign born; an additional 19 per cent reported that at least one parent had been born in a foreign country. The United Kingdom and Ireland still supply the largest number of immigrants, although the percentage dropped from 53 per cent in 1964-1965 to 12 per cent in 1994-1995 (Shu and others, 1996, p. 30). In 1990-1991, Hong Kong, China replaced New Zealand as the second largest source of settler arrivals (Australia, Bureau of Immigration Research, 1992, p. 33), and in 1992-1993, 43 per cent of migrants had been born in Asia (*The Economist*, 1994, p. 34).

Levels of immigrant admissions have fluctuated during the past few decades, depending on the government in power and the national economic conditions. During the late 1960s, nearly 140,000 immigrants per year settled in Australia, but the yearly intake was only about half that figure in the 1970s—about 73,000 per year. The numbers rose again in the 1980s, to nearly 81,000 per year during 1980-1984 and to 113,000 annually during 1985-1989 (United Nations, 1996, p. 199, table 60). The annual largest intake in the past two decades was in 1988-1989, when about 145,000 immigrants arrived (Shu and others, 1996, p. 25).

In the 1990s, there is renewed concern about the capacity of Australia's economy to absorb new immigrants, and polls show that nearly half the Australian population is uneasy about the rapid pace of ethnic change (Price, 1993, p. 13). Current immigrant levels are somewhat lower than 1980 levels: 80,000 immigrants received visas to settle in Australia in 1992-1993, and the figure set for 1993-1994 immigration was a total of 76,000 places in all categories (Australian National Committee for the United Nations International Conference on Population and Development, 1994, p. 48). In May 1994, the Government announced that the level would be set at 86,000 places for the next 12 months, but this figure included about 8,300 Chinese students already in Australia (*The Economist*, 1994, p. 34).

The immigrant intake announced for 1996-1997 was 74,000 for the fiscal year beginning 1 July 1996. This represented a cut of 10.8 per cent from the previous year's totals and reflected concern over continuing high levels of unemployment. Additional cuts were planned in the family reunion scheme, which was to be reduced to 44,700 from 58,200 (Timms, 1996). Family migration has been the major component in permanent migration, constituting more than 40 per cent of total intake in the decade from 1985 to 1995 (Shu and others, 1996, p. 26). Moreover, testing for proficiency in the English language was to be introduced in 1996 for some categories of relatives, and people sponsoring close relatives would be required to be Australian citizens rather than foreigners with permanent resident status.

The number of refugees to be accepted was cut from 15,000 to 14,000 in 1996-1997. Only the category of skilled migrants was increased, by 5,000 visas. According to Prime Minister John Howard, the changes reflected Australia's move towards preference based on skills and abilities and was not intended to discriminate against non-English-speaking immigrants from Asian countries (Timms, 1996).

The legal basis of immigration policy in Australia is the Migration Act of 1958, along with its amendments and the Migration Regulations. The law as written gave flexibility and broad discretionary authority to the Government in power, but it did not outline specific policy (Center for Immigration Studies, 1992, p. 3). During the past decade, however, discretionary powers have been curbed in favour of administrative law and appeals procedures that allow review of migration decisions on the basis of merit (McMahon, 1993, p. 9).

The adoption in 1973 of a policy of non-discrimination was in response to a Green Paper prepared by the Australian Population and Immigration Council, the country's main consultative body on immigration matters at the time. Nine principles were established to guide the nation's immigration policy, including non-discrimination with regard to race, nationality or cultural background; consideration of the benefits of immigration to Australian society; and integration of immigrants into Australian society while still encouraging them to preserve their ethnic heritage (Center for Immigration Studies, 1992, p. 3).

Extensive amendments to the Migration Act in 1989 codified the regulations for the granting of visas and the conditions under which decisions could be appealed and reviewed. The reforms were designed to introduce accountability and equity into the migration decision-making process and to state clearly and publicly the criteria for visas and entry permits (McMahon, 1993, p. 9). The legal framework is somewhat complex and has caused problems for administrators, but it seems to be accomplishing the objective of the Australian Government to establish a balance between administrative flexibility and fairness in considering immigrant applications.

Another set of amendments, passed in 1992, were embodied in the Migration Reform Act. This legislation was a response to a growing concern about persons who enter Australia illegally or who attempt to evade immigration regulations. The Act simplifies immigration documentation, making non-citizens accountable to a single authority for permission to enter or remain in Australia. The law makes it more difficult to obtain a visa or to extend an expired visa from within the country, and it clarifies the rules for detaining individuals. The Migration Internal Review Office and the Immigration Review Tribunal have jurisdiction over cases that merit special consideration.

The Australian Government has expressed a commitment to preserving the integrity of its immigration regulations; it emphasizes the importance of "front-door entry" into the country and supports a programme of compliance and deportation of overstayers and illegal entrants. The Government also uses recently developed computer technology to ensure that all arriving visitors have permission to enter the country. Since the two amnesties granted by the Fraser Government in 1976 and 1980, Australian policy has not favoured the use of amnesties because it is thought that they encourage undocumented migration and give preferential treatment to those who violate the rules (McMahon, 1993, p. 5).

Four categories of immigrant applications are recognized: family reunification, skilled migrants, special eligibility, and humanitarian. In recent years, family members have constituted the largest group of admissions, followed by those with business and occupational skills. For most categories, applicants must satisfy a points test, with scores based on employability, skills, education, language proficiency, age, relationship to sponsor, and sponsor's qualifications. The points test criteria vary according to the applicant's admission category.

The largest number of points (80) is awarded to an individual with a degree or diploma deemed acceptable in Australia who has at least three years of work experience and whose occupation is on the priority list. Fewer points are earned for lower levels of education and experience and for occupations in which there is no demand for workers. In 1992, an oversupply of medical practitioners resulted in a 10-point skill factor penalty for this specialty. Younger immigrants have an advantage in the points test: those 18 to 29 years old receive 30 points, and 30-to-34 year-olds score 20

points. Fewer points are given to older age groups, and those under 18 or over 49 receive no points.

English language skills are scored from proficient (20 points) to "extensive English training required" (0 points). With regard to relationship to sponsor, immediate family members (spouse and dependent children) are not required to be tested in English. Parents of an Australian citizen receive 15 points; brothers, sisters and non-dependent children receive 10 points; and nephews and nieces receive 5 points. Three other factors relating to the immigrant's sponsor are considered: citizenship factor (10 points if sponsor has been a citizen for at least five years); settlement factor (10 points if sponsor has a record of continuous employment in Australia for the past two years); and location factor (5 points if sponsor has lived in a designated area for the past two years). The points test criteria are adjusted according to labour market needs, and the passing score differs according to category. Applicants with scores slightly lower than the passing mark are entered into a pool of applicants and may be eligible for admission if places are available (McMahon, 1993, p. 22).

Family reunification is the first priority for immigrants to Australia, constituting about half the total immigrant intake in recent years. The category encompasses two types of relatives, preferential and concessional. New regulations introduced in 1996 require that the sponsor must have adopted Australian citizenship; those holding permanent resident status will no longer qualify as sponsors. Preferential relatives include only close family members (spouses or de facto partners, fiancés, dependent unmarried children, adopted children, and parents who meet the "balance of family" test) or relatives with special needs (orphaned unmarried relatives, aged relatives, and the last remaining brother, sister or non-dependent child). These applicants are not subject to the points test.

Concessional candidates include more distant relatives and those who are not so dependent (such as brothers, sisters, nephews, nieces, parents of working age, and non-dependent children). These applicants are points-tested and receive scores according to their skills, age, relationship to sponsor, employment record of sponsor, and duration of sponsor's citizenship. Beginning in 1996, relatives in the concessional category were tested for skills in written and oral English. Both types of family applicants must be sponsored by relatives who are Australian citizens.

The category of skilled migrants includes applicants whose skills or outstanding abilities will contribute to Australia's economy. Applicants may qualify under several arrangements: labour agreements or the employer nominations scheme (highly skilled persons recruited by Australian employers); distinguished talent (exceptionally talented creative people or sports figures); business immigrants (individuals who plan to invest at least $A 500,000 in a business venture to create jobs in Australia); and independent immigrants (applicants seeking permanent residence in Australia who have no relatives or close ties; their scores on the points test must exceed those of concessional relatives).

Special eligibility is a separate small category, less than 1 per cent of total intake. It includes New Zealand citizens (who do not need visas and are therefore not counted in the programme total) and spouses and dependent children of New Zealand citizens who are not themselves citizens of New Zealand. Self-supporting retirees and former Australian citizens and residents also fall into this category.

Australia also admits as permanent migrants individuals who qualify under humanitarian programmes. This category encompasses both United Nations Convention refugees and non-Convention refugees who have suffered gross violations of their human rights. About half are funded by the Government, and the rest are assisted by family members in Australia or by community support groups. A contingency reserve allows some flexibility for emergency needs. The intake in this category was reduced from 15,000 in 1995-1996 to 14,000 in 1996-1997.

Like other democratically elected officials, Australian politicians feel pressure from the public to limit the size of the immigrant intake when economic conditions are poor. Although studies have confirmed that it is unlikely that immigrants increase unemployment rates (Wooden, 1994, p. 144), public perception is a force that must be accommodated. The Australian system requires immigrant levels to be set annually, which permits the number of economic migrants to be limited during times of high unemployment. The intake of dependent family

members, who have private sponsors and are less likely to be job-seekers, can then be increased (Price, 1993).

A special category of immigration to Australia concerns movement across the Tasman Sea that separates Australia and New Zealand. Geographically and historically linked, the two countries have long exchanged population without restrictions and with no documents required at the border. Trans-Tasman movement has always been sensitive to economic conditions and such events as the discovery of gold, first in Australia and then in New Zealand (Carmichael, 1993, p. 514).

In the past, the numbers of people travelling back and forth were roughly equal, but since the mid-1970s, migration has been largely one-way, from New Zealand to Australia. The flow has abated only during periods of economic recession in Australia. These immigrants constitute a significant loss to New Zealand's population and a substantial proportion of Australia's annual immigrant intake. Net immigration from New Zealand in 1994 was about 20,000 persons. There are no numerical limits to arrivals from New Zealand, and they are not counted in Australia's annual immigration programme.

Australia amended its immigration regulations in 1981 to require that New Zealanders carry passports when they traveled to Australia. There had been concern that some Pacific Islanders were entering Australia illegally after first stopping in New Zealand. Travel between the two countries is still unrestricted. Most Australians who travel to New Zealand for permanent settlement are spouses of New Zealand citizens.

Australia has recognized that the efficient processing of immigrant applications is necessary to allow the country's policies to be implemented. The flexibility for policy change is limited if commitments have been made to a large backlog of approved applicants. Therefore, the country has devoted considerable effort to managing immigrant applications. The Government publishes in detail the criteria for qualifying for admission, and it provides extensive informational materials to applicants. This allows prospective applicants to assess their own prospects for success, and it discourages inappropriate or unqualified candidates from applying. The Government charges fees to applicants to recoup costs of processing. It has also established a system of applicant pools, which hold promising applicants in reserve until it can be determined if there are places for them in the programme (McMahon, 1993, p. 6).

Australia carefully monitors the arrival and departure of visitors (see box 2), and it also maintains an active programme of compliance to ensure that illegal aliens are identified, apprehended and deported. The compliance programme was implemented in 1990; it uses education, investigation and technology to create a climate that discourages illegal aliens from staying in the country. Computer-based technology plays an important role in compliance activities as well. Government agencies share data on eligibility for benefits and services. Illegal aliens who are denied benefits have a more difficult time supporting themselves and thus have less incentive to try to remain in Australia (McMahon, 1993, p. 15).

2. Canada

Canada has long been one of the major receiving countries for permanent settlers, and the high percentage of foreign-born Canadians reflects the country's immigration policies. Results of the 1991 census showed that 16.1 per cent of the population had been born in a country other than Canada (OECD, 1995, p. 230). During the 1970s, about 144,000 immigrants (including refugees) were admitted annually; the number in the 1980s was smaller, about 126,000 per annum (United Nations, 1996, p. 199, table 59). In 1995, approximately 200,000 new immigrants and refugees were admitted, and the projection for 1996 is slightly higher (Canada, Citizenship and Immigration Canada, 1995).

Canada's immigration policy was reshaped following the Second World War, when large numbers of permanent migrants, especially refugees, moved to Canada. The post-war economic boom and the low birth rate of the depression decade of the 1930s combined to create a demand for more labour, which could most easily be satisfied by admitting immigrants (Plender, 1988, p. 81). The focus on immigration presented an appropriate opportunity for Canada to re-examine its policies and to formulate a more coherent approach towards immigration (Plender, 1988, p. 81).

Box 2. Australia's visa control system

Australia's determination to maintain secure borders and control access to the country has led to the development of a computerized system of identifying visitors who are authorized to enter Australia. Known as TRIPS (Travel and Immigration Processing System), the system was designed by the Department of Immigration, Local Government and Ethnic Affairs. Except for New Zealanders with valid passports, every person entering Australia must have a visa, which is normally issued by one of Australia's overseas or regional offices. The details of each visa are transmitted electronically to Australia and loaded into TRIPS files within 24 hours after the visa is issued. The database also contains information about holders of passports from Australia and New Zealand.

When the traveller arrives in Australia, the visa number is entered into the Australian Customs Service system, which communicates directly with TRIPS. The visa number is matched with previously entered information, and the TRIPS system tells the customs officer whether the visitor should be allowed to pass through customs. This process can be completed within 2.5 seconds for 95 per cent of the foreign arrivals. If the visa number cannot be found or matched for some reason, the individual is referred to an immigration officer, who has full access to all computerized data and can make a decision about the proper course of action.

While the system is checking the traveller's permission to enter the country, the details about the individual's movement are written into the TRIPS database. If the visitor should change his travel plans, extend his stay, or make other changes during his visit to Australia, the new information is collected and entered into the system by regional immigration offices around the country. An up-to-date record of each visitor's stay in Australia is maintained in this manner. When a visitor leaves the country, the system again processes the record of the visit. It identifies visa overstayers, who are interviewed and may be sanctioned in some way--for example, they may be denied permission to re-enter Australia in the future. The departure record is linked to all other records of entry and change of status to provide a complete history of an individual's visit to Australia.

The TRIPS system was phased into all Australian international airports in 1991. It has enabled customs officials to facilitate the entry of large numbers of bona fide travellers while preventing entry of illegal arrivals. The system is designed to meet current needs (9.5 million border crossings in 1992) and to accommodate future growth in travel to Australia, estimated at between 12 and 20 million crossings per year by 2000.

Source: McMahon, Vincent (1993). Control of migration flows in Australia. Paper prepared for Migration and International Co-operation: Challenges for OECD Countries, Conference organised by the OECD, Canada and Spain. Madrid, 29-31 March. Paris, Organisation for Economic Co-operation and Development.

Canada broadened its admissions policies in 1962 to promote diversity and eliminate discrimination against people of particular ethnic or national origins (Hawkins, 1987, p. 95; United Nations, 1982, p. 5). This policy change has resulted in fewer immigrants from Europe and more from Asia, the Pacific, and Latin America. In 1988, for example, just over 50 per cent of all Canadian immigrants came from Asia, and nearly 14 per cent were from Latin America (Center for Immigration Studies, 1992, p. 4). The European share declined from 67.5 per cent in 1965-1969 to 24.0 per cent in 1985-1989 (United Nations, 1996, p. 199, table 59).

The principal legislation that regulates immigration policy and programmes in Canada is the Immigration Act of 1976, which came into effect in April 1978 and which has been updated several times since its enactment. The law maintains the racially and ethnically non-discriminatory policies introduced in the 1960s and specifies a system of points for selecting some types of immigrants (Stahl and others, 1993, p. 90).

Ten objectives for Canadian immigration are enumerated in the 1976 legislation. They include attaining demographic goals with respect to the growth, structure and geographic distribution of Canada's population; enriching the cultural and social fabric of Canadian society; facilitating the reunion of close family members; subsidizing the adaptation of new immigrants; ensuring that the process of admitting visitors or immigrants is free from discrimination on grounds of race, origin, colour, religion or sex; upholding Canada's humanitarian tradition with respect to accepting refugees; fostering a strong and viable economy in all parts of the country; protecting the health and safety of Canadians; and denying access to probable criminals.

The Immigration Act requires the Government to prepare periodic plans for immigration and to report to Parliament each year on the number of permanent migrants to be admitted. A five-year planning period was introduced in 1989, and the first plan covered the years 1991-1995. Numerical ranges were established for each category of immigrant, with the general objective being to maintain a balance among family, economic and humanitarian immigrants. In the first five-year period, the plan allowed for increased permanent immigration: for 1990, 200,000 were to be admitted, and the figure was to increase to 220,000 in 1991 and to 250,000 in the remaining years of the plan. The projections are reviewed annually and adjusted if necessary to reflect changing economic conditions.

Legislation that took effect in 1993 modified the Immigration Act to make Canada's immigration policy more responsive to the need for a skilled labour force, especially in regions and provinces that are economically less developed (Canada, Employment and Immigration Canada, 1993a, p. 3). The law created a new government department that focuses entirely on immigration and citizenship matters. The Act also introduced changes in the way immigration is managed, particularly in the selection criteria for skilled workers (OECD, 1995, p. 75).

Permanent migrants to Canada are classified according to three basic categories: immediate family members joining their relatives in Canada; refugees and asylum-seekers; and economic migrants, which includes skilled workers and entrepreneurs, as well as assisted relatives of Canadian citizens and permanent residents. The Immigration Act of 1976 assumed that the Government would be able to set an annual overall immigration target and allocate proportions of the total among the three categories. It was expected that demand for family members' visas and refugee visas would be relatively predictable and stable, and that the economic category could be adjusted according to the overall target number (Canada, Employment and Immigration Canada, 1993b, p. 6).

It soon became clear, however, that realistic targets for categories of immigrants could not be forecast. Family immigration dominated the admissions process, crowding out economic migrants. In 1991, for example, only 10 per cent of immigrants were selected on the basis of economic criteria (Canada, Employment and Immigration Canada, 1993b, p. 3). Moreover, adjustments to the numbers of economic migrants did not necessarily correspond to the needs of the economic cycle. The 1993 legislation was designed to improve the management of applications from immigrants. It changed the system of migration selection and visa processing by creating separate processing streams for different categories of immigrants.

Highest priority in processing goes to immediate family members (spouses, fiancés, children and adopted

children); immigrant investors; and refugees identified by the Immigration and Refugee Board.

The second processing stream operates on a first-come, first-served basis, and each immigrant class is subject to numerical limits (Canada, Employment and Immigration Canada, 1993b, p. 9). In this stream are other relatives of Canadians (parents and grandparents); humanitarian programme admissions (people in refugee-like situations who may not meet criteria for the refugee category); applicants with arranged employment; foreign domestics; self-employed applicants; and Government- and privately-sponsored refugees. After the year's target has been met, applications are held, and additional visas may be issued when more spaces become available.

A third processing stream was created to assess the best qualified in each immigrant category from a pool of applicants. Selections are subject to numerical limits set out in the annual levels plan. Applicants are assessed against objective criteria and ranked according to a system of points. Priority is given to the most highly skilled workers, those whose skills are in demand in Canada, and entrepreneurs (Canada, Employment and Immigration Canada, 1993b, p. 3).

The points system evaluates applicants according to certain human capital characteristics that are thought to advance the interests of the host country (Papademetriou and Yale-Loehr, 1996, p. 125). Points are awarded according to education, specific vocational preparation, experience, occupation, arranged employment, age, knowledge of English or French, personal suitability, and demographic factors. Additional bonus points accrue for entrepreneurs or investors, for the self-employed, and for those with close relatives in Canada.

The points system also encourages younger immigrants to apply for admission: more points are awarded to persons between the ages of 21 and 44, and points are deducted for each year outside this age range. Depending on the degree of fluency, an applicant may earn up to 15 points if he or she speaks one or both of Canada's two official languages. Personal suitability and adaptability, as determined by an interview with a Canadian immigration official, could earn as many as 10 points. Applicants who are related to Canadians but are not immediate family members are awarded a "kinship bonus" if the relatives agree to provide assistance. Immigrants in all categories must be in good health and of good character.

In 1994, 48 per cent of all immigrants to Canada were admitted according to economic characteristics, versus 43 per cent who came through the family reunion classification. Canada's goal is to increase the proportion of economic-stream immigrants to 53 per cent by 2000, and to maintain the family stream at about its current level. The 1996 immigration plan sets the target for admissions at 195,000 to 220,000 immigrants and refugees, up 5,000 from the 1995 projections. Within the immigrant category, the goal is for 50 per cent to come from the economic stream; 46 per cent are expected to be admitted in the family reunion category (Canada, Citizenship and Immigration Canada, 1995).

The 1993 legislation is expected to permit Canada to manage immigrant flows more equitably; to be immediately responsive to any new national policy focus; and to take into account changing economic and international conditions. A points system with somewhat different criteria and point counts was scheduled to go into effect in 1996; the previous points system had been amended to place more emphasis on economic characteristics (Papademetriou and Yale-Loehr, 1996, p. 130).

Integration of new immigrants is an important part of Canada's immigration policy, and a plan launched in October 1990 increased funding to programmes offering language training and orientation to immigrants before they departed for Canada. It also increased access to settlement services for all categories of immigrants, not just for government-assisted refugees, as was previously the case.

An important feature of Canada's immigration law is the consultation and shared responsibility between the national government and provincial governments for determining and carrying out immigration policy and for integrating new immigrants into Canadian society. This joint responsibility is written into the Constitution of Canada; primacy rests with the Parliament. In 1993, the Canadian Government had agreements with seven of the 10 provinces, the most comprehensive of which is the Canada-Quebec Accord of 1991. This Accord recognizes the federal responsibility for admitting immigrants and other aliens, granting permanent resident status and citizenship, and fulfilling

international obligations. It also recognizes Quebec's responsibility to select the independent immigrants intending to reside in Quebec, and to provide linguistic, cultural and economic integration services for permanent residents in Quebec, for which the Federal Government provides compensation. To preserve Quebec's demographic importance, the province is entitled to receive a percentage of immigrants equal to its percentage of the Canadian population, plus up to five percentage points in excess of its population share (Canada, Employment and Immigration Canada, 1993a, p. 6).

3. New Zealand

New Zealand has a tradition of admitting migrants for permanent settlement, although the country's small population size—about 3.6 million in 1996—has meant that the numbers of immigrants have been substantially lower than those of the other countries of permanent settlement. In 1990, 14 per cent of New Zealand residents were foreign born. In recent years, immigration has been a less salient feature of demographic change in New Zealand than has emigration. Economic conditions and relatively high rates of unemployment have led to the out-migration, especially to Australia, of substantial numbers of New Zealanders. The number of emigrants has frequently exceeded the number of immigrants, resulting in net immigration losses in 10 of the 15 years between 1976 and 1991 (New Zealand Government, 1994b, p. 12). In the 1990s, the immigration balance has again turned positive, and in 1994, a net total of 15,587 permanent and long-term migrants was recorded. This included more than 57,000 arrivals, but their number was offset by 41,670 departures (New Zealand Government, 1995, p. 78).

New Zealand's history of receiving migrants shows an almost exclusive reliance on British immigrants to supplement its population. New Zealand encouraged permanent migration from the United Kingdom with a policy of providing funds to pay for transportation of English and Irish settlers to New Zealand. Except for a long-established special quota for Netherlands immigrants, non-British Europeans were not encouraged to emigrate to New Zealand. Between 1922 and 1982, the immigrant balance was positive in every year except four, and these exceptions occurred during the Great Depression (1935), at a time when war restricted normal ship traffic (1945), and in the midst of a recession (1969-1970) (Elliott, 1993, pp. 45 and 46). Net immigration of more than 220,000 persons was recorded from 1946 to 1967, an average annual intake of more than 10,000 (New Zealand Government, 1994b, p. 15). The peak year for immigration was 1973, when some 50,000 settlers arrived (Stahl and others, 1993, p. 93).

Since the 1970s, two major policy changes have affected immigrant intake in New Zealand, especially in terms of country of origin and immigrant characteristics. One policy change is the increasing importance of economic factors in immigrant admission. The second policy, adopted in 1974, ended the long-standing preference for immigrants from the United Kingdom and made movement easier from Pacific Island nations that have traditional ties with New Zealand (Elliott, 1993, p. 45).

In 1974, New Zealand reassessed its immigration policy. The Government saw its traditional economic relationship with the United Kingdom diminishing as a result of Great Britain's decision to join the European Economic Community. Great Britain had long been a trading partner of New Zealand, buying large quantities of agricultural products, especially wool, butter and lamb. EEC membership shifted Britain's trading partnerships away from Commonwealth countries and towards Europe, and New Zealand was forced to search for new markets in Asia and the Pacific and to realign itself with nations in its geographical location within the South Pacific region. This realignment not only restructured trade and economic relationships; it became the basis for a new focus on multiculturalism in immigration policy.

The right of free entry for British citizens ended in 1974, although immigrants from the United Kingdom still constitute a substantial proportion of migrant inflow (Elliott, 1993, p. 49). Citizens of certain Pacific Islands with which New Zealand had ties—Cook Islands, Niue and Tokelau—have New Zealand citizenship and the right to enter the country without restriction. The Trans-Tasman Travel Agreement of 1972 allows freedom of movement between Australia and New Zealand and gives mutual right of entry to citizens and residents of both countries. Passports are required to establish identity and citizenship (Stahl and others, 1993, p. 94). An agreement dating from the 1960s provides for the

acceptance of up to 1,100 Western Samoan citizens and their dependants for residence each year. Entry is subject to a guarantee of employment, but specific skills are not required (New Zealand Government, 1994b, p. 50). This quota is separate from Western Samoans admitted under family reunification provisions.

Immigration policy after 1974 was designed to encourage the entry of skilled labour into New Zealand, as well as to allow for family reunification and humanitarian settlement (Elliott, 1993, p. 49). Since the mid-1970s, international migration to New Zealand has been erratic and has fluctuated from a net inflow of immigrants of 33,000 in 1974 to a net outflow of 26,500 in 1979. In the 21 years from 1968 to 1989, total departures exceeded total arrivals by an average of 1,100 people per year, and there were dramatic shifts in the balance from one period to another (New Zealand Government, 1990, p. 15).

In the past, the movement of permanent and long-term migrants between New Zealand and Australia involved roughly equal numbers of movers, but since the mid-1970s, it has been largely one-way, from New Zealand to Australia. Responding to the lack of economic opportunities at home, New Zealanders travelled to Australia in search of work and education. In 1982, nearly 35,000 permanent and long-term (those intending to stay away at least 12 months) emigrants departed for Australia; their numbers were offset by about 14,000 returning New Zealanders (New Zealand Government, 1995, p. 78). Because many of the emigrants were professional and technical workers, there was fear that New Zealand was facing a brain drain. However, the emigration figures conceal the fact that many New Zealanders go to Australia for further training and eventually return to their own country (Elliott, 1993, p. 55). In the 1990s, New Zealand is experiencing two migration flows: an inflow of foreign-born immigrants and returning New Zealanders, and an outflow of New Zealand-born emigrants, most of whom go to Australia (Stahl and others, 1993, p. 93). The immigration balance was positive between 1991 and 1994 (New Zealand Government, 1995, p. 78).

Because of the substantial traffic between New Zealand, Australia and the Pacific Islands, it has been estimated that less than one fourth of New Zealand's permanent and long-term migration is currently subject to control by visas or residence permits (Stahl and others, 1993, p. 94).

New Zealand's immigration policy since 1974 is reflected in the changing ethnic composition of the country. Europeans still dominate, with about 80 per cent of the population, and Maoris, with 13 per cent, constitute the second largest group. However, the number of arrivals from Pacific Islands and Asia is increasing rapidly. The 1991 census recorded growing populations of Samoans, Cook Islanders, Tongans and Niueans; all three groups had more members living in New Zealand than in their home islands (New Zealand Government, 1994b, p. 18). In 1995, Taiwan Province of China replaced the United Kingdom as the largest source of immigrants; China was third, followed by the Republic of Korea and Hong Kong, China (James, 1995, p. 27).

Immigration policy in New Zealand is at present based on the Immigration Act of 1987, together with the Immigration Amendment Act of 1991. The policy is administered by the New Zealand Immigration Service of the Department of Labour. The 1987 Act ruled that the selection of migrants should be based on criteria of personal merit and should not discriminate on the grounds of race, nationality or ethnic origin, colour, sex, religion or ethical belief (New Zealand Government, 1994b, p. 50). The 1991 Amendment Act specified that immigration should contribute to the social and economic well-being of the resident population of New Zealand. This policy gave preferences to immigrants with suitable qualifications, experience and assets.

New Zealand's current policy aims for an annual net immigration total of 20,000 immigrants, a figure that includes New Zealand citizens returning to the country. From time to time, a maximum immigration target is declared to achieve the specified total. For the year ending 30 June 1994, the target was 25,000 permanent migrants (New Zealand Government, 1994b, p. 50).

Prospective migrants for permanent settlement are considered in four categories: general, business investment, family and humanitarian. The general category ranks applicants under a points system with criteria based on employability, age, settlement factors, and facility in the English language. Work experience and qualifications constitute the employability factor.

Younger migrants are favoured, and applicants over 55 years of age are not approved. Settlement factors include funds available for settlement, a family or community sponsor, investments or an offer of employment in a skilled occupation. All principal applicants must meet an English language ability requirement.

The business investment category considers applicants who have business experience and skills and are able to invest a specified amount of money in New Zealand for at least two years. The principal applicant or at least one accompanying family member who is 17 or over must meet an English language requirement. Family category applicants are selected on the basis of their relationship to a New Zealand citizen or resident. They must demonstrate a genuine relationship with spouse or partner, adult child, sibling or parent. This category also allows for the entry of people who have a close family connection with New Zealand and are in particularly difficult circumstances (New Zealand Government, 1994b, p. 50).

In 1995 the New Zealand Government announced changes to the immigration law that are likely to reduce the number of immigrants from Asia. Principal migrants had to pass an English-language comprehension test and were not allowed entry if they failed. Family members of the principal migrant over the age of 16 who failed the test must pay $NZ 20,000 each, which is refunded if they pass the test within three months of arrival. If they pass the test within one year, $NZ 14,000 of the original bond is refunded. The test does not demand fluency, but rather requires the immigrant to have a partial command of the language and be able to cope with overall meaning in most situations (James, 1995, p. 27).

A second change in immigration policy requires prospective immigrants to demonstrate a commitment to New Zealand. In the past, some wealthy immigrants received resident status by depositing a sum of money in New Zealand but not committing to live or work there. The new requirements specify that funds be placed in active direct investment. Investment of funds will no longer confer the automatic right to residence status but will earn points towards approval. Moreover, immigrants will be required to spend at least six months of each of two consecutive years living in New Zealand, which will make them residents for tax purposes. The new regulations will make it more difficult for foreigners to use New Zealand as a "convenience" alternative to their legal country of residence (James, 1995, p. 28).

Another change in the law would ensure that professional qualifications are acceptable in New Zealand before the prospective immigrant is approved. This will prevent the situation in which an immigrant's qualifications gained points in the review process but were not recognized by New Zealand authorities when the new arrival attempted to practise a profession. The system will also be changed so that achieving the minimum number of points does not guarantee entry. The Government is expected to establish country quotas and to change the qualifying number of points each month (James, 1995, p. 28).

4. United States of America

Immigration for permanent settlement in the United States has been a tradition since the founding of the nation, reaching its numerical peak in the decades surrounding the turn of the twentieth century. It is one of the largest immigrant-receiving countries in the world. In 1980, about 6 per cent of the population was born in foreign countries, but this figure increased to 8 per cent in 1990, as a result of an amnesty programme that eventually regularized more than 3 million formerly illegal aliens. Family reunification continues to dominate the flow of permanent migrants, but skilled workers have recently received increasing numbers of visas.

After the Second World War, the United States Congress reviewed the country's immigration and nationality laws and policies and passed new legislation, the Immigration and Nationality Act, which remains the basic immigration law. Popularly known as the McCarran-Walter Act, the law took effect in 1952. It eliminated previous racial exclusions, but it retained the national origins formula of the Quota Act of 1924, which allocated visas according to nationalities already represented in the United States population. It also established a system that gave preference to relatives of American citizens and skilled workers (Plender, 1988, p. 82).

The next important revision to immigration legislation came in 1965, when the Kennedy amendments abolished

national origins quotas, fixed a ceiling on western hemisphere immigration, and devised a preference system that favoured close relatives of United States citizens and residents; those with needed occupational skills, abilities or training; and refugees (United Nations, 1996, p. 218). The 1965 Act allocated immigrant visas on a first-come, first-served basis, subject to a preference system that recognized seven categories of immigrant types. There was no numerical limit on immediate relatives (spouses, parents and minor children) of United States citizens.

A result of the 1965 legislation was the rapid shift in the countries of origin of immigrants. Whereas about half the immigrants admitted to the United States in the decade from 1955 to 1964 were of European origin, less than 30 per cent came from those countries during 1965-1974, and only about 13 per cent during 1975-1984. The greatest gains were in immigrants from Asian countries. In 1955-1964, 8 per cent of all immigrants originated in Asian countries; by 1964-1975, the proportion had increased to 22.4 per cent, and by 1985, 46.4 per cent of immigrants to the United States came from Asia (Stahl and others, 1993, p. 86).

The Immigration Reform and Control Act of 1986 (IRCA) was largely concerned with illegal migration, but its provisions had a major impact on the number and composition of permanent migrants in the United States. The law recognized that illegal migration had resulted in large numbers of undocumented aliens living in the United States, and it established an amnesty programme that would allow those who qualified to regularize their immigration status. The Act also instituted sanctions against employers who hired illegals and provided for more rigorous enforcement of the border between the United States and Mexico.

Under the provisions of IRCA, two groups of aliens were eligible to become legal permanent residents of the United States: those who had lived in the country continuously for five years since 1982, and seasonal agricultural workers who had spent at least 90 days in seasonal agricultural work during the 12 months beginning 1 May 1985. Achieving legal status involved a two-step process. The alien first had to apply for lawful temporary resident status, after which the status was adjusted to lawful permanent resident, or immigrant. Proving past residence required producing a "paper trail" of rent receipts, proof of employment, and other such documentation. Many aliens had assiduously avoided accumulating such evidence of residence. Nonetheless, nearly half a million persons were legalized in 1989, and the numbers rose to 880,000 in 1990 and 1.1 million in 1991 (Gordon, 1994, table 1). By the end of the amnesty programme, more than 3 million undocumented aliens had applied for regularization of status, and more than 2.7 million were approved for legal status. In 1994, the first to be regularized were eligible to apply for citizenship, after which they would be permitted to bring family members to the United States under the family reunification category.

The Immigration Act of 1990 was the first major change in immigration legislation in 25 years. It revised the numerical limits and preference system regulating permanent legal migration. The number of visas issued annually was increased to 714,000 in the fiscal years 1992-1994, but decreased to 675,000 in 1995 and subsequent years. The number of employment-based visas was expanded from 54,000 per year to 140,000, nearly all of which were designated for skilled workers. The law also established a three-year programme that would give 40,000 visas per year to nationals of countries that were underrepresented in the current system. The numerical caps do not include refugees. Reunification of family members continued to be the most important category of permanent migrants, with 71 per cent of the available visas reserved for family members.

The 1990 law provided for higher levels of immigration during the transition period of 1992-1994 in order to accommodate certain groups to which commitments had already been made. They included spouses and children of aliens legalized under IRCA; nationals from 34 countries that were identified as "adversely affected" by changes in United States immigration law in 1965; some Hong Kong, China nationals employed by United States multinational companies; displaced Tibetans; and some lottery "winners" who had been promised admission under the diversity programme, but for whom no visas had been available (Papademetriou, 1990, p. 1).

According to the 1990 Immigration Act, the permanent level of 675,000 immigrants per year beginning

in 1995 is distributed among family-sponsored immigrants (480,000), employment-based immigrants (140,000) and diversity immigrants (55,000). Not subject to numerical limitation are immediate relatives of United States citizens—parents, spouses and minor children—as well as children born to permanent United States residents during a temporary visit abroad. The number of immediate relatives is subtracted from the allocation of 480,000 for family-based immigration to yield the total permitted for other family preference categories, with the stipulation that the number of non-immediate family visas may not fall below 226,000 (Papademetriou, 1990, p. 2).

The United States family reunification policy is unusual in that it allocates visas for relatives who are not immediate family members. Four categories of family preferences are defined. The first category allocates 23,400 visas to unmarried sons and daughters (not minors) of United States citizens. The second preference category allocates 114,200 visas for spouses and unmarried children of lawful permanent residents. Most of these visas (at least 77 per cent) are reserved for spouses and minor children; they are issued in the order the applications were processed without regard to the country of origin. A maximum of 23 per cent of second-preference visas go to unmarried sons and daughters of lawful permanent residents and are subject to per-country ceilings.

The third family preference category allocates 23,400 visas to married sons and daughters of United States citizens, and the fourth-preference category allocates 65,000 visas to brothers and sisters of United States citizens. Unused visas from higher-preference categories may be transferred to lower-preference categories.

The 1990 law provides that no country may receive more than 7 per cent of either family preference or employment-based visas in a single year. Employment-based visas for permanent migrants are issued according to another system of preference categories, which are described in chapter V, Labour migration. The United States also has a programme for investor immigrants, but it has accounted for only negligible numbers of immigrants to date.

In addition to family preference and employment-based immigrant categories, the 1990 Immigration Act created a permanent diversity programme as a follow-up to the three-year transitional programme for nationals of foreign States that had been adversely affected by the repeal of the national origins quota system in 1965. Beginning in 1995, 55,000 diversity visas are available annually to foreigners from countries from which fewer than 50,000 immigrants had come to the United States during the preceding five years. To be eligible, aliens must have a high school education or its equivalent, or two years' experience in an occupation which requires at least two years of training or experience (Congressional Research Service, 1990, p. 5).

The 1990 Immigration Act created a Commission on Legal Immigration Reform, which was charged with studying a broad range of issues and evaluating the impact of the 1990 Immigration Act, especially with regard to the permanent diversity programme. Eight of the nine commissioners were appointed by the Congress, and the chair was appointed by the President. A report submitted in 1994 dealt primarily with undocumented migration; a final report on findings and recommendations is required by September 1997.

In 1994, in response to substantial undocumented migration of Cubans to the United States, the two countries reached an agreement that allowed at least 20,000 Cubans to migrate permanently to the United States each year, provided that the Cubans apply in Havana. Cuba is the only country in the world that has its own quota for immigration to the United States. In 1995, more than 190,000 Cubans applied for United States immigration visas, and 5,398 were granted visas. In a lottery for 6,000 visas that closed in April 1996, 435,000 applications were received. Even with a visa, immigration is costly; each immigrant is charged a fee of US$ 600, except for 1,000 needy cases a year, who are required to pay only US$ 300.

The large number of IRCA regularizations, along with fears that legal immigrants in the United States would soon lose the right to some types of government benefits, has led to a rapid increase in the number of applications for citizenship. The number of foreigners applying to become naturalized United States citizens increased from 340,000 in 1992 to 543,000 in 1994. In 1995, more than 1 million applications for citizenship were received, and the number for 1996 was expected to be even larger.

B. Other countries of immigration

In addition to the traditional countries of immigration, a number of other countries in the world accept immigrants for legal permanent settlement. They include nations like Argentina and Venezuela, which are actively seeking to attract immigrants, particularly skilled immigrants. Some countries, such as Germany, do not refer to themselves as immigration countries but nonetheless sponsor programmes, particularly in the area of family reunification, which enable foreigners to immigrate. Still other countries—for example, Israel and Japan—allow for the return or repatriation of earlier emigrants and their descendants who share an ethnic or religious background with citizens of the country of destination. Lastly, there is a category of permanent economic migrants who are not considered labour migrants because they are not seeking jobs. They include business or investor immigrants, who contribute investment capital and create jobs for local workers. Wealthy retirees constitute one type of economic migrant; developing countries such as Costa Rica, Mexico and the Philippines have had programmes designed to facilitate their immigration.

According to the Population Division Policy Data Bank, as of 1995, only 5 per cent of Governments had a policy to raise the level of immigration (United Nations, 1996 forthcoming). In most cases, countries expected to be highly selective in the immigrants they sought to attract, and the majority of the immigrants they sought could be categorized either as labour migrants or as investor immigrants.

After the Second World War, large numbers of immigrants, particularly from Europe, settled in Latin America, and migration for permanent settlement is still encouraged by several countries in the region. In their responses to the United Nations Population Inquiry, Argentina, Guyana and Uruguay indicated that they wished to raise the level of immigration. Bolivia, Chile, Paraguay and Venezuela have also expressed interest in promoting immigration.

A plan was proposed by Argentina in 1992 that would admit 100,000 immigrants from Eastern and Central Europe and a total of 300,000 immigrants over a three-year period. Immigrants would be expected to bring capital for investment, or their immigration would be sponsored by the European Union (United Nations, 1996b, paragraph 754). As a result of the United States Immigration Act of 1990, which increased the number of visa allocations for highly trained workers, the Southern Cone countries (Argentina, Bolivia, Chile, Paraguay and Uruguay) have experienced substantial emigration by scientists and researchers. One report estimated that approximately 50,000 skilled workers had left Argentina for other countries (United Nations, 1996b, paragraph 759).

In Africa, only Equatorial Guinea and Namibia reported in the Seventh Population Inquiry that they sought to raise the level of migration for permanent settlement. The Government of Namibia stated that it was relaxing immigration restrictions to allow foreigners, mostly entrepreneurs and businessmen from Asia, to migrate to the country (United Nations, 1996b, paragraph 714).

1. De facto immigration countries

During the economic boom that followed the Second World War, labour shortages in the industrialized countries led to numerous bilateral and multilateral agreements between countries for the admission of workers. Most countries expected that labour immigration would be a temporary phenomenon and that workers would return to their home countries when they were no longer needed. However, much of the temporary immigration has evolved into permanent settlement. The sharp rise in the price of oil in 1974 precipitated a worldwide recession and halted the recruitment and importation of workers. Even with high rates of unemployment, the Western European nations were not inclined to deport workers who did not wish to leave, and they solidified the workers' long-term status by permitting family members to immigrate to join the worker. By the end of 1990, it was estimated that the legally resident foreign-born population in Southern and Western Europe and in the Nordic countries had reached 16 million (United Nations, 1996b, paragraph 743).

Many of these labour-importing countries faced a dilemma with regard to the acceptance and integration of foreign workers. Although they were granted legal long-term residence, most foreigners were not eligible

to become full participants in the society of the host country. Countries with citizenship based on the principle of *jus sanguinis*—that is, related by blood or kinship ties rather than by ties to the land (see chapter II)—were reluctant to grant citizenship to foreigners, but without such acknowledgement of their belonging, the integration process remained incomplete. In the 1990s, some countries have amended their laws to make it easier for foreigners to acquire citizenship. Belgium, for example, passed an Act in 1991 that granted citizenship automatically to third-generation immigrants under the age of 18 and eased citizenship requirements for other long-term residents (United Nations, 1996b, paragraph 743). Some countries have still not acknowledged that they are countries of permanent migration and continue to maintain the position that foreigners who have lived in their country for more than a generation are "temporary" residents.

Despite the large number of foreigners in the country—8.5 per cent of the population at the end of 1993—Germany does not consider itself a country of immigration. Germany imported thousands of workers during the 1960s and early 1970s; however, foreigners born in Germany do not automatically acquire German citizenship. About 26 per cent of the foreigners have lived in Germany for 20 years or more, and an additional 26 per cent have lived in the country for at least 10 years (OECD, 1995, p. 88). Turks constitute the largest group of foreigners; there are about 2 million of them, slightly more than one fourth of all foreigners. Other nationalities with significant numbers are ex-Yugoslavs, Italians, Greeks and Poles.

Germany continues to debate the need for an immigration system like that of the United States or Canada. It has been argued that legal admissions would reduce the number of illegal entrants. About 100,000 family reunification immigrants arrive in Germany each year. Legislation came into force in 1991 which relaxed the requirements for acquiring nationality, especially for those who were born or raised in Germany (United Nations, 1996b, paragraph 743), but Germany's adherence to the principle of *jus sanguinis* means that it is much easier for ethnic returnees to acquire citizenship than it is for other foreigners.

In Japan, where the legal immigration of foreigners is strictly regulated, the largest group of foreigners are the descendants of Koreans, who were brought into Japan as labourers between 1910 and 1945. In 1993, there were about 682,000 Koreans in Japan (OECD, 1995, p. 204). Neither the original Korean immigrants nor their descendants have ever been granted Japanese citizenship (Zlotnik, 1994, p. 178).

2. Ethnic and religious repatriation

Some countries give special consideration to immigrants who can demonstrate ethnic, cultural or religious connections, even if such ties are only historic. Ethnically qualified individuals may never have lived in the country of origin and may not know its language or be familiar with its culture. Ethnic repatriation has become a popular route for movement to Western countries, especially since the break-up of the Soviet Union. Israel and Germany have both received significant numbers of such immigrants during the past decade; Finland, Greece, Italy and Japan allow the return of the descendants of former emigrants.

Since the beginning of its existence, Israel has welcomed Jews from other countries, and immigration has been a major factor in the growth of the nation's population. The Law of Return guarantees admission of persons of Jewish descent. They automatically qualify for Israeli citizenship unless they formally refuse it within three months of arrival or settlement. The Law of Return applies to any Jewish immigrant and to his or her immediate family members, whether or not they are Jewish. Emigration of Jews from the former Soviet Union accelerated after the relaxation of emigration restrictions; between 1989 and 1995, some 600,000 immigrants from the former Soviet Union arrived in Israel.

In Germany, the immigration of large numbers of ethnic Germans during the past decade has raised questions about how many newcomers the country can absorb. The German Basic Law provides a constitutional guarantee of citizenship for individuals with German blood. In addition to residents of the former German Democratic Republic (*Übersiedler*), who became citizens of Germany following reunification, Germany has received more than 2 million ethnic Germans, known as *Aussiedler*, from Eastern Europe and the former Soviet Union.

Since 1993, Germany has limited the number of *Aussiedler* to 220,000 per year, and applications to resettle in Germany must be made from outside the country. Those who arrive in Germany get German language instruction, are eligible for pensions, and become German citizens upon request. The largest sources of ethnic German immigrants are Kazakhstan and the Russian Federation, although substantial numbers have also come from Poland and Romania.

Japan also practises ethnic repatriation, and in June 1990 the country amended its Immigration Control and Refugee Recognition Act to grant long-term residence status to second- and third-generation descendants of Japanese emigrants. Thousands of descendants of immigrants to Brazil and Peru during the early twentieth century took advantage of this provision, and by 1991 there were about 148,000 South Americans of Japanese descent living in Japan, of whom 120,000 were from Brazil and 18,000 from Peru (Weil, 1996, p. 31). By 1996, an estimated 170,000 Japanese-Brazilians had moved to Japan. They represent about 15 per cent of the 1.2 million descendants of Japanese emigrants who settled in the states of São Paulo and Paraná, Brazil.

Japan's decision to recognize the right of ethnic Japanese to immigrate to Japan was as much a function of the country's critical need for labour during the late 1980s as it was a desire to welcome back the descendants of emigrants from a previous era (Weil, 1996). Japan limits the immigration of foreigners and strives to maintain ethnic homogeneity, preferring to export jobs, automate the workplace and mobilize the domestic labour force, especially women.

3. Economic migration

Countries that allow migration for permanent settlement have become increasingly selective about the characteristics of successful applicants for admission, both in terms of human capital and in investment capital. All four of the traditional countries of immigration now have programmes that set aside visas for investor immigrants, also called entrepreneurs or business immigrants. The requirements of the programmes vary, but all require that immigrants bring funds for investment in the country of destination and usually that they create jobs for local workers. There may also be a residence requirement, a language qualification and some further evidence of commitment to the country of destination.

Canada's programme for attracting business immigrants has been successful in bringing investment capital to the country. According to a survey by Statistics Canada, immigrants from Hong Kong, China invested about $6.5 billion in Canada between 1987 and 1991. Many of the new immigrants have settled in Vancouver, which in 1996 was home to about 300,000 residents of Asian origin. The total population of the city is about 1.8 million.

In New Zealand, business immigration applications declined to a trickle during the first half of 1996 after new regulations set the minimum investment at $NZ 750,000. Applicants were also required to own more than 25 per cent of the enterprise and to pass an English language test.

The United States Immigration Act of 1990 set aside 10,000 visas for "employment creation"—7,000 for investors of US$ 1 million in urban areas and 3,000 for investors of US$ 500,000 in rural or high-unemployment areas. The investment must create at least 10 jobs for United States workers. Investors are granted a conditional status of lawful permanent resident, which becomes permanent after two years. The programme has failed to attract many applicants, partly because of competition from a similar scheme in Canada (Kramer, 1993, p. 40). Another reason is that once foreigners become United States residents, their income earned in other countries is subject to United States taxes.

Immigrants may also be a source of income for developing countries, some of which have devised programmes to attract wealthy retirees. In the Philippines, for example, a government corporation known as the Philippine Retirement Authority was created in 1985 to promote the Philippines as a retirement haven for foreign nationals and former Filipinos. Foreign nationals who are at least 50 years old and have deposited $50,000 with an accredited bank may apply for permanent non-immigrant status through the Special Resident Retiree's Visa. Also welcome are retired military personnel, former members of the foreign diplomatic corps, and retired employees of international organizations. Between 1987 and 1995, the programme generated nearly US$ 100 million in funds.

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V. LABOUR MIGRATION

In most senses, nearly all migration ultimately involves labour migration of some kind; every type of migrant is potentially an economic actor with an impact on the labour market of the receiving country. Even refugees or families of migrants, whose admissions criteria and migratory motivations may differ in origin from those of labour migrants, enter the labour market and become part of the local working force. Nonetheless, at the core of labour migration is the explicit notion of a foreign workforce that is imported, mostly for a fixed duration, and chiefly to fill jobs for which local manpower is lacking. More specifically, labour migrants are defined by the State as those persons who are admitted expressly for employment activity.

Labour migration has been an essential component of international migration, which is generally assumed to result from some kind of imbalance—often economic—between the receiving country and the sending country. The majority of population movements in the post-war period started as labour migration, often organized by employers and Governments. The political economy-based theories of labour migration emphasized the crucial role of migrant workers in providing low-skilled labour as part of economic reconstruction and growth, while constraining wage increases in certain sectors such as manufacturing and construction. As the shift from temporary labour to permanent settlement has become more evident in the 1990s, economic globalization and recession have led to the rethinking of the role of labour migration.

A. Historical overview

The labour migration flows of the 1990s are not a new phenomenon. The practice of leaving one's homeland in search of better economic opportunities and a higher standard of living has been part of the international migration scene for centuries, as has the practice of recruiting workers from another country (usually poorer) to address labour shortages. Indeed, the earliest man was a hunter and a gatherer who wandered from place to place in search of food; man continued to migrate in order to improve his lot in life even after establishing residence. People who had the misfortune of settling in desolate areas devoid of natural resources moved to seek a livelihood elsewhere.

International migration during the past several centuries has been closely linked not only to demographic imbalances and national policies (including waging wars, expelling or resettling specific ethnic groups, and controlling migration), but to the changing geographical distribution of employment opportunities. Since labour remained a scarce commodity until the twentieth century, many countries encouraged immigration in an effort to satisfy the demand for labour. In contrast, by the twentieth century, national policies have become more restrictive in regard to labour migration, as population growth has created a workforce larger and more concentrated than available employment opportunities.

Indeed, most migration that takes place today has its roots in the international labour market, as labour surpluses and shortages in some countries are offset by flows to, or from, other countries. Perceived in this way, the real beginnings of a truly international migration of labour can be traced to the slave trade, when in the 1440s European sailors enslaved Africans and brought them to Europe for use in their own households. More than a century later, the first slave ship sailed from Africa to the West Indies carrying slave labour to be used in the sugar and tobacco plantations in the Caribbean. The next few centuries witnessed some 15 million Africans uprooted from their homelands and shipped to Brazil, the Caribbean and Northern America. Indeed, the slave trade was one of the largest mass labour migrations in history. The indentured labour system also supplied foreign workers, primarily from China and India, to British, Dutch, French and German colonies around the world. Estimates place the number of indentured workers (often known as coolies) at between 12 and 37 million.

Throughout the eighteenth century, many European Governments undertook measures to curb emigration in an effort to avoid losing much-needed manpower. Economic liberalism abolished all obstacles to mercantilism, including control over population movements, by the mid-1800s. As a result, from approximately 1860

until the outbreak of the First World War in 1914, European Governments, with the exception of Czarist Russia, had virtually no controls restricting travel abroad. Passports were not required for travel between countries and migrants could obtain employment in a new country without a permit. This period, however, was characterized by relatively moderate emigration rates.

The period from the outbreak of the First World War until the close of the Second World War coincided with the introduction of strict immigration controls designed to prevent the enemy from entering one's territory. After the First World War, the controls were used to protect labour market interests. Moreover, massive unemployment during the 1920s and the 1930s prompted Governments to protect domestic workers from foreign competition. In the aftermath of the Second World War, the needs for reconstruction and growth led to a renewed interest in foreign manpower. The period from 1945 to 1974 was characterized by relatively relaxed immigration controls, ensuing in large part from a high demand for labour in industrialized Western European countries. Although foreign workers were often directly recruited, it was assumed that the labour migration would be temporary and that the workers would soon return to their own countries. Nonetheless, the oil crises of 1973 were followed by strict immigration controls, resulting in a sharp reduction in the migration of workers. After 1985, labour migration remained relatively limited in scope, while the number of asylum-seekers and undocumented migrants increased.

In the nineteenth century it was more common to move workers to the sources of capital, but at the end of the twentieth century, the international labour migration scene reflects changing world economic conditions, with new policy responses. In Europe and the United States, slower economic growth and rising unemployment have once again raised concerns about the impact of immigration on the employment and income of nationals. Indeed, the prospect of millions of uninvited immigrants arriving on their doorstep has prompted many Governments to consider ways in which potential migrants might be provided with incentives to remain in their homeland. A variety of measures to discourage emigration have been discussed, ranging from the relocation of manufacturing and services to countries that provide cheap labour, to international trade, foreign investment and foreign aid. In its 1990 report, the United States Commission for the Study of International Migration and Cooperative Economic Development argued that sustained economic development, including the availability of new and better jobs in the sending countries, is the only way to decrease migration pressures over time.

While labour migration continues to be a fundamental component of the international migration scene, its evolution reflects the times, more specifically, economic globalization and growing regional interdependence. In the 1990s, it is becoming more evident that financial services, investments and trade move much more readily and much greater distances than persons seeking employment. With the notable exception of labour migration to Western Asia, most foreign workers tend to stay within their own region and to seek employment in neighbouring countries. Northern America, Western Europe, Western Asia, Africa and Latin America are the key actors in the field of labour migration. Asia is also becoming an important source of foreign labour. However, there is very little international labour movement in China and India, the two most populous countries in the world; the countries which were formerly republics of the Soviet Union are just now beginning to take part in labour migration flows.

The migration of workers across international boundaries continues to increase in both volume and geographical scope. Indeed, labour migration currently plays a major role in the globalization of the world economy, having a significant impact on the economies and the labour force of more than 100 countries throughout the world. Among the more recent factors involved in making migration possible for many people in the developing world are the increasing globalization of economic networks; technological progress; the development of regional economic blocs in Europe, North America, Asia and the Pacific; the liberalization of the movement of goods and capital; and direct foreign investments. These trends have been greatly facilitated by new actors in the international labour scene, particularly transnational corporations and international banks that have become pivotal in the internationalization of capital and the creation of an international division of labour.

Labour migration is no longer a purely South-North phenomenon. South-South flows, or movements of people within the developing world, and East-West flows, or movements from Eastern to Western Europe, have become increasingly important. The dramatic economic and political reforms that have recently taken place in Eastern Europe and the former Soviet Union have significantly affected both labour migration patterns and policy decisions. The extent of these trends is manifested in increasing Government willingness to cooperate in this area, and to include migration issues in international population policy forums.

Indeed, labour migration in the 1990s cannot be defined as a mass exodus of people from developing countries searching for work in industrialized nations. Rather, it is a much more complex phenomenon, with each region characterized by its own distinct patterns of migration. Africa and Latin America, for example, each have sizeable migration flows within their respective regions. In Asia, high rates of economic growth in Japan;Taiwan Province of China; the Republic of Korea; Hong Kong, China; and Singapore have attracted temporary migrant labour from neighbouring Indonesia, the Philippines and Thailand, countries that also provide contract labour to Western Asia.

Many countries today have implicit or explicit policies to attract foreign workers, although the types of workers have changed over time and according to region. Today's foreign workforce increasingly consists of temporary workers admitted as part of revised earlier programmes, based on seasonal activity and/or cyclical needs in particular regions or needs for specific skills. Most OECD countries, for example, grant foreigners the right to stay in the country and to obtain a temporary or seasonal work permit within the framework of a contract of employment or according to procedures delineated for trainees.

In addition, more and more, worker movement applies to skilled labour, especially highly qualified workers. In fact, in a climate of restrictiveness towards immigration, highly skilled labour appears to be one of the few modes of legal migration, and these migrants are notable for the special measures favouring them (e.g., procedures for entering, staying and working in the country of their choice, and in some cases for being reunited with their families). The mobility of managers, experts and professionals has become a critical feature of international labour migration, reflecting the expansion of world trade, the development of transnational enterprises and regional integration.

The pattern of movement for highly skilled workers is diverse. Often, highly skilled personnel migrate to fill a specific occupational niche in a country's economy, or to respond to a surge in a country's economic development. The United States, Australia, Western Asia and the European Union are the leading poles of attraction for these migrants. The transformation of former socialist regimes in Eastern Europe to market-based economies has been facilitated substantially by the role of these so-called "professional transients" (Appleyard, 1989, p. 32). Other developing economies such as Mexico, South Africa and the seven Asian "tigers"—Taiwan Province of China; the Republic of Korea; Singapore; Thailand; Malaysia; Indonesia and Hong Kong, China—are also affected by such flows. Indeed, the heterogeneity of characteristics within each professional group has made it difficult to formulate an internationally accepted definition of this group. Coupled with the temporariness of their movements, these factors impede statistical measurements. The most distinctive characteristic of highly skilled migration is the institutional framework within which it takes place. That is, these flows largely rely on the internal labour markets within multinational corporations, recruitment agencies, or Government offices (OECD, 1995). They tend to follow international investment flows, and reflect the internationalization of firms in the ongoing process of globalization of the world economy.

In spite of their small numbers, highly skilled migrants have grown in importance, and their movement underscores the intricate links between market globalization and migration dynamics. Highly skilled migration both responds to and reinforces the growing economic bonds between States and the development of transnational corporations. It has been argued that, without a migratory elite ready to move wherever needed, it would be impossible for many firms to acquire an international business dimension or even to open a subsidiary company in another country. Similarly, the existence of transnational corporations and of an international labour market fosters the development of a body of skilled migrants, perpetuating itself through students

who are educated abroad and exposed to a new international culture.

The key role of this global migratory elite has been recognized in several international forums, and particularly during the debates for the latest rounds of the General Agreement on Tariffs and Trade (GATT). Consequently, consultations have begun over a General Agreement on Trade in Services (GATS), which would promote the free circulation of highly skilled personnel as part of the free provision of trade in services. Similar provisions already exist in most of the regional economic agreements, such as the European Union (EU), the Economic Community of West African States (ECOWAS) and the Union douanière et économique de l'Afrique centrale (UDEAC).

Finally, there are increasing numbers of undocumented migrant workers who are in an extremely vulnerable situation and can be very easily exploited by employers. Many of these migrants are women who migrate as domestic servants and entertainment workers. Although virtually all Governments report that they seek to halt the flow of undocumented migrants, many do not implement policies or programmes to control the entry or stay of migrants, particularly of required "cheap" labour.

B. Policy issues

The conditions in the labour market and the skills possessed by the migrants are important determinants of their status in the host countries, but State policies are evidently most decisive. State policies of host countries determine whether migrants are able to work legally or illegally, whether they can make use of their acquired skills or professional qualifications, whether they can move occupationally or geographically in search of more productive and better paying jobs, whether employing firms would find it in their interest to invest in migrants' training and career development, and whether there are sanctions against practices that discriminate against immigrants. Indeed, the importance of State policies in determining the status of workers who are not nationals of the countries in which they are employed is the underlying assumption behind the evolution of international norms on the treatment of migrant workers such as those embodied in several ILO conventions and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

In the 1990s, major policy issues in the area of labour migration include controlling the number of immigrants admitted as foreign workers and ensuring that contract workers return to their home countries after the expiration of their contracts. Indeed, very often contract labourers fail to return home and virtually become permanent settlers with the passage of time. Short of integration efforts, protecting the rights of migrant workers has also been a major policy concern.

Policy considerations in countries of both origin and destination are weighed heavily against the cost-benefit analyses of importing and exporting labour. As labour migration affects the economies and labour forces of both sending and receiving countries, there are both costs and benefits derived from labour import and export. Sending countries often lose skilled and educated employees in their most productive ages, but their departure may alleviate population pressures, poverty and unemployment at home. Many countries of origin consider labour migration as a source of much-needed foreign exchange for development; others have grown to depend on remittances to manage their balance of payments. It is argued that remittances also have negative consequences that range from making remittance-dependent economies vulnerable to sudden external changes (for example, unexpected mass repatriations in times of sudden crises) and introducing an element of uncertainty in migrants' family incomes to weakening social cohesion, enhancing income inequality and creating distinct economic classes based on migrant status (Abella and Lönnroth, 1995, p. 5).

Cost-benefit analyses vary more distinctively according to the types of foreign labour addressed. Recourse to temporary foreign workers is designed to meet immediate manpower shortages related to specific activities. In certain countries, this type of migration serves as a means of counteracting undocumented migration, while avoiding long-term or permanent migration, with its accompanying integration costs.

For receiving countries, the benefits of unskilled and semi-skilled foreign labour that fills dirty, dangerous, demanding and low-paying jobs, often unwanted by the local population, are mitigated by some costs. Whether

perceived as threats to job security or wage levels, competitors for housing, or as burdens on health, education and public services, foreign workers may become targets of considerable public and official opposition. Such resistance to the importation of labour, which is often accompanied by xenophobia, also stems from cultural differences between the native population and the foreign workers and their families. Proponents of immigration are quick to point out that the evidence does not support such blanket assertions: immigrants who come in at the bottom of the occupational ladder can actually promote native workers who are found in the lowest positions; foreign domestic workers can release native women for full-time employment; immigrants may serve to increase native wages by creating or protecting higher skilled jobs (some industries might not have survived without low-paid foreign labour). It has also been argued that immigrants not only consume benefits but also contribute to the welfare State by paying taxes (Seifert, 1996). Many immigrants bring their own capital with them. Indeed, some countries offer special visas for individuals who bring sufficient capital to employ themselves and others.

While the beneficial impact of the highly qualified workers' talents on receiving countries, particularly for developing countries or economies in transition, is more obvious, the free circulation of this personnel has yielded less than clear-cut results. Highly educated and relatively affluent, such highly skilled professionals are often considered "low-risk" immigrants. Offering sought-after skills to local industry, these workers are widely perceived as an asset for the receiving country, a perception reflected in the favourable policies of most countries regarding their intake. The benefits are mainly economic; highly skilled migrants provide a new potential for industrial innovation, economic dynamism, entrepreneurialism and job creation. In addition, there are specific advantages for employers, who may obtain the world's best minds for relatively low pay because of competition in the international labour market. Many observers have nevertheless stressed the hidden costs of immigration of the highly skilled. Although the effects of immigration on the national labour market remain elusive, there are clear indications that highly skilled migrants displace domestic labour, which is then driven towards lower skilled occupations (Castles and Miller, 1993). Similarly, the immigration of highly skilled personnel may also have a depressing effect on national wages, although such an effect is difficult to prove.

In sending countries, the benefits—potential knowledge transfer and remittances—are weighed against the numerous costs—particularly the brain drain, also referred to as "reverse technology transfer". This means that those who leave are often the best educated and most promising individuals, and their departure may represent a substantial social loss in addition to the obvious economic one. Indeed, the drain of students and highly educated individuals may compromise the establishment of an intellectual and research pool in the sending country. On the other hand, while the brain drain may pose a serious loss, it has also been seen as a stopgap measure to reduce unemployment and potential instability in sending countries. In addition, the temporary nature of such migration may also have long-term sociocultural effects on sending countries. The earlier experiences of European colonists, like those more recently of the Japanese, for example, underscore the positive impact of opening societies to outside influences that are a by-product of such migration. Indeed, it has been argued that Japan, to a large degree, is being changed today by the exposure of its executives and technicians to other cultures (Castles and Miller, 1993, p. 87). One of the risks of letting the flow of highly skilled migration go unregulated is the perpetuation of the socio-economic gap between developing and developed countries. Brain waste, also known as deskilling, for example, has been common in Eastern Europe, where there has been a trend towards emigration of highly skilled personnel towards lower skilled jobs.

There are problems inherent in documenting the number of labour migrants. Statistics are often scarce and, when they do exist, are inadequate and unreliable. For example, because there are no reliable data on the number of nationals of Arab countries working abroad, estimates of the number of Egyptians employed outside the country vary from 1.4 million to over 3 million. Statistics that originate from different sources are often not comparable; estimates of the number of foreign workers in Saudi Arabia during 1985, for instance, varied from 1.3 million to 3.5 million. Data from other regions, notably sub-Saharan Africa, are virtually non-existent. Moreover, statistics on labour migration often suffer from a lack of international comparability that stems from the measurement of migration itself. An

individual who is classified as a migrant must have crossed a boundary and must have spent a certain amount of time in the new place of residence. Since these criteria are defined and measured differently cross-nationally, migration statistics are often not comparable from country to country. For example, German estimates of the number of Italian immigrants arriving during the mass migration of rural southern Italians to the industrial Federal Republic of Germany during the 1960s were more than twice as high as Italian statistics on the number of persons who had emigrated to Germany. Such shortcomings necessarily place serious restrictions on the assessment of the volume and composition of migration flows. They also impede any analysis of the implications of migrant worker flows as well as the development of appropriate policies that address the issue of labour migration.

Another problem encountered in the documentation of foreign workers stems from a question of definition. Labour migrants may be narrowly defined as persons recruited as foreign workers by Governments or employers, or they may include individual migrants who wish to find work abroad. A broader definition recognizes other types of migrants (family migrants, undocumented migrants, and refugees) who will be seeking work sooner or later and who will have an impact on the labour market. The term "labour migrant" usually refers to persons who migrate for employment reasons, including contract labour migrants who are recruited in groups for specific projects; individual contract workers who often remain for indeterminate periods; highly skilled professional, managerial and technical workers on secondment, short-term assignments or in joint ventures; seasonal workers; au pairs; domestic servants; entertainment workers; and entrepreneurs. However, there are other migrants who do not move primarily for employment reasons, but who subsequently enter the labour market and become part of the immigrant labour force. They include family members who rejoin a primary labour migrant; foreign students who work temporarily during their studies and stay on permanently after qualification; asylum-seekers who enter the labour market unofficially before formal acceptance and who remain and work illegally after being rejected; refugees who enter the labour market legally after being accepted; and persons who arrive as tourists, overstay their visas and enter the labour market. These diverse groups may be part of the labour force for varying amounts of time, as permanent settlers, temporary workers or short-term visitors. Their significance differs from country to country and within different geographical regions. The permutations of these various time periods and migrant types create a multitude of flows that often elude official statistics.

A special case of labour migrants are the undocumented migrant workers whose exact numbers will never be known. Some may have entered the country legally, but have since changed their purpose of stay. They may include visa overstayers, persons who claim asylum so that they can remain in the country to obtain employment, tourists who work clandestinely, or workers on visas who remain in the country after their work permits expire. Others cross national borders illegally with the purpose of seeking employment or are smuggled across the border or on the high seas by organized traffickers. According to the International Organization for Migration, there were an estimated 30 million undocumented labour migrants throughout the world as of the early 1990s. The vulnerable position of undocumented migrant workers, many whom are women, has raised concerns about exploitation by employers.

C. Regional overview

The nature, direction and magnitude of labour migration continue to be influenced by the economic and social changes taking place in the world. Thus, any onset of a world economic slump or mass unemployment has a direct effect on migration flows as Governments seek to address the problems caused by labour surpluses and as individuals seek employment in other countries. Periods of economic boom and prosperity, on the other hand, are often accompanied by the influx of foreign workers to alleviate labour shortages. In general, however, migration flows follow the persistence of demographic and economic imbalances more than cyclical trends. These flows and policy responses clearly vary within and according to regions, as some countries have tended to become labour-receiving or import countries and others, sending or labour-export countries. They also reflect substantial differences in the degrees of State or market organization in regulation.

The identification of receiving countries with developed countries, on the one hand, and of sending

countries with developing countries on the other, has blurred the complex linkage between the migration process and the development process. Although migrants seeking to improve their well-being generally move from countries that are lower on the development scale than those they choose as destination, migration cannot be characterized as being mainly from developing to developed countries. Indeed, since 1970, a growing number of developing countries have become important destinations of migrants. Most of those countries are rich in natural resources or capital and need to import labour in order to promote economic growth. Furthermore, while both developed and developing countries have been admitting highly skilled personnel, some evidence suggests that increasing numbers are migrating to developing countries (United Nations, *World Population Monitoring, 1997*, forthcoming).

Although it is true that many migrants from developing countries seek employment in developed countries, the majority of population movements occur intraregionally (particularly in Latin America and Africa). The globalization of international migration has coincided with substantial movement within Eastern European, Arab, African, Asian and Latin American countries. New poles of financial, manufacturing and technological power have emerged in the oil-rich Arab States, and outside, in countries such as Nigeria, Venezuela and Brunei Darussalam, and in Eastern Asia. Thus, in the 1990s, it is difficult to speak of either migrant-receiving/sending countries or developed/developing regions without placing them in the context of current trends. While there appears to be some correlation between development and migration (i.e., developed/developing and receiving/sending), by no means are these terms mutually exclusive. In Europe, for example, there have long been great disparities between the Northern countries, which traditionally have imported labour, and those in the South, which traditionally exported labour. Similarly, while Africa has been experiencing a steady brain drain—some 70,000 highly skilled Africans are believed to have left for Europe between 1960 and 1987—many have migrated to Côte d'Ivoire, Nigeria, Senegal, Gabon, Kenya and South Africa. Furthermore, some countries receive certain types of workers (e.g., highly skilled), while simultaneously exporting others (e.g., unskilled). Given the intraregional variations and the tendency of some countries to qualify as both migrant receiving and migrant sending, the organization of this chapter according to regional perspectives is intended as a crude framework to refer to migration experiences, with greater emphasis on these types of distinctions for a more systematic analysis.

1. Countries of immigration

As discussed in chapter IV on countries of permanent migration, countries such as the United States, Canada, Australia and New Zealand traditionally have emphasized immigration for settlement. At the core of their immigration policies is preferential entry for family and humanitarian migrants and, increasingly, skilled or highly skilled labour. This section will focus on policy changes that affect the movements of labour migrants.

In a climate of growing policy restrictiveness, policies reflect an evolution towards selectiveness, favouring the admission of people to meet specific labour needs, such as those in science and technology, those considered in short supply in the labour market, and those who are able to bring in capital. At the core of these policies are concerns to balance the needs of employers for foreign workers without causing adverse effects on the employment opportunities of native workers. In a larger perspective, these preferences are part of an overall strategy to enhance those countries' positions in the global economy.

Either by means of preferential categories as in the case of the United States of America, or points systems as in Canada and Australia, by the early 1990s most of the traditional immigration resettlement countries had enacted some legislation placing greater emphasis on migrant skills. As a result of new Government policies, skilled workers are reshaping immigration in the United States. Indeed, the influx of newcomers into such cities as New York has not subsided despite a weak economy and fewer manufacturing and low-skilled service jobs typically held by immigrants. Under the current preference system, newly arrived immigrants are more likely to be highly skilled and professional workers and to come from Asia and Europe. In Canada and Australia, countries which rely on a version of a points system, the numerical weight attached to factors such as education, training, occupation, and language skills has similarly reduced the proportion of immigrants dependent on family relationships.

The Immigration Act of 1990 served to restructure the United States immigration system. Although most visas continued to be family based, the new legislation nearly tripled the share of employment-based visas to be issued every year, from 54,000 to 140,000, accounting for less than 9 per cent of legal immigration into the country (United Nations, *World Population Monitoring, 1997*, forthcoming). It gave preference to applicants with valuable professional credentials, persons with skills and investors by allowing annual admission of up to 80,000 high-level professionals outside of the family migration category. The Act also introduced significant changes in the procedure involving certification of foreign workers for certain jobs, including the establishment of a pilot programme to determine labour shortages. Under the new legislation, employers are required to submit proof of the need for foreign workers before an application for a non-immigrant visa for a skilled worker is filed.

The 1990 Act distributed the total number of visas for employment-based immigration among five main categories or preferences. Preference 1, which includes 40,000 visas (plus any unused preference 4 and 5 visas), is reserved for priority workers with extraordinary ability (proven by sustained national or international acclaim) in the sciences, arts, education, business and athletics (no United States employer required); outstanding professors and researchers who seek to enter senior positions (United States employer required); and select executives and managers of multinational firms (United States employer required). Preference 2, which includes 40,000 visas (plus any unused priority worker visas), is reserved for members of the professions who have advanced degrees and for those with exceptional ability in the sciences, arts or business (United States employer required). Preference 3, which includes 40,000 visas (plus any unused visas from the previous two categories), is reserved for skilled workers with at least two years' vocational training or experience; professionals with a bachelor's degree; and unskilled workers (limited to no more than 10,000 visas per annum). The second and third preferences require a certification from the United States Department of Labor that United States workers are not available for the jobs and that the wages and working conditions of similarly employed native workers would not be adversely affected. Preference 4, which includes 10,000 visas (plus any unused visas from the first three categories), is reserved for special immigrants including ministers of religion and persons working for religious organizations (a limit of 5,000 visas over a two-year period for the latter); foreign medical graduates; employees of the United States Government abroad; and retired employees of international organizations. Preference 5, which includes 10,000 visas, is reserved for employment creation or investor visas for applicants who invest US$ 1 million (a minimum of 3,000 visas are reserved for persons who invest US$ 500,000 in rural areas or in areas with high unemployment). Each investor must create employment for at least 10 American workers; investors are granted conditional lawful permanent residence for two years.

By increasing the ceiling on the number of employment-based immigrants admitted into the United States each year, the Immigration Act of 1990 shortened the waiting period for most applicants. Under the former system, applicants who had fulfilled all admission requirements were still subject to a waiting period of approximately 18 months for an available third preference (highly skilled) slot and nearly four years for an available sixth preference (skilled and unskilled) slot. Applicants from China, the Dominican Republic, India, Mexico and the Philippines were often required to wait much longer. The expansion of employment-based quotas eliminated queues for all categories except the unskilled worker category, which is limited to 10,000 visas. Applicants from China, India and the Philippines have some slightly longer waits in the second, third and fourth preferences. Because the demand for unskilled worker visas far exceeds the supply, applicants in this category can expect a delay of approximately nine years.

The case of the United States illustrates the issues at stake in the debate over the migration of highly skilled personnel for a receiving country. On the one hand, business, particularly the computer industry, has strongly supported such migration, claiming that its survival depends on the ability to hire foreign talent. On the other hand, the Government has been concerned that the immigration of highly skilled personnel reduces opportunities for the domestic labour force and that this, in the long term, may contribute to the decline in the number of domestic scientists and engineers. Those who have supported the computer industry's point of view have maintained that the country has a deficit in scientists and engineers and that immigration enables

the industry to remain in the United States and to be one of the major economic assets of the nation. Critics, however, have claimed that the increasing recourse to foreign graduates diverts domestic skilled workers from scientific disciplines. Furthermore, in the long term, the country would lose its scientific base, potentially jeopardizing national security. Despite protectionist overtones in the face of increasing globalization, such an argument merits some attention, given the data which show that the scientific human resources of the nation may be substantially declining. As of 1990, the proportion of foreign-born scientists and engineers in the United States rose to 11.7 per cent compared to 7.9 per cent of the total foreign-born population. In addition, the proportion of foreign graduates in scientific disciplines has been increasing; in 1993, foreign students obtained 49 per cent of all Ph.D.s in computer sciences in the country (Bouvier and Martin, 1995).

In December 1994, the United States Department of Labor issued new rules that make it difficult for American employers to hire foreign professional workers under the "H-1B" category at wages that undercut those of United States professionals. Some companies are alleged to exist solely to supply foreign technicians and engineers to American companies, and some American workers have complained that native professionals, especially computer software programmers, were being laid off and replaced with foreign experts. In some cases, jobs were exported to countries where labour was cheaper. The new regulations allow the Labour Department to launch an inquiry without an outside complaint, to issue labour permits for three years instead of six years, and to require proof from employers that wages paid to foreigners are comparable to those paid to Americans.

Canada also has undergone similar revisions in its policy orientation in the 1990s. While immigration policy continues to be based on the Immigration Act of 1976, along with the five-year plans introduced in 1989 (the first plan covered the years 1991-1995), more recent debates about immigration management have led to considerable efforts to realign policies with changing economic and international conditions. Legislation that took effect in 1993 modified the Immigration Act to make Canada's immigration policy more responsive to the need for a skilled labour force, especially in regions and provinces that are economically less developed (Canada, Employment and Immigration Canada, 1993a, p. 3; see also chapter IV, section A, above). In response to unrealized targets, the pressure of family flows on economic objectives, and the failure of economic migrants to correspond to the needs of the economic cycle, the 1993 revisions aimed to shift Canada's policy towards a more long-term approach in planning and managing immigration. Changes in the selection criteria have been considered to make it more difficult for all but highly qualified workers. These include awarding additional points for post-secondary or university education, but none to those who have not completed secondary school. Language fluency is also emphasized. Canadian immigration policy also continues to encourage entrepreneurs and self-employed business immigrants who may qualify as permanent migrants.

Unlike Canada and the United States, Australia has not made any major policy changes since the early 1970s, when it shifted from a ethnocultural selective immigration policy to one which emphasized human capital. Family reunion is still allocated the largest share of admissions (55 per cent in 1992), but for the rest, entry eligibility is determined on a points system based on human capital attributes. Four types of skilled immigrants are distinguished, and they include both workers and investors. Highly skilled workers may be admitted under the employer nominations category; these applicants are individuals who are directly recruited by Australian employers, who must show that they were unsuccessful in filling the positions with Australian workers.

Immigrants admitted under the special talents category include exceptionally talented or creative persons, sports figures and individuals whose records of achievement clearly demonstrate that their presence would be beneficial to Australia. This is generally a very small category with fewer than 500 successful applicants per year. The final type of skilled migration includes independent immigrants who wish to reside permanently in Australia but have no relatives or close links with the country. They are subject to the standard "points test", which awards scores according to employability, skills, education, language proficiency and age. Independent immigrants must achieve higher scores than concessional family immigrants to be granted permanent residence (Jenks, 1992: Australia, p. 5).

Although Australia traditionally has not used short-term or contract employment programmes to supplement its workforce, foreign investment in Australia and the internationalization of the economy have given rise to the temporary movement of specialists, skilled workers and managers within the organizational frameworks of foreign companies (Australian National Committee for the United Nations International Conference on Population and Development, 1994, p. 33). In 1990-1991, specialists constituted more than 20 per cent of all temporary worker arrivals, followed by executives of overseas companies, academics and educators. Sports figures and entertainers were also included in this classification. The increasing importance of temporary workers is reflected in the fact that, in 1990-1991, the number of workers with temporary visas was equivalent to 83 per cent of the annual immigration intake (Stahl and others, 1993, p. 98). According to a recent report published by the Bureau of Immigration and Population Research, one of the chief advantages to the Australian economy of the temporary immigration of skilled workers is a flexible labour force, especially in occupations where technology is changing quickly (Baker and others, 1994). The rationale is that workers can be recruited according to demand and, if demand subsides, their temporary visas need not be renewed.

Australia has a long-standing tradition of not permitting temporary entry to unskilled workers, but its Working Holiday Maker Scheme provides an opportunity for individuals to work for periods up to three months as they travel around the country. In 1990-1991, two fifths of all temporary resident arrivals entered under this scheme, and many of them worked in unskilled or semi-skilled jobs, especially in the tourist industry (Stahl and others, 1993, p. 98). The countries whose citizens are eligible for the Holiday Maker Scheme are Canada, Ireland, Germany, Japan, the United Kingdom and the United States of America.

As a result of the Trans-Tasman Agreement of 1972, New Zealand is the source of the largest number of labour migrants to Australia. According to the terms of the Agreement, Australian and New Zealand citizens have a mutual right of free entry and residence in both countries. Beginning in the mid-1970s, economic conditions in New Zealand prompted many residents to cross the Tasman Sea in search of jobs in Australia. During 1982-1989, an average of more than 30,000 New Zealanders departed for Australia every year (New Zealand Government, 1995, p. 78). Australia continues to have a positive immigration balance with respect to New Zealand, but return migration to New Zealand in the 1990s reduced the imbalance to less than 4,000 in 1994 (New Zealand Government, 1995, p. 78).

Overall, with an administrative policy similar to Canada's, in which the Government is able to adjust the annual level of immigration according to labour market needs, similar biases towards highly skilled immigrants, like those of the other countries of permanent migration, are emerging in Australia. As the Government announced a reduction of the general migrant intake for the fiscal year 1996/97, particularly for those who come under the family reunion scheme and refugees, it announced an increase of 5,000 skilled migrants (NewsEDGE, 3 July 1996).

Like Australia and Canada, New Zealand also ranks long-term and permanent migrants according to a points system that includes employability as one of its criteria. Its immigration policy is closely linked to economic considerations and is, in fact, administered by the New Zealand Immigration Service within the Department of Labour. Legal labour migration to New Zealand since the early 1970s has been linked to changes in the nation's economy, particularly the shift from labour-intensive to capital-intensive industry. Its policy is also linked to a history of both emigration of natives and immigration of workers from countries that share special relationships with New Zealand. Thus, with the emigration of 140,000 New Zealanders, or nearly 10 per cent of the labour force during the past decade, New Zealand generally has been more receptive to all types of workers. Less restrictive policies also have emanated from special immigration relationships with other Pacific countries.

The movement of workers to and from New Zealand occurs largely outside the formal visa process because of exemptions from visas permitted for Australian citizens and for residents of certain Pacific Islands. Residents of three island groups—the Cook Islands, Tokelau and Niue—hold New Zealand citizenship and may enter the country without restriction. New Zealand also has special arrangements for work and residence permits for nationals of Samoa, Tuvalu and Kiribati. Samoa, because of its former colonial affiliation with

New Zealand, has an annual quota of about 1,100 temporary workers who have been guaranteed employment. Up to 80 nationals from Tuvalu are permitted to enter New Zealand each year, and a similar arrangement exists with Kiribati. These migrants must have job offers before they are granted work permits. The numbers of migrants entering under work permit schemes are small compared with the total flow of workers to New Zealand (Bedford, 1992, p. 53). Thousands of Pacific Islanders, especially Samoans and Tongans, enter the country on short-term visitors' visas and get jobs through kinship networks in the permanent migrant community (Bedford, 1992, p. 54).

Migrants from Pacific nations are primarily unskilled or semi-skilled workers, many of whom respond to the demand for labour and move back and forth between New Zealand and their home islands between periods of short-term employment. By far the largest number of Pacific Islanders in New Zealand are originally from Polynesia, especially Samoa, the Cook Islands and Tonga. They share linguistic and cultural elements with New Zealand's indigenous Maori people. Substantial communities of Pacific Islanders have been established in the larger cities, particularly Auckland, where more than 80,000 Pacific Island Polynesians were enumerated in the 1986 census (Bedford, 1992, p. 47).

The number of work permits granted to temporary arrivals in New Zealand has increased during the past decade. In the late 1980s, the countries that supplied the most temporary workers were the United Kingdom, Japan, the United States, Canada, Fiji and Germany. This focus on industrial nations reflects the growing international economic ties that have been forged (Stahl and others, 1993, p. 94). Following the coups in Fiji in 1987, an increased number of Fijians and ethnic Indians came to New Zealand on temporary work permits. Other Asian countries that have been sources of temporary workers to New Zealand are China, the Philippines, Malaysia and the Republic of Korea (Stahl and others, 1993, p. 94).

Like most of the other countries of permanent migration, New Zealand redefined its policy in the 1990s. The 1991 Immigration Amendment Act acknowledged the focus on labour migrants by giving preferences to immigrants with suitable qualifications, experience and assets. Awarding points on the basis of employability, age and financial resources, the policy specifies that permanent migrants be selected according to their potential contribution to the social and economic well-being of the resident population of New Zealand. New Zealand also has a business investment category to create employment and attract capital to the country; it requires an investment of $NZ 750,000 for at least two years. Since 1995, investors have been required to demonstrate a commitment to New Zealand and to be actively involved in the investment enterprise. They must also spend at least six months of each of two consecutive years in residence in the country (James, 1995, p. 28).

In most developed countries of permanent migration, the 1990s have witnessed a renewed effort to shift immigration preferences towards less universal criteria. The general trend amidst selectivity is that higher priority is being given to educated skilled migrants, while fewer slots are allotted to unskilled workers. These trends affect other categories of immigration, such as that of family reunification, where employability is becoming a more pertinent consideration.

2. Europe: Traditional and new labour-importing countries

The main distinction between the migration policies adopted in Europe and countries of permanent migration derives from the view of migrants as workers entering a labour market for a temporary stay, not as settlers. Such was the traditional approach to migration by European countries—even if differences among them are substantial. Indeed, while labour migration played a key role in reconstructing a war-torn Europe, marked by demographic insufficiencies and manpower shortages, policy approaches to labour migration have varied according to specific national exigencies and historical experiences. Thus, although recruitment of labour from foreign countries was a common phenomenon among the market economies of Europe, the types and origins of migrants recruited varied according to historical and colonial links, and labour market needs. Moreover, substantial differences emerged in the degrees of state or market organization and regulation of labour flows.

In most of the labour-importing countries of Europe, the oil crises of 1973 put a virtual end to the period of guest-worker migration from Mediterranean countries

to Western and Northern Europe that took place in the 1960s and the early 1970s. Recruitment of regular migrant labour practically ceased, resulting not only in a notable decrease in migration flows to the North, but in a significant return of foreign labour to the South. The economic downturn that followed the oil shock resulted in extensive unemployment, and a subsequent realization that many temporary labour migrants were rapidly becoming permanent residents under family reunification provisions, one of the last legal modes of migration to Europe. With limited successes in incentive schemes and repatriation programmes, and a shortage of long-term policies to incorporate workers into the society permanently, by the early 1980s, many European countries entered a new phase of migration policy, aimed at stabilizing the foreign population.

A gradual improvement in productivity and competitiveness, along with a revival of markets in the 1980s, enabled Western Europe to resume, albeit on a smaller scale, its recruitment of foreign labour. Economic development achieved by Southern European countries during the past two decades transformed traditional countries of origin into countries of immigration. Indeed, by the late 1980s and the early 1990s, several former emigration countries, including Greece, Italy, Portugal and Spain, had become countries of net immigration. Countries that had formerly supplied foreign labour had begun to attract large numbers of migrant workers from the third world and from Eastern Europe. Germany, France and the United Kingdom, countries that have a history of supplementing their labour forces with migrant labour, continued to have the largest numbers of foreign workers throughout the 1980s.

Several developments have affected labour migration flows in Europe over the past decade. First, the adoption of the Single European Act (1987) and then of the Treaty on European Union at Maastricht (1991) has given new impetus to migration issues, as they established a new level of cooperation among member countries of the European Union. While free movement of labour within the European Union was envisaged by the Treaty of Rome and came into effect in 1968 through several directives, it was not until the past decade that formal obstacles to labour mobility within the European Community were dismantled. This has generally proceeded through a slow establishment of mutual recognition of occupational qualifications among the member States. It is worth noting that the policy on free movement of labour within the Community did not lead, as many had anticipated, to the flooding of the market by labour from the less developed members of the European Union.

Second, in the late 1980s, migration flows in Western and Southern Europe were in large part a consequence of the political and economic changes under way in the countries of Eastern Europe. While the vast political and social changes that have taken place in Eastern Europe since 1989 did not lead to a flood of economic refugees as earlier feared, they did provoke a response from the Western European neighbours in the form of opening what Martin has referred to as a "side door" to non-immigrant foreign labour (Martin, 1994). Thus, in a manner reminiscent of the *Gastarbeiter* (guest-worker) programmes of the 1960s, a number of agreements on the importation and employment of Eastern European labour on a "rotation principle" were entered into by the Federal Republic of Germany, France, Austria and a few others with former centrally-planned market States such as Poland, Hungary and the Czech Republic.

Finally, despite restrictive policies towards labour migration adopted by most countries in Europe, established sources of labour, such as Northern Africa and Asia, are still eager to send their nationals abroad to work and send home remittances. Moreover, the persistence of demographic and economic imbalances between developed and developing countries is particularly evident among the European States and countries with which they have shared privileged historical relations.

Data on labour migration trends and policies among the European countries are more reliable because of these countries' advanced development, but they still need to be regarded with caution. Even with high-quality migration data compiled by SOPEMI, the Continuous Reporting System on Migration sponsored by the Organisation for Economic Co-operation and Development, difficulties in comparative analyses persist. Discrepancies exist among countries, partly because of the kind of information collected (Spain, for example, does not distinguish between new work permits and renewals), and partly because of the profusion of

migrant statuses (e.g., permanent settlement, permanent workers, frontier workers, seasonal or temporary workers, students and trainees authorized to take part-time or temporary jobs). Moreover, as the SOPEMI report observes, most OECD countries do not collect data on immigrants or foreigners leaving the labour force, whether through repatriation, retirement, naturalization, death or voluntary withdrawal from the workforce (OECD, 1993a). Given these conditions, it should be noted that data on the actual size and composition of the foreign labour force still need improvement and refining, even in developed regions such as Europe.

(a) Northern Europe

Trends in labour migration in most of Northern Europe are rooted in the common Nordic Labour Market, created in 1954. This Nordic agreement between the five Scandinavian countries—(Sweden, Finland, Denmark, Norway and Iceland)—essentially established the mutual right of citizens from each of these Nordic countries to enter, reside and work without restrictions. Among the Nordic community's largest labour migrant recipients is Sweden, whose rapid economic growth in the 1950s and 1960s attracted large numbers of industrial workers from nearby Finland. Indeed, at one point, nearly 10 per cent of the Finnish labour force was employed in Sweden. In fact, prior to the 1990s, the majority of Finland's immigration consisted of Finns returning home from working abroad.

The upheavals in Eastern Europe and the global economic recession have led to marked changes in Scandinavian labour migration. Thus, while most of the immigrant population in countries such as Sweden traditionally originated from European countries, the composition of immigrant nationalities has now shifted to countries outside Europe, especially those in Asia, but also in Africa and the Americas. Even Finland has become a country of immigration (albeit with a foreign population of less than 1 per cent in 1992, the smallest for any country in Europe). The break-up of the Soviet Union resulted in the arrival by mid-1992 of nearly 8,000 ethnic Finns (Ingrians) who resided in the former Soviet Union. Some 100,000 additional ethnic Finns are free to repatriate, and some Russians and Estonians also have immigrated to Finland.

Another noteworthy change in this part of Europe relates to immigrant policies. Sweden, for example, at one time considered one of the most liberal countries in Europe with regard to ensuring equality between migrants and nationals, has begun to question its generous welfare State. Provisions in question include those allowing migrants to stay in the country even if they are unemployed, and allowing their families to join them immediately, as well as voting rights which are granted with the completion of minimal residence requirements, and social programmes which provide language training and schooling for the migrants' children in their native language. The country's social welfare State has begun to be curtailed, first by the opposition conservative Government, and more recently by the Social Democrats, the party that built the system. Immigrant workers are now seen as a particularly vulnerable group. In early 1995, the unemployment rate in Sweden stood at 13 per cent (Stevenson, 1995), and among at least some groups of foreign nationals, unemployment was about twice as high as it was for Swedish citizens (OECD, 1993a, p. 96). Crimes of violence against immigrants and refugee centres have occurred, and there is evidence of anti-immigrant sentiments among young people (OECD, 1993a, p. 96). These trends have been replicated in nearly all of the Nordic countries. The economic recession in the early 1990s brought unemployment rates of approximately 15 per cent, with foreigners experiencing unemployment rates of up to 25 per cent in Finland, for example. In Norway too, unemployment is higher among immigrants from third world countries, especially those who have arrived recently (OECD, 1993a, p. 89).

Although the United Kingdom is somewhat isolated geographically from its Continental partners in the European Union, it shares some distinctive migration features with the rest of its European counterparts. Like other European Union member States such as France and the Netherlands, labour migration to the United Kingdom has been rooted in historical links with its ex-colonies. Immigrants from former colonies have received preferential treatment and have often been granted citizenship at the time of entry. Family reunion policies have been liberal.

The earliest waves of immigrants to the United Kingdom came from former colonies during the period

when colonials were entitled to British passports. Ireland, the United Kingdom's traditional labour reserve, provided a source of manual labour for industry and construction. Many Irish brought in their families and settled permanently, enjoying all civil rights, including the right to vote. New Commonwealth (former British colonies in the Caribbean and the Indian subcontinent and Africa) immigration started after 1945. Some workers came as a result of direct recruitment by London Transport, but most came spontaneously in response to labour demand. Most of the ethnic minorities from the West Indies arrived between 1955 and 1964; they were followed by Indians and, in the 1960s, by East African Asians expelled from Uganda, Kenya, the United Republic of Tanzania and Malawi. Immigrants from Pakistan and Bangladesh arrived during the 1960s, as well.

As in other European countries with former colonies, there has been a gradual erosion of the privileged status of these migrants. While during the period of European labour shortage, former colonials served as a convenient way of bringing in low-skilled labour, they appeared to become a liability when permanent settlement took place and labour demand declined. While most Afro-Caribbean and Asian immigrants and their children in the United Kingdom enjoyed formal citizenship, this no longer applies to the small number admitted since the Nationality Act of 1981. New legislation in 1971 and 1981 curtailed the rights to British passports among former colonials, and put Commonwealth immigrants on a par with foreigners.

As the British economy has undergone a protracted period of recession, and persistently high unemployment rates, by the 1990s, labour migration to the United Kingdom had all but ceased, and foreign nationals in 1991 constituted only 3.1 per cent of the labour force. Nearly half of these foreigners were from States members of the European Community, with the largest single group from Ireland.

By 1990, only a small number of economic migrants entered the United Kingdom through one of the following seven categories:

(*a*) European Community nationals, who are subject to separate regulations and are not counted in official immigration statistics;

(*b*) Professional, technical and administrative workers who are hired by an employer who asserts that it was not possible to recruit a comparable worker in the United Kingdom or any other European Community country. These employees receive work permits valid for one year, but the permits are renewable for up to a total of four years in the country. After four years of continuous approved employment, the immigrant may apply to have the time limit removed (Jenks, 1992, United Kingdom, p. 4);

(*c*) Ministers of religion, missionaries and some journalists, who are admitted without work permits on the condition that they will not require support from public funds. Permission to reside in the United Kingdom is granted for one year, renewable to four years, after which application may be made for permanent residence;

(*d*) Commonwealth citizens who have a grandparent born in the United Kingdom. They may apply for entry without a work permit. Admittance is not automatic and, under certain circumstances, they may be deported. After four years, they may apply for permanent settlement;

(*e*) Investors and self-employed persons, who may be admitted if they have sufficient capital (at least 200,000 pounds) to invest in a full-time business that is needed, will generate employment and will provide enough income to support the investor and his or her dependants. The initial residence period of one year may be extended to four years if conditions continue to be satisfied. After this probationary period, investors may apply for permanent residence;

(*f*) Persons of independent means—those with 200,000 pounds or with annual income of 20,000 pounds—and with close connections to the United Kingdom. They may be admitted for up to four years, after which they may apply for permanent settlement. Categories e and f attract very small numbers of economic migrants; in 1990 just over 300 immigrants were admitted as investors or persons of independent means;

(*g*) Writers and artists whose work is capable of supporting them and their dependants may be admitted for up to four years. After this period, they may apply for permanent settlement.

Ireland, another European Union member State in Northern Europe, is somewhat of an outlier as far as migration trends are concerned. The pattern of demo-

graphic change in Ireland has been very different compared with other countries in the northern hemisphere. Until relatively recently in its demographic history, Ireland was unique in that it was alone among European countries in experiencing almost continuous population decline through emigration. While the initial surge in Irish emigration in the middle of the past century was linked to massive crop failures associated with the Great Famine of 1847, emigration thereafter has continued as a result of economic and social causes. Ireland remained largely untouched by the Industrial Revolution, partly because of its peripheral location, and partly because, unlike other regions in Northern Europe, it possessed virtually none of the natural resources which were then necessary to achieve economic growth. The country remained largely agrarian in character, with the result that the potential for employment expansion was quite limited. Coupled with a high birth rate, the pace of emigration prevailed until the late 1950s, diminishing somewhat in the 1960s with increased economic growth.

Although Ireland is still considered an emigration country, economic recession in the neighbouring United Kingdom has mitigated net population loss in Ireland and, in fact, has given rise to a substantial increase in the labour force, and even unemployment in the early 1990s. Unlike earlier periods where emigration was considered a permanent event for mainly unskilled and low-wage labourers, in the 1990s, emigrants have become more educationally and occupationally mobile, and make greater use of cheaper and more efficient transportation. Frequent travel for intermittent work is not uncommon, and thus labour migrant flows are much more responsive to relative economic conditions. In 1994, estimates indicated that nearly 40,000 foreigners (Europeans and non-Europeans, including Americans and Asians) were in the labour force in Ireland (OECD, 1995, p. 97).

(b) Western Europe

Unlike the permanent migration countries of the United States, Canada and Australia, Western European countries do not see themselves as immigrant societies. Nonetheless, in contrast to most other parts of the world, the region has a long tradition of recruiting foreign workers. In the aftermath of the Second World War, until the late 1960s and early 1970s, all of these countries looked towards foreign labour as demographic and economic springboards for reconstruction and economic growth. A need for reconstruction and modernization led many European countries to recruit foreign workers actively or to adopt some type of laissez-faire immigration policy. In the immediate post-war period, large flows of migrants came from Southern Europe, which had already supplied a substantial part of the foreign labour force in France, Switzerland and Belgium between the wars. Countries with ex-colonial relationships extended their area of recruitment to Mediterranean countries such as Algeria, Morocco and Tunisia, or to other developing nations such as Pakistan and India, as well as Turkey and Yugoslavia, which also served as cheap sources of foreign labour.

National governments and administrations played an active role in organizing labour migration on the basis of bilateral agreements and, by the early 1970s, the number of foreigners working in Western Europe was considered to reach a first "historical maximum" (Hollifield, 1992). Altogether, Western European countries recruited some 20 million foreign workers; more than half of these sooner or later returned to their home countries (ILO, IOM and UNHCR, 1994). It was not until the cessation of recruitment in 1973 that many migrant workers decided not to return home, but instead to bring their families or to start new families in Western Europe, and recruited foreign labour migrants became "true" immigrants. The absolute numbers and percentages of foreign residents thus continued to grow in spite of the recruitment halt, whereas the number of gainfully employed foreigners stagnated (Munz, 1996, p. 207).

The distribution of Western Europe's foreign resident populations reflects a concentration in only a very few countries. In 1992/93, for example, 75 per cent of all foreign residents in Western Europe lived in Germany, France, Switzerland and the United Kingdom (Munz, 1996, p. 213). For the most part, this reflects policies of privileged relations between certain sending and receiving countries, linked by historical, cultural, economic and/or political affinities. The geopolitical context of these migration patterns has left indelible differences in the perception of immigration issues in the various Western European receiving countries. Thus, countries such as France, Belgium and, since the late 1980s, Italy and Spain, tend to see demographic pressure from Northern Africa and Western Asia as a major problem, whereas in Germany, Austria and Scandinavia,

the major concern is immigration from the East. To the extent that countries such as the Czech Republic, Hungary and Poland are now on the receiving end of immigration from the CIS countries and the Balkans, they have also begun to share this concern.

In addition to the great variations in sources of foreign labour, there are substantial differences in the structure of recruitment. Immigration experiences have also produced different national immigration infrastructures (Lahav, 1995, pp. 144-146). Among these countries, there are notable distinctions between countries such as France, the Netherlands, and even the United Kingdom, all of which have maintained certain colonial obligations, and countries such as Germany, Switzerland and Austria that, in the historical absence of a labour import base from former colonies, developed guest-worker models, which have attempted to preclude family reunion, naturalization, or any long-term residence status (Lahav, 1995, p. 142).

While the Netherlands relied on "repatriates" from the former Dutch East Indies (now Indonesia), the Netherlands Antilles, and from the Caribbean territory of Suriname, France imported many workers not only from Southern Europe, but from former colonies such as Algeria, Morocco and Tunisia, and from the former Western African colonies of Senegal, Mali and Mauritania, as well as its Overseas Departments of Guadeloupe and Martinique in the Caribbean and Réunion in the Indian Ocean. The situation of non-European immigrants in France was similar to that of new Commonwealth immigrants in Britain in that they were relegated to the bottom of the labour and housing markets. In contrast, Western European countries without colonial empires recruited labour, often by means of bilateral agreements, with nations with an excess supply of labour—generally from countries in Southern Europe, such as Spain, Portugal and Italy, where the economies were less well developed and, increasingly, from countries such as Morocco, Turkey and Yugoslavia.

Despite disparities in migration experiences and economic development, the progress of the European Union has had some neutralizing effect on historical policy differences, as European integration put an emphasis on the harmonization of rules for the movement of peoples and services. Moreover, the development of the European Union has narrowed traditional socio-economic gaps between the member States. Not only does regional integration grant a privileged status to intra-Community migrants, but at the same time, it has made entry and residence far more difficult for all non-European Union nationals, especially those from outside Europe. A gradual erosion of privileged status of migrants from former colonies such as in France, the Netherlands and the United Kingdom, has been coupled with a new privileged status granted to intra-Community European Union migrants. As intra-European Union mobility has been considered internal migration for the national economies of Northern and Western European countries, with the exception of Switzerland and Norway, the trend towards growing exclusion of migrants outside European Union borders has been somewhat disguised and has created an unrealistic portrait of labour migration trends.

Although intra-European Union migrants generally have been excluded from migration statistics since 1992, the European countries still can be differentiated by the numbers and stocks of immigrants, and for organizational purposes, according to recruitment principles. Two groups of Western European countries can be distinguished according to those which recruited from former colonies, and those without colonies, which recruited on the basis of the rotation principle.

Germany is the Western European country with the largest number of immigrants. Despite considering itself a non-immigration country, the country has absorbed millions of new residents in the past four decades. With no ex-colonies, and with a labour shortage following the erection of the Berlin Wall in 1961, immigrant workers were recruited from countries such as Turkey and Yugoslavia through bilateral agreements.

German policy towards labour migration has evolved over the past 50 years. With its guest-worker (*Gastarbeiter*) system, a highly organized State recruitment apparatus, the Federal Republic of Germany followed a principle of recruiting a temporary labour force which could be rotated and returned home upon demand. Indeed, between 1955 and 1973, approximately 14 million foreign workers arrived in Germany; nearly 11 million eventually returned home. Despite the end of recruitment following the oil crises of 1973, the foreign population grew owing to long resisted family

reunification and births to foreigners. Thus, the realization emerged that temporary economic migration had gradually become a permanent feature in German society. Although a scheme to encourage unemployed foreign workers to return to their home countries by offering grants up to DM 10,500 plus additional amounts for dependants succeeded in repatriating some 14,000 workers, it has been suggested that many would have returned without financial incentives.

By 1991, approximately 5.3 million foreigners—8.6 per cent of the total population—were resident in the Federal Republic of Germany (Werner, 1994, p. 27). The country of origin of the single largest group of foreigners was Turkey, with 1.7 million nationals living in Germany; the former Yugoslavia also contributed a large number of immigrants, with 775,000 nationals living in Germany. Many of these foreigners have been in Germany for many years, or were even born in Germany but, because of restrictive naturalization rules (a period of 15 years of residence and a barring of dual nationality), they have not been eligible for citizenship. These figures do not include the more than 1.2 million ethnic Germans (*Aussiedler*) from Eastern Europe and the former Soviet Union, who entered the country between 1988 and 1991, and who were granted citizenship upon arrival in Germany (Stalker, 1994, p. 193).

The German labour market has absorbed a significant volume of economic migrants since 1989. In striking contrast to other receiving countries, Germany did not experience high unemployment during the reunification process (Werner, 1994, p. 28). In 1991, the unemployment rate for German nationals was 3.7 per cent (for foreigners, it was 8 per cent), compared to 22.8 per cent for foreigners in France and 32.6 per cent in the Netherlands (Werner, 1994, p. 51). Reunification of Germany in 1989 wielded a strong attraction for workers in eastern Germany, about 1 million of whom moved to the Federal Republic of Germany between 1989 and 1992, in addition to nearly half a million workers who commuted between jobs in the Federal Republic of Germany and homes in the German Democratic Republic in 1992. Another large pool of potential workers consists of asylum-seekers who, since 1991, have been granted work permits while awaiting a decision on their applications for asylum. The inadequacy of the legal situation in coping with the growing numbers of economic migrants seeking entry through the asylum-seeker channel led to a protracted debate in the early 1990s, and an amendment to the German Constitution (Basic Law), making it more difficult to claim asylum without justifiable reasons.

While the neat categories of the guest-worker system have broken down in the face of the large group of asylum-seekers that followed events in Eastern Europe and the Yugoslav ethnic conflict (Castles and Miller, 1993, p. 106), Germany has for the first time in the post-war period established a formal immigration policy. After immigration pressure from Eastern European countries increased, the German Government reacted by intensifying border controls, while establishing legal processes for entry into the German labour market, particularly for arrivals from the neighbouring countries of Poland and the Czech Republic (Seifert, 1996, p. 4). In 1991, Germany adopted a new aliens law, providing workers with a statutory right to a residence permit. Foreigners in gainful employment in Germany must now be issued an unlimited residence permit after five years if they are able to speak some German, have sufficient living space, and have no criminal offences on their record that would cause deportation. After a further three years, a residence entitlement must be issued if the foreigner is self-supporting and meets all other conditions. This permit guarantees permanent residence in Germany unless the foreigner commits a serious offence or is considered a threat to public safety and order (Werner, 1994, p. 30). As a means of regulating access to the labour market, the effects of the work permits are in reality limited, given that large proportions of immigrants who currently arrive in Germany do not need a work permit—either because they are ethnic Germans or citizens of another European Union member State (Seifert, 1996, p. 5).

Germany has adapted itself to changing conditions in other ways. Recent political transformations in Eastern Europe have also triggered some new recruitment of migrant workers. Further motivated by concerns for providing a legal avenue for the thousands who were determined to find their way into the West, Germany has revived a version of the "rotation principle" (Kuptsch and Oishi, 1995). Guest-worker agreements of limited scope (500 to 1,000 employees on a temporary basis) have been made with Hungary (December 1989) and with Poland (June 1990). In addition, the Federal Republic of Germany approved a frontier-worker

programme with Czechoslovakia and also made arrangements for special labour-force sectors with the former Yugoslavia (Honnekopp, 1991). Overall, four such schemes have been developed: a contracts for work and services scheme (*Werkverträge*); a guest-employee scheme; a seasonal workers scheme; and a frontier-worker scheme. The first allows foreign companies to bring specialized personnel into Germany within certain quotas (100,000 in 1992) to carry out projects. Under its guest-employee scheme, Germany has reached agreements with Hungary, Poland, the Czech Republic and Slovakia. In the latter scheme, Czech, Slovak and Polish nationals who live within 50 kilometres of the frontier can obtain work permits in Germany provided they return to their native countries each day. Although the numbers of migrants benefiting from these regulations have been modest compared with total foreign employment, they are expected to increase.

Although integration into the labour market varies according to migrant groups, ethnic German immigrants have been considered to be in a privileged position (i.e., they are allowed to immigrate to Germany, acquire citizenship and have free access to the labour market, and are provided with special integration measures such as language courses and occupational training). Nonetheless, research has suggested that labour market integration has been problematic and these immigrants have had substantial difficulties in finding jobs owing to a mismatch of skills (see Seifert, 1996, p. 5). Overall, the unemployment rate among foreigners has deteriorated over the years, from being just below that of German nationals in 1983 to more than double in 1991.

Austria, the newest Western European country to join the European Union, has resembled Germany and Switzerland with regard to its temporary labour migration schemes. Like Germany, Austria has not considered itself an immigration country. Although demand for labour increased during the 1960s, wages and salaries were relatively lower than those in other Western European countries, thus luring foreign labour to Austria's neighbours, as well as encouraging Austrian nationals to seek work in other countries, especially Germany and Switzerland.

Austria's policy regarding foreign workers is generally characterized as a system of controlling the numbers and distribution, and responding to the labour needs of local industries. Like that of Switzerland, the work permit system in Austria is temporary. A first-time work permit is issued to a firm, rather than to an individual, and is valid for a specific job, typically for a period of one year, which may be extended upon successful completion of the initial period of employment. Limits on the numbers of permits are set annually according to region, economic sector, and skill level of the employee (Biffl, 1993, p. 7). Semi-permanent employment status allows the worker more latitude in changing jobs, although there still are restrictions about relocating within the country.

In the 1990s, Austria's geographic position on the eastern frontier of Western Europe has given the country a renewed migration orientation. Like Germany, Austria has become a pivotal way station for workers and refugees in transit from Eastern to Western Europe. Since 1989, the number of foreigners—both legal and illegal—entering Austria has increased dramatically. Although in earlier periods these migrants would have been considered transients, the ripple effect of more restrictive immigration policies among neighbouring Western countries has made Austria a long-term transitory place for new arrivals waiting for conditions to improve in their countries of origin.

The Austrian Government has responded to the upheavals in Eastern Europe and to its new role in the European Union by adjusting its policy and increasing acceptance rates of foreign workers, particularly those who already have been residing illegally in Austria (Gehmacher, 1993, p. 140). In 1990, a legislative amendment eased the requirement for obtaining a permanent work permit from eight to five years of employment.

Like Austria and Germany, Switzerland has followed a type of guest-worker system, tying migration to corresponding economic cycles, while making integration difficult. Switzerland was one of the first countries to enact bilateral labour recruitment agreements following the Second World War. In 1948, an agreement with Italy brought Italians for limited periods of work in Switzerland, and stipulated that no Italian worker could remain in the country continuously for 10 years, the period necessary to qualify for permanent residence (Lohrmann, 1993, p. 405). From 1945

to 1974, foreign workers were recruited abroad by employers, while admission and residence (which were restrictive) were controlled by the Government. Considerable use was also made of seasonal workers (in agriculture and tourism), and of cross-frontier commuters. Both of these groups were seen as part of the labour force but not of the population, an approach which has led some to refer to the Swiss system as a "guest-worker system par excellence" (Castles and Miller, 1993, p. 69).

Similarly, like Germany and Austria, by the late 1980s, Switzerland experienced a positive migration balance (Munz, 1996, p. 208). In 1991, 1.2 million foreign-born persons lived in Switzerland—17 per cent of the population (OECD, 1993, p. 96). Italy has accounted for the largest foreign group (34 per cent), while Yugoslavia, Spain, Portugal and Germany also have provided substantial numbers of labour migrants. Although most immigrants have been in the country for many years, Swiss authorities, like their German and Austrian counterparts, have long declared that they are a non-immigration country.

Unlike other West European countries, Switzerland remains outside the European Union, thus shielding itself from free movement of citizens from neighbouring States (nonetheless, Switzerland has few non-European foreigners). In fact, a Swiss referendum in December 1992 rejected membership in the European Economic Area (EEA), meaning that the Swiss system of work and residence permits would remain unchanged with regard to nationals of EEA countries. As a result of its immigration policy, Switzerland's economy has benefited from a highly elastic labour supply, while avoiding any conditions of a common labour market or of economic integration.

Since 1970, Switzerland has controlled the number of labour migrants with a quota system. Ceilings by canton have limited the overall entry of foreigners into the country and distributed foreign workers throughout Switzerland (Stalker, 1994, p. 19; Dex, 1992, p. 11). During the period of mass labour recruitment, work permits typically bound foreign workers to specific occupations or jobs. While most workers have the right to mobility, Swiss rules on "frontier" and seasonal workers still maintain such restrictions. Furthermore, as in Germany, an employer cannot hire a foreign worker for a job if a national is available.

Switzerland issues several different types of residence authorizations, and the system allows successful temporary workers to move towards a more permanent status. Most new permits are for seasonal work and are valid for a maximum of nine months. In 1993, 138,375 such permits were issued (Stalker, 1994, p. 199). Seasonal permits are common in the tourist, agricultural and construction industries. After completing 36 months of employment in a consecutive four-year period, a worker may apply to have the seasonal permit converted into an annual permit (Mauron, 1993, p. 7). The annual permit allows a foreigner to establish residence and to be joined in Switzerland by family members (Lohrmann, 1993, p. 405). In addition to seasonal and annual workers, Switzerland also recognizes more than 180,000 "frontier" workers, who live in France, Italy, Germany and Austria. They commute daily into Switzerland and work in jobs in the frontier zone.

A permit for permanent residence is usually granted after 10 years of annual permits. This time period is long enough to engender a sense of uncertainty among foreigners with respect to their future residence plans (Lohrmann, 1993). It may also impede the assimilation process that integrates foreigners into Swiss society (Hoffmann-Nowotny and Killias, 1993, pp. 242 and 243). In the early 1990s, about three fourths of the foreigners living in Switzerland had permits for permanent residence.

Although Switzerland has long been considered hospitable to foreigners because of its linguistic and cultural diversity, its immigrant population has faced difficulties with public acceptance. Migration has been placed on the ballot of six referendums and initiatives since 1965, all of which were designed to combat *Überfremdung* (foreign penetration) and stem immigration flows (Hoffmann-Nowotny and Killias, 1993, p. 238). In 1982, a new Aliens Law, which would have led to minor improvement in the legal status of foreign residents, was narrowly defeated in another referendum. Anti-foreign sentiment has been perpetuated by a growing percentage of foreigners, despite worsening economic conditions in the 1990s. Indeed, while declines were registered in the number of one-year

residence permits and in seasonal worker permits, Switzerland's foreign population has continued to grow both in numbers of new residents and in numbers of seasonal workers who acquired resident status (OECD, 1993, p. 96).

With respect to the integration of Switzerland's resident foreign population, the Government has left the matter largely to local authorities and private employers. Immigrant rights are limited in Switzerland, a self-declared non-immigration country. Foreign residents lack political rights, and citizenship is extremely difficult to obtain (i.e., the waiting period is 12 years, which must have been spent in the same canton). Foreigners had slightly higher unemployment rates than did Swiss nationals in 1992 (OECD, 1993a, p. 98). In accordance with the Swiss laissez-faire tradition of leaving social issues to market forces and self-regulation, there are no social policies for labour migrants (Castles and Miller, 1993, p. 216).

Luxembourg has both the highest percentage of foreigners in its relatively small population and the largest proportion of foreigners in the labour force. In 1991, 29.4 per cent of the population was foreign born, and foreigners made up 45 per cent of the labour force. The latter figure represented an increase from 34 per cent of the labour force in 1983. Whereas most of the foreign workers were formerly in the industrial sector, mainly in the mining industry, the rapid growth of the service sector has provided most of the new jobs for foreign workers. The main sectors for the employment of foreigners are commerce, banking and insurance, construction and civil engineering, but the hotel industry and public administration are also major areas of foreign employment.

Owing to its size, Luxembourg' s economy remains heavily dependent on foreign labour. Without immigrants, the population of Luxembourg would be declining; between 1960 and 1991, 97 per cent of population increase was attributed to foreigners (OECD, 1993a, p. 83). The majority of foreign workers in Luxembourg have come from other EU countries such as Portugal, Italy, Belgium and France, although, over the past few years, the number of foreigners entering from outside the European Union has increased (OECD, 1995, p. 102). In the large frontier zones, commuters from Belgium, Germany and France have crossed the border daily to work in Luxembourg, and the number of foreign frontier-zone workers employed in Luxembourg has increased considerably from 7,200 in 1970 to 47,300 in 1993. Indeed, even with the slowdown in economic growth and an increase in unemployment (from 1.4 per cent in 1991 to 2.1 per cent in 1993), the immigrant workforce and the frontier-zone workforce have not been reduced.

Despite restrictive citizenship rules (naturalization requires a 10-year period of continuous residence in the country), recent efforts have been made to integrate foreigners more effectively. In 1993, new measures were adopted to establish an inter-ministerial body to coordinate integration policy and to improve channels of communication between nationals and foreigners. In addition, an Act dated 13 July 1993 amended the Act of 4 April 1924, which set up elected occupational chambers to give foreigners the right to vote and to stand for election to those chambers. The first elections on that basis took place on 10 November 1993 (OECD, 1995, p. 104).

Like Luxembourg, one of its Benelux partners, Belgium has also amassed a significant foreign population, mainly Italians and Poles who were attracted to work in the country's iron and steel industries. Unlike the United Kingdom and France, Belgium did not import foreign labour from its former colonial empire to compensate for labour shortages and to meet the needs of reconstruction following the Second World War.

Although nationals from the States members of the European Union constituted over 60 per cent of the foreign population in Belgium in the 1990s (the Italians being the largest group), increasing immigration tensions have focused on immigrants from Morocco and Turkey. These tensions are marked not only by an increase in riots and youth-police clashes, but also by the growth of the right-wing Vlaams Blok party, calling for the deportation of all immigrants. These hostilities also have been exacerbated by cultural tensions among the Flemish and French-speaking communities, and their conflicting visions concerning minorities and integration.

Belgium grants three types of work permits to foreigners. Class A permits are issued on request to workers from EU States; no restrictions on employment are imposed. Class B work permits are valid for limited

periods (usually one year) and limit the worker to a specific employer and industry. Class C permits are valid for designated occupations, usually of a professional nature, but do not stipulate a specific employer (Vellinga, 1993, p. 145). In 1991, approximately 16,000 Class A and B permits were issued, more than two thirds of them to individuals already resident in Belgium (OECD, 1993a, p. 70).

Since 1984 there has been a steady rise in the number of initial work permits, required by all foreigners wishing to work in Belgium with the exception of nationals from EU countries—including Spain and Portugal since 1992. Nonetheless, by the beginning of the 1990s, not only did the unemployment rate for the whole population increase, but the rise in unemployment affected all nationalities, particularly foreign workers from non-EU countries. This may be the result of the fact that foreigners are concentrated in sectors more affected by unemployment, particularly in industry and construction (OECD, 1995, p. 69). The Government has adopted some measures to contain the foreign workforce, especially in regard to asylum-seekers, such as limiting the right to employment for asylum-seekers.

Labour recruitment in the Netherlands followed a pattern that was somewhat different from that observed in the other Benelux countries. The economy of the Netherlands was more agrarian-based than industrial until considerably later than in Belgium and Luxembourg, both of which had a history of importing foreign workers for their industrial sectors (Vellinga, 1993, p. 141). It was expected that labour needs could be met locally in the Netherlands. In fact, population growth following the Second World War was so high that the Government encouraged its nationals to emigrate, and about one and a half million Netherlands nationals had left the country before the period of economic expansion that began in the late 1950s (Vellinga, 1993, p. 148).

Immigrants from overseas colonies of the Netherlands began arriving in large numbers shortly after Indonesia became independent in 1949. During the next three decades, more immigrants arrived, including Moluccans, Surinamese and Netherlands Antilleans. Newcomers from former Netherlands territories already held Netherlands citizenship and were not restricted from entering the country. By 1991, approximately 600,000 former Dutch colonials and their descendants lived in the Netherlands (Werner, 1994, p. 34).

As the economy of the Netherlands grew, the shortage of labour became acute, and the Government signed labour recruiting contracts with eight Mediterranean countries between 1960 and 1971: Italy, Greece, Yugoslavia, Spain, Portugal, Morocco, Tunisia and Turkey. In spite of considerable immigration during the 1960s and 1970s, the Netherlands does not consider itself an immigration country. It was assumed that foreign workers would return to their home countries after their work contracts were completed.

As with other Western European countries, the Netherlands halted all further labour migration in 1974, and, except for the humanitarian reason of reunification of families, legal immigration into the country has been at low levels in recent years. Attempts by the Netherlands to repatriate foreign workers have included development programmes to employ returning migrants in their home countries. Financed by the Netherlands Directorate General for Development Cooperation, several projects were implemented in the 1970s, although they soon proved to be too small-scale and expensive to have much of an impact on return migration (Vellinga, 1993, p. 154). The socio-economic circumstances in the home countries still compare unfavourably with conditions in the Netherlands, even when its unemployment rates are high (Vellinga, 1993, p. 151).

In 1991, 9,400 temporary work permits were issued. New work permits are valid for a maximum of two years. They are issued to the employer rather than to the worker, and they pertain only to specific vacancies and thus limit the worker's mobility (Vellinga, 1993, p. 154). A further 26,100 foreigners (children or partners of legal residents) entered the workforce for the first time in 1991 (OECD, 1993a, p. 87). The foreign population at the end of 1991 stood at 733,000 but, if the large number of foreign-born citizens of the Netherlands is included, the total population born outside the Netherlands rises to 1.3 million persons (Werner, 1994, p. 34). Foreigners make up 3.1 per cent of the labour force, one of the lowest percentages of any country in Europe. A third of the foreign employees are nationals of European Union countries, most of them from Belgium, the United Kingdom and Germany (Werner, 1994, p. 34).

The labour market has been less successful in providing jobs for foreign workers. As restructuring moves the country towards a service-based economy, more jobs require personal interaction, which creates a disadvantage for foreign workers who may not be fluent in the Dutch language. Unemployment is cushioned by the social welfare State and its benefits, but unemployed workers frequently become marginalized in the society. To prevent this from happening to unemployed minorities, the Scientific Council for Government Policy in 1990 proposed a new package of social programmes to increase employment among ethnic minorities. They include better training (vocational and language), subsidies to employers who hire minority workers, regular reporting by companies on the ethnic composition of their workforces, the appointment of minorities to civil service positions, and placement efforts for the long-term unemployed. A charitable foundation called START finds temporary jobs for unemployed people to facilitate their introduction and integration into the labour force (Werner, 1994, p. 32).

While the policy of the Netherlands has been responsive to global changes, it has also become increasingly restrictive. A new category of immigrant was created, for example, to respond to continuing immigration pressure; since August 1992, war victims from the former Yugoslavia temporarily in the Netherlands are not considered refugees (they are not required to apply for asylum, nor are they considered illegal), but rather *ontheenden* (homeless). At the same time, since the early 1990s, new measures have been adopted with the aim of reducing immigration from outside the European Union.

Like the Netherlands, France also has inherited a substantial number of labour migrants, and shares in common an immigration tradition based on old colonial ties. The current immigration situation in France reflects a long history of movement to France from other countries in Europe and the Maghreb countries (Algeria, Morocco and Tunisia), as well as immigration from Turkey and from former French colonies in Asia (particularly Indo-China), and the francophone countries of sub-Saharan Africa. More recently, attempts to stem the flow of immigrants have included tighter restrictions on visas, employer sanctions, incentive schemes to persuade immigrants to return to their home countries, and an amnesty programme in 1981 that granted permanent residence to more than 130,000 undocumented migrants. In spite of all these measures and the fact that labour migration has been vastly curtailed for more than two decades, France continues to be one of the major recipients of immigrants in Western Europe.

France's immigration policy during most of the twentieth century has been generous. Thousands of foreign workers, particularly from Portugal, Spain, Italy and Poland, came to France before the Second World War. Many of them stayed, regularized their status, and were absorbed into French society. With a particularly acute demographic and manpower shortage in the inter-war years, France, like most of the other countries, looked to import temporary foreign labour to help meet the needs of reconstruction. In 1945, the Office national d'immigration (ONI) was created to organize recruitment of foreign workers. Nonetheless, by 1968, it became clear that the rapid pace of workers entering France exceeded the supervisory capacity of ONI, and most workers were not coming in through official channels. This was largely a result of bilateral agreements with ex-colonies such as Algeria, Morocco and Tunisia, as well as the fact that ONI had no jurisdiction over French citizens from overseas departments and territories who could enter the country without restriction.

In 1972, France issued regulations to control immigration. First priority in job allocation was henceforth to go to the indigenous labour force and to legal immigrants already residing in France. New labour migrants were required to obtain work and residence permits through ONI, and employers who wished to hire new immigrants were obligated to provide housing for them (Kubat, 1993, p. 169). The inflow of Algerians declined sharply after September 1973, and a complete halt to labour migration was announced in July 1974 as a result of the economic effects of the oil crisis. Foreigners continued to arrive in France, though in decreasing numbers, as family members joined relatives there, and refugees from Chile, Lebanon and Indo-China were admitted (Kubat, 1993, p. 170).

Since 1974, French immigration policies have continued to permit family reunification, but they also have attempted to repatriate foreigners by providing cash payments to immigrants who returned to their country of origin. Repatriation schemes have generally

attracted few applicants. The end of legal immigration marked the beginning of large-scale undocumented migration, which was met by all types of Government responses, including amnesty programmes, stricter laws governing the entry of workers, and enforcement measures such as employer sanctions and limits on seasonal work permits.

The amnesty did not put an end to undocumented migration, and despite measures to halt immigration, France continues to be host to one of the largest proportions of foreign-born residents of any country in the European Union. The 1990 census counted 4.2 million foreign-born persons living in France, about 7.3 per cent of the total population. Although the numbers of foreign born appear to have remained constant (that is, they were similar to those in the 1982 census), immigrant composition has changed. According to the 1990 census, immigrants are somewhat more likely to come from Asia, Africa and the Americas compared to the 1982 census (OECD, 1993a, p. 76). About half of France's foreign population originates in just three countries—Portugal, Algeria and Morocco. Other significant sources of migrants are Spain, Italy, Tunisia and Turkey. The labour force composition also reflects smaller proportions of Europeans and increasing proportions from other continents. Other shifts in the labour force include an increase in the percentage of women from foreign countries, a larger number of independent workers, and a greater proportion of foreign workers in the tertiary sector (OECD, 1993a, p. 77).

Increasing cultural, ethnic and religious diversity resulting from immigration, amidst an economic slump which led to high nationwide unemployment rates, has generated growing concern in regard to France's absorptive capacity. Even with slight economic recovery, in 1994, unemployment exceeded 12 per cent. The depressed economic climate has harshly affected the immigrant community; between 1980 and 1990, unemployment among immigrants rose from 9 per cent to 17 per cent—and up to 25 per cent among young people (Stalker, 1994, p. 195). A backlash of sentiment towards immigrants, and outbreaks of racial and ethnic violence, exacerbated by the consolidation of the anti-immigration party of Le Front national, prompted further Government restrictions in July 1991. These include a greater determination to reduce undocumented migration by expelling legal immigrants who hire undocumented workers at illegally low wages, and relaunching voluntary repatriation schemes (Stalker, 1994, p. 196).

In addition to the fact that some measures to stem migration have met with legal resistance from French and international courts, long-term analysis of fertility trends still favours labour migration (with a total fertility rate of 1.8, France is projected to experience serious labour shortages by the year 2005) (Stalker, 1994, p. 196). France currently admits three types of employment-based immigrants: permanent, temporary (usually researchers and professional apprentices), and seasonal workers. More than two thirds of the workers admitted in 1990 were seasonal, but their number has been declining steadily in recent years. Most of the more than 58,000 seasonal workers admitted in 1990 worked as grape pickers or in other agricultural jobs. Spain has traditionally supplied most of France's seasonal employees but, in recent years, Poland has become an important supplier. The number of seasonal workers from Portugal is substantial and has remained steady. While the number of immigrants receiving work permits appears to have declined by 1994, a fundamental explanation is the extension of free movement to Portuguese and Spanish nationals on 1 January 1992, and the exclusion of European Union nationals from the statistics.

Preoccupied with problems of integration, the French Government recently has acted to strengthen organizations that assist foreign workers, such as the Fonds d'action sociale pour les travailleurs immigrés et leurs familles (FAS). Nonetheless, data continue to show that migrants are concentrated in jobs at the low end of the labour market hierarchy; they receive fewer premium payments and bonuses and less overtime work than nationals, and their jobs are more dangerous and result in higher rates of work-related accidents than is the case for French nationals (Dex, 1992, p. 19).

(c) Southern Europe

One of the most significant migration trends over the past two decades is the transition of Europe's traditional emigration countries to countries of immigration. Italy, Greece, Spain and Portugal—countries which had supplied much of the labour pool for the industrial boom in Northern and Western Europe in the 1950s and 1960s—have all seen their migration balances turn

positive. In contrast, however, to the labour migrations of Northern and Western Europe, which originally developed through organized recruitment and bilateral agreements, labour migration in Southern Europe has tended to be spontaneous in nature.

These developments are linked to the end of labour recruitment in 1974, and the rise of unemployment in Western Europe, as well as to economic development in the South. Thus, by the mid-1970s, when many emigrants from Southern European countries lost their jobs, while some stayed in Northern and Western European countries and escaped poverty because of the extensive social welfare systems, others returned to their countries of origin and took advantage of improved conditions.

As industrialization and economic development extended to the relatively undeveloped economies of the Southern European countries in the late 1960s and 1970s, they began to experience labour shortages. At first the local population and returning emigrants were sufficient to satisfy the demand for labour, but continued development attracted workers from foreign countries, especially in unskilled jobs. The workers came predominantly from nations along the southern shore of the Mediterranean—Morocco, Tunisia and Egypt—and tended to become concentrated in jobs that are rejected by the local population, such as construction and manufacturing, as well as seasonal and labour-intensive agricultural work. While, in the 1990s, labour migration continues to reflect former colonial links (for example, Latin Americans in Spain and Portugal) with increasing European integration, immigrant flows in the 1990s also include both relatively high-income professional groups from EU and spontaneous movements of unskilled migrant workers from Northern Africa and Asia.

Partially because of significant undocumented migration, and of inherent problems with data, and partially because of the rapid pace of changes, policy makers in the countries of Southern Europe have been challenged increasingly by their new immigration situations, and have often responded by adopting inconsistent policies. Nonetheless, immigration has been addressed as an important policy issue, as is reflected, for example, by the appointment of Italy's first Minister of Immigration in 1991.

Italy's transition to an immigration country has been most striking. A country of emigration for most of its history, it is estimated that more than 25 million persons left Italy during the century following unification in 1861; most of the emigrants were bound for the Americas and other countries in Europe. There are still some 5 million Italian citizens living abroad (Rosoli, 1993, p. 282). During the economic boom after the Second World War, Italy was a major supplier of workers to the industrial countries of Western and Northern Europe.

Beginning in the 1970s, however, the immigration balance shifted, and Italy became a net importer of population. The first immigrants were predominantly women from the Cape Verde Islands, the Philippines and Eritrea, most of whom came to work as domestics. Male immigrants also arrived, particularly from the Northern African countries of Morocco, Tunisia and Egypt. Italy had no immigration laws until 1986, when the size of the immigrant population began to cause concern. In that year, Law No. 943 was enacted, primarily to regulate aliens from non-European Community countries already living in Italy. The law contained an amnesty provision, which eventually resulted in the regularization of approximately 120,000 non-EC aliens resident in Italy. However, issues of admission requirements, residence and employment were not addressed.

The realization that some regulation of the increasing undocumented population was necessary led to the enactment of the Martelli Law (Law No. 39) in 1990. Linking immigration numbers to the demand for labour, the Martelli Law established an annual review of economic needs and a yearly quota for the admission of non-EC foreign workers. The quota would be set by the Ministry of Foreign Affairs, in consultation with the Ministries of the Interior, Budget and Economic Planning, and Employment and Social Welfare, as well as the National Economic and Labour Council.

In 1991, the first year the Martelli Law was in effect, the quota was set at zero, reflecting the high level of unemployment in Italy. This limited admission solely to refugees, family members of citizens and legal residents who could qualify, and a small number of temporary workers. Criteria for non-EC workers admitted to Italy were also restrictive: applicants already had to have obtained a job before entering the country;

their employer had to have guaranteed that they had adequate housing; and their residence and employment had to be temporary or seasonal. To further control immigration, the Martelli Law, like the earlier immigration law, carried an amnesty provision for foreign workers and their dependants present in the country on 31 December 1989.

In 1991, two waves of Albanians totalling about 45,000 persons arrived by boat in Italy seeking refugee status. The Italian Government determined that they were economic migrants but, because of public sympathy, allowed them a period of time to apply for legal status as migrant workers. Those who could find a job and housing were allowed to stay; those who could not were returned to Albania. By 1994, the rapid growth in foreign immigration and some public outcry led to increasing efforts to reform the 1990 Martelli Law, considered by many to be outdated (OECD, 1995, p. 99).

With growing immigration, the Martelli Law addressed for the first time the rights of immigrants in Italy, developing infrastructure for the reception of immigrants, and an integration policy. Language and job training programmes, as well as counselling services, were not available to newly arrived immigrants before 1991 (Jenks, 1992, Italy, p. 7). After that, legally resident aliens from non-EC countries were granted civil rights, access to social services, and public education. Nonetheless, aliens are still not eligible for State-subsidized housing, and they may not acquire real estate, nor may they vote or become candidates in elections.

The other countries of Southern Europe have experienced fairly similar developments. Although there still are more Spanish and Portuguese citizens residing abroad, these countries also have undergone dramatic shifts in immigration patterns. The countries of the Iberian Peninsula, Spain and Portugal, have a long history of exporting population. It is only within the past decade that immigration has become an issue, and the foreign population in both countries is still only about 1 per cent of the total population. The economies of Spain and Portugal remained agricultural long after Northern and Western European countries had shifted to industrial economies. Spain and Portugal were sources of labour during the post-war period of expansion. Spain signed bilateral labour agreements with Belgium, the Federal Republic of Germany, France, the Netherlands and Austria. Portugal had agreements with the Netherlands, France, the Federal Republic of Germany and Luxembourg (Rocha-Trindade, 1993, p. 268). Following the independence of Portugal's colonies, particularly those in Africa, nearly 1 million former residents of those colonies were repatriated to Portugal (Rocha-Trindade, 1993, p. 271). In 1991, 49 per cent of the foreign residents in Portugal were from Angola, Cape Verde, Guinea-Bissau, Mozambique or some other African country (OECD, 1993a, p. 91). Other sources of migrants are Brazil, the island of Timor and Macau. In 1986, Spain and Portugal joined the European Community, and the principle of free movement of persons has been in effect since it was phased in during 1992 (OECD, 1993a, p. 93).

Emigration from Spain continues, particularly of seasonal flows of migrant workers to France to harvest grapes for the wine industry, and to Switzerland to work in construction. The Government of Spain supports Spanish emigrant workers abroad by encouraging participation in Residents' Councils, which are elected in countries with concentrations of Spanish emigrants. The General Emigration Council, made up of representatives of the Residents' Councils, serves as a consultative body for the Spanish Government (OECD, 1993a, p. 93).

Reintegration of Spanish nationals who returned home after the general cessation of European demand for labour in 1974 was less of a concern than had been anticipated. Fewer emigrants than expected chose to return, and those who did come back to Spain arrived over a period of several years. Thus, the repatriation process has occurred gradually. The Spanish Government has encouraged and assisted returning emigrants (Rocha-Trindade, 1993, p. 272).

Portugal also continues to send immigrants to other countries. It is estimated that more than 4 million Portuguese live abroad, a majority of them (56 per cent) in the Americas (OECD, 1993a, p. 90). Immigration to Portugal is increasing, but the country remains a nation of emigration. Remittances from workers abroad were the most important source of foreign exchange during the 1980s. In 1984, remittances amounted to about $US 2 billion, four times as much as Spain received from its emigrants. In addition to countries in

Europe, destination countries for Portuguese emigrants are Venezuela, the United States of America and Australia (Rocha-Trindade, 1993, p. 269).

Portugal has supported its emigrants abroad, particularly those in Europe, since the 1970s. In 1990, all responsibility for technical and financial services was transferred to the consular services. Cultural programmes are sponsored by the Institute for the Support of Emigration, and educational services are undertaken by the Ministry of Education (Rocha-Trindade, 1993, p. 271). The Government has focused on improving the vocational skills of Portuguese abroad by organizing intergovernmental cooperative schemes and offering courses in the main host countries —namely, France, Germany, Luxembourg and the Netherlands. It is estimated that about 30,000 Portuguese abroad are returning home each year (OECD, 1993a, p. 90). The Government is assisting in their return and reintegration.

Economic growth in the mid-1980s, which was further facilitated by regional integration in the European Council, attracted migrants from Northern Africa who might previously have gone to France or Belgium. Most foreigners are employed in the service sector, and some nationalities tend to be concentrated in particular sectors: Moroccans in construction and agriculture, Chinese in the hotel industry, and Dominicans in domestic services (OECD, 1993a, p. 92).

Several new measures adopted over the past few years are worthy of note. In Spain, for example, the need to coordinate immigration activities under a single governmental body resulted in the creation in 1992 of an Interministerial Commission for Foreigners. This Commission formulates policy on all issues relating to visas, employment of foreigners and their living conditions, and the integration of immigrants and refugees. In an effort to limit labour migration further, Spain introduced a system of quotas for foreign workers who were not nationals of a European Union country in 1993. That same year, the Dirección General de Inspección de Trabajo y Seguridad Social (Employment and Social Security Inspectorate) launched a national campaign against the informal economy with regard to both national and foreign workers. In February 1994, a directive on the control of illegal employment with sanctions against employers and employees in breach of the law was adopted (OECD, 1995, p. 119).

Although less strikingly, and with slight deviations, Greece has echoed some developments experienced by other countries in Southern Europe. In the 1990s, Greece has become a country with a substantial foreign population, although there is now little net immigration (OECD, 1993a, p. 80). Immigration of unskilled and semi-skilled workers began in the mid-1980s. Most of the immigrants came from former socialist countries, especially Albania, Poland and the former Soviet Union (Pontians or ethnic Greeks); some originated in Arab countries. In 1992, there were nearly half a million foreigners in Greece, constituting about 5 per cent of the total population and 7 per cent of the labour force (OECD, 1993a, p. 80). Many of these foreign nationals, especially those from Albania and Egypt, are in Greece illegally, doing unskilled or seasonal work that generally does not appeal to Greek nationals.

Until relatively recently, emigration from Greece involved a considerable proportion of the population. About 1.24 million emigrants—13 per cent of the Greek population—left the country between 1955 and 1977 (Lianos, 1993, p. 249). The largest number of emigrants went to the Federal Republic of Germany, which signed a labour recruitment agreement with Greece in March 1960. Other major receiving countries were the United States of America, Canada and Australia. Net emigration ended abruptly in 1974, and about 238,000 emigrants returned home between 1968 and 1977.

The exportation of labour brought in foreign currency in the form of remittances and helped to ease the chronically negative balance-of-payments situation. Labour migration was also a solution to unemployment in a country that was moving slowly from an agricultural to an industrial economy. By encouraging emigration, the Greek Government used the resources of other nations to convert its untrained, mostly agricultural workers into a skilled labour force (Lianos, 1993, p. 254). Moreover, it was felt that labour emigration was a temporary phenomenon that would end when the Greek economy was sufficiently developed to provide jobs for returning workers. In actual practice, many of the skilled workers chose to stay abroad; conditions in

Greece did not compare favourably with the standard of living to which the emigrants had become accustomed.

A geographical and cultural bridge to the European Union, Greece, by its membership, has made the country attractive to those outside the Union wishing to enter the free-market zone, thereby generating considerable pressure from other EU members to fortify the southernmost border of the Union. The number of foreigners with work permits or special cards (for EU nationals) declined from 34,000 in 1992 to 30,000 in 1993—a decrease which reflects a stricter interpretation of legal requirements by the issuing authorities (OECD, 1995, p. 92).

According to the Act of 1991 regulating the employment of foreigners, priority for employment vacancies in Greece is given to Greek nationals, ethnic Greeks, nationals of other EU countries, and foreigners granted refugee status by the Greek Government. Prospective employers can apply for a work permit to invite and employ a foreigner, should a vacancy not be filled. A one-year residence permit, which may be renewed annually for a total of five years, is granted initially to the foreigner. After a five-year permit, biannual renewal requests are examined by three Ministries, and after 15 years of residence in the country, the foreigner can apply for permanent residence (OECD, 1995, p. 92).

Greek migration policy continues to be based on the tenet that Greece is not an immigration country for economic migrants. Notwithstanding, it is admitted that considerable benefits accrue to both producers and consumers from flexible and low-cost migrant labour currently in Greece, in particular to enlarge the productive capacity of the economy through higher accumulation of real and human capital, as well as through the application of new techniques and forms of organization in production (OECD, 1995, p. 93). Nonetheless, some observers have argued that low-cost migrant labour may retard the substitution of capital and technology for labour as well as reduce the pressure to develop off-season activities and to change the product mix in agriculture. Despite a rather high unemployment rate (nearly 10 per cent in 1993), the high seasonality of the Greek economy (especially in construction, tourism and agriculture) and the exodus of Greeks from low-status jobs enable large numbers of immigrants to find work without work permits. The absence of local competition for jobs may account for the virtual absence of conflict with the native population, as has occurred in most of the other developed countries of Europe (OECD, 1995, p. 93).

Yugoslavia, like other Southern European countries, has also been a major source of labour for industrialized countries in Europe. Like these other countries, Yugoslavia had an excess supply of workers in the period after the Second World War. As a country that formerly had a centrally planned economy, it was unique in being the only socialist country to turn to migration as a means to bolster its own economy, allowing its citizens to emigrate since 1964. The country's economy was unable to create enough jobs to employ the population, and emigration gathered momentum in the late 1960s and early 1970s. In 1973, on the eve of the oil embargo and the ensuing halt to labour recruitment in Western Europe, Yugoslavia had 860,000 workers in foreign countries, about half of them in the Federal Republic of Germany (Meznaric and Caci-Kumpes, 1993, p. 339). Switzerland, Austria and Sweden also had substantial numbers of immigrant workers from Yugoslavia.

The number of emigrants declined sharply after 1973, and the number of return migrants increased. Yugoslavs took advantage of the family reunification programmes implemented by many European countries. This is reflected in the sex composition change of Yugoslavs abroad during the decade following the oil embargo. In-migration was "feminized", as Yugoslav women joined male expatriate workers and themselves entered the labour force (Meznaric and Caci-Kumpes, 1993, pp. 339 and 340).

Since the outbreak of war in 1991, hundreds of thousands of residents of the former Yugoslavia have left their country. Many have been received as refugees, either with permanent residence status or under temporary protected status, and some have been granted work permits on arrival. Countries such as Germany and Switzerland, which already had substantial populations of Yugoslavs, have been major destination countries. It is estimated that about 690,000 people left the former Yugoslavia between the start of hostilities and the end of 1991 and took up residence in other European countries. More than one third of them were admitted

by Germany (OECD, 1993a, p. 45). In 1991, migrant workers from the former Yugoslavia constituted the largest immigrant group in Austria and Switzerland and the second largest in Sweden and Germany (OECD, 1993a, p. 33).

As the situation created by the war in the former Yugoslavia has been protracted, some OECD countries have changed their entrance requirements. Switzerland has rescinded its visa requirement for persons from Croatia, Slovenia, and Bosnia and Herzegovina. Others, such as France and Sweden, have eased entry for former Yugoslavs. Italy permits ex-Yugoslavs to remain in the country and enter the labour market. In most cases, they are admitted under a special status, different from that of refugee status (OECD, 1993a, p. 45).

(d) Eastern Europe

Some of the most dramatic changes in migration patterns at the end of the twentieth century have occurred in Eastern Europe. Before the political changes of 1989, the countries of Eastern Europe severely restricted the entries and departures of both citizens and foreigners. Labour migration between these countries occurred on a very limited scale and was usually described not as migration for employment but as the coordinated use of the productive resources of friendly countries (United Nations, 1982, p. 35). Moreover, in the context of the cold war, Western countries typically have received migrants from Eastern Europe as political refugees, regardless of their motivations (Munz, 1996, p. 204).

The restrictions on emigration that characterized the Soviet era prevented workers from Eastern Europe from becoming suppliers of labour for Europe's industrial expansion after the Second World War. In spite of emigration restrictions, the Economic Commission for Europe (ECE) estimates that between 12 and 13 million persons permanently left countries of Central and Eastern Europe and the Soviet Union during the period between 1950 and 1989-1991 (United Nations, Economic Commission for Europe, 1995, p. 225). Most emigrants were members of ethnic minority groups (especially ethnic Germans, Jews, Armenians and Greeks), refugees, or illegal migrants. There were also a considerable number of legal labour migrants who left Yugoslavia.

The changes in 1989 greatly affected migration dynamics; not only did they open up new options for citizens to exit, but the break-up of old States and the emergence of new ones have reawakened dormant ethnic tensions. On the other side, the reception once given to migrants from this part of the world has changed significantly. The encouragement given to distressed people by Western nations, and the joy that greeted the liberation of Eastern Europe in 1989, have been followed by considerable fears of migration crises, and thus changes in official policies among countries that once generously received these people (Lahav, 1992, p. 77). Anticipating that many emigrants would ultimately find their way to the West, a number of countries made agreements on the importation and employment of Eastern European labour. Echoing the *Gastarbeiter* programmes of the 1960s, Western countries, especially Germany, France and Austria, developed work schemes with Poland, Hungary and the Czech Republic to bring in workers on a "rotation principle" (Salt, 1996). The aim of these types of schemes has been to improve occupational and language skills by working for normally one year, or for up to three months, in seasonal employment schemes. In 1993, there were 2.51 million citizens of Eastern Europe registered in the EU countries, and 2.76 million in EEA and Switzerland (Salt, 1996). The largest number of emigrants have come from Poland (447,900 or 16.2 per cent), and Germany has been the main receiving country for emigrants from countries of Eastern Europe. The German Constitution guarantees entry to ethnic Germans (*Aussiedler*) who have been residing outside the country. In 1990, about 400,000 *Aussiedler* arrived in Germany, nearly all of them from Poland, the former Soviet Union and Romania (OECD, 1992, p. 93). Just over 200,000 Polish workers were in Germany in 1992, 197,000 of them seasonal workers, mostly in agriculture. In addition, 50,000 Poles were in project-specific employment elsewhere, and approximately 100,000 were on individual contracts not regulated by intergovernmental agreements (Salt, 1996).

While immigration flows have been on the rise since 1989, they have remained largely intraregional, and have mostly concerned ethnic minorities (United Nations, *World Population Monitoring, 1997*, forthcoming). The major countries of destination are Poland, Hungary, the Czech Republic, Slovakia and the Russian Federation. Some of these States also serve as

countries of transit for persons migrating to the West. The actual flows are very difficult to assess because of the extent of undocumented migration, but some reported flows for some countries may be suggestive. In 1994, for example, the Czech Republic reported that the stock of foreigners in the country rose to 103,700 from a level of only 35,000 in 1990 (United Nations, *World Population Monitoring, 1997*, forthcoming).

In the early 1990s, the transition from centrally planned to market economies produced recessionary conditions in most of the countries of Eastern Europe. Trade within the region and with the former Soviet Union has declined, unemployment has risen, and inflation in some countries exceeds 100 per cent. The underground economy appears to have grown. The effects of these conditions on the propensity to emigrate are contradictory. On the one hand, the political motivation to leave is no longer compelling, but on the other hand, economic conditions and the disparity in standard of living between East and West encourage emigration (OECD, 1993a, p. 108). Moreover, those who leave their own countries during the difficult period of transition may be forced to accept jobs abroad that are far below their levels of skill and experience. At the same time, they may be forfeiting opportunities in the emerging economies of their own countries for good jobs and participation in entrepreneurial enterprises.

Population flows between countries of Eastern Europe and the West are considerable, especially from areas where political and economic stability have not yet been achieved. Albania, for example, experienced intensive emigration in the early 1990s, perhaps as much as 10 to 14 per cent of the population and a much larger proportion of the country's labour force (United Nations, Economic Commission for Europe, 1995, p. 231). Most of the emigrants are young males, and most are undocumented migrants. Romania is another source of many economic migrants (United Nations, Economic Commission for Europe, 1995, p. 224).

The decision to leave is influenced in part by the perception of stability and economic prospects for the future. In some countries—particularly the former Czechoslovakia, Hungary and Poland—real incomes stabilized or even increased during the early 1990s. Political change has been incremental rather than abrupt and violent, and the improvements are bringing about a new optimism and confidence in the future (United Nations, Economic Commission for Europe, 1995, p. 223). Under these circumstances, the pressure to emigrate has subsided.

In the Czech Republic and Slovakia, it has been reported that the political changes have actually led to a decline in the number of foreign workers. During the Soviet period, the former Czechoslovakia imported foreign workers from Viet Nam, Angola, Mongolia and Poland, numbering approximately 100,000 until 1990 (OECD, 1993a). The number of registered foreign workers declined to less than 15,000 in mid-1992, but since the opening up of the country after the fall of the centrally planned economy regime, undocumented migration has soared largely because of the number of Romanians, Bulgarians, Turks and some Asians who have found it easy to transit via the Czech Republic and Slovakia on their way to Germany and other Western European countries. In the case of Hungary, where it had been estimated that there were some 50,000 illegal workers in 1992, some 50,000 work permits have been issued annually for jobs that in principle cannot be filled by nationals. The authorities planned to reduce the number of one-year work permits and issue only three- to six-month permits (OECD, 1992).

Compared to the migration controls in effect during the socialist era, before the political changes in the late 1980s, policies towards migration have become more liberal. Modifications in migration laws, typically in the form of guaranteeing rights to movement, were adopted in 1988 in Poland, in 1989 in Hungary, Czechoslovakia and Bulgaria, and in 1991 in the former Soviet Union. Nonetheless, few of the countries have established new regulations specifically for foreign workers (United Nations, *World Population Monitoring, 1997*, forthcoming). In Poland, the legal foundation is provided by the Employment and Unemployment Act of October 1991. This Act specifies procedures, conditions of employment and participation in pension plans, social security and health insurance. The following year, a decree issued by the Ministry of Labour and Social Policy set a limit of 12 months for the duration of employment of foreigners, with a possible extension to 24 months (Okolski, 1994). The Czech and Slovak Republics signed a treaty granting the citizens of either State free access to the labour market of the other signatory State in 1992; there were

subsequent negotiations for reciprocal employment agreements (and employment for improving skills and qualifications of workers) with several European and non-European countries. An interest in concluding such bilateral agreements with the Czech Republic was expressed by France, Switzerland, Ukraine, the Russian Federation and Mongolia (OECD, 1995, p. 141).

While political, social and economic changes have had a substantial impact on immigration and emigration in the different countries of Eastern Europe, data problems impede an accurate assessment of the current situation. All the countries in that region, for example, have implemented a labour force survey, but not all collect the data necessary to identify the immigrant population (OECD, 1995, p. 155). Cross-country comparative statistics also vary according to how they are collected. In Hungary, work permits are issued by the Ministry of Labour and are compulsory for foreigners wishing to work there. Poland issues residence permits coupled with work permits in the form of either short-term permits (up to three months) or long-term permits (up to 12 months). Given the permeability of the frontiers of Eastern European countries, statistics do not always allow for a reliable estimate of migratory movements in the region.

(e) Commonwealth of Independent States

With the emergence of the successor States to the former Soviet Union, a new set of international borders was created. Since border controls between the Soviet Republics did not exist during the Soviet era, the 15 independent States have been preoccupied with the creation of a system of monitoring border crossings. In some areas, borders are still quite porous and it is easy to move from one country to another without appropriate documentation (United Nations, Economic Commission for Europe, 1995, p. 229).

The Statistical Committee of the Commonwealth of Independent States (CIS) estimated that there were 1.9 million migrants moving between CIS countries in 1992 and 1.6 million in 1993. Most moves (about 80 per cent) occurred between the Russian Federation and all the other successor States (United Nations, Economic Commission for Europe, 1995, p. 228). At the same time, considerable emigration from the former Soviet Union continues in the 1990s. More than 1 million people emigrated in the early 1990s, most of them ethnic minorities, with Germany being their primary destination.

At the close of the Soviet era, millions of people were living outside the Republic of their nationality. According to the 1989 census, 25 million Russians were in Republics other than the Russian Federation in 1989. Return migration to the Russian Federation involved both political and economic motives. Successor States, especially the Baltic countries, were eager to replace Russian functionaries with their own nationals. Under these new regimes, Russians faced unemployment and ethnic discrimination, and many returned to the Russian Federation. In addition, military troops that had been stationed in the German Democratic Republic and other successor States have been repatriated to the Russian Federation. In 1993, more than 920,000 people came to the Russian Federation from other former Republics (United Nations, Economic Commission for Europe, 1995, p. 228). During the same year, approximately half a million persons emigrated, giving the Russian Federation a net immigration balance in 1993 of more than 430,000 (United Nations, Economic Commission for Europe, 1994, p. 7).

The Federal Migration Service, which has been given wide powers to cope with the problems of resettlement, regulate the emigration of Russian citizens and establish measures regarding the admission of foreign workers, has yet to adopt specific measures to gain more comprehensive control over the situation. Liberal legislation and weakened controls over borders, as well as the absence of agreements on visa requirements with the CIS States, have resulted in an open Russian Federation, accessible for transit migration. At present, it is estimated that between 300,000 to 500,000 foreigners coming mainly from the former Soviet Republics and China are either employed illegally in the Russian Federation or are waiting to continue on to other destinations (United Nations, Economic Commission for Europe, 1994, p. 7).

Movement from the CIS countries to Western countries is lower than might be expected, given the economic conditions and high rates of inflation and unemployment. New emigration has been limited by the lack of migration networks that would have created

communities of migrants and facilitated further migration. Moreover, the costs of leaving, physical distance, and cultural and language differences have acted as barriers to emigration. Today's emigrants also face fewer options and more restrictive qualifications for admission to the traditional countries of immigration.

Labour tourism has been identified as occurring between countries of Central and Eastern Europe and CIS countries. The Economic Commission for Europe has defined "labour tourists" as one type of economic migrant. They are individuals who make short visits on tourist visas to more developed countries and engage in small-scale trading, commerce, and short-term entrepreneurial activities. They may make repeated visits, and their activities are generally illegal. In particular, labour tourists come from Belarus, the Russian Federation and Ukraine and operate in Poland and other Central European countries (United Nations, Economic Commission for Europe, 1995, p. 236).

The Russian Federation employs 400,000 foreign workers within its borders, most of them from successor States. Employers may offer temporary work (up to one year) to guest workers if Russian workers cannot be found for the jobs. In 1994, the Moscow city government requested and obtained permission to hire 5,000 Ukrainian bus drivers to fill low-paying jobs (*Migration News*, August 1994d, p. 6). The Russian Federation is seeking overseas employment for Russian workers. It has concluded bilateral agreements with more than 60 countries and maintains a list of thousands of qualified workers. In 1994, 200,000 Russians were working abroad (*Migration News,* August 1994d, p. 6). Most contracts are employer-to-employer agreements, but other types of arrangements are permitted.

3. Latin America and the Caribbean

Historically, Latin American countries, particularly Argentina, Brazil, Venezuela, Uruguay and Chile, have been traditional countries of immigration, drawing millions of settlers from Europe and many thousands from Asia. In contrast to the period up to 1970, in the 1990s, the scenario has changed dramatically, and the region as a whole is now exporting migrants (Stalker, 1994, p. 221). In relation to their experiences of substantial settlement from Europe, a number of countries in the region have examined ways to facilitate the immigration of skilled workers from Eastern Europe and the former Soviet Union. Simultaneously, the issue of undocumented migration has been a growing concern in the region, and a number of countries have turned to bilateral agreements and/or regularization drives in order to bolster their capacity to regulate migration.

While Latin America and the Caribbean as a whole no longer represent a major destination of intercontinental population flows, the past three or four decades have witnessed the growth of considerable intraregional refugee and labour migration flows (Balán, 1991). Intraregional migration has occurred as people have moved from rural areas in low-income countries to urban areas in neighbouring high-income countries. In the mid-1980s, Argentina, Brazil and Venezuela received large numbers of migrant workers from neighbouring countries.

Economic conditions are major determinants of labour migration in this region. Argentina has accommodated large numbers of migrants from Chile, Paraguay, Uruguay and Bolivia, but the size of the workforce appears to have declined slightly in recent years owing to economic conditions (United Nations, *World Population Monitoring, 1997*, forthcoming). In Central America, most labour migration has been replaced with refugee flows as political conflicts over the past few decades have uprooted large numbers of people. Latin America has also experienced a certain amount of brain drain; for example, 50,000 Argentine scientists were living abroad in 1980. In the Southern Cone, as well as in the Andean region and in Central America, labour movements have been facilitated by labour shortages in agriculture, coupled with the natural porousness of land borders, and by the generally relaxed policies of the States to the entry of citizens from neighbouring countries.

Declining economic conditions in Latin America have contributed to a return of many previous migrants to their countries of origin. For example, in Argentina, increasing unemployment and low salaries have led to the return of many Italians to Italy, where there are few restrictions to their entry, and EU offers the prospect of free movement. Brazil's economic recession of the 1980s also led many migrants to seek jobs in countries which have had traditional linkages with Brazil. In

1990, for example, approximately 20,000 Brazilians were found in Portugal, where until 1993 they had equal rights under Portuguese law (Stalker, 1994, p. 227). Moreover, the largest number of expatriate Brazilians are now located in Japan, from which hundreds of thousands of migrant workers emigrated to Brazil at the turn of the century. In 1990, Japan changed its immigration laws to grant three-year work permits to people of Japanese origin, and by 1992, over 100,000 Brazilians had taken advantage of this opportunity (Stalker, 1994, p. 227).

Most migration flows in the Caribbean are related to geopolitical factors, and therefore involve the United States of America. There also are some smaller intraregional migration flows within the Caribbean, of which the most significant in recent years have come from Haiti. Estimates suggest that over 1 million Haitians are found in the neighbouring Dominican Republic. Plantation owners in the Dominican Republic, which has extensive sugar plantations but not enough local labour for the harvest, have recruited Haitians to fill the gap. Some Haitians cross the border each year, while others have taken up permanent residence in the Dominican Republic. Haitians also have been attracted to the Bahamas, where the tourist industry has increased the demand for unskilled labour. The growth of the Haitian population, estimated to be approximately 20 per cent of the total population of the Bahamas, and reliance on Haitians to do menial jobs which local people refuse, coupled with growing pressures on health and education services, have caused growing concern in recent years. A Presidential decree in June 1991 ordered the expulsion of thousands of Haitian plantation workers, many of whom had been resident in the country for many years or had even been born in the Dominican Republic. The decree was reportedly issued following a report by the Government of Haiti concerning adverse recruitment practices and employment conditions for Haitian seasonal workers in the Dominican Republic (United Nations, 1996, para. 758).

The migration of highly skilled labour is a critical factor in Latin American migration dynamics. On the one hand, given the generous provisions for highly skilled immigrants adopted by its neighbour, the United States, through the Immigration Act of 1990, brain drain, or the emigration of highly trained persons from Latin America, and particularly from the Southern Cone countries (Argentina, Bolivia, Chile, Paraguay and Uruguay), is likely to remain an issue. On the other hand, concerned about a skills shortage, many Governments in the region have set their sights on attracting skilled migrants from Eastern Europe. Recalling earlier waves of European immigration to South America, a number of countries in the region have been examining ways to facilitate the immigration of skilled workers from Eastern European countries and the former Soviet Union. Venezuela, for example, has aimed at attracting 50,000 skilled migrants, hoping to respond to a shortage of chemical engineers (Stalker, 1994, p. 228). Since 1992, the Ministry of Planning has been organizing the recruitment of these technicians over a five-year period. The plan has been to create a computerized job bank to organize the recruitment of such professionals, based on detailed requests from potential private sector employers, who would help to defray the immigrants' air fares, Spanish lessons and several months' housing, at a cost of approximately $2,000 per person.

Other plans to accommodate the reservoir of manpower from Eastern Europe aimed at attracting migrants to underpopulated regions, as witnessed by an Argentine plan in 1992 to lure immigrants from Eastern and Central Europe to Patagonia (United Nations, 1996, para. 754). The plan proposed the admission of 100,000 immigrants from the former Union of Soviet Socialist Republics, to be funded in part by the European Union. The Government of Argentina had announced that it would be willing to admit 300,000 immigrants over the following three years, provided the immigrants were able to bring in substantial sums of capital or the European Union provided financial support (as much as $35,000 per immigrant, according to one report) (United Nations, 1996, para. 754). The Government identified Latvia, Estonia and Lithuania as recruiting grounds and targeted middle-ranking skilled workers (Stalker, 1994, p. 225).

Finally, a trend that has been consolidating over the past few years, with substantial implications for future immigration dynamics in the area, is regional integration. The earliest example of multilateral efforts was the Andean Instrument on Labour Migration, which, together with the Andean Social Security Agreement, formed an integral part of the Cartagena Agreement of 1969. The Agreement inspired some subsequent bilateral agreements, but lost much of its significance in the 1980s. In 1990, the Presidents of the Andean

countries—(Bolivia, Colombia, Ecuador, Peru and Venezuela)—adopted, under the Acta de la Paz, a measure aimed at speeding up the process of frontier integration by abolishing visa requirements and creating a common Andean passport (United Nations, *World Population Monitoring, 1997*, forthcoming). While there have been no equivalent political commitments in the other subregions, there have been discussions at technical levels on possible future cooperation. In Central America, officials in charge of migration created the Central American Organization for Migration in 1990 within the Permanent Secretariat of the General Treaty on Central American Economic Integration (SIECA). Created along lines similar to those of the European Union, a Southern Cone Common Market (MERCOSUR) has been established by Argentina, Brazil, Paraguay and Uruguay as an economic area, but the implications for free movement of labour are still somewhat unclear.

4. Asia

As the globalization of migration has given prominence to new countries of origin and employment, Asia has been at the forefront of some of the most dramatic population movements in the world. Changes in migration flows in Asia reflect both economic and demographic imbalances within and among countries of the region, a phenomenon which tends to be measured in terms of the growth of capital investment and the volume and composition of intraregional trade. In recent years, increasing attention has focused on another dimension, namely, the marked increase in the international migration of labour.

In the 1990s, the demographic and economic situation in Asia has been marked by two major characteristics. First, although the population growth rate has declined considerably since the 1960s, Asia contains approximately 60 per cent of the world's population, or more than 3 billion people (OECD, 1996). Thus, with more than half of the world's population and nearly two thirds of its workers, the Asian continent has been a major source of contract migrant labour for the rest of the world. Between 1969 and 1989, the International Labour Organisation estimated that approximately 11.8 million Asians were employed as migrant workers in other countries.

Secondly, since the Second World War, the economic growth of several countries in the region has been the highest in the world. Labour migration in Asia reflects the region's strong economic growth. Nonetheless, economic growth has not occurred evenly or simultaneously within the region. Japan, for example, began the process in the 1950s, followed by Taiwan Province of China; the Republic of Korea; Hong Kong, China; and Singapore during the 1960s; Malaysia; Thailand; and Indonesia in the 1970s, and finally China in the 1980s. Since the early 1970s, Western Asia as well has become a major importer of labour migrants, drawn initially from neighbouring Arab countries, and later from countries in Southern and South-Eastern Asia. Although estimates of the number of migrants residing in Western Asia vary considerably, there is some consensus that the number exceeds 4 million, including 3 million from Asian countries.

Asia is no stranger to international migration. South-Eastern Asia, in particular, was settled by out-migrants from the Asian mainland (mostly southern China); as a geographically fragmented, ethnically diverse region unified by sea-based trade, it has long experienced intraregional migration flows—most recently, in the nineteenth and twentieth centuries, from China and India (OECD, 1996, p. 61). The Chinese were part of the early flows, migrating to South-Eastern Asia for several centuries. Their migration, altered the ethnic composition of the population in some host countries (especially Thailand and Malaysia) and accelerated with the introduction of steamboats in the 1920s. Malaysia and Singapore also were settled almost entirely by migrants during the European colonial era. Filipinos migrated to the United States in the 1920s, mostly to work on sugar-cane plantations in Hawaii, fish canneries in Alaska, and farms in California. At the other extreme, Japan and the Republic of Korea remained ethnically homogeneous and were virtually closed to both outsiders and emigrants for many centuries. Nonetheless, thousands of Koreans and Japanese migrated as contract workers to North and South America and to Australia in the late nineteenth and early twentieth centuries. Compared to the colonial period, current levels of labour migration in Asia are not particularly large. From 1834 to 1937, for example, some 30 million persons from the Indian subcontinent were brought to South-Eastern Asia, Africa, the Caribbean and the Pacific as indentured workers on British plantations.

Asian migration to developed countries continued after the Second World War, accelerating after the relaxation of immigration restrictions in the 1960s. In the early 1970s, oil-producing countries in Western Asia sought large numbers of contract labourers to alleviate labour shortages. The annual placement of Asian workers in the oil-rich countries of Western Asia and Northern Africa increased from about 2,000 in 1970 to approximately 522,000 in 1979. Indeed, by the end of the decade, Western Asia had become the largest market for Asian labour migrants.

During the 1980s, the oil-rich countries of Western Asia, including Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, were the main destination points for migrants from Asia. Indeed, the foreign population in these countries increased from 2.8 million in 1975 to 7.2 million in 1985. The main labour emigration countries in the region during the years 1980-1984 were the Philippines (which by the late 1980s accounted for over 45 per cent of the migrant worker outflows originating in Asia), India, the Republic of Korea and Pakistan. The overwhelming majority of migrants, especially those originating in Southern Asia, sought employment in Western Asia. Other destinations for migrant workers in Asia included Brunei Darussalam; Hong Kong, China; Japan; Malaysia; and Singapore. The number of foreign workers who were granted visas in Japan increased from 34,000 in 1982 to 81,000 in 1988.

In Western Asia, labour migration actually began not long after the discovery of oil in Saudi Arabia in 1933, and one year later in Kuwait. These breakthroughs transformed the entire Gulf region and paved the way for one of the highest concentrations of migrant workers in the world (Stalker, 1994, p. 239). Although there had been some insignificant migrant flows consisting primarily of seasonal workers in the fishing and pearling industries off the coast of Kuwait prior to this period, it was the production and export of oil, especially after the Second World War, that provided the impetus for labour migration to the Gulf (Awad, 1993, p. 162).

International labour migration in its current guise did not begin to take shape in Western Asia until the early 1960s, when the development of the region's oil resources and the resulting increase in revenues made possible significant capital expenditure for development projects. By 1972, an estimated 800,000 foreign workers were employed in the region (Abella, 1994a, pp. 164 and 165). As oil prices began to rise, from less than $2 per barrel in 1970 to almost $40 per barrel in 1980, major projects were launched to build basic infrastructure and to develop modern services (Omran and Roudi, 1993, p. 22). The cumulative revenues of the oil-producing countries increased from $21 billion in the period 1961-1965 to $617.6 billion in the period 1976-1980 (Abella, 1994a, p. 165). Total investments in the six Gulf Cooperation Council (GCC) countries of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates increased more than ninefold, from $13 billion between 1970-1974 to $123 billion between 1975-1979 (Abella, 1994a, p. 165).

The economic boom and ambitious development projects created serious labour shortages throughout the Gulf region that were impossible to alleviate without the importation of foreign workers. A number of factors contributed to the dependence on foreign labour: the small size and young age structure of the population of the GCC countries; low labour force participation rates, especially among women; low levels of literacy and education; an aversion to manual labour and low-status jobs; and a reluctance to work in the private sector because of better employment conditions in the public sector. Moreover, many people had little incentive to work in the modern sector, given alternative ways to earn a living, often with higher wages in occupations or businesses that were reserved only for nationals. Many people, for example, received incomes by becoming partners with foreigners doing business in the country; this usually entailed lending their name for a fee or for a share of the profits and was done to satisfy a Government requirement that foreigners doing business in the Gulf States have local partners. Others received Government subsidies and grants for agriculture, housing and other investments; many urban dwellers received substantial income from leasing houses built with Government subsidies (Abella, 1994a, p. 166).

A highly efficient system of temporary labour migration was organized to address the problem of labour shortages in the region. Labour recruitment was conducted by local intermediaries who were issued bloc visas, which were subsequently sold to employers and other recruiters or directly to persons seeking employment. Foreigners who sought employment in Western

Asia were required to have a sponsor, called a *khafeel*, who was either a direct employer or a labour contractor acting as an intermediary between employers and prospective employees. During this early period of economic growth in the region, there were few restrictions on labour movement and the *khafeel* system flourished.

Contracting companies were established throughout Western Asia to provide manpower for specific projects. They were responsible for recruiting and deploying workers, housing and feeding them in work camps, providing medical and recreational services, and repatriating workers after the projects were completed. The companies, which were initially American and European, and later Chinese, Korean, Filipino and Thai, now contract services such as port handling, hospital staffing and operations, and building maintenance and operations in addition to construction (Abella, 1994a, p. 170).

The first migrant workers to fill the labour shortages in the region were Arabs from neighbouring countries including Egyptians, Jordanians, Yemenites, Syrians and Palestinians (Stahl and others, 1993, p. 50). Indeed, until 1973 Arab nationals comprised almost 84 per cent of the foreign labour force in Western Asia (Abella, 1994a, p. 167). Political alliances were a major factor accounting for the Arab dominance of the expatriate labour force. Other contributing factors were a common language, culture and religion, and a considerable amount of casual migration that already was occurring between neighbouring countries in the region (Stalker, 1994, p. 242).

The majority of migrant workers who came to Western Asia in the early period of infrastructure development in the region were unskilled labourers who became employed primarily in the construction and service industries (Abella, 1994a, p. 167). After the initial construction phase, labour demands changed from basic infrastructure development to economic and productive activities based on heavy industry, transportation, communication, banking and business. As a result, labour-importing countries began to seek workers with more specialized skills. The continent of Asia proved to be a vast pool of manpower able to meet the changing demands of the oil-producing countries in terms of both volume and skill.

By 1975, Arab workers, who numbered approximately 1.3 million, comprised about 70 per cent of the total foreign labour force in the oil-producing States, with Asian workers (mainly from Pakistan and India) accounting for approximately 20 per cent, and the remainder consisting of several thousand American and European nationals (Abella, 1994a, p. 169; Stalker, 1994, p. 240). As the proportion of Arab workers began to decrease, that of Asian workers began to increase substantially, with flows to Bahrain, Oman and the United Arab Emirates dominated by Asian workers (Stahl, and others, 1992, p. 50).

By the late 1970s and early 1980s, Asians from Bangladesh, India, Indonesia, Pakistan, the Philippines and Thailand were seeking employment in the Gulf region (Stahl and others, 1992, p. 50). While Arab countries were no longer able to keep up with the increasing demand for workers, thousands of experienced Asian workers were willing to leave their families and obtain temporary work in the oil-producing States. Government policies in many Asian countries supported the exportation of labour, which soon became highly organized through a network of private and state recruitment agencies that advertised job openings, selected applicants, secured visas, made travel arrangements, ensured that contracts were approved by the proper authorities and replaced workers who were rejected by foreign employers. Labour migration from Asia also increased as a result of the demand for female domestic workers, who comprise approximately 20 per cent of the region's foreign labour force (Stalker, 1994, p. 242). Indeed, a major feature of labour migration in the Gulf region has been the increase in the number of women who seek employment as domestic servants. By 1990, Arab non-nationals accounted for less than 35 per cent of the foreign workers in the Gulf countries (Stalker, 1994, p. 242).

Government policies in both countries of origin and countries of destination helped to shape migration patterns in Western Asia. Although Governments did not intervene in migration flows that were favourable to their national interests, politics did play a role in the selective application of policies towards different migrant groups (Abella, 1994a, p. 171). Among the policies implemented in the countries of destination were regulation of entry through border controls, visas and work permits; limitations on payment of migrant workers

in foreign currency; and restrictions on family reunification, internal travel, and trade unionism and collective bargaining. Government policies implemented in the countries of origin included regulation of emigration through passport issuance, taxation and exit clearance procedures; restrictions on emigration to certain countries; restrictions on emigration of certain groups of persons, including those with scarce skills and those who are deemed vulnerable; regulation of recruitment through licensing and inspection; regulation of employment through the establishment of minimum standards and model contracts; and the introduction of foreign exchange regulations to influence the flow of remittances (Abella, 1994a, p. 171).

Arab nationals were able to enter and work in the Gulf Cooperation Council countries without many restrictions; for example, before the Gulf crisis, Yemeni and Omani nationals were not required to obtain work permits to become employed in Saudi Arabia, and Egyptian, Jordanian and Palestinian nationals from the West Bank were granted easy entry into Iraq (Abella, 1994a, p. 171). As a result, Arab nationals seeking employment in the Gulf region were not forced to rely on recruiting agents, which accounts for the fact that Arab countries of origin did not develop an elaborate system of labour migration. Unlike their Arab counterparts, Asian nationals did not have the same degree of mobility in the Gulf region and found it necessary to resort to more formal channels for migration, including commercial recruitment.

Security as well as financial concerns prompted the oil-producing countries of Western Asia to implement a temporary guest-worker policy of labour migration. Indeed, permanent migration policies would have placed the GCC countries in a position where the native populations would constitute a minority in their own territories. Moreover, the virtually unlimited supply of migrant workers enabled receiving countries to admit foreign labourers who work for low wages and have little opportunity to bargain or organize for basic labour rights.

Under the guest-worker policy, Asians usually have been recruited under one-year contracts with the possibility of extension. They are not permitted to change employers, and only workers earning high salaries are allowed to bring their families. Many employers confiscate workers' travel documents to ensure that they do not abandon their contracts. Migrant workers are not permitted to organize or join unions, to strike or to bargain collectively. Migrants who work in Saudi Arabia are required to obtain special permission if they plan to travel within the country. Migrant workers are forbidden to leave the country of employment without the written consent of their employers. Wage differences persist along nationality lines, with Westerners earning the highest salaries, followed by other Arabs and, finally, Asians receiving the lowest salaries (Abella, 1994a, p. 171).

Although bilateral labour agreements exist between some sending and receiving countries in the Gulf region, they have little impact on the migration of workers and the type of treatment they receive in the countries of employment. The GCC countries have not set wage standards, nor have they reached an agreement on social security protection of migrant workers (Abella, 1994a, p. 172). Most Asian Governments pursue a laissez-faire or even a supportive policy towards emigration, although some countries do not permit persons in certain occupations to emigrate. For example, Bangladesh, the Philippines and Thailand forbid women to work as domestic helpers. Myanmar banned recruitment of all women workers except professionals, and India and Pakistan set minimum age requirements for the placement of female domestic workers. It is noteworthy, however, that such restrictions are often disregarded unless they are consistent either with social and religious values or with economic realities.

By 1990, on the eve of the Gulf war, foreign workers comprised 68 per cent of the total labour force in the GCC countries (Omran and Roudi, 1993, p. 21). Saudi Arabia received the largest share of migrant workers, attracting approximately 55 per cent of the foreign labour in the region. Qatar had the largest percentage of migrant workers, with foreigners comprising 92 per cent of the country's total labour force, compared to the United Arab Emirates with 89 per cent; Kuwait with 86 per cent; Oman with 70 per cent; Saudi Arabia with 60 per cent; and Bahrain with 51 per cent (Omran and Roudi, 1993, p. 24).

The outbreak of war in August 1990 dealt a severe blow to the economies of labour-exporting countries and to the families of the approximately 6 million foreign

workers who were employed in the region (Abella, 1994a, p. 163). In the aftermath of the Gulf crisis, as many as 2 million Arab and Asian migrants were estimated to have returned to their countries of origin from Iraq, Kuwait, Saudi Arabia and other States in the Persian Gulf area (United Nations, 1996a, para. 723). The loss in remittances to the labour-exporting countries was estimated at approximately $750 million, which in turn contributed to a foreign-exchange crisis in several countries, including Bangladesh and Pakistan, which depended on remittances as their single most significant source of foreign exchange (United Nations, 1996a, para. 723; Appleyard, Nagayama and Stahl, 1992, p. 63). Governments were also faced with the problems and costs surrounding the return and reintegration of workers who were forced to repatriate. Returning migrant workers served to exacerbate existing unemployment problems, since only a small percentage of returnees were able to obtain jobs.

The Gulf war has had significant long-term implications for a number of migrant groups that are no longer welcome in the countries of employment. Indeed, many migrant workers, such as Jordanians and Palestinians who worked in Kuwait, are not expected to return to their jobs. Asians, who were predominantly found in Saudi Arabia and the United Arab Emirates, were less affected by the crisis. A significant percentage of Asian workers who were employed in Kuwait returned after the end of the war (Amjad, 1994, p. 59). The war served to change the ethnic composition of migrant workers in the region. Moreover, the Gulf crisis, coupled with world economic recession, has shifted the demand for labour from relatively unskilled and semi-skilled workers to service workers with higher skills. As the Gulf region continues its process of reconstruction, Asian workers are finding more opportunities for employment, and highly skilled expatriates from the West and the newly industrialized economies of Singapore; the Republic of Korea; Taiwan Province of China; and Hong Kong, China will continue to be in demand.

Although many Asian Governments have been anxious to recover previous contracts and to become part of the reconstruction team in Western Asia, the future role of Asian labour migrants in the Gulf region is as yet unclear. Some preliminary trends suggest a progressive change in composition towards more workers in low-skill service occupations for which admission policies are liberal (United Nations, *World Population Monitoring, 1997*, forthcoming). Thus far, there has been no large-scale return of workers to the Gulf; indeed, many of those who had been employed in the region do not have the skills needed to restore oil production and basic infrastructure destroyed by the war. However, it appears that some Gulf States (e.g., Saudi Arabia and Kuwait) will seek to increase the flow of foreign labour from the Asian region at the expense of workers from other Arab countries. For example, Southern Asia (Bangladesh, India, Pakistan and Sri Lanka) has already experienced a post-war increase in the emigration of migrant workers, the majority of whom headed for Western Asia. This has served to offset the negative economic impacts felt during the Gulf crisis itself, when migrant workers were sent back to their home countries.

New groups of labour migrants, including female household workers and hotel workers from Sri Lanka, Indonesia, India and the Philippines; sanitation workers; mechanics; personal drivers; and farm workers from the Indian subcontinent have replaced the returning construction workers in the Gulf. Indeed, there was a definite shift towards service occupations that was accompanied by a decline in wages and other terms and conditions of employment of migrant workers in the region. Moreover, an ever-increasing number of Asian professionals and managers, who are willing to work for lower wages, have been replacing Westerners and non-national Arabs in Western Asia.

Concerned with the large numbers of foreign workers in their countries, the GCC Governments sought to reduce their reliance on foreign workers by increasing the labour force participation rates of nationals and by placing them in positions that are economically, strategically, politically and socially important. Such policies have not been very successful, however, because certain occupations are simply not attractive to Arab nationals (because they are not culturally acceptable, of high enough social status, or "modern"). Progress has been made in increasing the labour force participation rate of women, especially in countries such as Bahrain and Kuwait, where social acceptance and financial incentives served to facilitate the entry of women into the workforce (Stahl and others, 1993, p. 57).

Compared to labour migration to Western Asia, intraregional migration flows within Asia are more complex because they involve many countries and industries which are at different stages of development. Since the late 1980s, for example, Japan, the Republic of Korea and Taiwan Province of China have become labour-importing economies. The flows of unskilled migrant workers usually originate in developing countries in South-Eastern Asia and move to Japan and the newly industrialized economies (NIEs) of the Republic of Korea; Singapore; Taiwan Province of China; and Hong Kong, China. Flows of skilled and professional workers, which have been expanding as firms from Japan and the NIEs shifted to lower cost neighbouring countries in the region, move in the opposite direction. Indeed, the number of expatriates and cross-border managers from the NIEs has increased markedly, with a larger percentage of the foreign labour originating within the region. Multinational firms have increased their levels of recruitment of skilled workers from within the region; this is coupled with an increase in the number of return migrants who had been educated and/or employed in Western industrialized countries. Intraregional trade, stimulated in large part by Japanese investment and the opening up of the Japanese market, has increased considerably, so that market-led regionalization of trade, investment and labour flows appears irreversible (Pang and Lim, 1996, p. 63).

Three streams of labour migration have expanded rapidly in the Asia-Pacific region since 1985 (Pang, 1994). The first and fastest growing stream is between developing South-Eastern Asia and industrialized Eastern Asia; it includes the flow of predominantly unskilled documented (and undocumented) workers from South-Eastern and Southern Asia to North-Eastern Asia, especially to Taiwan Province of China; Japan and Hong Kong, China and the flow of skilled and professional workers in the opposite direction. The northward stream is comprised of workers who are organized by recruitment agencies to take advantage of employment opportunities in the labour-importing countries, while the southward stream is part of the flow of trade, investment and technology. The second major stream of labour migration in the region is found within South-Eastern Asia and is more complex. It consists of a large flow of skilled and unskilled labour into Singapore from neighbouring countries, including Indonesia, Malaysia, the Philippines and Thailand, and the temporary flow of skilled and professional workers from Singapore to neighbouring countries; migration of unskilled labour from the Philippines into the Malaysian State of Sabah (it should be noted that most of these labour migrants are undocumented); migration from Indonesia and southern Thailand into Malaysia; migration from Myanmar into Thailand; and migration from various parts of Southern and South-Eastern Asia into Brunei. The third major labour migration stream, which occurs within Eastern Asia and is equally complex and diverse consists of migrants from China; the Republic of Korea; Hong Kong, China; and Taiwan Province of China into Japan; a small flow of unskilled migrants from China into Hong Kong, China and a much larger reverse flow of professionals, managers and technicians from Hong Kong, China into the Pearl River delta in China, where many Hong Kong, China firms relocated their labour-intensive activities; and a short-term flow of professionals and managers from Taiwan Province of China into China. In addition, there is a large and growing number of migrants from Southern Asia who seek employment in Eastern and South-Eastern Asian countries; many of the migrants, who come from Bangladesh, India, Pakistan and Sri Lanka, go through recruitment or job placement agencies to find employment in Japan; the Republic of Korea; Hong Kong, China; Singapore; Taiwan Province of China and several States members of the Association of South-Eastern Asian Nations (ASEAN).

The scale and diversity of international labour migration patterns in Asia have become increasingly complex. At least part of this complexity is due to the increase in cross-national labour migration within the region, generated by growing economic interdependence and by a surge in the volume and composition of intraregional trade. International migration within and from Asia is also a response to spatial variations in income and employment opportunities; demographic and economic diversity has meant that the continent includes both some of the world's most densely populated and some of the least populated countries; some of the most rapidly growing economies and some of the poorest countries in the world. These discrepancies have produced a division of labour in the region, due at first to private initiative and reinforced subsequently by multilateral organizations such as the ASEAN Free Trade Area (AFTA) and the Asia-Pacific Economic Cooperation Council (APEC). The response of Asia's

increasingly interdependent economic system to the pronounced national inequalities in population size and income levels has been to encourage the movement of both labour and capital from countries that are at earlier stages of the demographic and economic transition to rapidly growing countries, such as Japan, Malaysia and the NIEs of Hong Kong, China; the Republic of Korea; Singapore; and Taiwan Province of China. Shortages of unskilled workers in Japan, in the NIEs and in ASEAN countries attracted immigrants from other countries in the region with labour surpluses, mainly in agriculture (China, Indonesia, the Philippines). Regional economic integration has further prompted increasing requirements for skilled workers in the more developed Asian countries (OECD, 1996).

Although unskilled migrant labour has attracted most of the attention in the Asia-Pacific region, the flow of professional, managerial and other skilled workers has been extremely important in the economic development of the region. The movement of capital, including direct foreign and joint venture investments, is typically accompanied by the migration of professional and technical manpower. Professionals and skilled workers migrate temporarily to manage capital, to oversee multinational projects and to provide management and consulting services; they are joined by job-seekers and investors, as well as by such groups as European and American professionals, junior and middle-level managers, and engineers and data-processing personnel. Indeed, a large number of skilled and professional workers from outside the region, especially from States members of the Organisation for Economic Co-operation and Development, such as the United States and Germany, which have substantial investments in the region, are employed in Pacific Asian countries.

Since the 1960s, the flow of skilled labour has accompanied investments by multinational companies throughout Asia, especially in Taiwan Province of China; Hong Kong, China; Malaysia; and Singapore, which openly welcomed foreign investment. At first, most companies, especially those from the United Kingdom and the United States, sent their own managers and engineers to run their firms; very few third-country nationals were hired, partly because not many were available, and partly because company practices often discouraged their hiring. With time, multinational firms began to hire locally qualified personnel because of the rising cost of keeping expatriates in the region and the increasing availability of experienced locals. In addition, legislation in some countries required foreign companies to replace expatriates with local personnel. Since the late 1980s, many European and North American companies have moved their Asian managerial staff from one country to another. In many countries, an increasing percentage of the expatriate labour force is from within the region; added to this is the growing number of nationals who are returning home after studying or working in Western industrialized countries. Moreover, the changing ownership of corporations and the shifting patterns of foreign investment and trade in the region have resulted in a change in the mix of nationalities of foreign professionals (Neymarc and Cervantes, 1996, p. 75).

The proliferation of transnational corporations has also played an important role in the expansion of international labour migration in Asia. Offshore production sites have brought capital to labour at the same time that turnkey projects and collective contract agreements have attracted workers to Asia. The transnational corporations have become more influential in directing flows of unskilled and semi-skilled workers than they have in transferring top-level management overseas because Asian Governments, despite welcoming foreign investment, have been tightening regulations for the entry of transnational corporation executives. Indeed, some Governments require proof that there are no locals eligible for the positions being taken by foreign professionals.

Also among the skilled labour migrants in the region are returning nationals who studied or worked abroad. Indeed, slow economic growth in many developed economies, coupled with Government incentives and programmes encouraging nationals to return home, and the availability of good jobs in the countries of origin have resulted in a significant number of returnees who were attracted by business and entrepreneurial opportunities at home. Since the early 1980s, thousands of students and professionals from Taiwan Province of China, the Republic of Korea and China have returned home with skills, knowledge and contacts acquired in developed countries (especially the United States).

A recent phenomenon of international migration in Asia is its temporary nature, particularly in the form of

contract migration. There has been a significant growth in contract migration in the past decade, with estimates suggesting 1 million such workers in Asia and another 3 million in Western Asia (United Nations, 1996a, para. 723). Temporary contract labour migration along the lines of the guest-worker systems adopted in European countries in the past has been an outgrowth of the oil boom in the early 1970s, when massive modernization and development programmes were undertaken by countries in Western Asia (OECD, 1996, p. 97). The guest-worker system is based on the "rotation principle", which stipulates that the worker return home after a fixed period, normally ranging from one to five years. The main Asian exporting countries are the Philippines, Pakistan, Sri Lanka, Bangladesh and Thailand; Indonesia and China are latecomers to the scene (OECD, 1996, p. 98). The traditional destination of contract labour migration has been Western Asia, but recently flows have been increasing within Asia. These flows largely involve unskilled and semi-skilled workers.

Several factors have contributed to the expansion of unskilled labour migration in Asia, one of the more important of which was a highly organized labour recruitment industry. Once the demand for migrant labour in Western Asia began to decline in the late 1980s, the labour recruitment industry that facilitated the export of labour to the region began to turn its attention to Eastern Asia. Indeed, the large flows of workers from Malaysia, the Philippines and Thailand to Japan and Taiwan Province of China since the late 1980s in large part reflect this change in region of destination. Another important contributing factor was modern transportation and communications, both of which facilitated labour migration and the dissemination of information on employment opportunities in other countries. Finally, barriers to labour migration are coming down in many labour-importing countries, despite the rise in negative attitudes towards unskilled foreign workers in many areas. Many countries enacted legislation to facilitate the emigration of nationals for employment abroad, while at the same time permitting the immigration of foreign workers to help alleviate chronic domestic labour shortages.

Unskilled migrant workers are concentrated in a few industries in the labour-importing countries, primarily in low-paying jobs that are shunned by the local population. Although their numbers are small when compared to the total labour force of most receiving countries, migrant workers have nevertheless become a controversial issue in their host countries, which have different policies towards the importation, protection and residence status of unskilled foreign labour.

While policies vary, some similarities are found throughout the region. A decision to import unskilled labour, demanded particularly by small industries or industries that cannot be easily relocated abroad, is resisted at the political level in order to avoid the European experience of social costs and cultural clashes. At the same time, immigration of domestic workers is allowed in almost all countries, except Japan, which allows the immigration of "entertainers". Some economies, notably Japan and the Republic of Korea, disguise the import of unskilled labour with the import of trainees (Battistella, 1995, p. 243). Migration is limited to short-term contracts, usually not renewable in the country of employment. With migration restricted for the most part to a short-term contract, which is often not renewable or renewable only after repatriation, family reunification is almost impossible (Battistella, 1995, p. 243). All countries have experienced a high level of undocumented migration. Often, the restrictions of short-term contracts and similar migration policies have generated undocumented migration.

Migration in Asia is distinctive because it is organized, supported if not encouraged by the sending countries because of substantial remittances; and marked by the growing presence of both undocumented migration and a rising proportion of young female workers among migrants (United Nations, 1996a, para. 722). Recruitment agencies, overseas employment promoters, and manpower suppliers have played an important role in the expansion of international labour migration in Asia. Indeed, most labour migration in Asia is arranged by recruitment and placement firms, rather than by individual migrants themselves. Recruitment firms were instrumental in the rapid growth of Asian labour migration to the Western Asia. In 1985, there were approximately 1,100 placement agencies in India, 960 in the Philippines, and more than 300 in Thailand. The agencies, which supply potential migrants with information about market conditions, seek out employment opportunities in other countries and mobilize workers to meet overseas demand, are responsible for recruiting, testing and selecting migrants; they also arrange the

migrants' travel documents and transportation. It is estimated that in 1986, 97 per cent of migrant workers who originated in the Philippines and Thailand, and 60 per cent of those from Bangladesh, were placed by either a private or Government recruitment agency. Countries that placed the highest percentage of their overseas workers through recruitment agencies received larger shares of the Western Asian labour market than those which had a higher percentage of individual migrants. Since many of the placement agencies that recruited workers for Western Asia are also involved in recruitment for the Asian market, it is believed that the firms will play an important role in the expansion of intraregional labour migration in Asia. Governments of labour-importing countries will no doubt utilize such institutional arrangements in planning their migrant labour needs, because they are much easier to monitor than individual migration.

The growing importance of intraregional labour migration, as well as its greater degree of institutionalization, poses major policy challenges in the area of planning, regulating and monitoring the migration of workers and in protecting the legal rights and social entitlements of labour migrants and their families (OECD, 1996). The institutionalization of labour migration within Asia also calls for stronger regional cooperation. Indeed, the rapid acceleration of intraregional migration in Asia is expected to prompt Governments that had not previously confronted labour migration issues to become much more involved in planning, regulating and monitoring the flow of migrant workers. As countries realize that labour migration is an important policy issue, labour-receiving Governments are expected to seek to exercise greater control over who enters their borders to seek employment, and to protect the interests of the domestic labour force. Indeed, Governments of labour-sending countries have become more actively involved in migration issues; many Asian embassies now have labour attachés on their staff. Many sending countries are concerned about the mistreatment and abuse of their nationals employed overseas, and about complaints from them, which include non-payment of salaries and lack of time off from work.

Although labour migration has played a major role in solving many of the region's economic problems, including unemployment and labour shortages, it also has raised serious concerns among the receiving countries about the effects of rising dependence on foreign labour. The more homogeneous Eastern Asian countries are also concerned by the social and cultural impact of a large, visible and culturally distinct population. Indeed, receiving countries are faced with the inevitable conflict that arises among various groups in a society that hosts large numbers of foreign workers. Another source of potential conflict is between sending and receiving countries over the protection of foreign workers from abuse and exploitation. Female workers are particularly vulnerable to exploitation; many women from South-Eastern Asia, especially from the Philippines and Thailand, are recruited illegally and are promised high-paying respectable jobs that are actually jobs as prostitutes.

Major issues surrounding international labour migration in Asia include plans for high-technology development at home; the movement of labour-intensive employment to neighbouring low-wage countries; restrictive immigration policies to discourage the employment of cheap imported labour; labour shortages, especially in advanced technological industries, but also in sectors that are avoided by educated local populations, such as services and construction; and large-scale undocumented migration that is filling the gap between long-term policy intentions and the immediate demand for workers.

While a number of issues are common to various countries in the region, migration paths are complex, and countries adjust in ways that reflect their history and institutions. Most countries are to some extent both receiving and sending migrants—of different skill levels. Malaysia, for example, hosts more than 1 million foreign workers, mostly from Indonesia, but also sends more than 100,000 of its own people each year to Singapore, Japan and Taiwan Province of China. Some countries are undergoing a transition from being a sending country to becoming a receiving country. The organization of this section attempts to follow these distinctions, while underscoring the fact that most countries in the area experience simultaneous inflows as well as outflows of diverse skills.

(a) Eastern Asia: Labour-importing countries

In Eastern Asia, labour migration is focused on four major labour importers: Japan; Hong Kong, China;

Malaysia; and Singapore. Indeed, the redirection of international labour migration from Western Asia to Japan and the four Asian "dragons"—Hong Kong, China; Taiwan Province of China; the Republic of Korea; and Singapore—has been one of the most significant features of recent labour migration patterns on the continent. In spite of restrictive immigration policies in countries such as Japan and the Republic of Korea, the past decade has witnessed a virtual explosion of labour migration as a result of sustained high rates of economic growth. More clear-cut policies were adopted by Hong Kong, China and Singapore to import temporary foreign labour as a counter-cyclical measure to mitigate the impact of economic fluctuations on wage growth.

Japan is a newcomer in the field of labour importation; indeed, the country had long been considered closed and self-contained. From 1640, Japan was effectively cut off from the rest of the world for 200 years. It is estimated that aliens, including long-resident Chinese and Koreans and undocumented workers, constitute only some 0.3 per cent of the Japanese labour force. Until fairly recently, most foreigners employed in Japan were found in jobs that required specific talents in non-Japanese business practices and cultures, including foreign language instruction and high-level management of multinational firms. As a result, the number of foreign workers was small and their salaries were either commensurate with or surpassed those of their Japanese counterparts. There was very little discussion concerning the acceptance of unskilled foreign labour and its remuneration.

With a history of exporting capital, rather than importing labour, Japan traditionally has opted to export its labour-intensive technologies and to increase the productivity of local labour. Unlike Western European countries, Japan did not admit foreign workers to alleviate labour shortages generated by high rates of economic growth during the 1960s, but instead chose to export many labour-intensive operations offshore to neighbouring countries that had large supplies of cheap labour. A debate in the early 1970s over the need for foreign workers to ease the shortage of labour in the country's manufacturing sector went unresolved until a recession and industrial restructuring following the oil price hikes in 1973 effectively ended the issue. Despite complaints of labour shortages from employers and a rise in undocumented migration since the mid-1980s, the Government has denied requests to import unskilled migrant workers. Indeed, employers faced with labour shortages were advised by the Government to recruit older and disadvantaged workers, or to restructure jobs so that there would be no need for foreign workers. Instead of importing foreign labour to fill so-called dirty, dangerous and demanding positions, employers were urged to correct labour market mismatches by implementing new technologies and by making better use of women and older Japanese workers. Many Japanese employers responded by hiring undocumented foreign workers, or by turning to Brazilian workers of Japanese ancestry (who are permitted to live and to work in Japan without restric-tion) after stiff employer sanctions went into effect in 1990.

Labour shortages have nonetheless persisted; low fertility rates and a high life expectancy have been increasing the demand for workers; the economy has shifted towards the more labour-intensive construction and service industries; and young people, who are now more educated and more discriminating, are increasingly turning down what they consider low status jobs. Indeed, there are approximately 35 per cent more job vacancies than there are job-seekers; the construction industry alone is reported to have a shortage of some 100,000 workers. The labour shortage is most acutely felt at the skilled, semi-skilled and unskilled levels; shortages at the professional level have been alleviated, to a certain extent, by workers from within the legally resident foreign community. Japanese firms unable to fill positions from among the local population have sought workers elsewhere.

The internationalization of the Japanese economy, a strong yen that has increased the income gap between Japan and other Asian countries, a growing manpower shortage in the construction, manufacturing and service industries, and the reduction in employment opportunities in Western Asia are all significant factors in the increase of both legal and undocumented foreign workers in Japan. Japan's growing economy has attracted an increasing number of immigrants who enter the country with the intention of obtaining employment, from 30,000 in 1980 to 44,000 in 1985 to 95,000 in 1990. In 1990, approximately 30,000 persons arrived in the country to study, and 38,000 came for training purposes. Employers seeking new workers are permitted

to hire trainees who have a residence permit for training. The trainee system is widely used as a loophole to admit foreign labourers to Japan. In order to avoid abuse of trainees, the Ministry of Justice has defined training as the activity of acquiring techniques, skills and knowledge. Furthermore, it has stipulated that the skills must not consist only of repetition of the same operations, that the trainee must plan to seek employment which requires the acquired skill after he or she returns to the home country, and that the techniques, skills and knowledge must not be obtainable in the trainee's country of origin.

According to the Japanese Ministry of Labour, in the year ending 1 June 1994, the number of manufacturers that hired foreign workers increased tenfold, from 1,300 to 13,000. The number of foreign workers hired in construction, transport and services also increased. In 1992, 110,000 immigrants arrived in Japan for employment, and on average 85,000 were in the Japanese labour force. In addition, there were 43,000 trainees and 27,000 language students who were allowed to work part-time.

The severe labour shortages in the Japanese economy have forced the Government to modify its traditionally restrictive immigration policies to reflect reality more closely. In 1990, almost 95,000 foreign workers were officially admitted into the country, compared to just over 22,000 in 1976; over 90 per cent of them were Asians. In 1990, the Japanese Government revised its Immigration Control and Refugee Recognition Act in order to facilitate the entry of professionals and skilled labour and to reduce the number of undocumented foreign workers. The new legislation, which reiterates its ban on unskilled labour and refines the classifications of permitted workers, expands the number of job categories for which the country will accept foreign workers from 18 to 28, typically for three-year stays. The law permits descendants of Japanese immigrants abroad (up to the third generation) to work and reside legally in Japan; *nikkei*, foreign nationals of Japanese descent, are entitled to long-term resident status and enjoy legal protection almost equal to that of Japanese-born citizens. The Government permits three categories of foreigners to work in Japan: (*a*) diplomats, artists, religious personnel and journalists; (*b*) those in specific professional and technical occupations ranging from financial and accounting experts to engineering and highly skilled craftsmen; and (*c*) those with very specific forms of expertise in select fields. Temporary visitors, students and family visitors are not permitted to work. The law also allows foreigners who are already residing in Japan to apply to the Immigration Office for a work permit; this provision was designed to benefit the children of foreigners legally resident in the country when they reach working age, rather than undocumented workers in unskilled jobs.

Although many observers have discussed the inevitability of foreign labour in Japan, the Government, unions, and Japanese public opinion remain largely opposed to the importation of guest workers. Indeed, the revised 1990 legislation clearly demonstrated that the Government is not ready to permit the entry of unskilled workers. Japanese policy continues to stress the exchange of high-level skills with other developed economies, the temporary exportation of Japanese expertise to the less developed countries and the newly industrialized countries with some reciprocal movement, and a ban on importing unskilled labour. The immigration debate in Japan, originally a purely labour market issue, has now become a much broader debate over the incorporation of foreigners in an ethnically homogeneous society. The debate centres not only on the basic question of the acceptance of foreign workers in Japan, but also on the potential for friction in Japanese society as a result of a large inflow of foreign workers. The only developed country in the world that did not rely on foreign workers to alleviate labour shortages, Japan is currently focusing increased attention on the dramatic rise in the immigration of foreign workers.

Once a major source of emigrants, Hong Kong, China has become one of the Asian labour importers. However, in the few years prior to its return to China on 1 July 1997, more attention was focused on emigration from the country, which accelerated after 1987. Of particular concern was the number of highly skilled and professional workers who left Hong Kong, China. In 1991, approximately 72 per cent of emigrants of working age were managers and administrators, professionals and associate professionals.

More recently, however, the flow of emigrants from Hong Kong, China has subsided, partly because of a recession in the West. A growing number of young professionals have chosen to remain in Hong Kong, China. Indeed, the number of emigrants from Hong Kong, China decreased from a peak of 62,000 in 1990

to 54,000 in 1993. Moreover, a significant number of those who relocated are returning; of the 500,000 Hong Kong, China citizens who emigrated in the 1980s, approximately 20 per cent have returned.

Despite experiencing heavy emigration, Hong Kong, China continues to be a major pole of attraction for migrant labour. With one of the fastest growing economies in the world, the territory has absorbed the largest number of migrant workers among the NIEs. The number of professionals and non-Chinese domestic workers, who are not subject to quotas, has increased rapidly since the mid-1980s. The number of highly skilled and professional and managerial workers increased from approximately 6,000 - 7,000 in the mid-1980s to 11,000 in 1992. The majority of them are expatriates brought in by companies to fill important positions in multinational corporations.

Until the mid-1970s, Hong Kong, China did not admit unskilled labour migrants with the exception of those originating in China. Faced with a shortage of domestic workers, however, the Government reversed its policy in 1974 and began to permit the entry of domestic helpers on two-year renewable contracts from any country other than China. As a result, the number of foreign women employed in domestic service, the majority of whom come from the Philippines, rose from 2,000 in 1975 to over 75,000 in 1991. Compared to other Asian countries and territories, Hong Kong, China offers the highest minimum wage and the best benefits for migrant workers, especially foreign domestic helpers. Employers are required to provide housing and to pay a minimum monthly wage. The Government has a dispute resolution service to address complaints from domestic helpers. Domestic workers soon became the largest group of migrant workers in Hong Kong, China; although small in number, they are nevertheless significant in economic terms. Not posing a direct threat to the local labour pool, domestic helpers enable Hong Kong, China women who would otherwise be confined to household duties and child care to join the labour force and to provide relief for the tight labour market.

Foreign domestic workers in Hong Kong, China established organizations, groups, unions and alliances that pursue common interests and objectives, including the protection of the rights of migrant workers in Hong Kong , China. Migrant organizations such as the United Filipinos in Hong Kong, China, which has 23 member organizations, provide much-needed assistance and support, while non-governmental organizations assist migrant workers in organizing, advocacy, and provision of social services.

Declining birth rates and a rapidly growing economy resulted in a more general labour shortage in Hong Kong, China in the 1980s. Reluctant to lift its ban on the importation of unskilled labour, the Government broadened its definition of skilled workers to include operatives with more than one year of experience, and increased the quota for these "skilled" workers. In the early 1990s, approximately 13,000 operatives per year were admitted from other Asian countries for employment in industries that were suffering from severe labour shortages, including clothing and machine shop trades, hotels, and car repair services.

A labour importation scheme first proposed in 1989 permitted employers to import foreign labour when they could not fill advertised vacancies with local workers. The Government set import quotas at 12,700 workers on two-year contracts; the quota was increased in 1992 to 25,000 and extended to provide employers with the option to renew the contracts twice, allowing workers to remain in the Hong Kong, China for up to six years. A programme to import labour for the Port and Airport Development Scheme (PADS), one of the largest construction projects in the world, raised the ceiling from 2,000 to 5,500 workers. The majority of workers involved in the labour importation scheme and the PADS project, who have a fairly low educational level, are part of the foreign labour pool that fills low-paying, low-status jobs that better-educated Hong Kong, China nationals are not willing to perform. Both projects are expected to be extended further.

The preferred solution to the problem of labour shortage in Hong Kong, China is to export work, particularly the manufacture of clothes, toys and other labour-intensive industries, to China. Managerial and technical staff accompany the export of capital to China. Since China opened its doors to foreign investment in 1978, entrepreneurs from Hong Kong, China have relocated their manufacturing, trade and hotel operations across the border to take advantage of the abundant supply of low-cost labour. Indeed, the 1980s witnessed a steady decline in labour-intensive manufacturing

industries in Hong Kong, China as a result of relocations to China. In 1991, more than twice as many persons were employed by firms jointly or solely owned by Hong Kong entrepreneurs in China than in Hong Kong, China itself.

Economic growth has similarly impacted on migration patterns in Singapore. The country's rapid economic growth, coupled with a slowly growing labour force, continues to make Singapore heavily reliant on foreign workers. Although the Government's official policy is to use foreign labour only in anticipation of fluctuations in the business cycle, in reality, many more immigrants enter Singapore seeking employment. The number of foreign workers in the country increased from 14,000, or 2 per cent of the labour force in 1970, to almost 128,000, or 10 per cent by 1989. It is estimated that there are over 150,000 foreign workers currently in Singapore.

While Singapore is not a newcomer to foreign labour importation, the magnitude of labour migration and the State's response to it in recent years have been significant. Indeed, built on immigrant labour, the country has been dependent on foreign workers since its founding in 1813. Despite strict immigration controls, the influx of migrants seeking employment (especially from Malaysia) continued until 1965, when Singapore gained its independence.

Since the mid-1960s, Singapore has carefully regulated the level of immigration with a foreign labour policy designed to encourage skilled and professional immigrants, and to restrict the entry of unskilled foreign workers. It adjusted its policy to suit particular needs, and from 1965 to 1968 immigration was permitted for reasons of family reunification. Unskilled workers were prohibited from entering because the domestic labour supply was more than adequate to meet labour demands. From 1968 to the late 1970s, unskilled foreign workers, primarily from Malaysia, were recruited to alleviate labour shortages in the construction and manufacturing industries; their numbers rose in times of growth and fell during periods of recession. In the late 1970s, as it became harder to recruit unskilled labour from Malaysia, the Government permitted employers to import workers from non-traditional source countries such as Bangladesh, India, Indonesia, Sri Lanka and Thailand. However, to discourage excessive labour importation from those countries, the Government imposed a monthly levy on employers for every foreign worker recruited. The monthly levy, which has been raised several times since its introduction in 1987, is designed to counter any cost advantage that employers might gain by hiring migrant workers. The levy varies between industries and among different types of workers. In order to encourage employers to train and to use more skilled workers, the levy is higher for the construction and shipbuilding industries, both of which are heavily dependent on unskilled foreign labour. In other industries, employers are required to pay a levy only for migrant workers who earn less than a specified amount. The Government of Singapore also exerts control over the numbers of immigrants admitted for employment by setting a maximum percentage of foreign workers in a given firm; in 1990, the maximum percentage of foreign workers was set at 70, with the actual level depending on the existing proportion of skilled workers in the company.

Government policy places restrictions on unskilled foreign workers. With the exception of domestic helpers, unskilled workers can only be employed in a few approved sectors, that is, in hotels and manufacturing, including shipyards and construction. A new policy announced in 1990 paved the way for employers in all sectors to be granted permission to recruit Malaysian workers. However, employers must ensure that Malaysian workers do not comprise more than 10 per cent of their workforce. The new liberal policy does not apply to workers from non-traditional sending countries, such as India, the Philippines and Thailand. The traditional source of unskilled workers is Malaysia. Approximately 30,000 to 40,000 Malaysians are employed in Singapore, with an additional 10,000 who commute daily; there are also some 30,000 Filipinos (mostly female domestic helpers); 20,000 Indonesians; and 16,000 Thais. Singapore has one of the highest rates of domestic helpers in the world: in 1990, 1 in 15 households in Singapore employed a maid. Because of the large number of domestic workers, females account for a high percentage of foreign labour in Singapore. In 1989, 52 per cent of foreign workers were women.

Unskilled foreign workers are not permitted to settle permanently or to bring their families with them. As a rule, foreign domestic helpers are not permitted to

work in Singapore for more than two two-year contracts; some maids circumvent this restriction by returning to Singapore under different names. Those who marry Singaporeans are not automatically granted residence rights. However, workers who can easily become assimilated and have acquired trade or professional qualifications may apply for permanent residence.

While policies towards unskilled foreign workers are restrictive (indeed, in the early 1980s, the Government announced its intention to repatriate all foreign workers except domestics and those employed in construction and shipyards by the end of 1991, but abandoned this goal in 1986), policies towards highly qualified and professional workers are exceptionally liberal. Indeed, there are no restrictions at all for skilled and professional workers. Persons with at least five "Ordinary Level" school certificates or equivalent qualifications, with five years of working experience and a salary of at least S$ 1,500 per month can apply for permanent residence. Employers are permitted to recruit professionals freely, provided that there are no nationals who are qualified for the positions. Indeed, immigrants who arrive under arrangements established to attract skilled workers, professionals and entrepreneurs are issued employment passes that are valid for three years. They are permitted to bring their families with them and to apply for permanent residence after six months, and for citizenship after two years of permanent residence.

The Government of Singapore seeks to attract workers with specific qualifications (especially Chinese from Hong Kong, China) in order to offset the emigration of skilled Singaporeans. In 1989, the Government lowered the eligibility criteria for foreigners who sought permanent residence status in Singapore; within a year, approximately 14,500 Hong Kong, China nationals were approved for permanent residence in Singapore, although a considerably smaller number actually settled in the country. Since the establishment of its International Manpower Division in 1991, the Economic Development Board has been instrumental in the recruitment of more than 3,300 foreign professionals and skilled workers to Singapore. In its mission to attract talented persons with critical skills from overseas, the Board planned to recruit 40 researchers and scientists per 10,000 workers by 1995.

Considering that the country may be reaching the limits of its capacity to absorb foreign workers, Singapore introduced new regulations in 1992, intended to make local industries less dependent upon unskilled foreign labour, and to increase the productivity of local labour. The Singaporean Ministry of Labour recently proposed a system of auctioning foreign workers to the highest bidders in order to ration the numbers of migrants employed in the country; the scheme is considered for applicants who do not have a college degree and who earn below S$ 1,500 per month. Currently, these workers may not comprise more than 40 per cent of an employer's workforce. Employers must also pay the Government a tax of S$ 250 to S$ 350 per worker each month. The Government is further seeking to reduce the country's dependence on foreign labour by offering women generous tax incentives both to have more children and to remain in the labour force, by encouraging older people to continue working, and by urging employers to upgrade their technology or to relocate labour-intensive production to neighbouring countries, especially to Malaysia and Indonesia.

Another more recent development in Singapore has been a significant level of emigration, especially of professionals. This emigration is both temporary, consisting of Singaporeans sent abroad by local and foreign firms in Singapore, and permanent, consisting of professionals who accept positions in industrialized countries, especially the United States, Australia and Canada. Although currently small in volume, the temporary outflow is expected to grow as Singaporean firms increase their investments abroad. Permanent emigration of professionals accelerated in the 1980s, but has decreased somewhat since 1989. In what has been termed a reverse brain drain, Singaporean and other Asian scientists trained and employed in North America and Europe are repatriating after being attracted by new opportunities to conduct research in Singapore. The growing importance of Singapore's overseas business ventures has enabled the Government to view emigration of professionals in a more positive light. Indeed, recent changes in Singapore's emigration policy suggest that the Government is moving away from perceiving emigration as a brain drain towards a view that emigration contributes to the country's internationalization

efforts. Indeed, Singaporeans are now encouraged to migrate overseas for investment and employment and thus serve as potential links to the outside world in the building of Singapore's external economy. Government officials also have suggested maintaining contacts with Singaporeans who have settled overseas. Despite its more relaxed attitude towards nationals who leave the country, the Government has made changes to improve the quality of life and education in Singapore to curb the flow of emigration.

Malaysia also plays an important role in labour importation in the region, attracting the largest number of labour migrants in the ASEAN subregion. The country represents a somewhat unique case, in that it is both a significant exporter and an importer of labour. The country exports workers to its wealthier neighbours and to Western Asia, while simultaneously attracting large numbers of migrant workers from poorer neighbouring countries. Malaysia also exports a large number of skilled and professional workers to Singapore, the United States, Canada and Australia. Indeed, a joint Government-industry survey in 1990-1991 found that 90 per cent of companies in Malaysia experienced difficulty replacing professional staff, especially in engineering, while Japanese firms were unable to recruit enough skilled workers for their factories in Malaysia.

The emigration of labour from Malaysia is more than offset by the immigration of workers. The country has one of Asia's highest percentages of foreign workers, between 4 and 10 per cent, depending on the estimate. The majority are unskilled workers in the plantation and construction sectors. Foreign labour accounts for approximately 33 per cent of plantation workers, 50 per cent of construction workers and a large proportion of domestic helpers. The majority of migrant workers in Malaysia are undocumented; in 1991, there were an estimated 66,558 legal workers compared to approximately 1 to 1.5 million illegal workers. The Government of Malaysia is cognizant of the need for foreign workers, but would like to exercise more control over their immigration. It has bilateral agreements with the Governments of Bangladesh, Indonesia, the Philippines and Thailand to supply migrant labour.

International labour migration has played a significant role in the Malaysian economy for more than a century. During the colonial era, in the late nineteenth century and again during the inter-war period, the British Government brought in Chinese, Indians and Indonesians to work in Malaysia's tin mines and on plantations, and to help in the construction and maintenance of infrastructure, especially roads and railways. Although this type of labour migration was curtailed shortly after the country achieved independence in 1957, the majority of immigrants were permitted to remain in Malaysia and were given the option to become citizens. Indeed, labour migration of the colonial era has contributed to the current multi-ethnic population of Malaysia. Large-scale immigration from traditional sources such as China and India was replaced with a sizeable increase in the number of migrants from neighbouring ASEAN countries.

Various development programmes implemented during the post-independence period served to accelerate agricultural development and industrialization in Malaysia. The remarkable growth of the Malaysian economy created increasing labour shortages in some sectors; they subsequently have been addressed by the importation of foreign workers, both legal and illegal, from the neighbouring ASEAN countries of Indonesia, Thailand and the Philippines, as well as from Bangladesh, Myanmar, Cambodia, India and Sri Lanka. The majority of Malaysia's foreign manpower comes from Indonesia.

Employment of migrant workers is overseen by the Ministry of Human Resources and the Immigration Department. Employment passes are provided only in those sectors of the economy in which local labour is not available. For example, Filipino women are granted permits only for employment as domestic helpers and are prohibited from work in other areas, while men from Indonesia and Bangladesh are exclusively permitted in the construction industry and in the plantation sector. Unskilled temporary workers are provided with temporary employment passes in three main categories: plantation work, construction and domestic service. Migrants who represent foreign investment interests or who have professional skills that are in demand are also granted legal stays of varying periods.

The Government of Malaysia, while moving towards stricter controls on foreign workers, has at the same time acknowledged that the demand for these workers has

been growing. With an unemployment rate that fell to 5.4 per cent and approximately 26,000 unfilled vacancies in 1991, the Government announced that foreign workers would be permitted, on a selective basis, to work in the manufacturing and service sectors (United Nations, 1996a, para. 728). The Government banned the recruitment of unskilled and semi-skilled foreign workers in January 1994, granting exceptions only in some cases to employers who recruit foreign labour directly. The freeze on the recruitment of additional foreign workers was relaxed four months later when employers who faced labour shortages were permitted to apply for foreign workers directly to the Government. The Government requires 70 local workers for every 30 foreign workers in most Malaysian establishments, but grants exceptions to industries such as plantations.

Labour migration continues to play an important role in Malaysia in the 1990s. A growing Malaysian economy, coupled with rapid urbanization, is expected to precipitate more widespread labour shortages not only in the plantation and construction industries, but also in certain areas of manufacturing and services. Out-migration from the countryside has resulted in shortages in agriculture, logging and mining. In addition, the increase in the educational level of the population has enabled women to join the labour force; together with the growing size of the middle and upper classes, this has augmented the demand for domestic workers. The number of jobs is expected to increase at a rate of 3.5 per cent per annum while the Malaysian workforce is expected to increase by only 2.9 per cent. As Malaysia continues to rely heavily on foreign labour, neighbouring countries such as Indonesia with high rates of unemployment and underemployment, and an expanding labour force, will continue to provide a steady influx of migrant workers.

(b) Eastern and Southern Asia: Labour-exporting countries

There are three types of exporters in Asia: (*a*) countries that both export and import labour, but are net importers, such as Malaysia; (*b*) countries that both export and import labour, but are net exporters, such as the Republic of Korea and Thailand; and (*c*) countries that are classic labour exporters, such as Bangladesh, Pakistan and the Philippines. Asia's classic labour exporters send 10 to 30 per cent of their annual labour force growth abroad; indeed, the countries do not view the emigration of labour as a brain drain but see it in a favourable light, primarily as a source of jobs and of some $10 billion in annual remittances. Five major labour exporters play an important role in labour migration in Eastern Asia: Bangladesh, the Republic of Korea, Pakistan, the Philippines and Thailand. Other significant labour-exporting countries in the region are China, India, Indonesia, Sri Lanka and Viet Nam.

The Republic of Korea, though still a net exporter, has, like Japan, been slow to react to its more recent position as foreign labour importer. Currently, the country is in the midst of one of the world's most dramatic migration transitions, from labour exporter to labour importer, with debates echoing those heard in Japan. Like Japan, the Republic of Korea has had a long history of relative isolation; it was only in 1963 that the Republic of Korea sent 240 migrant labourers to the Federal Republic of Germany, primarily to work as miners and nurses under bilateral Government arrangements. During the Viet Nam war, more than 10,000 Koreans were employed by Korean companies in construction and service jobs in Viet Nam. During the 1970s and early 1980s, Korean workers obtained construction contracts in Western Asia and were directly recruited and employed by Korean construction firms with projects in the region. Host countries preferred Korean workers because the majority of them migrated as young, single individuals and remained in the country only for a short period of time.

Since the 1960s, when the first labour migrants went to the Federal Republic of Germany, approximately 1.7 million Korean migrants have been employed abroad, remitting some $16 billion to the Republic of Korea. The majority of Korean labour migrants were sent to Western Asia, most to fulfil two- or three-year construction contracts. Their numbers peaked in 1982 at approximately 150,000 workers and declined to less than 10,000 in 1990. Labour migration has decreased since the mid-1980s because of worsening economic conditions in Western Asia, competition from less expensive labour sources in South-East Asia, and an improving economic situation, especially rising wages, in the Republic of Korea. Korean workers also found employment on merchant marine ships; of an estimated 55,774 migrant workers in 1990, 42,574 were employed on foreign vessels. Currently, approximately 25 per cent

of land-based migrants find employment in other Asian countries; of those who work in Asia, roughly 20 per cent are employed by Korean companies.

The Republic of Korea is one of the few countries in Asia to introduce an active programme for the overseas employment of its workers. In the early years of overseas migration, when the majority of Korean workers migrated to industrialized countries, the Government was mainly concerned with promoting migration and ensuring that basic needs such as working conditions were satisfactory. With an increasing number of Korean workers migrating to Viet Nam and to Western Asia, where the majority became employed by Korean firms, the Government had to consider the interests of both the companies as well as the migrant workers. Priority was often given to the advancement of Korean firms into foreign markets rather than to the promotion of overseas migration. Indeed, to alleviate unemployment at a time when the country had an abundant supply of labour, the Government promoted overseas construction projects in addition to overseas employment.

In 1965 the Government established the Korean Overseas Development Office to recruit and to train migrant workers for overseas employment. Korean embassies in receiving countries were assigned targets for manpower exports; staff who promoted Korean workers were officially rewarded. The Government also supported Korean companies that were among the first to offer collective project-related contract agreements. The Korean Overseas Development Corporation provided both foreign employers and Korean workers with a wide range of services that included a medical clinic, travel agency, training facilities, loans to cover emigration costs, and arrangements for the return and reintegration of overseas contract workers.

The Republic of Korea first began to experience labour migration from other countries in the late 1980s. With rapid economic growth, the Republic of Korea, like Japan and the other major Asian "dragons", has undergone remarkable shifts in migration patterns. Increasing output and a corresponding demand for workers, many of whom are younger, more educated and not attracted to manufacturing and construction jobs, have resulted in severe labour shortages in certain industries. Moreover, a growing economy, coupled with declining fertility rates and an ageing labour force, is expected to aggravate the problem of labour shortages in the future. Indeed, the country's industrial sector is projected to face significant labour shortages. The country is currently a major destination for undocumented workers from other Asian countries that are less developed and at earlier stages of the demographic transition who are willing to take jobs considered undesirable by Korean nationals.

Despite a report in 1991 from the Ministry of Labour, estimating a shortfall of 190,000 workers in the manufacturing sector, the Government refused to relax its restrictions on the recruitment of foreign workers. Instead, it announced in 1991 that 10,000 military conscripts would be allowed to exchange military service for five years of employment in industry (United Nations, 1996a, para. 731). Restrictive provisions for employment of foreign workers remained rooted in the Immigration Control Law, which limited employment of all foreigners, with the exception of those who were in training or who were hired in a few select occupations, including: journalists, persons with special industrial skills, employees of foreign companies, employees of foreign invested companies, educational personnel in institutes of higher learning, entertainment and sports professionals; and employees of public or private Korean organizations or persons hired by individuals. Government regulations further stipulated that employers could not hire foreigners for positions where it was possible to employ Korean nationals.

Nonetheless, in mid-1992, reflecting a policy shift in the direction of a limited accommodation of foreign workers, the Government created a programme providing visas to companies with overseas factories or subsidiaries that wished to import workers for on-the-job training. The legal admission of "trainees" was originally designed to permit Korean companies with overseas operations or subsidiaries to import foreign workers for the purpose of upgrading their skills. As the labour shortage in the Republic of Korea became more acute, and immigration law traditionally prohibited the entry of unskilled foreign labour, the Government began to admit unskilled foreign labour under this immigration regulation. In 1993, up to 10,000 trainees were permitted to remain in the Republic of Korea for one year to work in small establishments in selected industries considered essential for the country's eco-

nomic development; by the end of the year, this number had increased to more than 20,000 and the period of stay was extended to two years. Smaller businesses without foreign operations could also import workers if they applied for a labour-import quota from the Ministry of Trade and Industry. The Government issues visas only for workers in the following six categories: dyeing, moulding, plating, machinery works, heat treatment and steel work. Service industries are prohibited from hiring foreign workers.

The admission of foreign labour into the Republic of Korea remains a controversial topic that has not been resolved. There is no consensus on the issue even among Government ministries. The Ministry of Trade and Industry and the Ministry of Energy and Resources align with business in their eagerness to accept foreign workers, while the Ministry of Labour and the Ministry of Justice side with trade unions in opposing the importation of foreign labour, arguing that most of the current labour shortages can be solved by utilizing domestic human resources and that foreign workers could precipitate a deterioration in working conditions and loss of jobs for marginal Korean workers.

Thailand, like the Republic of Korea, has also been undergoing migration shifts and is currently experiencing both immigration and emigration. Thailand has been exporting labour on an organized basis since the oil crises of the 1970s. The numbers of Thai workers increased considerably in the early 1980s, then declined sharply in 1985, after which they increased steadily. Although Thailand continues to be a net labour exporter, near complete demographic transition and rapid economic growth have led to labour shortages that have not only slowed labour emigration, but have also led to an influx of workers from Myanmar and Cambodia, both of which are at much earlier stages of the demographic transition and economic development. During the 1990s, the Thai economy is expected to generate desirable jobs for most new entrants to the labour force. If projections of slow growth of the labour force coupled with rapid growth of the economy are realized, Thailand, like Japan or Malaysia, may change from being a net exporter of labour to being a net importer of workers from neighbouring countries.

The main destination for Thai workers has been Western Asia, especially Saudi Arabia and the Libyan Arab Jamahiriya. Since 1988, other Asian countries have become an increasingly important destination for Thai labour migrants. In 1983, only some 5.5 per cent of Thai overseas contract workers were employed in Asia; by 1988, this figure was over 18 per cent; and in 1991, 60 per cent of Thais found employment in other Asian countries, especially Singapore, Brunei Darussalam and Japan. The decrease in labour flows to Western Asia was a direct result of the Gulf crisis and political strains between Thailand and Saudi Arabia, when that country stopped issuing new visas for Thai contract workers after the assassination of three Saudi Arabian diplomats in Bangkok.

The Government of Thailand does not actively seek to promote emigration of its labour force; it considers the issue of overseas workers to be the responsibility of the private sector. Indeed, emigration is seen as an issue of freedom for the workers, while overseas dispatching is considered to be the responsibility of recruiters. However, the Government responds to direct requests from recruiters and ensures that Thai citizens employed abroad are protected.

The Office of Overseas Employment Administration of the Department of Labour, Ministry of the Interior, is responsible for managing overseas employment. Labour offices have also been established at Thai embassies in several countries. Besides handling public relations, the Office supervises private employment agencies; establishes criteria for employment and labour conditions for dispatchers and overseas job-seekers; certifies workers' skills tests; inspects employment contracts; examines complaints from persons seeking overseas employment; assists labour suits; selects and dispatches workers in response to requests directed to the Thai Government; and protects overseas workers. The Office of Overseas Employment Administration works closely with the Ministry of Foreign Affairs and the Department of Police, as well as with labour attachés abroad.

In 1985, the Government of Thailand established the Employment Agency and Job Seeker Protection Act to address the increasing number of disturbing incidents involving Thai workers employed overseas. The Act prohibits the direct recruitment of Thai workers by foreigners, and requires recruiting to be conducted through the Department of Labour or through registered

employment agencies. Foreign recruiters are required to present a "demand letter" indicating qualifications sought, employment conditions and necessary documentation to the Department of Labour through a registered employment agency. Workers who seek employment abroad must pass a skills test given by the Skills Examination Centre or other approved training centre. They must also undergo a medical examination at a facility designated by the Department of Labour. Workers who are approved for overseas employment must attend an orientation session offered by the Department of Labour prior to leaving the country. Workers who follow these procedures are registered with the Overseas Workers' Welfare Fund and are exempt from foreign travel taxes. Upon departure at the airport, workers are required to present a notification of overseas employment at the Labour Control Office, where they are verified as to the legality of their labour migration status.

According to the Thai Overseas Employment Administration Office, between 1988 and 1990 more than half of Thai workers found employment through private recruitment agencies, over 42 per cent found jobs on their own or with the help of relatives, and the remainder were either sent by Thai employers to work abroad or were placed by the Thai Department of Labour. More than 90 per cent of Thai overseas workers were men; those who sought jobs in the Western Asia were primarily men employed in construction, while those who went to Hong Kong, China were mostly women employed in domestic service. More than 70 per cent of Thai overseas workers were under the age of 35; roughly 60 per cent were semi-skilled or skilled workers with only a primary education.

Faced with a shortage of professionals, both the Government of Thailand and the private sector are actively seeking the return of Thai intellectuals who are working or studying abroad. As part of its reverse brain drain programme, the Government is accelerating the development of high-technology industries and is designing incentive packages to attract Thai professionals from abroad. The Government plans to offer education subsidies to Thais with doctoral degrees who return home to assume positions in the civil service. It is also considering the creation of import tax exemptions for personal belongings, and the introduction of dual citizenship.

In contrast to Thailand and the Republic of Korea, which have rapidly developed into labour-importing countries, many countries have continued their long tradition of supplying workers to other countries in the region. Some, like the Philippines, export workers globally. In fact, the Philippines is the second largest exporter of labour in the world, after Mexico.

The Philippines has a very organized system of labour migration which serves as a model for other countries in Asia. The Department of Labour and Employment is responsible for policy formulation, coordination and the administration of all matters pertaining to labour and employment in the Philippines. With a mandate to ensure that Filipino migrant workers obtain the most equitable terms of employment and receive social and welfare services, the Department oversees the work of two agencies responsible for labour migration, the Philippine Overseas Employment Administration (POEA) and the Overseas Workers' Welfare Administration (OWWA). POEA, which supervises the country's overseas employment programme, is responsible for the promotion and regulation of recruitment and placement of Filipino workers abroad. POEA, which was established in 1982 as an agency to replace the former Bureau of Employment Services, the Overseas Employment Development Board and the National Seamen's Board, is governed by a fourfold policy: to promote overseas employment opportunities; to establish an environment conducive to the continued operations of legitimate private recruitment agencies; to promote the interests of and to protect Filipino workers and their families; and to ensure the reintegration of returning contract workers into the Philippine economy (Philippine Overseas Employment Administration, 1993). POEA is empowered to authorize, sanction, supervise and investigate private employment agencies; approve private employment agency representatives; and certify the professional skills of workers. As part of its recruitment efforts, POEA publishes guides for employers who hire Filipino workers, explaining the recruitment process, hiring procedures, expenses involved, minimum contract requirements, POEA services for Government employers and the client referral assistance system.

The Overseas Workers' Welfare Administration administers the Welfare Fund that provides social and welfare services to Filipino migrant workers including insurance coverage, legal assistance, placement

assistance and remittance services. OWWA is responsible for the repatriation of workers (together with appropriate international agencies) in times of war, epidemics, and natural or man-made disasters, assuming all attendant costs in cases where the principal or the recruitment agency cannot be identified (Republic of the Philippines, 1995).

The majority of Filipino workers migrate to the oil-producing countries of Western Asia, especially to Saudi Arabia. The percentage that migrates to other Asian countries is increasing steadily; by 1994, it had grown to 34.4 per cent. The demand for particular skills is destination-specific: the oil-producing States attract various professionals and production workers; Japan employs musicians and entertainment workers; Hong Kong, China and Singapore attract domestic helpers. Women migrants outnumber men by a slight margin. A significant proportion of new migrants are women who are hired as domestic helpers or entertainers, often referred to as the "vulnerable occupations". In 1994, domestic helpers accounted for 13.6 per cent of all land-based workers, while entertainers comprised 10.2 per cent (Philippines, Department of Labor and Employment, Philippine Overseas Employment Administration, 1995).

The Philippines has a long history of labour emigration. As far back as the 1700s, when the country was under Spanish rule, Filipino workers emigrated to Mexico in search of employment. In the 1920s, Filipinos were recruited to work on the sugar and pineapple plantations in Hawaii, as fruit pickers in California, and in the fish canneries of Alaska. With their colonial status facilitating their migration process, Filipinos were able to migrate to the United States without restrictions. As a result, by the early 1940s, approximately 70,000 Filipino migrant workers were employed in the United States (Philippines, Department of Labor and Employment, Philippine Overseas Employment Administration, 1995). In the 1950s, Filipinos began to migrate to Asian countries where they became employed as barbers, artists, musicians and contract workers. In the late 1960s, Filipinos were employed in logging camps in Indonesia and, during the Viet Nam war, as construction workers for the United States armed forces in Viet Nam, Thailand and Guam. Also in the 1960s, professional women were hired in Canada, while entertainers were employed in Asian capitals. In the early 1970s, Filipino professionals began to be recruited in the Islamic Republic of Iran and in Iraq, especially as engineers and technicians. The 1970s also saw the large-scale migration of blue collar workers to the oil-producing countries of Western Asia. The number of Filipino contract workers, the majority of whom migrated to the oil-producing states, especially to Saudi Arabia, increased from 3,694 in 1969 to almost 500,000 in 1983. (Philippines, Department of Labor and Employment, Philippine Overseas Employment Administration, 1995) Overseas employment opportunities in the 1970s were primarily concentrated in the blue collar occupations, especially in construction; by 1983, there was a demand for professional and technical personnel as well as service workers including nurses, hotel employees and office clerks. The decline in construction, especially in Saudi Arabia, was followed by the opening of job opportunities in operations and maintenance. A significant number of Filipino workers also served as crewmen on foreign vessels.

International labour migration has been a major feature of Philippine economic and political policy for the past two decades. Indeed, the Government has explicitly endorsed the migration of Filipino workers abroad as part of its national development strategy since the enactment of the Philippine Labour Code in 1974, which provided an institutional framework for the regulation of the increasing numbers of overseas contract workers. At that time, the Government expanded the functions of the Bureau of Employment Services to include the regulation of private recruitment of labour, and created the Overseas Employment Development Board to recruit land-based workers for overseas employment and the National Seamen's Board to regulate shipping agencies that hired Filipino seamen. In addition, in an effort to reduce exploitation by illegal recruiters, the Government launched public information campaigns and prosecuted illegal recruiters, albeit with limited success. It authorized the Bureau of Employment Services, the Overseas Employment Development Board and the National Seamen's Board to review contracts before workers could be hired (a procedure that subsequently gave rise to model contracts which established minimum conditions of employment). The Government further established labour attaches at Philippine embassies in countries with large concentrations of Filipino workers, and instructed each agency to administer a welfare and training fund, financed by

worker contributions, to provide compensation for death or disability and assistance to dependants and beneficiaries of migrant workers. By expanding the role of the Overseas Employment Development Board and prohibiting the issuance of new private recruiting licenses, the Government hoped to phase out private recruitment; however, attempts to suppress the growing practice merely served to increase illegal recruitment.

The Government subsequently reversed its policy by amending the Labor Code to permit increased participation by private recruitment agencies. Currently, close to 1,000 private recruitment agencies operate in the Philippines. The agencies, which must receive authorization from the Philippine Overseas Employment Administration in order to conduct business, process the majority of overseas employment cases. Foreign employment agencies that wish to hire Filipino workers must also be sanctioned by the Administration. Persons found guilty of illegal recruitment, including recruiting without a licence, providing false information in relation to recruitment or employment, and charging or accepting fees that are in excess of those prescribed by the Secretary of Labor and Employment, are subject to imprisonment of not less than six years and one day but not to exceed 12 years and a fine of not less than 200,000 pesos but no more than 500,000 pesos (Republic of the Philippines, 1995).

Originally established as a temporary measure to alleviate the country's unemployment problem and to stimulate industrialization, the Overseas Employment Program has become a permanent feature of the Philippine economy, which has come to rely heavily on remittances sent by Filipinos working overseas. Indeed, such remittances are estimated to have totalled US$ 3 billion in 1994, with the actual figure probably twice as high if one were to add remittances sent through informal channels, including the popular door-to-door courier system that collects remittances from the workplace and delivers them to recipients in the Philippines within 24 hours (*The Philippine Star*, 1995).

Although economic conditions have improved considerably since the establishment of the Overseas Employment Program, Filipino workers continue to be attracted by job opportunities abroad. Overseas employment has become the answer not only to an ever-increasing number of unemployed and underemployed Filipinos, but to those who seek to improve their standard of living. As a result, the current challenge for national policy makers is not one of exporting surplus labour, but of effectively managing the natural process of labour migration, which, the Government believes, would continue even if overseas employment were prohibited. Towards this end, the Philippine Government has been increasingly implementing a policy of selective deployment of workers, encouraging some destinations and jobs and discouraging others. For example, as of 1995, Filipinos were not permitted to seek any type of employment in countries such as Algeria and Croatia (except for United Nations-sponsored projects), and in the Chechen Republic in the Russian Federation. Filipinas are not permitted to seek employment as domestic helpers in Singapore (except those on emergency leave or on mid-term vacation). Section 4 of the Migrant Workers and Overseas Filipinos Act of 1995 states that the Government will deploy overseas Filipino workers only to countries where their rights are protected. This includes: countries that have legislation protecting the rights of migrant workers; countries that are signatories to multilateral conventions, declarations, or resolutions that address the protection of migrant workers; countries that concluded bilateral agreements protecting the rights of overseas Filipino workers; or countries that are taking concrete measures to protect the rights of migrant workers (Republic of the Philippines, 1995).

The Migrant Workers and Overseas Filipinos Act of 1995 seeks to establish a higher standard of protection for and promotion of the welfare of migrant workers and their families. It seeks to "ensure that the rights and interest of distressed overseas Filipinos, in general, and Filipino migrant workers, in particular, documented or undocumented, are adequately protected and safeguarded" (Republic Act No. 8042, Section 2). The "country-team" approach to overseas labour migration, established under Executive Order No. 74 (1993) and expounded upon in the new Act of 1995, calls for all officers, representatives and personnel of the Philippine Government posted overseas to act as a unified team under the leadership of the ambassador to help protect and promote the welfare of Filipino migrant workers and their families.

The Migrant Workers and Overseas Filipinos Act of 1995 further established the Migrant Workers and Other

Filipinos Resource Center within the Philippine Embassy in countries with large concentrations of Filipino migrant workers and a counterpart centre at the Department of Foreign Affairs for the purpose of networking and coordinating with the home office, and a Replacement and Monitoring Center within the Department of Labor and Employment to assist in the reintegration of returning migrant workers into Philippine society. It also established an inter-agency committee assigned to implement a Government information system for migration that would permit the sharing of databases containing, *inter alia*, information on Filipino migrant workers and overseas Filipinos, immigration policies and civil and criminal codes in receiving countries, and lists of labour and human rights instruments acceded to by receiving countries. In conjunction with a progressive policy of deregulation, the Migrant Workers and Overseas Filipinos Act called for the phase-out of the regulatory functions of POEA within five years; labour migration would then become the concern of individual workers and their overseas employers (Republic Act No. 8042, VII, Sections 29 and 30).

Other labour exporters in the area have not been as organized and developed as the Philippines, yet play a major role in providing cheap labour. Bangladesh is one of the most densely populated countries in the world. Its high unemployment rates make Bangladeshi workers one of the most desirable and least expensive sources of migrant labour. With an annual population growth rate of between 2.2 and 2.5 per cent, and a labour force growth rate of over 3 per cent, Bangladesh suffers from unemployment, underemployment and seasonal unemployment. Given its limited natural resources, the country is unable to absorb the increasing labour force. Bangladesh addresses its unemployment problem by sending its manpower abroad. The country exported 800,000 workers between 1976 and 1990; by 1989, it was sending 100,000 workers abroad annually.

Over 90 per cent of migrant workers from Bangladesh seek employment in Western Asia; indeed, by September 1990, more than 760,000 Bangladeshis were in Western Asia, most as temporary workers or contract labourers. Although the Gulf war resulted in the repatriation of a significant number of Bangladeshis, an increasing number of workers from Bangladesh headed to the Gulf States when the fighting ceased. It was only in the early 1980s that workers from Bangladesh began entering the Asian labour market, seeking employment in Eastern and Southern Asia, primarily in Japan; Singapore; Hong Kong, China; the Republic of Korea; and Taiwan Province of China. The proportion of workers from Bangladesh migrating to other Asian countries has increased considerably in recent years.

Highly dependent on income from remittances (in 1990, Bangladesh received $800 million in remittances, which was equivalent to more than 50 per cent of the value of the country's exports), the Government of Bangladesh attaches great importance to the overseas employment of its nationals. Colourful brochures advertise the availability of skilled, semi-skilled and unskilled workers, and highly educated professionals from Bangladesh who command lower wages than their counterparts in other countries. The Bureau of Manpower, Employment and Training, a division of the Ministry of Labour and Manpower, is responsible for appointing, licensing and regulating the work of recruiting agents, cancelling licences in case of unsatisfactory performance, collecting fees, restricting the emigration of certain nationals, and maintaining records. The Bureau, which does not specialize in the overseas dispatch of workers, consists of two sections, an employment services section and an occupational training section. Besides promoting overseas employment, the Bureau also registers job-seekers and makes employment introductions, promotes the self-employment of workers, disseminates information on the job market, and provides training. The actual business of overseas employment is handled by the Bangladesh Overseas Employment Services Limited as well as by private recruiting companies. Both the Bureau of Manpower, Employment and Training and the major recruitment companies train workers for overseas employment.

Pakistan, like most Southern Asian countries, also exports the overwhelming majority of its overseas labour force to the oil-producing countries of Western Asia. Legal migration of Pakistani workers to other countries in Asia is currently insignificant. Indeed, over 99 per cent of Pakistani workers who depart through official channels find employment in the Gulf region. The country is heavily dependent on labour emigration to offset high rates of unemployment and underemployment. It also depends on migrant workers' remittances,

which have often exceeded the value of total merchandise exports from Pakistan.

The Government of Pakistan, which encourages the emigration of its workers to reduce unemployment, has established a network of organizations to facilitate overseas dispatching. The Ministry of Labour, Manpower and Overseas Pakistanis controls the activities of the Bureau of Emigration and Overseas Employment, the Overseas Employment Corporation and the Overseas Pakistanis Foundation. The Bureau of Emigration and Overseas Employment, established under the Emigration Ordinance of 1979, supervises the activities of private recruiting agencies, explores ways of managing and regulating overseas employment, and supplies the Government with information on overseas employment by providing estimates of foreign demand for workers and surveys of overseas job markets. It also registers persons emigrating from Pakistan and promotes overseas employment opportunities.

The Overseas Employment Corporation, a private limited company established in 1976, falls under the jurisdiction of the Ministry of Labour and is fully financed by the federal Government. The Corporation, the largest organization that handles the exportation of labour in Pakistan, is responsible for recruiting persons who seek employment overseas, conducting interviews and administering tests to applicants, preparing lists of prospective workers for overseas dispatch, administering health examinations, approving passports and visas, offering pre-departure orientation sessions and dispatching workers. The Overseas Employment Corporation works in cooperation with concerned Government agencies.

The Overseas Pakistanis Foundation, established in 1979, was designed to monitor the welfare of overseas workers and their families in Pakistan. Financed by commissions received from dispatched workers as well as the interest on guaranteed reserves of private recruitment agencies, the Foundation's activities include the construction of housing for overseas workers and their families, the construction and maintenance of occupational training facilities, the granting of scholarships to children of overseas workers, contributions to various public associations, and the establishment of domestic and foreign offices of the Overseas Pakistanis Foundation. Finally, there are over 1,000 private recruitment agencies in Pakistan that cater to the needs of workers who seek employment abroad. The Bureau of Emigration and Overseas Employment seeks to protect workers from abuse by supervising the agencies.

Emigration legislation in Pakistan stipulates that prior to emigrating on a work visa, a migrant must sign an employment contract with an employer which guarantees minimum wages and working conditions. The Government of Pakistan sets minimum terms of employment to protect workers from exploitation by foreign employers. Workers who meet these conditions, as certified by the Protector of Emigrants on the passport, are granted permission to leave the country. It is important to note, however, that a sizeable percentage of Pakistanis leave the country without approved contracts, mainly because the cost of obtaining a contract to work abroad may be as high as 10 to 30 per cent of the first year's earnings.

(c) Western Asia: Labour-importing countries

There are six major labour-importing countries in Western Asia: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates. Saudi Arabia is the largest importer of foreign labour in the region. Before the outbreak of the Gulf war in 1990, Yemenis comprised the largest group of migrant workers in the country. Expelled from Saudi Arabia during the Gulf war because of Yemen's support of Iraq, their mass departure (some 850,000 Yemeni workers left Saudi Arabia at the time) created employment opportunities for other labour-exporting countries (Stahl and others, 1993, p. 51).

In response to the rapid rise of temporary labour migration, most Gulf Governments have been searching to adopt measures to progressively "nationalize" their labour markets. Rising levels of unemployment among young and educated nationals entering the labour force for the first time are putting pressure on Governments to reduce the foreign worker populations in their respective countries. Indeed, the drive to reduce dependency upon foreign workers, already under way among many of the labour-importing countries in the late 1980s, has intensified in the wake of the Gulf war.

The Government of Kuwait has experienced these developments acutely. Kuwait has been highly depend-

ent on foreign labour; in August 1990, when the country was invaded by Iraq, migrant workers accounted for 86 per cent of the labour force, and foreigners comprised 73 per cent of the total population of Kuwait (Stahl and others, 1993, p. 52). Over 90 per cent of the non-Kuwaiti population fled the country during the occupation; those who remained were mainly Palestinians, the majority of whom had spent most or all of their lives in Kuwait and had no place else to go (Stahl and others, 1993, p. 52). Following the liberation of Kuwait in 1991, former non-national residents were permitted to remain or return, subject to much stricter controls on their employment. Only 35 per cent of the 80,000 foreigners employed by the Government prior to the Gulf war have been rehired, while those laid off have been permitted to reapply for a residence permit, provided they could find employment in the private sector (United Nations, 1996a, para. 732). Given that 90 per cent of the national workforce is employed in the Government sector, it will be difficult to reduce the dependence of the private sector upon foreigners, particularly in the light of the ambitious reconstruction plans in Kuwait. Kuwait's post-war reconstruction remains chiefly in the hands of foreign workers, mostly from Asia. The Government has placed stricter controls on the importation of foreign labour from Arab countries; the large number of Palestinians and Jordanians who were employed in Kuwait before the war are being replaced by Asians, who are filling the positions vacated by Arab workers.

Oman, Qatar and the United Arab Emirates are also highly dependent on foreign labour. Oman's demand for labour is second to that of Saudi Arabia and significantly higher than that in the neighbouring countries of Bahrain, Kuwait and the United Arab Emirates. By the early 1980s, migrant workers in Qatar comprised 85 per cent of the country's total labour force, and those in the United Arab Emirates comprised 89 per cent of that country's labour force (Stahl and others, 1993, pp. 52 and 53).

Many of these Governments have been recently adopting measures to nationalize their labour forces. In an attempt to promote "Omanization" and to reduce the proportion of expatriates, Oman issued new regulations in 1992, providing the private sector with unprecedented incentives to train Omanis, including grants covering 50 to 80 per cent of trainee salaries (United Nations, 1996a, para. 733). Saudi Arabia's 1995-2000 development plan set a target of creating 659,900 jobs for Saudis by the end of the century. It also aimed to replace some 319,000 expatriate workers by Saudi citizens (*Centre for Immigration Studies News*, 1996). In 1996, Saudi Arabia decided to ban expatriates from working in 14 job categories, as part of its drive to find more jobs for its citizens by the end of the century. These jobs included personnel manager and administrator, treasurer, auctioneer, customs clearance officer, secretary, cashier, people who handle companies' dealings with immigration authorities, messenger, security guard, security officer, watchman, cargo shipment jobs and all insurance jobs (*Centre for Immigration Studies News*, 1996). King Fahd also urged the private sector to employ more Saudi nationals and pledged that the Government would ensure that 650,000 Saudis have private sector jobs by the end of the century.

Among the Gulf Cooperation Council States, Bahrain is the least dependent on foreign labour and is the smallest importer of migrant workers. In 1995, at a time when the country's unemployment rate hovered around 40 per cent, some Bahraini nationals considered foreign workers responsible for the lack of jobs. The Government of Bahrain responded by promising to substitute Bahrainis for such workers (*Migration News*, August 1995c).

Israel's economic and social development has been supported by an increasing reliance on a foreign labour force. Since the mid-1990s, Israel has recruited foreign labourers from countries as far and diverse as Romania, Thailand, the Philippines and a number of countries in Africa. Growing problems with undocumented migration and integration of non-citizens have also arisen. Although the Government has addressed these issues in recent years, they promise to endure as long as prosperity continues to bring Israel a style of living dependent on foreign labourers in fields ranging from domestic care to restaurant and construction work.

(d) Western Asia: Labour-exporting countries

Jordan, the Syrian Arab Republic and Turkey are the major labour-exporting countries in Western Asia. Indeed, certain occupations with specialized skills are difficult to fill because many skilled workers are

employed overseas. Although the labour-exporting countries also have been importing labour, most migrant workers do not replace nationals working abroad because they have lower skills (Stahl and others, 1993, pp. 53 and 54).

Jordan is heavily dependent on labour emigration both for remittances, which were estimated to account for some 25 per cent of the country's gross national product prior to the Gulf war, and for employment for Jordanian nationals (Stahl and others, 1993, p. 53). By the early 1980s, 40 per cent of Jordan's employed population was working overseas; this out-migration was partially offset by a significant in-migration of Egyptians, so that by 1984, foreign workers comprised 25 per cent of the Jordanian labour force (Shah, 1994, p. 6).

There was a significant decline of labour emigration from Jordan to other Arab labour-importing countries in the 1980s, along with an increase in both immigration and return migration from Bahrain, Oman and the Libyan Arab Jamahiriya (Stahl and others, 1993, p. 114). Approximately 289,000 Jordanians, many of whom were of Palestinian origin, fled Kuwait as a result of the Gulf war; about 90 per cent returned to Jordan. The resulting loss of remittances, the decline in exports, shortages of oil and raw materials, increase in unemployment, and severe strain on social services prompted the Jordanian Government to place restrictions on foreign workers in the country (Stahl and others, 1993, p. 53).

The repatriation of the equivalent of 8 per cent of its national population placed enormous strains on the infrastructure of Jordan. Virtually overnight, the country had to find accommodations for 60,900 families. Unemployment soared to 20 per cent and remittances from overseas declined. The employment plan intends to reorganize local labour markets in order to give priority in recruitment to Jordanians.

Jordanian law prohibits the employment of foreign workers in 15 different occupations, including engineering, medicine and banking. The Amman Chamber of Industry is concerned with the fact that many foreigners are employed in occupations that are shunned by Jordanians, including agriculture, construction and domestic help. Replacing migrant workers with the local labour force would be a difficult, if not impossible, task. Moreover, Jordanians typically demand much higher wages than their foreign counterparts. The Government of Jordan is also concerned with the estimated $30 million in remittances sent abroad every month by migrant workers; the loss is a major drain on foreign currency reserves in Jordan (United Press International, 1995).

In 1995, in response to rising unemployment, caused partly by the reluctance of Jordanians to take what they consider unacceptable jobs, the Government of Jordan adopted a policy of "Jordanizing" the country's labour force which is composed of more than 250,000 Arab and Asian workers. Only some 42,000 guest workers hold work permits issued by the Ministry of Labour; the remainder are undocumented migrants (United Press International, 1995). In an effort to enforce labour regulations, the Government ordered businesses to regulate the status of guest workers and workers without permits. A deadline was set for 25 October 1995, after which foreign workers found in violation of the lawwere to be deported and their employers to face fines.

Yemen is another country that has had to cope with the massive influx of its nationals. An estimated 1 million Yemenis were repatriated from the States in the Persian Gulf area (800,000 from Saudi Arabia). To cope with its repatriated nationals, the Government of Yemen has allocated land to a large number of them on condition that they produce foodstuffs and in this way promote self-sufficiency in food production, a high government priority (United Nations, 1996a, para. 735).

Lebanon is faced with the opposite problem: a substantial exodus of its population. Many Lebanese who had returned to Lebanon following the conclusion of the civil war in 1990 have once again departed because of deteriorating economic conditions, high unemployment and recurring political tensions. Lebanese are continuing to request visas to Western countries, despite the fact that a number of these countries have declared that Lebanese are no longer entitled to refugee status, given the cessation of the civil conflict in Lebanon (United Nations, 1996a, para. 736).

Limited data are available on labour migration for the Syrian Arab Republic, the region's other major labour exporter. In 1975, Syrian workers constituted 2.4 per cent of the foreign labour force in the region. High rates of out-migration continued through the 1980s.

Turkey sends most of its labour migrants to Western Asia and to Europe. For a country with such a large number of its citizens in other countries, Turkey was a late arrival on the emigration scene. In fact, the right to leave the country was not established until the adoption of the Constitution of 1961. By 1984, 2.4 million Turkish citizens lived in foreign countries (Abadan-Unat, 1993, p. 307). Before 1961, workers were recruited as vocational trainees through the Turkish Ministry of Foreign Affairs. They were sent abroad, mainly to Germany, for fixed periods of time, and they were expected to return to Turkey after their period of training.

As Turkey embarked on a plan for national economic development, the country's leaders realized that exporting surplus labour would relieve the unemployment situation at home, provide training for an unskilled work force, and generate foreign currency in the form of remittances. The number of workers who left Turkey grew rapidly, until there were 770,000 Turkish workers abroad in 1973-1974 (Abadan-Unat, 1993, p. 308). Bilateral labour agreements were signed with Germany, Austria, Belgium, the Netherlands and Sweden.

Some Turkish workers returned home after the end of labour recruitment in the mid-1970s, but many others chose to stay in their host countries. Unemployment compensation and social services eased the difficulties of unemployment and helped to make the migrants' situation in their host countries more appealing than repatriation to Turkey.

A survey conducted in Germany in 1980 found that only 60 per cent of first-generation Turkish migrants and 34 per cent of second-generation migrants intended to return to their home country (Abadan-Unat, 1993, p. 320). In 1991, there were still about 2.8 million Turkish nationals living abroad—a figure equivalent to 5 per cent of Turkey's population. Remittances have declined in recent years, but they still amounted to about US$ 2.8 billion in 1991.

With the lack of opportunity to emigrate to Western Europe, and the new pressure for admission from ethnic Turks in Bulgaria and the former Yugoslavia, Turkey has become a country of immigration, at least temporarily (OECD, 1993a, p. 98). A new Turkish immigration policy is under consideration; it has the objective of regulating immigration and directing newcomers to areas that are not already overcrowded.

Most of the new labour emigration from Turkey is connected with projects in Western Asia, particularly in Saudi Arabia. Only a small percentage of Turks who want to work abroad can be accommodated. In 1992, the National Employment and Placement Office had an applicant pool of more than 900,000; it found jobs abroad for only 53,000 in 1991 (OECD, 1993a, p. 99). Moreover, Western Asian contracts are increasingly going to workers from Asian countries, who will accept lower wages than Turks.

5. Africa

The movement of workers across international borders is widespread and traditional in Africa. Indeed, migration patterns were established long before nations existed as political entities and before borders between modern countries were drawn. When national frontiers were established, they were often designated by officials of colonial Powers, who paid little or no attention to traditional movements or to ethnic and cultural homogeneity. Even today, some borders between African countries are largely ignored or very porous. Under these conditions, the distinction between internal migration and international migration tends to blur (Adepoju, 1991b), as does the distinction between legal and undocumented migrants. In addition to the largely undocumented nature of movement across borders, African labour migration is characterized by its seasonal and cyclical patterns and by migration of workers between neighbouring countries within the same region.

The extent of migration in Africa, and particularly labour migration, cannot be determined precisely, since visas are not required for travel between many countries and statistics are not collected at frontiers. The creation of sovereign African States beginning in 1957, and accelerating throughout the 1960s, led to mechanisms for controlling borders (Makinwa-Adebusoye, 1992, p. 67), but enforcement of admission regulations was selective and frequently depended on labour needs and economic conditions in receiving countries. One way of estimating the magnitude of international migration is to examine data on the percentage of foreigners living in a country. In some countries, such as Côte d'Ivoire,

nearly 30 per cent of the population in 1988 was foreign-born. Census estimates, however, provide only a crude measure of labour migration. They usually do not distinguish between labour migrants and other types of migrants (e.g., family members born abroad), and they may under-enumerate temporary or illegal migrants.

In Africa, as in other locations, international labour migration occurs between countries of unequal economic development, with labour migrants from poorer countries moving to jobs in countries with exploitable natural resources and significant foreign investment. The coastal countries tend to be more prosperous than the internal savannah hinterland, especially in the Sahel region, which is home to some of the world's poorest countries. In sub-Saharan Africa, the disparity between the richer oil-producing economies—Nigeria, Gabon, Angola, the Congo, Côte d'Ivoire and the Democratic Republic of the Congo—and countries without oil is apparent (Adepoju, 1991b, p. 45).

Most regions in Africa are characterized by one or a few countries with relatively strong economies, acting as a magnet for workers from neighbouring countries. The economic strength may lie in mineral resources, as is true in South Africa, or it may be rooted in good soils and favourable agricultural conditions, as in the case of Ghana and Côte d'Ivoire, where workers from countries in the interior of Western Africa have migrated to work on plantations since the colonial era. Northern Africa has been a major labour-exporting region, especially to Europe and the Gulf States.

Labour migration in Africa has a long history and involves large numbers of workers. It encompasses many types of movement—circular, frontier, seasonal and short-term as well as permanent—and it involves migrants of different skill levels. In general, single males have dominated migrant streams. Most movement occurs between neighbouring countries, but a number of important regional migration systems have evolved, each with its own historical roots and traditional patterns of movement. Cross-cutting the economic migration systems have been political upheavals, such as that in Uganda, as well as climatic and natural disasters, such as drought and famine, which have created large numbers of both refugees and economic migrants and have affected population distribution in many parts of the continent.

Several migration dynamics may be distinguished in the region. In Northern Africa, migration between countries of the Maghreb and European countries on the southern rim of the Mediterranean has become an established pattern. Also in Northern Africa, Egypt is a major supplier of workers, both inside and outside the region. Movement in Western Africa evolved from a traditional pattern of seasonal agricultural labour moving from the drier Sahelian region to the well-watered coastal plain. This pattern was reinforced by colonial administrators, and it created labour dependency that persists in the current situation. The world price of oil has had a profound effect on movement to Nigeria, the country with the largest population in the region. Most movement in Western Africa today is undocumented, with enforcement of border regulations depending as much on economic conditions as on immigration policy.

The dominant type of international migration in Eastern Africa is the movement of refugees, many of whom may also be labour migrants and undocumented migrants. War, drought and famine create large numbers of refugees, such as those who fled Eritrea during its long war with Ethiopia. Many refugees stayed abroad as labour migrants after the war ended and sent remittances home to help support their families. Central Africa is characterized by labour migration to wealthier countries with exploitable natural resources and by emigration from countries undergoing civil unrest.

South Africa has been a labour-importing country for more than a century. It is still in the process of implementing its post-apartheid policies, which are having significant impacts on migration, especially in countries like Lesotho, whose workers have become dependent on jobs in South Africa. Foreign workers are being replaced with domestic labour, while at the same time professionals from other countries in Africa and from abroad are being attracted to South Africa. The oil-producing countries of Africa also have acted as magnets for workers, and the fluctuation in the world price of oil has affected movements of workers in these migration systems.

As is true in other regions, African economies are sensitive to the vicissitudes of the international market place, and changing conditions produce ramifications throughout the global trading network. For example, oil-rich Nigeria in West Africa enjoyed considerable

economic expansion after the worldwide rise in the price of oil in the early 1970s, and its oil-production facilities attracted thousands of labour migrants from neighbouring countries. By 1982, an estimated 2.5 million immigrants were living in Nigeria. Shortly thereafter, however, oil prices fell and the economy went into decline. The country could no longer provide jobs for foreign workers, and the Government expelled about 1.5 million non-nationals. In recent years, Nigeria has become an exporter of skilled workers to industrialized countries (Stalker, 1994, pp. 234 and 235).

In Africa, where international migratory movements are generally unregulated, the few receiving countries—the Congo, Côte d'Ivoire, Gabon and South Africa—are greatly outnumbered by the sending countries—Algeria, Angola, Benin, Botswana, Cameroon, the Democratic Republic of the Congo, Egypt, Morocco, Swaziland and Tunisia. Nigeria is both a receiving and a sending country. The main poles of attraction for migrant workers are the mineral-rich countries of the Libyan Arab Jamahiriya, Nigeria, Gabon, the Congo, Zambia, the Democratic Republic of the Congo, Côte d'Ivoire and the Republic of South Africa, as well as the plantations of Zimbabwe, Kenya and the United Republic of Tanzania. Thus, although a distinction is made here between labour-exporting and labour-importing countries, it should be noted that migrant streams may flow in both directions at the same time. Moreover, the characteristics of migrants may change over time; for example, the first waves of migrant workers from the Maghreb to Europe in the 1960s consisted mainly of single males, who were later followed mainly by women and minor children.

The situation in Africa is further complicated by the large number of refugees, especially in Eastern Africa, some of whom may be economic migrants or undocumented migrants. Many Eritreans who fled to the Sudan and Saudi Arabia during the long war with Ethiopia remained abroad even after Eritrea became independent in 1993; they continue to support relatives at home with remittances. The mix of undocumented migrants, labour migrants and refugees is affected by policies in the labour-receiving countries. As restrictions are placed on the numbers and types of legal migrants they will accept, the flow of legal migrants may be slowed down, but new streams of undocumented migrants are created.

The movement of workers between developing countries is another type of international migration that is currently found in Africa. It is often assumed that labour migration is confined to movement from developing countries to developed countries, but there is evidence that workers in Africa migrate between one developing country and another (United Nations, Economic and Social Council, 1995, para. 28). Many of the workers in the cocoa plantations in Equatorial Guinea, for example, traditionally have come from Nigeria. This pattern is also found among skilled workers. In the Sudan, about two thirds of the country's technical and professional workers had taken jobs abroad by 1985, and some were replaced by skilled immigrants from Ethiopia (Stalker, 1994, p. 235). In some cases, the country of destination may have only a marginally more robust economy than the country of origin, but deteriorating economic conditions and high unemployment in many African countries make even a small advantage elsewhere attractive to migrant workers.

Most international labour migration in Africa occurs between countries in the same region; except for the Maghreb region and some movement between former colonies and their former colonial Powers, only small numbers of Africans emigrate to other continents (Makinwa-Adebusoye, 1992, p. 69). Of those who do emigrate outside Africa, most are immediate family members of labour migrants who departed earlier, students at universities in the West, professionals and technically trained personnel, and academics (Stahl and others, 1993, p. 68). Africa has been experiencing a steady brain drain in the past few decades; from 1960 to 1987, some 70,000 highly skilled Africans emigrated, many of them heading for Europe. For example, of the 500,000 Sudanese nationals who were employed abroad by 1985, approximately two thirds were professional and technical workers. Sudanese emigrants to the Gulf region constituted roughly 60 per cent of the national stock of skilled workers. Between 1987 and 1989, Nigeria lost over 110,000 skilled workers who sought employment in the industrialized countries.

Migration patterns in Africa may be expected to change in future decades, as migrants respond to worsening economic and environmental conditions. Widespread economic stagnation occurred in Africa during the 1980s: 20 African countries had negative

growth rates, and only 6 grew at annual rates of more than 2 per cent during that decade (Adepoju, 1991b). Unemployment and underemployment are chronic, per capita income has declined, commodity prices have fluctuated and debt burden has increased for many African countries.

The long-term effect of labour migration has not been associated with significant economic development for most labour-exporting countries of Africa. Short-term benefits, such as income from remittances and relief from unemployment and population pressure, have been realized, but income from migrants has generally not been used to invest in infrastructure or to support the development of self-sustaining local industry. In many countries, dependence on labour emigration distorts the economy in ways that may inhibit development. The result is a continuing pattern of dependence on remittances from workers abroad while conditions at home are not improved.

(a) Eastern Africa: Labour-exporting countries

In Eastern Africa, labour migration has been practised for generations, as workers from resource-poor countries have moved towards such employment centres as the copper mines in Zambia and plantations in Kenya, Zimbabwe and Uganda. The patterns of migration historically have been cyclical, and labour movements have tended to occur between neighbouring countries with similar cultural and ethnic characteristics. Many migrant workers cross borders without formal documentation and do not obtain work permits in the country of destination; they generally are willing to accept jobs in the informal sector, where wages are below minimum and jobs require few skills (Stahl and others, 1993, pp. 65 and 66).

Migration in contemporary Eastern Africa has been dominated by movements of refugees, but there is considerable labour migration as well. Rwanda and Burundi, countries with few resources and acute population pressure, have sent workers to plantations in Uganda, Zambia and Kenya, and to copper mines in Zambia (Stalker, 1994, p. 235). Much of this migration has been temporary and circular; when it occurs during slack periods of the agricultural season, the effect on agricultural production in the sending countries is minimal. Although considerable numbers of migrants are involved and the sending country gains immediate relief from unemployment and food shortages, the long-term effect appears to have brought little advantage to such countries as Rwanda and Burundi. Remittances are small and are used for consumption; skills acquired abroad may not be relevant at home; and a pattern of dependence on foreign employers has emerged (Adepoju, 1991b, p. 55).

Uganda was traditionally a country that received agricultural workers, who came from Rwanda, Burundi, Kenya, the Sudan and the United Republic of Tanzania to work on cotton plantations. Internal political disruption and economic collapse, however, have resulted in deteriorating living conditions and declining job opportunities. Educated Ugandans especially have left the country in large numbers, many of them emigrating to Kenya. More recently, the demand for skilled Africans in South Africa has attracted Ugandan professionals. An estimated 30,000 Ugandans have settled in North America, most of them exiles from decades of civil wars and political turmoil at home. They currently remit an estimated US$ 33 million annually in payments to support parents and other relatives in Uganda.

The United Republic of Tanzania and Uganda have become concerned about the continuing exodus of professionals from their countries, and they have instituted measures for restricting their emigration. They include requiring bonding, limiting foreign exchange, and centralizing scrutiny of applications for departure. Kenya, which was formerly a net labour importer, has entered into agreements with Arab oil-producing countries to supply workers on a contract basis (Adepoju, 1991b, p. 63).

In the Horn of Africa, war, drought and famine have resulted in substantial movements of people during the past two decades, many of them becoming refugees in other countries. In Ethiopia and Somalia, in addition to refugee movements, many highly skilled workers have emigrated to Persian Gulf countries (Russell and others, 1990, vol. 2, p. 31). Both Ethiopia and Somalia have been severely affected by the brain drain in Africa. Somalia was one of the first countries to join the Return of Talent Programme sponsored by the Intergovernmental Committee for Migration for the purpose of attracting skilled migrants back to the country of origin. Eritrea

also experienced population movements as a result of its 27-year war with Ethiopia. An estimated 430,000 people, many of them refugees, moved to the Sudan. When Eritrea became a separate nation in 1993, substantial numbers of Eritreans continued to live and work abroad. About 100,000 Eritreans were employed in Saudi Arabia in the mid-1990s, and their remittances constituted an important source of revenue.

(b) Northern Africa: Labour-exporting countries

The Maghreb countries of Northern Africa, especially Algeria, Morocco and Tunisia, have exported hundreds of thousands of workers to former colonial Powers in Europe since the 1940s. Together with Egypt, itself a major labour exporter, these countries on the southern rim of the Mediterranean have served as an enormous labour pool. Workers migrated to Western Europe following the Second World War to meet labour demand in economies that were industrializing and rebuilding the continent after the destruction caused by the war. Later, when industrialization and economic development extended to the less developed nations of Southern Europe, migrant workers from the Maghreb helped to fill their labour needs. During the 1970s, workers came from Morocco, Tunisia and Egypt to take jobs in Italy, Greece and Spain. More recently, migrants from Northern Africa joined the workforces of the oil-producing States of the Gulf; many were forced to leave in the mass exodus of foreigners that took place in connection with the 1991 Gulf war.

Migration between the Maghreb countries and Southern Europe is now viewed as a single Mediterranean migration system and can be understood only in the context of economic and social conditions in countries on both rims of the Mediterranean (Russell, 1993a, p. 36). To facilitate such understanding, ILO sponsors the Mediterranean Information Exchange System on International Migration and Employment (MIES), which grew out of a conference held at Tunis in 1987 that involved ministers responsible for labour and international migration policies in 10 countries of the Mediterranean Basin. The participating countries were Algeria, Egypt, France, Greece, Italy, Morocco, Spain, Tunisia, Turkey and Yugoslavia. MIES observes and analyses the movement of workers among these countries and publishes papers and bulletins to keep all parties informed.

The current situation with regard to the movement of workers between countries of the Maghreb and Europe is quite restrictive. Labour migration was officially halted in most of the former countries of employment in the mid-1970s, but some migrants are still permitted to enter European countries, particularly those who qualify under family reunification regulations. Primary family reunification was completed some time ago, and current immigrants are more likely to be intended spouses from the country of origin entering into arranged marriages with the grown children of workers who emigrated to Europe more than two decades ago.

Restrictions on legal immigration rarely reduce immigration pressure; rather, they create considerable incentives for undocumented migration. The traffic of undocumented migrants from North Africa to Europe follows well-known routes. Many of them cross the short distance between Tunisia and Sicily by boat and then enter southern Italy and other Western European countries (Cordahi, 1995, p. 7). The Maghreb countries have become dependent on foreign employment, both to absorb their surplus labour and to provide foreign exchange in the form of worker remittances (Charmes and others, 1993, p. 15). Population growth exceeds 2 per cent per annum in the region, and the agricultural economy cannot support additional workers, particularly when the supply of water is limited (Salt, 1992, p. 1088).

The beginnings of labour migration between France and countries of the Maghreb can be traced to the colonial period of the nineteenth century, when French employers hired North Africans to help in the building of the infrastructure to support the colonial empire. During the First World War, the French Army employed North Africans in the construction of roads, schools and hospitals, and some African workers were brought to France to replace Frenchmen who had been drafted into the army (Garson, 1987, p. 82). After the war, France experienced a shortage of labour because of heavy casualties and low natural increase, so North Africans, especially Algerians, continued to emigrate to France to supplement the workforce.

After the Second World War, France needed workers to rebuild the country, and again North Africa was a major source of supply. During the late 1940s, more than a quarter of a million Algerian workers entered France (Kubat, 1993, p. 165). The influx began in 1946

and reached its peak in 1955, when 200,000 North African workers journeyed to France. Until 1962, Algeria was a *département* of France; Algerians were considered French citizens and did not need special permission to enter and work in France.

Significant numbers of North African workers also emigrated to Belgium, Germany and the Netherlands in the 1960s and early 1970s. Moroccans constituted the second largest immigrant group in Belgium by 1993, and large ethnic enclaves of Moroccans and Tunisians lived in the Netherlands as well.

Tunisia and Morocco achieved their independence in 1956, but Algeria fought a bitter war with France before becoming independent in 1962. The peace agreement, known as the Accord d'Évian, stipulated that Algerians would have full sovereignty and the right to free circulation between Algeria and France. In 1968, France introduced annual quotas to limit the number of new Algerian workers, although recruitment of Algerians was not controlled (Garson, 1987, p. 83). France is still the destination for many emigrants from Algeria, legal and undocumented, but relations between the two countries became strained in the mid-1990s. French consulates in Algeria have been closed, and it is now nearly impossible for Algerians to obtain visas for France (Ibrahim, 1995).

In response to discord between the Maghreb countries and Western European countries that wanted to stop immigration, the International Labour Office in the early 1990s began an initiative that brought together labour-sending countries and labour-receiving countries to consider jointly how to deal with pressure for immigration. ILO selected the three major emigration countries of the Maghreb—Algeria, Morocco and Tunisia—for an experiment that would be known as the Maghreb Programme (Lönnroth, 1995, p. 38). ILO organized a meeting between development and employment experts from the Maghreb countries and technical cooperation specialists from Belgium, France, Germany, Italy and Spain; together they discussed the causes of migration pressure and identified measures that could help to reduce the pressure. A series of workshops and conferences in 1993 and 1994 led to proposals for specific programmes and activities that would make emigration a less attractive alternative, in part by training young people in areas of high emigration and by supporting the development of small enterprises. The process has been hampered by the lack of funds from international donors, but the effort continues, especially in Morocco and Tunisia (Lönnroth, 1995, p. 39).

Egypt is another major labour-exporting country in Northern Africa; it has long depended on international migration as a safety valve to relieve population pressure and to provide a source of remittances (Stahl and others, 1993, p. 55). The size of the labour force in Egypt continues to grow more rapidly than the capacity of the economy to create new jobs; employment has risen at an average annual rate of 2.4 per cent since 1990, whereas the size of the labour force is estimated to be growing at about 3 per cent per annum (World Bank, 1995, p. 158).

Traditionally, Egyptian workers emigrated primarily to the Libyan Arab Jamahiriya and Saudi Arabia (Kandil and Metwally, 1992, p. 40). Labour migration from Egypt to the main oil-producing Arab countries expanded rapidly after the oil price increase in 1973. Nearly all the Egyptian labour migrants were male; they were hired for contract work both directly and through private recruitment agencies. Most were production workers and technicians, but smaller numbers worked in agriculture and services (Charmes and others, 1993, p. 44). Before the Gulf war, ILO estimated that between 2 and 4 million Egyptian professionals and labourers were migrant workers in Arab countries, including Bahrain, Iraq, Jordan, Kuwait, the Libyan Arab Jamahiriya, Oman, Qatar, Saudi Arabia, the United Arab Emirates and Yemen. Egypt was the main source of foreign workers in Iraq and Kuwait. In the late 1980s, the earnings of an Egyptian working in Iraq were four times greater than could be earned at home (Russell, 1993b, p. 7).

About half of the 1.8 million Egyptian workers in Iraq left that country after the end of the war between the Islamic Republic of Iran and Iraq. Most of the Egyptian workers in Iraq were unskilled young men working in the agricultural and informal sectors. By contrast, part of the Egyptian labour force in Kuwait consisted of educated technical and administrative staff, as well as managers (Charmes and others, 1993, p. 22).

When war broke out in the Gulf in 1990-1991, more than half a million Egyptians fled Kuwait and Iraq. The

financial losses suffered by Egyptian workers as a result of the conflict were enormous. They included unpaid wages and other compensation, credits earned towards retirement and funds held in foreign currencies that could not be moved out of the country (Charmes and others, 1993, pp. 21 and 22). Egyptian workers have begun to return to Kuwait, and in mid-1995 it was estimated that about 200,000 Egyptians were legally in Kuwait. It is expected that Asians will dominate future labour migration streams to Kuwait, but Egyptians probably will continue to be employed in posts that require fluency in Arabic (Russell, 1993b, p. 8). They have already replaced many of the Palestinians who were formerly employed in Kuwait.

In all, as many as 2 million Egyptian workers may be currently employed in the six Gulf States, including about 1 million in Saudi Arabia. There may be as many as 5 million Egyptians worldwide employed outside the country; their remittances of more than US$ 5 billion annually are nearly equal to the US$ 6 billion earned from the Suez Canal, oil exports and tourism (*Migration News*, 1995a).

Labour migration from the Sudan, while not as extensive as that from Egypt, has serious implications for the country's development because such a high percentage of the emigrants are professional and technical workers. It was estimated that 44 per cent of the Sudan's most qualified personnel were working abroad in 1975, most in the Arab oil-producing countries (Stahl and others, 1993, p. 56). By the mid-1980s, as many as 60 per cent of skilled Sudanese were working abroad. Such a loss of talented nationals is likely to affect the Sudan's future development prospects because there will be fewer experts available in the country to train the next generation of skilled workers (Salt, 1992, p. 1097).

(c) Central Africa: Labour-exporting countries

The major labour-exporting countries in the middle region of Africa are Cameroon, Chad, Angola and the Central African Republic (Adepoju, 1991b, p. 49). Agricultural workers migrate to Sao Tome and Principe and Equatorial Guinea to work on cocoa, coffee and sugar plantations. Migrants also find jobs in the mining industries in Gabon and the Democratic Republic of the Congo and in the oil-producing countries of Gabon, Angola and the Congo. Cameroon is a labour-receiving country as well, with agricultural workers from Nigeria, Chad and the Central African Republic migrating to work on the palm oil plantations (Stalker, 1994, p. 235). Much of the migration is temporary and cyclical.

The Central African Republic sends migrants to the neighbouring countries of Cameroon, Gabon and the Democratic Republic of the Congo. The country has also been the destination for some migrants from Mali and Senegal, who were expelled from the Democratic Republic of the Congo, Zambia and the Congo. Mali, the country with the largest population in the Sahelian region, is also a country of emigration. Most emigrants have moved to coastal countries, mainly Côte d'Ivoire, but there are also Malians in Senegal, the Libyan Arab Jamahiriya, Algeria and France. Malian communities in Cameroon, the Democratic Republic of the Congo, the Congo, Gabon and Zambia had been established, but successive expulsions have reduced this presence (CINERGIE, 1993).

In Chad, civil war, a severe drought in 1983-1985, rural violence and epidemics resulted in an exodus of people from impoverished rural areas. Many settled in Chad's urban centres, but others continued to neighbouring countries to find work. In 1995, some 7,000 Chad expatriates returned from the Central African Republic (Economist Intelligence Unit, 1995a, p. 40). The economic situation has improved somewhat in Chad, relieving unemployment that created out-migration. The world price of cotton in 1995 was the highest in many years, bringing Chad a good return on its cotton exports.

Nearly one third of the inhabitants of Equatorial Guinea live outside the country, according to recent estimates (Economist Intelligence Unit, 1995b, p. 39). About 80,000 are in Gabon and another 30,000 live in Cameroon. During the regime of President Macias in the 1970s, tens of thousands of persons from Equatorial Guinea fled the country or were killed, and many remained abroad after he was overthrown.

(d) Southern Africa: Labour-exporting countries

The economies of Southern African nations have been linked since the colonial era, and the pattern of dependence on South Africa for employment has become

entrenched. Eleven countries in the region belong to the Southern African Development Community (SADC), which is exploring ways to implement long-term options and policies for labour-sending countries. The members are Angola, Botswana, Lesotho, Malawi, Mozambique, Namibia, South Africa, Swaziland, the United Republic of Tanzania, Zambia and Zimbabwe. All these countries have at one time supplied workers to South Africa, at first as farm workers and miners in the gold and diamond mines, and later in manufacturing and service industries. The United Republic of Tanzania and Zambia stopped supplying labour when they became independent in 1961 and 1966, respectively, and Malawi suspended South African labour recruitment after a plane carrying miners from Malawi crashed in Botswana in 1974 (Thahane, 1991, p. 78).

Even after gaining independence, most countries in the Southern African region continued to supply labour to South Africa, partly because of the lack of other employment opportunities at home, and partly because of growing consumer economies and the demand for goods produced by South Africa. The labour system was institutionalized with separate bilateral agreements between South Africa and Botswana, Lesotho, Malawi, Mozambique and Swaziland. Remittances became an important source of revenue, especially where a portion of the workers' wages was paid directly to the labour-supplying country (Thahane, 1991, p. 79). The system of providing workers to meet South Africa's labour needs may have impeded economic development in the sending countries because it reduced the incentive to modernize agricultural production and to provide alternative economic activities at home. Moreover, it created economic dependence on South Africa and made labour-sending countries vulnerable to changes in South Africa's labour migration policy.

Lesotho in particular, a tiny enclave country completely surrounded by South Africa, depended heavily on remittances from migrant labour in South Africa; in 1983 remittances as a percentage of gross domestic product reached a high of 106 per cent (Thahane, 1991, p. 81). South Africa's policy to "internalize" the workforce, especially with respect to less skilled workers, was aimed at reducing reliance on foreign labourers and replacing them with domestic workers. Some workers from Lesotho have applied for citizenship in South Africa, which could affect the amount of remittances sent from South Africa to Lesotho (Kapata, 1994, p. 26). Under the Migrant Labour Laws, migrant workers could not bring family members with them, but as citizens, they could be joined by their families in South Africa. Family reunification could thus effectively end some of the flow of remittances to Lesotho.

Mozambique also has been affected by changes in South Africa's labour-importing policies. It has long been a labour supplier for South African mines; in 1975, approximately 115,000 workers had jobs there, but the Government of South Africa suspended recruitment of workers from Mozambique following a border incident in 1986 (Russell and others, 1990, p. 100). Many formerly employed Mozambicans were forced to return home to an economy that could not absorb additional workers. In 1992, according to estimates from the Ministry of Labour, 80 per cent of the urban work force in Mozambique was unemployed or working in the informal sector. In addition, the country has suffered internal fighting between the rebel guerrilla movement, Resistencia Nacional de Moçambique (RENAMO), and the Government; thousands of people have been killed, and more than one million have become internal refugees (Russell and others, 1990, p. 101).

(e) Western Africa: Labour-exporting countries

Patterns of movement in the western part of Africa are among the most enduring on the continent and derive from several factors, including the two complementary climatic systems, the large number of tribal and ethnic groups divided by arbitrary borders, and the economic strategies pursued by colonial Powers (Makinwa-Adebusoye, 1992). The rainy, fertile coastal area along the Gulf of Guinea has been a perennial destination for agricultural migrants from the drier grassland areas bordering the southern reaches of the Sahara Desert. Different rainfall patterns between inland and coastal areas encourage off-season movement. In the interior areas of West Africa, harvesting occurs at the beginning of the dry season in September and October, and the fields are prepared for the next crop the following March. Most savannah farmers have two to five months of relative agricultural inactivity, which can profitably be spent working on the coastal plantations to earn money for taxes, consumer goods, tools and seeds for the next growing season (Ricca, 1989, p. 12).

Economic policies of the colonial Powers in West Africa reinforced regional inequalities and encouraged labour migration. The strategy was to create agricultural plantations growing cocoa, cotton, coffee and other crops in the well-watered coastal lands and to invest in areas that were rich in minerals. These growth zones were pockets of rapid development and prosperity, and they attracted labour migrants from less favoured parts of Western Africa. This pattern of movement continues in the present, partly because of the lack of development and infrastructure in the sending countries and partly because labour migration has created and perpetuated dependence on remittances.

Seasonal agricultural movement involves males from the inland countries of Mali, the Niger and Burkina Faso, as well as from northern parts of Côte d'Ivoire, Togo, Ghana and Nigeria (United Nations, Economic Commission for Africa, 1983, p. 26). Agriculture is still the main economic sector in Western Africa, although mining, commerce and the service industries also employ migrant workers (Adepoju, 1991b, p. 55).

Burkina Faso has been a supplier of labour to the neighbouring countries of Côte d'Ivoire and Ghana for decades, and working abroad has become a survival strategy for young men of Burkina Faso. A landlocked country classified by the United Nations as one of the "least developed", Burkina Faso was estimated to have 17 per cent of its total population living outside the country in 1975 (Stalker, 1994, p. 235). The plantation and construction industries in Côte d'Ivoire have employed migrant workers from Burkino Faso since the early 1900s, and cocoa farms in Ghana have also been a source of jobs. Emigrants from Burkina Faso are also living in Nigeria, Gabon and France. A modification in the pattern of international migration finds more long-distance movement, with new destinations in Western Asia and Eastern Europe.

The case of Ghana represents a shift of a country from being an importer of labour to one that now exports a large percentage of its labour force, both skilled and unskilled workers. Until the 1960s, Ghana and Côte d'Ivoire were the leading labour-importing countries of West Africa (Adepoju, 1991b, p. 51). The 1970 census reported that only 1 per cent of Ghanaians lived outside the country. But only a few years later, political upheavals and economic crisis had turned Ghana into a major emigrant-sending country. The years between 1970 and 1982 were the bleakest in the history of Ghana's economy, and many skilled, unskilled and professional workers left the country for higher wages and a better standard of living in Nigeria. Emigrants included technicians for the construction industry in Nigeria, teachers for the education system and unskilled workers for such positions as domestic servants and dockworkers (Adepoju, 1991a, p. 212). By 1983, nearly 10 per cent of the Ghanaian population—about 25 per cent of its labour force—was working in Nigeria, Côte d'Ivoire, Togo, Lesotho, Zimbabwe, other parts of Africa and Europe and the satellite homelands of the Republic of South Africa (Adepoju, 1991b, p. 51).

(f) Eastern Africa: Labour-importing countries

In Eastern Africa, the movement of skilled and unskilled workers is often obscured by the much larger flows of refugees. The East African Community facilitated the free flow of labour among Kenya, Uganda and the United Republic of Tanzania, but this alliance collapsed in 1977. The closing of the border between the United Republic of Tanzania and Kenya, to both migrants and goods, between 1977 and 1984 disrupted patterns of labour migration. Before 1982, Kenya was a major receiver of skilled Ugandans, but Kenya has been producing educated graduates of its own universities, and the demand for foreign professionals has declined. In fact, a study of graduates of the University of Nairobi found that lengthy job searches were common and many had accepted jobs for which they were overqualified. Low salary levels in Kenya have contributed to the emigration of university personnel and health workers, and Kenya has joined the Return of Talent Programme to encourage skilled migrants to return (Russell and others, 1990, vol. 2, p. 27).

Uganda is the main destination for migrants in Eastern Africa. Among the countries whose nationals emigrate to Uganda are Rwanda, Burundi, the Sudan, Kenya and the United Republic of Tanzania. Malawi, which has migrants from Zambia and other parts of Africa, is the second most important destination in the region (Oucho, 1995, p. 38).

Regional cooperation in Eastern and Southern Africa has recently been revived with the creation of the Common Market for Eastern and Southern Africa

(COMESA). More than 20 heads of State signed a document establishing COMESA, which may eventually involve the merger of the Preferential Trade Area and the Southern African Development Community (Oucho, 1995, p. 36). Liberalization of labour migration is expected to be addressed in the protocols of regional cooperation that are to be drawn up.

(g) Northern Africa: Labour-importing countries

In Northern Africa, the Libyan Arab Jamahiriya has been a major importer of foreign workers, especially from Egypt and the Maghreb countries. It also draws immigrants from Turkey, Greece and Cyprus, as well as from South-Eastern Asia. The employment market has been dominated by contracts for large public works projects, although fiscal problems periodically affect the flow of migrant labour (Stahl and others, 1993, p. 51).

The recent history of the Libyan Arab Jamahiriya with regard to labour migration has been characterized by abrupt policy changes. During the early 1980s, thousands of northern Africans, particularly Tunisians, entered the Libyan labour market. In 1985, however, the Libyan Arab Jamahiriya expelled workers who came from countries that expressed opposition to the country's political regime (Russell, 1993b, p. 6). The Libyan Arab Jamahiriya also wanted to stop the flow of hard-currency remittances out of the country. Some workers returned after diplomatic relations were restored.

In 1991, the first stage of a huge irrigation project was inaugurated by the leader of the Libyan Arab Jamahiriya, Colonel Muammar el-Qaddafi. Financed entirely by earnings from petroleum exports, the project pumps water from the underground water table of the Saharan subsoil and channels it to the Adjabiya Reservoir in the Gulf of Sirte for use in irrigation. In the first phase of the US$ 25 billion project, some 50,000 hectares of land were made available for agricultural production. The Libyan Arab Jamahiriya, however, did not have enough farmers to work on the newly irrigated land, so it advertised for more than a million families from Egypt. The offer coincided with the departure of hundreds of thousands of Egyptian workers from Kuwait, and was thus a welcome alternative to unemployment.

The Libyan Arab Jamahiriya and Egypt signed a bilateral agreement in December 1990 that provided for freedom of movement of persons between the two countries and for the right of citizens of both countries to live and work in either country. Labour recruitment is facilitated by the Egyptian Ministry of Labour and Training, which arranges contracts with Libyan authorities and prospective employers. In addition to farmers, immigrants included teachers, medical personnel and other community workers. In September 1995, the Libyan Government expelled thousands of Egyptians, Sudanese and other foreign workers living within its borders, in order to make jobs available for Libyans (Jehl, 1995, p. A10).

Some labour migration in Northern Africa occurs as a consequence of religious motivations. In the Sudan, Muslim pilgrims from many African countries constitute an important source of temporary agricultural labour. As they make their way across the Sudan to the Red Sea and Mecca in Saudi Arabia, many of them break their journey long enough to earn money to continue their pilgrimage by stopping in the Gezira plain in the Sudan to work as harvesters (Ricca, 1989, p. 15).

(h) Central Africa: Labour-importing countries

Gabon is one of the wealthiest countries of the middle region of Africa, with its natural resources of oil, forestry products, manganese and uranium. Thousands of foreign workers, mainly from Equatorial Guinea, Mali, Nigeria, Senegal and Benin, have taken up residence in Gabon (Economist Intelligence Unit Country Profile, 1995b, p. 9). The 1993 census counted a population of about 1 million, of whom about 150,000 were foreigners. Gabon is the third largest producer of oil in sub-Saharan Africa, after Nigeria and Angola, and its per capita income is second only to that of South Africa. However, the country is heavily dependent on oil revenues and is vulnerable to shifts in the price of oil. Its agricultural sector is undeveloped, so Gabon must import much of its food.

The Government of Gabon expelled some 65,000 undocumented migrants, which caused domestic demand to contract (Economist Intelligence Unit, 1995a, p. 4). It is estimated that some 25 per cent of wage earners are expatriates from Europe, especially France, and from other African countries. A presidential decree to

guarantee jobs for Gabonese was signed in 1991 in response to urban employment, and the policy of "Gabonizing" the labour force has been intensified. Many employers, however, prefer to hire non-Gabonese workers because they will accept lower wages (Economist Intelligence Unit, 1995b, p.13).

Mineral deposits in the Central African country of the Democratic Republic of the Congo have attracted foreign investments, creating jobs for both skilled and unskilled workers. In 1984, the Democratic Republic of the Congo had more than 600,000 foreign workers, the largest number of immigrants in the region (Stalker, 1994, p. 235), and in 1990, the Democratic Republic of the Congo was thought to have more than 1 million migrants. The political upheavals in the early 1990s and the expulsion of some foreigners, however, reduced the number of resident aliens. Estimates of refugees in the Democratic Republic of the Congo remain high—about 1.7 million in 1995 (United Nations, 1996a).

In Equatorial Guinea, more than 40,000 Nigerians were employed in the cocoa industry in the early 1970s, but they were forced to leave in 1976, and cocoa production declined. Some workers returned from Nigeria in the 1980s; however, when security forces killed a Nigerian worker in 1985, the Nigerians left again, leaving the cocoa estates chronically short of labour. Efforts to revive the cocoa industry, which suffers from ageing and diseased trees, have met with little success (Economist Intelligence Unit, 1995b, p. 45).

(i) Southern Africa: Labour-importing countries

In the southern region of Africa, the most dominant immigrant-attracting country for more than a century has remained South Africa. In fact, it is the continent's main labour migration destination (Salt, 1992, p. 1097). After the discovery of diamonds and gold in the late nineteenth century, labour shortages were chronic; competition between the mining industry and plantation owners led to the importation of workers from as far away as China (Thahane, 1991, p. 73). It also led to the creation of the Chamber of Mines, which regulated the recruitment of labour and kept wages low by expanding the pool of available foreign workers. By the beginning of the twentieth century, more than three quarters of the workers in South African mines were of foreign origin.

Dependence on foreign labour was eventually considered an inappropriate strategy, and a policy to internalize the labour force was instituted in 1977 (Thahane, 1991, p. 78). In 1973, foreigners made up about 80 per cent of the labour force in the mines, but by 1990 the percentage had declined to about 40 per cent, and it is expected to continue to decrease (Stalker, 1994, p. 236). Among the youngest workers in the mines in 1990, nearly three quarters were South Africans. The trend is for much greater selectivity in hiring foreign workers in the mining industry.

With the historic political changes in South Africa and the installation of the Mandela Government of National Unity, patterns of labour migration are shifting and affecting migrants from countries all over Africa. Jobs that require higher skills are drawing Black professionals from many other countries, both within and outside Africa. The end of apartheid triggered a demand for qualified Black managers, technical workers, academics and other highly skilled workers, and there were not enough educated, experienced South African Blacks to meet the demand. Some expatriate South Africans who had expressed their opposition to the previous Government by living abroad have returned to South Africa, and American Black professionals have also found jobs there (Ford, 1994, p. A6).

The high standard of living, relative political stability, and excellent academic facilities are attracting immigrants to South Africa from other African nations as well, especially Ghana, Uganda, Somalia and the Democratic Republic of the Congo (Keller, 1993, p. A8). This is contributing to what is already a serious problem of brain drain from other parts of Africa (Davis, 1995, p. 1435). South Africa is replacing Europe and North America as the preferred destination for skilled African labour. The majority of African professionals who have come to South Africa first worked in one of the former so-called homelands, whose borders with South Africa were not policed (Keller, 1993, p. A8).

At the same time, the changes in South Africa's economy have not created enough jobs to reduce unemployment rates, which exceed 40 per cent for some age groups. The country has high expectations for improved living standards for Blacks, who constitute 75 per cent of the population. The perception that immigrants—whether legal or undocumented—take jobs

from nationals has resulted in resentment among South Africans, who endured years of apartheid only to find that outsiders now have some of the best positions in the country. Although the Government is concerned about joblessness among South Africans, it is reluctant to offend neighbouring countries, such as Mozambique and Zimbabwe, which were supportive during the long struggle against apartheid.

Efforts are currently under way to establish controls over South Africa's borders and to require work permits for foreigners. The Government approved legislation in 1995 to limit the number of foreign job seekers. South Africa is thought to have at least 2 million foreign residents. As many as 300,000 are Zimbabweans and 350,000 are Mozambicans; many of the foreigners work illegally at low wages and under substandard working conditions.

(j) Western Africa: Labour-importing countries

In Western Africa, bilateral and multilateral agreements between labour-sending and labour-receiving countries have existed since African countries gained independence. Burkina Faso, Côte d'Ivoire, Mali, Mauritania, the Niger and Senegal were founding members in 1973 of the Communauté économique de l'Afrique de l'ouest (CEAO); the organization agreed in 1978, by the Treaty of Abidjan, to allow the free circulation of people (Makinwa-Adebusoye, 1992, p. 71).

The most influential economic alliance in the region at present is the Economic Community of West African States (ECOWAS), established in 1975 by 15 of the 16 countries in Western Africa and joined in 1977 by Cape Verde. ECOWAS adheres to the principle of free movement of labour, goods, services and capital, and it advocates the elimination of border-crossing requirements. The organization's Protocol on the Free Movement of Persons, Right of Residence and Establishment was agreed to in 1979 and was to be phased in over a 15-year period. ECOWAS has invested in infrastructural facilities, such as roads and telecommunications, and it continues to influence the movement of labour among countries of the region.

There are, however, considerable discrepancies between stated policies and actual policies, and economic conditions tend to be the determining factor in the enforcement of border controls. During periods of labour shortages, admission even of undocumented immigrants is permitted, whereas economic recessions lead to stringent enforcement of immigration regulations, as was the case in Nigeria at the end of the oil boom (Makinwa-Adebusoye, 1992, p. 77). Coastal countries such as Ghana, Nigeria and Guinea, which received large numbers of labour migrants in the past, have been progressively closed to immigration, and Côte d'Ivoire has become the regional destination country (CINERGIE, 1993).

Since Nigeria is the home of more than half the people in Western Africa, its migration policies and practices have greatly affected the region in the post-colonial period. Nigeria enjoyed unprecedented economic prosperity during the 1970s, when world oil prices reached record highs and the country's economy expanded rapidly. Hundreds of thousands of immigrants entered Nigeria, many of them illegally. Because of the shortage of labour, the Government adopted a tolerant approach and did not expel them. At the same time, the first phase of the ECOWAS Protocol on the Free Movement of Persons, Right of Residence and Establishment facilitated the entry of ECOWAS immigrants. By 1982, estimates of the number of immigrants living in Nigeria ranged from 2 to 2.5 million, most of whom were from Ghana. Shortly thereafter, however, the price of oil dropped and precipitated a crisis in the economy. Nigeria responded in January 1983 by ordering all aliens without valid travel documents or resident permits to leave the country. This deportation order led to a mass expulsion of immigrants, most of whom had come from Ghana, the Niger, Chad, Togo and Benin (Makinwa-Adebusoye, 1992, p. 75).

The economic recession worsened in Western Africa during the 1980s, and Nigeria again expelled all aliens in May 1985, violating the ECOWAS Protocol that permitted 90-day visits without visas for nationals of ECOWAS States. It further stipulated that unskilled workers who competed with Nigerian labourers could not exercise the ECOWAS right of residence in a member State other than their own (Makinwa-Adebusoye, 1992, p. 76). While implementing an indigenization policy that excludes foreigners from certain types of work, Nigeria has also taken steps to find employment for its citizens abroad. In 1987 Nigeria

established a Technical Aid Corps programme that sends skilled personnel to African and West Indian countries that request them.

In contemporary Western Africa, the main destination country is Côte d'Ivoire, where it was estimated in 1988 that 28 per cent of the population was of foreign origin. More than half of the foreigners were from Burkina Faso, continuing a labour migration pattern that existed in pre-colonial times and was reinforced by the colonial administration. Most foreign workers are employed in the primary sector, especially cocoa and coffee plantations, but some find work as manual labourers and in the commerce and service industries.

In addition to labour migrants from Burkino Faso, Côte d'Ivoire also has nationals of Ghana, Guinea, Mali and Liberia and an increasing number of Mauritanians. The Government considers that the current level of immigration is too high. It is attempting to reduce the flow by increasing vigilance at borders and expelling undocumented migrants.

D. International and regional instruments concerning labour migrants

In the aftermath of the Second World War, a surge of universal principles were enshrined and codified in international law to protect human rights while maintaining the State's prerogative to decide who should enter its territory—the ultimate embodiment of sovereignty. These principles have been significantly developed as attested by the number of bilateral, regional and transnational agreements entered into and institutions established in recent years. International and regional instruments have been adopted both to secure States' interests to control and regulate international migration and to protect the rights of migrants.

Economic globalization and growing interdependence have been matched by the proliferation of international instruments dealing with migration and regional groupings and free trading zones—most of which have had a considerable impact on the movement and treatment of labour migrants. The progress achieved by countries in promoting regional economic blocs has brought to their policy agenda questions of integrating labour markets more formally through the harmonization of migration policies and the removal of restrictions on cross-border flows of labour. Multilateral efforts have been evidenced in all regions.

1. International instruments

The international community has attempted to set minimum standards for the treatment of migrant workers and their families, especially in the area of employment and social integration in the host society. In establishing the International Labour Organisation in 1919, the Treaty of Versailles affirmed that "the standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein". Among the priorities spelled out in the Constitution of the International Labour Organisation is "the protection of the interest of workers when employed in countries other than their own". Specific international labour standards favouring migrants have been adopted since then. In 1926, at a time when large numbers of Europeans were emigrating, ILO adopted the first International Convention on the Inspection of Emigrants.

The main ILO instruments that address the protection of migrant workers are the Migration for Employment Convention (No. 97) of 1949 and the Migrant Workers (Supplementary Provisions) Convention (No. 143) of 1975. Recommendation No. 86 (1949) addresses Migration for Employment, Recommendation No. 100 (1955) concerns the Protection of Migrant Workers (Underdeveloped Countries), and Recommendation No. 151 (1975) addresses Migrant Workers. Important international instruments that address social security issues for migrant workers include Convention No. 19 and Recommendation No. 25 concerning Equality of Treatment (Accident Compensation) of 1925; the Maintenance of Migrants' Pension Rights Convention (No. 48) of 1935; the Equality of Treatment (Social Security) Convention (No. 118) of 1962; the Maintenance of Social Security Rights Convention (No. 157) of 1982; and the Maintenance of Social Security Rights Recommendation (No. 167) of 1983.

The ILO conventions and recommendations established the rights and freedoms to which migrant workers are entitled. It is important to note, however, that migrant workers do not automatically enjoy these rights

simply because ILO states that they are entitled to them. Conventions are adopted because the representatives at the conference, who represent Governments as well as employers' and workers' organizations throughout the world, believe that there are certain standards that must be applied in order to protect the rights of migrant workers. Adopted conventions are then open to ratification; when ratified by a country, that country's laws should then conform to the convention. Recommendations, which supplement conventions, cannot be ratified, but carry a certain moral force. ILO conventions and recommendations influence the conditions of work and life of millions of employees, not only because they are recognized as standards to follow, but because they are often directly incorporated into laws or because the principles which they espouse form the basis of special laws and regulations.

The rights advocated by ILO address a variety of important issues that are of concern to migrant workers before their departure from the homeland, during the journey to the new country, on arrival, during the period of employment, upon termination of employment, and upon departure to the country of origin.

Among the issues of concern to migrant workers before they depart their homeland that have been addressed by ILO conventions and recommendations are information about living and working conditions in the country of destination, the recruitment process, the employment contract, and facilitation of departure procedures. Thus, before leaving their country of origin, prospective labour migrants have the right to know the general conditions of work and life, including existing employment opportunities, in the country in which they plan to work. Recruitment of foreign workers should be carried out only by public authorities, prospective employers, or private agencies. Such recruitment should be subject to prior authorization and carried out under official supervision, thus offering protection against possible exploitation, including the charging of excessive fees, the use of misleading propaganda, and attempts to evade immigration controls. In countries where Governments supervise employee contracts, migrant workers have the right to receive a written contract of employment before they leave their home country; such a contract should specify the conditions of work and the terms of employment, especially wages. Migrant workers have the right to receive free assistance from public authorities in completing documents and other formalities before their departure.

Workers who have been recruited by an employer should not be required to pay for the cost of their own travel nor, if applicable, that of their families; the recruiter or employer is expected to pay travelling expenses. Workers who travel without having entered into a contract or accepted an offer of definite employment should be charged reasonable rates for travel. Migrant workers and members of their families who are authorized to accompany them should be provided with adequate medical services at the time of departure, during the journey and on arrival in the host country.

Upon arrival, migrant workers are entitled to customs exemption, that is, they should be permitted to take their personal belongings (and those of members of their families who are authorized to travel with them) and the tools of their trade free of customs duty. Migrant workers are also entitled to assistance in finding suitable employment, in obtaining suitable housing, in obtaining translation services, and in otherwise settling into the new environment.

During the period of their employment, migrant workers are entitled to the same kind of treatment that is enjoyed by nationals of the country with respect to wages, payments in kind, hours of work, rest periods, holidays with pay, welfare facilities and other benefits. They are entitled to equal treatment with regard to working conditions, job security, promotion, and social security, special health and safety needs, trade union rights, access to courts, access to other jobs and to vocational training, and freedom of movement as enjoyed by nationals.

Migrant workers are also entitled to social and civic rights including equal treatment with respect to education, the right to participate in the cultural life of the country while at the same time maintaining their own culture; the right to practise their religion and to adhere to their national customs and ceremonies; assistance in learning the language of their host country; facilities for their children to learn their mother tongue; the right to transfer their earnings and savings to their home country within the limits set on the import and export of currencies; and social services, in the mother tongue, if possible or with interpretation, as necessary. Although

family reunification is not an absolute right, ILO recommends that migrant workers be permitted to visit their families or that families be allowed to visit a worker during paid annual holidays after at least one year of service.

Migrant workers, who have the same right to legal aid as national workers, have the right to appeal a decision to terminate their employment or to deprive them of resident status. If successful, they are entitled to reinstatement or time to find alternative employment, and to compensation for loss of wages. Although ILO standards do not provide an absolute right to a free return trip to the home country, if, through no fault of his or her own, a migrant worker cannot secure the employment for which he or she had been recruited, or other suitable employment, he or she will not be responsible for paying the cost of the return trip home, nor that of family members who have been authorized to accompany him or her. Migrant workers who are expelled from a country may be required to pay their own travel expenses (and that of their families), but they are not expected to pay the costs of the administrative or judicial procedures resulting in the expulsion. Migrant workers are entitled to assistance with arrangements for departure. Whether or not they were in the country and employed legally, such workers have a right to outstanding remuneration, severance pay, compensation for holidays not taken and, in some cases, reimbursement of social security contributions.

Migrant workers who have retained the nationality of their country of origin are entitled to assistance when they return to their homeland, including unemployment benefits, and assistance in obtaining employment. They should be exempt from customs duty on personal possessions as well as tools and equipment for use in their occupation.

The various ILO conventions and recommendations also address other issues such as acclimatization, naturalization, property rights and usury. Some of the conventions and recommendations exclude one or more of the following groups: frontier workers, members of the liberal professions, artists on short-term visits, seafarers, the self-employed, persons who enter a country in order to obtain training or an education, and workers who remain in a country illegally.

The United Nations General Assembly adopted the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families on 18 December 1990 (resolution 45/158, annex). At its fiftieth session, the Commission on Human Rights, in its resolution 1994/17 of 25 February 1994, called upon all Member States to sign and ratify or accede to the Convention as a matter of priority and expressed the hope that it would enter into force at an early date. The item entitled "Measures to improve the situation and ensure the human rights and dignity of all migrant workers" was included in the agenda of the fifty-first and fifty-second sessions of the Commission, and a resolution entitled "Violence against women migrant workers" was adopted at each of those sessions.

An International Conference on the Human Rights of Migrant Workers: Agenda for NGOs, attended by some 100 representatives of non-governmental organizations involved with assistance and protection of foreign contract workers, was held at Manila in 1992. It focused on human rights violations of migrant workers and the protection available to them. Concerns were raised that domestic workers are often subjected to long working hours, verbal assault, physical harm and sexual abuse; that women migrants who arrive in a foreign country with the promise of honest work are often directed towards prostitution; and that indiscriminate and unjustified dismissal of migrant labourers is common, forcing workers to return home to process new contracts. Many migrant workers are not aware of their own rights; in some countries workers cannot utilize labour laws because they are not enforced. Migrant workers often find themselves the targets of racism and xenophobia; some are discriminated against when it comes to certain professions. Others are subjected to poor living and working conditions that would not be tolerated by local employees. It is through international instruments such as the ILO conventions and recommendations that the international community seeks to address these and other concerns of labour migrants.

2. Regional instruments for nationals and migrant workers

At the regional level, the most extensive measures with regard to migration have been adopted in Europe. Several groupings exist in Europe, which have implica-

tions for free movement of persons, goods, and capital. Among these are the Council of Europe (1949), the Nordic Labour Community (1954), the European Community (1957), European Union (1992), the European Free Trade Area (1960) and the Schengen Group (1995).

Since its inception in 1949, the Council of Europe has made substantial efforts towards establishing common standards governing the status and treatment of aliens. The *raison d'être* of the Council was to safeguard the ideals and principles of the members' common heritage, by "discussion of questions of common concern and by agreements and common action in economic, social, cultural, scientific, legal and administrative matters and in the maintenance and further realization of human rights and fundamental freedoms" (article 1, Statute of the Council of Europe, 1982). Although the Council was originally founded by 10 nations, today it is constituted by 39 member countries: Albania, Andorra, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Republic of Moldova, Romania, Russian Federation, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine and United Kingdom of Great Britain and Northern Ireland. The two predominant organs of the Council are the Committee of Ministers, comprising the foreign ministers of the member countries and the Parliamentary Assembly, consisting of representatives appointed by the national parliaments. Other bodies of a permanent and a temporary nature have also been established by Council conventions or by decisions of the Committee of Ministers, and have considerably extended the Council's activities in a wide variety of fields.

The 1950 European Convention on Human Rights, adopted by the Council of Europe, reinforces some general principles established by other international instruments, including those that protect family unity and freedom from discrimination. The European Social Charter of 1961 and the European Convention on the Legal Status of Migrants of 1977 (which entered into force in 1983) were both adopted by the Council of Europe, encouraging the contracting parties to protect families of foreign workers. Nonetheless, both instruments provide the contracting States substantial means to impede family reunification migration.

Addressing issues of integration, the Council of Europe, through its Steering Committee on Intra-European Migration (COMG) has sponsored projects dealing with language and vocational training, equivalency of professional and technical qualifications, occupational safety, equal treatment, Europe Centres and model work contracts. It has also formulated projects dealing with the problems of family reunion, low-cost housing, education of migrant workers' children and social services for migrant workers.

The Nordic Labour Community has been among the most advanced in terms of relaxation of national controls on migration (Plender, 1988, p. 288). The Community, which originally consisted of Denmark, Finland, Norway and Sweden, with Iceland joining later, includes a passport union, a common labour market and the recognition of social security entitlement. More recently, some issues have arisen concerning the effects of the simultaneous membership of three of its members (Denmark, Finland and Sweden) in the European Union.

Of the regional organizations and regimes that have enshrined principles of international migration, the European Community/European Union has been most developed. The European Economic Community (EEC), as its name implies, was originally conceived as an economic regime, and therefore envisaged freedom of movement for workers and self-employed. The right to freedom of movement was recognized in the three founding treaties of the European Communities: namely, the Treaty of Paris, establishing the European Coal and Steel Community in 1952; and the two Treaties of Rome, establishing the European Atomic Energy Community and EEC in 1958. The tasks of achieving the aims of the treaties have largely rested in the same institutions: the European Parliament (the legislative branch); the Council of Ministers and the Commission (both considered the dual executive); the Court of Justice and the Court of Auditors.

Although the 1957 Treaty of Rome, the founding document of EC, established the free movement of workers, this freedom did not become a reality until 1968. At that time, the first transitional period stipulated by article 48 on the free movement of workers and

article 52 on the freedom of establishment culminated in the issuance of EEC regulation No. 1612/68 on freedom of movement for workers within the Community. The economic rationale of EC meant that rights of migrant workers from member States would be addressed later by secondary law in the form of directives or regulations.[a]

The drive towards a regional common market has made major contributions to the integration of migrant workers. Since issuing its Action Programme for Migrant Workers and Their Families in 1976, EEC has focused on enhancing the free movement of EEC workers and their families and on finding ways of gradually eliminating unjustifiable limitations on their rights, as well as on improving the position of workers and their families. EU essentially guarantees citizens of member States the right to free movement, gainful employment and residence within the boundaries of the Community. It prohibits discrimination based on nationality among workers of the member States with regard to employment, social security, trade union rights, living and working conditions, education and vocational training. One of the most fundamental achievements in establishing equal conditions for workers of all member countries has been the mutual recognition of training and qualifications by member States. Under the principle of mutual recognition, individuals holding the equivalent qualification from one member State are able to practise in the field of their expertise in another member State under the same conditions as individuals holding the relevant qualification of the latter State. In 1988, the Council of the European Communities adopted a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration (directive No. 89/48/EEC).

While EC/EU directives and the Single European Act of 1987 have gradually expanded rights to free movement beyond workers and self-employed persons, they have not established completely free movement within the Community. First, EC has not dealt with third-country nationals or nationals of non-member States of the European Community who have acquired the right to residence in a member State. Legislation has been predominantly limited to nationals of the Member States, which now include Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the United Kingdom. Second, not only are Community citizens desiring to relocate obliged to present proof of independent economic viability for their whole period of residence in the host State, they also are subject to considerable local control through the issuance of residence permits (Hovy and Zlotnik, 1994, p. 26).

EU however, has gone further to protect the rights of third-country nationals in terms of incorporation. Focusing on the problems of second-generation migration, it has encouraged participation of migrants in all aspects of life. The Migrants Forum was created in 1991 on the basis of a recommendation of the European Parliament's first Committee of Inquiry on Racism and Xenophobia Report (1986). That forum has direct access to the decision-making bodies of EU, and it receives aid from the Community budget, while retaining its independence with its own statutes and secretariat. According to the Declaration adopted at its Constituent Assembly in Brussels in 1988, its work includes the monitoring of migrants' economic situation, trends in migration, administrative and legislative developments and developing practical proposals for action to combat racism (MIGREUROPE, 1988; Harris, 1994, p. 216).

The Treaty on European Union, signed at Maastricht on 7 February 1992 and in effect since 1994, further established measures towards the harmonization of social and political policies of member States. The aim of the Treaty was to go beyond the economic motivations of the Treaty of Rome and to create a European Union, integrated socially and politically. In its efforts to strengthen the protection of the rights and interests of the nationals of its member States, the Treaty of Maastricht created the status of European Community citizenship (Soysal, 1994, p. 147). Thus, as EEC has developed into a social and political European Union, freedom of movement pertains to European citizens—or those who have citizenship in one of the 15 member States.

With increasing integration in different arenas, EU has not only expanded the number of its members—from 6 countries in 1957 to 15 countries in 1997, but also the scope of its activity. Nonetheless, the Maastricht Treaty incorporated three pillars and delegated migration matters largely to Ministers of Home Affairs and Justice,

the intergovernmental third pillar. Title VI, article K, specifically defines "matters of common interest" as asylum policy, visa policy, immigration policy, third-country national and illegal migration to be dealt with on an inter-governmental basis. This means that migration matters need not necessarily be dealt with by the Council of Ministers, nor are decisions automatically subject to judicial review by the Court of Justice. Article K.2 further leaves these issues outside of EU machinery, as it notes that "the matters referred to in article K.1 shall be dealt with in compliance with the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 and the Convention relating to the Status of Refugees of 28 July 1951 and having regard to the protection afforded by Member States to persons persecuted on political grounds".

Further progress on migration matters in EU depends on the direction of the 1996 Intergovernmental Conference prescribed by the Treaty on European Union when it was signed in 1992. At that time, the EU Governments committed themselves to a new Intergovernmental Conference (IGC) to prepare the next stage of institutional reform. According to article N of the Treaty, "A conference of the representatives of the governments of the Member States shall be convened in 1996 to examine those provisions of the Treaty for which revision is provided". IGC has reviewed the intergovernmental work adopted by the Treaty, and to assess the effectiveness of the pillar structure, possibly by proposing measures to improve or change the structure, and bring national legislation further in line.

Up until now, a series of intergovernmental and Ad Hoc Immigration Group meetings have addressed various migration issues. One of the most prominent agenda-setters for EU migration policy is the intergovernmental Schengen Group, consisting of nine of the 15 EU countries: Belgium, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal and Spain (the exceptions are the United Kingdom, Ireland, and Denmark and the three new members). The Schengen Group underscores the fact that not all regional agreements are aimed to secure fundamental rights for migrants. In fact, the objectives of many of such agreements are inextricably linked to immigration control. Under the terms of the Schengen Agreement, for example, a foreigner barred by a signatory State shall automatically be refused entry by the other signatories. The Schengen Accords of 1985, which were supplemented by the Schengen Supplementary Accord in 1990 and finally came into force in March 1995, have aimed to eradicate internal borders among the member countries while at the same time fortifying external borders. To this end, the Group has been involved in creating the Schengen/European Information System (SIS/EIS information network) and a common list of nationals requiring visas.

An Ad Hoc Immigration Group was created in October 1986 and operates under the coordination of the Commission of EC. In 1993, Ad Hoc Immigration Group of Ministers from the EU member States met in Copenhagen and adopted a resolution calling for the harmonization of national policies on family reunification (*Harmonisation of National Policies on Family Reunification*, 1993). Although the resolution codified a minimum set of standards already in use for family reunification, it essentially validated the State's right to allow or deny the admission of foreigners for family reunification. In fact, according to some observers, the resolution has been seen to provide grounds for the adoption of more restrictive policies on family reunification than the ones now in place (Battistella, 1994, p. 12). Reproaches have been made with regard to the fact that guidelines were set outside of EU institutional scrutiny. That is, like most of these specialized meetings, these deliberations were conducted in secret, behind closed doors and lacked the normal democratic scrutiny of EU institutions.

The Trevi Group was also set up as an intergovernmental body, initially to deal with coordinating efforts to combat terrorism, but has expanded its actions to address most issues of police cooperation. It has been working on setting up the European Police Office (EUROPOL) and the European Drugs Unit (EDU). At this point, there is an overlap between the responsibilities of the intergovernmental groups, such as the Trevi or the Schengen Group, and those of the EU institutions.

Another group in which representatives of EU member States and those outside EU, including the traditional immigration countries, meet to discuss interests and strategies and to coordinate actions has been the Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia.[b] The agenda of this "informal consultations"

group, as it is commonly referred to, has expanded from dealing with specific refugee populations to four broad topics: long-term strategies, East-West migration, South-North flows, and reform of asylum systems.

The plethora of intergovernmental groups dealing with migration has led to the creation of yet another intergovernmental body, the Group of Coordinators on the Free Movement of Persons (also known as the Rhodes Group). Composed of high-ranking officials of the EU States, with the participation of the Commission, its aim is to coordinate the activities of the numerous intergovernmental bodies and attempt to remedy any delays in the member States. The Rhodes Group coordinates the activities of the following bodies: the Ad Hoc Immigration Group, the Trevi Group, the Mutual Assistance Group (MAG), the European Committee to Combat Drugs (CELAD), the European Political Cooperation Group (EPC) and the Horizontal Group.

There also has been a sharp increase in intergovernmental cooperation meetings. Whereas in 1984, refugee, asylum and migration issues were limited to only four or five forums, by 1989 over 15 groups met regularly to discuss these concerns. Most of the initiatives have been taken by countries in Western Europe, but broader discussions have also included Eastern European countries. An appeal by the Austrian Government to the Council of Europe in May 1988 to respond to the problem of East-West movements in a spirit of solidarity resulted in a 1991 ministerial Conference on the Movement of Persons from Central and Eastern European Countries. The Conference has since been followed by a series of intergovernmental meetings known as the "Vienna Process". These include the International Conference on Migration in Rome (March 1991), the Informal Expert Group Meeting on International Migration at Geneva (July 1991) the regional Seminar on Prospects of Migration in Europe Beyond 1992 at Athens (October 1991), and the Conference on Mass Migration in Europe at Vienna (March 1992). Other similar meetings took place in Berlin (January 1993) and in Budapest (February 1993).

The European arrangements for freedom of movement, concluded under the aegis of the Council of Europe, the European Union and the European Free Trade Area, have significantly influenced other regional developments. In particular, they are reflected in the Southern Cone Common Market, (MERCOSUR), the North American Free Trade Agreement (NAFTA), the Economic Community of West African States (ECOWAS), the Central African Community and the Caribbean Community. They also have been precursors to a plethora of regional interdependent arrangements in Asia and, less so, in the Andean region (which has been more influenced by ILO). The trend towards policy coordination is also occurring among the countries of and Eastern Europe, both through bilateral arrangements and agreements extended by the EU countries.

NAFTA has been in place since 1989 between Canada and the United States and joined by Mexico since 1994. The purpose of NAFTA is to promote the free flow of goods and capital and thereby to stimulate economic and job growth throughout North America. NAFTA does not create a common market for the movement of labour but does permit the temporary entry of highly qualified workers, in particular, business visitors, treaty traders and investors, intra-company transferees and professionals (OECD, 1995, pp. 106 and 107). Although the discussions about NAFTA centre around the economic impact, the Agreement is considered to have prospects for migration flows between the countries.

A regional economic grouping that will likely have implications for future migration trends in the Southern Cone of Latin American is MERCOSUR, established by Argentina, Brazil, Paraguay and Uruguay. Created along lines similar to that of the European Union, the pact, which entered into force in the mid-1990s, permits the free movement of persons, goods and capital among the member countries. The impact of MERCOSUR on international migration is expected to derive primarily from the elimination of such barriers, and the domestic economic restructuring of the member countries as a result of regional integration. The significance of the abolition of barriers to circulation and residency of persons is more questionable than that of economic integration, since, as it has been argued, movements between the countries have already been part of a long tradition (Maletta, 1992, p. 37).

Another common market established in 1989 by the Andean Pact countries (Bolivia, Colombia, Ecuador, Peru and Venezuela) did not initially appear to deal directly with questions relating to migratory movements between its members. Nonetheless, in 1990, the

Presidents of the Andean countries adopted, under the Acta de la Paz, a measure aimed at speeding up the process of frontier integration by abolishing visa requirements and creating a common Andean passport (United Nations, *World Population Monitoring, 1997*, forthcoming). Since 1992, there has been a growing motivation to take a common approach to social questions, and to address specific questions relating to the movement of persons (Léon and Kratochwil, 1993, 41). In 1992, as part of the reorientation of the foreign relations between the countries of the Andean Group of Nations, an agreement was signed with the International Organization for Migration (IOM). At the first meeting of migration officials, a greater participation of IOM was advocated, and steps were taken to formalize a closer institutional relationship concerning movement of persons.

In Asia too, economic interdependence among Japan and the newly industrialized economies (NIEs), which include Hong Kong, China; Singapore; South Korea; and Taiwan Province of China, and the four Association of South-East Asian Nations (ASEAN) states (Malaysia, Thailand, Indonesia and the Philippines) has had a considerable impact on international labour migration. ASEAN provides a forum for Ministers of Labour to discuss issues of common interest among member countries that experience the greatest volume of labour migration in the region. Over the past two decades, the increasing interdependence of the Asian/Pacific Rim countries has been manifest by the growth of capital investments and the increase in the volume and composition of intraregional trade. There has been a trend towards relocating labour-intensive production away from the more technologically advanced Asian countries and into those with cheap and expanding labour supplies. Labour-short economies opt increasingly for exporting capital rather than importing people (Lim, 1994, p. 145). In contrast to the European Union, which has adopted measures for the free movement of nationals of member countries while coordinating efforts to control the entry of workers from outside the Union, ASEAN member States have not favoured free movement policies for labour, nor do they offer preferential treatment for workers from member States. According to some observers, this partially explains the massive clandestine migration within Asia (Lim, 1994, p. 137). Nonetheless, cross-border "immigration industries" in the region, involving recruitment agents, overseas employment promoters, manpower suppliers, trade associations and transnational corporations, have been pivotal in mobilizing market opportunities.

It is expected that regional organizations such as ASEAN will play an increasingly important role in intraregional migration policy, including establishing a relatively uniform set of regulations governing work permits, employment duration and social security benefits. The International Labour Organization is also expected to assist in the formulation of agreements acceptable to employers, workers and Governments. ILO held a series of Interregional Tripartite Round Tables on International Migration for Arab and Asian countries; it is expected to hold similar conferences in the Asian region, assisting Governments in adopting agreements on the protection of labour migrants, on the standardization of employment contracts and occupational classification of migrant workers, and on reciprocal social security arrangements. A Technical Committee on the Social Security Protection of ASEAN Migrant Workers, which was established with the support of the United Nations Development Programme and ILO, drafted a multilateral Social Security Convention among ASEAN member States that addressed employment injury and invalidity protection. It is expected that other aspects of social security will gradually be added, especially the important issue of providing a linkage between a migrant worker's different periods of employment. Often, workers who have been employed in more than one country have their benefits reduced because their work experience is not considered cumulatively or because there is inadequate documentation for another country. Implementing multilateral arrangements that coordinate such legislation for international migrants is a lengthy, ongoing process because it requires a certain amount of modification of national regulations.

In Africa, at least two regional organizations have been inspired by European instruments: the Communauté économique de l'Afrique de l'ouest (CEAO) and the Economic Community of Western African States (ECOWAS)—Communauté éonomique des États de l'Afrique de l'ouest (CEDEAO), which was established on 28 May 1975 by the Treaty of Lagos. Parallel to ECOWAS is the Economic Community of Central African States (ECCAS), established in 1983 under the joint aegis of the United Nations Economic Commission

for Africa and the Organization of African Unity. This regime also aims to abolish obstacles to the free movement of people, goods, services and capital and to create a Community citizenship.

The 1973 Treaty establishing CEAO stated that the objectives of the Community should include the realization of a homogeneous and integrated economic area within which persons, services, goods and capital might move freely (article 39). A 1978 agreement provided for freedom of movement and equal treatment of nationals (Treaty of Abidjan, 27 October 1978, articles 1-3). ECOWAS was established to promote cooperation and development in economic, social and cultural affairs between 16 West African States,[c] including the six parties to the CEAO Treaty. The Treaty of Lagos, the founding Treaty of ECOWAS, like that of the European Economic Community, contains a preamble referring to the objective of removing obstacles to the free movement of goods, capital and persons. Not only does the Treaty aim to remove obstacles to the free movement of persons in phases, but, according to article 27, the long-term goal is to ultimately create a Community citizenship which may be automatically acquired by citizens of the member States. Nonetheless, provisions relating to the free movement of persons have been complicated, and have come in stages (Plender, 1988, p. 279). Phase I of the Protocol on the Free Movement of Persons and the Right of Residence and Establishment (supplemented to the founding treaty), which allowed visa-free travel within ECOWAS within 90 days, was ratified by all the States and came into effect in 1980. This has had a significant impact on the mobility of workers among member States, since it facilitated entry. Phase II granting the right of residence was adopted in 1986, but not all States have ratified it. Phase III, granting the right of establishment, has yet to come into effect. Economic difficulties encountered in the late 1980s make it unlikely that this last phase will be implemented soon.

In the Caribbean as well, the Caribbean Free Trade Association (CARIFTA) was replaced by the Treaty establishing the Caribbean Community (CARICOM) in 1973. Although this Community is more reserved about abolishing controls for freedom of movement of persons, it has taken some steps to advance the cause of promoting "travel within the region" (Plender, 1988, p. 282).

In addition to regional initiatives such as policy instruments and meetings, there are also regional information networks that address migratory movements. The Continuous Reporting System on Migration (SOPEMI) of the Organisation for Economic Co-operation and Development (OECD) was created in 1973 with the objective of providing the OECD countries with an efficient system of mutual information. Every year, the recent evolution of international migratory movements and the migration policies of the countries in the region are studied and reports are produced which draw conclusions about possible future trends. Other informational projects are carried out by the Economic Commission for Europe's United Nations/ECE project, which began in March 1992. Similar work has been conducted in Latin America by the International Migration in Latin America (IMILA) programme of the Latin American Demographic Centre (CELADE) and by IOM's Information Centre on Migration in Latin America (CIMAL) project. In Africa, the Economic Commission for Africa monitors regularly the patterns and trends of international migration.

NOTES

[a]Directives are considered binding on national authorities with respect to the aims of the legislation, while leaving the choice of methods to national legislators (Böhning, 1972, p. 19; Hovy and Zlotnik, 1994, p. 21). In comparison, regulations are substantially more influential, as they are binding in their entirety. They take direct effect in each member State, are applicable without the requirement of transformation into municipal law, and cannot be changed (even with regard to wording).

[b]UNHCR and IOM participate as observers.

[c]The members are: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, the Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, the Niger, Nigeria, Senegal, Sierra Leone and Togo.

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VI. REFUGEES

The trend in refugee numbers has been generally upward during the past three decades, from fewer than 2 million in 1965 to more than 13 million in 1996. During the past few years, however, the worldwide population of refugees has moderated, down from a high of 18 million in 1993. Repatriation efforts have been undertaken by the Office of the United Nations High Commissioner for Refugees (UNHCR) in many areas, for example, in Afghanistan, Mozambique, Myanmar, Rwanda and Viet Nam. Moreover, new restrictions on access to asylum adopted by Governments, particularly in Europe, have decreased the number of applications for asylum. Situations that create new streams of refugees and asylum-seekers continue to emerge, and UNHCR continues to develop and improve responses to the worldwide challenge of refugees and asylum-seekers.

Refugees and asylum-seekers have always been part of the international migration scene, but conditions in the late twentieth century have produced a new urgency, both in countries of origin and countries of destination. The end of the cold war and the relaxation of emigration restrictions in Eastern Europe and the Commonwealth of Independent States made emigration a new possibility for millions of people. However, these emigrants may not qualify for refugee status in receiving countries. In some cases, the realignment of borders and the establishment of autonomous States have resulted in renewed ethnic tensions and conflict in areas where such strife had long been suppressed. Ethnic rivalry may be especially fierce if the Government is controlled by one of several competing ethnic groups.

At the same time that the supply of potential emigrants has increased, developed countries—even those with long traditions of accepting immigrants—have been reassessing policies relating to the admission of immigrants, including refugees. Many countries have tightened restrictions and moved towards adopting selection criteria that favour educated, skilled immigrants. Most legal immigration is now based on skills, family ties and investment capital.

Some countries with large foreign populations, particularly in Europe, are still dealing with the consequences of workers who were imported more than a generation ago and whose numbers continue to grow. An anti-immigrant climate has made it increasingly difficult to find countries willing to accept substantial numbers of refugees. Moreover, some who seek asylum or claim refugee status may have migrated to escape poverty and may not in the end qualify for refugee status. Although rejected, they burden the process of identifying and assisting those granted refugee status. Immigrants who are denied admission in one category may reapply in another category. If they are unsuccessful in immigrating legally, they may join the ranks of undocumented migrants.

Although many of the changes in refugee immigration streams and policies have involved the European continent, the largest numbers of refugees by far are still found in Africa and Asia. The report entitled *Populations of Concern to UNHCR*, issued in July 1996, lists Africa with 5.7 million refugees at the end of 1995, and Asia with 4.5 million. In both continents, the numbers have declined since the end of 1994, from 6.8 million in Africa and from 5.0 million in Asia. By contrast, the number of refugees in Europe, while smaller, increased from 1.9 million in 1994 to 2.1 million in 1995 (UNHCR, 1996a, p. 10). Major refugee-producing countries are Afghanistan, Rwanda, Liberia, Somalia and the former Yugoslavia. Populations of concern to UNHCR include not only refugees but also those recently repatriated to countries of origin; those who have been internally displaced; and those who merit humanitarian concern because they are in danger of being displaced by conflict from their homelands.

The terms "refugees" and "asylum-seekers" are often used interchangeably to designate persons fleeing from their countries. Although both categories of persons must meet the same criteria of well-founded fear of persecution according to the 1951 Convention relating to the Status of Refugees (see section C of this chapter for a discussion of definitions adopted by international organizations), the difference between the two terms is the location of the person at the time of application: refugees are seeking permission to enter the host country, while asylum-seekers are either already in the country in which they hope to be recognized as refugees

or at its port of entry. Asylum-seekers travel on their own initiative and present themselves as persons in need of asylum on arrival. If the host country determines that their claims to refugee status are indeed valid, the asylum-seekers are considered refugees and are accorded the rights of refugees.

De facto refugees are persons who do not meet the definition of refugee as contained in the 1951 Convention, but who are not deported from the country of asylum because of unsettled conditions in the country of origin. Some countries—Australia and Canada, for example—have established separate humanitarian categories to accommodate persons in refugee-like situations who may not meet the strict requirements of the 1951 Convention definition. An increasingly common status for refugees is known as temporary protected status. Countries of asylum that do not want to make a permanent commitment to refugees may grant asylum on a temporary basis until a crisis abates. This status was devised in July 1992 to respond to the situation in the former Yugoslavia. UNHCR asked Governments to give temporary protection to people fleeing the conflict. The agreement guaranteed protection against forcible return; delayed individual determination of refugee status; required countries of asylum to treat refugees in accordance with internationally recognized humanitarian standards; and committed the international community to assist with repatriation when conditions were safe. Temporary protected status bypasses the normal asylum channels and does not require the same burdens of proof. It may be granted to groups or classes of persons, and it may be extended if conditions for repatriation continue to be unfavourable. Among the difficulties associated with temporary protected status are the ambiguity surrounding the rights and entitlements of those who are granted protection and the criteria for determining whether conditions are safe for repatriation.

In the past, solutions to refugee problems were generally limited to three alternatives or to some combination of them. They were repatriation and reintegration in the country of origin when conditions had improved; settlement and integration in the country where the refugee had sought asylum; and resettlement in a third country that was willing to accept refugees. These solutions are clearly inadequate for the current population of refugees and asylum-seekers. UNHCR uses traditional solutions where possible, but it has also developed a wide range of pro-active approaches to meet the needs of refugees and asylum-seekers. Emphasis has shifted from exile-oriented concerns to objectives that include the prevention of situations that create refugees; monitoring conditions in countries of origin with a view to early repatriation of refugees; cooperation in development projects that show immediate results and benefit the entire community; and assistance for persons who are displaced internally within their country for reasons that would make them of concern to UNHCR if they were outside their country.

It is now recognized that successful repatriation and reintegration of refugees must be accompanied by sustainable development projects in the area of origin, especially projects that involve broad participation and do not promote dependency. In order to improve the probability of success of repatriation movements, UNHCR has developed a simple small-scale assistance programme known as the Quick Impact Project (QIP). First implemented in Nicaragua in 1991, QIPs are designed to bring tangible, visible and immediate benefits to areas where returnees and displaced people have settled. They make use of local resources and, where possible, are based on proposals from within the community itself. They strive for active involvement of the returnees and other local residents, and they can be targeted to benefit particular disadvantaged groups, such as female heads of household. QIPs not only address the immediate needs of returnees, but also help to bridge the gap between short-term reintegration assistance and long-term development.

A. Responding to refugees

The Office of the United Nations High Commissioner for Refugees is organized to respond to many types of emergencies involving refugees and asylum-seekers, from short-term basic needs to long-term repatriation programmes. Although the Office was established in the aftermath of the Second World War to meet the needs of persons outside their countries of origin as a result of the war, it has evolved to become an umbrella organization for planning and coordinating programmes designed to find durable solutions for refugee problems. Assistance is often provided in cooperation with governmental and non-governmental implementing partners.

UNHCR offers five major types of assistance for refugees. They are emergency assistance with basic needs in the short term; care and maintenance in the longer term, pending the identification of appropriate solutions; voluntary repatriation of refugees when conditions in the country of origin warrant their return; local settlement and integration assistance in the country of asylum; and third-country resettlement for refugees who have temporary asylum and cannot return home.

1. Emergency assistance

An influx of refugees can occur without warning and can involve thousands of individuals in a short period of time, most of whom have had little time to prepare to leave their homes. Their immediate needs are basic, consisting of food and water, shelter and medical attention, all in a safe environment. Emergency assistance does not normally exceed a period of 12 months. During the 1990s, Asian refugees have figured prominently in UNHCR's emergency operations: nearly 2 million Iraqi Kurds fled to the Islamic Republic of Iran and to the border between Turkey and Iraq; some 260,000 refugees fled from Myanmar to Bangladesh; and approximately 1.5 million people were displaced in Armenia, Azerbaijan and Tajikistan as a result of crises in Central Asia and the Transcaucasus.

The Central Asian republics generated substantial refugee flows in the 1990s as a result of ethnic conflicts and disputes over territory. The Armenians and Azerbaijanis fought over Nagorny Karabakh, a predominantly ethnic Armenian enclave in Azerbaijan; the fighting has resulted in the displacement of hundreds of thousands of people since 1988. Armenia is faced with some 300,000 refugees, while Azerbaijan is currently trying to accommodate as many as 1 million refugees and displaced persons. Initially, the Government of Azerbaijan found accommodation for refugees and displaced persons in private homes or in public buildings, but repeated influxes of refugees have led to a new policy. Insisting that the cities and towns had already reached their capacity and that the only solution was for the people to return to their original towns and villages, the Government set up roadblocks close to the front lines to prevent displaced persons from moving to the capital and to the country's second major city, and from dispersing throughout Azerbaijan. Armenia's refugee problem is compounded by the fact that the country has not fully recovered from a devastating earthquake in 1988 that left the population, especially in urban areas, suffering from a lack of access to food and fuel. Many refugees became squatters in condemned buildings. As many as half the ethnic Armenian refugees from Azerbaijan who initially settled in Armenia left the country, many moving to the Russian Federation. There they found inadequate housing and employment, so most left the Russian Federation and returned home, only to be forced to flee a second time when renewed fighting broke out.

In Central Africa, the emergency in Rwanda in 1994 led to one of the most challenging refugee situations ever encountered by relief agencies. Violence between the majority Hutu population and the minority Tutsis has been a persistent problem since the country became independent in 1962. As the Hutus gained political power, an ever-increasing number of Tutsi exiles sought refuge in neighbouring countries. By the late 1980s, nearly half a million Rwandese were refugees in Burundi, Uganda, the Democratic Republic of the Congo and the United Republic of Tanzania. Civil war broke out in 1990, when the Rwandese Patriotic Front, a movement composed mainly of Tutsi exiles, attacked Rwanda. In April 1994, the country was plunged further into crisis when the presidents of both Rwanda and Burundi were killed in a plane crash. What followed can only be described as a massacre: at least 500,000 people—mostly Tutsis and moderate Hutus—were killed. In two days in late April, some 250,000 Rwandese fled into the United Republic of Tanzania, and in a 24-hour period in July 1994, more than half a million people fled the advancing rebel army in Rwanda and took refuge in the neighbouring Democratic Republic of the Congo. Other Rwandese refugees sought asylum in the United Republic of Tanzania and created one of the world's largest refugee camps, Benako, which became that country's second largest city.

The crisis strained the resources of relief agency personnel; not only were they faced with providing emergency food and shelter, but they had to contend with militant Hutus, who threatened violence to keep refugees from returning to Rwanda. In 1995, UNHCR established a security force to work with troops from the Democratic Republic of the Congo who had been assigned to ensure order in the refugee camps; this was an unprecedented arrangement in the history of UNHCR

Box 3. Safe areas instead of refugees?

In an effort to prevent refugees from fleeing to other countries when threatened by conflicts or dangerous conditions, the international community has intervened in some situations to establish "safe areas" to protect civilians and wounded soldiers within their own borders. The notion of providing safe havens for non-combatants has existed for centuries; in more recent times, the Geneva Conventions included a provision for neutral zones. In such places as Sri Lanka and southern Iraq, guaranteed safe areas have saved lives and prevented mass out-migration. In other areas, however—particularly in Bosnia and Herzegovina and Rwanda—the results have been disappointing.

UNHCR established two open relief centres in Sri Lanka to permit civilians to escape the fighting between Government forces and Tamil rebels. The warring factions did not accede to the creation of the centres, but they have generally respected them. The centres have brought security to the civilian population and reduced the number of refugees fleeing to India, without limiting the options of the local people. They are still free to move in or out of the centres or to seek asylum in India.

The safe area maintained by an international military coalition in northern Iraq has had some success in protecting approximately 1.5 million Kurds. The protected zone was created in 1991 after thousands of Kurds fled to Turkey and were stranded in the mountainous border area when Turkey refused to admit them. The zone enabled them to return home to relative safety. However, the zone is maintained only by threat of force, and it is not free of conflict.

A constant danger with safe areas is the possibility that their purpose will be subverted and they will be used by the parties in the conflict to sustain their confrontation. This has been the case in the ongoing war in Bosnia and Herzegovina. The six so-called safe areas established in 1993 by the United Nations Security Council have not provided protection for civilians, who have been under constant assault and bombardment. The havens have been used as military areas, and their very existence has provoked hostile activity.

Rwanda is another example of limited success. A humanitarian protection zone in south-western Rwanda was created in 1994 by a French-led military intervention authorized by the Security Council. The operation contributed to stopping the massacres and allowing the distribution of humanitarian aid, and it may have reduced the flow of refugees to neighbouring the Democratic Republic of the Congo. But it also provided shelter for combatants and terrorists, and it did not prevent hundreds of thousands of refugees from fleeing the country.

Source: UNHCR (1995). *The State of the World's Refugees, 1995.* New York: Oxford University Press.

(UNHCR, 1995e, p. 32). Although some Rwandese have been repatriated, in 1996 most of the refugees remained outside their country. In 1996 UNHCR was providing protection and assistance to some 2.2 million displaced people in Burundi, Rwanda, Uganda, the United Republic of Tanzania and the Democratic Republic of the Congo.

2. Care and maintenance

Once survival is no longer threatened, measures to ensure the longer-term care and maintenance of refugees must be taken. Basic needs must be met on a more routine basis, while efforts are under way to determine the best durable solution. Assistance usually takes the form of providing food, water, household utensils, medical care, shelter, transportation, basic education, vocational training and other identifiable needs.

The Palestinians are the world's second largest refugee group, after the Afghans. The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) provides education, health, relief, and social services to about 3 million Palestine refugees in Jordan, Lebanon, the Syrian Arab Republic, and the West Bank and the Gaza Strip. UNRWA defines a Palestinian refugee as a person who lived in Palestine for a minimum of two years before the 1948 Arab-Israeli war, who lost both home and livelihood as a result of the conflict, and who sought refuge in present-day Jordan, Lebanon, the Syrian Arab Republic, the West Bank or the Gaza Strip. According to UNRWA, repatriation or compensation are the only permanent solutions for the Palestine refugee problem.

Jordan hosts the largest number of Palestine refugees—nearly two fifths of the total number registered with UNRWA—and the number continues to increase. The overwhelming majority live outside the camps, with only 20 per cent settled in 10 refugee camps. Palestinians in Jordan are eligible for Jordanian citizenship and are granted the same rights and obligations as Jordanians. Those who have lived in Jordan for 10 years are issued two-year passports that give them the right to travel and to own property, but not the right to vote or to hold Government jobs. Two-year passports are issued, upon request, to Palestinian residents of the West Bank; these passports, which do not confer the right to reside in Jordan, are used for international travel. East Bank Palestinians are considered full-fledged citizens of Jordan and are issued five-year passports received by all Jordanian citizens.

In Southern Asia, Afghanistan is the major refugee-generating country, and no durable solution to the problem has been formulated. Some 6 million Afghans fled the country and sought refuge in the Islamic Republic of Iran and Pakistan following the Soviet invasion of Afghanistan in 1979. Fifteen years later, many of those who fled are still housed in refugee camps, while a new generation of refugees is leaving Afghanistan because of continuing unrest, insecurity, human rights violations, hunger, lack of infrastructure, environmental damage, and harsh winters. Even some Afghans who had voluntarily repatriated to Afghanistan have returned to the border. In response to the renewed influx of refugees, the Governments of Pakistan and the Islamic Republic of Iran closed their borders to incoming refugees and camps have been set up inside Afghanistan. It is estimated that more than 2 million internally displaced persons are living in Afghanistan.

Although nearly 1 million Afghan refugees repatriated from the Islamic Republic of Iran and Pakistan during 1993, by year's end, some 1.9 million Afghan refugees were still living in the Islamic Republic of Iran and 1.48 million were found in Pakistan. Continuing political uncertainty and insecurity in Afghanistan has prevented UNHCR from actively promoting repatriation. However, UNHCR and the World Food Programme stand ready to provide assistance in the form of cash and food grants to refugees who decide to repatriate from the Islamic Republic of Iran and Pakistan. UNHCR also provides such emergency equipment as bednets in malarial areas, quilts, plastic sheeting and tarpaulins. The United Nations Office for the Coordination of Humanitarian Assistance to Afghanistan (UNOCHA) is continuing its Mine Clearance Programme, which includes land surveillance, mine clearance and mine awareness training. In cooperation with UNHCR, the Governments of Afghanistan, the Islamic Republic of Iran and Pakistan established two tripartite commissions on voluntary repatriation in order to facilitate the safe, orderly and voluntary repatriation of Afghan refugees. Adding to Afghanistan's problems are the increased flows of Tajiks fleeing civil war in Tajikistan.

Box 4. Reproductive health in refugee situations

THE NEED FOR ADEQUATE AND TIMELY REPRODUCTIVE HEALTH INTERVENTION

- Sexual and gender-based violence

The events which recently took place in the former Yugoslavia and Rwanda have provided a dramatic illustration of the fact that sexual and gender-based violence tends to spread in unstable situations and in populations which have been forced to move. Refugees are therefore typically at risk and among them those most at risk are unaccompanied women, lone female heads of household, unaccompanied children, children in foster care arrangements and refugees in detention or detention-like situations. The large majority of reported cases of sexual violence among refugees involve female victims and male perpetrators, although male victims are not uncommon.

- Reproductive ill-health

Typically, about 20 per cent of the population in developing countries are women of reproductive age (15-44 years old), and 25 per cent of these are pregnant at any one time. It is estimated that approximately 15 per cent of pregnant women will develop complications which require essential obstetric care, and up to 5 per cent of pregnant women will require some type of surgery. However, birth rates have been found to be considerably higher among refugees than among local populations. The percentage of female adolescent refugees who are pregnant sometimes reaches 25 per cent. A high incidence of abortion, especially clandestine abortion, has been reported. Reproductive health needs are often acute in the period following the immediate emergency. Refugees have usually lost their means of livelihood and are unable to buy medical supplies such as contraceptives. Without family planning services, refugee women are faced with the risk of frequent pregnancies and increased risk of sexually transmitted disease/HIV.

THE MINIMUM INITIAL SERVICE PACKAGE (MISP)

In order to meet the specific needs for reproductive health of refugees and, in particular, of women and adolescent girls, an inter-agency field manual on reproductive health in refugee situations has been prepared which provides guidance to field staff in introducing and implementing reproductive health services. During the initial phases of a new refugee situation, the manual recommends implementation of a minimum package providing core reproductive health care. Four basic services are included in this minimum package:

- the prevention and management of the consequences of sexual and gender-based violence including the provision of emergency post-coital contraception
- the enforcement of respect for universal precautions against HIV/AIDS
- guaranteeing the availability of free condoms
- the provision of delivery kits for self-use by women and UNICEF midwife delivery kits

In addition, the MISP encompasses planning activities for the provision of comprehensive reproductive health services, in particular comprehensive antenatal delivery and post-partum services, as soon as feasible.

Source: UNHCR(1995). Reproductive health in refugee situations. An inter-agency field manual.

3. *Voluntary repatriation*

The 1990s have been designated by the United Nations High Commissioner for Refugees as the "decade of voluntary repatriation". Although regarded as the preferred solution to the refugee problem, successful repatriation can occur only in a context of peace and stability. Unfortunately, current repatriation movements often take place under less than ideal conditions in the country of origin. This creates serious problems with regard to the protection of refugees. The majority of refugees who returned voluntarily to Afghanistan, Angola, Cambodia, Mozambique and Somalia in the early 1990s have returned home amid continuing conflict, instability and insecurity.

Repatriation movements can take place either with or without the assistance of the international community. Many returnees go home spontaneously; others return under the auspices of international organizations, especially UNHCR, as part of formal repatriation programmes. Refugees who return home without assistance may find that they are not equipped with the basic necessities with which to build a new future. UNHCR and other organizations provide materials for shelter, seed packets and agricultural tools, and they may sponsor projects that support the infrastructure, such as road construction, restoration of water supplies, rebuilding health-care facilities, organizing landmine awareness campaigns, and offering social services (see box 5). Examples of organized repatriations are the Cambodian repatriation programme conducted by UNHCR in 1992-1993 to allow for the safe return of Cambodian refugees living in Thailand, and the UNHCR-organized repatriation movements of more than 1.5 million Mozambican refugees from some six countries of asylum that began in 1993.

The great majority of refugees, however, are not part of organized repatriation movements but return home on their own initiative. In 1992, out of a total of approximately 2.4 million refugees who repatriated, about 70 per cent returned home without organized support. Such spontaneous repatriations present a special challenge to UNHCR as well as to the Governments and non-governmental organizations that are entrusted with the protection of refugees. In their eagerness to return home, some refugees do not wait for the political climate to normalize, but repatriate at the first sign of an improvement or a hint of possible relaxation of hostilities. For example, Afghan refugees in the Islamic Republic of Iran and Pakistan began to return home in increasing numbers following the collapse of the Najibullah regime in April 1992, despite continued fighting in the country. By June 1993, some 1.7 million Afghans had repatriated with the aid, rather than with the formal encouragement, of UNHCR.

Spontaneous repatriation movements are often triggered by the end of war, by the disappearance of the conditions that precipitated out-migration, or by a change in government which brings an end to violence and persecution. Repatriation can also occur in response to legal measures taken by the country of origin, for example, the proclamation of amnesty for nationals living abroad, or the recognition of property rights of refugees who were deprived of their possessions on departure. Repatriation can also be the result of delicate negotiations between the country of origin and the host country, often with UNHCR acting as intermediary. UNHCR has facilitated repatriation movements by providing transportation, reception and relief services in designated areas, and agricultural tools and seeds necessary for economic self-sufficiency. Finally, repatriation can also be triggered by the outbreak of conflict in the country of asylum; for example, in the early 1990s, hundreds of thousands of refugees fled the outbreak of fighting in their countries of asylum and returned home to Angola, Ethiopia, Liberia and the Sudan. At times, refugees are forced to flee because of direct attacks on refugee camps; in May 1991, some 380,000 Sudanese in Ethiopia fled to the border and to the Sudan when fighting broke out in the camps where they had settled.

In Africa, the great majority of refugees wish to return to their home countries. Indeed, some refugees prefer continuing violence and insecurity in their own country to living in exile. In 1993, approximately 60,000 Burundians and 250,000 Somalis returned home despite continuing conflict.

The largest and most ambitious repatriation programme in Africa is the Mozambique Repatriation and Reintegration Operation, which was designed to return and reintegrate close to 1.7 million Mozambican refugees and to rebuild the country's shattered

Box 5. Refugees and landmines

Landmines are an increasingly common weapon of war and a lasting legacy of destruction in countries trying to recover from armed conflicts. Landmines maim and kill civilians, render land unusable, disrupt transportation networks, and make it impossible for relief agencies to repatriate refugees. The United Nations estimated in 1995 that 100 million landmines were scattered through 64 countries around the world. Among the countries most contaminated with landmines are Afghanistan, Iraq, Kuwait and Cambodia.

Landmines are cheap and readily available from suppliers of war *matériel*, and they can be deployed easily. Once in place, they may remain a danger for decades. When stepped on or touched, they explode and cause death or injury, especially the loss of limbs. They are a particular danger to children playing out of doors; landmines are sometimes made to resemble toys that tempt children to pick them up and play with them. Landmines have virtually no advantage as military weapons; their sole use is to terrorize the civilian population. Cambodia is estimated to have the world's highest percentage of disabled persons because of exploding landmines: 1 of every 236 Cambodians is an amputee.

Territory that has been sown with landmines is hazardous to farmers and interferes with their production of food. Deprived of the means to feed themselves, the local population may be forced to flee and become refugees. Removing landmines is dangerous and costly, as much as US$ 300 to US$ 1000 per landmine; it requires labour-intensive efforts and equipment, but it must be done before refugees can return to their homes.

Landmine awareness is a necessary component of many repatriation programmes undertaken by the United Nations High Commissioner for Refugees. In Mozambique, for example, mine awareness campaigns in refugee camps taught returnees how to avoid the dangers posed by some 2 million mines scattered throughout the country.

The United Nations has organized an international effort to ban the use of landmines in all conflicts and to stop their manufacture. Approximately 800 persons are killed every month and thousands more are maimed by landmines already in place. Moreover, the cost of medical care and rehabilitation services for victims diverts scarce resources away from other urgent tasks in the reconstruction of damaged areas.

Sources: Ferris, Elizabeth G. (1996). After the wars are over: reconstruction and repatriation. Paper prepared for the Pew Project on Migration Policy in Global Perspective, 4 October. The International Center for Migration, Ethnicity and Citizenship, The New School for Social Research, New York, NY.

United Nations, Department of Public Information (1993). *United Nations Focus. The Scourge of Land Mines* (October 1993).

infrastructure. Tripartite agreements between the Mozambican Government, UNHCR and the six asylum countries hosting Mozambican refugees (Malawi, South Africa, Swaziland, the United Republic of Tanzania, Zambia and Zimbabwe) provided guarantees and outlined the prescribed procedures for the three-year repatriation process, which began in 1993. By February 1994, the operation had successfully repatriated some 600,000 Mozambicans, or over one third of the total number of refugees. Mass information campaigns were conducted in the countries of asylum in order to keep refugees fully informed about developments in Mozambique. UNHCR also conducted mine-awareness campaigns in all refugee camps to ensure that returnees were trained how to avoid the dangers posed by some 2 million mines scattered throughout the country.

Returnees were provided with agricultural tools and seed kits, as well as one year's supply of food to see them through to their first harvest. Quick Impact Projects, organized in areas of most need and coordinated with bilateral and development agencies to ensure continuity after UNHCR assistance is phased out, include road and bridge reconstruction, organization of transit centres, demarcation of mined areas, monitoring of food allotments, distribution of agricultural tools and seeds, re-establishment of water supplies and sanitation facilities, provision of temporary shelter, re-establishment of health facilities and primary schools, and restoration of community services. Since the restoration of peace in the country, Mozambique is hosting a small number of refugees from Angola, Burundi, Ethiopia, Somalia and Uganda.

Demobilization was another part of the repatriation programme in Mozambique; approximately 70,000 soldiers and their families were demobilized and reintegrated. Demobilization focused on the surrender of weapons; the provision of food, clothing, health care, severance pay, and information on employment and training options; transportation to the destination of choice; further training, advice and assistance; and continued cash payments for 18 months.

Other repatriation operations in Africa include the return of Somalis from Kenya, Ethiopia, Djibouti and Yemen, as well as the return of a smaller number of refugees to Ethiopia. In Somalia, where the voluntary repatriation operation was carried out with the support of UNHCR's Cross-Border Operation, some 386 Quick Impact Projects launched jointly by UNHCR and non-governmental organizations in safe areas of the country supported the reintegration and rehabilitation of refugees. By the end of March 1994, more than 150,000 refugees living in Kenya had been repatriated to Ethiopia and Somalia, closing down two refugee camps and four refugee border sites in Kenya.

Traditional repatriation assistance that stopped at the border is no longer considered adequate. Providing returning refugees with food, agricultural tools and seeds, and a small amount of cash may satisfy their immediate needs, but long-term assistance requires projects that benefit the community as a whole and provide a bridge towards long-term development programmes. Such assistance often involves reconstruction of war-torn areas, including removal of landmines, road repair, rebuilding of infrastructure, and restoration of health-care and social services. It is feared that, if aid is not forthcoming, deprivation and competition for resources may lead to a renewal of fighting and more displacement.

A major repatriation programme was carried out in Cambodia in the early 1990s. More than two decades of war in Cambodia had resulted in the displacement of some 370,000 Cambodians, who sought refuge in neighbouring countries, primarily in Thailand. The largest and most expensive peacekeeping mission in the history of the United Nations, the United Nations Transitional Authority in Cambodia (UNTAC), was organized to address the refugee crisis. Lasting 18 months, involving 22,000 soldiers and civilians, and costing more than US$ 2.8 billion, the mission concluded with the organization of a large-scale repatriation operation, one of the largest logistical operations undertaken by UNHCR. Between 30 March 1992 and 30 April 1993, more than 365,000 Cambodians returned home, at the rate of 1,000 a day. The majority of the returnees had lived in refugee camps in Thailand; only some 2,000 refugees came from other countries in South-Eastern Asia.

The returnees were offered a choice of repatriation packages, consisting of land, fuel, cash, food rations and a household/agricultural kit. The vast majority of returnees chose the cash option, which enabled them to reunite with relatives who had remained in Cambodia

and still possessed land. After the repatriation operation was completed, the top priority became the successful reintegration of returnees. Some 50 Quick Impact Projects were implemented in collaboration with the United Nations Development Programme in order to help reintegrate returnees and to benefit the local population. Projects included the construction and repair of roads, bridges, schools and health centres; digging of wells; the preparation of land for cultivation; and the provision of seeds for families. UNHCR also organized demining operations that included the promotion of mine awareness; mined-area information collection and marking; mine clearing; and training in mine identification, detonation and the administration of first aid.

Bangladesh both hosted and generated refugees in the early 1990s. One of the poorest countries in the world, Bangladesh was faced with the problem of sheltering a large number of Rohingya refugees from Myanmar who began to arrive in late 1991. The initial welcome that the refugees were given soon turned to official and popular resentment over the refugees' prolonged stay in overcrowded makeshift camps, and many refugees were repatriated involuntarily. UNHCR and the Government of Bangladesh signed a Memorandum of Understanding in 1993 agreeing to cooperate to ensure the safe and voluntary repatriation of refugees who wished to return to Myanmar. Meanwhile, Chakma refugees from the Chittagong Hill Tracts region of Bangladesh fled violence and violation of human rights and sought refuge in north-eastern India. Despite several meetings between officials of Bangladesh and India to discuss the repatriation of the refugees, only a small number of Chakma refugees returned home. Helped by assistance in the form of cash grants, housing materials and food rations, the repatriation process gathered some momentum in the mid-1990s.

In some instances, Governments prefer not to involve UNHCR when dealing with an influx of refugees. India hosts a significant number of Asian refugees: Sri Lankan Tamil refugees in Tamil Nadu State in southern India; Tibetan refugees; Chakma refugees from Bangladesh; ethnic Nepalese refugees from Bhutan; Afghan refugees; ethnic Nagas and pro-democracy students from Myanmar; and refugees from 14 other countries including the Islamic Republic of Iran and Somalia. The Government of India has repeatedly declined offers of international assistance to all refugees except individuals living in the capital and in other urban areas. In 1992, the Government agreed to give UNHCR a limited role in the repatriation of Sri Lankan refugees. Indian Government policy is to encourage refugees to return home, and the Government has organized repatriation registration drives for Sri Lankan refugees to persuade them to repatriate.

A decade-long, ethnic-based conflict in Sri Lanka has resulted in the displacement of well over 100,000 Tamils who sought refuge in India and as many as 250,000 who sought asylum in the West. Tamils are traditionally a migrating population, and their presence has presented a problem for Governments faced with their status determination. Most European Governments either granted them temporary leave on humanitarian grounds, or denied them asylum, but did not deport them. Canada followed a liberal policy towards Tamils, while the United States granted asylum to a small percentage of those seeking refuge within its borders. Tamils have been repatriating from India (both voluntarily and involuntarily) for several years. UNHCR has a limited role in the repatriation process, temporarily placing in reception centres those who did not return to their original homes or who did not choose to live with relatives or friends. Tamils who returned to Government-controlled areas received the same Government assistance available to internally displaced Sri Lankans who returned home. Those who came back to the rebel-controlled areas received a grant from UNHCR and food assistance from the Government for three months.

Following the outbreak of civil war in Tajikistan in 1992, more than one tenth of the country's 5.4 million people fled their homeland. By September 1994, more than 100,000 Tajik refugees had sought refuge in Afghanistan. In 1993, Tajik refugees began returning home from Afghanistan both spontaneously and with UNHCR assistance. One of UNHCR's main functions in Tajikistan is to assist local authorities in protecting returnees.

In the Caribbean, a coup in Haiti in 1991 precipitated the flight of thousands of refugees, some to the Dominican Republic but most to the United States. Claims for asylum were processed in the United States, but less than a third of the refugees were found to have reasonable grounds for asylum. Most were repatriated to Haiti.

A United States policy change in May 1992 resulted in interdiction of Haitians at sea and their immediate repatriation. After the return of the exiled President and the achievement of a degree of stability in Haiti, most of the 20,000 Haitian refugees who had been detained at the United States base at Guantánamo Bay in Cuba and in Panama were repatriated to Haiti.

Repatriation of refugees in Central America in the 1990s required a major effort on the part of local governments and international agencies, but the outcome has been extremely successful. Civil conflict and economic instability during the 1980s, especially in El Salvador, Guatemala and Nicaragua, uprooted as many as 2 million people, of whom about 165,000 were recognized as refugees. The peace initiative designed by Central American Presidents in 1987, known as the Esquipulas II Accord, recognized the link between peace and development, as well as the root causes of refugees and displaced persons. At the request of Governments in the region, the Secretary-General of the United Nations convened the International Conference on Central American Refugees (CIREFCA) at Guatemala City in 1989, which produced a Concerted Plan of Action based on commitments by Governments, cooperating countries and UNHCR and the United Nations Development Programme.

The Conference promoted voluntary repatriation because it achieved the goals of international protection and the reincorporation of refugees and displaced persons into their own communities. CIREFCA facilitated the voluntary repatriation of 70,000 Nicaraguans, 30,000 Salvadorans and 16,000 Guatemalans. For those refugees who settled in a country of asylum, CIREFCA maintained that they should be able to enjoy economic, social and cultural rights so that they might lead productive and dignified lives. Resettlement of Central American refugees in third countries was done only in exceptional cases, such as for individuals who needed special protection, or those who wanted to be reunified with families elsewhere.

The CIREFCA approach linked development projects with emergency assistance, integrating populations into the development process and bringing benefits to both the uprooted population and the local communities that received them. Quick Impact Projects were implemented in Belize, El Salvador, Guatemala and Nicaragua, adapting assistance to the needs of specific groups and encouraging the participation of women. In Nicaragua alone, 29 QIP micro-projects to benefit women included a honey-production enterprise, a charcoal-making project, livestock raising, and seminars on starting and managing businesses.

Political progress was achieved as well. Belize acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol and adopted national legislation to incorporate these instruments. It also improved its refugee policies and moved towards integrating the 30,000 Central American refugees and displaced persons in the country. Costa Rica adopted policies that recognize asylum, support repatriation, and facilitate local integration of refugees. The status of more than 10,000 refugees was changed to permanent or temporary resident, allowing for integration and permitting the closing of refugee camps. More than half of the 45,000 refugees in Costa Rica chose to remain in the country.

More than 8,000 Guatemalans were repatriated after the national peace plan promulgated by the Government in October 1993 gave priority to assisting refugees and displaced persons. Honduras also acceded to the United Nations refugee instruments, and the Government facilitated the voluntary repatriation of refugees, closed refugee camps and implemented development projects in communities with large populations of refugees. Mexico has introduced legislation to ensure an appropriate status for refugees, many of whom came from Guatemala. A series of infrastructure and economic and social development projects were implemented to promote the self-sufficiency of Guatemalan refugees living in the Mexican States of Campeche, Chiapas and Quintana Roo.

When the CIREFCA process ended in the summer of 1994, a final meeting at Mexico City renewed commitments to sustainable human development strategies in Central America. The need to address causes of poverty and social exclusion was recognized, as was the usefulness of a territorial approach that targets priority areas and searches for regional solutions.

4. Local settlement and integration

In the past, refugees were often granted asylum in the country where they sought refuge. Although voluntary repatriation may be a preferred solution for many refugees, it is not a viable option in countries that are ravaged by war and destabilized by continued turmoil. Asylum has traditionally been assumed to confer permanent residence status, and refugees were expected to settle and become integrated into the host society.

Currently, more refugees are granted asylum in less developed countries than in Western industrialized nations. Countries differ in the degree of willingness to grant local integration. In Eastern and South-Eastern Asia, for example, asylum countries usually do not favour local integration as a solution. Only certain groups have been admitted permanently; for example, 1,000 Cambodians obtained permanent residency in Thailand in 1990 (Rogers and Copeland, 1993, p. 73). Africa, Southern and Western Asia, and Central America offer greater possibilities for local integration; despite the fact that asylum may be granted for the long term, in most countries refugees are expected to return home eventually. Refugees in Western Europe, the United States, Canada and Australia can usually opt for permanent residence and full integration into the host society.

According to the United Nations High Commissioner for Refugees, the continent with the most refugees as of December 1995 was Africa. About 5.7 million people were considered by UNHCR to be refugees, of whom 80 per cent were assisted. The total had declined by more than 1 million from the previous year (UNHCR, 1996, p. 10). Africa has a tradition of hospitality towards refugees and, in some countries, legislation reflects this attitude. The Governments of Lesotho and Zimbabwe were the first in Africa to pass progressive protection-oriented refugee legislation in 1983, which served as a model for legislation in other African countries, including Malawi and Ghana. Benin, Senegal and the Sudan are among the countries that have legislation governing the recognition of refugee status; their laws provide for equal access with nationals to education, employment and social benefits.

In addition to formulating policies and legislation that ensure legal recognition and protection for refugees, the host Government also makes provisions for the reception, relief and settlement of refugees within its borders. In Africa, three types of international organizations assist Governments in this capacity: the Office of the United Nations High Commissioner for Refugees (which is often assisted by specialized agencies of the United Nations system), non-governmental humanitarian organizations, and the Organization of African Unity. UNHCR programmes in Africa amounted to one third of its total budget in the late 1980s; the Office has assisted by helping to settle refugees in camps, distributing food and initial relief, distributing land provided by the Government, investigating individual cases and assisting in obtaining recognition of refugee status, placing refugees in jobs or educational institutions, and organizing repatriation movements. UNHCR also provides legal and administrative assistance in drafting national laws and regulations that are in keeping with international instruments, and in establishing national support structures for refugees. Approximately 70 humanitarian organizations assist refugees in Africa; they include international non-governmental organizations, private national associations, and international bodies of a religious nature that operate through national agencies to assist refugees in Africa. OAU established the Bureau for Placement and Education of African Refugees in 1968 (later known as the Bureau for African Refugees) to disseminate information on education, training and employment opportunities.

Countries in Africa have always assumed responsibility for their own refugees to a much greater extent than other regions of the world. Local integration in other African countries was the most common solution for the majority of African refugees, many of whom found refuge across the border. Some refugees settled for long periods or permanently. The majority have settled spontaneously without assistance; others live in organized settlements, usually established under UNHCR auspices. Nearly all the settlements are agricultural and are intended to become self-sufficient within a few years; however, very few actually achieve this. In many countries, such as Somalia and the Sudan, refugee camps are the only available option. Most refugees settle in rural areas, but the proportion of refugees in urban areas has been increasing.

Most African Governments considered the admission of refugees to be a humanitarian act; the ratification of

the 1969 OAU Convention reflected this spirit of hospitality. The United Republic of Tanzania became the first African country to offer refugees the opportunity to become naturalized citizens. More recently, however, the financial burden of hosting large numbers of refugees, coupled with continued instability in the region, has strained the tradition of African hospitality and the practice of granting asylum. Some countries of asylum are unable to ensure adequate services for their own citizens; they do not have land to spare, sufficient educational and employment opportunities, or adequate health and social services to meet the needs of refugees. Destruction of forests and other natural vegetation surrounding refugee camps, soil degradation, the lowering of water-tables in arid regions, overgrazing by livestock, and pollution are among the environmental problems that have emerged as a result of the high concentration of people in a limited space. In some countries, notably Djibouti, Kenya and the Sudan, large numbers of refugees have added to unemployment, underemployment and urban problems.

Many African countries are no longer in a position to offer local integration as a durable solution to so many refugees. Even when long-term asylum is granted, it is usually with the expectation that refugees will eventually return home. On the grounds that it is no longer in a position to cope with the volume of refugees, the United Republic of Tanzania, home to over 700,000 refugees, closed its borders to refugees from Burundi and Rwanda in March 1995. Soldiers in Burundi turned away refugees from Rwanda, despite the fact that the borders were officially open. The Democratic Republic of the Congo, too, announced that it would not admit more refugees.

In Eastern Europe, countries that have never before been besieged with large numbers of refugees or asylum-seekers have recently begun to formulate policies towards asylum-seekers, and some have become parties to the 1951 Convention and its 1967 Protocol. Hungary extends no legal status to asylum-seekers who come from outside Europe, and it refers all such claimants to UNHCR for status determination. The Czech Republic passed a bill in 1993 to require asylum-seekers to declare their intention to apply for asylum immediately upon entry at the border. Those who are accepted as refugees are subsidized by the Government and provided with health care, housing assistance, education for children, and job placement services. They have almost the same rights as Czech citizens, except for voting rights and some employment and property ownership restrictions. After being required to obtain work permits for the first three years, they have free access to the labour market.

The two largest newly independent States in Eastern Europe, the Russian Federation and Ukraine, have already adopted new migration legislation to address the problem of refugees and asylum-seekers. In the Russian Federation, refugee legislation that went into effect in March 1993 is oriented towards swift integration of refugees, encouraging them to find permanent residence within three months from a list of places provided by the Federal Migration Service, and to apply for citizenship within three years or to voluntarily repatriate. Under the new law, a refugee is defined as a non-citizen who has arrived or who wishes to arrive in the Russian Federation and who has either been forced to flee or who intends to flee another country because of violence or persecution committed against him or her in any form, or because of a real danger of violence or persecution based on race, nationality, religion, language, membership in a particular social group, or political opinion.

Defining forced migrants more broadly in terms of causes of migration, but more narrowly in terms of geographical origin, the companion law on forced migrants was intended to codify reception and resettlement procedures and to reassure ethnic Russians outside the Russian Federation that they would be welcome in the country if they were forced to leave their current place of residence. Under the new law, a forced migrant is defined as a citizen of the Russian Federation who was forced (or who intends) to leave his or her place of habitual residence in another State or in the territory of the Russian Federation because of violence or persecution committed against him or her in any form, or because of a real danger of being persecuted for the same reasons as those outlined above in the case of refugees. A forced migrant is also one who is forced or who intends to leave following hostile campaigns aimed against certain individuals or groups, massive disturbances of the social order, or other circumstances seriously violating human rights. Included in the definition of forced migrants are non-citizen permanent residents of the Russian Federation who have been displaced for the same reasons, and citizens of the former

Soviet Union living in other former Soviet Republics who have moved to the Russian Federation for the same reasons. The new Russian legislation has resulted in considerable ambiguity over who is a *refugee* and who is a *forced migrant*. Moreover, the law combines both persons who flee other former Soviet Republics to seek asylum in the Russian Federation and internally displaced persons within the Russian Federation.

The Parliament of Ukraine adopted a law on refugees in December 1993 with a definition of refugee that corresponds to the 1951 Convention. According to the new legislation, refugee status will not be granted to individuals who are citizens of a country which recognizes human rights and where there is no persecution, or to persons who, prior to arriving in Ukraine, resided in a country where asylum could have been obtained or refugee status acquired. Individuals who have committed crimes against peace, war crimes or crimes against humanity, as well as persons who committed crimes of a non-political nature outside the borders of Ukraine prior to entering the country are also not admitted. The Migration Service of the Ministry of Nationalities and Migration has one month after an application is filed in which to make a decision on the granting of refugee status. In addition to being guaranteed basic human rights and freedoms, refugees in Ukraine have a right to education, employment, health-care services, housing, financial assistance, and other social security benefits. They can acquire property under the same conditions as foreigners. Refugees also have a right to choose a place of temporary residence from a list of areas of residence proposed by the Migration Service, and the right to free movement within the territory of Ukraine. The law prohibits deportation of a refugee to a country where conditions have not improved.

In Northern Europe, Sweden has the largest number of asylum applications among the Nordic countries. Prior to 1989, asylum could be granted to refugees as defined by the 1951 Convention on humanitarian grounds, and to conscientious objectors and de facto refugees who did not meet the criteria of that Convention but who were unwilling to return to their country of origin because of the political situation in that country. In 1989, the Swedish Parliament temporarily restricted its definition of a refugee to include only those persons who fell under the terms of the 1951 Convention. The country's asylum process has come under increasing scrutiny in the past few years, largely because of the social and economic burdens it places on Swedish society. Persons awaiting a decision on their asylum case (final decisions may take anywhere between one and three years) are provided with basic necessities, housing and emergency health care; until recently, they were not permitted to seek employment while their cases were pending. A new Aliens Board was created in 1992 to deal with the backlog of asylum cases.

Sweden formerly granted permanent residence status to those who were accepted for asylum, but a temporary protection system was established in 1994 for persons who left their country because of civil war and were involved in a situation that was expected to change in the foreseeable future. Temporary permits can be issued for up to two six-month periods; a residence permit is granted if the situation in the country of origin has not improved.

In response to public concern that refugees were placing an undue burden on the country's major cities, in 1985 the Government of Sweden devised an elaborate programme of refugee dispersal based on the welfare state and municipal system, providing accommodation and welfare payments for a period of three years. Once the period of support expired, however, most refugees returned to metropolitan centres. Nevertheless, under this programme, Sweden was able to settle some 100,000 refugees within five years, most of them outside the country's three major cities.

In the Caribbean, refugees from Cuba have constituted a major movement of immigrants. The policy of the United States from the beginning of the Castro regime in 1961 until 1994 was automatic asylum and local integration for Cuban refugees. During the 1960s, about 10 per cent of Cuba's population, mostly the educated middle and upper classes, emigrated to the United States. With the loss of financial support in the early 1990s following the break-up of the Soviet Union, Cuba experienced growing economic problems and political isolation, and a new wave of refugees sought to reach United States territory. Responding to an influx of boat people, the United States changed its policy in 1994 from automatic entry to an annual allotment of 20,000 visas available to Cubans who apply for them in Cuba. Cuban refugees who arrive spontaneously are detained

and returned to Cuba. The United States agreed to admit 6,000 refugees annually, and the definition of refugee was broadened to include former political prisoners, human rights activists, labour conscripts and others.

5. *Third-country resettlement*

The planned removal of refugees from the country of asylum for permanent resettlement in another country is known as third-country resettlement. It is usually thought to be the least desirable alternative in the search for a permanent home for refugees, to be implemented only when there is no other solution available. Refugees may be resettled if repatriation is impossible because of continuing warfare in their own country, or if conditions in the host country deteriorate to the point where their safety is in question. In the case of temporary protected status, third-country resettlement may be necessary when the host country is unwilling to extend further protection. Resettlement may also be used as a solution for vulnerable groups, such as torture and rape victims, the disabled, the injured and severely traumatized persons in need of specialized treatment unavailable in the first country of asylum. Resettlement is often the only way to reunite refugee families whose members were forced to seek shelter in different countries.

Third-country resettlement was once the primary resolution of the predicament of refugees and displaced persons, especially after the Second World War when thousands were resettled from Europe to the Americas and Australia. In the current immigration climate, however, third-country resettlement is available for only a very small percentage of persons seeking refuge. More recent examples of resettlement include the Vietnamese, Iraqi refugees in Turkey and Saudi Arabia, and Somali refugees in Kenya. In 1980, some 3 per cent of the world's refugees were resettled in third countries. In 1992, only 0.2 per cent, or some 34,000 out of a world total of 18.2 million refugees, were resettled in third countries.

No country is legally obligated to accept people for resettlement within its borders. In 1992, only 10 countries announced annual resettlement quotas: the United States (132,000), Canada (13,000), Australia (4,800), Sweden (2,000), Norway (1,000), New Zealand (800), Denmark (500), Finland (500), the Netherlands (500) and Switzerland (500). Several Western European countries, including Austria, Belgium, France, Germany, Greece, Hungary, Spain and the United Kingdom, as well as Japan resettle refugees on a regular basis without declaring annual quotas. The majority of countries, however, rarely, if ever, offer refugees the opportunity for resettlement.

Third-country resettlement may seem to be a logical and simple humanitarian response to the needs of refugees, but in reality, it is problematic. Many countries do not accept resettlement cases. Moreover, the process is complex and expensive, involving the arrangement of international transportation, assistance in the integration of refugees, and the provision and payment of medical treatment and counselling. Resettlement is time-consuming and labour-intensive and requires a highly trained staff. A refugee's background and the situation in the resettlement country must be carefully assessed in order to ensure the chances of successful adaptation.

Resettlement has traditionally been viewed as a permanent solution to the problem of refugees; those who were resettled received a secure, permanent residence status, not unlike that of immigrants, and they could choose to become fully integrated into the host society. However, the majority of refugees who are victims of conflict rather than political persecution may be more in need of temporary resettlement outside the immediate region of confrontation rather than permanent resettlement.

In its Assessment of Global Resettlement Needs for Refugees in 1994, UNHCR estimated that, barring any unforeseen crises, a total of 58,860 places would be needed for the resettlement of refugees in 1994. This figure amounts to less than 1 per cent of the world's refugees. The resettlement needs of Asian refugees were greatest—more than four fifths of the total. Western and Southern Asians accounted for nearly 30,000 places, with South-Eastern Asian refugees requiring another 18,650 places. More than 10,000 African refugees were in need of third-country resettlement as well, although the escalating conflict in Rwanda has made that projection inadequate. Uncertainty in the former Yugoslavia precluded the projection of resettlement needs in Europe; UNHCR reported that more than 40,000 places were offered in 1994 for the temporary protection and resettlement of refugees from that war-torn country.

In Africa, third-country resettlement is an option for very few African refugees, given the relatively low quotas for refugees from Africa. UNHCR assists in the resettlement of a small number of refugees, with priority given to urgent protection cases: those medically at risk; women at risk, including rape victims; and family reunification. Most refugees awaiting resettlement in 1995 were from Ethiopia, Liberia, Rwanda, Somalia and the Democratic Republic of the Congo. African refugees are usually permitted only a brief stay; immigration and asylum restrictions force many refugees to move from country to country. Resettlement is usually the only possible solution for African refugees outside Africa who are destitute or who have violated immigration laws in the country where they have sought asylum; indeed, resettlement has prevented many cases of refoulement and deportation. In 1993, over 6,300 African refugees were resettled in various countries, the majority in the United States. A total of 3,610 refugees, the majority of whom were Somali, were resettled in the West, especially in the United States, in the first eight months of 1994.

The Asian approach to the problem of asylum and third-country resettlement is to offer short-term asylum based on group determinations rather than adopting the Western approach of granting long-term asylum upon individual status determinations on the basis of the 1951 Convention's definition of refugee. In many Asian countries, concerns about overpopulation, security, and threats to the local population balance precluded the granting of long-term asylum and eventual integration into the host society. In Eastern and South-Eastern Asia, for example, short-term asylum for Indo-Chinese refugees was a practical approach because Western countries, especially the United States, had ensured resettlement of the refugees. Before the refugees received offers of resettlement in the West, Asian countries of first asylum housed them in camps and restricted their freedom of movement. In some cases, when the refugee flows became excessively large and far outnumbered resettlement offers, asylum-seekers were denied refuge and some were even returned to the country of origin.

In 1989 an International Conference on Indo-Chinese Refugees was convened to address several key issues regarding refugees in the Asian region: the large number of asylum-seekers with no valid claims to asylum; the situation of persons who continued to be housed in refugee camps because they were passed over year after year in the resettlement process; and the uncertain state of temporary asylum in Asia. The Conference, which was attended by 56 nations, including the refugee-generating countries of Viet Nam and the Lao People's Democratic Republic, adopted a comprehensive plan of action that called for responsibilities to be assumed by all nations involved—the refugee-producing countries, countries of first asylum, and donor and resettlement countries. The Government of Viet Nam agreed to expand legal methods of emigration, including the Orderly Departure Programme, and to permit the safe return of persons who wished to repatriate. The Government of the Lao People's Democratic Republic agreed to continue to cooperate with the United Nations High Commissioner for Refugees and the Government of Thailand concerning the existing Lao screening programme, and to continue to permit the safe return of persons who were screened out and those who wished to repatriate voluntarily. The countries of first asylum agreed to grant temporary refuge to all asylum-seekers. Indo-Chinese asylum-seekers were no longer to be granted blanket admission, followed by virtually automatic resettlement; individual determination of refugee status was to replace group determination. All new arrivals were to be screened for a determination of status under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol; those granted refugee status would be eligible for third-country resettlement, while those screened out would be encouraged to return home voluntarily or would be provided for until they returned. Resettlement countries agreed to provide resettlement opportunities for persons who arrived in countries of first asylum before specific cutoff dates as well as for new arrivals who were granted refugee status.

The 19-year-long exodus of Vietnamese boat people was officially declared over by the United Nations High Commissioner for Refugees in early 1994. Vietnamese asylum-seekers would henceforth be treated the same as asylum-seekers from any other country. Governments which rule that Vietnamese nationals are not refugees fleeing persecution can deport them immediately. In 1992, the Governments of the United Kingdom and Viet Nam signed an agreement providing for the forced repatriation of the 50,000 Vietnamese nationals detained in camps in Hong Kong, China. In 1994, chaos erupted on Galang Island in Indonesia where some 8,000 long-

resident Indo-Chinese boat people, who were passed over by resettlement countries, protested when they realized that their only remaining option was repatriation. Other Vietnamese boat people were repatriated after being refused refugee status by immigration authorities on the grounds that they were economic migrants rather than political refugees. However, UNHCR's voluntary repatriation programme provided each returnee with generous repatriation assistance. Together with international aid and Viet Nam's improving economy, many returnees were able to achieve a standard of living higher than that of Vietnamese who had never left the country.

Political developments in the Lao People's Democratic Republic were also accompanied by mass displacements of people; from 1975 to 1986, some 325,000 persons, or 10 per cent of the entire population, fled the country and settled in Thailand. By 1992, approximately 300,000 refugees had been resettled abroad, roughly two thirds in the United States. A number of Laos, including those who were denied refugee status or had not applied for refugee status, returned home under a repatriation agreement reached between UNHCR and the Government of the Lao People's Democratic Republic. In 1991, UNHCR and the Governments of Thailand and the Lao People's Democratic Republic agreed to a three-phased repatriation programme that would facilitate the return of all Laos not eligible for resettlement or not planning to resettle by the end of 1994. UNHCR increased its assistance package to returnees in order to encourage repatriation, and several Governments provided funds for reintegration assistance. In 1991, the Governments of China and the Lao People's Democratic Republic signed a bilateral agreement regarding Laos repatriation from China. With many Laos reluctant to repatriate and with the Government of the People's Democratic Republic of Lao slow to approve applications for repatriation, in 1992 and 1993 the Government of Thailand increased pressure on Laos to repatriate. The Government closed two of the main refugee camps and moved all Lao refugees who were not granted refugee status and those who did not apply for third-country resettlement to another camp where their only option would be to repatriate.

The Government of Uzbekistan has not officially recognized any refugees within its borders. However, tens of thousands of people who fled civil war in Tajikistan (mostly ethnic Uzbeks), and several thousand who fled Afghanistan, lived in Uzbekistan in refugee-like circumstances in 1993. Ethnic Germans, Jews and Russians continued to leave the country and to settle in Germany, Israel and the Russian Federation.

A former refugee-producing country, Poland is currently serving as host country to asylum-seekers bound for Western Europe. In 1992, an estimated 100,000 persons transited through Poland. The Polish Constitution includes a provision that guarantees the right to asylum, but the Government has not specified how refugee status is to be determined. This is not a major problem, since only a very small percentage of persons transiting through Poland actually apply for asylum there. A readmission agreement with Germany for the return of asylum-seekers passing from Poland to Germany without valid travel documents has had a deterrent effect on the number of improperly documented aliens.

Third-country resettlement is the preferred policy of Greece and Italy, until recently both countries of emigration. Applicants for asylum in Greece must have arrived directly from a country where the Greek Government considers that their freedom or lives are in danger. Asylum-seekers receive a temporary residence permit and are required to remain at a known location in Greece while their applications are being processed. Rejected applicants, whose residence permits are withdrawn, may file an appeal. Applicants who are rejected may be permitted to remain in Greece on humanitarian grounds for renewable six-month periods. However, Greece insists on third-country resettlement as the preferred solution.

Italy was once a country of temporary asylum which permitted large numbers of refugees to live in refugee camps while they applied for resettlement in a third country, but it has tightened its admission requirements under the 1990 Martelli Law. Aliens who arrive in Italy must state their intention to apply for asylum upon arrival; those who enter illegally or with tourist visas are automatically ineligible to apply for asylum status, as are persons who arrive with valid visas for third countries or those who arrive via countries that are signatories to the 1951 Convention.

Canada is one of the major countries of refugee resettlement; its policy aims to assist persons in need of protection and to further family reunification. Among those eligible for resettlement in Canada are: refugees who meet the United Nations criteria for refugee status; those who belong to designated classes of displaced, persecuted or oppressed persons in "refugee-like" situations who need not individually meet the strict definition of a refugee; and persons from countries that are in the midst of severe domestic strife. In late 1992, the second category of refugees included political prisoners and oppressed persons. The Indo-Chinese designated class continues to benefit some people as a transitional measure. Individuals who fall into the third category of refugees are admitted under relaxed criteria on humanitarian grounds. In 1992, this group included refugees from El Salvador, the Islamic Republic of Iran, Lebanon, Somalia and Sri Lanka. A special programme allows individuals from the former Yugoslavia to apply for permanent resident status either within Canada or from other countries, if they have family in Canada.

In 1988, a Women-at-Risk programme was established in Canada to help women refugees who would not ordinarily be admitted under the usual criteria because they required more assistance than was available to Government-sponsored refugees. The women receive health care and settlement services, including food and shelter. Private organizations provide employment counselling, child care, transportation, and psychological support. Canada has been a pioneer in admitting women who claim gender-based persecution. In 1993, a Saudi Arabian woman who opposed the subordination of women and refused to wear the veil was granted asylum on the grounds that she risked persecution if she returned home. In a landmark immigration ruling in 1994, Canada granted refugee status to a woman who fled Somalia with her 10-year-old daughter because she refused to let her daughter face ritual genital mutilation.

Refugees may apply for resettlement in Canada from outside the country or within Canada, or upon arrival at a Canadian port of entry. Applications made abroad are adjudicated by an immigration officer who determines whether the applicant is eligible and admissible. Once accepted, refugees are given a visa and become permanent residents (landed immigrants) of Canada upon arrival. They are eligible to apply for Canadian citizenship after three years of residence. Applicants who file from within Canada or at the borders proceed through a refugee status determination hearing (with right of court appeal). Once approved, the refugees are also granted permanent resident status.

An amendment to the Canadian Immigration Act (Bill C-86), which went into effect in February 1993, streamlined Canada's asylum process and has reduced the processing time for asylum claims to an average of less than eight months. Like many European countries, Canada now refuses to grant asylum to individuals who arrive from a "safe" country (one that complies with the Geneva Convention relating to the Status of Refugees) and did not avail themselves of protection in that country. In 1992, more than half the refugees arrived in Canada via safe countries. The new asylum procedures reduced the number of asylum-seekers by more than 40 per cent between 1992 and 1993. The largest number of applicants in 1993 came from Sri Lanka, the former Soviet Union and Somalia. More than half the 25,549 applications were approved in 1993.

The ceiling on Government-sponsored refugee resettlement stood at 13,000 in 1993, the same number as the previous four years. However, only 5,900 refugees were admitted through Government sponsorship in 1993, and just over 5,000 were admitted through private sponsorship. There is no limit on the number of privately sponsored refugees who can be resettled in Canada each year. Refugees who obtain permanent resident status are entitled to the same social welfare benefits as Canadian citizens. This includes education, health care, unemployment insurance, and welfare allowances. The Government also provides settlement assistance payments and free language training in English or French for persons admitted under its refugee and special humanitarian programmes. Interest-free loans cover the cost of transportation to Canada.

The United States of America resettled more than 1.7 million refugees between 1975 and 1992; the country receives the largest number of refugees in the world for permanent resettlement. The Immigration and Nationality Act, as amended by the Refugee Act of 1980, regulates admissions of refugees and asylum-seekers to the United States. This Act, which conforms to the 1967 Protocol relating to the Status of Refugees, defines refugees as persons outside their country of nationality who are unable or unwilling to return to that country

because of persecution or well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. Refugees and asylum-seekers must meet the same criteria; the difference between the two groups is their location at the time of application. Requests for refugee status must be made outside the United States, whereas petitions made within the United States or at a land border or port of entry are requests for asylum.

The maximum number of refugee admissions is set annually by the President of the United States, in consultation with the Congress. Authorized refugee ceilings since the passage of the Refugee Act of 1980 decreased from an all-time high of 217,000 in 1981 to a low of 67,000 in 1986, when they began to increase to 192,000 in 1992. The authorized refugee ceilings were 132,000 in 1993 and 121,000 in 1994 (Kramer, 1993, p. 18). Unused numbers may not be carried over from one fiscal year to the next. The President is authorized to increase the worldwide refugee ceiling or reallocate regional ceilings in cases of emergency need. The overall refugee ceiling is subdivided into regional ceilings for five geographical areas. In fiscal year 1994, the overall allotment of 121,000 places for refugees was set at 7,000 for Africa, 45,000 for Eastern Asia, 55,000 for Eastern Europe and the former Soviet Union, 4,000 for Latin America and the Caribbean, and 6,000 for the Near East and Southern Asia. An additional 3,000 unallocated places can be assigned as needed, and 1,000 Private Sector Initiative slots are available for private organizations that cover resettlement costs (Kramer, 1993, p. 17).

The Attorney General of the United States is authorized to grant temporary protected status to nationals of a designated country that is experiencing civil strife, environmental disaster, or other extraordinary and temporary conditions that prevent its citizens from returning in safety. In 1994, nationals from five countries were eligible for either deferred enforced departure or temporary protected status: Bosnia and Herzegovina, El Salvador, Somalia, Liberia, and certain nationals of the People's Republic of China (Kramer, 1993, p. 20).

Individuals who are in the United States or at its borders may apply for asylum to an officer of the Immigration and Naturalization Service. Applications are accepted regardless of the legal status of the applicant, who must demonstrate that he or she meets the definition of a refugee as set forth in the Immigration and Nationality Act. Persons filing asylum applications receive permission to work while a decision is pending but do not receive Government assistance. If the request for asylum is approved, the applicant is given permission to remain in the country and authorization to work. If members of an asylum-seeker's immediate family (spouse and minor unmarried children) are abroad, the asylum-seeker may apply for them to come to the United States. Asylum-seekers are eligible to adjust to immigrant status after one year of residence; a maximum of 10,000 such adjustments may be approved annually. Adjustments of status are not counted against the annual refugee admissions ceiling. Four years after adjusting status, asylum-seekers may apply for United States citizenship.

Applications for asylum have overwhelmed the asylum system in the United States; a backlog of some 364,000 cases was pending in 1994. Of the 150,573 asylum applications filed in fiscal year 1993, 35,227 were resolved, resulting in approval for 5,119 cases (Kramer, 1993, p. 22). Currently, the majority of applicants come from Central America, as do the majority of recipients of asylum status. It is expected that fraudulent asylum claims will be reduced when applicants can be checked against a database of prohibited immigrants, such as known criminals and terrorists. Additional proposed changes include expediting the processing of meritorious cases; separating work authorization from the asylum process by requiring a waiting period for work permits; and returning asylum-seekers to a safe third country through which they had passed without applying for asylum, if the United States has reciprocal agreements.

Persons outside the United States and their country of origin may apply for refugee resettlement in the United States. Resettlement applications may be accepted and adjudicated by United States officials within the country of origin in special circumstances as determined by the President. In 1992, applicants from the former Soviet Union and certain categories of people from Viet Nam, Cuba and other countries of the western hemisphere were able to request resettlement in the United States while still residing in their own country.

The Government sets admissions priorities for refugees based on such factors as prior ties to the United States, family legally resident in the United States, or resident members of the same ethnic group. In addition, refugees may be admitted when there is concern about the vulnerability of a particular population, or if UNHCR specifically requests that a particular group be resettled in the United States. For example, at the request of UNHCR, the United States expanded the parameters for the resettlement of ex-detainees released from prison camps in Bosnia and Herzegovina. Future policy will focus more on cases referred by UNHCR, especially for populations that are largely unknown in the United States. The Government expects the resettlement programme to become more diversified in terms of nationality. In the past, the United States resettlement programme was influenced largely by a long-standing commitment to the Vietnamese and to people from the former Soviet Union.

Refugee admission decisions are made on a case-by-case basis by Immigration and Naturalization Service officers who interview the applicant and review the documents presented. Applicants must fit the definition of a refugee (that is, establish a well-founded fear of persecution), must not be inadmissible under United States immigration law, and may not already be resettled in another country. Refugees whose applications are denied may request reconsideration if they produce additional information or evidence. Most refugees who obtain permission to resettle in the United States receive transportation loans administered by the International Organization for Migration (IOM). In many regions, IOM also provides medical examinations, inoculation treatments, and a variety of processing and training services for refugees who resettle in the United States. These services, as well as the transportation loans, are financed by the United States Government. Many refugees bound for the United States also receive English language and cultural orientation training before they arrive in the United States. Eastern Asia offers the most comprehensive programmes; refugees between the ages of six and 55 spend up to six months in training at Refugee Processing Centres in the Philippines and Thailand.

Once resettled in the United States, refugees are assisted through programmes that strive not only to meet their immediate needs but also to integrate them as rapidly as possible into American society. Voluntary agencies, many of which maintain networks of local affiliates, assist the Bureau of Refugee Programs by providing aid to refugees for the first 90 days after their resettlement in the United States. Volunteers and religious and civic groups also assist in the resettlement of refugees.

In the Asia-Pacific region, Australia receives most of the refugees who seek asylum in the region, and New Zealand admits a significant number of refugees referred by the United Nations High Commissioner for Refugees. Both Australia and New Zealand have refugee policies that reflect humanitarian concerns; they admit not only refugees whose status is defined under the 1951 Convention but also a broader category of humanitarian cases. Both countries are also sensitive to the special plight of refugee women, allocating settlement places in a women-at-risk category. A key issue in Australia is whether refugees require special services, other than those offered to all immigrants, that are specifically designed to meet their unique needs to enable them to integrate more easily into Australian society and to prevent them from becoming a permanently disadvantaged minority.

Australia's humanitarian resettlement programme is one of the largest in the world. Since 1975, the country has resettled over 200,000 refugees under its Humanitarian Programme (Jupp, 1994, p. xii). Australia regards itself as a permanent haven for those seeking asylum within its borders, rather than as a temporary shelter or as a stepping stone to another country of permanent settlement. Since 1947, Convention refugees selected outside Australia, typically in refugee camps, were usually admitted as part of the country's overall immigrant intake.

Australia's immigration policy has two major components, the Migration Programme and the Humanitarian Programme, with the refugee and humanitarian intake typically comprising about 10 per cent of the country's total immigration (Jupp, 1994, p. 6). The Humanitarian Programme, designed to meet Australia's obligations towards refugees and to respond to global humanitarian and special needs, has three parts: Refugee, Special Humanitarian, and Special Assistance. The Refugee component is designed to admit persons overseas who meet the United Nations definition of a refugee, whereas

the Special Humanitarian component is for those who are not technically refugees, but who have suffered blatant violations of their human rights. The Special Assistance component, established in 1992 in response to the realization that only a minority of displaced persons could be categorized within the Convention and Protocol definition, serves persons with close links to Australia who find themselves in vulnerable situations but who do not fit into the traditional refugee and humanitarian categories. The Government has the flexibility to respond to diverse hardship cases, including groups in danger because of civil conflict in their home country, displaced persons unable to return home, or minority groups that suffer discrimination.

A significant increase in the number of persons entering the country under the Special Assistance category has occurred in the 1990s, especially persons from the former Soviet Union and the former Yugoslavia. Indeed, the Special Assistance category is currently the largest component of the Humanitarian Programme (Jupp, 1994, p. xii). In 1993-1994, in addition to citizens of the former Yugoslavia and ethnic minorities from the former Soviet Union, the Special Assistance Category included Cambodians, Burmese, Sudanese and Eastern Timorese (OECD, 1995, p. 64). In addition, the Government periodically extends entry permits for persons from areas experiencing conflict. In 1989, for example, a special class of four-year permits was created for Chinese students.

Persons admitted under the Humanitarian Programme are granted permanent residence in Australia and enjoy the same rights and entitlements as individuals admitted as migrants, including the right to family reunification and the right to apply for citizenship. They can avail themselves of all services accessible to permanent settlers, including transfer payments for unemployment, disability, age, dependency and health, as well as ethnic-specific or immigrant-specific services provided mainly by the Department of Immigration and Ethnic Affairs. Individuals who do not speak English can take advantage of special services such as grants-in-aid, migrant resource centres, English programmes for adults, and translation and interpretation services.

The refugee and humanitarian categories are clearly defined for persons seeking admission to Australia from overseas. By contrast, the situation of those already living in Australia who seek to change their status because conditions in their country of origin have deteriorated or because it was easier to enter Australia as a tourist or as a temporary resident than as a refugee is less clear. Regulations in 1988 defined the humanitarian category for persons already present in Australia, including persons who would suffer discrimination in their country of origin because of their beliefs or their membership in a particular group or class. War, revolution and intercommunal violence in the homeland were also grounds for inclusion in the humanitarian category. Indeed, significant numbers of asylum-seekers enter the country on a variety of visas and subsequently seek refugee status. Many arrive under temporary entry permits which they subsequently extend; others from conflict-ridden countries overstay their visas and eventually seek refugee status. Some asylum-seekers, nominated by relatives who are themselves former refugees or humanitarian migrants, arrive under the family reunion category.

The Government has a two-stage system of refugee status determination for asylum-seekers, who are called "onshore refugees". The first stage consists of an application and an interview with an officer of the Department of Immigration and Ethnic Affairs. Rejected claims may be appealed before an independent statutory body, the Refugee Review Tribunal. Asylum-seekers may be eligible for financial assistance while awaiting the outcome of their application. Asylum-seekers may not be joined by their families while awaiting a decision on their case; those who are experiencing hardship are permitted to seek employment while awaiting their status determination. Those who are denied refugee status must leave the country. Persons who arrive by boat without valid entry documents and apply for asylum can be detained pending adjudication of their applications. The number of asylum applications lodged in Australia decreased significantly from 15,500 in 1990-1991 to approximately 2,800 in 1994.

New Zealand is the second most important destination of asylum-seekers in Oceania; it has routinely accepted refugees since 1944. The New Zealand Immigration Service of the Department of Labour is responsible for the formulation of the country's immigration legislation and policy. The Government has a fixed quota system that annually admits up to 800 refugees (subject to the availability of community sponsorship) who have been

previously processed by UNHCR. As many as 50 of this quota are accepted in the women-at-risk category. The Minister of Immigration, in consultation with other agencies, determines the allocation of settlement places. The majority of UNHCR-processed refugees are from Cambodia and Viet Nam. Refugee settlers may sponsor relatives under the family reunification policy. In addition to the official quota, the Government also accepts applications for political asylum and for humanitarian admission; over 750 such applications were received in 1992 from persons at ports of entry or already on New Zealand soil.

Applicants for humanitarian admission, although not officially classified as refugees, receive the same treatment as refugees. Cases are usually processed within four months; an interview with an immigration officer is followed by a hearing before the Refugee Status Appeal, if necessary. Applicants are granted temporary residence and work permits while awaiting approval of their case. Once approved, applicants are granted resident status and are accorded either political asylum-seeker or humanitarian status.

Upon completion of a six-week orientation programme, during which they receive emergency unemployment benefits, newly admitted refugees are integrated into the country's social welfare system. Refugees are eligible for the same benefits as New Zealand citizens, including unemployment compensation and subsidized housing. They may apply for New Zealand citizenship after three years of residence in the country.

New Zealand does not usually offer permanent resettlement to refugees granted temporary asylum elsewhere, unless the applicants meet the criteria for refugee admission; such admissions are counted in the annual quota of 800. Repatriation, either voluntary or involuntary, is rare; persons are repatriated at the port of entry if they fail to meet the criteria for admission.

B. Countries of asylum

1. Rights and responsibilities of countries of asylum

Refugees represent a special category of international migrants, whose status differentiates them from other migrant groups. Most countries of the world recognize that the unique situation of refugees necessitates special laws, regulations, institutions, policies and programmes that address their concerns. In addition to the international conventions that define refugees and provide legal guidelines for their treatment, special national and international organizations have been established to address refugee issues. Refugee legislation varies considerably from region to region and within a particular geographic area.

It is a basic right and an expression of the national sovereignty of any country to determine who is a refugee. The Universal Declaration of Human Rights asserts that everyone has the right to seek and to enjoy in other countries asylum from persecution, but it does not claim that an individual has the right to be granted asylum. Nevertheless, countries agree not to refuse admittance to persons who claim to be refugees; to investigate cases, as necessary; and to offer asylum to those who are deemed to deserve refugee status. When granting refugee status, countries agree not to discriminate on the basis of ethnic or geographic origins. Moreover, the granting of refugee status and asylum is a humanitarian act that cannot be considered hostile by the refugee's country of origin. Once granted refugee status, refugees, in turn, are expected to refrain from any subversive action against their country of origin. According to the 1951 Convention, refugees must comply with the laws and regulations of the country of asylum.

Countries of asylum bear full responsibility for the physical safety of refugees within their borders. They may be assisted by international agencies such as UNHCR and the International Committee of the Red Cross (ICRC); non-governmental organizations play an active role in refugee protection. UNHCR advises Governments on security issues, monitors the situation of refugees, and protests instances of refugee abuse or exposure to danger. The physical safety of refugees is often seriously threatened when they are placed in camps that are located close to the border of the country of origin. Besides being easy targets for cross-border attacks, camps that are located close to borders are sometimes off limits to UNHCR and other relief agencies, making the tasks of monitoring and protection virtually impossible. Proximity to the border may also lead to a mistaken or genuine association of refugees with guerrilla movements, or to forced recruitment into

these movements. Indeed, any linkage of refugees with armed national liberation movements often results in the perception of refugees as the cause rather than as the product of insecurity. Such situations ultimately serve to undermine the institution of asylum. Refugee camps are expected to be neutral humanitarian zones, but they can be used as bases for fighting, or as sources of food supplies and medical care for wounded soldiers.

The presence or absence of an official Government policy on admission and treatment of refugees has important implications for relations with neighbouring countries and with the international community. Pressures from the international community, world public opinion, and the threat of withdrawal of foreign aid often compel Governments to accept refugees despite public opposition from their citizens. Indeed, countries with no specific refugee policies, or those that would like to reduce or to halt the flow of refugees, especially because of severe social and economic pressures on inadequate infrastructure and impoverished economies, are often pressured by world opinion into hosting refugees within their borders. Others, governed by principles of genuine humanitarian concern, admit refugees despite the severe strain on their economies.

Governments have different expectations with respect to the length of time for which asylum is granted and different policy responses to the problem of refugees. Refugees may be granted short-term asylum, with the expectation of a quick return home or rapid resettlement in a third country; long-term asylum, with the expectation of their eventual return home; or permanent asylum, leading to permanent settlement in the host country.

Once asylum has been granted, Governments have three durable solutions or policy options for dealing with refugees: voluntary repatriation or return to their home countries; permanent settlement and integration into the country; and permanent resettlement in a third country. Opportunities for permanent settlement and integration into the host country are limited; third-country resettlement is becoming even less of an option and is at present available to only about one half of 1 per cent of the world's refugees. Voluntary repatriation to the home country is viewed as the most desirable solution available to the majority of refugees.

2. Policy responses to asylum-seekers in the 1990s

The end of the cold war and the accompanying political upheavals of the late 1980s and the early 1990s, including the fall of the Berlin Wall, the break-up of the Soviet Union and the Warsaw Pact and of Yugoslavia, precipitated unprecedented flows of migrants, among them refugees and asylum-seekers. Europe, especially, saw dramatic increases in the number of applications for asylum, from about 30,000 per year in the 1970s to 75,000 in 1983, to 230,000 in 1988 and to 554,700 in 1991, surpassing by far applications in the traditional countries of destination (Canada, the United States of America and Australia). The number of asylum applications reached a peak of 690,400 in 1992 before the trend was reversed in 1993 and numbers began to decline substantially.

The decline can be attributed in large part to changes in asylum legislation and procedures adopted in a number of European countries to reduce the number of persons seeking asylum, streamline the asylum process, and eliminate fraudulent claims. European policies have become increasingly restrictive and now severely limit access to asylum. The current approach to containing mass migration focuses on preventing potential asylum-seekers from reaching a country's borders. Measures implemented by European Governments include establishing visa requirements for citizens of countries where asylum-seekers originate, enforcing fines and other sanctions against airlines that carry passengers whose papers are not in order, reducing social benefits to asylum-seekers, detaining asylum-seekers pending adjudication of their asylum applications, and expediting asylum claims that are considered unfounded. Some countries are also addressing the root causes of mass displacements by allocating resources to preventing conflicts and maintaining peace in trouble spots. Maintaining the integrity of the institution of asylum is essential to preserving the basic human right of individuals to seek asylum from persecution. The increase in asylum fraud, together with the growing cost of assistance, has had a negative effect on public opinion regarding refugees; indeed, the more asylum is used as a substitute for legal immigration, the greater the risk of erosion of public support for genuine refugees.

Approval rates for asylum applications are low throughout Europe. However, most countries do not deport persons who are denied asylum. They remain in the host country for humanitarian reasons (age, health conditions, or extended residence in the country), or because the Government considers them de facto refugees—that is, persons who do not meet the definition of refugee as contained in the 1951 Convention relating to the Status of Refugees, but who are in refugee-like situations and are unwilling or unable to return home. Countries vary significantly in their treatment of de facto refugees. In contrast to the African nations of the Organization of African Unity and the Latin American countries that are parties to the 1984 Cartagena Declaration on Refugees, European Governments have not expanded the definition of refugee to include individuals fleeing generalized violence. The European Council on Refugees and Exiles has proposed that European Governments adopt a supplemental definition of refugees, similar to that adopted in Africa and Latin America, that would include individuals currently recognized as de facto refugees who were forced to flee their homeland because of widespread violence and violations of human rights rather than because of individual persecution.

Temporary protection is another policy response to asylum-seekers in Europe. Initiated by European Governments and supported by the United Nations High Commissioner for Refugees to address the needs of the large influx of people from the former Yugoslavia, temporary protected status bypasses the normal asylum channels and is designed to limit the number of individuals seeking asylum and permanent protection. Rights and privileges of those granted temporary protection are not uniform across countries, but are resolved by the country granting asylum. As the conflict in the former Yugoslavia continues, there is increasing pressure to regularize temporary status and to settle the questions of duration of temporary protection and services for those granted such protection.

Civil war in Yugoslavia has precipitated the largest forced migration since the Second World War. Indeed, between 1991 and 1993, more than 5 million citizens of the former Yugoslavia became refugees or displaced persons; of these, some 700,000 persons who fled repression in Serbia and ethnic cleansing in Croatia and Bosnia and Herzegovina have sought asylum in Western Europe. Not recognized as refugees under United Nations instruments, the majority of them have been tolerated as de facto refugees. Most Western European Governments, fully aware that mass inflows of refugees would present a considerable burden, and concerned that the refugee presence was likely to become permanent, responded to the influx of refugees by instituting visa requirements that prevented former Yugoslavs from entering. Persons who succeeded in entering European countries that did not exclude them were usually offered ad hoc "temporary protection" instead of full-fledged asylum. Although Western European Governments sought to keep out citizens of the former Yugoslavia, they have financed relief aid for displaced persons within the area, especially in Croatia and Slovenia, and provided relief to besieged cities in Bosnia and Herzegovina. Some European countries admitted a small number of especially vulnerable persons in highly controlled and symbolic humanitarian gestures. Since the beginning of the conflict in early 1991, the United Nations High Commissioner for Refugees has been actively involved in delivering aid to the hundreds of thousands of people caught in one of Europe's worst refugee crises. An estimated 600,000 citizens from the former Yugoslavia were granted temporary protection in Europe. In addition, thousands have been resettled worldwide under UNHCR auspices.

As the numbers of asylum-seekers began to increase in the late 1980s and early 1990s, Governments in Europe considered ways to distribute the burden of hosting asylum-seekers among the countries in the region. One policy response was the concept of the "safe third country", in which countries require asylum-seekers to seek protection in the first "safe" country they reach—usually defined as any country that is a signatory of the 1951 Convention or its 1967 Protocol. This policy often results in a string of deportations, where each country sends the asylum-seeker back to the country through which he or she last travelled. The effect of such policies will be to push the asylum wall to the east and create buffer zones between Western Europe and the countries that produce refugees.

The response of Germany to large numbers of asylum-seekers entering its territory is illustrative of the reassessment of asylum policies and the enactment of new laws in countries of Europe. Germany's central location, its generous welfare benefits and strong

economy, as well as the comparatively restrictive asylum policies elsewhere in Europe, all contributed to make Germany the preferred destination for the majority of asylum-seekers in Western Europe in the early 1990s. Germany received 72 per cent of all asylum applications filed in 1992 in countries of the European Community. About 1.5 million refugees and asylum-seekers were living in Germany in 1993, including those formally granted refugee status, those not granted such status but given the right to remain temporarily because they would be in danger if they were to return to their countries of origin, and dependants of both groups.

The large number of asylum applicants in Germany prompted the Government to pass a new asylum law in 1993 which restricts the right to seek asylum in the country and provides for the prompt return of rejected asylum-seekers. Under the old law, persons suffering from political persecution had the right to asylum in Germany; they could stay in the country until their status had been determined. They were also guaranteed a court hearing if their application was denied. The new legislation grants protection and refuge to victims of persecution, but it is now more difficult to claim asylum. The new legislation uses the concepts of "safe third country" and "safe country": persons who arrive in Germany from "safe third countries"—which includes all countries surrounding Germany—are not eligible to apply for asylum and will be turned back. A transit stop in a "safe third country" may also disqualify a potential applicant. Arrivals at German airports from "safe countries" where there is no risk of persecution, as well as those without valid travel documents, are not placed in the regular asylum pool but are put in an accelerated 48-hour determination track, where they have a greater burden of proof of persecution than applicants in the regular asylum pool. A negative decision is followed by swift deportation from the country.

The German Government has agreements with other States members of the European Union requiring them to accept asylum-seekers who travelled through their territory before reaching Germany; bilateral readmission agreements were also signed with non-member States that produce large numbers of asylum-seekers, including Bulgaria, Poland, Romania and Switzerland. Persons whose request for asylum is granted have the right to a residence permit of unlimited duration, and financial assistance is provided during their first year in Germany. Their status is considered equivalent to that of German nationals in many legal, social and economic spheres. Moreover, spouses and children are granted asylum even if they do not suffer from political persecution. The number of asylum applicants in Germany fell by 26 per cent from 1992 to 1993, and by 60 per cent from 1993 to 1994, and deportations rose to an estimated 30,000 during 1993.

In October 1995, Germany's Federal Administrative Court ruled that the general dangers and consequences of civil wars are not sufficient grounds to prevent the repatriation of persons whose political asylum has been rejected unless the individuals face "targeted inhumane treatment" or if returning home would pose a "concrete, serious danger". The German Government has implemented several programmes to facilitate the voluntary return and reintegration of rejected asylum-seekers. Special reintegration programmes for Bulgarian and Romanian former asylum applicants ensure education and training upon return to the home country. The German Government also concluded retransfer treaties with a number of European countries to facilitate the informal repatriation of persons who crossed the border into Germany without the proper entry documents.

Austria, too, has changed its asylum policies to respond to changing demands for asylum. Austria once served as a country of transit for asylum-seekers en route to resettlement in the West, but after the end of the cold war, Austria suddenly found itself with an increasing number of refugees whom Western countries did not wish to resettle. Its response was new legislation and practical measures designed to limit access to the Austrian asylum system. Foreigners are no longer permitted to apply for asylum at the border, and transit passengers on flights landing in Austria are not permitted to disembark. Persons arriving from "safe third countries" that are both free of persecution and in a position to grant asylum are prohibited from applying for asylum in Austria. A 1992 law established accelerated procedures to deal with asylum applicants with invalid travel documents and arrivals from "safe countries".

Other European countries that revised asylum policies or enacted new legislation in the 1990s include Belgium, France, the Netherlands and Switzerland. The concept of "safe countries" has gained acceptance, and other

measures to reduce multiple applications for asylum in different countries have also been introduced, such as Belgium's policy of fingerprinting asylum-seekers. Many countries have acted to shorten the time required for arriving at a decision, and others have limited benefits and rights of those awaiting judgements. "Tolerated" status for rejected asylum-seekers has been replaced with short-term provisional residence permits in the Netherlands. Switzerland permits rejected asylum-seekers to remain in the country if there is a generalized condition of violence in their country of origin.

Asylum-seekers have become one of the central concerns in discussions of migration to European countries, and the issue of harmonization of asylum and refugee policies in Europe has been a major agenda item at regional meetings since the mid-1980s. Agreements from conferences in Schengen, Dublin and Maastricht all addressed the movement of people across borders and within the territory of nations of the European Community. At the forefront of governmental concern is the issue of sovereignty regarding migration. Each State has the right to maintain control over borders and to determine the conditions of entry and stay within its territory. Governments have been reluctant to cede authority for admissions and border policies to the European Union.

C. International instruments relating to refugees

The term "refugee" was used as far back as 1573 to refer to the granting of asylum and assisting foreigners who were escaping persecution (Zolberg and others, 1989, p. 5). Although the term has deep historical roots, it did not achieve significance as a legal and administrative classification until well into the twentieth century. Indeed, in an era of unregulated immigration, there was no urgent need for precise categorization of refugees to distinguish them from any other type of immigrant. It was only when the numbers of refugees and asylum-seekers increased significantly, and when policies in receiving countries became more restrictive, that specific criteria were established for the determination of refugee status. Once it had become a legal and administrative category, the term "refugee", as defined by United Nations documents, could then be used to identify which immigrants qualified for admission into another country and were eligible to receive legal protection and assistance from organizations established to aid refugees.

1. United Nations instruments

In chapter II of the Statute of the Office of the United Nations High Commissioner for Refugees, a refugee is defined as "Any person who, ... owing to well-founded fear of being persecuted for reasons of race, religion, nationality or political opinion, is outside the country of his nationality and is unable or, owing to such fear or for reasons other than personal convenience, is unwilling to avail himself of the protection of that country" (General Assembly resolution 428 (V) of 14 December 1950).

The 1951 Convention relating to the Status of Refugees and its 1967 Protocol spelled out both the definition of a refugee and the conditions that created refugees. Article 1 of this Convention defines a refugee as any person who, "As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it" (United Nations, *Treaty Series*, vol. 189, p. 150, article 1 A, paragraph 2).

The 1951 Convention, drafted as a result of the recommendation by the newly established United Nations Commission on Human Rights, was adopted by the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons at Geneva on 28 July 1951, and entered into force on 22 April 1954. The Convention set the minimum standards of treatment for refugees, including the basic rights to which they are entitled. It also established the juridical status of refugees and outlined provisions regarding their rights to gainful employment and welfare, identification papers and travel documents, applicability of fiscal charges, and their right to transfer assets to another country where they have been resettled. Article 33 of

the Convention prohibited the expulsion or forcible return of persons who have refugee status: "No Contracting State shall expel or return ('refouler') a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion".

Article 34 of the Convention addressed the issues of naturalization and assimilation of refugees; other provisions concerned the rights of refugees, including access to courts, education, social security, housing and freedom of movement. Although it did not create a right to asylum, the 1951 Convention proved to be a landmark in setting the standards for the treatment of refugees. One of the most important outcomes has been the establishment of legal protection and a clear definition of the status of refugees.

The 1967 Protocol relating to the Status of Refugees was formulated to extend the scope of the 1951 UN Convention, which benefited only persons who had become refugees as a result of events that had occurred prior to 1 January 1951. The 1967 Protocol extended the application of the Convention to the situation of persons who became refugees as a result of events that took place after that date. As of March 1997, 128 States were Parties to the 1951 Convention and/or the 1967 Protocol relating to the Status of Refugees.

Although these two international legal instruments are applicable to persons who are defined as refugees, the actual determination of refugee status under the 1951 Convention and the 1967 Protocol is the responsibility of the Contracting State in which an individual applies for refugee status. The Office of the United Nations High Commissioner for Refugees published a *Handbook on Procedures and Criteria for Determining Refugee Status* that serves as a practical guide designed to meet the needs of Government officials, academics and lawyers concerned with refugee issues. In explaining the criteria for determining refugee status, the UNHCR handbook notes that the definition of a refugee in the 1951 Convention consists of three parts: inclusion, cessation and exclusion clauses. Inclusion clauses define the criteria that a person must satisfy in order to become a refugee. Besides spelling out the official United Nations definition of a refugee, they address the situation of statutory refugees, or persons who were considered refugees under the provisions of international instruments that preceded the 1951 Convention. Thus, persons holding a Nansen passport (a travel document introduced in 1992 that was issued to refugees) or a certificate of eligibility issued by the International Refugee Organization are considered refugees under the 1951 Convention.

The cessation clauses are based on the premise that international protection should not be granted when it is no longer necessary. They describe conditions under which a refugee ceases to be a refugee. Persons who voluntarily reavail themselves of their country's protection; those who voluntarily re-establish themselves in the country which they left because of fear of persecution; those who voluntarily reacquire their nationality after having lost it; those who acquire a new nationality and are enjoying the protection of that country; and persons who come from a country where persecution was feared and where changes in the country render international protection no longer necessary cease to be refugees under the 1951 Convention.

Exclusion clauses specify the conditions under which persons who otherwise exhibit the characteristics of refugees are excluded from refugee status. They address cases of persons who are already receiving protection or assistance from an agency of the United Nations other than the United Nations High Commissioner for Refugees; cases where persons have been received in a country where they have been granted most rights normally enjoyed by nationals (including protection against deportation or expulsion) except formal citizenship and are not considered in need of international protection; and cases where persons have committed crimes against peace or humanity, war crimes, or serious common crimes of a non-political nature, or who have been guilty of acts that are contrary to the purposes and principles of the Charter of the United Nations and are thus not considered to be deserving of international protection.

The 1951 Convention definition excludes persons who are displaced by violence, warfare or poverty, as well as those who have not been singled out for persecution. Indeed, persons who are forced to leave their country owing to international or national armed conflicts are not usually considered refugees under the 1951 Convention or the 1967 Protocol. However, protection of war

instruments that specifically deal with armed conflicts, including the Geneva Conventions of 1949 for the Protection of Victims of War Victims and the 1977 Protocol relating to the Protection of Victims of International Armed Conflicts. There are cases, however, where foreign invasion or the occupation of all or part of a country results in persecution for reasons of race, religion, nationality, membership in a particular social group or political opinion, as spelled out in the 1951 Convention and its 1967 Protocol. Persons seeking refugee status in such situations must not only be able to demonstrate a well-founded fear of persecution in the occupied territory, but must also show that they are not able to avail themselves of effective protection by the Government or those in charge of safeguarding the interests of the country during wartime. Persons who fear prosecution and punishment for desertion or draft evasion are not considered refugees unless there are other compelling reasons, within the meaning of the 1951 Convention, to fear persecution.

The 1951 Convention does not incorporate the principle of family unity in its definition of a refugee, but the Final Act of the United Nations Conference of Plenipotentiaries on the Status of Refugees and Stateless Persons that adopted the 1951 Convention considered the unity of the family to be an essential right of the refugee. It said that the rights granted to a refugee should be extended to members of his family. The Act further recommended that Governments take the necessary measures for the protection of the refugee's family, ensuring the unity of the family and the protection of refugees who are minors, in particular unaccompanied children.

The 1951 Convention recommended in article 34, that the Contracting States facilitate the assimilation and naturalization of refugees as far as possible, making every effort to expedite naturalization proceedings and to reduce the costs of such proceedings. It encouraged States to give refugees the same treatment as nationals with respect to elementary education, public assistance, and social security. They should also be given the most favourable treatment accorded to nationals of a foreign country in the same circumstances with respect to the right to gainful employment, housing, and access to higher education.

2. Other international instruments

(a) Africa

Regional conventions and declarations have also addressed the definition and conditions of refugees. On 10 September 1969, the Organization of African Unity (OAU) adopted a comprehensive Convention Governing the Specific Aspects of Refugee Problems in Africa. The OAU Convention expanded the United Nations definition of a refugee, stating that, in addition to the definition which appears in article 1 A, paragraph 2, of the 1951 Convention, "the term 'refugee' shall also apply to every person who, owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality" (OAU Convention Governing the Specific Aspects of Refugee Problems in Africa).

The Convention was adopted by the Assembly of Heads of State and Government of OAU at Addis Ababa and came into force in 1974 after ratification by one third of the member States. The Convention established rules regarding the admission and treatment of refugees, and it urged member States not to reject, return or expel persons who would be compelled to return to or to remain in a territory where their life or liberty would be threatened. The OAU Convention further stated that the voluntary character of repatriation should be respected in all cases and that no refugee was to be repatriated against his or her will. The Convention is significant because it expanded the United Nations definition of the term "refugee" and addressed Governments' concerns that "well-founded fear of persecution" was not sufficient to cover all refugee situations in Africa, given the growing number of refugees fleeing wars and internal conflicts on the continent.

Further resolutions adopted by OAU in February 1975 and July 1976 recommended greater flexibility in issuing travel documents and in according transit facilities to refugees. The African Charter on Human and Peoples' Rights also addresses the question of refugees, calling for their protection, especially those fleeing *en masse*.

(b) Latin America

A long tradition of asylum in Latin America dates from the Montevideo Treaty on International Penal Law, signed in 1889, which was the first regional instrument to address the issue of asylum. The Treaty stipulated that "asylum for persons persecuted for political offenses is inviolable". Other instruments include the Caracas Convention on Territorial Asylum, signed in 1954, and the American Convention on Human Rights "Pact of San José, Costa Rica", signed in November 1969 at the Inter-American Specialized Conference on Human Rights. The San José Pact espoused important principles regarding the right of persons seeking asylum, including the right of every person to leave any country freely, including his or her own; the right not to be expelled from the territory of the State of which a person is a national and not to be prevented from entering it; the right of every person to seek and to be granted asylum in a foreign territory, in accordance with the legislation of the country and international conventions, in the event that he or she is being pursued for political offences or for related common crimes; and the right of an alien not to be deported or returned to a country, regardless of whether or not it is his country of origin, if in that country his or her right to life or personal freedom is in danger of being violated because of race, nationality, religion, social status or political opinion.

The outbreak of conflict in Central America in the 1980s, resulting in the mass exodus of almost 1 million persons, led to the Coloquio sobre la Protección Internacional de los Refugiados en América Central, México y Panamá: Problemas Jurídicos y Humanitarios, which was held at Cartagena, Colombia, in November 1984 to address the refugee problem in the region. The Colloquium adopted the Cartagena Declaration on Refugees, a document that laid down the legal foundations for the treatment of Central American refugees, including the principle of non-refoulement, the importance of integrating refugees, and the eradication of the root causes of the refugee problem. The Declaration seeks to promote the adoption of national laws and regulations that facilitate the application of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. The Cartagena Declaration, like the 1969 OAU Convention, broadens the definition of the term "refugee" as found in the 1951 Convention to include persons who have fled their country because their lives, safety or freedom were threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances that have seriously disturbed public order. The Cartagena Declaration emphasized that repatriation of refugees must be voluntary, and it set forth principles for protecting, assisting and reintegrating refugees. The Declaration is not binding on States, but it is applied in practice by a number of Latin American countries, and it has been incorporated into domestic legislation in some States.

(c) Europe

Among the more important declarations concerning refugees adopted by the Council of Europe are the European Agreement on the Abolition of Visas for Refugees (1959); resolution 14 (1967) on asylum to persons in danger of persecution; the European Agreement on Transfer of Responsibility for Refugees (1980); the Recommendation on the Harmonization of National Procedures relating to Asylum (1981); the Recommendation on the Protection of Persons Satisfying the Criteria in the Geneva Convention Who Are Not Formally Refugees (1984); and the Dublin Convention (1990), which set rules for determining the State responsible for examining applications for asylum.

The States members of EU met at Schengen, Luxembourg, in 1985 to discuss the elimination of border controls; this was the first intergovernmental arena to address the issue of harmonization of visa and asylum policies in the region, and the coordination of the policing of external borders. The Schengen Agreement was signed in 1985 by Belgium, the Federal Republic of Germany, France, Luxembourg and the Netherlands; agreements were later signed by Italy (1990), Spain and Portugal (1991) and Greece (1992). The Convention on the Application of the Schengen Agreement, which came into force on 26 March 1995, abolishes internal border controls between Belgium, France, Germany, Luxembourg, the Netherlands, Portugal and Spain. Persons who travel between these countries are no longer required to present their passports at airports, seaports or land border checkpoints. The elimination of internal border checks is accompanied by the reinforcement of external border controls designed to prevent illegal migration and international crime. A joint computer database, known as the Schengen Information System,

prevents persons who do not have the necessary documents from entering. It also permits monitoring of the movements of criminals. Nationals from non-Schengen EU countries are required to present their identity cards or passports to enter the Schengen countries; nationals from outside the European Union will be subject to stricter controls than in the past.

The Convention Determining the State Responsible for Examining Applications for Asylum Lodged in One of the Member States of the European Communities, popularly known as the Dublin Convention, was the result of a meeting in Dublin, Ireland, in 1990. The Convention was signed by 11 of the States members of the European Communities and was another step towards the realization of a single market and the elimination of internal border controls. Denmark, the twelfth EC member, signed the Convention within a year. Signatories of the Dublin Convention reaffirmed their obligations under the 1951 Convention and the 1967 Protocol with no geographic restriction of the scope of these instruments.

The Dublin Convention set rules for determining which State was responsible for examining asylum applications, and it addressed the conditions that govern the transfer or readmission of applicants between member States. It provided for the exchange of general information, as well as information on individual cases (with safeguards to protect personal data), between States members of the European Community. The Convention also established the principle that refugees must apply for asylum in the first member State in which they arrive.

The Treaty on European Union, a result of a conference held at Maastricht, the Netherlands, in 1991, addressed the free movement of goods, services, capital and people within the region. The Treaty encompassed such issues as the crossing of external borders; conditions of entry, movement, residence and employment of third country nationals (including their right to travel freely within the European Union once they have legally entered one member State); and undocumented migration. By the end of 1993, all member States had ratified the Maastricht Treaty.

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VII. UNDOCUMENTED MIGRATION

Strictly speaking, undocumented migration has no policy equivalence within immigration policy, since innately it defies State or international legislation and rules. However, undocumented migration can be seen as an artifact of immigration policy. First, countries create immigration policies, and then those migrants who have entered by fraudulent or unofficial channels or who have not received formal residence status are presumed to have an illegal status. Since often the major changes in the mode of State intervention to control migration are tantamount to no more than the creation of new administrative categories to classify their flows, undocumented migration often reflects these changes. In the 1990s, undocumented migration appears to be inextricably related to increasingly restrictive immigration policies adopted during the past decade.

By its very nature, undocumented migration remains difficult to quantify (see box 6). In many countries, estimates of such flows are based on the number of undocumented migrants apprehended. Thus, tightened enforcement and innovative measures to implement national immigration policies and apprehend non-legal migrants may skew numerical estimations. Often, the figures in the literature on the number of undocumented migrants diverge greatly from each other and from concrete evidence. Regularization drives, for example, usually yield considerably lower numbers of undocumented migrants than those claimed to exist and, although there are often reasons to believe that some undocumented migrants may fail to apply for amnesty, the difference in magnitude between regularization results and claims made about the number of undocumented migrants is generally so large that it cannot but call the latter into question (United Nations, Economic and Social Council, 1995, para. 11).

Terminology has evolved over time and reflects the different perceptions of the phenomenon. While, traditionally, undocumented migration has been treated as a residual category of migration that falls outside the domain of "legal" migration, the term "illegal migration" has been criticized for its normative connotation and its generality. Although the International Conference on Population and Development in 1994 agreed to the usage of "undocumented migration"—noting that "Undocumented or irregular migrants are persons who do not fulfil the requirements established by the country of destination to enter, stay or exercise an economic activity"(United Nations, 1995, para. 10.15)—the phenomenon is commonly referred to as clandestine, irregular, illegal and unauthorized migration, interchangeably.

Although the actual number of undocumented migrants is inherently difficult to determine, the limited information that exists suggests that it has risen significantly in many countries in spite of a proliferation of restrictive measures and increasingly sophisticated policy responses. Although undocumented migration has existed for many years, in the face of global economic recession, the socio-economic context has changed in many countries. Such factors have placed undocumented migration in the forefront of immigration debates in many world capitals. At the core of the issue are questions concerning State capacity to control or manage migration flows.

However, the growing salience of undocumented migration is related not only to the rise in flows and diversity of migrant stocks. States are attempting to control their territories and assert their sovereignty. Sectors of public opinion in many countries have reflected resentment towards undocumented migrants, who are believed to be compromising the native population's economic and social welfare, and towards Governments, whose inability to control such movement is interpreted as a sign of weakness. Dealing with undocumented migrants has confounded policy makers in countries in all regions of the world.

A. CAUSES OF UNDOCUMENTED MIGRATION

Undocumented migration has emerged in response to increasingly restrictive admissions policies adopted by the traditional immigration countries and the labour-receiving countries, in the wake of a global economic slowdown. The traditional immigration countries—e.g., Australia, Canada and the United States of America—together currently admit an annual total of nearly 1 million legal immigrants, most of whom have skills or family connections to immigrants previously admitted. Very few countries have policies to admit large

Box 6. Selected methods used for estimating the number of undocumented migrants in the United States

- CENSUS-BASED INDIRECT ESTIMATES

Warren and Passel (1987) derived estimates of the number of undocumented aliens by comparing the foreign-born population counted in the 1980 United States census data adjusted for naturalizations and omissions and the number of aliens legally residing in the United States at the census date according to the Immigration and Naturalization Service (INS) data. The following identity was used to compute the final estimates:

Undocumented aliens counted in the census	=	Foreign-born population counted in the census	+	Naturalized United States citizens in the United States	-	Legally resident aliens in the United States

- ESTIMATES BASED ON BORDER APPREHENSION DATA

Espenshade (1995) developed a model which yielded estimates of the number of undocumented migrants crossing the United States-Mexico border. This model postulates that undocumented migrants will keep trying to re-enter the United States after they have been apprehended until they succeed. Under this assumption, the size of the illegal immigration flow (F) is equal to the product of the odds of being arrested by the number of border apprehensions (A):

$$F = A\ ((1-p)/p).$$

Estimates of the apprehension probabilities (p) were derived from statistics on total apprehensions and repeaters for the period 1977-1988. Probabilities estimates ranged from 0.21 to 0.40 over this period and had an average value of 0.32. The simple linear correlation between the number of apprehensions and the volume of illegal immigration was approximately 0.90 and the size of the undocumented migrant flow was roughly 2.2 times the number of Border Patrol arrests.

- SURVEY-BASED ESTIMATES

Survey-based estimates of the number as well as the characteristics of undocumented migrants of Mexican origin have been computed using direct observation at major crossing points (Santibáñez, Romellón, 1993, and Colegio de la Frontera Norte, 1994) and interview techniques. Both non-systematic and random samples were used for conducting interviews. Cornelius (1982) and Massey and Singer (1994) constructed community-based "snowball" samples of migrants originating from the same Mexican villages where each migrant provided names of other illegal migrants who were subsequently interviewed in Mexico or the United States (Cornelius, 1982). Heer and Passel (1987) drew a systematic sample with random starts of newly-born babies in Los Angeles County whose father or mother was reported as being of Mexican origin.

numbers of unskilled immigrants, yet there is a continuing rise in demand worldwide for unskilled work. Moreover, some of the countries which have had very large absolute increases in population over the past decade are countries which have a tradition of emigration.

Another important factor in explaining undocumented migration is that fewer countries now have emigration controls. Throughout the period of the cold war, immigration and particularly emigration were subject to strict regulations, and international borders were rigorously controlled. Following the political changes of 1989-1991, border controls were significantly relaxed and it became much easier to cross from one country to another (United Nations, Economic Commission for Europe, 1995, pp. 229). Moreover, with the democratization of a number of States in Africa, Asia and Latin America, there currently are few countries from which exit is now controlled (Widgren, 1994).

Although differences in the economic, political and social contexts limit generalizations, certain features of undocumented migration are more or less universal. There is general agreement that economic factors are paramount in inducing persons to migrate illegally. Illegal flows are often from relatively poor countries to countries with high gross national product (GNP) per capita. Japan, for example, has been a major pole of attraction for undocumented migrants in recent years, with a stock of as many as 300,000 undocumented migrants from more than 90 countries of origin. This is partly explained by the fact that Japan's per capita GNP ($26,920 in 1991) is significantly greater than that of many neighbouring Asian countries, e.g., 34 times greater than that of the Philippines, 67 times greater than Pakistan's and 122 times greater than that of Bangladesh (World Bank, 1996).

Some of the more extreme instances of economic disparities are among contiguous countries that share extensive historical migration relationships. Per capita GNP in the United States of America, for example, was six times higher than in Mexico in 1994 ($25,700 versus $4,180), whereas it was 11 times higher in Germany than in Poland ($25,700 versus $2,410). Likewise, the Bermejo River that separates Argentina ($8,200 per capita GNP) and Bolivia ($900 per capita GNP) has been likened to the Rio Grande River separating Mexico and the United States, in that it separates countries with widely different levels of per capita income. In addition to disparities in levels of GNP, business cycles and periods of recession have a powerful impact on undocumented migration. In spite of greatly stepped-up enforcement along the United States border, for example, Mexicans continued to enter the United States in record numbers during the recession following the collapse of the peso in December 1994.

Widespread poverty and income inequality exist in the context of a global communications revolution, with international telephone/telefax networks, global television channels and so forth. As Widgren notes, these new technical possibilities to link up with far-away countries provide better opportunities for potential migrants to take departure decisions (Widgren, 1994). Moreover, although migrants continue to cross national borders by foot, improved transportation networks, including cheap and rapid air travel, now mean that undocumented migrants have additional means to cross borders, and no longer move mainly from neighbouring countries.

A relatively new dimension is that of trafficking. Within trafficking, there are various activities ranging from small-scale operators who provide a specific service such as transport across a border to large-scale operators who make full use of the most modern communication techniques and provide the entire range of services, including documentation, transportation and assistance in crossing borders, places for transit and residence in the receiving countries and illegal employment (Gunatilleke, 1994).

In recent years, large-scale trafficking operations increasingly have come under the control of international networks of organized crime, an industry that is estimated to generate gross earnings of between $5 and $7 billion annually (Gunatilleke, 1994). The trafficking business not only is highly lucrative, but in some cases is treated rather leniently. In most of the Central American countries, for example, where large numbers of undocumented migrants transit, alien smuggling is not a crime and traffickers operate openly as travel agents.

One of the major problems with trafficking is that it undermines the process of orderly legal migration.

Moreover, the entry of organized crime and the increasing difficulty of combating undocumented migration have negative consequences for the image of migration and migrant communities in the societies that are at the receiving end of trafficking. They tend to generate reactions that are strongly antagonistic, which associate migration with criminal activity (Gunatilleke, 1994).

B. Consequences of undocumented migration

The consequences of undocumented migration are still unclear. A significant debate among academics and policy makers alike focuses on the effects of undocumented migrants on the depression of wages and working conditions. Some economists argue that a large supply of inexpensive foreign labour in a country is responsible for depressing wages and working conditions, particularly in large urban areas. The rationale is that undocumented aliens are more docile and vulnerable, and therefore preferred by employers, who find them more cost-effective. This phenomenon lends itself to a general reduction in wages, health and safety conditions, and various fringe benefits. Others argue that depressed wages and working conditions are not the result of an influx of foreign workers but rather the cause of this influx. The argument rests on the assumption that, as a by-product of industrialization, a level of jobs exists that is rejected by native workers and open to other sources of labour. According to these theories, native workers are not displaced by foreign workers; rather, foreign workers maintain certain businesses and agricultural enterprises which would otherwise be unable to attract sufficient labour.

There also is an unresolved debate concerning the impact of undocumented migration on the social welfare State. While some contend that undocumented migrants overburden social services without contributing to the system (i.e., given that most do not pay taxes), others point to the fact that these migrants often contribute to the social welfare system without any return (i.e., pensions). Moreover, an argument has been made that the cost of not providing access to social services is even steeper. Where access to education or health care for undocumented migrants is lacking, the resultant social costs may in the end be greater as a result of the higher level of marginalization and criminality, or the potentially higher health costs incurred if treatment is left until an advanced or acute stage.

The costs of undocumented migrants clearly vary with their degree of integration into the social, economic and political structures of the receiving society. The consequences of undocumented migration and the cost/benefit assessments thus depend on individual characteristics of undocumented immigrants (i.e., level of personal wealth, education and ability to integrate), and on variations in national provisions (i.e., ease of access for undocumented immigrants to social benefits (Secretariat of the Inter-governmental Consultations, 1995, p. 8). Such analyses underscore one of the chief dilemmas in assessing the undocumented migration phenomenon since, apart from differences in countries of origin and modes of undocumented migration, migrants also vary greatly in terms of wealth, education, family situation, and level of social and political integration into the receiving countries.

C. Regional overview

Despite redoubled control efforts, large-scale spontaneous migration continues to be the number one immigration challenge for advanced industrial societies (United States of America, Department of Labor, 1992). The United States of America has the world's largest stock of undocumented migrants, owing to such factors as the country's high wage levels, its virtually unregulated labour market and its long open borders. Despite a 1986 legalization programme which attracted more than 3 million persons, estimates suggest that the undocumented migrant population in the United States has been continuing to increase by about 1 million persons every four years and was expected to reach 4.8 million in October 1996 (Passell, 1996).

The traditional labour migration countries, such as France and Germany, but also the Netherlands, the United Kingdom and, to a lesser degree, the Nordic countries, have been major destinations for undocumented migrants. In recent years, the proportion of irregular arrivals managing to gain entry and residence to many European countries appears to be increasing. Indeed, non-deserving asylum-seekers and illegal entrants now account for more than 50 per cent of total immigration to the main European countries, as compared to 25 per cent in the mid-1980s (Widgren, 1994). An increasing number of undocumented migrants in Europe have been linked to new restrictions on asylum-seekers. In addition, trafficking in undocu-

mented migrants has become a growing problem, as the disappearance of the rigid border controls of the cold war period has facilitated the smuggling of undocumented migrants into the West via Eastern Europe.

The focal area for undocumented migration to Germany is the German-Polish and the German-Czech borders, where large numbers of Romanian and Bulgarian nationals and, increasingly, Asians and Africans have entered in recent years. Since 1989 the number of foreigners, both legal and undocumented, entering Austria has increased dramatically. Illegal employment has been common in Austria; indeed, a Government survey conducted in 1992 found that, of 389 firms in Vienna, two thirds employed illegal workers (OECD, 1993, p. 68).

The countries of Eastern Europe and the Commonwealth of Independent States (CIS) have experienced a new and previously unknown migration stream, namely, illegal transit migration. Many migrants have entered these countries in recent years not to settle or work, but with the intention of moving on further to the West. The Czech Republic and Slovakia are major countries of transit, with Prague being a focal point for the organized smuggling of foreigners into Germany. Large numbers of undocumented migrants, mainly from South-Central Asia (India, followed by Afghanistan, Pakistan, Sri Lanka, the Islamic Republic of Iran, and Bangladesh), also have been crossing the Baltic States on their way west. Ukraine and other CIS countries are also common transit countries, with migrants entering illegally from the territory of the former USSR, having either false documents, false visas, or temporary tourist visas to some CIS country, mainly Ukraine (Sipaviciene, 1996). According to Government estimates, there are an estimated 500,000 to 1 million undocumented migrants from China, Afghanistan and various African countries in the Russian Federation (*Migration News*, 1997).

In Southern Europe, countries that were major sending countries 20 years ago now are major recipients of undocumented migration, in part because they did not develop the restrictive immigration policies of the traditional labour-receiving countries and in part because of labour shortages. Immigration, particularly undocumented migration, has become a policy issue in Italy only in recent years. Although the number of legal foreign workers admitted to Italy has declined, the Martelli Law apparently has had little effect on the flow of undocumented migrants, many of whom cross from Northern Africa into Sicily. It is estimated that more than 1 million undocumented migrants now live in Italy even after the most recent amnesty. Employment in Italy is supposedly restricted to legal immigrants but, in practice, most of the undocumented migrants have no difficulty finding jobs, and their employment is tolerated. Before 1985, foreigners in Spain and Portugal were predominantly from countries of the European Community, and from Latin America. In recent years, however, droves of North Africans have crowded into small boats and crossed the Strait of Gibraltar into Spain. Greece also has large numbers of undocumented workers, especially from Albania and Egypt.

In recent years, the countries of Southern Europe have been forced to draft new laws and regulations in order to give their northern partners in the European Union sufficient guarantees of the determination not to remain the "weak links" in common protection (Claude-Valentin, 1994). Towards this end, in 1992 the Portuguese Parliament began to transpose Community or intergovernmental directives into national law, setting new criteria for entry and residence, revising regulations concerning expulsion, categorizing aiding and abetting illegal immigration and refusal to comply with an expulsion order as new criminal offences, and increasing the fines for illegal residence and working without authorization. Spain and Greece have undertaken similar measures.

In Western Asia, Israel has as many as 100,000 undocumented workers who have replaced Palestinians as a source of labour. The foreign workers, who are mainly from Romania, Thailand and Ghana, fill low-paying jobs in agriculture, construction, restaurants and nursing homes. Many have come in the past few years, as Israel repeatedly closed its borders following terrorist attacks.

In Asia, an important development in recent years has been the surge in migration to some of the countries of Eastern and South-Eastern Asia whose expanding economies have been experiencing labour shortages. Because of the reluctance of many of these Governments to admit migrant workers legally, undocumented migration has been common. In the early 1990s, Japan

was estimated to be hosting nearly 300,000 undocumented migrants, for example, in addition to the million or so foreign residents legally present in the country (United Nations, Economic and Social Council, 1995, para. 8).

These flows are in some part encouraged by their acceptance. Malaysia, for example, is estimated to have a minimum of 1 million foreign workers, excluding a large number of illegals, whose numbers cannot be accurately ascertained (OECD, 1996). Thailand is another major receiving country, with as many as 500,000 undocumented migrants as of 1994—mainly from Myanmar, but also from Cambodia, the Lao People's Democratic Republic and China. Even Singapore, a country that is widely regarded as a highly regulated society that can manage the foreign population effectively, now has significant numbers of undocumented workers, particularly in the construction industry. In South Asia, Pakistan may have as many as a million undocumented migrants, with workers from Afghanistan, Bangladesh, Burma, India and the Islamic Republic of Iran.

Many Asian countries are also important sources of undocumented migrants. There may be as many as 1.8 million undocumented Filipinos, for example, living abroad. At the same time, many of the Asian countries that produce undocumented migrants also attract significant illegal flows. There currently are some 500,000 undocumented migrants, for example, in the Philippines. More than half of these undocumented migrants are Chinese nationals from Fujian Province who have relatives in the country.

A number of reasons account for the persistence of foreign workers entering illegally even when legal channels to entry exist. Despite the fact that countries such as Thailand, Indonesia and the Philippines actively encourage their citizens to work overseas, bureaucratic delays in processing applications make official channels unattractive (OECD, 1996). Potential migrants often have to apply for overseas work permits, take a skills test, obtain clearance from the Labour Department, and then produce all compulsory travel documents before immigration authorities grant travel permits. In some countries, a compulsory exit tax acts as another deterrent; in most cases, the entire process is slow, cumbersome and costly.

Easily evaded border controls, widespread intra-regional income differentials, and unequal availability of jobs have made undocumented migration a predominant form of migration in Latin America. For many years, undocumented migration in Latin America was widely tolerated, although this situation has appeared to be changing in a number of countries in recent years. In Argentina, for example, a country with 17 per cent unemployment in 1996, there has been growing opposition to the presence of some 800,000 to 1 million undocumented migrants.

Undocumented migration in Africa frequently has been an extension of internal migration, with migrants crossing back and forth over international boundaries without documentation, particularly in areas where there are no distinct geographical barriers or where the same ethnic group inhabits both sides of the border. Such flows have sometimes been seasonal, most often for a period of several years, and sometimes have lasted for a lifetime, although they have rarely resulted in citizenship in the country of settlement. In addition to this border-crossing type of movement, there have been other international migration flows of very long standing (e.g., the movement of nomads, herdsmen and fishermen) that are technically irregular. Large numbers of Africans have also entered neighbouring countries without documentation to escape deteriorating ecological conditions, while others have crossed international frontiers to move away from civil strife (although many do not formally seek asylum and therefore are not accorded the protected status of refugees). Undocumented labour migration also frequently takes place between contiguous African countries. Indeed, until fairly recently, many countries in Africa did not require immigrant visas. In Côte d'Ivoire, for example, before residence cards were introduced in 1990, there were no restrictions on the presence of foreigners on Ivorian territory (Awad, 1995).

An increasing number of Governments in Africa have adopted policies to curb undocumented migration, partly as a response to domestic political pressures generated by chronic unemployment, inflation and political instability, which have combined to focus resentment on non-nationals. Many African countries have tightened immigration laws and passed legislation or invoked administrative procedures to deny entry to new immigrants while enforcing rules and regulations aimed

at reducing the number of established immigrants, and particularly of undocumented migrants. Policy measures reflecting this trend include border controls, visa and passport requirements, the introduction of quotas, and indigenization policies.

D. A REVIEW OF POLICY INSTRUMENTS

Policies to combat undocumented migration vary and, of course, change over time in relation to the size and perceived characteristics of the migrant population. A Government is likely to be more tolerant of the presence of a small number of overstayers, of undocumented migrants who possess needed skills, or of migrants who settle in an underpopulated area that has manpower shortages, than of an influx of large numbers of undocumented migrants who duplicate the skills of the local population, or who settle in a densely populated area, where they are perceived to engage in criminal activities or to foment unrest.

Policies reflect not only the nature and characteristics of the undocumented migrant population but also the political, economic and social conditions of the receiving country. A Government's perception of undocumented migration may change following an upsurge of nationalistic sentiment, in response to fears over national security, or following a war or other dispute with another country, which often leads to the expulsion of nationals of that country. A policy change may also reflect economic conditions. Indeed, it is well known that, in many countries of attraction, enforcement varies according to economic circumstances, with a lenient enforcement policy in times of economic prosperity and more vigorous enforcement during an economic downturn. Policies also reflect and change in response to perceived negative social and cultural impacts, such as rising crime, domestic violence, or the undermining of traditional values.

Governments' perceptions of undocumented migration and related policies vary from one country to another and reflect both the broad range of national legislation and how it is applied in practice. However, most of the apparatus in force in the various States to combat undocumented migration comprises the same broad range of measures: e.g., visa requirements, border controls, surveillance within States, action to combat the employment of foreigners without a work permit, detention and expulsion, with each measure being given a higher or lower priority, according to the circumstances. In the United States of America, for example, where about half of undocumented migrants "enter without inspection"—either by eluding border inspection or using fraudulent documents—and half are visa overstayers, the major policy emphasis is on border controls.

A complicating factor is that the status of migrants can and does change over time. Thus migrants may enter and reside in a country legally but, if not allowed to engage in an economic activity, may become undocumented if they work. Others may become undocumented only when they stay beyond the time allowed by their entry or residence permits. Still others may be persons whose application for asylum is rejected but who manage to evade deportation and remain in the receiving country illegally.

For purposes of analysis, this chapter will discuss policies to combat undocumented migration according to the various modes of illegality: namely, through entry, residence or stay, and employment. In addition, the chapter will focus on policies in regard to pre-entry, which are assuming increasing importance in a growing number of countries.

A major thrust of recent policy efforts in many countries in regard to undocumented migration is interdiction, which is defined as activity directed towards preventing the movement of potential undocumented migrants at the source. Interdiction initiatives take various forms, including information campaigns to deter potential migrants, visa requirements, carrier sanctions, airline training, liaison with foreign control authorities, as well as the actual interception of persons travelling on fraudulent documents (Canada, 1994a). Interdiction is considered not only to be more cost-effective but also more humane and efficient than taking enforcement action after a migrant has arrived in a receiving country.

1. Information campaigns

In line with the concept of interdiction, there is growing awareness of the need for publicity and media campaigns in both source and transit countries to deter undocumented migrants. It is felt to be important to

create a realistic picture in the source countries of the possibilities of legal migration to the receiving countries, with a view to preventing undocumented migrants from undertaking costly and sometimes hazardous journeys without having a realistic chance of obtaining a work or residence permit. Also, publicity campaigns can inform potential migrants of the hazards and costs of using traffickers.

Information is considered to be particularly important in the case of trafficking in women for sexual exploitation. Research conducted under the auspices of IOM has found that a lack of information or false information among potential migrants about the prospects of a rosy life in the receiving countries may influence the decision of women to entrust themselves to traffickers and illegal recruiters (IOM, 1996b). Moreover, there is evidence that information about the reality of conditions in the receiving countries can have a considerable impact in deterring women from migrating. Indeed, a study conducted by IOM concluded that the recruitment in Nigeria of girls and women for sexual exploitation had shifted from the cities to rural areas in recent years, partly because women in those areas were less well informed about life in the receiving countries and were more easily persuaded to migrate. IOM has noted that information campaigns also need to be targeted at the trafficked women, who sometimes are afraid to tell the truth to their families and therefore send back false reports of the good life that they are leading, inducing other young women to emigrate in turn (IOM, 1996b).

In some cases, the sending countries themselves have undertaken efforts to protect their nationals from being exploited by traffickers and to inform them of their rights. The Philippines, for example, considers that the problem of illegal recruitment stems from the public's lack of information regarding overseas labour markets and the rules and regulations governing overseas employment. To address this situation, the Government embarked on a massive education and information campaign—using radio, television, newspapers, the cinema, posters, and so forth—to disseminate information on how illegal recruiters operate and to motivate people to use only legal channels of recruitment (Republic of the Philippines, 1994a). Likewise, Ghana's Immigration Service reported that it intended to mount educational campaigns in the form of television and radio programmes and posters to be displayed in public places and at entry and exit points, focusing on the requirements to travel to and reside in other countries (Ghana, 1994).

Information campaigns have also been conducted by major receiving countries. In 1995, for example, the United States of America began airing a series of informercials in Latin America and the Caribbean. Picked up by some 1,400 television stations and broadcast on the Voice of America, the Spanish language broadcasts warned foreigners not to enter the United States illegally, threatening violators with prison (*Ft. Lauderdale Sun*, 1996).

2. Visa requirements

Many Governments have introduced more stringent requirements for granting visas. The members of the European Union, for example, maintain a common list of 110 countries for which visas are required. In some cases, countries have used the visa system to respond flexibly to changes in illegal migration flows. For example, in the early 1980s, Canada began requiring visitor visas for nationals of countries that had consistently produced undocumented migrants; in 1981, for example, visitor visas were required for nationals of India; in 1983, for Sri Lankans and Bangladeshis; and in 1984, for Guyanese, Peruvians and Guatemalans (Kubat, 1993). In some cases, a Government may suspend the visa requirement for a given country and then decide to reimpose it. For example, after suspending the visa requirement for nationals of Chile in 1993, Canada announced in the following year that Chilean nationals would again be required to obtain visas, mainly because of increasing numbers of claims from bogus asylum-seekers.

The United States of America, which requires visas from nationals of all countries, with the exception of 26 countries included in the Visa Waiver Pilot Program (which permits entry to the United States for 90 days without a visa), likewise has used the visa system to respond to changes in migration flows. In mid-1996, for example, the United States abolished visa requirements for nationals of Argentina. As the first Latin American nation to qualify for the Visa Waiver Pilot Programme, Argentina was exempted because most Argentine visitors had not overstayed their visas.

3. *Carrier sanctions*

A further attempt at interdiction is the use of carrier sanctions, in accordance with guidelines established by the Convention on International Civil Aviation (1944). Standards 3.35.1 to 3.38 to that Convention established that it was the responsibility of the airline to ensure that passengers have the necessary travel documents. The Convention recognized the airlines' need for assistance in establishing the validity and authenticity of passports and visas, and granted the ability to seize fraudulent, falsified or counterfeit travel documents of inadmissible persons (ICAO, 1994). It further outlined the responsibility of airline operators to return inadmissible persons to the point where they commenced their journey, or to any other place where they would be admissible, and the ability of the airline operator to recover transportation costs (ICAO, 1994).

Sanctions are imposed on the airlines in the case of violations. In the Netherlands, for example, transporting an improperly documented person carries a fine of 50,000 guilders and up to six months' imprisonment. In other countries the sanctions are more severe. Canada, for example, imposes a penalty of up to $25,000 for a first offence, or up to $100,000, or a term of imprisonment not exceeding three years or both, for a subsequent offence. Canada has noted, however, that it has had difficulty collecting fines from the airlines. Whereas an airliner can be detained for up to 48 hours, a commercial airliner on a regularly scheduled flight cannot be seized, because a contravention is dependent on the operator's knowingly organizing, aiding and abetting persons to enter Canada by improper means (Canada, 1994a). Hence, since 1993 the Government of Canada has required that airlines deposit a cash security to ensure the payment of fines incurred for airline violations.

In line with carrier sanctions, a number of countries have conducted training programmes for airline staff and foreign immigration officials or have posted liaison officers in third countries. Canada, for example, not only has been very active in training airline personnel but has also sent experienced immigration staff to sending countries to assist them in developing immigration policies and programmes. Germany also conducts training courses for airline staff and officers of foreign immigration authorities on ways of preventing the transportation of inadmissible passengers (Germany, 1994). Likewise, the Netherlands has found that posting liaison officers in third countries and in transit countries has proved to be a successful preventive measure to deter undocumented migration. The Netherlands has also had a favourable experience with conducting pre-boarding checks in several African countries.

Sanctions against ships have been in force for many years. However, arrival by ship often presents a more serious problem of apprehension. In many countries, there is a continuing arrival of small boats along unpatrolled coastlines, often under the cover of darkness. In other instances, elaborate trafficking schemes involve the transport of large numbers of aliens in freighters that are sometimes intercepted at sea, with aliens being brought to shore in less conspicuous vessels such as fishing boats.

The trafficking of Chinese migrants gained a great deal of international attention in 1993 when one of the trafficking organization's freighters ran aground on a New York beach; in that same year, however, United States intelligence reported that there were over 30 such ships sailing towards the United States (International Organization for Migration, 1995a). The prospect of imposition of a fine or seizure of a ship for carrying illegal aliens has led to cases of extreme human rights abuses in recent years, with illegal aliens being thrown overboard to avoid penalties or seizure of the vessel.

4. *Border controls*

In many countries, undocumented migrants enter clandestinely either alone or assisted by traffickers by crossing over stretches of unpatrolled borders, particularly in forested or mountainous areas. In some cases, undocumented migrants are hidden, for example, in trucks with a double bottom, or even in sealed containers lacking ventilation. Among measures adopted by Governments to stem the problem of illegal entry is the fortification of borders. Malaysia, for example, is building a M$ 54.6 ($22 million) wall 2.5 to 3.5 metres high on its northern border with Thailand to discourage undocumented migration and drug smuggling (*Migration News*, 1996a). Kuwait also recently announced plans to build an electric fence along its 130-mile border with Iraq. Border or frontier controls, however, often have

been ineffective in countries with long land frontiers. Argentina, for example, which has nearly 800 different crossing points along its 2,500-mile western border, has found it difficult to control undocumented migration. Indeed, in most instances, a determined clandestine migrant can penetrate most borders—unless a country is prepared to militarize them, which in the present international political climate is perceived as an action of last resort (United States of America, Department of Labor, Bureau of International Labor Affairs, 1992).

In the United States, where about half of the undocumented migrants enter the country illegally and half are visa overstayers, interdiction of migrants at the United States-Mexican border traditionally has been viewed as the first line of defence against undocumented migration. Until recently, the United States border patrol followed a capture-after-entry strategy, apprehending illegal aliens after they crossed the border, often at transportation arteries and in places where illegals congregated (Passell, 1996).

In September 1993, however, the United States initiated a major shift in its operational strategy in El Paso, Texas, known as "Operation Hold the Line". Rather than apprehending migrants after they had entered, some 400 border patrol agents formed a highly visible, unbroken, 24-hour blockade along the levees of the Rio Grande River. In 1995, the United States nearly doubled the size of the border patrol, to more than 4,500 agents. (The new immigration bill provides for even stronger border enforcement, adding 1,000 border patrol agents per year for five years, bringing the total to almost 10,000 by the year 2000.) Subsequent evaluations found that Operation Hold the Line was more successful in controlling illegal local crossings than in preventing long-distance migration. Indeed, given the economic recession in Mexico following the devaluation of the peso, many long-distance migrants simply went around El Paso by crossing the border elsewhere, as evidenced by increases in apprehensions in adjoining sectors (Passell, 1996).

Beginning in October 1994, under another major initiative known as "Operation Gatekeeper", a 10-foot-high, brightly lit steel fence was built along 24 miles of the southern California border in an area known as Smugglers Canyon, which traditionally has been a transit area for long-distance migrants. The operational aspects of Operation Gatekeeper greatly enhanced the effectiveness of the operation; for example, additional hardware was brought into the process, such as new vehicles, encrypted hand-held radios, night vision equipment, infra-red scopes, motion sensors and portable lighting equipment (Passell, 1996). Subsequent evaluations of Operation Gatekeeper found that it disrupted historical patterns of illegal entry, pushing undocumented migrants eastward into rougher terrain and more remote areas where the trip to a populated area was much more difficult (whereas an alien could slip into a house or car within 20 minutes of crossing the border in the western-most section, at least 12 hours were required further to the east). Ironically, however, with the increased difficulty of making the crossing and the higher probability of being caught, more potential migrants began using smugglers, whose prices increased (Passell, 1996). Moreover, the deterrence strategy of making illegal entry much more difficult had another unintended effect, in that individuals who successfully entered the United States illegally appear to have remained longer than they otherwise would have done (Passell, 1996).

In Germany, the Federal Border Police has undertaken various measures to combat illegal border crossings, including reinforcement of personnel at the country's eastern borders—there currently are 5,700 agents to guard Germany's eastern borders, with another 500 scheduled to be added in 1997—improved surveillance equipment such as radar and infra-red imageing devices, and greater use of police dogs, helicopters and patrol boats for mobile border surveillance. In addition, the Bundestag adopted a new Federal Border Policy Act which authorizes border police to search dwellings within 30 kilometres of the border in connection with combating illegal immigration networks.

In Europe, there is ongoing controversy over proposals to abolish all border controls within the European Union. Under the Maastricht II proposal, EU members would first eliminate border checks on EU nationals and third-country nationals moving within the Union. EU nations would agree on a common list of countries whose nationals would need visas to enter EU and would standardize asylum and entry and residence procedures. The United Kingdom and Denmark are opposed to the replacement of national laws by an EU immigration regime. The United Kingdom still checks incoming EU citizens at entry ports, despite the expectation that the

European Court will rule that Great Britain's passport checks on other EU citizens violate the Treaty of Maastricht.

Under the Schengen Agreement of 1985, which exists independently of the European Union, checks on incoming persons have been eliminated at the borders and airports between France, Germany, the Netherlands, Belgium, Greece, Italy, Luxembourg, Austria, Spain and Portugal. Five Nordic nations that have had a passport-free travel zone since 1958—Finland, Denmark and Sweden, and non-EU Norway and Iceland—joined the Schengen Group in December 1996. In March 1996, however, France reinstituted border checks at its crossings with Belgium, Luxembourg and the Netherlands in order to enforce its drug laws, and in December 1996 Spain and Portugal agreed to rebuild checkpoints along their border to combat undocumented migration.

5. Documentary controls

The term "undocumented" migration is something of a misnomer, since migrants in an irregular situation frequently do have documentation. Most countries in the world use documentary controls at border checkpoints to ensure that persons entering the country are entitled to do so. In recent years, documents produced upon arrival in many countries are bogus documents—consisting of counterfeit or altered documents, forged unissued passports stolen from embassies and consulates throughout the world, or even genuine documents that were improperly issued. In recent years, a whole underground industry for the production of fake documents (e.g., passports, visas, identity papers) has sprung up to cater to the needs of migrant trafficking. Bogus documents are frequently recycled to be used again and again, with smugglers often taking back the travel and identity documents used by illegal migrants to board airlines or instructing them not to present any travel documents upon arrival. Passports and other travel and identity documents have been found concealed in cut-out portions of books and photo albums, hidden in small appliances, and sewn into the lining of clothing (Canada, 1994a). Moreover, there are growing indications that organized crime is involved in the trade in bogus documents being conducted through the international mail and courier services. To address this problem, the Government of Canada has pressed for legislation to provide the authority to search for and seize travel and identity documents from international mail and courier services (Canada, 1994a).

To combat the problem of bogus documentation, a number of Governments have developed counterfeit-proof passports and visa stamps. The Government of Pakistan introduced a newly designed passport booklet with enhanced security features, namely, a heat-sealed laminating system to safeguard the passport against photo replacement (Pakistan, 1994). Within the European Union, the Schengen Convention provided for the harmonization of visa regulations and the introduction of a uniform, largely counterfeit-proof visa stamp. A new Canadian passport with increased security features was introduced in 1993 and a new permanent resident document in 1995. In the United States in 1996, the Government began trying out a new technology that will make it harder to produce fake work permits, green cards and other papers. The new credit-card-sized documents, made of hard plastic that cannot be peeled back to allow for alteration, will have holograms, high-resolution photographs, fingerprints and other security devices to deter counterfeiters from forging papers.

A number of countries have instituted computerized checks to aid in the detection of fraudulent documents. The Netherlands, for example, has a central system containing information about identity documents, including foreign and national passports, drivers' licences, residence permits and visas that have been reported stolen or missing.

Whereas the technology exists in many countries to prevent illegal entry through the use of counterfeit-proof travel documents, verification of identity through fingerprinting, and so forth, a number of countries have expressed reservations in regard to possible infringements of privacy or even abuses of civil rights stemming from such procedures. In Germany, for example, since the adoption of the Asylum Procedures Act in 1992, the police and departments dealing with asylum-seekers have had at their disposal a fingerprint record system known as AFIS. A system of the same type is now operating in the United Kingdom. Although assurances have been given about the use of these data files, possibilities for abuse remain. In the United Kingdom, for example, a number of civic associations have denounced the negative trend in public freedoms

reflected by this type of identification process, pointing out that so far only persons accused of crimes have been subjected to such procedures (Claude-Valentin, 1994).

Ultimately, the use of machine-readable travel documents is considered to offer a strong safeguard against alteration, forgery and counterfeiting of passports and travel documents. The Council of the International Civil Aviation Organization (ICAO), at the request of the Assembly of ICAO, has urged States to introduce machine- readable passports and visas to the fullest extent possible; this would accelerate the movement of passengers through clearance controls at international airports, and provide instantaneous verification and recording of personal data, as well as security benefits for States through immediate matching with lists of undesirable or potentially dangerous persons (ICAO, 1994).

6. Standardization of asylum procedures

In relation to the issue of screening out migrants who arrive in a country with bogus documents, countries have been concerned in recent years with the increasing number of persons who abuse the asylum system by claiming that they are refugees while in reality they are economic migrants.

After a steady rise in such asylum claims in many developed countries in the early 1990s, a number of Governments implemented new legislative and administrative procedures to step up the processing of applications and to deal with fraudulent requests more efficiently. The objective of these policies has been to prohibit entry to persons whose request is manifestly unfounded and to accelerate processing in order to avoid giving unsuccessful applicants the time to familiarize themselves with the society of the host country and to plan an illegal stay (OECD, 1995). In the wake of the Dublin Convention adopted in 1990, countries have been coordinating efforts to prevent asylum-seekers from filing applications in several countries simultaneously, thereby preventing so-called "asylum shopping".

Among States members of the European Union, there has been a rapprochement of legislation in regard to asylum in recent years. Increasingly, countries have adopted the concept of "manifestly unfounded applications", involving immediate assessment of the admissibility of the asylum-seeker, followed, in the case of refusal, by equally rapid expulsion. In the Netherlands, for example, persons who are deemed "inadmissible" are deprived of their identity papers and are ineligible for any social welfare benefits (Claude-Valentin, 1994, p. 5). Likewise, legislation strengthening the discretionary power of the State gives the authorities the possibility of issuing an expulsion order on the grounds of public order at any stage of the proceedings; it also extends the time limit for the detention of aliens or asylum-seekers in an unlawful situation; conversely, it shortens the time limit set for appeals to the State Council against all decisions taken under the Aliens Act.

In Germany, since July 1993, border authorities are allowed on principle to reject or deport asylum-seekers coming via so-called safe third countries. This third-country regulation is supplemented by the so-called airport regulation, which provides that, for foreigners who attempt to enter Germany without a valid passport or from a safe third country via an airport and request asylum, the procedure for the granting of refugee status has to be carried out before a decision on the individual's entry to Germany is made.

Appeal mechanisms in a number of countries have been revised (Claude-Valentin, 1994, p. 6). In the United Kingdom, for example, since 1 July 1993, if a person whose application for asylum has been rejected has a right of appeal before expulsion, the complexity of the system now greatly limits the scope of that right, particularly for those whose application is considered "manifestly unfounded".

In an effort to protect the rights of persons who are genuine refugees, UNHCR has cautioned that the new streamlined asylum procedures adopted in a growing number of countries should be accompanied by appropriate procedural safeguards, including the opportunity to rebut the presumption of illegal entry on which the exclusion measures may be based. Moreover, as UNHCR has noted, if asylum-seekers have acted irregularly, such as by entering illegally or using forged documents, the specific circumstances of their flight may have forced them to do so and should be taken into consideration, in conformity with article 31 of the 1951 Convention relating to the Status of Refugees, which reaffirms the principle that refugees shall not be penalized for their method of flight and manner of entry

into the country of asylum, provided that they present themselves without delay to the authorities and show good cause for their illegal entry or presence (UNHCR, 1994).

7. *Trafficking*

Trafficking, which may involve clandestine entry and/or presentation of bogus documents, is part of the more general process of illegal migration. According to a definition developed by IOM, trafficking involves several elements: it requires a trafficker or intermediary (which can range from organized criminal networks to more informal networks of compatriots in the country of destination) that facilitates the migration; it involves payment; the migration itself is illegal and is generally supported by various illegal acts; and the migrant who is party to the transaction is making a voluntary choice (Gunatilleke, 1994). Typically, the package of services provided by traffickers includes forged documentation, transport, and accommodation during transit. Fees range from a few hundred dollars to more than $30,000, depending on such factors as destination and distance. In addition to the economic migrants who make use of the services of traffickers, non-deserving asylum applicants with very weak or no genuine protection claims frequently make use of such services at some point in their journey.

Traffickers often have highly sophisticated counterfeiting workshops, where all of the necessary documents, visas and stamps can be forged or falsified, using state-of-the-art communications equipment. They also typically have considerable funds at their disposal, enabling them to spend large sums, e.g., on bribery, and to respond flexibly to the tightening of immigration controls in various receiving countries, switching rapidly to other routes.

Trafficking networks now operate globally, with elaborate schemes of "jump-off points" as well as temporary, third-country transit points prior to final destination. Currently, Hong Kong, China; Singapore; Thailand; the Netherlands; Bolivia; Belize; the Dominican Republic; and Mexico are some of the major transit points. Europe is currently a major operating arena for traffickers. Large populations of undocumented migrants have taken up residence in countries with more liberal entry policies, or have been stranded in transit countries when neighbouring nations have strengthened their inspection policies or increased airline boarding scrutiny. Moreover, the widespread changes in recent years in Eastern Europe and the freedom of travel between the States members of the European Union have opened up new and lucrative areas of criminal activity. Smuggling syndicates have also established a major presence in Moscow to facilitate the trafficking of Chinese and other nationals through the former Soviet Union and Eastern Europe. In many instances, trafficked migrants become involved in a very costly, long and uncertain mobility process. The migrants may be trafficked from one transit country to another, with the journey from country of origin to the final destination taking an average of about four years (International Organization for Migration, 1995c).

Trafficking involves a number of human rights issues. A number of particularly vulnerable groups, such as children and women lured into prostitution, have been involved in trafficking in recent years. Whereas the data on trafficking in women are very sparse, the limited information that is available suggests that there have been several waves of trafficked women to Europe from various regions of the world—the first composed of Asian women (mainly Thais and Filipinas); the second, of Latin Americans (Dominicans and Colombians); the third, of Africans (Ghanaians and Nigerians); and the most recent of women from Eastern Europe (International Organization for Migration, 1995a). Recruitment by traffickers in these cases frequently involves the use of force or deception, promises of high-paying jobs, or even of marriage. In many instances, the persons who enter a receiving country with the support of a smuggling organization are subject to continued exploitation. The extremely high sums demanded by smugglers sometimes drive the victims into serf-like dependency. Indeed, as the Government of China has noted, generally speaking, a trafficked illegal migrant is both a lawbreaker and a victim (People's Republic of China, 1994).

8. *Measures to combat trafficking*

One of the problems in regard to trafficking is that alien smuggling is not a crime in many countries. Moreover, in countries where it is a crime, it is often a minor offence without sufficient penalties to serve as a deterrent. (Indeed, drug smuggling typically results in prison terms of 10 to 12 years, versus one to two years

for smuggling aliens.) Even where fines and prison terms are imposed, the substantial profits to be made frequently override the potential risks.

Although trafficking is a criminal offence in most developed countries, the maximum penalties differ considerably. A number of countries punish trafficking with prison terms of one year or less. In Slovakia, for example, the penalty for trafficking is up to one year in prison or a fine of from 5,000 to 5,000,000 Slovak koruny (equivalent to US$ 150-$150,000), depending on the seriousness of the crime and previous involvement in organized crime (Slovak Republic, 1994). In the Netherlands, the penalty for trafficking has been one year in prison and a fine of 100,000 guilders; as the Government noted: "so far there are no indications that the rather low maximum penalty in the Netherlands is a pull factor, but of course there is an actual danger that smugglers focus their activities on the countries with the lowest penalties" (Netherlands, 1994); in 1996, the Netherlands announced that it proposed to raise the penalty for smuggling aliens to from four to eight years' imprisonment.

A number of countries have recently increased the penalties for trafficking. In Canada, for example, in February 1993, the fine of Can$ 10,000 for a conviction for trafficking was increased to Can$ 100,000, or a term of imprisonment not exceeding 5 years, or both. For persons organizing or attempting to organize the illegal entry of groups of 10 or more undocumented migrants, Canada established a penalty of up to Can$ 500,000 or a term of imprisonment not exceeding 10 years, or both. In the United States, the 1996 crime bill made the smuggling of aliens into the country punishable by a term of 10 years in prison, doubling the previous sentence; if anyone is injured during the act of smuggling, the penalty is increased to 20 years; if an incidence of smuggling results in death, the penalty is death or life imprisonment. In the United Kingdom, facilitation of illegal entry carries a penalty of up to 7 years' imprisonment and a fine. In Italy, a group of three or more persons who for profit bring illegal aliens into Italian territory is liable to imprisonment for up to 6 years (article 3, paragraph 8, of the Martelli Law of 1991) (International Organization for Migration, 1996b). A number of countries impose even stricter penalties; in the United Arab Emirates, for example, jail sentences of up to 15 years are imposed on those assisting the illegal entry of aliens.

A problem in regard to alien smuggling is that, in most countries of the European Union, it is a criminal offence to smuggle a person into the country, but not to smuggle a person out of the country into a third country. For example, if a person is smuggled from Poland via Germany to the Netherlands, the smuggler can be prosecuted if he is caught on Netherlands territory, or under German law if he is caught on German territory. If the smuggler stays in Poland, however, there is no possibility under existing legislation of prosecution, as smuggling migrants out of Poland to a third country is not a criminal offence. Given the fact that the fight against immigration crime no longer is a national, but rather an international, task there is growing awareness that there is a need for the international application and harmonization of penal measures.

Beyond the imposition of fines and other penalties, and the harmonization of laws and practices, there is widespread agreement among countries affected by trafficking that a critical precondition for the prevention of trafficking is the dissemination of information in the sending countries on the immigration laws and regulations of the receiving countries, the types of exploitation to which the trafficked migrants may be exposed, and the special hazards of operations managed by organized criminal networks. IOM has suggested, moreover, that countries already implementing such public education programmes should exchange their experience with other countries (Gunatilleke, 1994).

9. Stay

Once a migrant has successfully entered a receiving country, it becomes very difficult to monitor his or her stay. In many countries, migrants enter a country legally, with a tourist visa, and then decide to stay beyond the expiration of their visa. In some countries, such as Japan, unauthorized overstayers constitute the bulk of undocumented migrants, whereas in the United States, only about half of the total stock of undocumented migrants are estimated to be overstayers. Very little can be done to detect overstayers. In Japan, for example, where 30,000 people were indicted for unlawful residence and repatriated in 1990, the bulk of

visa overstayers were detected when they applied to the authorities for exit permits.

Many of the women currently being trafficked to various Western European countries for purposes of prostitution enter the countries legally, either with tourist visas or, in the case of several countries, with the status of "artist". When their visas expire, the women find themselves in an irregular status; they may then move on to a different European country to ensure that they do not stay illegally in any one country; or, in some instances, their sponsors let them be caught since it is a cheap way to send the women home at the host country's expense. Moreover, by expelling women who are potential witnesses, it becomes more difficult to prosecute traffickers (International Organization for Migration, 1995b). (The Netherlands and Belgium have introduced measures such as temporary residence permits to prevent victims of trafficking from being immediately deported, allowing them to come forward to press charges and to give evidence against the traffickers.)

There are instances where complicated documentation that may appear to be necessary to identify foreigners correctly creates such a problem for the migrants that they prefer to avoid it and instead become illegals (Böhning, 1996). In Gabon, for example, in order to obtain a residence card, a migrant must present a legal antecedents certificate from his place of birth, a housing certificate, an individual authorization from his employer, and a receipt for payment of the repatriation guarantee. In addition to these documents, around US$ 100 has to be given to the Ministry of Defence's Direction général de la documentation for the initial granting and subsequent renewal of the residence card. This sum imposes such a burden that it is largely responsible for the large-scale presence of undocumented migrants in Gabon (Böhning, 1996).

Of course, the problem of forgery arises in connection with identity cards and residence permits, as well as with documents required for entry at border checkpoints. A number of countries have taken steps to prevent the counterfeiting of such documents. In Botswana, for example, the Government has made efforts to prevent forgery of passports and residence documents, and to make the national identity card more secure. In South Africa—where, in an attempt to register as many voters as possible, temporary voter identity cards were widely dispensed and then parlayed into other South African identity documents—the Government intends to introduce new counterfeit-proof identity cards.

A number of countries are resorting to identity checks on a routine basis. Germany, for example, has expanded the obligation for residents to carry identity documents so as to allow the concrete identification of foreigners and require them to provide proof of legal residence. In the Netherlands, the Duty of Identification Act makes it compulsory for each citizen to identify himself in certain places or on certain occasions. Moreover, the Aliens Act now permits unlimited detention of persons in the Netherlands without residence permits pending their expulsion. In France, where legislation previously restricted the practice of administrative police checks by establishing that they could be carried out only on persons whose conduct was in direct breach of law and order, new legislation provides that an identity check may now be carried out on any person "irrespective of his conduct" (*International Labour Review*, 1993, p. 419). Moreover, in December 1995 the lower house of the French Parliament put forth a proposal to require private citizens to notify local authorities whenever they had non-EU foreigners in their homes.

10. Sham marriages

In a number of countries, undocumented migrants may attempt to be admitted to a receiving country or, once in the country, to regularize their status through the vehicle of a sham marriage. In the European Union, such marriages have become the subject of growing attention in the various member States, where new measures have been enacted to reduce their incidence. In the Netherlands, for example, an amendment to the Civil Code prohibiting marriages of convenience gives a key role to registrars in authorizing or refusing to authorize a marriage between a Dutchman and a foreigner. Similarly, in France, a mayor now has the authority to notify the Government procurator when he doubts the sincerity of the marriage he is called upon to solemnize; the procurator may then suspend solemnization of the marriage for one month and lodge a formal objection that the prospective couple can challenge in the courts. When a marriage has been contracted, the foreign spouse may not receive a residence permit until

one year after the date of the marriage, with this being conditional upon the spouses having lived together continuously (Claude-Valentin, 1994). In Switzerland, the revision of Swiss nationality law in 1992 was aimed in part at preventing the practice of organizing bogus marriages to traffic women into Switzerland.

There is evidence that sham marriages are a growing worldwide problem. In Australia, for example, in 1994-1995, the authorities rejected more than 1,000 applications for marriage visas on the grounds that the relationships were not genuine; in the first half of 1996, almost half of the immigration prosecutions in Australia involved immigration marriage fraud. In Malaysia, in an effort to stop "marriages of convenience", the Home Ministry announced that it would revoke the work permits of foreign workers married to local women in an effort to gain permanent residence in Malaysia.

The major sending countries are equally concerned by the potential human rights abuses posed by sham marriages. The Philippines, for example, prohibits mail-order-bride arrangements, barring almost 1,000 Filipina brides in 1996 from leaving for the Republic of Korea, on suspicion that their marriages were a ruse to turn them into housemaids (Manila, 1996). In a recent development, there is evidence that women from Asia and Eastern Europe are being sold via the Internet for prostitution and marriage to Western men (*The Guardian*, 1995).

11. Work permits/employer sanctions

A safeguard against the employment of illegal immigrants used in a large number of countries is the work permit system, under which the worker must typically have a work permit or the employer must obtain authorization to employ a foreign worker. Supplementary measures include the requirement that the worker must have entered the country legally, or that the contract between the employer and the worker must not have been made through an illegal intermediary or unauthorized recruitment agency. Provisions requiring employers to provide the competent authorities with information on all foreign workers in their employ, as well as to inform the authorities of the termination of the migrant workers' employment, are additional measures commonly in use.

With respect to enforcement, a number of countries assign responsibility to a labour inspection service or other labour authorities to ensure that no migrant workers are employed illegally. In other countries, periodic inspections of establishments known to employ undocumented migrants are carried out. Moreover, civil and penal sanctions, including large fines and imprisonment, are sometimes imposed on employers of undocumented migrants.

There are major differences between the United States and Europe in this regard. In many European countries, the agency with the most labour market expertise, the labour agency, has responsibility for detecting and removing unauthorized workers from the workplace. Indeed, European labour agencies often see removing undocumented workers as a means of protecting legal workers. In contrast, in the United States, inspectors from the Immigration and Naturalization Service (INS) are concerned about the workers' legal status but not about their wages or working conditions, while the State labour inspectors are concerned about wages but not about the workers' legal status. Indeed, in California, New York and other States with high levels of immigration, State labour inspectors typically do not cooperate with INS (federal labour inspectors, on the other hand, are obliged to report suspected immigration violations to INS) (Passell, 1996).

Western European countries have a long history of protecting their workers by controlling access to their labour markets by undocumented migrants. France adopted employer sanctions as early as 1926, and again in 1946 and 1976, whereas most other advanced industrial European countries instituted similar provisions in the early to mid-1970s. The Federal Republic of Germany first prohibited the employment of undocumented migrants in 1975, the Netherlands in 1974, and Austria in 1981. The United Kingdom adopted legislation prohibiting the harbouring of undocumented migrants--although not their employment (out of fear of fuelling discrimination) in 1971 (United States of America, Department of Labor, Bureau of International Labor Affairs, 1992). As in the United States, most of these countries adopted sanctions after considerable debate and despite uncertainties regarding the administrative feasibility of such programmes, the degree to which they would be enforced, and the nature and magnitude of their impact (Miller, 1987).

Because of the European system's heavy social safety net, which sets employer payroll taxes and related overhead costs at higher levels than they are in the United States, the fine structure in European is often greater than in the United States (United States of America, Department of Labor, Bureau of International Labor Affairs, 1992). In the United Kingdom, for example, under the employer sanctions that went into effect as of 27 January 1997, employers found to have hired illegal alien workers over 16 years of age can be fined up to L5,000. However, an employer can escape employer sanctions if he can prove that he saw and kept a copy of documentation which appeared to prove that the applicant was entitled to work in the United Kingdom. In France, more than 1,000 employers have been arrested since May 1995 for hiring undocumented workers.

In contrast to the situation in Europe, the major labour-receiving countries in Asia, as in the United States, have adopted employer sanctions mainly as a clandestine migration control measure rather than as an employment standard. Concerned about the impact that migrants might have on Japanese society and the strains that would be placed on housing and other services, Japan has made serious efforts to stem the problem of undocumented migration. According to the Immigration Control Act, as amended in 1989, employers hiring undocumented workers or those supplying them can be imprisoned for up to three years and fined up to 2 million yen. Workers are liable to a fine and imprisonment. An exception in the new law is made for foreign nationals of Japanese descent, 50,000 of whom are believed to have entered Japan in the second half of 1990, mostly from Brazil and Peru. Singapore likewise has adopted a very hard stance against unauthorized employment. An employer with more than five illegal foreign workers is liable to three strokes of the cane. Moreover, in a 1996 crackdown on the construction industry, contractors who hire illegal workers can be fined two to four years' levy, or imprisoned for up to one year—or both—for the first offence; a second offence brings a mandatory jail sentence of one to 12 months, in addition to the fine. The penalty for an illegal worker is a maximum fine of S$ 5,000 or imprisonment of up to one year, or both (Singapore, 1996). Thai employers can be fined 60,000 baht for each undocumented worker that they hire (*Migration News*, 1996b). In January 1997, Malaysia began to stiffen penalties on employers of undocumented migrants, levying fines of M$ 10,000 to M$ 50,000.

In Argentina, where many employers prefer to hire workers who will work outside the social security system, the Government has proposed to increase fines to $100,000 and impose prison terms of up to six years for employers who hire illegal foreign workers.

In Canada, the punishment for knowingly employing an unauthorized worker is a fine not exceeding Can$ 5,000 or imprisonment for a term not exceeding two years, or both. On summary conviction, the penalty may be a fine not exceeding $1,000 or a term of imprisonment not exceeding six months, or both. Action by the Australian Government in this area includes a three-year employer awareness campaign to permit effective location of persons working in Australia illegally (Australia, 1994).

In the United States, the Immigration Reform and Control Act (IRCA) of 1986 introduced employer sanctions into United States immigration law for the first time. Before that Act, illegal aliens were violating Federal law by entering the United States and working, but their employers were not (Passell, 1996). Employers who were proven to have knowingly hired unauthorized workers were subject to fines ranging from US$ 250 to $10,000 for repeated violations; moreover, employers who failed to verify and keep records of employees' work authorization could incur fines of up to $1,000.

Implementation of IRCA presented a serious challenge to the United States Immigration and Naturalization Service (INS), which was charged with regulating a vast economic process involving tens of millions of individual hiring decisions every year with limited agency resources (Passell, 1996). In assessing IRCA, it is felt that the easy availability of fraudulent documents and the low likelihood of punishment faced by employers contributed to the failure of sanctions as a control mechanism. In addition, some amount of discrimination could be linked directly to the implementation of this programme (see box 7).

To combat the problem of fraudulent documentation, in 1996 the United States began replacing some of the older work authorization forms with a new tamper-resistant Employment Authorization Document;

Box 7. IRCA'S employer sanctions

The United States Immigration Reform and Control Act (IRCA) of 1986 provides an interesting case study in terms of the implementation of employer sanctions. While IRCA required employers to examine documents and retain records, it did not require employers to become documents experts or hold them responsible for accepting a couterfeit document, as long as the document appeared to be genuine. Thus, the mere employment of illegal immigrants was not necessarily a violation of the new law. Rather, most violations involved failure to complete and maintain the required paperwork or the "intent to employ illegals"—a much higher legal standard.

As a first step in implementing employer sanctions, the Immigration and Naturalization Service aimed at educating employers about compliance with the new standards. Fines were not levied until employers received an "education visit" and often until one or more warnings had been issued —an approach consistent with the generally pro-business attitudes prevalent in the United States (Fix and Hill, 1990).

Several years after IRCA's passage, a number of studies were conducted to assess the impacts of employer sanctions. The general consensus of these studies was that IRCA was not having a significant impact on the employment of illegal aliens in the United States labour market, but that discrimination against foreign-looking or sounding persons had apparently increased as a result of IRCA's paperwork requirements (Passell, 1996). The principal impediment to effective enforcement was found to be the lack of a secure document system. Faudulent documents wer cheap and plentiful; moreover, employers had no incentive to challenge false-looking documents, for fear that they be charged with discrimination. From a prosecutor's point of view, proving specific intent to hire undocumented migrants was extremely difficult (Passell, 1996).

Suggestions for reform and improvement of employer sanctions in the United States have included reducing the number of permissible documents presented to employers; requiring counterfeit-proof documents; and setting up a secure, computer-based system for establishing identity and work eligibility. Moreover, studies have suggested the need for increased enforcement, targeted enforcement, and greater penalties. Also, there has been a suggestion to draw public attention to sanctions violations and enforcement successes in order to generate public support (Passell, 1996).

however, the large number of documents which may be presented to establish eligibility for employment hampers such efforts (Passell, 1996). The new United States immigration law adds 1,200 INS investigators, who will inspect workplaces for unauthorized workers. It also introduces a pilot telephone verification programme to enable employers to verify the status of newly hired workers. However, employer participation in the verification programme is voluntary, and no national worker eligibility verification system that mandates employer verification can be established without new Congressional legislation.

In addition, in 1996, the Government prepared a directive instructing the Department of Labor's Office of Federal Contract Compliance and INS to work together to prohibit companies that knowingly hire undocumented migrants from obtaining federal contracts.

12. Amnesties/regularizations

Amnesties—and subsequent regularizations—have been employed for varying motives and with varying success. They are often used to respond to cases where States have not implemented policies or programmes to control the entry or stay of migrants, and undocumented migrants have been tolerated until new impetuses emerge to galvanize State control. Moreover, Governments often feel that the regularization of the illegal stay of foreigners becomes advisable when they introduce major revisions to their immigration law, and it is appropriate to "wipe the slate clean" beforehand (Böhning, 1996). Amnesties sometimes have been advocated on the grounds that to allow large numbers of persons to retain their illegal status would perpetuate a permanent underclass, subject to exploitation from various sources. Moreover, to deport persons who have lived in a country for extended periods and who have developed networks of interpersonal relations would be inhumane.

In many instances, amnesties have been an attempt to establish some control over ongoing illegal flows, or to force persons to bring their situation into alignment with the laws of the receiving country. These channels sometimes are employed to encourage persons to come forward so that some type of census can be taken and their status regularized. In other instances, amnesties have been essentially a pretext to round up and deport large numbers of undocumented migrants.

Amnesties have frequently had lower response rates than anticipated. One reason for this is that the proportion of undocumented migrants that comes forth to register varies according to their perception of the likelihood of being deported and, most important, of being apprehended in the first place. Another reason for low response rates may be technical and bureaucratic obstacles.

Amnesties may also create difficulties for the receiving country. Premature announcement of an amnesty, for example, can serve as a powerful magnet for accelerated flows of new illegal migrants seeking to enter before enforcement is made effective. Some countries, such as Germany, have strongly opposed amnesties, mainly on the grounds that they create the expectation of further regularizations and may result in increased efforts by undocumented migrants to enter or remain in a country illegally.

The International Labour Organization has suggested general guidelines to make both foreigners and employers respond to a proposed amnesty to the maximum extent. ILO emphasizes, for example, that it is important to establish clear and attractive conditions or eligibility rules; a broad-based and energetic advertising and publicity campaign; an effort by the administration to convince migrants and employers that it wishes to "wipe the slate clean" rather than to get rid of the foreigners or to punish the employers; and a sharing of the actual implementation process with non-governmental organizations that are trusted by the migrants (Böhning, 1996).

ILO also emphasizes that the point in time when migrants become eligible for regularization should be very recent. Moreover, the country's authorities implementing the regularization ought to be prepared from the beginning to accept all migrants who meet the cut-off point—irrespective of their employment status. Publicity is crucial to a successful amnesty and regularization. Besides local newspapers, radio and television, ILO has suggested that the authorities should enlist the support of trade unions and the ethnic press, where it exists, as well as of ethnic or local immigrant support bodies (Böhning, 1996).

A number of regularization programmes have been conducted in Europe over the past two decades. In France, where previous regularization programmes had been conducted in 1973, 1974, 1976, 1979 and 1980, the Government offered amnesty in 1981 to an estimated 400,000 undocumented migrants and seasonal workers who had overstayed their permits. Of those who applied for amnesty, about 131,000 qualified and were granted legal residence. The amnesty programme was followed by stricter laws governing the entry and stay of workers, as well as enforcement measures that included employer sanctions and limits on seasonal work permits.

Italy's first immigration laws (1986) contained an amnesty provision, which eventually resulted in the regularization of some 120,000 non-European Community aliens resident in Italy. The 1991 Martelli Law, like Italy's earlier immigration law, also carried an amnesty provision. Foreign workers and their dependants who were present in the country on 31 December 1989 were eligible to apply for amnesty; more than 225,000 aliens had regularized their status by 1992 under this provision (Jenks, 1992). Spain conducted three regularization programmes—the first in 1985-1986; the second in 1991, when 108,000 applicants for regularization were approved; and the third in 1996. Likewise, Portugal conducted a regularization in 1992 (OECD, 1993, p. 90).

Amnesties and regularization programmes have also become increasingly common in Asia. The Republic of Korea, where many small businesses are heavily dependent on undocumented workers, regularized the status of more than 60,000 undocumented workers in 1992 (OECD, 1996). Malaysia, the country with Asia's largest number of undocumented migrants, also began a drive to register undocumented workers in 1992; up to 1994, some 450,000 foreign workers had been registered, although it is not known how many subsequently received work permits (OECD, 1996).

During 1996, the Philippines conducted a regularization programme for some of the estimated 70,000 undocumented migrants in the country. In order for an applicant to be regularized, the Philippines required that each principal applicant pay US$ 7,923, spouses pay $2,154 and children $1,192—with the goal of raising 4 to 6 billion pesos. As of June 1996, however, only 7,000 undocumented migrants had applied for the programme.

Thailand also conducted an amnesty in 1996. The Government approved regulations that would allow undocumented migrants from Myanmar, the Lao People's Democratic Republic and Cambodia who entered Thailand before 25 June 1996 to become legal migrant workers for up two years in two sectors—waterways transportation and manufacturing. Under the terms of the fixed term regularization programme, Thai employers are obliged to register their undocumented migrant workers with the local police, bail them out, and then register them at the provincial labour office between July 1996 and July 1997. Once registered, the foreign workers are to be paid the same wages and have the same protections as Thai workers. However, all are expected to leave Thailand after their two-year work permit has expired. (It is interesting to note that the Thai Labour Congress threatened a nationwide strike if the Government did not reverse its plans to regularize undocumented foreign workers; the Labour Congress asserted that the amnesty would result in hundreds of thousands of Thai workers losing their jobs, and lead to social problems.)

In Saudi Arabia, a recent crackdown and amnesty took place in order to allow workers without residence permits to leave the country. In the United Arab Emirates, where significant numbers of foreigners do not have work permits, or work for employers other than their sponsors, a 1996 law designated a two-month amnesty period during which violators could legalize their stay or leave the country. The law stipulated fines and jail sentences for undocumented migrants, as well as for their sponsors and employers. Anticipating that as many as 200,000 foreigners would depart during the amnesty period, the Government hired boats to repatriate illegal foreign workers.

In Latin America, the major receiving countries have tended to use regularization periodically as a means of establishing control over undocumented migration. Chile and Ecuador signed a bilateral agreement in September 1990, providing for regularization of the status of nationals of each country. Argentina announced an amnesty in 1991 for thousands of undocumented migrants from neighbouring countries. Several of the affected countries, including Bolivia, Chile, Paraguay and Uruguay, have reciprocated by adopting similar measures for undocumented Argentines in their respective countries.

In South Africa in February 1996, the Government agreed to regularize the status of undocumented migrants from the surrounding Southern African Development Community countries (e.g., Angola, Botswana, Namibia, Zambia and Zimbabwe). The decision arose out of a request from Mozambique for a moratorium on the repatriation of Mozambicans who had been in South Africa illegally. The Government of South Africa subsequently decided to broaden to scope of the amnesty to include anyone who could demonstrate that he or she had been in the country for at least five years, and who had a formal or an informal job, a relationship with a South African or a child in the country.

In Australia, which has had a significant problem over the years with visa overstayers, the Government tackled the problem by granting amnesties to all established overstayers except those guilty of serious offences; the two amnesties of 1976 and 1980 produced nearly 25,000 applicants for permanent residence. Subsequent Governments in Australia have refused further amnesties, relying instead on enforcement procedures and revisions to the Migration Act (Price, 1993).

One of the most highly publicized amnesties took place in the United States of America, where, under the Immigration Reform and Control Act (IRCA) of 1986, undocumented migrants with significant equities in the United States were allowed to regularize their status. IRCA actually encompassed two major legalization programmes: an amnesty for undocumented aliens who had resided continuously in the United States since before 1 January 1982, and a Special Agricultural Worker (SAW) legalization programme for seasonal agricultural workers.

More than 3 million undocumented migrants obtained legal immigrant status under the amnesty and the Special Agricultural Worker programme. In hindsight, however, it has been acknowledged that, whereas IRCA failed to halt illegal immigration, it succeeded "too well" in its efforts to legalize undocumented workers and their families (Martin and Midgley, 1994, p. 29). An interesting footnote to the IRCA story is that, under the process, newly legalized aliens could request immigrant visas for family members after five years of legal residence in the United States. However, faced with enduring such a long separation, many family members of IRCA adjustees came to the United States illegally. Most would have been at risk of deportation were it not for the "family fairness" provision of the Immigration Act of 1990, which prevented the deportation of the spouses and children of newly legalized aliens who were in the United States before 5 May 1988 (Martin and Midgley, 1994, p. 5).

13. Denial of services

Other measures to cope with undocumented migration involve limiting access to social welfare services. In the United States of America, for example, IRCA established the Systematic Alien Verification for Entitlement Programme (SAVE), which required State and local welfare officials to verify the eligibility of applicants to the various welfare programmes, in an effort to stem welfare benefits for undocumented migrants. Moreover, public dissatisfaction in the United States with the ability of the Federal Government to control undocumented migration, particularly in California, led to calls for action (Passell, 1996). Proposition 187, passed in California in 1994, attempted to withdraw social services from undocumented migrants. More recently, the Gallegly amendment is perhaps the clearest example of a possible new trend in industrial democracies—namely, that of using integration policy to affect immigration flows. By implementing such measures as barring the children of undocumented migrants from public schools, the theory is that undocumented migrants will be discouraged from migrating to, or from staying illegally in, the United States.

In France, following the passage of the Act on Immigration Control and Conditions of Entry and Residence of Foreigners in France (1993), foreigners living in France illegally will no longer qualify for social security, i.e., child allowances, health insurance, old age pensions and unemployment benefits (*International Labour Review*, 1993, p. 418).

14. *Deportation*

Expulsion, or deportation, which is the most extreme policy response, occurs in various circumstances. Some countries resort to expulsion only for certain categories of offences; other countries deport all persons who

contravene immigration laws. In the United States of America, for example, all categories of undocumented migrants, from persons who enter without inspection to those who overstay their visas, and including both adult newcomers and persons who entered illegally as children and were raised in the society, are subject to deportation.

Of course, the conditions under which deportation occurs may vary widely. As Böhning has noted, democratic States find it very difficult to expel undocumented migrants on a massive scale. Not only are measures of collective expulsion discouraged by international law, such as the 1990 International Convention, but also the expulsion of individual foreigners is subject to procedural safeguards (Böhning, 1996, p. 66).

Mass deportation has been common, however, over the years in Africa. There are large stocks of aliens in many of the African countries. Some of these communities have persisted for generations, usually without formal authorization, although in recent years many of these communities have found their status shifting from that of undocumented, but tolerated, to that of illegal. One example was the enforcement of the Aliens Compliance Act in Ghana in 1969, which led to the departure of 200,000 to 500,000 persons. Another was the expulsion of 1.2 to 1.5 million undocumented migrants from Nigeria, following the fall in oil prices.

In recent years, there have been large-scale round-ups and expulsions of undocumented migrants. In 1993, South Africa expelled 96,000 undocumented migrants to 39 countries, primarily to Mozambique, Lesotho and Zimbabwe. In Kenya in late 1995, the Government rounded up hundreds of foreigners in an early morning sweep in a continuing Government crackdown against alleged illegal aliens. In the Congo, in a similar crackdown, foreigners without papers were transported to the border after paying a fine. In Ghana, the authorities have tried to enlist the support of landlords and hotel proprietors to flush out the many undocumented migrants residing in the country. Similarly, in the Gambia, the head of the security service launched an appeal to Gambians to help the police to identify persons residing illegally in the country; it was further announced that anyone offering them refuge could be sentenced to up to a year in prison or a fine of 20,000 CFA francs.

As increasing numbers of Governments have tightened their entrance requirements and surveillance procedures, they have streamlined the process of deportation. The Australian Government, for example, which keeps updated computer records of all arrivals and departures, has increased the number of "compliance officers" and speeded up the process of deportation of its large number of visa overstayers.

As European countries such as Germany reduce undocumented migration and access to asylum, migrants from Asia and Africa are being stranded in increasing numbers in Eastern Europe. An estimated 20,000 to 40,000 Sudanese, Bangladeshis, Sri Lankans and other undocumented migrants are in Romania, for example, which complains that it cannot afford to repatriate the foreigners that are apprehended, since the cost of flying a migrant home is around $5,000. Likewise, the Czech Republic noted that the cost of rail and air tickets associated with administrative and judicial expulsion amounted to almost CK 4 million in 1993 (Czech Republic, 1994).

In the European Community, all Governments have tried to put into effect a policy of effective removal. One of the main concerns has been to do away with the reluctance of countries of origin to accept the "forcible" return of their nationals. Towards this end, take-back agreements have been increasingly in use. In 1992, for example, Spain and Morocco entered into an agreement, whereby Spain provided for the readmission into Morocco of aliens who had entered Spain illegally. Likewise, in 1993, the Netherlands and Morocco signed an agreement whereby the Moroccan authorities would verify the identity of a suspected offender liable to be sent back to Morocco and the expulsion would be accepted.

Since the Budapest Ministerial Conference of February 1993, the number of bilateral agreements concluded between individual countries has greatly increased. In November 1994 Germany and the Czech Republic signed a treaty designed to speed the return of undocumented migrants. Under the agreement, the Czech Republic will take back individuals who crossed illegally into Germany from Czech territory. Germany, in turn, will provide the Czech Republic with DM 60 million during 1995-1997 to help finance tighter border controls. Germany also signed a treaty in 1994 with

Romania; similar treaties with Poland and Switzerland are also in effect (*The Week in Germany*, 1994).

In mid-1996, Viet Nam announced that it was ready to accept more than 2,000 Vietnamese living in Germany, taking the first step towards fulfilling a July 1995 agreement to take back by the year 2000 up to 40,000 of its nationals who live in Germany without residence permits—in exchange for $140 million in German aid. (Most of those to be returned were Vietnamese who had applied for asylum but were rejected.)

Bilateral agreements for the return of migrants have been concluded in other regions. Cuba and the Bahamas, for example, have reached an agreement aimed at stopping undocumented migration from Cuba, under which Cubans who arrive illegally in the Bahamas will be sent back. Under agreements concluded between Cuba and the United States of America in 1994 and 1995, Cubans intercepted at sea are returned to Cuba; whereas Cubans who reached the United States had been allowed to stay. Under a new policy that went into effect in December 1996, Cubans who reach the United States now will be returned if the Cuban Government accepts their return.

Although policy responses have tended to be reactive rather than active, and formulated to deal with undocumented migrants who are already present, increasingly, Governments are pursuing long-term policies which aim to stem the tide of undocumented migration even before entry. These policies focus on international cooperation, with particular emphasis on global measures to address the causes and to identify the nature of undocumented migration.

Various initiatives have also been taken to coordinate national policies and to promote international cooperation to strengthen the system for combating undocumented migration. They include bilateral and multilateral agreements on transiting, readmission and return of undocumented migrants, the exchange of information and the coordination of border controls to prevent illegal entry. There were a series of ministerial and other conferences beginning with the European Convention on the Legal Status of Migrant Workers in 1977 and the Ministerial Conference at Vienna in 1991 followed by the Berlin and Budapest conferences. Those conferences formulated strategies and made specific recommendations on a variety of matters ranging from re-admission agreements to legislation and exchange of information. However, while the initiatives were strong in intent, they were weak and inadequate in implementation. As yet the mechanisms for sustained and effective coordination and international cooperation to deal with the emerging problems are not firmly in place.

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CONCLUSION

A number of trends have been identified that point to the continuity of migration policies adopted by Governments since the late 1970s and early 1980s. The number of allotted places available worldwide for permanent settlement has remained fairly small while more emphasis has been placed on economic selection and professional skills criteria. In labour-importing countries, policy priorities have been put on enforcing a stricter control over the number and duration of stay of foreign contract workers. Acceptance of refugees and asylum-seekers has increasingly been based on commitments of limited duration on the part of host countries with a view to early repatriation of refugees and further reliance on the prevention of, and the search for solutions to, conflicts that generate refugees. Through interdiction initiatives, prevention has also been a major thrust of policy efforts in regard to undocumented migration.

In the traditional countries of immigration, the general trend clearly has been towards limiting immigrant intakes and towards selectivity in admitting immigrants. Employability has been given higher priority for both primary migrants and migrants applying in the family reunification category. As a result, fewer slots have been available for migrants with limited education or professional skills. Access to social benefits for eligible relatives has been reduced and provisions have been made for family sponsors to provide for their immigrating relatives.

Despite more restrictive immigration policies, the migration of workers across international boundaries has continued to expand in both volume and geographical scope. With the increase in South-South and East-West flows, the emergence of distinct intraregional flows as well as the growing number of labour-importing countries in both Asia and Southern Europe, labour migration has become a complex phenomenon. Policies towards labour migrants have been conditioned by earlier migration experiences, in particular the difficulty of repatriating workers who no longer meet the short-term needs of the labour market. As a consequence, employment and residence entitlement are increasingly granted to labour migrants within the framework of temporary contracts.

A typical example of such a policy is provided by the bilateral agreements signed between a number of Western European countries such as Austria, Germany and France and the Czech Republic, Hungary and Poland following the opening of borders in Eastern Europe. Those agreements provide for the importation and employment of Eastern European labour on a "rotation principle" and have, so far, been implemented to the satisfaction of both parties. On the other hand, a major achievement in the area of labour migration in Europe was the adoption of the Single European Act and the Treaty of Maastricht, which established freedom of movement of labour within a large part of the European Union for nationals of member States. In this context, it is worth noting that neither the policy of free movement of labour within the Community nor the opening of the borders of Eastern European countries has led, as often anticipated, to the flooding of the labour market by labour migrants from the less developed members of the European Union or from Eastern Europe.

Asia is another part of the world where major developments have recently taken place in the area of labour migration. A main characteristic of labour migration in Asia is that it is organized and encouraged, sometimes through active emigration policies, by sending countries. Recruitment agencies and placement firms have also played an important role in the expansion of labour migration in Asia, giving rise to a profitable migration industry. Marked by the growing presence of both undocumented migration and a rising proportion of young female migrant workers, labour migration has also emerged as a source of potential conflict between sending and receiving countries over the protection of foreign workers from abuse and exploitation.

The rapid growth of refugee numbers which developed during the past three decades has slowed after reaching a high of 18 million worldwide in 1993. This slowdown was due to restrictions on access to asylum adopted by a number of countries, particularly in Europe, as well as a number of successes in repatriation operations by the Office of the United Nations High Commissioner for Refugees. Indeed, an

anti-immigrant climate has also developed which has made it increasingly difficult to find countries willing to accept substantial numbers of refugees. As a consequence, emphasis has shifted from exile-oriented concerns to interventions within countries of origin. In-country operations typically include preventive action such as assistance to internally displaced persons and monitoring conditions with a view to early repatriation of refugees. They also include development projects that show immediate results, as it is now widely recognized that such projects are of critical importance to the successful repatriation and reintegration of refugees.

Undocumented migration is of growing salience. In part, recent undocumented migration has emerged in response to more restrictive admissions policies adopted by traditional receiving countries. An important dimension of undocumented migration is that of trafficking, which increasingly has come under the control of international networks of organized crime. Policy measures aimed at addressing undocumented migration have often taken the form of interdiction initiatives such as information campaigns to deter potential migrants, visa requirements, carrier sanctions, airline training and interception of persons travelling on fraudulent documents prior to their arrival. Interdiction initiatives are implemented in cooperation with foreign control authorities and are believed to be more cost-effective and efficient as well as more humane than enforcement action in the receiving countries. However, policies towards undocumented migrants are often ambiguous and inconsistent, reflecting a situation where certain employers either benefit from the presence of inexpensive and vulnerable workers or do not find an appropriate answer to their needs in the domestic labour market. In many countries, legislation provides for sanctions against employers who hire illegal workers, but enforcement varies greatly.

Attempts have also been made to establish some control over ongoing illegal flows through amnesties. Amnesties have frequently been difficult to implement in view of technical and bureaucratic obstacles and have had limited success. Some countries have strongly opposed amnesties on the ground that they create the expectation of further regularization and therefore indirectly encourage further undocumented migration. As a last resort, expulsion and deportation have been used by a number of countries, although usually on a limited scale, since collective expulsion is discouraged by international law and individual expulsion is subject to procedural safeguards.

Many countries, in particular developed countries, have confronted the fact that most of their immigrants tend to become permanent residents whereas, at the same time, the presence of groups of foreigners who are culturally, linguistically, religiously and socio-economically different from the national population has been perceived by the latter as challenging traditional notions of national identity and has generated tension and conflicts. In the face of this situation, immigration policy increasingly focuses on how to manage these conflicts. Indeed, in the 1990s, integration policies have emerged as almost unavoidable in industrialized countries. Although the concept of integration remains subject to various interpretations, it is generally agreed that naturalization policies and family reunification policies are important instruments for the integration of immigrants. Both sets of issues and related policies have received considerable attention in the recent past. Access to citizenship for second- and third-generation immigrants has turned out to be most critical in European *jus sanguinis* countries, where naturalization policies have often been revisited. Family recomposition has long been seen as conducive to integration in traditional immigration countries, and policies aimed at facilitating family reunification have prevailed. However, these policies invariably have been questioned in the mid-1990s. The issue of family reunification emerged has at the heart of the debate between sending countries and receiving countries. In traditional immigration countries, family reunification has been based on a preference system. Although a number of international instruments encourage family reunification, no international instrument universally establishes family reunification as a fundamental right.

Recent trends in labour migration and the movement of asylum-seekers and, to some extent, in family reunification efforts, support the observation that international and national immigration policies exert a significant influence on migration patterns. However, the growing salience of undocumented migration raises questions about the degree to which

governments can actually control migration across borders. In light of the globalization of the economy and the emerging commodification of labour migration, there is little doubt that cooperation among nations will become increasingly critical to the resolution of immigration issues.

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