

**Elusive Protection,  
Uncertain Lands:  
Migrants' Access  
to Human Rights**



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ICM International Organization for Migration

Bimal Ghosh prepared this report as an independent consultant to the International Organization for Migration. The monograph draws partly on a paper he prepared for the International Council on Human Rights Policy, Versoix, Switzerland, in January 2003. Opinions expressed in this document are those of the author and do not necessarily reflect the views of IOM.

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# **Elusive Protection, Uncertain Lands: Migrants' Access to Human Rights**

Bimal Ghosh

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## PREFACE

One in every 34 persons in the world is a migrant. In the industrial countries the ratio is even higher: one in ten. Many migrants, regardless of their country of reception, are exposed to human rights abuses, sometimes in their worst forms. The seemingly relentless pressures for emigration juxtaposed against an increasingly restrictive climate for entry in the destination countries have sharply enhanced the potential risks of such human rights abuses. While in the past few decades the world has made significant strides towards the protection of human rights in general and although many of the issues involved have now come to the fore, the vulnerability of migrants to human rights abuse has failed to receive adequate attention.

Against this background this short study makes a synoptic analysis of the inadequate recognition of migrants' human rights in international and national law and discusses some of the main practical obstacles that make it even more difficult for them to enjoy their human rights. The study then focuses on migrants' heightened vulnerability to human rights abuses in certain special situations during the displacement process.

Given its citizen-centric vocation, why should the nation-state be particularly concerned with the protection of the human rights of migrants who are non-nationals? The study argues that the nation-states have an ethical duty as well as a citizen-centric self-interest in defending these rights through both individual and collective action. It then discusses the nexus between human rights protection and migration management. The former is seen as an essential interlocking element to sustain a global system of orderly migration. Those anxious to defend human rights of migrants and those involved in migration management thus share a common interest. Building on this paradigm, and going beyond state practices, the study stresses the need for human rights groups and migrant – serving associations to cooperate and coalesce.

Finally, in outlining a strategy for protecting migrants' human rights in the wake of September 11 terrorist attacks the study argues for striking a balance between security and human freedoms and explores the ways in which this can be achieved. In this context, the importance of coalition building between human rights groups and other civil society actors, most notably migrant-serving associations, is once more brought into focus.

I hope the monograph will be of interest to human rights groups and migrant-serving organizations alike as well as to professionals and policy

makers in this field. I also hope that the monograph will serve as a useful and timely input into the process – launched in 1997 under the NIROMP (New International Regime for Orderly Movement of People) project and reinforced more recently by the Hague Declaration on the Future of Refugee and Migration Policy (2002), and the Bern Initiative sponsored by the Swiss Government – of developing a comprehensive, coherent and cooperative global arrangement to better manage international migration.

I am thankful to Swiss-based International Council on Human Rights Policy (ICHRP) for authorizing the use in this monograph part of the material already included in a shorter paper, *A Road Strewn with Stones: Migrants' Access to Human Rights*, which at the ICHRPs request I had prepared for its Sixth Annual Assembly earlier this year (Guadalajara, Mexico, January 2003).

Despite his busy work schedule, and the extremely short notice, my good friend and colleague, Guy Goodwin-Gill, formerly Professor of International Refugee Law and now a Senior Research Fellow at All Souls College, Oxford University, was kind enough to go through an earlier draft of the study and make some useful comments. I am deeply indebted to him. Sincere thanks are also due to Frank Laczko, Chief of IOM's Research and Publications Division and his several colleagues, including Heikki Mattila, Ilse Pinto-Dobering, Angela Pedersen and Camille Pillon, for their support and assistance in carrying out the study and making it ready for publication.

The views expressed in the study are my own and the responsibility for any errors or serious omissions rests with me alone.

## INTRODUCTION

Since the adoption of the Universal Declaration of Human Rights in 1948 and especially in the past few decades the world has made significant strides towards the protection of human rights. And yet, large numbers and different groups of people in various parts of the world continue to suffer from an inadequate access to these rights. Migrants, working or living in foreign lands as non-nationals, often find themselves in such situations. While all migrants are not equally disadvantaged and although the characteristics of different categories of migrants – including refugees – vary considerably, their lack of adequate access to human rights and their vulnerability to the abuse of such rights share at least a number of common causes.

Several considerations lend special significance to the issue of human rights of migrants. The first concerns the large number of people involved and the rate at which migration is rising. Estimates by the United Nations suggest that the world's migrant stock is now hovering around 175 million. This means that roughly one in every 34 persons in the world is a migrant. In the more developed regions, the percentage is still higher: about one person out of ten is a migrant. At the same time, in absolute terms, the annual flow is rising at a faster rate than ever before. Today, every minute at least ten people are crossing borders around the globe, not including tourists, short-term visitors and others normally not counted as migrants.

A second consideration relates to the distinctive and multiple dimensions of the vulnerability of migrants as non-nationals. Under international instruments and most national laws, all citizens are entitled to certain basic rights although, in practice, some of them – the urban and rural poor, women, indigenous populations and the like – may fail to fully access them. The situation of migrants or non-nationals is, however, significantly different. This is for the simple reason that, for migrants or non-nationals, the rights or entitlements themselves are yet to receive full or unequivocal recognition in law. Thus, in contrast with the citizens of the receiving or transit state in which they may find themselves, migrants start with an initial handicap in accessing human rights. An analysis of migrants' inadequate access to rights must therefore logically "begin at the beginning" with a discussion of their position in law.

Besides this initial handicap, many migrants are exposed to a second layer



of vulnerability or disempowerment, due, for example, to poverty, lack of education and skills, and gender discrimination. True, many of these latter obstacles are the same as, or similar to, those affecting the vulnerable domestic groups, too. However, as will be discussed later in this paper, migrants' additional vulnerability from these common handicaps stems not just from their lack of familiarity with local conditions, including the legal and judicial system and the power structure but also, and often more importantly, from a built-in bias in the receiving society against foreigners, especially when they belong to a different cultural, religious or ethnic group.

Another consideration underscoring the importance of migrants' human rights concerns the possible wider implications of the denial of these rights. While suppression of human rights, aside from being a human scourge, can be a source of domestic and even global tension, the danger is even greater when the victims are migrants. This is because of the resentment and hostility it causes in the migrants' countries of origin, triggering inter-state tension and conflicts. When these, in turn, suck in, or spill over into, neighbouring countries, regional peace and global stability are easily threatened.

Somewhat paradoxically, however, until recently and barring two specific groups of migrants, namely, refugees and migrant workers, little systematic attention has been given to issues of human rights as they specifically affect migrants and the particular situations in which the various migrant groups may find themselves. What is particularly striking is that the subject receives scant attention even in the context of migration management. And yet, as will be argued in this paper, protection of human rights and sustainable management of migratory movements are inextricably correlated. Gross violations of human rights often lead to disorderly and unwanted movements, which, by their very nature, are difficult to manage; conversely, when migration is disorderly, and especially when it is irregular and unwanted (as most disorderly movements are) the risk is greater for further human rights violations to occur. This constitutes the crucial nexus between human rights and migration management.

# 1. MIGRANT PROTECTION: PRINCIPLES AND PERFORMANCE

## **Inadequate recognition in law of migrants' human rights**

Effective access to human rights depends critically on the recognition of the rights in law and practice. Where such recognition is lacking, inadequate or controversial, the issue of access to human rights becomes problematic. This is precisely the case with migrants. In general, “all rights recognized in national constitutions have become the rights of citizens, whereas the rights of man (sic) have generally been delegated to international law” (United Nations, 1998). And, as the following discussion will show, international law itself has not been sufficiently strong, coherent or explicit in upholding migrants' rights within the purview of the rights of “man”.

True, there is an impressive body of international human rights law seemingly applicable to all human beings (see Annex). These include, in addition to the Universal Declaration of Human Rights (UDHR), 1948, the International Covenant on Economic, Social and Cultural Rights (ICESR) and the International Covenant on Civil and Political Rights (ICCPR), both adopted in 1966, to give legal force to the rights specified in the UDHR. The two covenants, together with the declaration, confer the fundamental rights to which, in principle, all individuals in any situation are entitled. Other international human rights instruments of relevance to migrants include the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984, and the International Convention on the Elimination of All Forms of Racial Discrimination, (ICERD), 1965. Also of relevance is the 1993 Vienna Declaration and Programme of Action which underlines a state's responsibility for promoting universal respect for, and observance and protection of, all human rights and fundamental freedoms, and upholds the protection and promotion of human rights as the first responsibility of governments (UN, 1993).

The major human rights instruments acknowledge a set of fundamental rights for all. The thirty articles of the UDHR, for example, list a wide range of such rights, guaranteed by the principle of non-discrimination.<sup>1</sup> Clearly, the state, within certain international standards of compliance, has a margin of discretion in determining whether and what restrictions on such rights may be applied in the light of special circumstances. However, some human

rights remain absolute and cannot be derogated from in any circumstances and regardless of the status and other conditions of the individual. Such absolute rights, as specifically listed under the ICCPR, include the following: the right to life, prohibition of torture and cruel, inhuman or degrading treatment or punishment, prohibition of slavery, servitude and forced or compulsory labour, prohibition of retroactive criminal penalties, right to recognition as a person before the law, and freedom of thought, conscience and religion.

However, although the provisions of international human rights law apply in principle to all human beings without discrimination and oblige a state to ensure the enjoyment of the declared rights by “all individuals within its territory and subject to its jurisdiction” (ICCPR) several gaps and ambiguities weaken the recognition of migrants’ rights and, consequently, their access to these rights. For instance, in the Universal Declaration of Human Rights the absence of an explicit recognition of the applicability of these rights to foreigners and “the absence of the word ‘citizen’ leaves the distinction between aliens’ and citizens’ rights vague, with considerable latitude for interpretation” (United Nations 1998). While the ICCPR guarantees certain basic rights specifically to non-citizens, it does not cover the various special situations that migrants may face during the migration process. Protection against racial and ethnic discrimination is particularly important for migrants who are minorities in the host state. However, in providing such protection for migrants, ICERD remains somewhat ambiguous by disclaiming, in Article 1(2) “distinctions, exclusions, restrictions or preferences” as between citizens and non-citizens. Indeed, the question as to whether there is a core of rights so fundamental that they must be respected by all states has been a subject of juristic debate and disagreement for a number of years (Schachter, 1991).<sup>2</sup>

Not surprisingly, the lack of specificity regarding the migrants’ entitlement to these fundamental rights is also often reflected in national legislation. And, in many countries – for example, Algeria, Angola, Democratic Republic of Congo, Egypt, Ireland, Lebanon, United Republic of Tanzania (Zanzibar) and Togo – provisions on equality of treatment in the constitutions and national laws apply to nationals only (ILO, 1999).

A second weakness in the existing international legislation relates to the dispersed and fragmentary nature of the provisions of international human rights laws that are of direct relevance to migrants and migration-related situations. Not only does this weaken the protection offered to the migrants, but also makes it harder for them to take full advantage of these provisions,

or for the human rights activists to fight for these rights on their behalf.<sup>3</sup> The United Nations has published a two-volume collection of all its human rights treaties and texts – *Human Rights: A Compilation of International Instruments* – but there is no such compendium of instruments of specific relevance to migrants, not to speak of any effective move to consolidate and codify the norms and standards contained in them.

True, by clearly defining and specifically extending the basic human rights to all migrant workers and their families, the 1990 UN Convention on All Migrant Workers and their Families (ICMW) has to some extent responded to both the deficiencies mentioned above. But the limitations of the Convention (which, at the time of writing, had just received 20 ratifications, and was to become operational on 1 July 2003) are also clear: it explicitly excludes from its scope a number of important groups of migrants and, as the discussion in Chapter 2 and 3 will show, fails to cover explicitly all situations of potential human rights abuse. Among those outside the scope of the Convention are: refugees and stateless persons, investors, students and trainees, seafarers and workers on offshore installations.<sup>4</sup> As concerns refugees, an important international instrument of relevance to their human rights is the 1951 UN Convention (and the 1967 Protocol) Relating to the Status of Refugees (CRSR).<sup>5</sup> But, as will be discussed in Chapter 2, this too suffers from many gaps and ambiguities to give adequate protection to refugees and those in a refugee-like situation, and fails to respond effectively to many complex exigencies that such movements tend to entail.

### **International principles and performance at home: a yawning gap**

The failure of a number of countries to ratify all the main international human rights instruments or those specifically applicable to migrant workers is still another constraint impeding the migrants' full enjoyment of the rights enshrined in them. A striking case is the 1990 UN Convention on Migrant Workers and Members of their Families (ICMW). It took more than 12 years since its adoption to secure the minimum 20 ratifications required to make it operational.<sup>6</sup> In many instances the provisions in national laws thus fall short of the standards laid down in the international instruments of human rights law. Finally, even when the instruments are duly ratified and national laws are brought in line with the international standards, they are not in all cases effectively enforced. Experience also shows that the enforcement of these provisions for the protection of non-nationals does not always receive

due consideration by the international monitoring mechanisms. The reasons for this include: lack of timely access to information, inadequate familiarity of the monitors with migration-related issues and time constraints resulting from heavy work programmes.

There could also be other reasons that inhibit the process of monitoring the instruments and thus the enforcement of the stipulated rights. For example, both under its own statute and the provisions of the Convention itself, UNHCR has the responsibility to supervise the enforcement of the CRSR. However, some analysts have expressed the view that in the absence of a specific monitoring mechanism and a formal process of inter-state scrutiny – let alone a system for individual petitions – the enforcement arrangements have remained weak (Hathaway and Dent, 1994). It should be noted that Article 35(2) of the Convention provides a basis for installing a periodic reporting system, but imposes no obligation to establish a formal and specific mechanism for inter-state scrutiny.<sup>7</sup> As concerns ICESCR, the absence of a complaints mechanism has been cited as an important weakness in clarifying the rights through their application to specific cases (Dent, 1998).

The issue of non-ratification of existing standards and/or their inadequate enforcement is a serious one. There is a growing dichotomy between states' expression of concern for migrants' rights at the international level and their willingness and ability to do something about it "back home" (UNCHR, 1999; Bustamante, 2002). This leads to, and is reflected in, a continuing tension between international law to protect human rights and national laws where, as already noted, the primary concern is to protect and promote the rights and welfare of citizens. It is then hardly surprising that, unless specifically protected under national law and practice, migrants as foreigners remain vulnerable relative to the nationals of the state.

## **2. VULNERABILITY AND OBSTACLES TO ACCESS**

The Working Group of Intergovernmental Experts on the Human Rights of Migrants, set up by United Nations High Commission For Human Rights (UNHRC) in 1997, described the particular vulnerability of migrants as a root cause of their inadequate access to human rights. The vulnerability of migrants has also found recognition in the Vienna Declaration on Human Rights (1993). Clearly, vulnerability can be external (or exogenous) or internal (or endogenous), but they often interact with each other, creating a vicious circle. If, for example, inadequate recognition of migrant rights in law or ineffective enforcement of the relevant provisions in practice (as discussed above) act as an external obstacle to migrants' access to rights, it also generates a sense of insecurity and inferiority *among them* and circumscribes their *own ability* both as individuals and as a group to fight for the recognition and enjoyment of their rights. Such obstacles may be of a juridical nature (as discussed above) just as they could be economic, institutional or social, often working together and reinforcing one another.

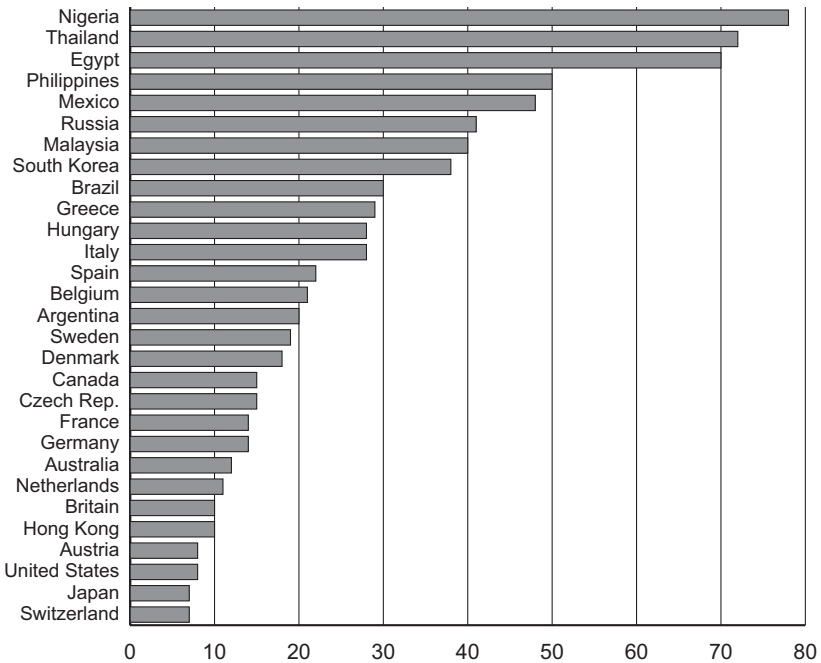
### **Globalization: an obstacle or a facilitator?**

Globalization has a mixed, indeed a contradictory impact on the human rights of migrants. Clearly, the complex process of globalization does not simply imply the exchange of goods, services and capital in world markets at an ever increasing pace; it also entails a freer flow of information, ideas and human values between peoples around the world. Recent dramatic progress in information technology, including the use of the internet, has certainly contributed to a heightened public awareness of the importance of human rights, just it has helped human rights organizations and activists to forge coalitions across countries and build an increasingly powerful network to promote and protect human rights for all, including migrants. The emerging signs of "globalization" of rights stemming from "bottom-up globalization" should not be underrated (Bengoa, 1977).

Further, in an environment of close interpenetration of markets and growing interdependence of nations, both migrant-sending and migrant-receiving countries normally share a common interest in ensuring that migrants have access to at least some minimum human rights. Governments of sending countries, partly owing to domestic political pressure, are stepping up their vigilance on how their emigrants are treated in the receiving countries. The latter, too, generally recognize that serious denial of immigrants' human rights would strain inter-state relations and hurt their longer-term political and economic interest in a globalizing world society (further discussed in

But globalization also has its downside. Economic globalization and market penetration are creating rapid structural changes in the world economy. Some analysts believe that these changes are leading to a growing unmet demand for low-wage and low-skilled workers in advanced industrial societies, and rising emigration pressures among the unemployed and unskilled workers in poor countries, fuelling international migration at the lower end of the labour force.<sup>8</sup> While the overarching and deterministic theories underlying these approaches have their limitations, there is little doubt that globalization, including increased competition in the world market, rapid technological change and the decline of the organized manufacturing sector, has contributed to an unprecedented expansion of the informal sector, or the underground economy, almost everywhere, including the industrial countries<sup>9</sup> (see Figure 1). Less competitive industries, marginal firms and many family enterprises with low productivity strive to survive in this sec-

FIGURE 1  
SHADOW ECONOMY AS PERCENTAGE OF OFFICIAL GDP



Note: Developed economies 1998, estimated using the currency-demand approach. Emerging economies, various years 1990-9, estimated using the physical-input method. Data for Japan are from 1993.  
Based on Friedrich Schneider.

tor with the help of cheap, docile, and often irregular, immigrant workers, while avoiding taxes.

These firms and micro-enterprises in the informal sector generally remain outside the purview of the existing national social and labour laws; and even when they come within the scope of these laws, verification and enforcement often go by default due to staff and financial constraints of the government services concerned (Ghosh, 1998). The situation excludes the possibility of any careful or systematic detection of human rights abuses. Without a legal status in the receiving country, and in the absence of any trade unions of their own, most of these (irregular) immigrants (as further discussed in Chapter 3), remain extremely vulnerable to human rights abuse.

## **An overview of major obstacles**

### **Migrants' organizational weakness**

Organizational weakness is an important factor that constrains migrants' access to their human rights. In today's world, collective institutional pressure often shapes or influences government policies and priorities: it also holds a key to public vigilance over the enjoyment and protection of citizens' rights. However, migrants are handicapped in exercising such pressure, given that in many countries there are important restrictions on non-nationals forming their own associations for political purposes.

True, in the period following the Second World War, in several countries, as in Belgium and France, the traditional restrictions on foreigners' associations have been removed. What is more, in countries like the Netherlands and Sweden, government financial assistance is now made available to regular immigrants' organizations as part of their integration policy and, as will be discussed in Chapter 4, the situation regarding such associations, in terms of both their numbers and effectiveness, has been evolving fast.

Nevertheless, the old principle that foreigners' associations can be suppressed in times of emergency and that foreigners can be deported if they threatened public order (*ordre public*) remains valid. More important, since "public order" is hardly defined in precise terms, interpretations could vary, leaving migrants in somewhat precarious and uncertain situations (United Nations, 1998). The consequent feeling of insecurity tends to hold back many migrants, especially those without a permanent resident status, from



actively participating in associations to assert and defend their rights (Report of the UNHRC Working Group, 1999).

Trade union rights are particularly important for migrant workers, and the right to form such unions is covered under Article 8 of the ICESCR. In addition, ILO Convention No. 143 (Migrant Workers [Supplementary Provisions], 1975) requires governments to promote and guarantee equality of opportunity and treatment in relation to trade union rights, while Convention No. 97 (Migration for Employment [Revised], 1949) guarantees equality of treatment regarding trade union membership and enjoyment of benefits arising from collective agreements. Under article 8(1)(b) of the UN Declaration on the Human Rights of Individuals Who are not Nationals of the Country in Which They Live (1985), non-nationals in a regular situation are entitled to join trade unions, but there is no right to form trade unions. Nor can such a right be inferred from any other provisions of the Declaration (Cholewinski, 1997). In reality, legislation in many countries contains significant restrictions on such rights of migrants. Some states (e.g. Algeria, Belarus, Czech Republic, Qatar, Slovakia and Thailand) make citizenship a condition for taking office in trade unions; or require (e.g. Colombia and Panama) that a proportion of the members must be nationals. In a number of states trade union membership is bound to a condition of residence (e.g. Kuwait and Lithuania) or of reciprocity (the Philippines) (ILO, 1999).

These restrictions, combined with the fact that under much of national legislation only citizens of the country can be elected to official trade union positions clearly prevent migrant workers from playing an active role in defending their interests, particularly in sectors where they represent a significant part of the workforce. As in the case of other forms of association, a main obstacle to the exercise by migrant workers of their trade union rights lies in their vulnerability to deportation on grounds of national security or public order. In particular, in case of workplace conflicts, discretionary powers for ordering such expulsion often rest with the administrative authorities; and depending on how such powers are exercised, this could constitute a real barrier to the exercise of trade union rights by migrant workers.<sup>10</sup>

As concerns the trade unions themselves, their attitudes to migrant participation varies. Trade unions in Australia as in a number of countries of western Europe, such as Germany, Sweden and Switzerland, encourage participation of migrants in trade unions through special measures. In Switzerland, the Construction Workers' Union, 75 per cent of whose members are foreigners, has encouraged change in union by-laws to facilitate

the unrestricted election of migrant workers to leading positions. Many of these unions also recognize the specificity of the needs of migrant workers and may even promote their own associations within the trade union. However, some trade unions, such as the General Confederation of Labour (*Confédération générale du travail*) in France, opposes any autonomous migrant worker organization outside its regular structure on the grounds that this would encourage division between foreign and national workers (United Nations, 1998).

### **Ignorance of rights, spatial segregation and social exclusion**

Low-skilled, less educated migrants, most of whom are also poor, are often unaware of human rights laws and practices in general. Nor do they always have, prior to their departure or even after their arrival, full information about their entitlements in the host country and of its social institutions and judicial system concerned with migrants' rights and welfare. While this presents a serious obstacle to the enjoyment of their rights, the situation is worsened when they are also victims of social exclusion as a result of residential segregation in less favoured urban areas. This causes difficulties in enjoying many of the social and economic rights, including access to public health, education and employment – difficulties which tend to be inherited by the second and even third generation migrants. True, residential segregation may enable migrants to seek mutual support, to re-establish family and neighbourhood networks and to help conserve their languages and cultures (Castles and Miller, 1993). But, by the same token, these may also lead to their further seclusion from the host society, thus creating a vicious circle. Segregation of migrants could sometimes be an unintended consequence of migrant integration policy. For example, in France, where integration has been based on the principle of equality, allocation of public housing in keeping with the number of children and family income in the 1960s, led to an increased influx of traditionally large immigrant families in certain areas. As this led to an accelerated exodus of nationals, there was increasing segregation of migrants, alongside declining quality of teaching in schools and shrinking opportunities in the labour market (Werner, 1994).

### **Behavioural and cultural constraints**

A most serious and over-arching obstacle is a widespread behavioural or cultural bias both among the public and government officials in the receiving society, including those engaged in law enforcement services, against foreigners in general and groups of specific ethnic or national origins, in particular. As migrant visibility coincides with ethnic or racial affiliations,

the actual size of specific groups of migrants could be overestimated, fuelling the host society's fears of cultural dilution and erosion of social cohesion. Populist anti-immigration slogans and xenophobic propaganda lead to, and thrive on, hostile stereotyping and blaming of migrants for economic and social problems. When these become endemic, even clear legal guarantees against discrimination, racial prejudices and xenophobic bias against foreigners could have little practical effect.

Indeed, in most countries, including those with legal guarantees against discrimination, a degree of such prejudice does seem to exist. South Africa, for example, has one of the most progressive and inclusive constitutions that guarantees basic rights and freedoms to everyone living within its borders.<sup>11</sup> However, recent surveys showed that large numbers of South Africans, both black and white, clearly disagreed with their own Bill of Rights (Crush, 2001). Legal recognition of rights and guarantees against discrimination is necessary but not sufficient; for rights to be respected and enjoyed, a conducive cultural climate must also exist in the society.

### **Prejudice in the receiving society and the missing pro-active stance**

Prejudice against foreigners could be a reflection of, and is often exacerbated by, (a) a negative perception of migration and its effects on local employment, incomes, housing and social services and (b) a lack of general awareness or knowledge of the human rights law provisions and their implications. To take again the example of South Africa, a recent survey showed only 55 per cent of respondents had heard of their country's Bill of Rights and over half of those surveyed thought that the rights guaranteed by the constitution were only for South Africans (Crush, 2001).

Recent experiences in several western European countries such as Austria, Denmark and France have shown that once the negative perception of migration, including fears about cultural erosion and joblessness, takes hold and the anti-immigration issues are injected into the political agenda, parties across the political spectrum, including those in power, find themselves on the defensive and react to the situation "by demanding or implementing more stringent anti-immigrant policies" (United Nations, 1998). This adds to the migrants' vulnerability and feeling of insecurity, making it harder for them to access their rights. An important lesson to be drawn from the situation is that the success of a rights-based approach to migration depends largely on the timely initiation of pro-active measures, including systematic dissemination of objective information on migrants' rights and their real contribution to the receiving country, before the migration issue is politically hijacked

by those opposed to it.

### **3. HEIGHTENED VULNERABILITY: A VARIEGATED PATTERN**

## Migrants in special situations

Access to human rights is particularly difficult, and the risks of human rights violation much higher for certain migrant groups or in specific migratory situations that are inherently prone to human rights abuse. Only a few of these can be briefly discussed within the limits of this paper.

### Migrants in an irregular situation

If, for the reasons already discussed, even those foreigners who are legally present in the receiving state cannot fully enjoy the rights to which they are entitled by law, it is not difficult to see why those in an irregular situation would be in a far worse situation. Certain instruments such as the 1990 UN Convention (ICMW) and the ILO Migrant Workers Convention 1975 (No.143), do provide for certain basic rights to which irregular migrant workers are entitled. But, in practice, they are often handicapped to benefit from them. One main reason is a built-in political and cultural bias against them – which is often much deeper and more common than that against regular migrants. Significantly, even some of the NGOs fighting for migrant rights seem to be only or mainly concerned with those who are in a regular situation, as distinct from those who are not. As for the state attitude, irregular migrants may be perceived as a challenge to national sovereignty, as a source of social tensions or as easy recruits for the political opposition. Indeed, the reluctance of some states to recognize the rights of irregular immigrants has been cited as one of the causes of the low rate of ratification of the UN Convention (ICMW) (Cholewinski, 1997). Also, some states may believe that by extending human rights to *all* migrant workers, including those in an irregular situation, they would be encouraging inflows of more irregular immigrants.<sup>12</sup> Finally, since both the UN and ILO Conventions urge states to curb irregular migration, there is, as confirmed by a 1996 ILO survey, a real risk of human rights abuse occurring in the process of state action.

Nor are other existing international instruments sufficiently robust to protect irregular migrants. For example, the UN Declaration on Human Rights of Individuals Who are Not Nationals of the Country in Which They Live (1985) recognizes the right of any state to establish differences between nationals and aliens. Advantage can be taken of this provision to discriminate against those aliens who do not have legal status in the receiving state. Further, although many essential civil and political rights are guaranteed to *all* aliens by virtue of Article 5(1) of the Declaration, the enjoyment of economic and social rights is restricted to aliens *lawfully residing* in the territory of a

state (Cholewinski, 1997). For its part, the law of aliens, mainly customary law, largely ignores the status of irregular migrants who, therefore, cannot rely on it for the protection of their rights.

### **Migrants as victims of human trafficking**

The horrid tales of human rights abuse of trafficked migrants, including forced prostitution of women and child abuse, are now well documented.<sup>13</sup> Many of them die on the way, some are abandoned in inhospitable places while some others, on arrival in the destination country, are used virtually as slave labour. They are often consigned to semi-exclusion in sweatshops, brothels and other similar sites; have little cash or outside contacts and may not even speak the local language. They may also be fearful of approaching the local authorities because of their irregular status in the country. The situation completely rules out any possibility of their enjoying even the most basic human rights.

Until recently, international and national laws were far from adequate either to prevent the rights abuse, or to give protection to the victims. The fact that at least some of these crimes are often perpetrated outside the territorial limits of a country or region posed another problem. This is because the legislation of only few countries, such as Switzerland and Austria, fully covered offences committed outside the national territory.<sup>14</sup> More recently, a number of countries have either enacted specific legislation to deal with human trafficking or tightened up existing legislation. Concurrently, at the global level, two specific Protocols on trafficking and smuggling of migrants as part of the new International Convention Against Transnational Organized Crime, 2000, have established a set of legal standards dealing with suppression, prevention, protection and punishment related to these activities. The combined effect of these national and international measures can be expected to discourage migrant trafficking and the human rights abuse that it invariably entails.

However, these initiatives are mostly of a reactive and punitive nature. Unless parallel policy and normative initiatives are taken to complement these punitive measures and a pro-active global regime for migration management is put in place,<sup>15</sup> the root causes of human trafficking can hardly be eradicated. Further, despite the inclusion of some provisions on protection in the new instruments, human rights activists, including women's groups, have expressed concern that the measures focus more on the perpetrators of trafficking, with less attention given to protection for the victims.<sup>16</sup> The distinctions made in the two recent Protocols between trafficking (involving

gross violation of human rights) and “simple” smuggling of migrants may also be questioned. In practice the two often overlap.<sup>17</sup>

### **Refugees and asylum seekers in vulnerable situations**

Refugees and genuine asylum seekers are supposed to enjoy their basic rights under international human rights and refugee laws. And yet, recent experience has shown that because of gaps and ambiguities in the laws, or their restrictive application, or both, they may be prevented from enjoying their rights fully. First, the 1951 UN Convention on the Status of Refugees and its Protocol of 1967 which provide the widely accepted definition of a refugee as a person with a well founded fear of persecution on certain specific grounds, do not cover several other individuals or groups who are also in genuine need of protection, at least on a temporary basis. These include victims of forced migration resulting from civil strife, armed conflicts and generalized violence, massive violation of human and minority rights disturbing public order, and natural and man-made disasters.<sup>18</sup> In many situations of forced movements, instances of individual persecution are not easily identifiable.

States in North America, western Europe and Oceania have responded to some of these humanitarian emergencies on an *ad hoc* basis by creating a wide variety of special categories of temporary and “humanitarian” refugees.<sup>19</sup> But in the absence of a set of internationally agreed and harmonized norms, the protection for these categories remains unpredictable, insecure and fragile. Of particular importance is the question of entitlement to the range of rights which, under the Convention, accrue on an incremental basis, depending on the refugee’s degree of attachment to the state – that is, whether the individual is *simply present* or *lawfully present* or is *lawfully staying*. However, there is considerable disagreement on the exact meaning of these terms, with a good deal of confusion and uncertainty concerning the differentiation between the various categories and their corresponding rights.

Some states tend to take the view that they enjoy full discretion in their treatment of temporary refugees and that therefore the rights accorded to Convention Refugees need not be extended to those under temporary protection. However, many scholars have challenged this, arguing that temporary denial of refugee access to status determination procedure is not a legitimate basis for denying the rights guaranteed under the 1951 Convention. While supporting this view, some commentators nonetheless agree that states might have some leeway to suspend such access and withhold the accompanying

rights if it is for a limited period, or under certain conditions of mass influx. There is no agreement, however, on the duration of that limited period or, more precisely, at which point in time an asylum seeker awaiting a decision is to be considered “lawfully present” (and not just physically present) to enjoy the corresponding rights (Dent, 1998).<sup>20</sup>

The pressure of large numbers of asylum seekers and the perceived threat of more arrivals have led most industrial countries to resort to a rigid interpretation and a restrictive application of the provisions of existing international and national refugee protection laws. In western Europe some are insisting on the presentation of valid travel documents by asylum seekers as a pre-condition for considering the asylum application. But there could also be many cases where a genuine asylum seeker, haunted by the fear of persecution in a hostile political climate, may be unable to secure all the travel documents and complete the necessary formalities before fleeing the country. It is significant that the 1951 Refugee Convention (CRSR) clearly establishes the principle of non-penalization for illegal entry in such cases. Should the presentation of valid travel documents become a pre-condition, it would seriously prejudice the application of the Convention. Further, in some countries, such as the United Kingdom, attempts have been made to disqualify asylum seekers from all public assistance unless they lodged the claim immediately at the port of entry. However, as confirmed by court judgments in the United Kingdom, a denial of social assistance to asylum seekers who are awaiting the outcome of their claim would be tantamount to a violation of their right to asylum.<sup>21</sup>

Uncertainties have arisen not just because political considerations have been visibly allowed to intercede when applying the protection provisions to different refugee flows, but also because of the exclusion of cases of persecution by non-state agents, interdiction or interception of would-be asylum seekers on the high seas, and frequent recourse (at the discretion of the government) to the safe-country concept under various labels (e.g. “safe country of origin”, “safe country of first asylum” and “safe third country”).

It has been argued that under international human rights and refugee laws the right to leave one’s own country can be considered complete in one particular context, namely, that of the right to seek asylum from persecution. Here the correlative duty of states combines the principle of *non-refoulement* with an obligation not to impede the exercise of the individual’s right to seek asylum from persecution (Goodwin-Gill 1995). States are, however, increasingly resorting to interdiction at sea – as they did in the case of po-



tential asylum seekers from Afghanistan, Albania, China, Cuba, Haiti and Turkey – to prevent them from entering their territory. The US Supreme Court has upheld the policy of authorizing the forcible return of potential Haitian refugees intercepted on the high seas. Even so, under the CRSR, the state has a duty, as reiterated by UNHCR on numerous occasions, to abide by the principle of “no rejection at frontiers without fair and effective procedures for determining status and protection needs” (UNHCR, EXCOM, 1981, 1997, 1998).

A related, but separate, question arises in connection with the protection of asylum seekers and refugees rescued at sea. The phenomenon is certainly not new. The mass exodus of Vietnamese refugees – or boat people – is well known. However, as large numbers of would-be asylum seekers and migrants are now trying to reach the destination countries by boat, and given that the vessels are often overcrowded and unseaworthy, issues of rescue-at-sea, disembarkation and protection have come sharply into focus. Under international law ship masters have a clear duty to rescue persons on ships in distress; and states have an obligation to adopt legislation establishing penalties for ship masters who fail to discharge the duty to rescue. What is not clear however is where the persons, once rescued, should be taken. Should this be the next scheduled port of call of the vessel or the nearest port? Also, how to make sure that the rescued persons’ valid claims to *non-refoulement* will be respected and that they will not be exposed to persecution or other forms of human rights abuse?

A global consultation held by UNHCR in 2000 looked into the whole matter. It recognized that the issues involved cut across several strands of international law – maritime law, refugee law, human rights law as well as the emerging regime for combating transnational crime. The consultation also revealed several gaps and grey areas that needed to be carefully looked into, alongside the development of a new international cooperative framework, to respond more effectively to the various risks involved.

Concerning the shift of policy emphasis towards *safe conditions*, not only has this restricted the admission of some genuine refugees coming from countries deemed to be “safe”, but has also had the negative effect of diluting the principle of “voluntariness” as a condition for the return of refugees. Doubts have been expressed about the depth and authenticity of the willingness of refugees to return under the new policy stance. Conditions in refugee camps can be so bad that the refugees would prefer to take a chance in a situation of conflict, insecurity and even possible persecution rather than prolonging their stay in camps. The situation of the Ugandan refugees in

camps in Sudan and Zaire (now the Democratic Republic of Congo) in the 1980s, the Somali refugees in Kenya in 1992 and the 2.5 million Rwandan refugees in Tanzania and Zaire in 1994 were typical of such situations. Worse still, in the absence of any viable alternative, refugees are sometimes obliged to return home because of civil war breaking out in the country of asylum itself, as was the case for Ethiopian refugees in Somalia (Ghosh, 2000, Ferris, 1993).

From the perspective of refugee protection, the policy shift away from the principle of voluntary repatriation to that of safe conditions could be worse if the reluctant host state had the sole prerogative of deciding whether or not the conditions in the country of origin (or a third country) are safe, regardless of the views of the refugees and/or any objective assessment by an outside agency (Chimni, 1999; Leotard, 1995). In a restrictive political climate, further constrained by limitation of resources, UNHCR has been obliged to embrace the doctrine of “imposed return” which, in essence, violates one of the basic principles of refugee protection, namely *non-refoulement* (Chimni, 1999). In 1996, UNHCR recognized that a large proportion of the world’s refugees returning in the previous years had taken place under some form of duress (UNHCR, 1997).

Refugees returning to areas of conflict often remain exposed to human rights abuses. Recent experiences in countries such as Cambodia, El Salvador and Liberia have revealed some of the risks refugees are likely to face on return if it takes place before security and peace are fully restored. Cessation of conflict or repression may not necessarily bring peace and normalcy; hatred and revenge may still be a daily feature of life, with human rights violation continuing to run rampant. When they return home, refugees in many cases face serious difficulties in meeting even their most basic needs. This is because refugees often return to areas which have witnessed large-scale destruction of the physical infrastructure and serious dislocation of the local production system, with crops burned, houses demolished, land lying uncultivated and economic activities virtually paralysed (Ghosh, 2000a). Although UNHCR has been given a residual responsibility for post-return protection and reintegration of “persons of concern” (usually for two years), the mandate is fragile and, as experiences in El Salvador and Guatemala have poignantly demonstrated, UNHCR’s institutional capacity remains far too limited to cope with the formidable problems that often arise. (The issue of post-return protection of rejected asylum seekers is discussed below.)

### **Asylum seekers whose applications have been rejected**

In the absence of any international instruments specifically designed to protect them, rejected asylum seekers find themselves in a particularly vulnerable situation. They can rely only on the general international human rights law that guarantees, in principle, certain basic rights for everyone, irrespective of legal status. Thus, under ICESCR, they may not be denied urgent medical care, or the fulfilment of their basic needs through social assistance. Also, they may not be subject to forcible eviction or discrimination in accessing housing. Children as asylum seekers are entitled to medical care for the treatment of illness. Additionally, under the CEDAW, women are entitled to adequate health care during pregnancy and the post-natal period. Rejected asylum seekers who are working lawfully can benefit from provisions in ILO instruments concerning social security and assistance, health, education and housing and, whether working lawfully or otherwise, they would be able to benefit from the ICMW provisions as the Convention comes into force.<sup>22</sup>

In practice, however, it is far from certain that the rejected asylum seekers always enjoy these basic rights. Given the present restrictive political climate in many host countries, state authorities are generally not very enthusiastic to grant the rejected asylum seekers all the basic facilities to which they are entitled. Rather, attention is focused on their speedy repatriation. When this takes the form of forcible expulsion, rejected asylum seekers become particularly vulnerable to human rights abuses. This high-risk situation is briefly discussed below.

### **Irregular migrants and rejected asylum seekers subject to forcible return**

Enjoyment of basic human rights becomes highly problematic for those rejected asylum seekers who have received an expulsion order. The risks are similar to those that occur in the case of forcible expulsion of irregular migrants. Why are these two groups so vulnerable? As already mentioned, the concepts of *ordre public* or national security, and the general welfare of the community can be interpreted very widely, permitting the state to circumvent its obligation not to arbitrarily deport non-nationals, especially since (unlike recognized refugees and legally employed migrant workers) the state has no positive obligation towards irregular migrants and rejected asylum seekers in this respect. The protection provided against arbitrary expulsion under Article 13 of the ICCPR, for example, applies only to aliens who are *lawfully* residing on the territory of a state, and not to irregular migrants.<sup>23</sup> True, under the 1990 UN Convention (ICMW), which extends certain rights to *all* migrant workers, expulsion may be authorized only by a

decision in accordance with the law, and the expelled person shall be given a reasonable opportunity before or after departure to settle any claim for wages. But, in order to benefit from these provisions, non-nationals must have been *employed* in the host country. Besides, as already noted, the Convention does not cover all migrants or all specific situations and practices in connection with an expulsion order.

The risk of human rights abuses in connection with expulsions is particularly high at the stages of localization and detention, as well as prior to and during the return journey. As several recent incidents in western Europe have shown, in its anxiety to repatriate the irregular migrant, the returning state may be inclined to use force or harsh and inhuman treatment to counter or prevent actual or anticipated resistance by the returnee (Noll, 2000). The European Parliament, for example, has been critical of the “deplorable conditions” under which asylum seekers are sometimes kept in detention for expulsion purposes in member states.<sup>24</sup> Irregular migrants awaiting deportation could also be subject to similar conditions. Admittedly, under existing human rights law the state is barred from exercising its discretionary powers in an arbitrary or abusive manner, and the principle of proportionality between the means employed and the (legitimate) goals to be achieved must be respected. But, once more, there is no explicit guidance on procedural standards to cover all potential situations of rights abuse and even when guidance is available in international human rights law, it is not necessarily followed. There is a clear need to further develop and refine relevant procedural norms in dealing with the various stages of forcible deportation. In addition to international human rights law, the guidance already provided in individual cases by the monitoring bodies should be helpful in filling these normative gaps (Noll, 2000).

Problems of human rights abuse also arise at the post-return stage. In the absence of any international legal arrangements for their post-return protection, rejected asylum seekers remain vulnerable to human rights abuse in cases of, for example, continuing political instability and civil strife in the home country or area of return (Ghosh, 2000a). It is sometimes believed that the rejected asylum seekers do not need (or deserve) international protection when they return home.<sup>25</sup> However, this assumption is not necessarily valid. Experience has shown that, while the rejection of the claim may well be based on a narrow application and/or a rigid interpretation of the refugee law, the lack of security facing the individual may be quite real. Continuing violence and strife in the area of return is not the only source of concern. Resentment, or even a feeling of vengeance over the fact that the individual had left the homeland to seek asylum abroad may make the state unwilling,

or at least reticent, to extend due protection to the returnee, even when it is able to do so. It is not surprising that in Viet Nam UNHCR found it necessary to undertake post-return monitoring to reassure rejected persons that it was safe to return. As things stand now, there is an important vacuum in international legal and institutional arrangements to deal with the post-return situation affecting rejected asylum seekers.

### **Migrants and migrant workers during armed conflicts**

In the absence of any specific instrument geared to their needs, migrants, including migrant workers, may find themselves in a particularly vulnerable situation during armed conflicts, especially when the host country is under belligerent occupation by a foreign power, as exemplified by Iraq's occupation of Kuwait (two-thirds of the country's resident population were legal migrant workers) for almost seven months in 1990-91. (Penna, 1993).<sup>26</sup> The only laws that seem to provide some protection in such situations are the Geneva Conventions of 1949, notably the Fourth Convention Relative to the Protection of Civilian Persons in Times of War. However, the Convention refers merely to humane treatment without mentioning specific rights relevant to the situation of migrants.<sup>27</sup> Also, the applicability of the Convention to migrants from third countries in such situations remains open to question. The relevant article (Article 4) states: "Nationals of a neutral state who find themselves in the territory of a belligerent State shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are." Since most of the migrant workers in Kuwait were nationals of neutral states that maintained normal diplomatic representations in Iraq, they may not be considered "protected persons" under the Convention.

Nor is it certain that migrant workers in such a situation could rely on the protection of the UN Convention on the rights of all migrant workers (ICMW). Like most other similar instruments, the Convention requires the state parties to respect the basic human rights of migrant workers and their families "within their territories". In the absence of a clearer definition of the phrase "within their territories", some have argued that in Kuwait-like situations the occupying state has no obligation to protect the migrants' rights since the occupied territory is not its territory (Penna, 1993).

### **Territorial changes and the vulnerability of stateless persons**

Complex issues of human rights arise when people become aliens in

their homeland not because they have crossed borders (or taken any other voluntary action for that purpose) but because the state borders have themselves been moved. This happens when new states are created through the division of an existing state or the cession of a part of it. In such situations those living in the territory of the new state are usually given the right to choose between the nationality of the new state and the nationality of the state with which they may have ethnic, religious or cultural links. In the latter cases, they can continue to reside as non-nationals in the territory where they lived before the territorial change,<sup>28</sup> or have the right to move to, and be admitted into the state with which they have the closest links (United Nations, 1998).

However, national laws on the subject differ, and in the absence of well-developed international law the consequences of territorial change on nationality remain a controversial issue. This has some very serious implications for migration-related basic rights. This is so primarily because it is nationality or citizenship that provides the indispensable link between international law and the rights of individuals, including as migrants, to protection by that state. As Chan puts it, the absence of nationality logically excludes an individual from all the benefits conferred on him or her by international law.<sup>29</sup>

As discussed in Chapter 1, in principle international human rights law now requires the state to guarantee a core of human rights to all persons within its jurisdiction, be they its own citizens or stateless persons. This includes the right to leave and return to one's country. Under Article 13, paragraph 2, of the UDHR, "Everyone has the right to leave any country, including his own, and to return to his country." ICCPR emphasizes the state obligation to avoid arbitrariness in granting these rights: "No one shall be arbitrarily deprived of the right to enter his country" (Article 12, paragraph 4). In a like manner, Article 5 (d) (ii) of the International Convention on the Elimination of All Forms of Racial Discrimination underlines the obligation of the state to avoid discrimination in granting the right to everyone to leave any country including one's own, and to return to one's country.

The entitlement of a stateless person to these rights is not completely uncontroversial, however. Some have argued that the right to leave and the right to return to one's country are embedded in the individual's link with his/her state through nationality or citizenship. Others have taken a different view on the basis of an asserted doctrine of acquired rights or legitimate expectations (Goodwin-Gill, 1978) or on the claim that the phrase "his own country" is not limited to citizens (Joseph, Schultz and Castan, 2000; Nowak, 1993). In its General Comment No.27,

the Human Rights Committee has supported this position by asserting that the phrase “his country” is broader than the concept “country of nationality”. According to the Committee, it embraces individuals with special ties to, or claims in, a given country, including those “whose country of nationality has been incorporated in, or transferred to, another national entity, whose nationality is being denied them”. However, state practice tends to be more restrictive and some of the regional conventions, such as the European Convention and the American Convention, expressly limit the right of return to the state of which the person is a national.

If a stateless person’s enjoyment of “the right to leave and the right to return” under international human rights law is, at best, uncertain, statelessness clearly deprives the individual of a wide range of rights and protection that the state provides exclusively to its citizens. By denying the opportunity of full participation in the society in which he or she may be living, statelessness imparts a feeling of insecurity to the individuals concerned and impedes their integration in society. And the presence of large numbers of stateless persons and their exclusion from the polity clearly undermines its democratic inclusiveness.

True, in 1948, the UNDHR guaranteed for the first time in international law, that “Everyone has the right to a nationality” (Article 15, paragraph 1) and that “No one shall be arbitrarily deprived of his nationality” (Article 15, paragraph 2). However, the failure to specify which state is to grant such nationality made these provisions somewhat vague. In the wake of the Second World War, the fear of large-scale statelessness resulting from post-war territorial adjustments led to the adoption of the Convention Relating to the Status of Stateless Persons in 1954, and the Convention on the Reduction of Statelessness in 1961. Unlike the previous 1930 Hague (League of Nations) Convention on conflict of nationality, the 1961 Convention imposed on contracting states a duty to confer nationality on those who have specified connections with them and who would otherwise be stateless.

Nonetheless, the 1961 Convention does not absolutely prohibit states from depriving a person of his/her nationality; nor does it provide clarity on state responsibility, aside from specifying treaty obligations to prevent statelessness. Article 10, paragraph 1, states: “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.” Thus, as matters stand now, international law does not impose any specific duty on successor states to grant nationality. Decisions on nationality issues following territorial changes are effectively left to state discretion, subject to prevention

of statelessness and the obligation to avoid discrimination. The weakness of the provision apart, the effectiveness of the Convention is inhibited by the fact that only a relatively small number of states – as of 23 April 2002, only 26 – have ratified it. A state's reluctance to accept specific obligations in reducing statelessness was reflected in the debate on the subject at the Fiftieth Session of the UN General Assembly in 1995. Resolution 50/152, adopted at that Session, called upon states "to adopt nationality legislation with a view to reducing statelessness, consistent with the fundamental principles of international law", but, at the same time, it recognized "the right of States to establish laws governing the acquisition, renunciation or loss of nationality." The primary responsibility for stateless persons is thus clearly vested in states, with UNHCR basically playing only a supportive role in reducing statelessness, and IOM providing some limited and occasional assistance to the persons involved.

In 1994 the Executive Committee (EXCOM) of UNHCR requested the High Commissioner to strengthen the Organization's efforts in this area, including the promotion of state accessions to the 1954 and 1961 Conventions. Analysts have argued, however, that making such action effective would require a clearer definition of its mandate. This should include assigning UNHCR a supervisory role in the implementation of the Conventions, with an obligation to report on a regular basis to the UN General Assembly on statelessness; a stronger directive from EXCOM to address statelessness and closer links with other organs of the United Nations system dealing with nationality matters, notably the International Law Commission and the Human Rights Commission (Iogna-Prat, 1995).

As events in the Baltic states in the early 1990s showed, the absence of clear international rules to address statelessness and nationality issues linked to territorial changes could create uncertainty about access to human and other fundamental rights for large numbers of people, while also generating inter-state tension. Although the problems in the Baltic States have now receded or are largely resolved, the situation created by the disintegration of the former Soviet Union continues to cause concern elsewhere. For example, by 1996, of the 34 million Russians, Ukrainians and Belorussians living outside their own republics and autonomous regions of the former Soviet Union, more than 3 million had already returned to their ethnic homelands. Many more were likely to follow.<sup>30</sup> But whether they moved or not, their situation was disturbing, given the absence of, or the delay in, formulating sound migration and nationality laws to protect their rights and ensure them a secure future, either in their states of residence or in the new states which were their ethnic homelands.<sup>31</sup> Also, in the context of the situation of Serbs



in Bosnia and Herzegovina and in Croatia, many have expressed doubts if existing international law, including the concept of “genuine link” provides clear and sound guidance on the subject of conferring nationality. (Mikulka, 1995). Gaps in existing international law in specifying the responsibility of successor states constitute a major handicap in handling such situations. Given the simmering ethnic and nationality conflicts in different parts of the world today, new challenges to existing state frontiers can hardly be ruled out in the years ahead. This, combined with the fact that statelessness can be an important source of population displacement and conflicts, underscores the importance of filling the gaps in international law on this subject.<sup>32</sup>

### **Internally displaced persons: objects of charity or right holders?**

From a technical or legal standpoint, internally displaced persons (IDPs) are not migrants. They are defined in the *Guiding Principles on Internal Displacement* as persons, or groups of persons, who have been forced or obliged to flee their homes or places of habitual residence, in particular as a result of, or in order to avoid, the effects of armed conflicts, situations of generalized violence, human rights violations or natural or man-made disasters, and who have not crossed an internationally recognized state border.

Unlike migrants or refugees, IDPs do not have a special legal status. As nationals, they are, in principle, entitled to enjoy the same rights and freedoms under domestic and international laws as do other persons in their country. And yet, they are often seriously handicapped in their enjoyment of the basic human rights because of their vulnerability, which, in several ways is comparable to, and perhaps more worrying than, that to which migrants and refugees are often exposed.

Aside from any protection available for aliens under international instruments and the national laws of the host country, regular migrants can, in principle, rely on the political support of their state of origin to defend their rights and interest. By contrast, located within their own country, but often deprived of effective protection by their own government, IDPs cannot rely on any of these for their protection. In the home country, the denial of access to their human rights may be deliberate on the part of the government but, as in the case of a failed state, it may also be due to its lack of authority or administrative capacity to deal with the situation that caused the human displacement.

The IDPs also share some of the characteristics of the vulnerability

of refugees. They try to escape from hostile situations, such as armed conflicts, internal strife and generalized violence, commonly marked by violation of human rights. Uprooted from their home and their familiar surroundings and cut off from their social and economic base, displaced persons, like international refugees, may be exposed to new difficulties in the areas of settlement, such as inadequacies of basic amenities, including food and shelter, discrimination in, or denial of, access to education, medical care and earning opportunities. Worse still, the government may view them as subversive elements colluding with insurgents. The similarity of the situation surrounding the refugees and IDPs is all the more striking when internal displacement is conceived as an “internal flight alternative” or “safe haven within the country” for potential refugees. However, unlike refugees, who can turn to an established international legal and institutional regime for protection, IDPs are not protected under any specific international arrangement tailored to their needs.<sup>33</sup>

International human rights law, in principle applicable to all human beings, is thus of critical importance for the protection of IDPs. Another important international source of protection for IDPs is the international humanitarian law. When internal displacement occurs in situations of armed conflicts, human rights provisions may be significantly circumscribed or derogated from, but international humanitarian law remains in effect. Also, unlike human rights laws, humanitarian law applies not only to states but also to insurgent groups and other non-state actors. Refugee law, although not applicable to IDPs, also contains certain principles and norms, such as the principle of *non-refoulement*, which is of particular relevance to the protection of uprooted persons.

Following a request in 1992 from the UN High Commission on Human Rights, a multi-year study was launched in 1992 to appraise the extent to which existing international law met the specific needs and condition of IDPs. The study concluded that although existing law provided substantial coverage for IDPs, it was still necessary to restate them in more specific detail and to address protection gaps in a new instrument. Some of the gaps concerned the absence of explicit norms, for example, protection against arbitrary displacement; some others related to the absence of norms which specifically addressed the distinctive needs of the internally displaced, such as the express guarantee against forcible return to dangerous or hostile areas. In certain cases, the weaknesses in the protection framework for IDPs also stemmed from the limited scope of application of humanitarian law and the failure of some states to ratify the existing international human rights and humanitarian instruments (Mooney, 2001).

The efforts of the Special Representative of the United Nations Secretary-General on the Internally Displaced finally led to the development of the *Guiding Principles on Internal Displacement*. Comprising 30 principles in all, the document draws on and consolidates the many norms relevant to the protection of the internally displaced which were previously dispersed over numerous different instruments, and fills the gaps to meet the specific needs of the internally displaced. It thus provides protection during all phases of displacement – protection from arbitrary displacement, protection and assistance during displacement as well as during return and resettlement (Kälin, 2000).

Unlike an international treaty, the Guiding Principles are not a binding instrument, but are designed simply to provide guidance to the actors involved. The Principles expressly recognize that the primary obligation and responsibility for ensuring protection and assistance for IDPs rests with national authorities. However, as already noted, the home state may be unwilling or unable to fulfil these obligations. Although the International Committee of the Red Cross (ICRC) has the right to initiate an offer of humanitarian assistance to IDPs in armed conflicts or civil disturbances, states are not obliged to accept it. Besides states, the Principles are designed to give guidance, among others, to the Representative of the United Nations Secretary-General on the Internally Displaced and to intergovernmental and non-governmental organizations. The Secretary-General of the United Nations or the heads of other major United Nations bodies can request UNHCR to take responsibility for providing assistance to internally displaced persons, as it has indeed done on several occasions. However, its mandate remains weak and *ad hoc* and the resources often prove inadequate.<sup>34</sup> In a number of countries including Angola, Guatemala, Haiti, Mali and Mozambique, IOM has provided return and reintegration assistance to IDPs. None the less, IDPs are still unable to benefit from a sufficiently strong international legal and institutional framework to enjoy the protection and assistance they need (Newland, 1999; Kourula, 1997; Plender, 1995).

### **Migrants in the wake of the September 11 attacks**

In the wake of the terrorist attacks of September 11, many countries, especially in the West, have imposed restrictions on certain freedoms and civil liberties as part of their anti-terrorist campaigns. Most of these measures apply to all, but migrants, including long-term foreign residents and even those who are naturalized citizens, seem to be among the worst sufferers.

In the US, new laws and administrative measures give the executive branch of the government wider powers regarding arrests on suspicion, detention without trial and enforced deportation. Despite official denials of racial profiling, Arabs from the Middle East and North Africa and even US citizens of Arab origin have come under close scrutiny, as reflected in the systematic FBI interviews of 5,000 persons of Arab descent. The New York based Human Rights Watch reported that some 1,200 non-citizens were secretly arrested (and 752 of them incarcerated).

Field investigations by newspaper reporters have revealed that, facing intense pressure to avoid another terrorist attack, federal US government agents acted on information from tipsters of questionable background and motives, touching off needless scares and uprooting the lives of innocent persons (*The New York Times*, 19 June 2003). Concurrently, a report released in June 2003 by the Justice Department's Inspector-General, confirmed that the round-up of illegal immigrants was beset with "significant problems" that forced many illegal immigrants with no connection to terrorism to languish in prisons in harsh conditions. There was a "pattern of physical and verbal abuse". Many detainees were not informed of the formal charges against them for more than a month instead of within the stated 72 hours, and the delays hindered their access to lawyers (*The New York Times*, 3 and 19 June, 2003) As Anthony Romero, Executive Director of the American Civil Liberties Union put it, "Immigrants weren't the enemy. But the war on terror quickly became a war on immigrants" (*The New York Times*, 17 June 2003).

In keeping with his election pledge, but most probably prompted by these revelations, President Bush has now issued guidelines to end racial profiling as part of routine investigations, including the handling of immigrants. The new guidelines, based on 12 recommendations in the Inspector-General's report, include clearer standards for deciding when a detained immigrant may be considered a terrorist suspect and provide for improvements in the conditions of confinement. None the less, the policy makes room for exemptions to deal with terrorism and national security matters. Immigration officials, for instance, will continue to be able to require visitors mainly from Middle Eastern countries to register with the government.

Arab-American and civil rights groups have expressed their concern that the guidelines will give the authorities legal justification to single out Middle Easterners and other specific ethnic or religious groups who may come under suspicion. Some have also questioned whether the new

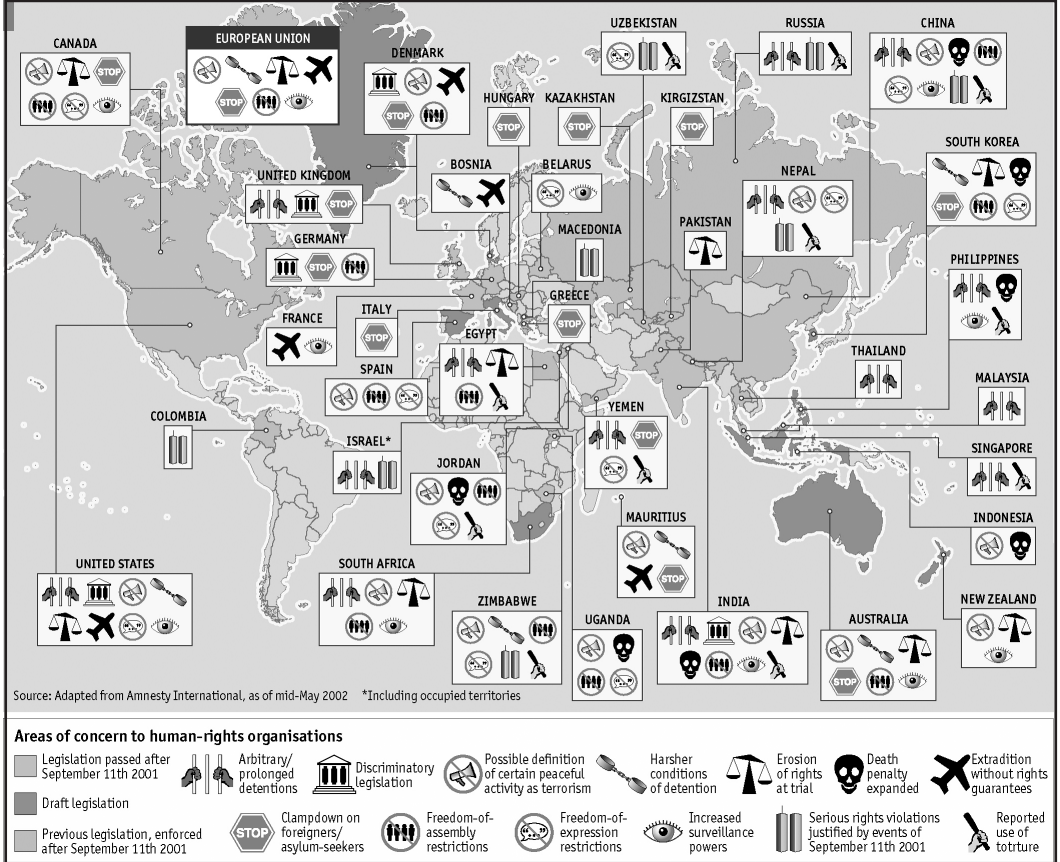
policy – issued as guidelines – will be strictly enforced. As an official of the American Civil Rights Union put it, the policy acknowledges racial profiling as a national concern, but it does nothing to stop it (*The New York Times*, 19 June 2003). The Justice Department has however maintained that the guidelines’ overarching theme is that law enforcement officials cannot use race or ethnicity as a proxy to focus increased criminal suspicion on a person. If so, the reforms are clearly a step in the right direction.

Incursions on civil liberties in general, but affecting non-nationals in particular, have also become noticeable in most west European countries, including Germany, Italy, Spain and the United Kingdom, as well as at EU level (see Figure 2). Security concerns may not have been the only driving force in all these cases. As *The Economist* observed, “Most EU governments have also leapt at the chance to act against asylum-seekers and tighten immigration laws, though their motives in doing so have little to do with security” (*The Economist*, 31 August, 2002). These measures, combined with a rising genuine concern for security, have created an environment that unavoidably constrains the migrants’ enjoyment of their basic rights.

#### **4. OVERCOMING THE OBSTACLES: THE STATE, CIVIL SOCIETY AND HUMAN RIGHTS INSTITUTIONS**

How can the general situation concerning the access for migrants to human rights be improved? A variety of useful, though somewhat dispersed, suggestions are available for this purpose in the Programme of Action (Chapter X) of the 1994 Cairo Conference on Population and Development, the report of the Working Group of Intergovernmental Experts on the Human Rights of Migrants (1999), the Report of the UN High Commissioner for Human Rights (May 2000), the Report of the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance, 2001, and elsewhere. While many of the proposals are addressed to states, they also delineate the role that the various other actors – intergovernmental organizations, the corporate sector, trade unions,

FIGURE 2  
 CIVIL RIGHTS CHANGES WORLDWIDE  
 SINCE 11 SEPTEMBER 2001



Source: Amnesty International: © The Economist Newspaper Limited, London, 31 August 2002.

migrants' associations, academia, religious bodies, welfare societies and other civil institutions – can play, be it individually or in partnership with others, to enhance migrants' access to their human rights.

### **State and inter-state action: a snapshot of existing recommendations**

The main proposals for state action, including interstate cooperation, can be summed up as follows:

- The existing gaps and ambiguities in international law and in the mandates of international organizations concerning the protection of migrants who are in a particularly vulnerable situation should be addressed in a coherent manner. Pending the consolidation and codification of the various provisions in international human rights instruments which are applicable to migrants and migration situations, a compendium of the relevant provisions should be prepared with a view, *inter alia*, to facilitating the work of human rights activists.
- States which have not yet ratified the key human rights conventions, including those specifically applicable to migrants, should do so. Those which have already ratified key human rights instruments should bring national legislation in line with the international standards, specifying their applicability to non-nationals. All ratifying states should take the necessary measures, including the establishment or reinforcement of relevant mechanisms and practices, to ensure that these standards are effectively applied and that all cases of denial of migrants' rights are properly investigated.
- States ratifying the key international human rights instruments should ensure and encourage effective and timely use of the monitoring mechanisms established under these treaties to protect migrants' human rights. The existing functions and mechanism of the UN Special Rapporteur on the Human Rights for Migrants should be strengthened in its present or in a modified form, as appropriate.
- Effective measures should be taken to avoid the pressures and root causes leading to irregular migration, including human trafficking. Alongside punitive action against criminal and other unlawful activities, these should include: (a) allowing legal and orderly immigration when there is a real unmet labour demand in the country; and (b) extending inspection of labour and human rights standards to the informal sector, while helping to raise the productivity, incomes and working conditions of the

firms operating in this sector through restructuring or replacement, as appropriate.

- States should facilitate the establishment of democratically constituted migrant associations as well as their participation in trade unions, in keeping with the provisions of the relevant UN and ILO instruments, as a means of safeguarding their rights and legitimate interests and maintaining continuing dialogue with relevant government agencies and national human rights commissions and/or other similar monitoring bodies.
- Both sending and receiving states should take appropriate steps so that migrants may be better aware of their rights and obligations, and have some knowledge of the legal and judicial systems and conditions, including the public and private agencies concerned with the human rights of migrants, in the receiving state. They should also encourage human rights groups, migrant-serving associations and other private agencies to carry out or support these activities in a coordinated manner.
- Receiving states should as far as possible avoid creating ghetto-type residential segregation of migrants which can contribute to their social exclusion, heighten local tension and make it hard for them to enjoy their social and economic rights.
- Appropriate arrangements should be made in receiving states to provide training to law enforcement personnel and other government officials concerned on the scope and application of human rights standards for migrants in different situations. They should also encourage similar training courses for the activists in human rights organizations and migrant-serving associations.
- Receiving states have a responsibility to take punitive action against racism and xenophobia and discourage hostile categorization or unjustified stereotyping and “scapegoating” of migrants for crimes and various other domestic social and economic problems unrelated to migration. At the same time, they should take pro-active measures by initiating and encouraging programmes of public information on the benefits and costs of migration, the role and contribution of migrants, and their entitlement to human rights under national and international law.
- Given that effective implementation of many of the above measures in the receiving states calls for cooperation and coordination involving different government agencies as well as various civil society actors and non-government bodies, governments should elaborate a national plan of action with a clear demarcation of responsibilities for each of



the partners involved.

It is not the purpose of this monograph to make a detailed review of these various proposals, nor does it seek to put forward an exhaustive blueprint of the measures that the state, in conjunction with non-state actors, should take to promote and protect the human rights of migrants. Instead, it aims at examining the strategic issues underlying state, including inter-state, action in favour of migrants' rights: Why should the nation state, which is primarily concerned with the rights and welfare of its own citizens, be actively engaged in promoting the rights or interests of aliens even if they are on its territory? These issues are taken up in the next chapter. Meanwhile, it is important to bear in mind that in the whole area of migrants' human rights, there are actors other than the state, notably the migrant associations, a wide variety of migrant-serving NGOs and human rights groups, and that much also depends on whether, and if so, how they act and cooperate with one another. A quick review of the role and activities of these institutions is, therefore, considered useful.

### **Role of migrants' associations and other civil society actors**

Since the early 1990s, especially in the past few years, migrants have taken energetic steps, alongside a variety of NGOs, to overcome their traditional organizational weaknesses (discussed in Chapter 2) and have achieved some positive results. A relatively relaxed attitude of western governments towards the freedom of association for foreigners and the expansion of democracy in several parts of the world clearly helped this process. Networking and close cooperation between migrants' own associations and various civil society actors have also been a key factor. The role of trade unions in promoting and safeguarding the rights of migrant workers and their families has already been discussed in Chapter 2.

Traditionally, migrants' associations and migrant-serving NGOs have been concerned with service activities to promote the welfare and integration of migrants in the destination country, assist in their return and help develop local projects in their communities of origin. Increasingly, however, they have also become involved in policy advocacy, serving useful channels of communication and consultation with local and national authorities on migration-related issues, including migrants' rights.

A survey carried out in 1997 at the instance of the UN Commission on Population and Development, covering some 282 NGOs, sheds light on the

wide spectrum of these organizations and the range of their activities. The findings of the survey showed that they “provide a place for information, dialogue and cooperation between migrants (documented, undocumented and refugees) citizens, employers and government agencies in countries of origin and destination.”<sup>35</sup> The findings concluded that, given their extensive contact with migrant populations, these NGOs were well positioned to assess the migrants’ needs for services and education, to serve as effective conduits of information on national laws and regulations relevant to migrants and refugees, and to act as valuable advisers to governments and inter-governmental organizations on future policies and programmes concerning migrants and refugees.

The survey also revealed, however, that the origins and activities of these NGOs varied widely. Some had a broad spectrum of constituencies; some were created by migrants to promote self-development and protection, while some others were to represent the views and concerns of particular migrant groups or had mandates to provide services, guidance and advocacy for the benefit of migrants in general. Significantly, for many of them the protection of the rights of migrants and refugees was one of their priority concerns. The survey results showed that more than 50 per cent of the respondent organizations had included in their work programmes activities dealing directly or indirectly with the protection of migrant and refugee rights – for example, 59 per cent carried out programmes to ensure protection against racism and xenophobia, 58 per cent to eliminate discrimination against regular migrants, especially women, children and the elderly and 56 per cent to ensure protection of refugees and their families. Significantly, in certain regions, notably Asia, many service or development-oriented NGOs (including some of those concerned with migrants) which may not have started out explicitly for human rights purposes, have gradually moved into the human rights areas as well (Dias, 1993).

In many countries, migrant-serving NGOs and migrants’ (including migrant workers’) own organizations act closely together, although the pattern and extent of collaboration vary. Just as many NGOs have been providing valuable support to migrants and their associations in critical areas, such as institution-building, advocacy and provision of services, so have migrants’ associations found it useful to forge alliances with NGOs in particular areas or on specific issues. Such alliances or coalitions have sometimes led to the establishment of national platforms, joint programmes and, more often, joint campaigns at the national level. In Japan, for example, where a large number of NGOs – 30 or more – are involved in protecting migrants’ rights, leaders get together once a month to exchange information on their respective work

programmes. They cooperate in various national and international projects, such as the preparation of booklets and pamphlets on migrants' rights, organizing national hotlines for use in the event of violations of human rights of migrant workers and launching other public campaigns on migrant issues.

At the regional level, especially in Asia and Europe, migrants' associations and migrant-serving NGOs have developed extensive mutual support and information-sharing networks with the objective of promoting the migrants' rights and welfare. For example, together with the Migrant Forum in Asia, the Asia Migrant Center has been networking with more than 20 associations in 11 Asian countries on migration-related issues, including migrants' rights. In Europe, aside from the European Union Migrants Forum and the European Council on Refugees and Exiles, both supported by the EU, there are well developed networks bringing together numerous local migrants' associations to deal with migration-related issues, as exemplified by "United Against Racism and Fascism". In Africa, networking for research on migration issues, including migrants' human rights, is being developed by the South African Migration Project. In Central America, national coalitions are being fostered by a regional organization on forced migration.

At the international level, several initiatives, such as the Migrants' Rights International and The December 8 Initiative (an online network), both of which focus on promotion of migrants' rights, have been able, despite their limited resources, to bring together formally or informally a significant number of organizations for advocacy work. The NGOs have been a powerful driving force in promoting the cause of migrants' rights in the United Nations Commission on Human Rights. Together with some national human rights groups, they provided valuable inputs to the work of the UNCHR working group on the human rights of migrants. It is worth recalling that the group's recommendations included those concerning the appointment of a special UN Rapporteur on the human rights of migrants, and proclaiming 18 December as International Migrants Day. The formal approval of these proposals has helped to bring the issue of migrants' human rights into the mainstream of global human rights discussions. The Global Campaign for Migrants' Rights, set up in 1998 by a group of international NGOs and inter-governmental bodies has made a singular effort to advance the ratification of the 1990 UN Convention (ICMW).

### **Role of human rights organizations**

As for the human rights entities, until recently the major international organizations had focused attention on refugees and asylum seekers rather

than on migrants in general. However, in recent years their concern has extended to all groups of migrants. Indicative of this trend are the reports prepared by Amnesty International on executions of migrants in the Middle East, and by Amnesty USA on abusive treatment meted out to migrants in detention. Other examples include the investigations by Human Rights Watch into the treatment of migrants and refugees in South Africa in 1997, and a study of migrants' human rights in four western European countries. In the US, Human Rights Watch reported on the conditions of the non-citizens who were secretly arrested and incarcerated following the September 11 attacks. Human rights organizations also joined hands with migrants' associations and other NGOs in several of the global initiatives mentioned above. In general, however, they seem to have a preference for operating autonomously.

In developing regions, too, mainstream human rights groups in general do not seem to have been very widely or actively concerned with migrants. It is worth noting, however, that in some of these regions, including Asia, there is an emerging trend for the mainstream human rights groups to widen their advocacy to include economic and social issues, as a sequel to a growing recognition that these problems can seriously impinge on the access of the vulnerable groups to their human, notably civil and political, rights.<sup>36</sup> It is conceivable that this changing approach might also induce the mainstream human rights institutions to be more actively involved in issues of human rights of migrants as a vulnerable group.

## **5. STRATEGIES FOR MOVING FORWARD**

### **What is in it for the nation state?**

The preceding chapter raised a key question to which we now revert: given its citizen-centric vocation, how can the nation state be induced to opt for a more pro-active stance to protect and promote the human rights of migrants who are non-nationals? Or, to put it more bluntly, what is in it for the nation state? Some of the strategic issues involved are taken up in this chapter.

In granting and protecting the rights and privileges of its citizens the nation state acts within its own (domestic) domain of jurisdiction and it cherishes its prerogatives of sovereignty. At the same time, it generally recognizes

the importance of human rights both as an ethical objective *per se* and as a factor in international relations. But its concern for human rights in general, and for non-nationals in particular, constantly vies with its other – political, strategic and commercial interests. This, as already discussed, gives rise to a cleavage between the declarations of principles or even formal commitments by governments at the international level, and their actual performance at home, especially in relation to non-nationals.

Even while recognizing the complexities of the situation, it is possible to advance at least three powerful arguments to induce the nation-state to be actively involved in protecting and promoting the human rights of migrants. The first consideration concerns ethics and law. As already discussed, despite some continuing differences among jurists, most of them agree on the concept of a set of universal human rights applicable to all, including non-nationals. Using this as a point of departure, some sociologists, such as David Jacobson and Yesmin Soysal, have argued that migrants have acquired a legal status that bypasses (state) citizenship and needs to be recognized at a global or “post-national” level (Jacobson, 1996; Soysal, 1994). Some others, like Rainer Baubock, have gone further and argued that, given the dynamics of economic globalization a new transnational citizenship with accompanying rights is both necessary and inevitable (Baubock, 1994). One can see the beginning of this trend, albeit at a regional level, in the concept of an EU citizenship with its rights and obligations, as distinct from those applicable to nationals of individual member states within their respective territories.

Based on existing human rights law, and taking a more nuanced view, Guy Goodwin-Gill strongly argues that protection of migrants’ rights extends even into areas of sovereign competence. States have a responsibility to protect the human rights of all those within their territory and jurisdiction and, given the manifestly international dimensions of migratory and refugee movements, there is a collective duty of states to protect the persons moving across borders. He argues that it is, therefore, incumbent on them to cooperate to achieve this purpose. Moreover, these human rights obligations are embedded in the cooperative framework established by the United Nations Charter and general international law (Goodwin-Gill, 2000, 1996).<sup>37</sup>

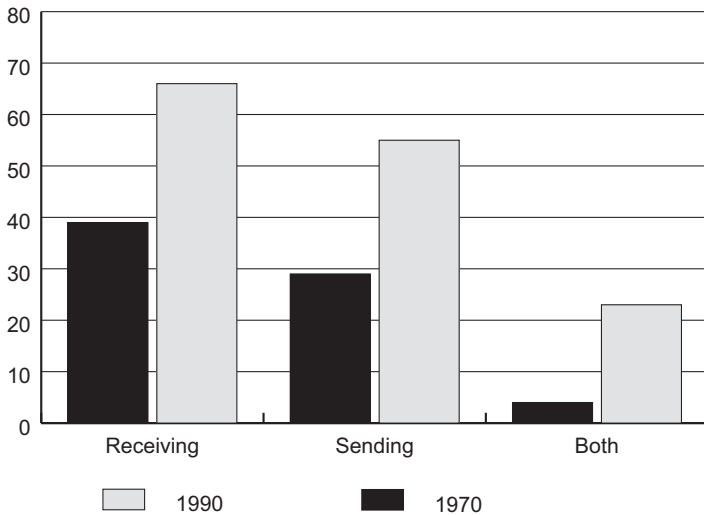
The second consideration is citizen-centred and more pragmatic. It concerns the nation-state’s traditional role in defending its own citizens’ rights, but is sharpened by the changing configuration of migration as a global process. As a recent ILO survey showed, more and more countries are now becoming increasingly involved in *both* emigration and immigration (see figure 3).<sup>38</sup> This has an important implication for a state’s attitude

to migrants' rights. The state, as discussed, has a basic, internally driven and widely accepted, obligation to protect the rights and welfare of its own citizens, even when they are in another state as migrants. It cannot effectively meet this obligation except through inter-state cooperation based on reciprocity. This requires the state to treat non-nationals working or living within its own territory in the same manner as it would like its own nationals to be treated abroad. Obviously, such reciprocity between states can be best guaranteed within a multilateral framework. When convinced that it has a direct national stake in protecting im/migrants' access to their rights, a state is more likely to improve its domestic performance and take its international commitments more seriously in this regard.

**Nexus between human rights protection and migration management**

This leads to a third argument that relates to the collective interest of nation states in maintaining orderliness in the movement of people across

FIGURE 3  
NUMBER OF MAJOR\* MIGRANT-SENDING  
AND MIGRANT-RECEIVING COUNTRIES, 1970 AND 1990



\* "Major" is defined as including only countries which (a) had a population of more than 150,000 in 1970 and 200,000 in 1990, and (b) whose labour market or GNP was affected to an extent of at least 1per cent by international labour migrants, disregarding asylum seekers or refugees. The successor States of the ex-socialist Federal Republic of Yugoslavia are not included.

Source: ILO, 1994, 1999.

countries as an important element in global peace and stability. It is well recognized that the denial or abuse of human rights in countries of origin is one of the principal causes of disorderly and disruptive movements of people. Experience has also shown that when movements are disorderly and especially when they are irregular and unwanted (as disorderly movements often are) the risk of further violation of human rights in countries of transit and destination is greater. When this happens, management of migration flows becomes more difficult and financially more exacting; it also entails heavy social and human costs. By straining inter-state relations or provoking conflicts, the situation could even threaten regional and international stability. Some experts in international relations have even argued that any weakening on the part of liberal states in their commitment to support orderly movements of people could threaten “the new liberal world order” (Hollifield, 2000). Given that the states have an individual as well as a collective interest in maintaining a sound and sustainable system of orderly migration, they must be prepared to protect human rights, including those of migrants, as an essential interlocking element in the system of migration management. Viewed from this perspective, those anxious to defend the human rights of migrants and those involved in migration management clearly share a common interest.

The three considerations are clearly not mutually exclusive, although their perspective and the thrust of reasoning vary considerably. All three bring into focus the role and responsibilities of the nation state in defending the rights of migrants, and they all point to the importance of a framework of inter-state cooperation or for a global regime to achieve this purpose.<sup>39</sup> However, while in the first case the approach is more ethical and absolute, with an exclusive focus on human rights as a universal entitlement, the second and third are more pragmatic and utilitarian. Without in any way belittling the universality of human rights, they underline the reasons why the state is required to protect the rights of migrants in its own citizen-centric interest- as part of its wider strategy and inherent duty to defend the rights of its own citizens and promote their welfare at home and abroad.

### **Coalition building by human rights groups: risks and rewards**

Given this background, what should be the strategy of human rights organizations that are anxious to secure increased access by migrants to their human rights? A self-contained, holistic approach to human rights, stubbornly seeking to hold the states accountable to (still fragile) international

standards, is unlikely to be the most effective means to achieve that end. Indeed, the pursuit of such an approach will probably isolate and enfeeble the local human rights activists even more than they actually are or need to be. A much more effective (rights-based) approach would be to pursue the objective by placing migrants' human rights in a broader context, more precisely, by convincing governments that the promotion and protection of migrants' human rights, besides being of high ethical value, are *also* very much in line with their national interest because they are inextricably interlocked with the promotion of the rights and welfare of their own citizens.

As discussed above, such a broadly based approach to migrants' human rights brings into focus both the need and opportunities for coalition building between human rights groups and migrants-serving (including migrants' own) organizations. It has also been noted that in several instances human rights groups have moved in this direction, yielding encouraging results. But broadening the coalition is not without risks. It is conceivable that the involvement of numerous groups with divergent, even conflicting, interests in migration, could dilute the issue of migrants' human rights or weaken the focus of the human rights approach. Or, in some cases, it may even create tensions and conflicts because of their different priorities and approaches.<sup>40</sup>

However, even if the potential risk is real, it should not be exaggerated. Much depends on the exact configuration and methods of operation of the coalition and, at the national level, also on the country-specific situation. There is no fixed or ideal model for such a coalition. It can take different forms and they can conveniently co-exist in the same country, each playing a valuable role. In some cases, as between the national human rights commission and the migrants' associations in the country, the links should preferably be fully institutionalized and firmly established to achieve the best results. In some other situations, the coalition may be more flexible and take variable forms depending on the specific issues. For example, when the purpose is to build public support for equality and tolerance, or the launching of a campaign against discrimination and xenophobia, a broad and flexible coalition comprising community and business leaders, trade unions, political parties and various NGOs might be more expedient.

### **Strategy in the wake of September 11: retreat is not the answer**

The anti-terrorist campaign launched in the wake of the September



11 attacks in the US has thrown a new challenge to activists fighting for migrants' human rights. After the horrendous attacks in the US and more recently elsewhere, no one can seriously question the legitimacy of the government's increasing concern for security. True, in many countries this has meant encroachments on citizens' and foreigners' rights, often turning the presumption of a person's innocence on its head. But, people by and large seem to have accepted these losses of liberty as the price to be paid for the most basic freedom – security of life. Clearly, in this new climate dominated by security concerns, aggressive advocacy for human rights cannot be expected to be smooth sailing – especially given the involvement of foreigners in most of the recent attacks.

The dilemma that the human rights organizations may face in the context of the “international campaign against terror” is highlighted in a recent publication by the International Council of Human Rights Policy, (...) “human rights organizations that do not condemn terrorism in forceful terms stand to be disowned by a large proportion of the population in Europe, and even more people in the United States. (...) Organizations that do firmly condemn terrorism, on the other hand, will be accused by others of colluding with the interests or the propaganda of the United States and ‘the West’ generally.” (ICHRP, 2002).

Does all this mean that the human rights activists should be on the retreat? Most definitely not. But the new situation once more brings into focus the need for placing the issue of migrants' rights within a wider context, just as it underscores once again the importance of pro-active coalition building. A major part of their work should lie in sensitizing the government and the public on why the concern for security needs to be balanced and harmonized with the protection of the human rights of migrants, and in discerning the ways in which this can be achieved. They need to exercise their disciplined capacity “to hold a clear, consistent, just and defensible line, when political opinion is highly polarised” (ICHRP, 2002). Among the major considerations that could bolster this approach are the following (Ghosh, 2001):

First, the fight against terrorism is not a fight against immigrants. All migrants are not terrorists, nor are all terrorists migrants. Second, improved border and immigration controls do not necessarily mean a more repressive immigration policy, and even draconian immigration laws and practices will not necessarily put a stop to all forms of terrorism from abroad. Pro-active policy initiatives, on the other hand, can well be expected to make it easier to deal with the security aspects of immigration.<sup>41</sup> Third, the real value of every security measure that impinges on human rights – unfair arrest, deten-

tion without trial, forced expulsion – must be assessed and then weighed against its current and future cost – in terms of economic benefits sacrificed and human freedoms forgone.<sup>42</sup> Undeniably, security or the right to life is not at issue, the issue is how best to protect it. As *The New York Times* put it in an editorial comment on education and national security: “Keeping the United States accessible rather than bureaucratically impenetrable, is an important key to American security. Welcoming students from all over the world to study in the United States will not only help us learn about the perspectives of other societies, but also demystify the United States for those who return home and become leaders and professionals. Such an exchange is also a vital tool for ensuring national security” (*The New York Times*, 23 June 2003).

The non-economic costs of security measures suppressive of basic human rights of foreigners could be far-reaching. They cannot but rebound negatively on the receiving country as a whole, eroding respect for human rights and values associated with an open society. And once forgone these cannot be easily regained. The situation foreshadows another potential danger. Lack of democracy and respect for human rights are recognized as contributing to political and social frustration, terrorism and religious fundamentalism. But, should increasing security concerns lead western democracies to unduly suppress civil liberties and human rights of immigrants in their own societies, they could inspire opportunistic attacks on human rights by repressive regimes – not only in migrant-sending countries but generally around the world. Opposition groups, striving for human rights and democracy, are likely to be the worst victims.<sup>43</sup> This has already started to happen in several countries in Central Asia, North Africa and the Middle East. Such situations could lead people to believe that change cannot be achieved through peaceful means; the opposition groups may be driven to take up arms, leading to violent civil conflicts and the widespread abuse of human rights. That would be an ugly and needless defeat for freedom, democracy and human rights.

## NOTES

1. The rights include the following: right to life, liberty and security of one’s person; prohibition of slavery and servitude; prohibition of torture or inhuman or degrading punishment; prohibition of criminal penalties under retro-active laws; right to respect for private and family life, home and corres-

- pondence; right to leave any country and to return to one's own country; right to freedom of thought, conscience and religion, and right to freedom of expression.
2. Aside from the latitude implicit in the state's obligation for "progressive realization" of ICESCR rights, it is to be noted that the monitoring body of neither Covenant has unequivocally held that non-nationals are to enjoy all social and economic rights equally with nationals, although any such differentiation must not be "unreasonable" or motivated by prejudice (Dent, "Research paper on the social and economic rights of non-nationals in Europe", 1998, European Council on Refugees and Exiles, (ECRE), London. However, the Committee on Economic and Social Rights has asserted that non-nationals are entitled to enjoy the minimum core content of the rights guaranteed by the ICESCR (Craven, 1995). It has also been argued that where no distinctions are made between nationals and non-nationals in the texts of the Covenants, none were

intended. A different view is taken by some others (Lillich, 1984). For a more detailed discussion of the controversy, see Dent, 1998 and Cholenwinski, 1997, Chapter 2.

3. UNCHR, 1999 Report of the Working Group of Inter-Governmental Experts on the Human Rights of Migrants, UN document R/CN4/1999/80, 9 March. Recognizing the widely felt need for such guidance, some advocacy groups, such as the European Council on Refugees and Exiles (ECRE), have produced summaries and analyses of some of the relevant instruments. See, for example, John Dent, "Research paper on the social and economic rights of non-nationals in Europe", commissioned by ECRE.
4. Others excluded are diplomatic and military personnel posted abroad and persons working abroad under bilateral and multilateral development programmes. There is also some ambiguity regarding the definition of *family* members, specified as "persons married to migrant workers or having with them a relationship that, *according to applicable law*, produces *effects equivalent to marriage*, as well as their dependent children and other dependent persons who are recognized as members of the family by applicable legislation or applicable bilateral or multilateral agreements between the states concerned (*italics provided*). It is not clear, however, whether the applicable law is the law of the state of origin or of the state of employment. Since some states recognize polygamous marriages, while many others do not, confusion arises, unless the matter is covered under bilateral agreements. The phrase "produces effects equivalent to marriage" could also be subject to interpretation (Rao Penna, 1993).
5. Other international human rights treaties which explicitly extend these rights to specific vulnerable groups include: the Convention for the Elimination of Discrimination Against Women, 1979, and the Convention on the Rights of Child (CRC), 1989.
6. With the ratification of the Convention by East Timor in December 2002 the number of ratifications has now just reached 20. As of November 2002, it had received 19 ratifications, and 12 signatures. A similar situation is reflected in the relatively low level of ratifications of the various ILO conventions dealing with equality of treatment and other entitlements of migrant workers.
7. The weakness in the CRSR monitoring arrangements has led some institutions such as the ECRE and Amnesty International to suggest greater use of the monitoring bodies of other UN treaties to press for the enforcement of refugees' human rights. See, for example, Amnesty International, *The UN and Refugees' Human Rights: A Manual on How UN Human Rights Mechanisms Can Protect the Rights of Refugees* (1997)
8. The two main theories are the dual market theory and the world systems theory. Although there are important differences of approach, both believe that structural changes in the world economy constantly create an unmet demand for low-skilled labour in advanced industrial societies, which is met by workers from poorer countries.
9. For example, the underground economy equals up to 16 per cent of the EU's GDP, compared to a mere 5 per cent in 1970. Between 10 and 20 million workers, mostly, though not exclusively, irregular immigrants, are working in this

- sector. Some respectable companies, including fashion houses, are now taking advantage of the situation through sub-contracting arrangements. European Commission, cited in *Financial Times*, 8 April, 1998; Ghosh, 1998).
10. In Argentina, for example, the ministry of interior can expel (subject to some waivers) any foreigner, regardless of his/her residency situation, if he/she undertakes activities which disrupt social peace, national security or public order (section 95(b) of Act No. 22.438/81). In France, prior to 1981, foreign trade unions activists could be expelled on grounds of lack of respect “for political neutrality to which any foreigner residing on French territory is bound”, (Wihtol de Wenden, 1992; UN, 1998).
  11. Only two sets of rights that are expressly reserved to citizens: (a) the right to vote and (b) the right to engage freely in trade, occupation and profession.
  12. A somewhat paradoxical situation arises if and when the state, under pressure from employers or in tacit connivance with them, tolerates some inflows of irregular migrants as a source of cheap and docile labour.
  13. Gathering information from the field regarding the conditions of trafficked women, the Global Survival Network reports: “The women are controlled by various mechanisms: isolating strategies to deprive them of their personal freedom, refusal to provide legal and medical assistance, withholding their pay, physical intimidation and dependence on drugs and alcohol” cited in IOM, 2000. See also Ghosh, 1988.
  14. Article 23 of the Swiss Aliens Law provides one of the broadest definitions of the crime by stipulating that any person “who in Switzerland or abroad facilitates or helps to prepare an illegal entry or exit or an illegal stay shall be punished”. In Austria, Article 80 of the Aliens Law is also quite wide in geographical scope. It defines trafficking as “facilitating illegal entry or exit of an alien, irrespective of whether it occurs before or after the crossing of the border or during the foreigner’s stay in the country”.
  15. See, in this connection, B. Ghosh (Ed.), *Managing Migration: Time for a New International Regime?* 2000.
  16. The Protocol requires the state parties to protect the physical safety, privacy and identity of victims, to assist them in legal proceedings and to consider adopting measures to provide for the physical, psychological and social recovery of victims. It is useful to note in this connection that the Recommended Principles and Guidelines on Human Rights and Human Trafficking, issued by the UN High Commissioner for Human Rights in May 2002 seek to promote and facilitate the integration of a human rights perspective into national, regional and international anti-trafficking policies, laws and practices.
  17. This is because in some, though not all, cases traffickers’ operations may very well start at the stage of illegal crossing or smuggling across borders as part of an overall strategy, just as smuggling may, and often does, involve a degree of mistreatment of migrants.
  18. Even under the regional instruments with wider scope, notably the OAU Convention in Africa and the Cartagena Declaration in Latin America (a non-binding declaration of intent), not all of these victims of forced migration are adequately covered. Also, individuals recognized under regional agreements may be considered illegal if they move to states which are not a party

thereto.

19. In addition to refugees under temporary protection, there are other categories with an inferior status including *de facto* refugees, humanitarian cases, B-status refugees, etc.
20. It should be mentioned, however, that the CRSR itself contains no provision for a generalized suspension of state duties. The situation is different when, following a fair status determination procedure, asylum seekers are found not to qualify as Convention Refugees, but are still permitted to remain in the host country on a subsidiary status.
21. R. v. Secretary of State for Social Security, *ex parte* B. and the Joint Council of the Welfare of Immigrants; Court of Appeal, 21 June 1996.
22. Rejected asylum seekers who are nationals of a Council of Europe or an EU member state enjoy social security and other benefits under the relevant regional instruments. Rejected asylum seekers who are nationals of third countries which have signed bilateral agreements with the EU, benefit from the provisions of the EU law as applicable under such agreements.
23. If, however, the legality of an alien's entry or stay is in dispute, any decision leading to expulsion must be in keeping with the provisions of Article 13. See R. Plender, *Basic Documents on International Migration Law*, 1997.
24. See, for example, the 1996 Annual Report of the Committee on Civil Liberties and Internal Affairs, EP Doc. A4-0034/98; also Hughes and Liebaut, 1998 and Noll, 2000.
25. Note, for example, the following statement, "In principle, rejected asylum seekers have no need of international protection, and so the question of monitoring their welfare once they have gone home should not arise", United Nations: *World Population Monitoring*, 1988..
26. See, L. Rao Penna, "Some salient human rights in the UN convention on migrant workers" in Graziano Battistella (Ed.) *Human Rights of Migrant Workers: Agenda for NGOs*, 1993. .
27. Protocol II, additional to Geneva Conventions relating to the Protection of Victims of Non-International Armed Conflicts does provide a number of guarantees, for instance, the prohibition of civilian displacement except for safety reasons. Where such displacements are unavoidable, article 17 operates to guarantee adequate conditions of health, hygiene, shelter, nutrition and safety. Children receive additional guarantees. However, Protocol II is applicable only in very specific situations.
28. Such persons should enjoy equal treatment with nationals of the successor state in relation to social and economic rights. See, in this connection, the European Convention on Nationality, 1997; also the Council of Europe (DIR/JUR (2000) in particular "Principles on Citizenship Legislation Concerning the Parties to the Peace Agreements on Bosnia and Herzegovina" and "Declaration on the Consequences of State Succession for the Nationality of Natural Persons", adopted by the European Commission for Democracy Through Law, September 1996.
29. Chan, 1991, United Nations, 1998.
30. At an international conference on forced migration (Geneva, 1996), which was attended by 80 governments, including all 12 CIS members, the CIS

- governments agreed to grant citizenship to all former Soviet citizens permanently living on their territories, protect minorities and allow displaced persons to return. The programme adopted by the conference also invited the states to allow free choice of residence. But progress in implementing these agreements has been slow, and not without its difficulties.
31. A similarly uncertain situation surrounded many of the 3.1 million people belonging to 20 major national or ethnic groups who were deported from the western borders of the former Soviet Union more than 50 years ago. Some have now returned to their ancestral homelands; a number of them have become involved in new ethnic conflicts on return; and some others – the Crimean Tartars and Meshetians, for example, were still trying to return.
  32. The situation has prompted the Council of Europe Committee of Experts on Nationality to embark on the drafting of a European convention of nationality. Also, the International Law Commission's Special Rapporteur on State Succession and its Impact on the Nationality of Natural and Legal Persons has been working on the codification of basic principles related to nationality. P. Kourula, *Broadening the Edges*, 1997.
  33. Since the beginning of the 1990s, when the Operation Comfort was launched in northern Iraq, there has been a discernible trend for the international community to use "safe havens" within, instead of outside, the country of origin, for the protection of would-be refugees. However, as the painful experience in Srebrenica during the Bosnia crisis showed, for a variety of reasons the "internal flight alternative", christened by UNHCR as "the preventive protection approach," has not proven to be a great success.
  34. See in this connection UNGA Resolution 47/105, operative paragraph. 14; Res. 48/116, operative paragraph. 12 and Res. 49/169, operative paragraph 10. In 1994 the following four situations of internal displacement were identified in which it would be appropriate for the High Commissioner to assume a role: (i) IDPs are present in or returning to the same areas as repatriating refugees, or areas to which refugees are expected to return; (ii) refugees and IDPs in similar circumstances are present and in need of humanitarian assistance and/or protection in the same area of a country of asylum; (iii) there are operational or humanitarian advantages in addressing the problems of internal displacement and refugee flows within a single framework, and (iv) the provision of assistance and/or protection to IDPs may enable them to remain in safety in their own country and help avoid potential refugee flows. "Protection aspects of UNHCR activities on behalf of internally displaced persons", EC/1994/SCP/CRP, May 1994. The General Assembly has clarified that activities on behalf of IDPs must not undermine the institution of asylum, including the right to seek and enjoy asylum in other countries.
  35. See, in this connection, UN (ECOSOC), "Follow-up Actions to the Recommendations of the International Conference on Population and Development: Activities of Intergovernmental and Non-governmental Organizations in the Area of International Migration", E/CN.9/1997/5, 10 January 1997.
  36. An important reason for this may well be found in the special situations and challenges often faced by the human rights activists in the developing world. As a study by Commonwealth Human Rights Initiative (London) put it, "The

issues that absorb human rights NGOs in the developed western democracies (...) will be different from the issues of NGOs in situations of intense political repression, or of NGOs in Third World countries facing such multiple crises as famine, ecological degradation, foreign debt, ethnic violence, lawlessness and corruption.” *Put Our World To Rights: Towards a Commonwealth Human Rights Policy*, 1991. Tracing the historical evolution of Asian human rights NGOs, Evelyn Balais-Serrano takes a similar view. According to her, even as these NGOs start and develop emphasizing civil and political rights, they inevitably find it “increasingly difficult to distance themselves from the internal conflicts raging within their borders (...) if they want to be relevant. They therefore broaden their advocacy”, Balais-Serrano, 1993.

37. Article 1(3) of the United Nations Charter, for example, specifies the duty of states to cooperate “in solving international problems of an economic, social, cultural and human character, and in promoting and encouraging respect for human rights”.
38. An ILO survey of 1994 showed that out of the 98 countries significantly involved in migration, 24 countries, or roughly a quarter, were both major sending and major receiving countries at the same time. ILO/IOM/UNHCR, *Migrants, Refugees and International Cooperation*, 1994. “Major” is defined as including those countries which (a) had a population of more than 150,000 in 1970 and 200,000 in 1990, and (b) whose labour market or GNP was affected by at least 1% as a result of international labour migration (disregarding asylum seekers and refugees). The successor states of the former Federal Republic of Yugoslavia were not included.
39. For fuller information on the rationale and configuration of such a regime, see Bimal Ghosh (Ed.) *Managing Migration: Time for a New International Regime?* 2000.
40. Such coalition building, however helpful in promoting the cause of migrants’ rights, could also place additional institutional strain on the human rights organizations, especially if they have just started to widen their agendas to include a range of new social and economic issues, as seems to be the case in certain countries in Asia.
41. Significantly, in the US, the outgoing INS commissioner, James Ziglar, remarked in an October 2002 speech that the United States “needs to find a way” to satisfy growing labour demand so that the INS could “focus on the bad guys coming across – not on the flow of people who just want to get into the country to work.” Cited in *Migration News*, November 2002.
42. The enrolment by foreign students in US universities could be used as an illustration of the economic cost involved in such measures. Every year the US admits large numbers of foreign students – a record number of 582,996 foreign students attended US colleges and universities in 2001-2002 – and earns, both directly and indirectly, billions of dollars (US\$ 12 billion in 2002, according to the Institute of International Education) from such enrolment. Many of the foreign students continue to stay and work in the US after they have completed their studies. However, if the suspicion against foreigners and the repression of their rights (combined with visa restrictions) discourage foreign students to enrol in US universities, these earnings will also



fall. More importantly, that would mean forgoing significant benefits in the form of access to new skills and human capital, economic dynamism and cultural enrichment that foreigners bring to the country. Furthermore, the enduring political, economic and cultural links with the sending countries that often grow out of these inflows will also be adversely affected (*Migration News*, 2002).

43. See, in this connection, *Financial Times* (London), 16 January, 2002, Roula Khalaf, “Crackdown on terror takes a toll on Mideast freedoms”.

## **ANNEX**

### **Selected human rights treaties and other instruments of relevance to migrants**

#### **1. General**

- United Nations Charter, adopted on 26 June 1945, entered into force on 24 October 1945.
- Universal Declaration of Human Rights, adopted on 10 December 1948, United Nations General Assembly, Res. 217 A (III). (UDHR).
- International Convention on the Elimination of All Forms of Racial Discrimination, adopted on 21 December 1965, entered into force on 4 January 1969 (ICERD).

- International Covenant on Civil and Political Rights, adopted on 16 December 1966, entered into force on 23 March 1976. (ICCPR).
- International Covenant on Economic, Social and Cultural Rights, adopted on 16 December 1966, entered into force on 3 January 1976 (ICESCR).
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 10 December 1984, entered into force on 26 June 1987 (CAT).

## **2. Specific groups of population**

- The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, 1930 (ratified by 20 states as of 25 April 2002).
- Geneva Convention Relative to the Protection of Civilian Persons in Time of War, adopted on 12 August 1949, entered into force on 21 October 1950.
- Additional Protocol II to the Geneva Convention of 12 August 1949, relating to the Protection of Victims of Non-International Armed Conflicts, adopted on 12 December 1977, entered into force on 7 December 1978.
- Convention relating to the Status of Stateless Persons, adopted on 28 September 1954, entered into force on 6 June 1960.
- Convention on the Reduction of Statelessness, adopted on 30 August 1961, entered into force on 13 December 1975.
- Convention Relating to the Status of Refugees, 1951 (CSRS), adopted on 28 July 1951, entered into force on 22 April 1954; Protocol to the Convention, adopted on 31 January 1967, entered into force on 4 October 1967.
- Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature on 18 December 1979, entered into force on 3 September 1981 (CEDAW).
- Declaration on the Human Rights of Individuals Who are Not Nationals of the Country in Which They Live, adopted on 13 December 1985.
- Convention on the Rights of the Child, opened for signature on 20 November 1989, entered into force on 20 September 1990 (CRC).

Optional Protocol to the Convention, adopted on 25 May 2000.

- International Convention on the Rights of All Migrant Workers and their Families, adopted on 18 December 1990, entered into force on 1 July 2003 (ICMW).
- United Nations Convention against Transnational Organized Crime, adopted on 15 November 2000. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, adopted on 15 November 2000. Protocol Against the Smuggling of Migrants by Land, Sea and Air, adopted on 15 November 2000.

### **3. Regional Instruments**

- Convention of the Organization of African Unity on the Specific Aspects of Refugee Problem in Africa, adopted on 10 September 1969, entered into force on 20 June 1974.
- African Charter on Human and People's Rights, adopted on 27 June 1981, entered into force on 21 October 1986.
- American Declaration on the Rights and Duties of Man, adopted on 2 May 1948.
- American Convention on Human Rights, adopted on 22 November 1969, entered into force on 18 July 1978; Additional Protocol, adopted on 17 November 1988, entered into force on 16 November 1999.
- Cartagena Declaration on the problems of refugees and the Displaced in Central America, adopted on 19-22 November 1984.
- Inter-American Convention to Prevent and Punish Torture, adopted on 9 December 1984, entered into force on 28 February 1987.
- Charter of Fundamental Rights of the European Union, adopted on 7 December 2000.
- European Convention for the Protection of Human Rights and Fundamental Freedoms, (Council of Europe), adopted on 4 November 1950, entered into force on 3 September 1953. Protocol No 4, 16 September 1953; No 7, 22 November 1984; Protocol No 12, 4 November 2000.

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