

MIGRANTS, REFUGEES AND HUMAN RIGHTS

RESOURCE-BOOK

ANNE VON OSWALD  
ANDREA SCHMELZ (ED.)

NETZWERK **MIGRATION** IN EUROPA



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## INTRODUCTION

This resource-book is targeted at NGOs, practitioners and students in the field of European Citizenship Education who require educational materials and want to learn about human rights and (forced) migration with a particular focus on the European Union.

This resource-book gives an overview of the European and International legal framework and Human Rights laws concerning refugees and migrants (SECTION I). It provides some background information on basic facts and debates on Migrants, Human Rights and Migration Policy (SECTION II). It gives an overview on the harmonisation of the European immigration and asylum policy (SECTION III) and deals with the consequences of the harmonisation process for Poland (SECTION IV). SECTION V informs on European Research centres, Initiatives and Human Rights Education Sources.

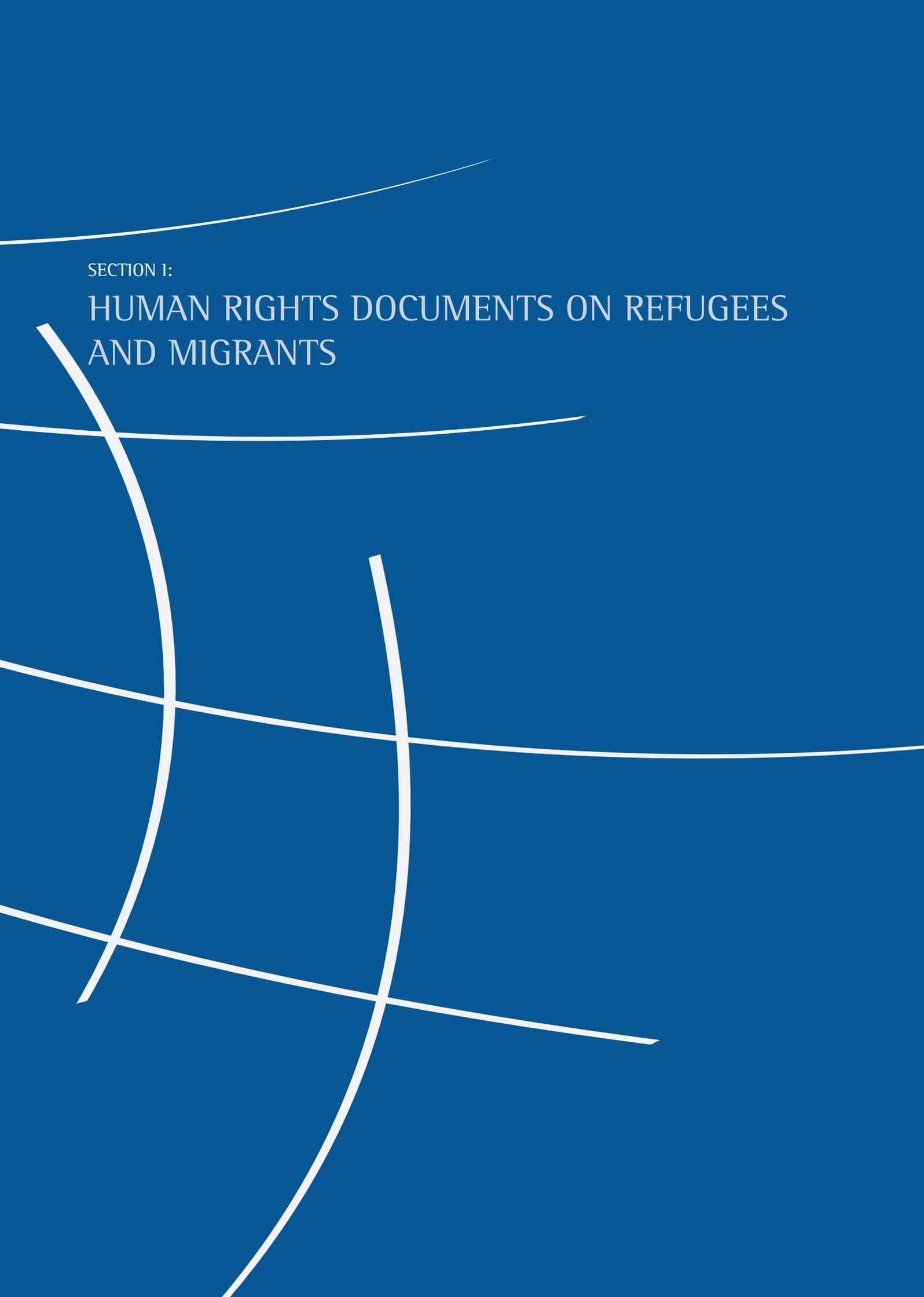
The resource-book is intended to provide an introduction, background and perspective for those interested in

Berlin, March 2006

understanding how European policy deals with migrants and refugees in light of the human rights protection. The resource materials are an outcome of workshops and seminars on „Learning for Human Rights and Democracy in Multicultural European Societies“ with students and educators from Eastern European Countries, funded by the European Commission, Active European Citizenship Program, Brussels and the Remembrance and Future Fund, Berlin.

In particular, we would like to extend our thanks to Forschungsgesellschaft Flucht und Migration (FFM) who kindly allowed us to reprint selected parts of an article on Poland's migration and asylum policy. Our special thanks goes to all our partners and funders for the project and to all participants for their fruitful discussion. Last, but not least we thank Holger Schnaars and Thomas Huddleston who assisted with the editing process.

Anne von Oswald  
Andrea Schmelz

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SECTION 1:

# HUMAN RIGHTS DOCUMENTS ON REFUGEES AND MIGRANTS

## SECTION 1: HUMAN RIGHTS DOCUMENTS ON REFUGEES AND MIGRANTS

### 1. Background and Documentation on Human Rights and Refugee Law

#### 1.1. Introduction to the Convention Relating to the Status of Refugees (Geneva Convention 1951)

This convention was the first international agreement covering the most fundamental aspects of a refugee's life. It spelled out a set of human rights that should be at the very least equivalent to the freedoms enjoyed by foreign nationals living legally in a given country and in many cases those of citizens of that state. It recognized the international scope of refugee crises and the necessity of international cooperation in tackling the problem, including burden-sharing among states. As of 1 October 2002, 41 countries had ratified the Refugee Convention.

The development of a body of international law, conventions and guidelines to protect refugees began in the early part of the 20th century under the League of Nations, the predecessor of the United Nations. It culminated on July 28, 1951, when a special UN conference approved the Convention relating to the status of refugees. The Convention clearly defines who a refugee is and what kind of legal protection, other assistance and social rights he or she should receive from states party to the treaty. Equally, it describes a refugee's obligations to host governments and certain categories of persons, such as war criminals, who do not qualify for refugee status.

This first instrument was limited to the protection of mainly European refugees in the aftermath of World War II, but a 1967 Protocol expanded the scope of the Convention as the problem of displacement spread around the world. The original document inspired further regional instruments such as the 1969 Africa Refugee Convention and the 1984 Latin American Cartagena Declaration.

The United Nations High Commissioner for Refugees (UNHCR) was created in 1951 to assist in the international protection of refugees. The organization's primary objective is to ensure that all persons can exercise the right to seek asylum to secure safe refuge in another state, and to return home voluntarily. The UNHCR currently helps more than 21 million people and the Convention, which has proved to be remarkably flexible in rapidly changing times, remains the cornerstone of refugee protection.

Increasingly, the current majority of world conflicts involve disputes between political or ethnic groups within countries rather than wars between countries. Given this trend, the number of persons caught in conflicts within their own countries who are forced to leave their homes is likely to increase.

#### 1.2. Key Provisions of the 1951 Refugee Convention

For the full text of all international treaties, go to Office of the High Commissioner for Human Rights (OHCHR): <http://www.ohchr.org>.

##### Article 1. Definition of the term „refugee“

A. For the purposes of the present Convention, the term „refugee“ shall apply to any person who:

(2) As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

C. This Convention shall cease to apply to any person falling under the terms of section A if:

(1) He has voluntarily re-availed himself of the protection of the country of his nationality; or

(2) Having lost his nationality, he has voluntarily reacquired it; or

(3) He has acquired a new nationality, and enjoys the protection of the country of his new nationality; or

(4) He has voluntarily re-established himself in the country which he left or outside which he remained owing to fear of persecution; or

(5) He can no longer, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, continue to refuse to avail himself of the protection of the country of his nationality;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to avail himself of the protection of the country of nationality;

(6) Being a person who has no nationality he is, because the circumstances in connection with which he has been recognized as a refugee have ceased to exist, able to return to the country of his former habitual residence;

Provided that this paragraph shall not apply to a refugee falling under section A (1) of this article who is able to invoke compelling reasons arising out of previous persecution for refusing to return to the country of his former habitual residence.

D. This Convention shall not apply to persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance. When such protection or assistance has ceased for any reason, without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of this Convention.

E. This Convention shall not apply to a person who is recognized by the competent authorities of the country in which he has taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.

F. The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

(a) He has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) He has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

(c) He has been guilty of acts contrary to the purposes and principles of the United Nations.

#### Article 31. Refugees unlawfully in the country of refuge

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.

2. The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country. The Contracting States shall allow such refugees a reasonable period and all the necessary facilities to obtain admission into another country.

#### Article 32. Expulsion

1. The Contracting States shall not expel a refugee lawfully in their territory save on grounds of national security or public order.

2. The expulsion of such a refugee shall be only in pursuance of a decision reached in accordance with due process of law. Except where compelling reasons of national security otherwise require, the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person or persons specially designated by the competent authority.

3. The Contracting States shall allow such a refugee a reasonable period within which to seek legal admission into another country. The Contracting States reserve the right to apply during that period such internal measures as they may deem necessary.

#### Article 33 . Prohibition of expulsion or return („refoulement“)

1. No Contracting State shall expel or return („refouler“) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that country.

## 2. Background and Documentation on Human Rights and Migrant workers

### 2.1. Introduction to the International Convention on the Protection of the Rights of All Migrant Workers and their Family Members (1990)

The International Convention on the Protection of the Rights of All Migrant Workers and their Family Members breaks new ground by extending the protection for migrant workers and members of their families world-wide. It transcends a simple application of existing human rights legislation to a specific category of individuals.

The Convention advances how the international community conceives of the application of human rights in its provisions for „equality of treatment“ between female and male migrant workers, between documented and undocumented workers, and between nationals and non-nationals.

More than 150 million migrants, including migrant workers, refugees, asylum-seekers, permanent immigrants and others, live and work in a country other than that of their birth or citizenship. In all, they represent two percent of the world's population. Persons who qualify as migrant workers under the provisions of the Convention are entitled to enjoy their human rights regardless of their legal status. The Convention reflects an up-to-date understanding of migratory trends as seen from the point of view of both the countries of origin and the host countries of migrant workers and their families.

The Convention recognises the specifically vulnerable lives of migrant workers and the subsequent need to strengthen legal protections in a more comprehensive fashion. It brings together a number of international norms in a way which responds directly to the needs of migrant workers and the realities that many face on a daily basis. The Convention seeks to establish a framework for migration management through the promotion of equitable, humane and lawful conditions for international migration. It inter-alia requires cooperation between states in order to prevent and eliminate illegal movement and employment of migrants in an irregular situation.

The Convention therefore fosters the establishment of a comprehensive system of migration management within a framework of the respect for fundamental human rights.

Overall, the Convention seeks to play a role in the prevention and elimination of the exploitation of all migrant workers and members of their families throughout the entire migration process. In particular, it aspires to put an

end to the illegal or clandestine recruitment and trafficking of migrant workers and to discourage the employment of migrant workers in irregular or undocumented situations.

The call for universal ratification by the European member states is supported by a European Parliament resolution of 24 February 2005 and a European Economic and Social Committee's opinion of 30 June 2004 (SOC/173). UN Secretary General Kofi Annan emphasized in his speech to the European Parliament in January 2004 the need for the EU to construct its economic migration policy and legislative initiatives on the principles outlined in the Convention.

### 2.2. Key Provisions of the Migrant Workers Convention

#### Part I: Scope and Definitions

#### Article 1

1. The present Convention is applicable, except as otherwise provided hereafter, to all migrant workers and members of their families without distinction of any kind such as sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.
2. The present Convention shall apply during the entire migration process of migrant workers and members of their families, which comprises preparation for migration, departure, transit and the entire period of stay and remunerated activity in the State of employment as well as return to the State of origin or the State of habitual residence.

#### Article 2

For the purposes of the present Convention:

1. The term „migrant worker“ refers to a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national.

#### Article 5

For the purposes of the present Convention, migrant workers and members of their families:

- (a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;

(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.

## Part II: Non-discrimination with Respect to Rights

### Article 7

States Parties undertake, in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status.

## Part III: Human Rights of All Migrant Workers and Members of their Families

### Article 8

1. Migrant workers and members of their families shall be free to leave any State, including their State of origin. This right shall not be subject to any restrictions except those that are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present part of the Convention.
2. Migrant workers and members of their families shall have the right at any time to enter and remain in their State of origin.

### Article 27

With respect to social security, migrant workers and members of their families shall enjoy in the State of employment the same treatment granted to nationals in so far as they fulfil the requirements provided for by the applicable legislation of that State and the applicable bilateral and multilateral treaties. The competent authorities of the State of origin and the State of employment can at any time establish the necessary arrangements to determine the modalities of application of this norm

### Article 30

Each child of a migrant worker shall have the basic right of access to education on the basis of equality of treatment with nationals of the State concerned. Access to public pre-school educational institutions or schools shall not be refused or limited by reason of the irregular situation with respect to stay or employment of either parent or by reason of the irregularity of the child's stay in the State of employment.

### Article 35

Nothing in the present part of the Convention shall be interpreted as implying the regularization of the situation of migrant workers or members of their families who are non-documented or in an irregular situation or any right to such regularization of their situation, nor shall it prejudice the measures intended to ensure sound and equitable-conditions for international migration as provided in part VI of the present Convention."

### 3. Key Provisions of International and European Human Rights Treaties relating to Refugees and Migrants

For the full text of all international treaties, go to Office of the High Commissioner for Human Rights (OHCHR): <http://www.ohchr.org>.

The international legal framework for the protection of human rights of migrants and refugees is very broad. A number of international (and also European) treaties contain provisions that protect the human rights of all human beings, irrespective of citizenship. These include all the human rights treaties adopted by the United Nations, the European Convention on Human Rights adopted by the Council of Europe, as well as the founding document which has served as a matrix for all of these: the Universal Declaration of Human Rights.

#### Universal Declaration of Human Rights (1948):

„No one shall be subject to arbitrary arrest, detention or exile.... Everyone has the right to freedom of movement and residence within the borders of each State. Everyone has the right to leave any country, including his own, and to return to his country.... Everyone has the right to seek and to enjoy in other countries asylum from persecution.... Everyone has the right to a nationality...“ (Universal Declaration of Human Rights, Articles 9, 13, 14 and 15)

#### Convention on the Prevention and Punishment of the Crime of Genocide (1948)

„The ... Parties confirm that genocide ... is a crime under international law which they undertake to prevent and to punish.“ (Convention on the Prevention and Punishment of the Crime of Genocide, Article 1)

#### The European Convention on Human Rights (1950)

##### „ Article 2: Right to life

Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

- (a) in defence of any person from unlawful violence;
- (b) in order to effect a lawful arrest or to prevent escape of a person lawfully detained;
- (c) in action lawfully taken for the purpose of quelling a riot or insurrection.

##### Article 3: Prohibition of torture

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

##### Article 5: Right to liberty and security

1. Everyone has the right to liberty and security of person.

No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

- (a) the lawful detention of a person after conviction by a competent court;
- (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;
- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;
- (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;
- (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;
- (f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him.

##### Article 6: Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

### Article 8: Right to respect for private and family life

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

3. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. (European Convention on Human Rights, Articles 2,3,5,6 and 8)."

### International Covenant on Civil and Political Rights (ICCPR, 1966)

"Each State Party ... undertakes to respect and to ensure to all individuals within its territory ... rights ... without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. ... Everyone lawfully within the territory of a State shall ... have the right to liberty of movement and freedom to choose his residence. Everyone shall be free to leave any country, including his own. ... No one shall be arbitrarily deprived of the right to enter his own country. An alien lawfully in the territory of a State Party ... may be expelled ... only ... in accordance with law and shall ... be allowed to submit the reasons against his expulsion and to have his case reviewed by ... the competent authority.... All persons shall be equal before the courts and tribunals.... All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. ..." (ICCPR, Articles 2, 12, 13, 14, and 26)

### International Covenant on Economic, Social and Cultural Rights (ICESR, 1966)

"The States Parties ... recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing...; ... recognize the right of everyone to the ... highest attainable standard of physical and mental health...; the right of everyone to education.... Primary education shall be compulsory and available free to all. ..." (ICESR, Articles 11, 12, and 13)

### Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment(1984):

"No State Party shall expel, return („refouler“) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture." (Convention Against Torture, Article 3)

### Convention on the Rights of the Child (1989)

"States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee ... shall ... receive appropriate protection and humanitarian assistance in the enjoyment of ... rights. ... States Parties shall provide ... cooperation in ... efforts ... to protect and assist such a child and to trace the parents or other members of the family of any refugee child ... for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child ... deprived of his or her family environment. ..." (Convention on the Rights of the Child, Articles 22)

#### 4. Protection Mechanisms and Initiatives relevant to Refugees and Migrants

##### **Global Commission on International Migration (GCIM) <http://www.gcim.org>:**

The Global Commission on International Migration, launched in Geneva on 9 December 2003 in the presence of United Nations Secretary-General, Mr. Kofi Annan, has commenced its activities as of 1 January 2004. In September 2005 the Commission presented a report and recommendations.

The aim of the commission is to provide the framework for the formulation of a coherent, comprehensive and global response to migration. An important focus is to strengthen the human rights framework of migration policies.

The Commission's mandate includes:

1. *Placing International Migration on the Global Agenda* through the promotion of a comprehensive debate among governments, international organisations, academia, civil society, private sector, media and other actors on all aspects of and issues related to migration
2. *Analysing Gaps in Current Policy Approaches to Migration and Inter-related Issues* through a focus on various approaches and perspectives of governments and other stakeholders in different regions and by addressing the relationship between migration and other global issues that impact and cause migration
3. *Presenting Recommendations to the United Nations Secretary-General and other Stakeholders* on how to strengthen national, regional and global governance on international migration.

##### **International Labour Organization (ILO)**

<http://www.ilo.org>:

The International Labour Organization is the UN specialized agency which seeks the promotion of social justice and internationally recognized human and labour rights. It was founded in 1919 and is the only surviving keystone provision of the Treaty of Versailles which brought about the League of Nations. The ILO became the first specialized agency of the UN in 1946.

The ILO formulates international labour standards in the form of Conventions and Recommendations setting minimum standards for basic labour rights: freedom of association, the right to organize, collective bargaining, abolition of forced labour, equality of opportunity and treatment, and other standards regulating conditions across the entire spectrum of work related issues.

It promotes the development of independent employers' and workers' organizations and provides training and advisory services to those organizations. Within the UN system, the ILO has a unique tripartite structure with workers and employers participating as equal partners alongside governments in the functioning of its governing organs.

##### **International Organization of Migration (IOM)**

<http://www.iom.int>:

IOM was founded in 1951 as an intergovernmental organization to resettle European displaced persons, refugees and migrants. It has grown to encompass a variety of migration management throughout the world. It assists governments through:

- rapid humanitarian responses to sudden migration flows,
- post-emergency return and reintegration programmes,
- assistance to migrants on their way to new homes and lives,
- facilitation of labour migration,
- assisted voluntary return to irregular migrants,
- recruitment of highly qualified nationals for return to their countries of origin,
- aid to migrants in distress,
- training and capacity-building of officials,
- measures to counter trafficking in persons,
- migration medical and public health programmes,
- mass information and education on migration research related to migration management and other services for migrants.

##### **Office of the High Commissioner for Human Rights**

**(OHCHR) <http://www.ohchr.org>:**

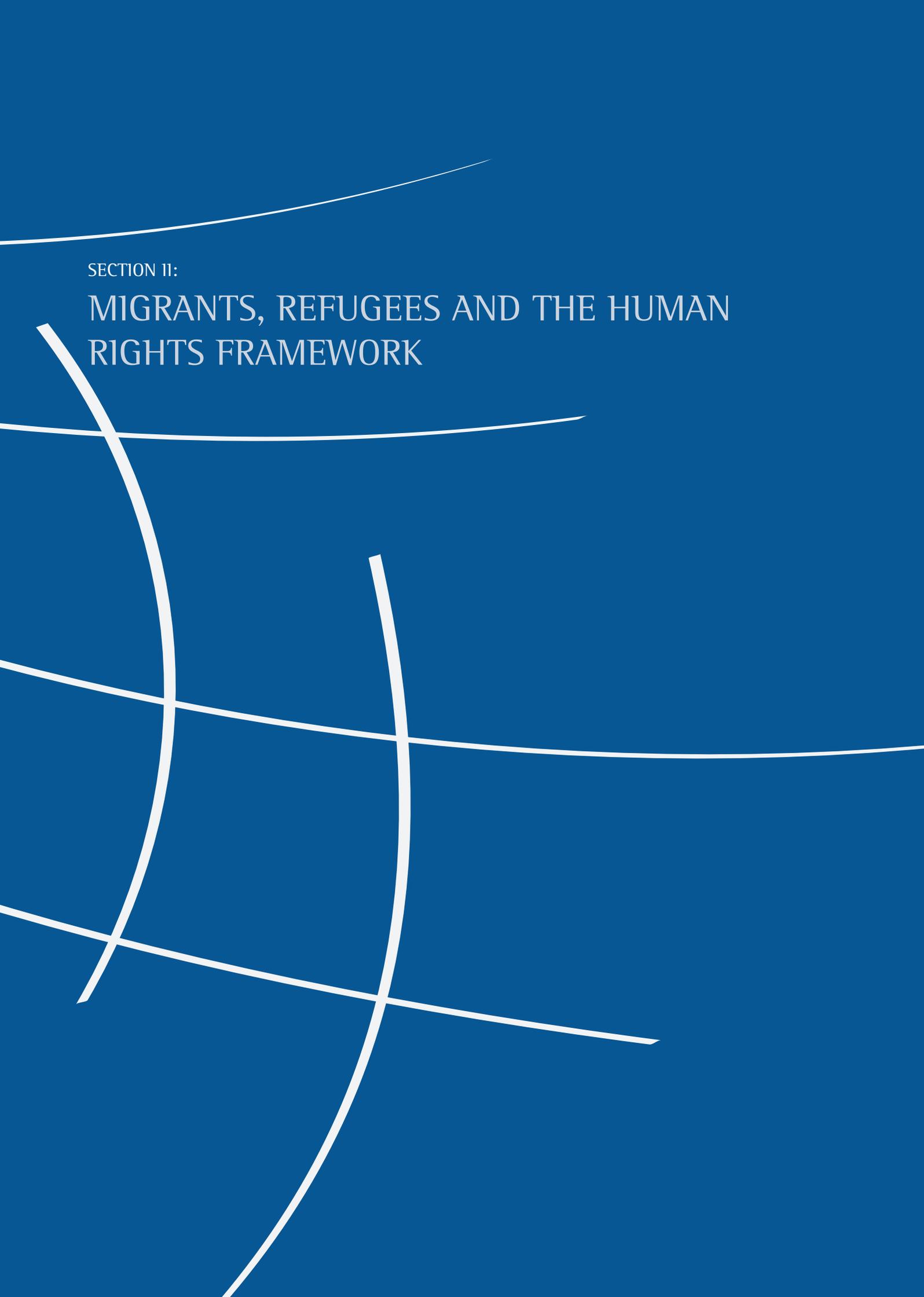
The Office of the High Commissioner for Human Rights (OHCHR) is a department of the United Nations Secretariat. It is mandated to promote and protect the full realization and enjoyment by all people of all rights established in the Charter of the United Nations and other international human rights laws and treaties. The mandate includes preventing human rights violations, securing respect for all human rights, promoting international cooperation to protect human rights, coordinating related activities throughout the United Nations, and strengthening and streamlining the United Nations' operations in the field of human rights. In addition to its mandated responsibilities, the Office leads efforts to integrate a human rights approach within all work carried out by United Nations agencies.

##### **United Nations High Commissioner for Refugees**

**(UNHCR) <http://www.unhcr.org>:**

The Office of the United Nations High Commissioner for Refugees was established on December 14, 1950 by the United Nations General Assembly. The agency is mandated to lead and co-ordinate international action on the protection of refugees and to resolve refugee problems worldwide. Its primary purpose is to safeguard the rights and well-being of refugees. It strives to ensure that everyone can exercise the right to seek asylum and find safe refuge in another State, with the possibility to return home voluntarily, integrate locally or to resettle in a third country.

Over more than half a century, the agency has helped an estimated 50 million people restart their lives. Today, a staff of around 6,540 people in 116 countries continues to help 19.2 million persons.

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SECTION II:

MIGRANTS, REFUGEES AND THE HUMAN  
RIGHTS FRAMEWORK

## SECTION II: MIGRANTS, REFUGEES AND THE HUMAN RIGHTS FRAMEWORK

### Human Rights, Migrants and Migration Policy: An Introduction

For this introduction see also the following graphic overview: The inter-relationship between Migration and Human Rights (p. 20)

Human rights can be used as a powerful tool for the empowerment of migrants and their mobilization in the migration policymaking process. Human Rights are universal and inalienable. They apply everywhere and to all human beings by virtue of their humanity. Human rights are a legal framework developed by states themselves to ensure that all human beings, particularly their own nationals, are treated with a certain standard wherever they find themselves. This includes migrants regardless of their legal status in the host society. Despite the long development of human rights protection system since 1945/48, migrants, as a particularly vulnerable group, have only recently become visible on the international human rights agenda.

Migrants' rights were largely neglected within the international and European human rights protection system (despite incidences of clear abuse) for several reasons:

- Gaps between different institutional mandates and parallel systems of protecting employment rights and human rights: the ILO protects labor rights of migrant workers; the UNHCR protects the rights of refugees and stateless persons; the IOM does not include rights protection in its general mandate
- The dominance of the refugee protection in the migration field. Therefore human rights NGO report scantily on these issues, which are also underaddressed in media and governmental reports on migrant's human rights, in particular in the case of migrant women and forced and exploitative labour.
- The low attention migrants received in human rights discussions arises from the very way human rights law was written: migrants are not named as a specific group because the core treaties are drafted as rules of universal application.

### Types of Migrants and Human Rights

A migrant's human rights are largely based on the type of migration. The human rights/migration spectrum consists of:

- voluntary migrants (migrant workers, elite migration, student migration) to whom most of the world's estimated 185 million migrants belong. They are protected under general standards of international human rights law and under the UN International Convention on the Protection of the Rights of All Migrant Workers and Their Families (ICMW, 2003)

- forced migrants to whom more than 10 million refugees and stateless persons worldwide belong and who suffer from severe human rights violations. Refugees are protected under the mandate of the UNHCR and the Geneva Convention, 1951, which ensures the right to claim asylum outside the country of origin and aims to provide protection and assistance to displaced persons.
- a growing number of irregular migrants who enter another country illegally or enter legally but lose their legal status; all face serious human rights concerns. They are protected under the ICMW, 2003, which was signed up only by 33 state parties and in Europe only by Serbia and Bosnia Hercegovina. Irregular migrants are mostly seen as part of the border control, security and migration management field.

In the real world, of course, migrants cannot strictly be divided into voluntary and forced migrants. Therefore the separated policy areas are very often overlapping in practice. An interrelationship between migration and human rights can clearly be shown at all stages in the migratory cycle:

- Country of Origin: Reasons of and decisions for migration are f.e. often influenced or motivated by violations of economic and social rights such as health care, education, and adequate housing.
- During Transit and in Country of Destination: Outside the home country, a migrant becomes vulnerable because he/she is a stranger in the society who is unfamiliar with the language, laws and practice and less able than others to assert their rights. Unskilled workers, who work in sectors where labor standards are not applied, encounter discrimination, unequal treatment and unequal opportunities at work. Vulnerability and abuse increases among irregular migrants, in particular among women and children.

### Making Migrants' human rights visible – New developments since the 1990s and today's challenges in Europe

The increasing recognition of migrants' rights results from new international law, new interpretations of existing laws, and new reporting mechanisms which strengthen awareness and create new protection „tools“.

Members of human rights treaty bodies, which monitor core human rights law, started to apply the treaties to specific cases of migrants. This awareness includes social and economic rights, such as education, adequate housing and essential health care. In 1999, the UN Human

Rights Commission appointed a Special Rapporteur for migrants who were identified as a vulnerable group. But also Special Rapporteurs on other human rights fields confront issues of migrant human rights, such as Munoz Vernor, Special Rapporteur of Education, whose February 2006 report examined the education system in Germany regarding discrimination of children with a migration background.

In 2003, UN General Assembly adopted and ratified the ICMW, which explicitly protects migrant worker's rights, including irregular migrants. The ICMW is an important basis for developing this agenda. Optimists argue that states will ratify it once they recognize that it does not represent a radical departure from standards that most industrialized countries have already accepted.

Migration management is today an accepted approach on the national, international and European agenda. It determines IOM's main strategy. EU migration policies and the Global Commission on International Migration launched in January 2004 at UN level are multilateral approaches to immigration control. In this context, general human rights law in today's world continues to offer a sound basis for rights-based migration policies. In its final report to Kofi Annan the Commission recommends to protect the human rights and labour standards of all migrant men and women.

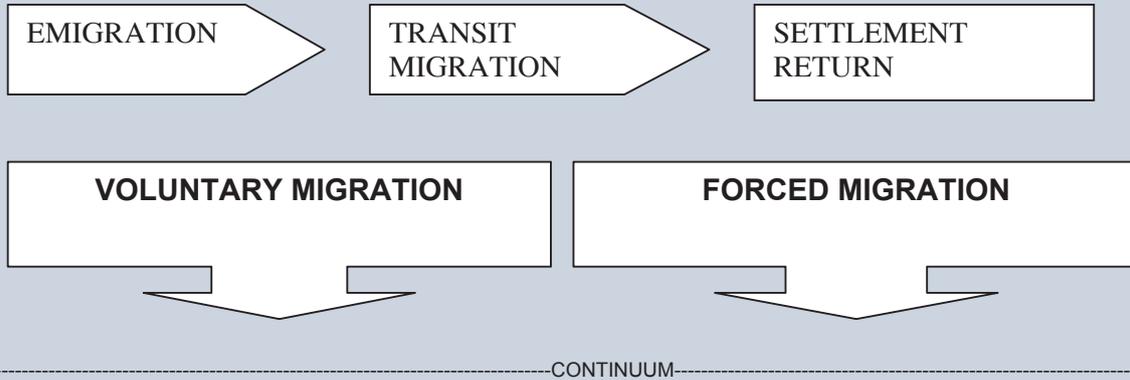
The core areas of European migration policy concern the harmonization of EU-policy towards migrants from third-national countries and refugees. The migration discourse and measures focus on two policy areas:

- At one end, migration management/security and border control practices where immigration control is strictly linked to anti-terrorism measures „Stichwort Raum für Sicherheit und Frieden in Europa“
- At the other end, the harmonization of asylum policies in Europe, which results in a lowering of standards and a decreasing number of asylum seekers.

As a consequence of these EU migration policies, migrants are generally perceived as a threat among the population of a host country. Racism and xenophobia are widespread problems in many European countries. At times of political tensions, migrants may be the first to be suspected as security risks. By linking anti-terrorism measures and immigration control in the context of the "war on terror", EU policy and many national governments have encouraged – however unintentionally – xenophobia against migrants and refugees.

Adapted from articles by Stefanie Grant, former director of the research division of the Office of the UN High Commissioner for Human Rights, Geneva, and Director of Research, Amnesty International London and by Monette Zard, research director International Council on Human Rights Policy: [www.migrationinformation.org](http://www.migrationinformation.org)

## THE INTERRELATIONSHIP BETWEEN MIGRATION AND HUMAN RIGHTS



**ECONOMIC MIGRATION**  
migrant workers, skilled transients etc.

**IRREGULAR MIGRATION ASYLUM**  
refugees, stateless persons, trafficking

### PROTECTION UNDER:

#### ILO

International Human Rights Laws  
Convention on the protection of all migrant workers  
since 2003 and a special rapporteur since 1999

#### UNHCR

International Human Rights Laws  
Refugee Convention, 1951

### EU (AND) EUROPEAN MIGRATION POLICY AREAS:

I. Migration management/Border control/Security: Immigration control linked to anti-terrorism measures and economic interests of the EU member states (with consequences for irregular migrants, asylum seekers and migrant workers)

II. EU- Harmonization of asylum policies, Protection/assistance according international legal norms : Lowering of Standards and decreasing numbers of asylum seekers in EU

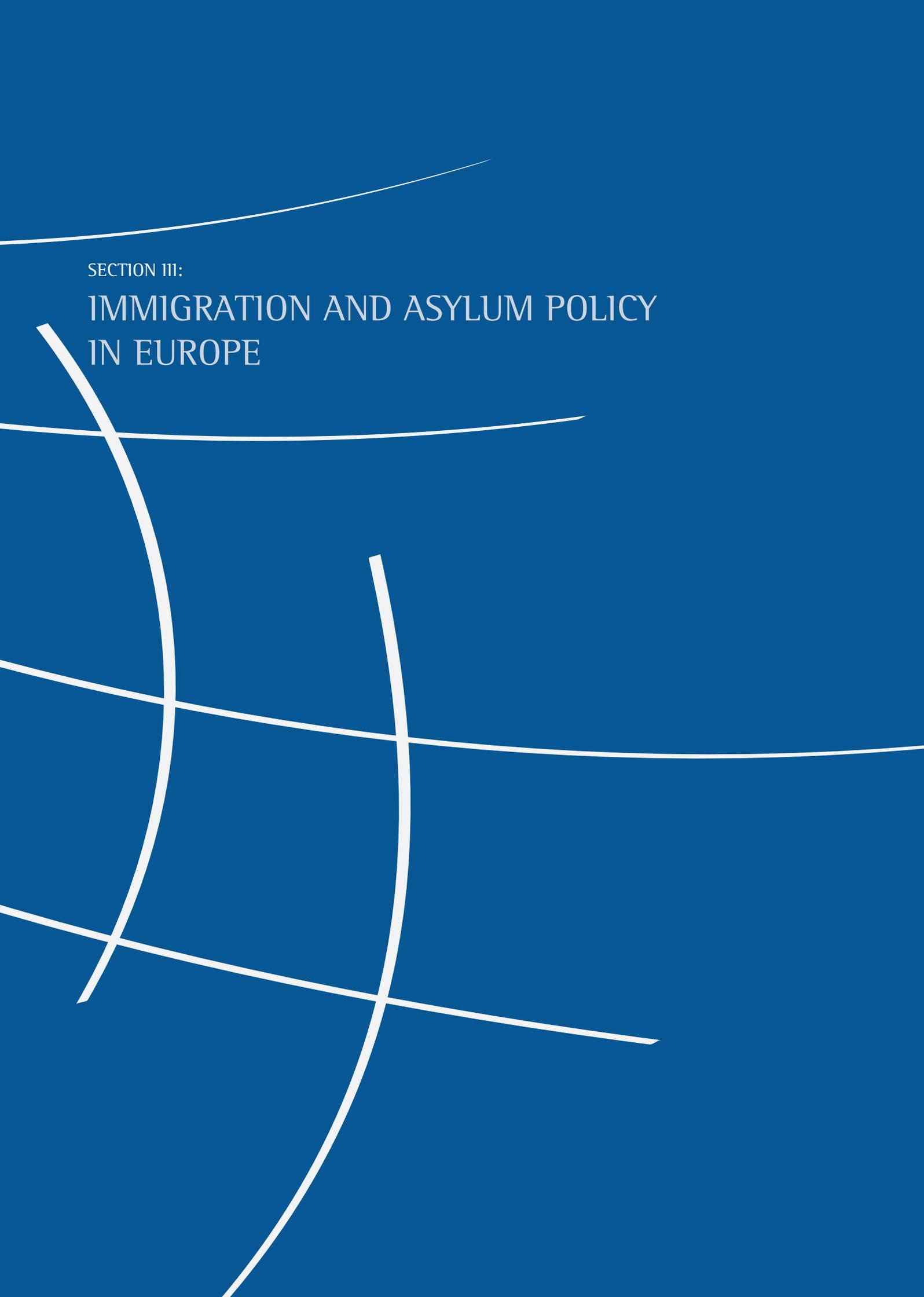
**DISCRIMINATION AND XENOPHOBIA IN EUROPE AGAINST MIGRANT WORKERS AND REFUGEES**

## Migration Typology

- Permanent settlers -- People who immigrate to a country to live there permanently, often with some family members already there. During 1965-1989, the three major official countries of immigration (Australia, Canada and the United States) received a total of 18.4 million permanent immigrants.
- Guest workers -- Short-term, including seasonal, contract workers whose main motivation for seeking employment abroad is the wage differential. They are often unskilled or semi-skilled.
- Cross-border commuters -- Sometimes referred to in migration literature as „labour tourists“ or „incomplete migrants,“ these are people who commute back and forth across international borders in search of employment, whether legally or otherwise. They work usually for just a few weeks at a time, but regularly.
- Skilled transients -- Professionals who move from country to country, often within organised transfers of multi-national companies. This category also includes employees of international organisations, military personnel on peace-keeping missions, the clergy, academic researchers and students.
- Migrants for family reunification -- Foreigners admitted to a country because of close family ties with other migrants who enjoy legal residence in that country or with nationals of the host country. Migration for family formation also comes within this category.
- Irregular migrants -- A group also commonly referred to interchangeably as illegal, clandestine, undocumented and unauthorised migrants. They are present in the territory of a State without meeting that State's legal requirements for entry, residence or exercise of an economic or any other activity. According to some estimates, about 30 million migrants are believed to stay illegally in a foreign country. The International Centre for Migration Policy Development (ICMPD) estimates that between 400,000 and 500,000 irregular migrants are smuggled into the European Union each year.

UNHCR Discussion Paper, Reconciling Migration Control And Refugee Protection in the European Union: A UNHCR Perspective, ed. High Commissioner for Refugees, Geneva, October 2000.



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SECTION III:

IMMIGRATION AND ASYLUM POLICY  
IN EUROPE

## SECTION III: IMMIGRATION AND ASYLUM POLICY IN EUROPE

### Migration and Asylum policies in Europe: An Introduction

*„...when refugees cannot seek asylum because of offshore barriers, or are detained for excessive periods in unsatisfactory conditions, or are refused entry because of restrictive interpretations of the Convention, the asylum system is broken, and the promise of the Convention is broken, too.“ (Kofi Annan, UN Secretary General, Address to the European Parliament, 29 January 2004).*

The adoption of the Amsterdam Treaty by the 15 Member States of the European Union in 1997 marked the beginning of a new era for immigration and asylum policy-making in Europe by establishing that binding EU-wide minimum rules on asylum and immigration should be developed. Following the Amsterdam Treaty's entry into force in May 1999, the EU's Heads of State or Government held a summit in Tampere, Finland, on 15–16 October 1999, and adopted the political guidelines that constituted the framework in which the EU's policies and legislation on asylum and immigration were to be developed (see the following overview: Europeanisation in the field of immigration and asylum).

#### Regress made since Tampere

Years of difficult negotiations followed the Tampere Summit. These discussions were not driven by the spirit of Tampere (the intention to establish a Common European Asylum System based on the full and inclusive application of the Geneva Convention), but driven by the desire of most European governments to keep the number of incoming asylum-seekers as low as possible and to tackle perceived abuses of their asylum systems.

Countries showed little sense of solidarity and pursued their narrow national agendas at a great cost to refugees and the construction of a fair and efficient European protection system. This negotiation took place in a deteriorating public climate of growing hostility towards asylum seekers and refugees. The period after Tampere constituted a missed opportunity to focus on the protection and integration of refugees, rather than deterrence, and to set standards in line with international refugee and human rights law.

- Many of the accepted provisions, such as those on the 'safe third country', 'super safe third country', safe country of origin, internal protection and appeals, lack the necessary safeguards to ensure anyone seeking asylum cannot be sent to a country where they may face persecution, including death, torture or degrading

treatment. Unless Member States implement safeguards, they may breach their non-refoulement obligations under international law.

- Some provisions allow unacceptable derogations from international minimum standards which, if implemented, would lead States to breach their obligations under international refugee and human rights law, in particular the 1951 Refugee Convention and the European Convention on Human Rights. One example is the Directive on Family Reunification that has failed to guarantee the protection of the family and respect of family life, as enshrined in the European Convention on Human Rights, and the rights of the child, as enshrined in the UN Convention on the Rights of the Child. It was on this basis that the European Parliament requested the European Court of Justice to review the legality of the Directive.
- The 'absolute respect of the right to seek asylum', as reaffirmed at Tampere, has been totally undermined. The EU's work has concentrated significantly on the fight against illegal immigration to the detriment of the development of adequate safeguards for refugee protection or measures and procedures on admission and legal migration to the EU. In the European Union of today, the act of seeking asylum in Europe has effectively been criminalised.

#### Progress made since Tampere

No doubt some positive progress has been made since Tampere on the agreement of certain minimum standards on asylum and the improvement of the capacity of existing and new Member States in meeting their international obligations to refugees. The central status of the 1951 Convention Relating to the Status of Refugees has been upheld through the adoption of a common definition of a refugee as well as content of refugee status that broadly (though not wholly) reflects international obligations. The granting of a subsidiary form of protection has been set as a minimum standard in all Member States, as has the recognition of non-State actors, gender-specific and child-specific forms of persecution. Some meaningful minimum standards have been adopted with regard to the treatment of displaced persons in situations of mass influx. Binding member state responsibilities have been set in relation to the documentation and provision of material reception conditions for asylum seekers to ensure a adequate standard of living for the health and subsistence of applicants. These developments could potentially herald some positive changes in refugee protection, in particular in the context of the enlarged European Union. Nevertheless, the level of harmonisation achieved is lower than what had been envisaged in 1999 and insuffi-

cient for the interests of both Member States and refugees. This policy gap is particularly acute on improving burden-sharing and creating more equitable access to protection across the EU. But if all 25 Member States now adopt positive approaches to the transposition and implementation of these EU minimum standards, the potentially huge negative impact of the measures could hopefully be limited. Of paramount importance is the clear need for Member States to raise standards (legislative and practice) in areas where they are lower than those set by the EU as soon as possible. The new European Refugee Fund could play an important role in the essential work of building the institutional capacity of Member States. It should however be noted that the ERF is not supposed to cover for a lack of State funding of activities, which should be States' responsibility. Instead, it should

tender more direct support to the transposition of EU asylum directives and assist with the process of raising standards and practices to meet European and international agreements.

The europeanisation of the immigration and asylum policy started two decades ago (see the following chronological overview). In the area of strict migration control in the European Union UNHCR faces a difficult task to assure standards of refugee protection.

Adapted from articles by ECRE, Broken Promises - Forgotten Principles. An ECRE evaluation of the development of EU minimum standards for refugee protection, Tampere 1999 – Brussels 2004, see: <http://www.ecre.org/factfile/resources.shtml> and ECRE: Overview of asylum developments in the EU, see: [http://www.ecre.org/policy/eu\\_developments.shtml](http://www.ecre.org/policy/eu_developments.shtml)

## Chronological Overview: Europeanisation in the field of immigration and asylum

1986	<p><b>The Single European Act</b>          „The Single Act means the commitment of implementing simultaneously the great market without frontiers, more economic and social cohesion, an European research and technology policy, the strengthening of the European Monetary System, the beginning of an European social area and significant actions in environment (Jacques Delors)“.</p>
1985/1995	<p><b>Schengen Agreement (1985) and Convention (1995)</b>          The practicalities of free movement within an area without internal border controls were first set out by the Schengen Agreement in 1985 and the subsequent Schengen Convention in 1995 that abolished controls on internal borders between the signatory countries.</p>
1992	<p><b>The Dublin Convention</b>          Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities</p>
1992	<p><b>CIREA: Centre for Information, Reflection and Exchange on Asylum.</b> Since 2002: EURASIL (European Union Network for asylum practitioners).  <b>CIREIF: The „Centre of Information, Discussion and Exchange on the Crossing of Frontiers and Immigration“</b> has as its objective to assist the Member States in studying legal and illegal immigration, preventing illegal migration and facilitator networks, in better detecting forged documents and improving expulsion practices.</p>
1997	<p><b>The Treaty of Amsterdam</b>          Under the Amsterdam Treaty, asylum and immigration have been moved from the „third pillar“ – where unanimous decisions by all member states through an intergovernmental decision-making process are required – to the „first pillar“ where the EU institutions play a larger role.          It provides for the establishment of an „area of freedom, security and justice“ and gives the Union Institutions new powers to develop legislation on immigration and asylum matters. For the first time, one can talk meaningfully of a European Asylum Policy.</p>
1997	<p><b>High Level Working Group on Asylum and Migration</b>          produces „action plans“ for various migrant and refugee-producing regions of the world. They tend to emphasize the need to contain refugees in their region of origin by addressing the causes of flight and by providing aid locally.</p>
1998	<p><b>SCIFA: The Strategic Committee on Immigration, Frontiers and Asylum</b> is an umbrella organisation composed of officials from the member states that is charged with the task of overseeing and coordinating the diverse task forces active in the field of asylum and immigration.</p>
1999	<p><b>Summit in Tampere</b>          The EU declared its intention to establish a Common European Asylum System based on the full and inclusive application of the Geneva Convention.          The five-year agenda from 1999 to 2004 called the ‚Tampere programme‘:          the first set of legally-binding EU-level agreements on asylum: temporary protection for persons displaced by conflicts; a common understanding of refugee status and „subsidiary“ protection; minimum procedural guarantees; minimum conditions for the reception of asylum seekers; and a regulation on deciding which Member State is responsible for assessing which asylum claim.</p>

2001	<p><b>Treaty of Nice</b> The Intergovernmental Conference faced the main challenge of setting the bases of an Union enlarged towards the East. The EU has agreed on a Charter of Fundamental Rights, which includes a right to asylum.</p>
2003	<p><b>Green Paper „Deportation“</b> The Green Paper of the Commission „on a community return policy for illegal residents“ suggested joint procedures and mutual official assistance in the area of deportation.</p>
2003	<p><b>Eurodac</b> The very first European Automated Fingerprint Identification System (AFIS) is called EURODAC and will register the fingerprints of asylum seekers and certain categories of illegal immigrants arriving in any of the participating countries. This will make it possible to apply the „Dublin Convention“ on the criteria and mechanisms for determining which State is responsible for which asylum application, as well as the Community regulation which will replace it in the course of 2003.</p>
2004	<p><b>The Hague Programme</b> The European Commission has acknowledged that „the objectives set at Tampere have not yet all been achieved,“ (COM 4002 final, 2 June 2004, page 7). The Hague programme is a new five-year programme for closer co-operation in justice and home affairs at EU level from 2005 to 2010. It aims to make Europe an area of freedom, security and justice. The programme focuses on setting up a common immigration and asylum policy for the 25 EU member states. In the field of asylum, immigration and border control, the Hague programme contains the following key measures:</p> <ul style="list-style-type: none"> <li>* a common European asylum system with a common procedure and a uniform status for those who are granted asylum or protection by 2009;</li> <li>* measures for foreigners to legally work in the EU in accordance with labour market requirements;</li> <li>* a European framework to guarantee the successful integration of migrants into host societies;</li> <li>* partnerships with third countries to improve their asylum systems, better tackle illegal immigration and implement resettlement programmes;</li> <li>* a policy to expel and return illegal immigrants to their countries of origin;</li> <li>* a fund for the management of external borders;</li> <li>* Schengen information system (SIS II) - a database of people who have been issued with arrest warrants and of stolen objects to be operational in 2007</li> <li>* common visa rules (common application centres, introduction of biometrics in the visa information system)</li> </ul>
2005	<p><b>Border Protection Agency</b> The new Border Protection Agency opened for work in Warsaw. The main duties are: First stage of risk analysis (i.e. the detection of migration routes) and the coordination of the joint deportation of persons from third countries.</p>

Table: Anne von Oswald, Network Migration in Europe, adapted from the MigMaps, see: <http://www.transitmigration.org/migmap/index.html>

## UNHCR basic assumptions on Migration Control And Refugee Protection in The European Union

- While obvious inter-linkages between refugee and migratory movements exist, each raise fundamentally different concerns and require distinct policy responses and legislative measures.
- People will continue to move across international borders in the coming years, just as they have done in the past. Some will move by choice, some because they are forced to, and others for reasons that include elements both of choice and coercion.
- The experience and lessons to date suggest that control and deterrence measures will have little lasting impact when the need to move prevails. If one door narrows or closes, the pressure is directed at another one.
- Given the tyranny of distance and the absence of opportunities, only a few of those on the move for refugee-related reasons are likely to make it beyond the borders of countries neighbouring their own country. Preserving the institution of asylum in those States that find themselves geographically proximate to major refugee-producing countries necessarily requires a sustained commitment to asylum on a global level.
- Irregular migrants do not enter the European Union only by means of misusing States' asylum systems. Many studies suggest that in fact the majority of those who enter the European Union in an irregular manner, including people with legitimate refugee claims, do not file asylum applications for fear of being apprehended, detained and deported.
- Governments will be in a better position to address the problem of irregular migration if they are equipped with a broad range of migration management policies beyond measures to curb the perceived or real misuse of their asylum systems.
- In designing comprehensive migration policies, European Union States may have to begin to embark on a serious consideration of their own demographic future. How large a population is the European Union aiming for in the long-term? At what rate of growth? With what proportion of immigrants? At what cost?
- Legal admission policies for labour migration will not completely prevent irregular migration or misuse of asylum systems. They should go in tandem with both appropriate anti-smuggling measures and effective asylum adjudication systems that are capable of identifying refugees expeditiously and accurately, thereby balancing refugee protection with immigration control.
- Both refugee protection and migration control impose a formidable financial burden on States. Yet, this is inevitable where narrowness of vision, perspective and mandate isolate refugee crises and migration problems from other areas of international relations and co-operation, including in the areas of human rights, democracy, good governance, sustainable development, trade, etc. The best way to minimise this burden is to invest imaginatively and resourcefully in tackling the causes of flight at their source.

UNHCR Discussion Paper, Reconciling Migration Control And Refugee Protection in the European Union:  
A UNHCR Perspective, ed. High Commissioner for Refugees, Geneva, October 2000

## Migration control measures in the EU

The wide-ranging migration control measures hitherto introduced by European States are blunt instruments, which, failing as they frequently do to distinguish between refugees and ordinary migrants, have served to seriously undermine the foundations of the refugee protection regime. Various other restrictive measures have also been introduced to reduce the number of asylum-seekers entering Europe's territory and limit the granting of refugee status. The entirety of these measures, policies and practices could be grouped under four categories:

- „Non-arrival“ policies intended to prevent, interrupt or stop improperly documented aliens, including potential asylum-seekers, from ever reaching Europe (e.g. mandatory visa requirements, carrier sanctions, posting of Immigration Liaison Officers abroad to carry out „externalised“ immigration control and physical interception or interdiction of vessels);
- „Deterrence policies“ such as detention, denial of or inadequate of subsistence, and restrictions on family reunification even after the granting refugee status.
- „Diversion“ policies designed to shift the responsibility to other States for those asylum-seekers who manage to arrive at the borders of the European Union (e.g. „safe third country,“ re-admission agreements);
- Restrictive application of the 1951 Convention, in particular „defining away“ certain categories of refugee claimants from the scope of the refugee definition (e.g. victims of non-State agents of persecution, gender-related persecution, or localised persecution);

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SECTION IV:

# EUROPEAN CASE STUDY: POLAND

## SECTION IV: EUROPEAN CASE STUDY: POLAND

### The Polish Case: An Introduction

Poland is one of the countries in Eastern Europe that is most affected by new migration movements after the fall of the Iron Curtain in 1989/1990. The text examines the evolution of migration and refugee control and management in the last one and a half decades during Poland's long process of accession to the European Union. It gives a deep insight into history and practices of border control and the asylum process in Poland.

With its accession to EU, Poland became the „first EU country of entry“ from many refugees, and hence took responsibility for their registration, asylum application and care. The asylum authorities in Poland keep the growing number of applicants in detention centers and accommodations that are sometimes poorly designed and overflowing. Nevertheless, the quota for applications approved in Poland is well below the EU average. The large majority of refugees, who are not approved but also not deported, are tolerated in the country, but they receive little support and thus have little chance to build a tolerable life for themselves. The alternatives to this precarious existence are returning home or fleeing further west.

### European Migration Geographies, Poland

Reprinted Article from *An Architektur* 157/FFM 11, October 2005

On May 1, 2005, in Warsaw the new „Border Police Agency“ of the European Union officially began work. It is supposed to coordinate the monitoring of 6,000 kilometers of land borders and 8,500 kilometers of sea borders. On two floors of the tallest building in the city, the Palace of Culture – a „gift“ from Stalin, thirty employees with an annual budget of around 40 million euros supervise the airtight defense of the EU's external borders and the Europe-wide deportation of immigrants to so-called safe third states.

The establishment of this authority is a logical continuation of the policies that, since the signing of the Schengen Treaty, have massively restructured the European monitoring of migration within countries and at their external borders. The internal flexibility for EU citizens and holders of a Schengen visa goes hand in hand with a rigorous sealing off from the outside and an expansion of intense inspection of people within the entire EU region. The Schengen Treaty and the Dublin Conventions form the legal basis for a „Fortress Europe“ that is characterized by the harmonization of asylum regulations and visa requirements for just under 130 countries, by an effort to

improve border security, and by requiring transportation companies to comply with the process of entry inspections. In the past ten years, according to the Amsterdam network UNITED and Pro Asyl, more than 5,000 refugees and migrants have died trying to cross Europe's outer borders.

The image of a „Fortress Europe“ conveys an idea of a homogeneous and hermetically sealed space whose separation is technically perfect. This point of view declares a fictitious state of affairs to be normal and focuses on migration as a danger. As a geographical conception, it follows the historically Eurocentric world map and cements the perspective of power as operating from a center toward these margins. It reinforces a rhetoric of threats and the defense of territory that has little to do with the reality of a globalized division of labor, of poverty, or of migration. The present issue is intended to criticize this description of space as well as the actual dramatic effects of state power on the everyday lives of people on their way to and through Europe. For migration occurs despite it all – whether formalized, merely tolerated, or undocumented. It takes place in a space. It produces specific sites and is structured by them. (...)

The description of the spaces and architectures of – migration can only provide a partial snapshot of a process of permanent change. It documents a temporary state in the migration regime in Poland since the EU enlargement. A comparison of the border fortifications, Europe-wide asylum practices, the geography and typology of the camp system, techniques of administration, and everyday practices reveals the complex dovetailing of border and camp on the EU's new territory.

### Migration Societies

After the political upheavals of 1989, the breakup of the border regime was received with enthusiasm in Poland and its neighboring countries. The permeability of the borders to both east and west was considered desirable. In 1992, Lech Walesa responded to a German demand that Poland's eastern borders be sealed against migrants: „We will not stop these people [from Eastern Europe and Asia]; we are not in a position to do so. We will assemble an honor guard for them and send them to you.<sup>1</sup> Nothing came of this honor guard, but the first part of the sentence remained somewhat valid: the cordon against refugees and migrants that Western Europe imagined in the southern and eastern European countries, and sought

<sup>1</sup> Der Spiegel, 27.01.1992

to establish by supplying money and technology, proved to be quite porous at first.

Migrations to Poland and the reception of refugees play scarcely any role in the public's perception. At the time of the last census, just under 800,000 registered Polish citizens spent an extended period abroad, whereas only 22,000 people of other nationalities were registered in Poland for longer than a year.<sup>2</sup> In Poland prior to 1989 – as throughout the nineteenth and twentieth centuries, and even today for the majority of Poles – migration primarily meant emigration from Poland, in search of work or asylum. Poles went abroad seeking protection from pogroms, to escape persecution by liberal and nationalist movements under Russian and Prussian rule, to flee German National Socialism, even to escape the Polish state during the confrontations between East and West and especially when martial law was imposed in the 1980s. The experiences of Polish society with immigration were marginal and under state socialism were limited to socialist contract workers, especially from Vietnam, and to communist contingent refugees, especially from Greece and Chile. After the borders were opened, the asylum applications in Poland in the 1990s came primarily from refugees in transit to Western Europe and from re-admitted refugees from Germany – at first just a few hundred but eventually thousands annually. They were mostly southern European Roma, refugees from a disintegrating Yugoslavia, and from Armenia, Afghanistan, and south Asia. More than half of them traveled on to the West before the asylum process was completed – 16,000 of them between 1992 and 2004, according to the estimates of the Polish Ministry of the Interior.

Although the number of refugees was so small, in public discourse migration has been increasingly demonized and

criminalized. Here Poland has moved closer to the German and European perspectives. At first, the trans-national migration from the East was indiscriminately lumped together with the Russian „Mafia.“ That was the subtext to legitimize numerous German-Polish cooperative measures aimed at migrants and refugees coming from Eastern Europe and Asia and at so-called organized crime. During the 1990s, Poland's security policies consistently painted a picture of both a threat from mass poverty migrating from the former Soviet Union and allegedly overpowering criminal cartels from the East.

At the same time, however, migration began to play a stronger economic role in Polish society as a whole. For the structurally weak eastern parts of Poland in particular, traders (often working informally) and job seekers from Belarus and Ukraine became an important and welcome factor in the economy. Poland did introduce a visa requirement for its eastern neighbors in 2002, to fulfill the requirements for joining the EU; however, the Polish authorities have tried to keep their relationship with these countries as free of tension as possible. Visas are granted inexpensively and without fuss to Poland's immediate neighbors. At the same time, the granting of visas and right of entry to citizens of the Caucasian, central Asian, and Asiatic states has become increasingly restrictive. The bogeymen of the 1990s seem to have been replaced by the new international threat: global terrorism.<sup>3</sup>

For some time Poland has had well-established Vietnamese, Chinese, and Armenian communities, only a small percentage of whose members have residence permits. The same is true of Roma and the smaller groups of Kurds and Arabs. An amnesty plan as part of the 2003 alien laws failed: the authorities had expected 50,000 applications but received only 3,508, the majority of which came from Armenians and Vietnamese.<sup>4</sup> Evidently, registration promised no appreciable advantages over undocumented residence in Poland within established economic and social networks outside bureaucratic control.

For several years now, Chechens have made up by far the largest group of refugees in Poland (2004: 7,182 of 8,058 asylum applicants).<sup>5</sup> As citizens of the Russian Federation, they can, as a rule, travel by train to the Polish-Belarusian border, even if inspections and harassment by Russian and Belarusian military officers make it an unsafe and very expensive journey. Nevertheless, the percentage of asylum applications granted in accordance with the Geneva Convention on Refugees is very low for refugees from Chechnya.<sup>6</sup> The overwhelming majority receive only the status of „tolerated,“ with little legal security and minimal state support. Some are deported to Belarus or

2 Republic of Poland – Ministry of Interior and Administration: Poland's Migration Situation and the Process of Elaborating Polish Migration Policy, Report at the 13th OSCE Economic Forum Prague, 23 - 27 May 2005, [www.osce.org/item/14563.html](http://www.osce.org/item/14563.html)

3 Krystyna Iglicka, Completing a Single Area of Freedom, Security and Justice: The Role of the New EU Member States: Poland (Paper presented to the Bertelsmann Foundation workshop on „Exploring the Potential of the Enlarged EU“), Gütersloh 2004, p. 3, [www.csm.org.pl/en/files/COMPLETING%20A%20SINGLE%20AREA%20OF%20FREEDOM.pdf](http://www.csm.org.pl/en/files/COMPLETING%20A%20SINGLE%20AREA%20OF%20FREEDOM.pdf)

4 Bis November 2004 wurden 69 Prozent dieser Anträge positiv beschieden. // Until November 2004, 69 percent of these applications were approved. Krystyna Iglicka, EU Membership Highlights Poland's Migration Challenges, mpi Country Profiles, 2005, [www.migrationinformation.org/Feature/display.cfm?id=302](http://www.migrationinformation.org/Feature/display.cfm?id=302)

5 URiC (Urząd do Spraw Repatriacji i Cudzoziemców // Amt für Repatriierung und Ausländer // Office for Repatriation and Aliens), [www.uric.gov.pl](http://www.uric.gov.pl) | UNHCR, [www.unhcr.pl](http://www.unhcr.pl), April 2005

6 URiC; Barbara Eßer, Barbara Gladysch, Benita Suwelack, Die Situation tschetschenischer Asylbewerber und Flüchtlinge in Polen und Auswirkungen der EU-Verordnung Dublin II, 2005, p. 14, [www.emhosting.de/kunden/fluechtlingsrat-nrw.de/system/upload/download\\_913.pdf](http://www.emhosting.de/kunden/fluechtlingsrat-nrw.de/system/upload/download_913.pdf)

the Russian Federation. For the Chechens tolerated in Poland, it is extremely difficult to earn a living or find an affordable apartment. As a result of registration in the Polish asylum system, which since May 2004 has been linked to the Europe-wide database, there is no longer any possibility of applying for asylum in another EU country. The alternative would be to travel clandestinely, temporarily dive into the undocumented migrant society and prepare for further flight. This is particularly difficult for families, and hence they are dependent on the Polish asylum administration. It is assumed that three-quarters of all Chechen asylum applicants have made their way to the Czech Republic or to Western Europe, in view of the lack of prospects associated with remaining in Poland.<sup>7</sup> Others, unable either to make a living or travel further, return to the Russian Federation, even though their safety and lives are at risk there.

### The EU Migration Regime

In the 1990s, the western European states passed new migration laws and negotiated bilateral treaties in order to create a „cordon sanitaire“: a buffer zone on Europe’s borders, which Poland joined early on. The Schengen Agreement and the Europe-wide harmonization of refugee and migration policies were intended to expand the area of inspections and stem the flow of unwanted migration. The responsibility for enforcing these policies is to be transferred gradually from the individual nation-states to the state structure of the European Union. In geographical terms, it results in a „Europe of concentric circles“ that is particularly evident in migration policies. One distinguishes between the „inner circle“ (member states of the European Union), the „circle of close associates“ (above all states looking to join the Union), and „smaller circles“ with which stronger cooperation is planned.

One important element of this new border regime is the „third state rule“ introduced by the Bonn government in 1993, which drastically restricted the right to asylum. Poland and all of Germany’s other neighboring states were declared so-called „safe third states.“ Refugees who enter through one of these states should be deported back there without regard to whether they might have suffered persecution. The re-admission agreement concluded by Germany and Poland later that same year lega-

lized an earlier „wild“ (i.e., extralegal) police practice that had been common for years, in which refugees and migrants from the border regions of eastern Germany were deported back to Poland within forty-eight hours. Another consequence of these and other bilateral agreements was that the police obtained latitude, over which little control was possible, to implement the rules informally. The stipulated agreements with Poland „permitted, curiously, more opportunities for police collaboration than that found in the agreements and associations that had evolved in recent decades with most Western European States,“ the director of the Federal Criminal Investigation Agency remarked in 1997.<sup>8</sup> The German-Polish practice of cross-border collaboration quickly became the prototype for the international migration policies that would serve as models for the readmission agreements that western European states concluded with a number of other states.

### A Request for Help by Chechen Refugees in a Polish Camp

To the leader of XXXX, the member of the State Duma  
XXX XXX

Linin Center, January 9, 2005

We urgently request your attention and support, in view of the difficulties that face us during our stay on the territory of the Polish Republic. We are refugees from Chechnya. [...] We would never have agreed to leave our homeland voluntarily if we had not had to fight for our lives, safety, personal freedom, and every peace of bread. Forced to leave our homeland, we seek and request asylum in Europe. Nevertheless, since finding ourselves on Polish territory; we are deeply worried and afraid because we have ended up in a closed facility with poor accommodations, from which the only escape is to return to Russia. [...]

In the Polish centers for refugees (closed camps) we are isolated from the surrounding world. We hoped not just to save our bare lives here but also to find some meaning in them – namely, the possibility for our children to learn and experience a little bit of childhood; for us to regain our health, and finally to find a little reassurance about our future and the –future of our children. [...] Our children cannot learn here, because there is no organized school program for refugee children. The few who are able to attend school are held back because their teachers show no consideration for the fact that they cannot speak

<sup>7</sup> URiC; EBer/Gladysch/Suwelack 2005; Helmut Dietrich, Flüchtlingslager und die neuen Außengrenzen Europas, in: Rudi Friedrich, Karl Kopp, Tobias Pflüger (Hrsg.): In welcher Verfassung ist Europa?, Grafenau 2004, pp. 49-60

<sup>8</sup> Jörg Wolters, Aspekte der internationalen polizeilichen Zusammenarbeit in Ost- und Westeuropa, in: Europa der durchlässigen Grenzen. Schriftenreihe der Polizei-Führungsakademie 1, 1997, p. 33

Polish. There are no preschools or kindergartens at all where the younger children could learn the language. [...] We have tried several times to speak to the administration about these problems. But no attention is paid to our problems at all. We have explained many times that we cannot cope physically with the monotonous food, three times a day (for breakfast, lunch, and dinner) the canteen distributes only potatoes. But our requests to give us dairy products or the money to pay for them were not granted. [...]

In the overfilled refugee camps; two to three families have to share a 6 x 6 meter space. The camp is suffering from a flu infection that makes children and adults sick for three to four weeks, and in these close they are constantly infecting one another. [...] Both adults and children have symptoms of anemia, vitamin deficiency, and general physical exhaustion.

Refugees who somehow have cash on them or who attempt to travel to another country are refused payment of the pocket money of 70 zloty (20 dollars) a month, which doesn't suffice for anything anyway. With these 70 zloty we are not even able to purchase the things we need for hygiene, which are no longer provided to us, and we are all trying to get by somehow. Many owe debts to other refugees.

After this exhausting stay under such circumstances, we risk receiving not a positive decision but „tolerated“ status, with which the refugees, with small children and no means to survive, can be sent out of the camp and put out on the street in any season. [...]

We the refugees implore you urgently to help us out of this situation and to find us asylum in other countries of the European Union.

Yours respectfully  
Chechen refugees living in the Polish Republic

By fax on January 11, 2005, Gora Kalwaria Post Office

The Polish government subsequently concluded re-admission agreements with a series of other states, mainly in Eastern Europe, so that they in turn could also pass on responsibility for the accommodation of refugees.<sup>9</sup> Nowadays, refugees are sometimes deported from country to country. These chain deportations sometimes take them back to the states where they were persecuted. This

practice is forbidden by the Geneva Convention on Refugees, but it is difficult to prove in any given case, since it takes place within the sphere of activity of the police, and there are hardly any mechanisms for public control. According to information from the Polish border police, for example, migrants without documents are deported to Belarus and the Russian Federation, even though Poland has no re-admission agreements with them.<sup>10</sup>

In the 1990s, Poland's western border was the focus of border security and defense against migrants. Supported by the willingness of the German population to denounce them, migrants were deported to large numbers. Thereafter, the German-Polish border became an outwardly quiet region by the time Poland entered the EU. Already in 2002, the German border police were arresting far more illegal immigrants on its borders with Austria, France, the Benelux countries, and Denmark (15,991 people) than on the Schengen external border with Poland (1,974 people).<sup>11</sup> It is difficult to say whether the number of arrests reflects a real decline in the number of clandestine entries on the German-Polish border or merely a change in the way police were conducting border inspections. Perhaps the shifting eastward of the defense against refugees made itself felt here as well.

In the late 1990s, Poland, with the support of funds from the Phare program<sup>12</sup> to financially support candidates for EU entry, shifted the focus of its border control to its eastern borders and developed a new practice for inspections and deportations. In the areas of migration and asylum, Phare's objectives included not only securing the border but also training the border police and improving the asylum authorities and the capacity for accommodating asylum applicants.

With Poland's entry into the EU, the EU regulations for asylum procedures – the Dublin Convention and Dublin II – replaced the German-Polish readmission agreement. The Dublin Convention stipulates in general that the first country of entry should be responsible for processing an asylum application within the EU. The

9 Krystyna Iglicka, Robert Rybicki, Schengen – Consequences for National Migration Policy Poland, ISP Report 1, Schengen 2003, p. 8, [www.isp.org.pl/docs/PM/eng/Polska/rep\\_1pol.pdf](http://www.isp.org.pl/docs/PM/eng/Polska/rep_1pol.pdf); Catherine Phuong, Controlling Asylum Migration to the Enlarged EU, WIDER World Institute for Development Economics Research: Discussion Paper No. 2003/59, August 2003, p. 17, [www.wider.unu.edu/publications/dps/dps2003/dp2003-059.pdf](http://www.wider.unu.edu/publications/dps/dps2003/dp2003-059.pdf)

10 Marek Adamczyk, The Border Guard Service of the Republic of Poland – a Modern European Border Force, Borderpol June 2003, p. 10, [www.borderpol.com/PBG%20Adamczyk%202003.pdf](http://www.borderpol.com/PBG%20Adamczyk%202003.pdf)

11 Bundesgrenzschutz Jahresbericht 2002 // Federal Border Police Report 2002, p. 4

12 <http://europa.eu.int/comm/enlargement/pas/phare/>

Dublin II agreement of September 2003 made the deportation praxis in Europe even more severe.<sup>13</sup> All applicants throughout Europe are registered in the Eurodac fingerprint database (the central European Dactyloscopic System). If the stored data establishes that a person has already applied for asylum in another member state or was already registered in another state during transit, he or she is deported to that state. The responsibility for deportation passes from the border police to the authorities ruling on the asylum application, who thus not only have to concern themselves with assessing the reasons for flight but also must certify the route taken.

### Schengen Agreement:

On June 14, 1985, representatives of five EU member states – Germany, France, Belgium, the Netherlands, and Luxembourg – signed the so-called Schengen Agreement. Its goal was the discontinuation of inspections of people at their internal borders, and in return it obliged the participating states to improve security along their external borders. The Schengen II amendment of 1990 laid out the concrete implementation of the agreement, stipulated the introduction of a joint system of visas and defined police cooperation and the handling of asylum applications. One important element of the agreement is the establishment of the centralized Schengen Information System (SIS). This system stores information and personal data for the entire Schengen area that can be called up at any point on the Schengen outer border. In this way entry can be refused if, for example, the person has no visa or an invalid one, has been banned from residence, or if other reasons argue against allowing entry. Both agreements became effective in 1995. In the meantime, thirty-three countries have signed the agreement or take part in it de facto. With the elimination of inspections at internal borders, customs and federal inspections have been heightened throughout the territory of the Schengen countries.

<sup>13</sup> VO/EG Nr. 343/2003 des Rates der Europäischen Union vom 18.02.2003 zur Festlegung der Kriterien und Verfahren zur Bestimmung des Mitgliedstaats, der für die Prüfung eines von einem Drittstaatsangehörigen in einem Mitgliedstaat gestellten Asylantrags zuständig ist. // Council Regulation (EC) No. 343/2003 of the Council of the European Union of February 18, 2003, establishing the criteria and mechanism for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national. (ABl. L 50, 25.02.2003, p. 1); Development in Europe: Preliminary Lessons Learned from the Central European and Baltic States, in: International Journal of Refugee Law, 3, 2000, pp. 380-400

### Third State Rule (§ 26a AsylVfG):

An alien who enters from a safe third state can no longer appeal to the basic right to asylum. Entry is to be refused at the border by the border authorities without such alien being admitted to the asylum application process. In the case of entry from a safe third state, the applicant has no right to remain temporarily in the Federal Republic of Germany. Re-admission to the safe third state can be performed whether or not a legal procedure has been lodged. A legal procedure can be handled from the safe third state. If it is not possible to re-admit the alien to the safe third state, then it should be explored whether § 51 para. 1 of the Ausländergesetz (Law governing aliens) prohibits re-admission to the country of origin. According to the standards of constitutional law, „safe third states“ include the member states of the European Community as well as other European states whose observation of the Geneva Convention on Refugees and the Human Rights Convention has been ensured. At the moment, the latter are: Norway, Poland, Switzerland, and the Czech Republic.

Bundesamt für Migration und Flüchtlinge, „Die Novellierungen des Asylverfahrensrechts seit dem 01.01.1991“, [www.bamf.de/template/asyl/content\\_asyl\\_neuregelungen.htm](http://www.bamf.de/template/asyl/content_asyl_neuregelungen.htm)

### Poland's Re-admission Agreements:

Poland has concluded re-admission agreements with the following countries: Bulgaria, August 24, 1993; Czech Republic, May 10, 1993; Croatia, November 8, 1994; Moldova, November 21, 1994; Romania, July 24, 1993; Slovakia, July 8, 1993; Slovenia, August 28, 1996; Ukraine, May 24, 1993; Hungary, November 26, 1994; Lithuania, July 13, 1998 (effective January 9, 2000). Re-admission with visa exemption was concluded with: Latvia, December 17, 1992; Estonia, February 26, 1993. Re-admission agreements are currently being negotiated with Armenia, Kazakhstan, and Vietnam.

Over the course of recent years the „Europe of concentric circles“ has been expanded and reinforced through the elements described here. When the build up of the EU external borders in Poland to meet European standards is complete, Poland will be completely integrated into Schengen territory beginning in 2008. As far as possible, undesirable migration is to be stopped at the new EU external borders. Already today, European politicians are publicly discussing exterritorializing the administration and processing of the asylum applications and handling the procedures in camps outside EU borders.

### Borders

(...) The end of the confrontation between East and West opened up new travel opportunities to and from Poland. The borders between Poland and its eastern neighbors were opened for visa-less travel to the populations on both sides of the border, which permitted unhampered exchange between the respective national minorities, relatives, and businesspersons. The amount of border traffic rose sharply. Because of the severe differences in currency rates and affluence, there was considerable cross-border retail trade, which provided a basis for the livelihood of the residents of the structurally weak, primarily rural border regions. Like the „Polish markets“ on the German-Polish border, large markets with a broad range of goods arose in the larger towns on both sides of Poland's eastern border. In addition, there was also „shuttle trade“ of individuals with alcohol and cigarettes, informal migration of workers to Poland (and from Poland to Western Europe), and cross-border shopping and sex tourism.

At the same time, undocumented transit migration across Poland's borders into Western Europe also increased. According to data from the Polish border patrol, the migrants in the early 1990s came primarily from Romania, Bulgaria, and the countries of the former Soviet Union. With the re-admission agreements and the tightening of the asylum policies of the EU states, more and more refugees and migrants were being sent back to Poland or were stopped directly at the German-Polish border. At Germany's instigation, Poland focused on

securing its western border and on preventing migration to Western Europe. The Polish border patrol took on, with financial support from Germany, the re-admission, arrest, and deportation of the refugees stopped at Poland's western border.

During the second half of the 1990s, the Polish border regime tightened up and increasingly conformed to guidelines from Germany and the EU. In 1997 a new law governing aliens specified more restrictive requirements on entry for travelers not required to have visas, including an invitation registered with the Polish authorities, a plausibly documented reason for travel, and sufficient cash funds.

Another transfer of European control technologies and border patrol methods took place in the course of preparations for Poland to join the EU. Important preconditions for its entry in May 2004 included the adoption of Europe's visa policy and the buildup of its eastern border as the new EU external border.

In 2001/02 Poland allowed agreements with fifty-four states on visaless travel to expire. The visa requirement for the majority of countries of the former Soviet Union could be implemented very quickly, but the visa requirement for Belarus, Ukraine, and the Russian Federation met with open resistance from the population of eastern Poland as many depended on the informal border economies for their livelihoods. In some cases street blockades were erected in the region in protest. The Polish government thus postponed the step until October 1, 2003, that is, until a few months before it was scheduled to join the EU. In order to ensure border traffic with its eastern neighbors, Poland is quite generous: the visas are free to Ukrainians and very affordable for Belarusians. Multiple visas can be obtained without a problem, and Polish consulates estimate that only one percent of the visa applications are rejected. A new euphemism was created for this graduated Eastern EU periphery: friendly Schengen policies.<sup>14</sup> In March 2005 the number of visitors from Belarus, Ukraine, and the Russian Federation returned to the levels that had existed prior to the introduction of the visa requirement.

<sup>14</sup> Jakub Boratynski, Grzegorz Gromadzki, *The Half-Open Door: the Eastern Border of the Enlarged European Union* (Stefan Baton/ Foundation: On The Future of Europe. Policy Papers 2) Warsaw, March 2001; Centre for European Policy Studies, SITRA Foundation, Stefan Baton/ Foundation (Hrsg.), *New European Borders and Security Cooperation: Promoting Trust in an Enlarged European Union*. 6 - 7 July 2001. Conference Report

### Information for Refugees

You have applied for asylum in Germany. This does not necessarily mean that your asylum procedure will be handled in Germany. Rather, in the coming weeks there will be an investigation to determine whether another state in Europe may not be responsible for your asylum case. If your fingerprints indicate that you were in another EU state before entering Germany, this is a so-called „Eurodac hit.“ In accordance with the Dublin II convention, you can then be sent back to the state in which your fingerprints were taken, which will be „safe“ for you. Eurodac hits are not all that is considered proof that you were in another EU state before your arrival in Germany; rather, all possible indices are compiled. If it can be demonstrated that you were in another EU state before your arrival, and that state is prepared to take you back, then your asylum procedure will be conducted in that country.

Advice leaflet by the counseling team on the asylum process, Diakonisches Werk Elbe-Elster et al.

The building up of the eastern border, the improvement of border stations, and the shift of focus further east of the employment of the Polish border guard have been achieved primarily with EU financing from the billion euro Phare programs for harmonizing the legal systems and development of the infrastructure in the acceding states. A large part of the Phare funds allocated has been used by the border patrol to purchase high-tech equipment for communication and border surveillance. The border installations from the Soviet period – an 800-meter-wide corridor in the forest, with raked sand, electric fences, and barbed wire – has been maintained along the Belaru-sian side. On the EU side, additional border watch-towers are to be constructed every 15-20 km, and the border will be equipped with the latest surveillance technology.

Since 1997 more than twenty new border crossings have been built along Poland's eastern border, including several transit centers that concentrate on trans-national traffic of goods and people. The average distance between border posts was reduced from about 50 km to 12-20 km. Through new hiring and the transfer of border control units from the west, the number of border police employed in eastern Poland has more than doubled. The Schengen-com-patible buildup of the eastern EU outer border is scheduled to be complete by 2006. Then between 2006 and 2008, the control of persons crossing Poland's EU interior border will be discontinued. (...)

In Poland, the dissolving of the hardened Eastern Bloc borders has been followed by the construction of a new border regime in the spirit of a „European fortress“ since the mid-1990s. Poland is shifting the defense against migration further east. Asylum laws and procedures are becoming increasingly restrictive, and the technology of securing the border promises a hermetic seal. In specific locations and everyday praxis, however, quite deliberate contradictions and gray zones become evident in the system: informal border crossings are permitted to the extent that they are economically necessary or tolerable. One tries to regulate them in this way. The disproportionate buildup of the borders appears, given the lack of real threat, to play a more symbolic role: meeting the targets of the European community of states and reassuring the politicians and the public. The border does, however, also prove to be a space of conflict that is permanently being redefined by all the interested parties using a variety of definitional powers –by creating options for action or settlements by force, through the conquest, exploitation, and defense of leeway and loopholes.

### The Asylum System

Poland acceded to the Geneva Convention on Refugees in 1991, and its convention from 1997 guarantees the basic political right to asylum. Since then, its asylum procedures and its handling of refugees have been regulated by an increasingly restrictive law governing aliens, which is largely modeled on the examples of Germany and the ED.<sup>15</sup> In its 1997 law governing aliens Poland established an organized system of deportation, since by force of this law people could be detained long enough for decisions to be made in the asylum process and readmission inquiries. Since September 2003 Poland has a new law governing aliens<sup>16</sup> and a new law protecting aliens<sup>17</sup> that claims to distinguish clearly between migrants and refugees and reproduces the Schengen guidelines down to the smallest details. The severity of the detention regulations for asylum applicants even exceeds the legal situation of other EU states. If someone without an entry visa requests asylum directly at the border, he or she – just like anyone found in the country without valid papers – faces detention for an initial thirty days in one of more than twenty deportation centers. Detention is

15 Stephan Anagnost, Challenges Facing Asylum Systems and Asylum Policy Development in Europe: Preliminary Lessons Learned from the Central European and Baltic States, in: International Journal of Refugee Law, 3, 2000, pp. 380-400

16 Act of 13 June 2003 on Aliens, Journal of Laws of 2003, No 128, item 1175, [www.uric.gov.pl/auths/113/files/40335c46b7306\\_Act%20on%20Aliens.htm](http://www.uric.gov.pl/auths/113/files/40335c46b7306_Act%20on%20Aliens.htm)

17 Act of 13 June 2003 on granting protection to aliens within the territory of the Republic of Poland, Journal of Laws of 2003, No 128, item 1176, [www.uric.gov.pl/auths/113/files/740335c46b7306\\_ACT\\_granting\\_protection.htm](http://www.uric.gov.pl/auths/113/files/740335c46b7306_ACT_granting_protection.htm)

intended to ensure that those who wish for asylum is judged „obviously unfounded“ can be deported directly. According to the law this detention can be extended multiple times, up to a year, depending on how long the authorities need for the formalities of deportation.<sup>18</sup> According to data from the Polish border police, 26,200 people were deported between 1998 and 2001; of these, 16,000 were deported via its eastern border, 5,000 via its border with the Czech Republic and Slovakia, and 5,000 by air. Overall, deportations from Poland have assumed considerable proportions, but it must be said that Germany, Italy, Spain, and now even Libya have considerable higher figures.<sup>19</sup>

The legal requirement to take asylum applicants without visas or papers into custody is one the Polish authorities are scarcely able to comply with at the moment as they lack the capacities. In practice, therefore, refugees who apply for asylum at Poland's eastern border, for example, are not always arrested. Families in particular are frequently brought immediately to Dębak, to the central facility for the reception of asylum applicants who have entered the country legally. According to the Helsinki Foundation in Warsaw, there is no apparent consistency in the practice of detaining applicants.<sup>20</sup> Moreover, crossing the border in violation of procedures is under Polish law a statutory offence that can be punished by up to eight years in prison in the worst cases (if organized together with others).

Those who have entered legally, by contrast, submit their asylum applications directly to the asylum authorities in Warsaw: the Office for Repatriation and Aliens (Urząd do Spraw Repatriacji i Cudzoziemców, or URiC), and are also first admitted to the initial reception center in Dębak, from which they are sent to one of the other accommodations for asylum applicants in Poland.<sup>21</sup>

The number of asylum applicants in Poland roughly doubled between 1998 and 2003; in 2003 the figure was over 7,000. For 2005, the Ministry of the Interior estimates there will be just under 10,000 applications. Refugee status under the Geneva Conventions is very rarely granted to asylum applicants in Poland. In 2003 and 2004 only 200 or 300 people were granted that status.<sup>22</sup> In accordance with EU guidelines, refugee status provides access to a year of social services and integration assistance. In reaction to the constantly rising number of refugees from Chechnya, in 2003 the Polish state established the legal status of „toleration“ (pobyt tolerowany), which can be granted for a year at a time. This status does not guarantee the EU minimum requirements for the accommodation of refugees but it does include a work permit.

However, those with „tolerated“ status often cannot register with the police, because they cannot find affordable places to live, thus they have no right to social, medical, or age-related benefits. In creating a tolerated status, the state gave itself an instrument for creating, with minimal financial outlay, a registered status for residence for those who cannot be deported. This makes it possible to maintain control over people who otherwise might plunge into illegality. Tolerated status must be renewed annually, and as soon as no more obstacles are seen, the state can deport tolerated persons to their country of origin relatively quickly.

In recent years the Polish state has created a number of formal possibilities to deal flexibly with migrants and refugees – systematic, graduated deprivation of rights, institutional enforcement, and deportation. There are only a few human rights organizations and independent legal experts who offer advice to asylum applicants. In many cases refugees in arrest centers and remote accommodations have no access to information or legal aid. They are dependent primarily on their own networks for information about their rights and legal options. (...)

This shortened version of the original text is reprinted with the friendly allowance of Forschungsgesellschaft Flucht und Migration (FFM, Research Center for Refuge and Migration). The original version you find in: *An Architektur* 157 / FFM 11, October 2005 (*An Architektur* is a cooperation between the Forschungsgesellschaft Flucht und Migration and *An Architektur* as part of the project TRANSIT MIGRATION: [www.transit-migration.org](http://www.transit-migration.org)).

18 Eßer/Gladysch/Suwelack 2005

19 Adamczyk 2003, p. 12

20 Bartłomiej Tokarz/Helsinki Foundation im Gespräch mit *An Architektur* am 8. Oktober 2004. // Bartłomiej Tokarz of the Helsinki Foundation in conversation with *An Architektur* on October 8, 2004

21 Die zweite Instanz bildet der Rat für Flüchtlingsfragen (Rada do Spraw Uchodźców), er hebt aber äußerst selten die negative Entscheidung des URiC auf. Die anschließende gerichtliche dritte Instanz, das Verwaltungsgericht in Warschau, hat 2001 und 2003 lediglich jeweils vier negative Entscheidungen aufgehoben. // Appeals are made to the Council for Refugee Problems (Rada do Spraw Uchodźców), but it rarely overturns a negative decision by the URiC. The subsequent third, legal appeal is made to the administrative court in Warsaw, but in 2001 and 2003 it reversed only four negative decisions.

22 Ministry of Interior and Administration 2005



The background is a solid blue color. Overlaid on this are several white, curved lines of varying thickness and curvature. These lines are abstract and do not form a specific shape, but they create a sense of movement and depth. One line is a thin, slightly upward-curving arc near the top. Another is a thicker, more pronounced curve that starts on the left and sweeps across the middle. A third is a thin line that curves downwards from the left. A fourth is a thick, curved line that starts near the bottom left and curves upwards and to the right. These lines intersect and overlap, creating a dynamic composition.

SECTION V:

RESEARCH, INFORMATION, ACTIVISM  
AND EDUCATION IN THE FIELD OF (FORCED)  
MIGRATION AND HUMAN RIGHTS

## SECTION V:

### RESEARCH, INFORMATION, ACTIVISM AND EDUCATION IN THE FIELD OF (FORCED) MIGRATION AND HUMAN RIGHTS

There are a wide range of organisations, research centres, educational associations and projects which work and act in the field of (forced) migration and human rights. The following list gives a selection of organisations which research, inform and promote education related to human rights and (forced) migration, mostly on an European level or from an European perspective. In every European country, you will find additional institutions that deal with specific national issues, which cannot all be listed here.

On the one hand, you will find institutions that concentrate mainly on research, on the other, you will discover information networks and civil society activities that focus mainly on information, educational and cultural projects. Some institutions work in both fields.

#### Research Centres

##### **Centre for Research in International Migration and Ethnic Relations (CEIFO), Stockholm University, Sweden**

The Centre for Research in International Migration and Ethnic Relations' research programme covers international migration, ethnicity, nationalism, xenophobia and racism, ethnic relations, immigration policies and refugee reception models.

<http://www.ceifo.su.se/>

##### **Centre for European Migration and Ethnic Studies (CEMES), Sussex, UK**

CEMES is a 'not for profit' company founded in 1998 that specialises in policy-relevant research, information and publishing on international migration, ethnic relations and related topics in Western, Central and Eastern Europe.

<http://www.cemes.org/>

##### **Centre for Migration Law University of Nijmegen, the Netherlands**

The Centre provides a forum for exchange of ideas and discussion on issues surrounding migration and minority protection. The work carried out by participants of the Centre is part of its long term research strategy which focuses on migration and minority issues in an European context, be that the European Union, the Council of Europe or the OSCE.

<http://www.jur.kun.nl/cmrl/>

##### **Center for International and European Law on Immigration and Asylum (CIAL), University of Konstanz, Germany**

The Center for International and European Law on Immigration and Asylum was founded in 1994 by Prof.Dr. Kay Hailbronner. He holds a professorial chair in public law, international law and European law at the University of Konstanz, Germany.

<http://www.uni-konstanz.de/FuF/ueberfak/fzaa/english/>

##### **Centre for Research in Ethnic Relations (CRER), University of Warwick, UK**

The Centre for Research in Ethnic Relations is the major academic body in the UK for the research and teaching of matters concerning racism, migration and ethnic relations. The Centre lies at the forefront of work on race and ethnic relations in Europe and continues to develop and participate in a range of European networks and partnerships.

[http://www.warwick.ac.uk/fac/soc/CRER\\_RC/](http://www.warwick.ac.uk/fac/soc/CRER_RC/)

##### **Europäisches Forum für Migrationsstudien Institut (EFMS), Bamberg, Germany**

EFMS investigates the issues of migration and the integration of refugees in Germany and in Europe. The centre undertakes research, gathers documentation, provides a consultancy service and publishes research.

[http://www.uni-bamberg.de:80/~ba6ef3/main\\_g.htm](http://www.uni-bamberg.de:80/~ba6ef3/main_g.htm)

##### **European Migration Information Network (EMIN), University College London, UK**

EMIN is a web-based system designed to provide a gateway to information on international migration.

<http://www.emin.geog.ucl.ac.uk/>

##### **European Research Centre On Migration and Ethnic Relations (ERCOMER), Utrecht University, the Netherlands**

ERCOMER is a European research centre with a strong interest in comparative research in the fields of international migration, ethnic relations, racism and ethnic conflict within the European context.

<http://www.ercomer.org/>

**Institute for Migration and Ethnic Studies (IMES), Amsterdam the Netherlands**

The Institute for Migration and Ethnic Studies is an interdisciplinary research institute of the University of Amsterdam which has existed since 1994.

The research programme promotes the encounter and – where possible – the integration of different perspectives and therefore co-operates with the Departments of Anthropology, Sociology, Communication Science, Political Science, Social Geography, Economic Geography, Econometrics, and Administrative Law and the Department of Social and Economic History,

<http://www.pscw.uva.nl/imes/>

**Institut für Migrationsforschung und Interkulturelle Studien (IMIS), Osnabrück, Germany**

Migration, integration and intercultural problems are crucial issues in the world of today and are concerns for a wide variety of academic disciplines and research institutions. IMIS examines historical and contemporary demographic, geographic, social, economic, political and legislative, psychological and educational issues of migration and integration from an interdisciplinary perspective.

<http://www.imis.uni-osnabrueck.de/>

**Nordic Network on Transnational Migration**

This is a network of social science researchers in the Nordic countries, working with different aspects of transnational migration.

<http://nntm.dragoeiro.com/>

**Odysseus, European academic network for legal studies on asylum and immigration in Europe**

The network aims to analyse the legislation of EU member states and legislation in the EU in the areas of migration and asylum. The network intends to furnish universities, policy-makers, practitioners and NGOs with a deeper insight on the relevant, from a European perspective. The results of their analysis will be addressed to the European Institutions to aid in the preparation of legislation based on the new provisions of the Treaty of Amsterdam. The working languages are English and French.

<http://www.ulb.ac.be/assoc/odysseus/odnetuk.html>

**Refugee Studies Centre, Oxford University, United Kingdom**

The Refugee Studies Centre (RSC) is part of the University of Oxford's International Development Centre at Queen Elizabeth House.

The Centre carries out multidisciplinary research and teaching on the causes and consequences of forced migration; to disseminate the results of that research to policy makers and practitioners, as well as the academic community; and to understand the experience of forced migration from the perspective of the affected populations.

<http://www.forcedmigration.org>

**Swiss Forum for Migration and Population Studies (SFM), Neuchâtel, Switzerland**

The Swiss Forum for Migration and Population Studies is an independent research institute affiliated with the University of Neuchâtel. It conducts scientific research in the fields of migration and demographic issues with the aim of contributing a pragmatic discussion on topics associated with migration.

<http://www.migration-population.ch>

**Initiatives and Networks**

**Global Commission on International Migration**

Series of papers on migration issues worldwide and on the European region and European countries (called Global Migration Perspectives).

[http://www.gcim.org/en/ir\\_gmp.html](http://www.gcim.org/en/ir_gmp.html)

**European Council on Refugees and Exiles (ECRE), Brussels, Belgium**

ECRE is an umbrella organisation of 76 refugee-assisting agencies in 30 countries working towards fair and humane policies for the treatment of asylum seekers and refugees. ECRE is concerned with the needs of all individuals who seek refuge and protection within Europe.

<http://www.ecre.org>

**European Migration Centre (EMZ), Berlin, Germany**

The overall aim of the organisation is to intensify networking between European institutions working in the wide field of migration and ethnicity.

<http://www.emz-berlin.de/>

### Migration Information Source

Analysis of international migration and refugee trends and authoritative data from numerous global organizations and governments. Broad information on developments in European countries and on the EU:

[www.migrationinformation.org](http://www.migrationinformation.org)

### Migration Policy Group, Brussels, Belgium

MPG's mission is policy development on migration and anti-discrimination, with a view to generate innovative and effective responses to the challenges and opportunities of both migration and diversity. In order to achieve this mission, MPG operates on two parallel fronts: stimulating policy debates and promoting stakeholder co-operation.

<http://www.migpolgroup.com/>

### Network Migration in Europe, Berlin, Germany

Network of European experts and projects related to (forced) migration, European citizenship education, human rights, anti-discrimination and anti-racism.

Aims: 1. Education, Transfer of Information, applied research 2. Strengthening Awareness within the majority population and empowerment of (young) people with a migration background. There are two important projects in the field of human rights and (forced) migration: 1. European youth forum on learning human rights in multicultural European societies; 2. Forced migration and human rights violations in 20th century history in Europe ([www.the-unwanted.com](http://www.the-unwanted.com)).

<http://www.network-migration.org>

### National Human Rights Institutions Forum

An international forum for researchers and practitioners in the field of national human rights institutions. At the website of the network you will find: Key global and regional documents, Documentation on the work of global and regional for a, Information on and from national human rights institutions, Bibliography and research materials, Capacity building and training resources.

<http://www.nhri.net>

### Human Rights Education Sources

Compass: Human Rights Education Youth Resources:

<http://eycb.coe.int/compass/>

Democracy and Human Rights Education in Europe:

<http://www.dare-network.org>

Human Rights Education Associates with an online Learning and Resource Centre:

<http://www.hrea.org/>

Human Rights Education of Amnesty International:

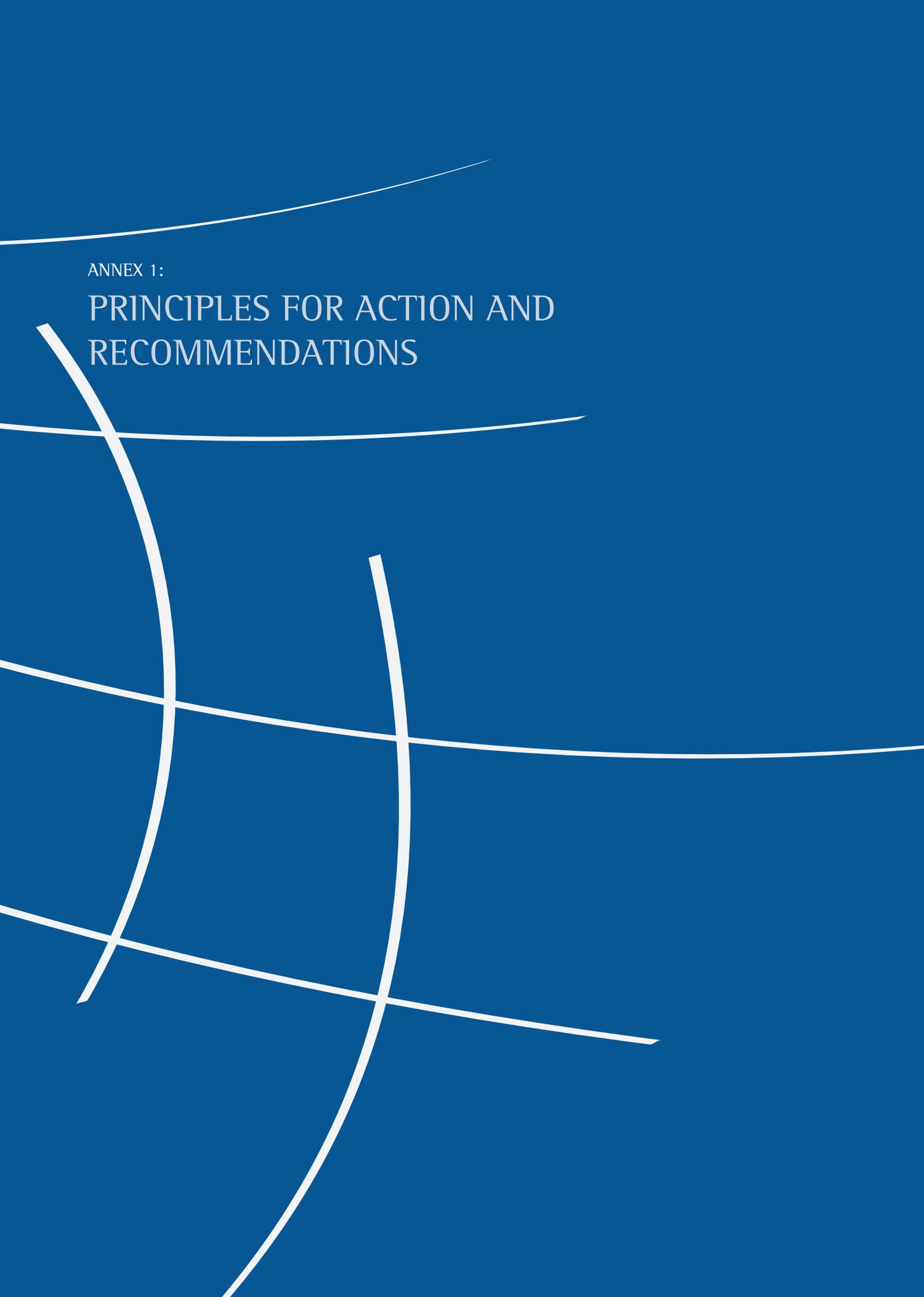
[http://web.amnesty.org/web/web.nsf/pages/hre\\_home](http://web.amnesty.org/web/web.nsf/pages/hre_home)

Vision Human Rights Culture: Human Rights Education Project of Vocational Schools and Further Education Teacher:

<http://www.humanrights.net.ms/>

The People's Movement for Human Rights Education:

[www.pdhre.org/](http://www.pdhre.org/)

The background is a solid blue color. Several white, curved lines of varying thickness and curvature are scattered across the page, creating an abstract, modern design. One prominent line starts near the top left and curves downwards and to the right. Another line starts near the bottom left and curves upwards and to the right. There are also several thinner, more horizontal lines that curve slightly.

ANNEX 1:

# PRINCIPLES FOR ACTION AND RECOMMENDATIONS

## PRINCIPLES OR ACTION AND RECOMMENDATIONS

### GLOBAL COMMISSION ON INTERNATIONAL MIGRATION

#### I. A world of work: Migrants in a globalizing labour market

##### Principle – Migrating out of choice: Migration and the global economy

Women, men and children should be able to realize their potential, meet their needs, exercise their human rights and fulfil their aspirations in their country of origin, and hence migrate out of choice, rather than necessity. Those women and men who migrate and enter the global labour market should be able to do so in a safe and authorized manner, and because they and their skills are valued and needed by the states and societies that receive them.

##### Recommendations

The number of people seeking to migrate from one country and continent to another will increase in the years to come, due to developmental and demographic disparities, as well as differences in the quality of governance. States and other stakeholders must take due account of this trend in the formulation of migration policies.

States and other stakeholders should pursue more realistic and flexible approaches to international migration, based on a recognition of the potential for migrant workers to fill specific gaps in the global labour market.

States and the private sector should consider the option of introducing carefully designed temporary migration programmes as a means of addressing the economic needs of both countries of origin and destination.

The GATS Mode 4 negotiations on the movement of service providers should be brought to a successful conclusion. Given the linkage between international trade and international migration, greater efforts should be made to foster a dialogue between officials and experts dealing with the two issues.

Governments and employers should jointly review current barriers to the mobility of highly educated professionals, with a view to removing those which are unnecessarily hindering economic competitiveness.

Greater efforts should be made to create jobs and sustainable livelihoods in developing countries, so that the citizens of such states do not feel compelled to migrate. Developing countries and the industrialized states should pursue economic policies and implement existing commitments that enable this objective to be achieved.

#### II. Migration and development: Realizing the potential of human mobility economic

##### Principle – Reinforcing economic and developmental impact

The role that migrants play in promoting development and poverty reduction in countries of origin, as well as the contribution they make towards the prosperity of destination countries, should be recognized and reinforced. International migration should become an integral part of national, regional and global strategies for economic growth, in both the developing and developed world.

##### Recommendations

Cooperative relationships between labour-rich and labour-poor countries are required to promote human capital formation and the development of a global pool of professionals. Providing appropriate pay, working conditions and career prospects in order to retain key personnel must be an integral component of such strategies.

Remittances are private money and should not be appropriated by states. Governments and financial institutions should make it easier and cheaper to transfer remittances and thus encourage migrants to remit through formal transfer systems.

Measures to encourage the transfer and investment of remittances must be combined with macro-economic policies in countries of origin that are conducive to economic growth and competitiveness.

Diasporas should be encouraged to promote development by saving and investing in their countries of origin and participating in transnational knowledge networks.

States and international organizations should formulate policies and programmes that maximize the developmental impact of return and circular migration.

### III. The challenge of irregular migration: State sovereignty and human security

#### Principle – Addressing irregular migration

States, exercising their sovereign right to determine who enters and remains on their territory, should fulfil their responsibility and obligation to protect the rights of migrants and to re-admit those citizens who wish or who are obliged to return to their country of origin. In stemming irregular migration, states should actively cooperate with one another, ensuring that their efforts do not jeopardize human rights, including the right of refugees to seek asylum. Governments should consult with employers, trade unions and civil society on this issue.

#### Recommendations

States and other stakeholders should engage in an objective debate about the negative consequences of irregular migration and its prevention.

Border control policies should form part of a long-term approach to the issue of irregular migration that addresses the socio-economic, governance and human rights deficits that prompt people to leave their own country. This approach must be based on interstate dialogue and cooperation.

States should address the conditions that promote irregular migration by providing additional oppor-

tunities for regular migration and by taking action against employers who engage migrants with irregular status.

States should resolve the situation of migrants with irregular status by means of return or regularization.

States must strengthen their efforts to combat the distinct criminal phenomena of migrant smuggling and human trafficking. In both cases, perpetrators must be prosecuted, the demand for exploitative services eradicated and appropriate protection and assistance provided to victims.

In their efforts to stem irregular migration, states must respect their existing obligations under international law towards the human rights of migrants, the institution of asylum and the principles of refugee protection.

### IV. Diversity and cohesion: Migrants in society

#### Principle – Strengthening social cohesion through integration

Migrants and citizens of destination countries should respect their legal obligations and benefit from a mutual process of adaptation and integration that accommodates cultural diversity and fosters social cohesion. The integration process should be actively supported by local and national authorities, employers and members of civil society, and should be based on a commitment to non-discrimination and gender equity. It should also be informed by an objective public, political and media discourse on international migration.

#### Recommendations

While recognizing the right of states to determine their own policies in relation to the situation of migrants in society, all migrants must be able to exercise their fundamental human rights and benefit from minimum labour standards.

Authorized and long-term migrants should be fully integrated in society. The integration process should value social diversity, foster social cohesion and

avert the marginalization of migrant communities. Local and national authorities, employers and members of civil society should work in active partnership with migrants and their associations to promote the integration process. Migrants should be properly informed of their rights and obligations and encouraged to become active citizens in the country to which they have moved.

Particular attention should be given to the empowerment and protection of migrant women, as well as ensuring that they are actively involved in the formulation and implementation of integration policies and programmes. The rights, welfare and educational needs of migrant children should also be fully respected.

While temporary migrants and migrants with irregular status are not usually granted the right to integrate in the society where they are living, their rights should be fully respected and they should be protected against exploitation and abuse.

Those individuals and organizations that have an influence on public opinion must address the issue of international migration in an objective and responsible manner.

#### **V. A principled approach: Laws, norms and human rights**

##### **Principle – Protecting the rights of migrants**

The legal and normative framework affecting international migrants should be strengthened, implemented more effectively and applied in a non-discriminatory manner, so as to protect the human rights and labour standards that should be enjoyed by all migrant women and men. Respecting the provisions of this legal and normative framework, states and other stakeholders must address migration issues in a more consistent and coherent manner.

##### **Recommendations**

States must protect the rights of migrants by strengthening the normative human rights framework affecting international migrants and by

ensuring that its provisions are applied in a non-discriminatory manner. All states must ensure that the principle of state responsibility to protect those on their territory is put into practice, so as to reduce the pressures that induce people to migrate, protect migrants who are in transit and safeguard the human rights of those in destination countries.

Governments and employers must ensure that all migrants are able to benefit from decent work as defined by the ILO and are protected from exploitation and abuse. Special efforts must be made to safeguard the situation of migrant women domestic workers and migrant children.

The human rights component of the UN system should be used more effectively as a means of strengthening the legal and normative framework of international migration and ensuring the protection of migrant rights.

#### **VI. Creating coherence: The governance of international migration**

##### **Principle – Enhancing governance: Coherence, capacity and cooperation**

The governance of international migration should be enhanced by improved coherence and strengthened capacity at the national level; greater consultation and cooperation between states at the regional level, and more effective dialogue and cooperation among governments and between international organizations at the global level. Such efforts must be based on a better appreciation of the close linkages that exist between international migration and development and other key policy issues, including trade, aid, state security, human security and human rights.

##### **Recommendations**

All states should establish coherent national migration policies that are based on agreed objectives, take account of related policy issues and are consistent with international treaty law, including human rights law. Governance at the national level should be effectively coordinated among all concerned

ministries and should also involve consultation with non-state actors.

The international community should support the efforts of states to formulate and implement national migration policies through the contribution of resources, appropriate expertise and training.

Bilateral agreements are a valuable means of addressing migration issues that affect two states. They must always respect the normative framework affecting international migrants and thereby safeguard migrant rights.

Additional efforts are required to ensure that regional consultative processes on migration have worldwide coverage, engage civil society and the private sector, and are not focused solely on migration control. Greater interaction between the different processes is essential given the global nature of migration.

The new willingness of a range of states, institutions and non-governmental stakeholders to take global initiatives on international migration is welcome. The UN General Assembly High-Level Dialogue provides an opportunity for greater interaction and coherence between these initiatives, and to ensure that their momentum is maintained. The ongoing UN reform process provides a window of opportunity to realize this momentum through a revision of current institutional arrangements.

The Commission proposes to the UN Secretary-General the immediate establishment of a high-level inter-institutional group to define the functions and modalities of, and pave the way for, an Inter-agency Global Migration Facility. This Facility should ensure a more coherent and effective institutional response to the opportunities and challenges presented by international migration.

Report of the Global Commission on International Migration, Migration in an interconnected world: New directions for action, October 2005: [www.gcim.org](http://www.gcim.org).



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