Irregular migration, state security and human security

A paper prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration

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September 2005

Introduction

This is a thematic expert report commissioned by the Global Commission on International Migration (GCIM). Its focus is irregular migration. The key points are intended for inclusion in the final report of the Global Commission, and the report is therefore evidence-based and focuses on actionable policy options. It relies on a variety of sources, including recent academic literature, policy statements published by a variety of governments, regional and international organisations, and various statements and papers in the public domain arising from earlier meetings of GCIM. New documents are emerging on an almost daily basis, which is testament to how high on political agendas irregular migration has risen.

The report emphasises that irregular migration is a complex and diverse phenomenon. To provide some clarity the main focus is irregular flows and entries, rather, for example, than the various challenges posed by stocks of irregular migrants such as undocumented work. This focus is in line with the terms of reference provided, and intended to minimise overlap with other thematic expert reports commissioned by GCIM, including those on integration (Hugo 2004) and human rights (Grant 2004).

The report proceeds from the following standpoint: Irregular migration poses very real dilemmas for states, as well as exposing migrants themselves to insecurity and vulnerability. Most states have, nevertheless, failed to manage or control irregular migration effectively or efficiently. What is therefore required are new, more effective and coherent approaches to address the issue of irregular migration, that recognise both the concerns of states in this respect and the need to protect the rights of irregular migrants.

At the same time, it is important to be realistic about expectations. Irregular migration will continue for the foreseeable future, although it may be possible to reduce its scale. One reason is that the forces that determine the scale of international migration are powerful (for example growing disparities in the level of prosperity and human security experienced by different societies) and the ability to modify them is very limited (Crisp and Dessalegne 2002). In addition, even if there is momentum towards a degree of liberalization in certain parts of the world (for example to address the so-called demographic deficit), regular migration channels will not be opened on a scale sufficient to satisfy total demand to move.

The limited scope for radical new approaches also needs to be acknowledged. States have the right to control their borders, and it would undermine the credibility of GCIM to suggest otherwise. In certain parts of the world, policy on irregular migration is driven by the perception (whether accurate or not) that countries risk being 'overwhelmed' by large numbers of irregular migrants who embody threat to states and society. Control measures introduced by states are therefore unlikely to be dismantled wholesale. Nevertheless, states are increasingly willing to acknowledge that current policy approaches have had only limited success, and many are willing at least to consider new alternatives.

In addition, divergences between the interests and policies of various stakeholders exist and will continue, although it may be possible to narrow them. The most obvious divergence is between the interests of migrants and states trying to control

their entry. There are, in addition, also divergences between different government departments within states; between governments, NGOs and civil society, and between governments and other stakeholders in origin, transit and destination countries.

This report has seven main sections. First, the key dilemmas framing policy-making on irregular migration are outlined. Second, irregular migration is defined and appropriate terminology and data sources considered. The next section provides a brief overview of recent global trends in relation to irregular migration. The fourth section examines the ways and extent to which irregular migration constitutes a real or perceived threat to state security and human security. Next, the contribution of non-state actors to the development of policy in this arena is considered. The penultimate section examines policies and practices concerning the return of unauthorised migrants. Finally, alternative policy approaches are explored.

Key dilemmas

As alluded to in the Introduction, most states have failed significantly to reduce irregular migration. A typology of state policies, and an analysis of why they have often fallen short of their intended outcomes, is provided in Section Six below. The purpose of this section, in contrast, is to outline some of the key dilemmas that make policy-making so difficult in this area.

It is important, first, clearly to state that to recognise the dilemmas facing states is not to accept any abrogation on their part of responsibility to confront these dilemmas. To ignore irregular migration because it poses difficult challenges is not an option, for a whole variety of reasons that are detailed through this report. At the same time, confronting these dilemmas must fully acknowledge the perspectives of migrants themselves and respect their fundamental rights.

Political will

Politically-sensitive though it may be to acknowledge, and difficult though it may be to evidence, there is a consensus among many commentators that certain states lack the political will to address irregular migration. This applies in particular to states in certain countries of origin. Irregular migration can be perceived as benefiting some countries of origin – for example by removing a labour surplus and providing a source of remittances and overseas investment (Koser and Van Hear 2003).

Addressing this issue may be sensitive, but it needs to be addressed. Irregular migration cannot be managed on a unilateral basis by individual destination states, but requires meaningful cooperation between countries of origin, transit and destination. As detailed in Section Seven below, certain regional processes appear to have formed the basis for the required dialogue and action.

In certain parts of the world, it may be that the changing geography of irregular migration provides incentive enough for states to act, as their countries transform from countries of origin to countries that also receive irregular migrants. This would

appear to be the case in Central and Eastern Europe, and in the Maghreb countries of Northern Africa.

Labour market demands

There is no doubt that most receiving states, especially in the industrialised world, do have the political will to act, for reasons outlined in Section Five below. It is estimated, for example, that in 2002 alone Canada, Germany, the Netherlands, the United Kingdom (UK) and the United States (USA) together spent about US$17 billion in trying to respond to the problem of irregular migration (Martin 2003).

What is undeniable, nevertheless, is that from an economic perspective irregular migration is actually quite functional for many destination states. As a result of deregulation, liberalisation and flexibilisation, there is demand for various forms of unskilled and semi-skilled labour employed under precarious conditions. Irregular migrants provide a cheap source of labour and are often willing to work in sectors in which regular migrants and nationals are not. Unless its economic rationale is properly understood, efforts to manage irregular migration are unlikely to succeed.

State sovereignty and human rights

Whether or not irregular migration actually threatens state sovereignty is a moot point, as discussed in Section Five below, but what is incontrovertible is that integral to the concept of sovereignty is the right of states to control their borders. But the respect of human rights is an equally important prerogative for states. One of the key dilemmas for policy-making in the realm of irregular migration is that at times these two principles are difficult to reconcile. This is particularly the case for asylum seekers and refugees who move in an irregular manner. The challenge for states is to limit access to their territories without undermining the right to seek and enjoy protection.

Implications for GCIM 1

> In making recommendations on policy towards irregular migration, GCIM needs to be aware of and acknowledge the dilemmas that frame policy-making in this arena.

Concepts and data

Analyses of irregular migration are confronted by confused terminology, unclear concepts and very inadequate data. In the highly politicised and emotive current climate, it is important to be as precise and consistent as possible in the use of language, and as accurate as possible with numbers.

Terminology

This report uses the terms 'irregular' migration and 'irregular' migrant(s). The term 'irregular' is conceptually problematic, as expanded in the following subsection. It is, nevertheless, considered preferable to the other term most commonly used in this context - 'illegal'. The use of the term 'illegal' can be criticised in at least three ways. First is its connotation with criminality. Most irregular migrants are not criminals. This has been emphasised by the UN Special Rapporteur on the Rights of Non-Citizens, whose final report recommends that: 'Immigrants…even those who are in a country illegally and whose claims are not considered valid by the authorities, should not be treated as criminals' (E/CN. 4/Sub. 2/2003/23 Para 29). Second, defining persons as 'illegal' can also be regarded as denying their humanity (Ochoa-Llidó 2004). It can easily be forgotten that such migrants are human beings who possess fundamental rights whatever their status (CDMG (2004) 29). Third, and of particular concern to the Office of the United Nations High Commissioner on Refugees (UNHCR), is the possibility that labelling as 'illegal' asylum seekers who find themselves in an irregular situation may further jeopardise their asylum claims.

The two other terms that are often used in this context are 'undocumented' and 'unauthorised'. The former is avoided in this report because of its ambiguity. It is sometimes used to denote migrants who have not been documented (or recorded), and sometimes to describe migrants without documents (passports etc.). Neither situation applies to all irregular migrants, yet 'undocumented' is often used to cover them all. Similarly, not all irregular migrants are necessarily unauthorised, and so this term too is often used incorrectly. A final term worth referring to is 'irregular secondary movements', which is used specifically in the context of asylum seekers and refugees (Box 1).

Box 1 'Irregular secondary movements'

Irregular secondary movements refer specifically to asylum seekers and refugees who move in an irregular fashion from a country where they have already applied for asylum or been granted refugee status. The causes of secondary movements are manifold and include a lack of durable solutions, limited capacity to host refugees and provide effective protection for protracted periods of time, as well as lack of access to legal migration opportunities.

Source: Lisbon Expert Roundtable (2002)

While therefore acknowledging the conceptual problems associated with the term 'irregular', it is nevertheless considered preferable to the other terms commonly used in this context, and as good as any alternative. Another reason why it is recommended that GCIM should use this as opposed to other terms in its final report is that it used by most organisations with a competence in migration, including the Council of Europe, International Labour Organisation (ILO), International Organisation for Migration (IOM), the Organisation for Security and Cooperation in Europe (OSCE) and UNHCR. Indeed the European Union (EU) is the only significant international actor that persists in using the term 'illegal migration' (CDMG (2004) 29). It makes sense for GCIM to use terminology and language that will be easily understood by most of the audience for its final report, rather than adding confusion by trying to introduce a new concept.

Implications for GCIM 2

> In its final report and all public consultations, GCIM should use the term 'irregular' (in the appropriate context). It should also actively encourage the consistent and accurate use of language in this context.

Concepts

Irregular migration is a complex and diverse concept that requires careful clarification. First, it is important to distinguish flows from stocks (COM 6621/1/02. REV 1). They give rise to quite separate challenges and policy responses: Irregular flows pose challenges of control and management, as well as concern for the safety and dignity of migrants on the move. In contrast, the political responses to irregular stocks tend to focus either on channels for their regularisation or their removal.

Second, it is important to recognise that there are a variety of routes into irregularity (Uehling 2004). Irregular migration includes people who enter a country without the proper authority (for example through clandestine entry and entry with fraudulent documents); people who remain in a country in contravention of their authority (for example by staying after the expiry of a visa or work permit, through sham marriages or fake adoptions, as bogus students or fraudulently self-employed); people moved by migrant smugglers or human trafficking, and those who deliberately abuse the asylum system.

Third, it is important to separate out asylum from the broader debate on irregular migration. Asylum seekers and refugees may resort to migrant smugglers, and they may undertake irregular secondary moves. At the same time, people not in need of international protection may resort to asylum channels in the hope of gaining temporary or permanent stay abroad. As a result of these sorts of convergences, the line between irregular migrants and asylum seekers and refugees has become increasingly blurred in the media and the public mind, as has the distinction between migration control and refugee protection. What is important to reinforce, however, is that asylum seekers and refugees do not lose their protection needs and entitlements just because they are part of a mixed flow. What changes is the context in which protection and solutions have to be realised (UNHCR 2004a).

A fourth source of confusion is the distinction between migrant smuggling and human trafficking. Until about 2000, these terms were used more or less interchangeably (IOM 2000). As a result of two United Nations (UN) protocols, however, a clear distinction between the two processes has now been established (Box 2).

Box 2 The distinction between migrant smuggling and human trafficking

Trafficking of human beings is defined as: 'the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat, or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation'. The *smuggling of migrants* is defined as: 'The procurement, in order to obtain, directly or indirectly a financial or other material benefit, of the illegal entry of a person into a state Party of which the person is not a national or a permanent resident'

Sources: UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000); UN Protocol against the Smuggling of Migrants by Land, Sea and Air (2000)

A final conceptual complexity arises because migrants' status can change – often rapidly. A few examples include: A migrant can enter a country in an irregular fashion, but then regularise their status, for example by applying for asylum or entering regularisation programmes. Conversely, a migrant can enter regularly then become irregular when they work without a work permit or overstay a visa. Asylum seekers can become irregular migrants when their application is rejected and they stay in the country of application without authority. And migrant smuggling can transform into human trafficking (Koser 2000).

Data problems

Data on irregular migration – including both numbers and also demographic and socio-economic profiles - are scarce, often unreliable and usually incomparable between states and over time. The types of conceptual problems covered in the preceding subsection are one reason why: Different States, for example, define irregular migrants in different ways, and migrants can shift overnight between regular and irregular statuses.

There is also a series of more practical problems. Some irregular migrants can be recorded – such as asylum seekers whose applications are rejected, or those apprehended at borders without proper documentation. Most estimates of irregular migration simply present data recorded from sources like these. The problem is that recorded irregular migration represents only a proportion of the totality of irregular migration – and estimates of what that proportion is are largely guesswork and vary widely. Most sources agree that the majority of irregular migrants are not recorded (Clarke *et al*. 2003), and this is probably unsurprising given the desire of many of these migrants not to be identified by the authorities for fear of prosecution or deportation.

Another problem is access to data – however limited it may be - that has been collected. In many states such data are collected by enforcement agencies and are not made publicly available. Alternatively, information and data that may establish a person's irregular status are frequently dispersed between different agencies such as government departments, the police and employment offices, making cooperation and access to data difficult (Pinkerton *et al*. 2004).

International cooperation on data collection is even more problematic. There is no authoritative source on global trends and numbers in irregular migration, and the available sources are not comprehensive: The Organisation for Economic Cooperation and Development (OECD), through its SOPEMI initiative, for example, collates data from various industrialised nations, which usually include estimates on irregular migration - although this is not the focus. Similarly, the UN Statistics Division collects data on global trends that include estimates on irregular migration. And IOM regularly publishes data on human trafficking, which comprises only a proportion of all irregular migration.

A question that therefore arises is what recommendations GCIM should make in its final report regarding data collection. In the opinion of this author, a new institution for the collation of national data is not the way forward, as this would replicate efforts already underway elsewhere (OECD, UN Statistics Division). Instead, GCIM might more usefully support strengthening the mandate of the UN Statistics Division to collect data directly from national authorities - a need that is identified as pressing in the recent publication of the UN Department of Economic and Social Affairs on International Migration (DESA 2004).

At a national level, GCIM might also encourage more open access to data. It is striking to note, for example, that the UK Home Office only recently published a report it commissioned over two years ago on the subject of 'Sizing the Illegal Population' (Pinkerton *et al*. 2004) after several NGOs threatened to invoke the Freedom of Information Act. The report does not even include a final estimate of the size of the UK's 'illegal' population. It is hard to see how reasonable debate can be encouraged within society if governments are unwilling to engage.

Implications for GCIM 3

Considerable efforts are already made to collect data on irregular migration at national, regional and global levels, and there appears no reason why GCIM should recommend any further infrastructure for collating available data. Where the Commission can play a role, however, is in supporting the strengthening of the mandate of the UN Statistics Division to collect data, and at a national level in encouraging more open access to available data.

Global trends

Presenting data on irregular migration is something of a double-edged sword. On the one hand the numbers are undeniably significant, and their presentation runs the risk of fuelling further public and media overreactions to the phenomenon. On the other hand, if these data are put in their proper context, then irregular migration is not necessarily the overwhelming problem it is so often perceived to be.

Recent estimates

Most estimates of irregular movements are at the national level. These are scattered and largely incomparable, and given the policy-oriented nature of this report it is not considered worth collating them in detail. Instead, some recent estimates of the scale of irregular movements at a wider level are provided in Table 1. The discrepancies are worth noting, and probably can be accounted for by the types of reasons covered in the preceding section. Recent estimates of the global scale of irregular migration, for example, vary by a factor of ten and range from three million to 30 million; while estimates of its scale in the EU range from 400,000 to 830,000.

Table 1 Recent estimates of irregular movements

Source	Year	Scale	Region	Comments
ICMPD	2004	2 - 4. 5 million	Global	Estimates that between one third and one half of the world's 6-9 million migrants per year are irregular migrants
Council of Europe	2002	30 million	Global	Estimates that every year 30 million people cross an international border illegally
ICMPD	2004	830,000	EU 15	Estimate of irregular entrants per year
IOM	2003	500,000	EU 15	Estimate of irregular entrants per year
Council of Europe	2002	400,000 – 500,000	EU 15	Estimate of irregular entrants per year

Sources: COM 8728 (2000); IOM (2003); ICMPD (2004a); Widgren (2004)

An alternative measure of irregular migration that is increasingly used is fiscal, including for example estimates that migrant smuggling and human trafficking are businesses that turnover over ten billion USD per year (IOM 2003).

Irregular migration in context

Perhaps more important than speculating on numbers is to place irregular migration in its proper context. First, the political significance of irregular migration far outweighs its numerical significance. Even the most extreme estimates, for example, indicate that irregular migration accounts for no more than 50 percent of all migration worldwide, and in the EU it probably accounts for no more than ten percent.

Second, it is important to emphasise that irregular migration is not just a South-North issue. There are very few estimates of the scale of either irregular flows or stocks in the Developing World, but the majority of irregular migration on a global scale certainly takes place between countries in the Developing World. According to some estimates, for example, there are several million irregular migrants in South and South East Asia, and between three and five million in South Africa (DESA 2004).

Third, irregular stocks are almost certainly far greater that irregular flows. There are few estimates of stocks of irregular migrants – no EU member state, for example, publishes official estimates of the size of its irregular population (MPI 2004a; Pinkerton *et al*. 2004). There is no doubt, nevertheless, that in most countries stocks

far outnumber new arrivals. It was estimated in 2003, for example, that there were 12 million irregular migrants in the USA (IOM 2003). In Australia in 1998-99, 3,032 irregular arrivals compared with 13,485 people who overstayed their visas (David 2000).

Fourth, most migration is regular. The example of the UK is illustrative. Estimates for the number of irregular migrants entering the UK vary widely. Even the highest estimates are relatively small in comparison with regular migration to the UK. For example, 120,000 foreign students arrive each year and another 200,000 people enter legitimately to work (Clarke *et al*. 2003).

Implications for GCIM 4

GCIM should acknowledge data inadequacies in its final report, place irregular migration in its proper context and encourage other reporting bodies (including the media) to do the same.

Irregular migration, state security and human security

In political and media discourses, irregular migration is often described as constituting a threat to state sovereignty. Put simply, the argument is that states have a sovereign right to control who crosses their borders, and that by undermining that control irregular migrants therefore threaten sovereignty. It follows that stopping irregular migration is fundamental to reasserting full sovereignty. In certain, more extreme discourses, irregular migration has also been perceived as a threat to state security (Koslowski 2004). Specifically, irregular migration and asylum, it has been suggested, may provide channels for potential terrorists to enter other countries.

Given the sensitivity of the current debate, extremely careful analysis is required before supporting such potentially incendiary conclusions. The argument developed below is that while irregular migration may in certain circumstances threaten state sovereignty or security, focusing exclusively on this debate has tended to overlook other equally pressing threats associated with irregular migration – for states, societies and importantly migrants themselves.

Misperceptions

That irregular migrants threaten either state sovereignty or security is often a misperception. It needs to be corrected through careful and objective analysis and presentation of the available evidence, and concerted dialogue between governments, the media and citizenry. The following arguments need to be made more strongly. First, numbers matter. Wrapped up in the argument that irregular migration threatens state sovereignty is the perception that states are, or risk, being 'flooded' or overwhelmed by enormous numbers of irregular migrants. In reality, as discussed in the preceding section, the political significance of irregular migration generally outweighs its numerical significance. Irregular migration does occur in significant

numbers, but in most countries it represents a fairly small proportion of total migration.

Second, irregular migrants are often imputed with tainted intentions without any substantiation (Uehling 2004). Two particularly frequent assumptions are that irregular migrants participate in illegal activities and that they are associated with the spread of infectious diseases, and especially HIV/AIDS. Both these assumptions are gross generalisations. Some irregular migrants (and asylum seekers) are criminals and some carry infectious diseases: but most do not. Misrepresenting the evidence criminalises and demonises all irregular migrants. It can encourage them to remain underground, and in the case of asylum seekers not to lodge applications. It also diverts attention from those irregular migrants who actually are criminals and should be prosecuted, and those who are diseased and should be treated.

Other 'threats'

Another problem about statements as extreme as irregular migrants threaten state sovereignty and security, is that debate tends to be become polarised. The 'knee-jerk' reaction of liberals, civil rights groups and asylum advocates has been to deny any wrongdoing on the part of irregular migrants. What is needed is objective debate that disregards both extremes and deals with realities as opposed to perceptions and political posturing. 'Threat' may be too loaded and strong a term, but it would be unrealistic, for example, not to admit that there can be real problems associated with irregular migration – especially when it takes place at a large scale.

In specifying the nature of that 'threat', however, it is not always easy to disentangle the implications of irregular migration from those of regular migration. Migration in general can threaten economic stability by increasing employment competition; undermine social stability where it is combined with the rise of xenophobia and lack of integration, and be associated with multiple challenges associated with increasing religious, cultural and ethnic heterogeneity (Kicinger 2004). But these challenges arise as much from regular as they do irregular migration, as detailed in another GCIM expert report (Hugo 2004).

Is it possible, then, to identify challenges or threats specifically associated with irregular migration? A paper commissioned for the GCIM Global Migration Perspectives series suggests that irregular migrants can be associated with different health risks as compared with regular migrants – resulting for example from long periods spent in transit (MacPherson and Gushulak 2004). In a written statement for the GCIM Regional Hearing for Europe, the Platform for International Cooperation on Undocumented Migration (PICUM) detailed other threats associated specifically with irregular migration. It can, for example, be associated with criminal activities – on the part of migrant smugglers and human traffickers, and also migrants themselves who engage in 'survival crimes' (PICUM 2004).

Irregular migration also impacts on the ability of governments to expand regular migration channels. The importance for a government to be perceived by citizens to be in control cannot be underestimated. If irregular migration exists, it is not unreasonable for voters to ask why even more migration is required. And if

governments cannot control irregular migration, why should anyone believe they can regulate any other form of migration?

Human security

Another aspect that is often lost in current debates about irregular migration is that it also has adverse consequences for migrants themselves. This is most obviously the case for the victims of trafficking, who are usually women or children, and are often exploited in domestic work or the sex industry. Such can be the level of abuse of their human rights, that some commentators have compared contemporary human trafficking with the slave trade (O'Neill Richard 2000; Ryf 2004).

One criticism of the UN Protocols on Smuggling and Trafficking (see Box 3. 1) is that they emphasise the human rights abuses associated with trafficking but underplay those that can arise as a result of migrant smuggling (Koser 2001). Research on the smuggling of asylum seekers in particular has demonstrated that smuggling can also expose migrants to sources of economic, social and political vulnerability (Koser 1998).

It is not just the process of moving in an irregular fashion that can jeopardise migrants, but also their irregular status. Irregular migrants often work in precarious and dangerous jobs; they are excluded from health, education and other social welfare provisions, and they can be subject to exploitation in the housing market (le Voy *et al*. 2004). Their status often makes them unwilling to engage with authorities, and this is a particular concern where they may have a valid asylum claim.

Implications for GCIM 5

The debate on irregular migration needs to be better informed. Irregular migrants can threaten state sovereignty or security, but they are more often associated with other challenges and threats. The adverse consequences for irregular migrants themselves also need to be emphasised.

Reconciling state security and human security

In her report on the human rights of migrants, the Special Rapporteur of the Commission on Human Rights notes that: 'In exercising their sovereign right to regulate the entry, stay and movement of migrants and their policy on immigration, asylum and refuge, States should bear in mind the international obligations they have assumed in the area of human rights. In other words, States party to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child must guarantee to anyone who is in their territory and subject to their jurisdiction the rights recognised in those legal instruments. ' (UNGA 2004: 11).

She goes on, however, to observe that: 'Despite the fact that these basic rules of human rights are applicable to non-citizens, the actual circumstances of migrants,

particularly those with irregular administrative status, do not match the ideas reflected in the aforementioned instruments (UNGA 2004: 11).

Two points arise that are worth emphasising. First, basic rights extend to all migrants, including irregular migrants. These are enshrined not just in the instruments cited by the Special Rapporteur, but also the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Even when states refer to the public safety or order of a country, there are also a number of non-derogable rights applicable to all human beings, including non-discrimination on the basis of race, colour, sex, language, religion or social origin; the right to life; the prohibition of torture, slavery and servitude; the right to recognition before the law, and the freedom of thought, conscience and religion.

But second, in attempting to reconcile state security and human security, states have often prioritised the former above the latter. States need to be encouraged to ratify the relevant covenants and conventions where they have not. But equally important, it is essential to ensure the proper application and interpretation of these provisions by signatories, in order to guarantee that the rights and fundamental freedoms of migrants are respected in practice.

Implications for GCIM 6

> States around the world should be encouraged to ratify, and then implement, the range of covenants and conventions that cover the basic rights of all migrants.

State policies

The first part of this section provides a typology of the most common policies adopted to try to address irregular migration. As already alluded to at the beginning of this report, often these policies have been at best only partially successful, and the reasons why are elaborated in the next part.

To try to reflect the global perspective of GCIM, three specific case studies are then considered in turn. The first is Australia, whose policy approach to irregular migration has proved uniquely effective, if heavily criticised. The extent to which lessons might be learned by other destination states is considered. The second is South Africa, which is included as an example of a Developing World destination for irregular migrants where a policy framework is evolving. The final case study is China, which is a country of origin for a significant number of irregular migrants, and is developing policies to try to reduce outflows.

A typology of state policies

State policies in relation to the control of irregular migration have evolved since about the mid-1990s, and overwhelmingly have been control-oriented. They have tightened even more in the aftermath of 9/11. A working typology of these is provided in

Figure 1. The typology distinguishes policies at various migration stages: pre-frontier, border and post-entry. Return is also an integral part of most states' approaches, and is considered in greater detail in Section 8 below. It is not the purpose of this section to describe these policies in detail, but it is worth noting that significant controversy surrounds several, including liaison officers, regional processing, detention and dispersal (see for example Schuster 2004).

Alternative categorisations are also possible. Some of these policies, for example, aim to reduce the scale of irregular migration (border controls) while others aim to affect the geography and direction of irregular migration (visa requirements). Some have a direct impact on irregular migration (carrier sanctions) while others have an indirect impact (restrictions on access to welfare, for example, are partly intended to make a particular country a less attractive option for prospective migrants). Although irregular migration is still largely governed on a unilateral basis, approaches in most receiving states have converged around some combination of these policies.

Figure 1 A typology of state policy instruments to address irregular migration

Pre-frontier measures
• Visa requirements
• Pre-boarding documentation checks in countries of origin and transit
• Information campaigns
• Carrier sanctions
• Liaison officers
• Interdiction and interception
• Regional processing
• Punitive measures against human smugglers
Measures relating to border management
• Strengthened physical borders (fences, electronic surveillance)
• Strengthened border controls and inspections
• Documentation with enhanced security features
• Biometric data
• Training border guards
Post-entry measures
• Detention
• Workplace inspections
• Internal ID inspections
• Accelerated procedures
• Employer sanctions
• Dispersal and restrictions on mobility
• Restrictions on the right to work, access to housing, legal advice and social welfare benefits

The impact and effectiveness of control policies

There is a growing consensus that control policies alone cannot prevent irregular migration (Caritas Europa *et al*. 2004, Uehling 2004). This is evidenced by the fact that in many states irregular entries have increased despite the introduction of such

policies, and where they have fallen it has normally not been to acceptable levels (MPI 2004a).

There are a series of reasons why such policies have failed to achieve their goals (Castles 2004). First, and as alluded to in the Introduction to this report, some of the factors shaping migration are largely beyond the control of direct state intervention, such as globalisation, conflict and widening economic disparities between different parts of the world. Control policies, in other words, do not change the fundamental reasons for irregular migration (Zetter *et al.* 2003).

A second reason is that once a migration becomes established, its momentum can be very hard to stop. In part this is a result of social networks and chain migration (Boyd, 1989; Gurak and Caces 1992, Koser 1997). In part it is because a multi-billion dollar migration industry has evolved that has a vested interest in migration continuing. This industry has both a legitimate aspect – including travel agents, recruitment agents, and lawyers, and an illegitimate aspect, most obviously including migrant smugglers and human traffickers (Salt and Stein 1998).

A third reason is that control policies often have unintended consequences. Although the nature of the linkage is more complex that many people assume (Koser 2000), most commentators agree, for example, that one consequence of control policies has probably been to fuel the growth in migrant smuggling. Even where smugglers are not involved, control policies have often pushed migrants to more dangerous and complicated ways of crossing borders and remaining illegally (MPI 2004a).

In this respect, there have been particular concerns about the impacts of control policies on asylum seekers. It is increasingly the case that asylum policies are being developed as a subset of migration policies, rather than part of a refugee policy. As a result many asylum policies are becoming control-oriented and losing the protection focus of refugee policies (UNHCR 2004a). Besides some justifiable moral outrage that people with a genuine claim on asylum are often left with no alternative but to turn to migrant smugglers, asylum advocates are also concerned that some asylum claims may be jeopardised as asylum seekers become inextricably linked in the minds of the public, politicians and civil servants alike with irregular migrants.

Australia

Australia stands out as a country which has effectively reduced arrivals of irregular migrants (although there is still a problem of regular migrants who overstay). Box 2 summarises the policy initiatives that have been combined to such effect.

Box 2 Australia

- legislation – targeting slavery, sexual servitude and deceptive recruiting; organised migrant smuggling; domestic violence against spouses; and organised crime
- combating illegal work
- law enforcement – including intelligence gathering, training, international liaison, coastal surveillance
- international cooperation – through full participation in regional processes and by signing relevant international instruments
- economic assistance for countries or regions that are the source of illegal migrants – including education, targeted economic development and projects for the victims of trafficking
- research and data collection
- services for the victims of trafficking
- education

Source: David (2000)

To what extent are these policies transferable? First, it is important to recognise that some of Australia's specific policies – especially those targeted on asylum seekers - have confronted vehement criticism, and might well face such opposition from civil society that they simply could not be introduced elsewhere. A second, associated point is that certain of these policies would be difficult to implement in European countries in particular, where they might risk causing tension among ethnic communities. Third, even if they were transferred successfully, it may well be that they would not be as effective elsewhere as they have been in Australia because of Australia's unique geographical situation.

Rather than focus on specific policies, therefore, it might be more useful to draw out some of the hallmarks that characterise the policy approach as whole. First, it does not rely solely on short-term, control measures, but also includes more liberal and long-term approaches such as a focus on education and development. Second, it does not over-rely on technological 'fixes', including in addition for example research and documentation. Third, it does not rely on a unilateral approach, instead promoting regional dialogue and partnerships.

Implications for GCIM 7

In some countries policies towards irregular migration have proved effective. These approaches should be inventorised, and their lessons applied in other countries as appropriate.

South Africa

South Africa is included as an example of a Developing World destination country where a policy framework is being developed. Its main characteristics are

summarised in Box 3. It is probably too soon to assess the impact of this framework, as it is still being developed and implemented. Irregular migrants do at present, nevertheless, continue to arrive in South Africa on a considerable scale. And looking to the future, it is worth observing that its overall character is quite different from that adopted in Australia – it depends largely on restrictive, technical and unilateral responses.

Box 3 South Africa

- strengthened physical barriers - a computerised travellers' database operating at all ports of entry that verifies the authenticity of visas - introduction of 'carrier sanctions' - a pool of fingerprints of citizens, permanent residents, asylum seekers and deportees that have facilitated the detection of multiple identities, fraudulently obtained documentation and unauthorised entry - greater emphasis on inspection of premises and service provides known to accommodate undocumented migrants, along with increased rate of prosecution of employers of undocumented migrants - proactive engagement with neighbouring states, regional approach, bi-lateral meetings with neighbouring states

Source: Gilder (2004)

China

There is only very limited scope to comment on state policies targeted on reducing the outflow rather than arrival of irregular migrants. One reason is that most origin countries have not developed policies – in part because they may lack the political will to stop migration, but also because of financial and infrastructural constraints. Another reason is that even where policies do exist, information and data are largely unavailable. Box 4 therefore provides a brief overview only of policy developments in China.

Box 4 China

- strengthened laws covering the control of irregular migration - amendment of the passport law - production of documents with new security measures and stronger IT applications - information campaigns - detention facilities - establishment of an inter-ministry Joint Committee for Anti-Illegal Migration - establishment of a marine police team - bilateral cooperation with 40 countries of destination incorporating technical cooperation and the exchange of liaison officers

Source: Omelaniuk (2004)

Inter-state cooperation

The preceding section focused on state policies. This section, in contrast, focuses on how states have cooperated in formulation policies on irregular migration. It distinguishes regional approaches, regional intergovernmental organisations, regional consultative processes and international approaches. Greater detail on these initiatives and their contribution to international migration policy as a whole is provided in UNDESA's recent report on international migration (UNDESA 2004) and in an overview by IOM (2003b). In contrast, the focus here is on their roles in the realm of irregular migration specifically. The final part of this section briefly highlights some of the contributions non-governmental organisations (NGOs) have made.

Regional approaches

Regional approaches to migration have tended to emerge from economic unions, and their focus has therefore been the free movement of workers within the region. A corollary of free movement within a region is controlling immigration from outside the region, and this is where regional approaches can apply themselves to irregular migration.

Globally, different economic unions can be considered to be at different stages in this sequence. In Africa, the main unions are the Economic Community of West African States (ECOWAS), the Common Market for Eastern and Southern Africa (COMESA) and the Central African Economic and Monetary Community (CEMAC) (UNDESA 2004). In each of these economic integration has been limited, the free movement of workers has yet to be established, and therefore none is yet specifically concerned with controlling regional borders (Adepoju 2004). Elsewhere, the Council of Arab Economic Unity, the Asia-Pacific Economic Cooperation, the Andean Community, the Southern Common Market (MERCOSUR) and the North American Free Trade Agreement (NAFTA) all have provisions for free movement of workers, but none has yet adopted a regional approach to controlling external borders.

The sequence has been most fully realised in Europe. Free movement of both workers and citizens has been established across almost the entire European Union (it is also being phased in for the new accession states), and significant progress is being made towards a common policy on asylum and immigration. Key elements include partnerships with countries of origin, a common asylum system, and a series of legislative, operation and financial measures targeted on irregular migration.

Regional intergovernmental organisations

In Europe there are three principal intergovernmental organisations with a competence in migration. The Council of Europe, through its European Committee on Migration – has produced a series of action plans, recommendations, guidelines and principles on a range of migration-related issues including irregular migration. The International Centre for Migration Policy Development (ICMPD) serves as the secretariat for the Budapest Process, one of the goals of which is the harmonization of control mechanisms. The Organisation for Security and Cooperation in Europe

(OSCE), finally, provides training for border guards, assists in the development of migration legislation and coordinates activities among various government agencies.

In Africa, the African Union (AU) replaced the Organisation of African Unity (OAU) in 2000, and its mandate includes discussion of migration competency beyond refugees. In Asia, the Association of Southeast Asian Nations (ASEAN) adopted the Plan of Action on Immigration Matters in 2000. This provides an institutional framework for cooperation on international migration. South Asian Association for Regional Cooperation (SAARC), meanwhile, has a particular focus on the trafficking of women and children within the region. Finally in the Americas, the Organisation of American States (OAS) acts as a legal framework for governments to cooperate on education, justice, security and other related issues, including migration (UNDESA 2004).

Regional consultative processes

In recent years there has been a proliferation of so-called regional consultative processes. One of their advantages is that they are regionally-based, and thus bring together governments which tend to be affected - albeit from different perspectives - by similar migration issues. Another is that they are informal, and thus promote dialogue and an exchange of information (Hansen 2004). Their principal disadvantage is that their conclusions and recommendations are non-binding. In many cases it is probably too early to provide an assessment of their contribution, although the Puebla Process has been singled out as an example of a successful regional consultative process, with comprehensive, action-oriented approaches (IOM 2003b).

In Europe, processes of relevance for international and irregular migration include the Intergovernmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC), the Commonwealth of Independent States (CIS) Regional Conference (1996), the Budapest Process, the Berne Initiative and the 'Five plus Five' forum for dialogue.

In Africa the two main consultative processes involve the countries of Eastern, Middle and Southern Africa (MIDSA) and those of Western Africa (MIDWA). The latter is concerned in particular with human trafficking. In Asia there are: the Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants (APC) and the Manila Process for countries of Eastern and South-Eastern Asia. There processes were strengthened by the ministerial-level International Symposium on Migration, which led to the adoption of the Bangkok Declaration on Irregular Migration (1999). The Bali Ministerial Conference on People-Smuggling, Trafficking in Persons and Related Transnational Crime (2002) has a more extended regional coverage. Finally in the Americas, the 'Puebla Process' allows regular consultations between governments of Central and North America; while the Lima Declaration for countries of South America includes a focus on combating human trafficking.

It is worth reiterating that with the possible exception of the 'Puebla Process', these initiatives have not had a demonstrable impact on policy. They are largely non-

binding on states, and their recommendations have often been ignored. A continuing challenge is therefore properly to harness the potential of such initiatives.

Implications for GCIM 8

> There is a wide spectrum of regional initiatives with direct and indirect relevance to the management of irregular migration. More are not needed. What GCIM could instead usefully promote is the activities of those that exist, and more importantly a framework for translating their recommendations into positive policy outcomes.

International approaches

While states exert a sovereign right to protect their own national interests, they may voluntarily limit their sovereignty by entering into binding international commitments. The key United Nations (UN) legal instruments pertaining to international migration are the Universal Declaration of Human Rights (entered into force 1948), the International Covenant on Civil and Political Rights (1976), the International Covenant on Economic, Social and Cultural Rights (1976), the International Convention on the Elimination of All Forms of Racial Discrimination (1969), the Convention on the Elimination on All Forms of Discrimination against Women (1981) and the Convention on the Rights of the Child (1990). There are also a series of legal instruments more specifically relevant to international migration – covering refugees (1951), migrant smuggling (2000) and human trafficking (2000).

Of particular relevance for irregular migration is the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (1990), which extends to irregular as well as regular migrant workers. It was not ratified by enough states to enter into force until July 2003, and there were still only 27 State Parties to the Convention as of 28 September 2004 (Gencianos 2004).

Another GCIM expert report (Martin 2004) is more concerned than this one with the ratification and implementation of international instruments, but because of its direct relevance to irregular migrants it is worth briefly rehearsing some of the reasons why states have been so reluctant to ratify the 1990 Convention. In the case of origin countries, it has been argued, reluctance has arisen from a lack of understanding of the Convention and its implications, from the expense of ratification, and from a concern about losing overseas labour markets and remittances. In some destination countries the Convention has been considered inconsistent with national laws and regulations, and to duplicate existing rights. There is also reluctance to yield sovereign rights over the control of irregular workers (Iredale and Piper 2003).

Non-state actors

This report cannot possibly do justice to the wide range of non-state actors, especially NGOs and elements of civil society, concerned with various aspects of irregular migration. A number of general comments are nevertheless worth making. First, very few NGOs are specifically and exclusively concerned with irregular migration.

Some include the topic as part of a wider remit on international migration; whereas others are concerned only with specific aspects of irregular migration such as smuggling and trafficking or asylum seekers and refugees.

Second, most NGOs are less concerned with the governance of irregular migration than with protection and the promotion of the rights of irregular migrants. One example referred to above is PICUM, which has produced a series of reports and has regular newsletters, mainly concerned with the social rights of irregular migrants in Europe. Another is the Platform for European Red Cross Cooperation on Refugees, Asylum-Seekers and Migrants (PERCO), which has a Working Group on Irregular Migration that has recently produced a report which recommends awareness-raising, advocacy, emergency aid, health care, legal and social counselling, educational facilities, tracing services, contact points, specific services for victims of smuggling and trafficking, and information dissemination in countries of origin (PERCO 2004).

Third, it is fair to conclude that in most cases the activities of NGOs have not had a demonstrable impact on policy. One exception worth highlighting is Migrants Rights International (MRI). One of its four principal objectives has been to advocate for the widespread ratification of the 1990 Convention referred to above. Although, as already noted, lamentably few states have yet ratified, MRI takes considerable credit for encouraging sufficient ratifications at least to allow the Convention to enter into force (Geniancos 2004).

Return

Most states view return as an integral part of policy on irregular migration. Three debates currently dominate return policy-making, and these are considered in turn, briefly, in this section. The first concerns the extent to which return actually impacts on the scale of irregular migration. The second is how best to achieve returns. And the third is how to make sure return is sustainable. Throughout the section the focus is on the return of irregular migrants – including unsuccessful asylum seekers and irregular secondary movers – rather than the voluntary return of regular migrants or the repatriation of refugees.

The impacts of return on irregular migration

It is obvious that return is one way to reduce stocks of irregular migrants – although it can be debated whether regularisation is a more equitable option. (The regularisation option is discussed in detail in a Global Migration Perspective published by GCIM and written by Papadopoulou - 2004). Whether – and if so the extent to which - returns impact on flows of irregular migrants is, in contrast, a moot point. In support is the assumption that returning irregular migrants convinces not only these individuals that this form of migration will not be successful in future, but also others in the country of origin too.

The conclusions of a series of recent academic research projects (reviewed in Black *et al*. 2004) have, however, cast some doubt upon this assumption in three main ways. First, there is a risk of returning individuals to a precarious situation. This applies

most obviously to asylum seekers who may face protection problems upon return even if their claim for asylum has not been upheld. But it also applies to that increasing proportion of irregular migrants who apparently are moved by smugglers, and therefore may return to their countries of origin in debt. The risk of the latter is only heightened by the determination in countries such as the UK to increase the speed of deportations of irregular migrants and unsuccessful asylum seekers. One implication of returning to a precarious situation is that the very migrants who are returned may have an incentive to leave again straight away.

The idea that return deters irregular migration by others in the country of origin also probably underestimates the forces underlying a significant proportion of irregular migration. People who believe their lives or livelihoods to be in jeopardy are unlikely to opt not to leave simply because a neighbour has been returned. What they might be encouraged to do, however, is to employ an alternative smuggler, or head for an alternative destination.

A final reason to question the link between return and the reduction of irregular migration is that interviews with irregular migrants repeatedly demonstrate their sanguinity when faced with obstacles to migration and how to overcome them. It seems that for many irregular migrants, taking risks is simply part of their strategy, and the odd setback is not enough to deter them or others.

Implications for GCIM 9

That return can reduce the scale of irregular migration is a good example of an assumption underlying policy-making on irregular migration that remains largely unsubstantiated. GCIM should promote more policy-oriented research, with an aim to understanding the actual impacts and implications of current and projected policies.

Promoting return

Irregular migrants and unsuccessful asylum seekers have traditionally been deported – or forcibly returned – from countries of destination. In several countries, particularly in Europe, attention has recently turned to the extent to which assisted voluntary return programmes might be a more effective way to promote returns. One reason is that NGOs and various elements of civil society regularly raise concerns about personal safety and dignity during the deportation process. Amnesty International has, it is nevertheless worth noting, accepted that asylum applicants whose claims are refused should be deported, albeit as humanely as possible, as an important element of managed migration and to allay public fears (Robinson 2003).

Other obstacles have also encouraged states to re-think their policies on deportation. Principally, deportation is hard to carry out for practical reasons – if the person is unwilling to leave, if they do not have travel or identity documents, if their country of origin is unwilling to cooperate, if friends, family and colleagues or lawyers fight the deportation or, for example, if the person to be deported is unwell (Schuster 2004). Large scale removals in particular can also be expensive, and socially and

economically disruptive. In addition, there are certain legal constraints on a state's power to remove irregular migrants (Phuong 2005b).

Many countries have assisted voluntary return programmes – or their equivalent – for regular migrants expressing a desire to return to their country of origin. There is significant debate about whether, and if so how, these might be extended to irregular migrants in order to overcome some of the problems associated with deportations. Where pilot projects have taken place, there have been recurrent problems. The most important has been that the take-up rate by irregular migrants has been very low. Many irregular migrants – and even unsuccessful asylum seekers – are reluctant to go home for a whole variety of reasons including family ties, concerns about security in the country of origin and economic incentives to stay (Black *et al*. 2004). Another contributing factor is that many irregular migrants simply do not know about return programmes – almost by definition they are a population that is hard to access formally.

Neither is there any agreement yet on whether – and if so how best – to assist irregular migrants who return voluntarily. An argument against providing any assistance at all is that it might become a 'pull factor' attracting new irregular migrants, although research has yet properly to investigate the nature of this relationship. Where assistance is provided: What form should it take? Upon whom should it be targeted? When and where should it be dispersed?

The emerging consensus is that some combination of deportation and assisted voluntary return is the most effective away to achieve the return of irregular migrants – it is unlikely that the latter will completely replace the former. Gibney and Hansen argue that '…deportation is, from the state's point of view, both ineffectual and essential' (Gibney and Hansen 2003:2). It must be maintained for three reasons: to assuage public opinion, as a disincentive for other potential migrants, and to allow pressure to be applied on voluntary return.

It needs finally to be acknowledged that certain irregular migrants are effectively irremovable for practical, legal or humanitarian reasons. Leaving them interminably in an irregular situation is not a humane option, and alternatives need to be developed. Most NGOs would probably argue for their regularisation (PICUM 2004).

Implications for GCIM 10

> GCIM should acknowledge that deportation is a necessary element of an integrated return policy for irregular migrants and unsuccessful asylum seekers – as long as it takes place humanely. GCIM should also promote the search for durable alternatives for those irregular migrants who are in effect irremovable.

Bilateral readmission agreements

Return – both voluntary and deportations – has far more chance of success where there is genuine dialogue and working partnerships between countries of destination origin and, as necessary, transit countries too. The most common policy framework

in this respect has been bilateral readmission agreements. Some of these allow for the readmission of migrants in countries through which they have transited. Others allow for readmission in their countries of origin. A special 'type' also covers the readmission of irregular secondary movers to the countries of asylum they subsequently left (Box 5).

Box 5 Key criteria for 'effective protection' in the context of the return of irregular secondary movers to third states

- the person has no well-founded dear of persecution in the third state - there will be respect for fundamental human rights in the third state - there is no risk the person will be sent by the third state to another state where effective protection would not be available - the third state has explicitly agreed to readmit the individual as an asylum seeker or refugee - the third state has acceded to and is in compliance with the 1951 Convention and/or 1967 Protocol, or satisfactory alternative practice - the person has access to a sufficient means of subsistence

Source: Lisbon Expert Roundtable (2002)

In the 1990s there was a proliferation of bilateral readmission agreements – according to UNDESA 173 had been signed by 2000 (UNDESA 2004). Details varied considerably, particularly about how best to 'incentivise' transit or origin countries to readmit. Common options have included aid, investment, technical support, training and contributions to various infrastructural development.

Bilateral readmission agreements now link all Western European states with all Central and Eastern European countries. European states (and in some cases the EU as a whole) have also signed agreements with countries of the Maghreb, several Caribbean Island states, Estonia, Mexico and Turkey (SOPEMI 2004), as well as specific origin countries including Somalia, Sri Lanka and Ethiopia (Hansen 2004). Outside Europe bilateral readmission agreements remain relatively thin on the ground, though there is an increasing number across Latin America too (Marmora 2003).

There is a surprising dearth of published evaluations of bilateral readmission agreements, and so it is not possible to comment on their effectiveness.

Implications for GCIM 11

There is a plethora of bilateral readmission agreements linking Western European destinations with origin and transit countries. GCIM could usefully promote a full evaluation of these initiatives, in order to learn lessons where appropriate for the establishment of similar frameworks elsewhere in the world.

Sustainable return

Ideally the return of irregular migrants should be sustainable. A recent report for the UK Home Office by this author and several colleagues (Black *et al.* 2004) - based on a large-scale empirical survey - defines sustainable return, develops a method for

measuring sustainability and considers how to encourage it. Rather than rehearse these findings in detail here (the report is publicly available on the internet), it is worth summarising the key conclusions regarding policies for encouraging sustainable return.

The report finds that many of the factors influencing the sustainability of return are beyond the scope of direct policy intervention. They include pre-migration circumstances and personal characteristics like age and gender. At the same time, it develops some general observations that do have implications for policy development. First, voluntary return appears more likely to be sustainable than involuntary return. Second, education, employment and training in the country of destination appear to encourage sustainable return. Finally, return and reintegration assistance appears to encourage sustainable return. On the basis of these conclusions, the report contains a series of recommendations for future research and policy.

Policy alternatives and recommendations

The first part of this final section briefly explores a series of policy alternatives on irregular migration, focusing on case studies of particularly controversial or topical initiatives. Some of the policies covered are not necessarily new, but have been newly invigorated. Others are genuinely new. Some are still in the planning stage. For these reasons, it is too soon to provide an assessment of how successful they have been. The point instead is to demonstrate that there is already active – and at times quite radical - thinking about alternative approaches. The second part of this section outlines key principles for policy on irregular migration.

Implications for GCIM 12

> Most states will now admit that their policies on irregular migration have had only limited success. Many are willing to consider new approaches, within certain limitations. There is an opportunity for GCIM to make some bold and visionary suggestions.

Policy alternatives

At least partly in response to some of the problems outlined in Section Six above, a number of states have recently considered – and in some cases adopted - new approaches to irregular migration, that do not rely on restrictions alone – although control measures still form an integral part of the overall approach.

These can be thought of as falling into three main categories. The first is a series of policy instruments primarily intended to avert the arrival or stay of irregular migrants. At their most far-sighted, these include the promotion of development, human rights and good governance in countries of origin. More controversially, another set of proposals in this category concerns processing and protection in regions of origin and transit (Box 6). Although a special case, also included in this category are proposals to prevent irregular secondary movements (Box 7).

Box 6 Regional processing and protection

There has been lengthy debate in the European context about two basic proposals for regional processing and protection. The first is for Transit Processing Centres (TPCs). The idea is that asylum seekers arriving in the EU would be transferred to a TPC outside the EU where their claims would be assessed. There would be certain exceptions such as minors and the disabled. Recognised refugees would be resettled inside the EU and rejected asylum seekers returned to their country of origin Temporary status would also be granted in the EU for rejected asylum seekers who cannot immediately be returned. Concerns have been raised in particular about procedural safeguards in countries that would host TPCs. A longer term vision is for Regional Protection Areas (RPAs) – locations close to their countries of origin where unsuccessful asylum seekers who cannot immediately be returned can be protected.

Source: Amnesty International (2003)

Box 7 Preventing irregular secondary movements

UNHCR proposals for dealing with irregular secondary movements among refugees include the following elements:
- strengthening the protection capacities in States where refugees and asylum seekers initially arrive
- improving domestic asylum systems in States where onward movements may occur
- ensuring the timely availability of durable solutions for refugees
- ensuring that States apply border control measures in a protection-sensitive manner

Source: UNHCR (2004b)

A second category is a series of policy instruments intended more efficiently to determine the status of asylum seekers. These include: improved country of origin information, increased numbers and training of asylum adjudicators and accelerated and simplified refugee status determination procedures. Although such policies are directly targeted on irregular migrant stocks, they are also intended to close the procedural loopholes that are thought to attract some irregular migrants to particular destinations. Recent research, however, casts doubt on the extent to which immigration policies and procedures really do influence the decision-making of potential migrants (Box 8).

Box 8 Information dissemination and migration decision-making

It has often been assumed that immigration (and related) policies and procedures are considered by irregular migrants and asylum seekers in choosing potential destinations. Recent research raises reservations about this assumption in three main ways. Firstly, it has been found that irregular migrants often do not actually choose their final destination – that choice instead being made on their behalf by smugglers. Secondly, even where they do make a choice, it is more often based on ties with family and friends than on knowledge of policy. This has been reinforced, thirdly, by

a survey among recently-arrived asylum seekers in the UK, the majority of whom knerw very little about asylum policies and procedures upon their arrival.

Source: Gilbert and Koser (2004)

A third category is policies designed primarily to provide people with access to regular migration channels. These include: the dissemination of information about regular migration channels (Gilbert and Koser 2004); the extension of labour migration programmes (Box 9); the extension of refugee resettlement programmes; humanitarian visa arrangements and amnesties and regularisation programmes.

Box 9 Extending regular labour migration programmes

A number of EU countries have recently extended their labour migration programmes. The purpose of these initiatives has been to fill labour market gaps, and no link with the management of irregular migration has been made in public policy. Nevertheless, there is considerable debate about whether opening opportunities for regular migration might impact on the scale of irregular migration. The consensus appears to be that the impact will be limited. First, regular migration programmes are unlikely to be opened at a scale sufficient to make significant inroads in irregular migration. Second, the migration 'business' that has developed around irregular migration has a vested interest in its maintenance. Third, for expanded labour migration to succeed in displacing irregular migration, several other interventions are also required:
- the public must be prepared for the possibility of expanded labour migration, through public education and a reduction in domestic unemployment rates
- the existing unauthorised population must be minimised, so employers are not tempted to continue to employ them
- employers must be brought in early in the planning process to 'buy in'
- irregular migration and employment must not be allowed to continue to be attractive options for migrants or employers, making enhanced enforcement of immigration and labour law crucial

Sources: Martin (2003), MPI (2004a), Netherlands Ministry of Justice (2004), Widgren (2004)

A policy 'template'

It has been emphasised throughout this report that irregular migration is a complex and diverse phenomenon. Different specific policies will be more or less appropriate in different contexts and at different times. This final part of the report does not, therefore, try to proscribe specific policy recommendations. Instead, drawing on the wide range of sources addressed in writing the report, it outlines a policy 'template'. First, it identifies some underlying principles for policy. Second, it describes some key components for a unified policy approach.

Policy should be guided by the following underlying principles:

- A long-term approach that takes account of the causes and effects of irregular migration
- A balanced approach that reconciles state sovereignty with the rights of individuals

- A unified approach that incorporates dialogue between different parts of government; between government, NGOs and civil society, and between governments in different countries

Policy should usually incorporate the following key components:

- Control measures and law enforcement
- Regular and organised migration programmes
- Return programmes
- Strategies for combating migrant smuggling and human trafficking
- Special programmes for ensuring the protection of refugees within broader migration movements

Implications for GCIM 13

GCIM is not in a position to dictate specific policies to states. It can, however, construct and promote policy templates with underlying principles and key components.

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