VIII. Measures to Prevent or Reduce Irregular Labour Migration

Before examining the measures that can be advanced to prevent or reduce irregular labour migration,[1] it is necessary to consider a number of preliminary issues, such as the rationale for preventing or reducing irregular labour migration; the need to understand the group of persons in question and the numbers involved; the response of the international community to the problem of irregular migration; and the necessity of a comprehensive and coordinated policy approach which attempts to tackle all the dimensions of the phenomenon.

VIII.1 The Need to Prevent or Reduce Irregular Labour Migration

There are a number of reasons which can explain why irregular migration should be reduced or prevented. The following is by no means an exhaustive list:

- To ensure that migration is successfully managed and the credibility of legal immigration policies is maintained. It is difficult to obtain public support for legal immigration policies, if no measures are taken to deal with irregular migration or if it is in effect tolerated by the authorities.
- To ensure satisfactory salary levels and working conditions for national workers and lawfully resident migrant workers. The presence of irregular migrants in the economy can depress wage levels and working conditions, particularly in the low-skilled sectors of that economy.
- To avoid the creation of entire employment sectors and enterprises wholly dependent on irregular migrant labour. It has been argued that the availability of irregular migrants to some employers enables their businesses to survive, because they gain an unfair advantage over their competitors in terms of lower labour costs, and therefore they have no incentives to restructure, modernize and improve working conditions, etc. (Ghosh, 1998: 150-151).
- To prevent exploitation of irregular migrants by employers, employment intermediaries or agents, smugglers and traffickers. The exploitation of irregular migrants is well documented. They are paid lower salaries than national or lawfully present migrant workers; if dismissed they are often unable to obtain money owing from employers; and they are rarely protected by social security legislation. Moreover, they can also be exploited by smugglers and traffickers, which, in the latter case in particular, can place them in a position akin to slavery or forced labour. Increasingly, (and this is particularly evident in respect to the entry of irregular migrants into the European Union), the irregular migration of labour is controlled by organized crime, which is an obvious negative feature of this phenomenon.

Clearly, the involvement of organized crime in irregular labour migration, and particularly in the highly exploitative context of trafficking, can constitute a national security concern. Similarly, the irregular entry into and presence of a large number of foreign nationals in a country as well as their sudden return to

VIII.

the country of origin in the event of an economic downturn can lead to serious concerns about security: for example, during the Asian financial crisis in the late 1990s, large groups of irregular migrant workers in countries such as Malaysia were required to leave, and this resulted in considerable tensions between countries in the region.

Nevertheless, it cannot be denied that irregular migrants do meet labour demands in destination countries, particularly in low-skilled sectors. They provide low-cost labour not just because they earn less money (and employers do not make social security contributions), but also because they are usually young and less in need of health care. They also create a flexible workforce which can easily be dispensed with during downturns in the economy. It has been contended that governments often turn "a blind eye" to irregular migrant labour, because they recognize the short-term advantages of such a flexible workforce for employers and the national economy.

VIII.2 Who are the Irregular Migrants?

By and large irregular migrants comprise two groups of persons. First, there are those who arrive clandestinely (i.e. passing the "green" frontier at night, crossing the sea in small rickety boats between North Africa and EU Member States, or hiding in sealed containers of articulated trucks) sometimes with tragic consequences.[2] The second group are irregular migrants who arrive legally (for example, with tourist or student visas) and overstay the period for which their visas are valid.

It is widely acknowledged that the majority of irregular migrants fall into the second group. In the EU 15 Member States (prior to enlargement in 2005), approximately 10 million EU/Schengen visas are issued annually to third-country nationals for short-term stays of no more than 3 months. However, it is unclear how many of these persons overstay, even though all third-country nationals (visa and non-visa nationals) must now have their passports stamped on their entry into and exit from EU territory (EU, 2004j). Moreover, as observed in Section VI.4.3 above, the proliferation of temporary labour migration schemes and the increasing complex rules that govern these schemes increases the risk that migrant workers originally admitted lawfully into the country will fall into irregular status. Similarly, past regularization procedures (Section VII.4.5) have frequently been linked closely to migrant workers remaining in employment, which means that such migrants will again find themselves in an irregular situation if they lose their job.

Can irregular migrants be counted? Most official documents refer to the "problem" of irregular migration and that it is "significant", but there have been very few serious attempts to verify whether this is indeed the case. Estimates frequently differ significantly, according to the messenger (government or media) or indeed the situation when they are published. Most of the available data refers to the number of persons ap-

prehended trying to enter clandestinely (although often this includes figures for people apprehended more than once) and of persons detected and expelled. However, this kind of data gives an incomplete picture and frequently reflects the extent of the resources assigned to and the level of effectiveness of immigration enforcement agencies. A further difficulty is that very little available data is disaggregated by sex and age. The absence of sex-disaggregated data on irregular migration prevents an accurate gender analysis of migration policies and programmes. Moreover, it has been difficult to obtain accurate EU-wide figures since some Member States are reluctant to publish their figures for fear that such information might be useful to those who facilitate irregular migration, such as smugglers and traffickers. The European Police Office (EUROPOL) has estimated that, before the recent EU enlargement, 500,000 irregular migrants enter the EU annually (EU, 2000b: 13), although the intractability of this issue is best reflected in a European Commission report on the links between legal and irregular migration, where it recognized the difficulties in counting irregular migrants and was only prepared to estimate that the numbers of irregular migrants entering the EU each year was probably over six figures (EU, 2004d: 11). ILO estimates that irregular migrants represent 10 to 15 per cent of the total migrant stocks and flows (2004: 11), which indicates that irregular migration does not represent a major share of labour migration.

Perceptions are also particularly important. Negative perceptions are presented when the terminology "illegal" migration and "illegal" migrant is used. The notion of "illegality" carries with it the stigma of "criminality" and many irregular migrants, even though they may have contravened immigration laws on admission and residence, are not normally perceived as "criminals" in the ordinary understanding of this term. Most international and regional organizations, such as IOM, ILO and the Council of Europe use the terminology "irregular migration". Indeed, only the EU persists in using the terms "illegal immigration" and "illegal immigrants".

Another issue of perception concerns rich and poor migrants. Irregular migrants are normally considered as persons with a low level of education from poorer countries with high unemployment or structural underemployment seeking a better life for themselves in countries which are more economically advanced. Governments and the media often convey similar perceptions of irregular migrants. But this is not necessarily the case. Often such migrants have a higher level of education and are not the poorest in their country of origin. Indeed, if their irregular movement has involved the "services" of smugglers, many must have been able to find the resources to pay for such services, either alone or with the assistance of their families, friends and home community.

VIII.3 Response of the International Community

How has the international community responded to the perceived increase in irregular migration? In the 1970s, the phenomenon of irregular migration came to the attention of the international community after some horrific incidents involving trafficking. One incident in particular caught the headlines: some 50 Africans from Mali were discovered in terrible conditions in a truck in the Mount Blanc tunnel. Concerns over such incidents eventually resulted in the adoption of several UN General Assembly and Economic and Social Council resolutions against the abuses connected with irregular migration as well as the International Labour Conference's adoption of ILO Convention No. 143, which is discussed in Section I.2.1 above. The first part of this Convention is dedicated to preventing the abuses connected with the migration process and requires ratifying States to take measures to detect, eliminate, and apply sanctions for the clandestine movements of migrants in abusive conditions and illegal employment, including labour trafficking. It also contains a number of provisions protecting the rights of irregular migrant workers, particularly their basic human rights as well as their rights arising out of past employment (unpaid wages, etc.) (Arts.1 and 9(1)) (Section I.2.3 above).

ICRMW was drafted during the 1980s and adopted in December 1990. It entered into force on 1 July 2003 (Section I.2.2 above). Its aim is to ensure that the rights of *all* migrant workers and their families are protected and in-

cludes a chapter on the protection of the rights of all migrant workers, including irregular migrants (Part IV). However, the ICRMW also contains a number of provisions aimed at preventing and eliminating movement of illegal or clandestine migrants and employment of migrant workers in an irregular situation (Part VI, Art.68). Its philosophy is that a comprehensive approach to preventing irregular migration cannot ignore the basic needs and rights of those already in an irregular situation.

In 2000, the UN General Assembly adopted the International Convention against Transnational Organized Crime (ICTOC), which includes two protocols relating to the links between organized crime and migration: the Protocol against the Smuggling of Migrants by Land, Air and Sea; and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN, 2000b, 2000c, 2000d). The Convention and both Protocols have now entered into force. In addition to establishing a framework for dealing with these crimes, the Protocol on Trafficking also contains a number of provisions focusing on the protection of victims of trafficking. However, it should be emphasized that these are not human rights instruments, having been adopted in a criminal law enforcement context.[3]

In addition to these international responses, there have also been regional responses to addressing the phenomenon of irregular (labour) migration. In particular, EU law and policy on irregular migration has expanded rapidly in recent years under new EU competences afforded by the 1997 Treaty of Amsterdam, which amended the EU Treaty. The EU has adopted a series of legal "soft law" and operational measures to combat irregular migration, including trafficking and smuggling of human beings.[4]

VIII.4 The Need for a Comprehensive Approach

A comprehensive or holistic approach is necessary to address the problem of irregular labour migration. Four governing principles should underpin action to prevent or reduce irregular migration:

- An isolationist approach is bound to fail. Strengthening dialogue, cooperation and partnerships between all countries affected by irregular migration (i.e. origin, transit and destination countries) is critical.
- It is necessary to adopt a set of measures that are both comprehensive and complementary. A holistic approach to preventing or reducing irregular migration is therefore required.

TEXTBOX VIII.1

The Informal Economy in the Russian Federation

"The scale of the informal economy is ... [significant] in Russia. The most conservative estimate of the contribution the informal sector makes to the economy is 22.4 per cent of Gross National Product (GNP). The greatest numbers of informal workers are in trade (market sales) or are working for individuals, for example, as domestic workers. Many also work in agriculture and construction. By mid-2001, an estimated 10 million persons were engaged in the informal sector. Of these, 6.5 million worked solely in the informal sector. It is also estimated that 3.3 million were involved in trade and catering, 2.7 million in agriculture, about 1 million in industry and more than 0.5 million in construction.

The scale of the informal economy ... [contributes] towards the proliferation of labour exploitation, both for national and migrant workers. Irregular migrants are particularly vulnerable. Demand for informal labour promotes irregular migration .... Moreover, ... the presence of a great number of irregular migrants (estimated at around 4 to 5 million) in the country who cannot obtain official employment stimulates the development and prosperity of the informal sector.

The wide use of ... migrants [in the informal economy] is an important feature of labour migration in Russia. Using migrant workers allows employers to increase flexibility and decrease costs in the form of social security contributions, taxes and wages. Yet the situation is dual edged. Migrants' lack of rights increases their vulnerability to exploitation; however, their own willingness to enter into flexible situations exacerbates the problem. A vicious circle ensues, escape from which might only be possible given a well-planned policy to regulate the informal economy."

Source: Tyuryukanova (2005: 56-57) (footnotes omitted).

- Control or restrictive measures alone are insufficient.
- A cross- or multi-sectoral approach is essential, engaging not merely the participation of governments in the countries affected by irregular labour migration, but also the social partners and civil society. In particular, the problems of the informal labour market cannot be adequately addressed without the participation of employers and unions.

With regard to controls and restrictive measures, there are significant differences in the positions of policy-makers: for example, ICRMW underscores this point, although it has not secured wide support from OSCE participating States. It recognizes that irregular migration often leads to exploitation and abuse and therefore strongly supports actions to preventing and eliminating illegal or clandestine movements and employment of migrant workers in an irregular situation (Part VI). At the same time, it accepts the fact that irregular migrant workers exist and supports the protection of their fundamental human rights and social rights, including employment rights (Part IV) (Section VIII.4.4 below). A similar approach is adopted in ILO Convention No. 143.

Consequently, protection should be an important ingredient in the comprehensive set of measures required to prevent or reduce irregular labour migration. Such protection can also be a useful tool in combating the informal labour market, which is more prevalent in some OSCE countries (e.g. southern European countries and the Russian Federation – Textbox VIII.1) than in others and serves as a significant pull factor for irregular labour flows.

A series of comprehensive measures to prevent or reduce irregular labour migration can therefore be envisaged at all stages of the migration process: activities in countries of origin; border controls and articulation of a viable visa policy; measures and sanctions against those who facilitate irregular migration; safeguards for irregular migrant workers; regularization or legalization programmes; return measures; opening up more legal channels for labour migration; and inter-state cooperation. This broad range of measures is considered below.

VIII.4.1 Activities in countries of origin

Activities to discourage irregular labour migration movements should be taken in the countries of origin of potential irregular migrants (Section III.3.3.1 above). These activities may include public information and/or education campaigns on the risks of irregular migration, particularly on the dangers of falling into the hands of traffickers, smugglers or unscrupulous labour migration intermediaries or agents; and knowledge of laws and practices in destination countries.[5] In this re-

TEXTBOX VIII.2

ILO Activity to Prevent and Reduce Trafficking in Women

The ILO technical cooperation project "Employment, vocational training opportunities and migration policy measures to prevent and reduce trafficking in women in Albania, Moldova and Ukraine" provides assistance and guidance to the Ministries of Labour, State Migration Authorities and National Employment Services of these countries in the formulation of gender-balanced migration policy measures and the strengthening of migration and employment management capacity. The project activities are aimed at strengthening the institutional structures and policy measures to regulate legal labour migration, especially out-migration, and reducing trafficking of young women by providing domestic employment alternatives and by enhancing access to legal migration channels.

An ILO special booklet addresses the causes, consequences and mechanisms of trafficking and its gender dimensions. It provides guidelines for policies and other actions to prevent and address trafficking and support for and protection of victims and prosecution of traffickers. The Guide has been translated in several languages and is widely used by ILO constituents and civil society organizations working on migration. It has proven to be a valuable tool in assisting constituents in countries of origin to formulate their migration policies and programmes and raise awareness on migrant workers' rights.

Sources: ILO International Migration Programme (MIGRANT), March 2006; ILO (2003c).

gard, IOM undertakes numerous activities in countries of origin with a view to informing potential migrant workers of the risks of leaving in an irregular manner. Moreover, such activities may include capacity-building measures to strengthen institutional structures in this area. It is also important that any such measures in countries of origin are not focused solely on deterring labour migration altogether. Legal labour migration opportunities should also be promoted (Textbox VIII.2). The aim should be to ensure that as many migrants as possible move in a lawful manner. For example, with specific regard to women migrants, the *ILO Information Guide on Preventing Discrimination, Exploitation and Abuse of Women Migrant Workers (2003)* contains comprehensive guidelines, outlined in several distinctive booklets, to help potential migrants to decide and prepare for employment abroad, to prevent and address abuse in recruitment, to improve the situation of women migrants, including irregular women migrants, in the countries of destination, and to assist and support their return. The negotiation of bilateral labour agreements between origin and destination countries and their effective implementation (Section IX.1.1 below) can also play an important role in reducing irregular labour migration flows between the countries concerned.

VIII.4.2 Border controls and visa policy

In discussing external measures to be taken to prevent or reduce irregular migration, the most common provisions mentioned are those relating to prevention of entry to irregular migrants. Border controls need to be efficient and fair, since the propensity to try irregular methods tends to increase if migrants are unsure whether a corrupt border guard will demand payment of a bribe or make life difficult for them. Efficiency at the border is enhanced when there is trust based on cooperation among border officials of all the countries involved in the migration process, and particularly between countries with common borders. Unfortunately, in some regions, it is not uncommon for border guards to attempt to pass responsibility for irregular migrant workers (particularly those transiting through their country) to officials in the other country, rather than to work together to address the problem. The EU has adopted comprehensive measures to ensure that common rules are applied at EU external borders and has established a European agency to enhance cooperation between EU Member States at these borders (EU, 2004f).

A viable visa policy enabling the migrant to enter the country to take up employment, with a minimum of bureaucratic obstacles and/or red tape, is also essential to ensuring that fewer migrants enter the country without authorization. Unfortunately, visas issued for admission into a country for other reasons (such as tourism or study) are abused in many countries as well as EU Member States applying the three-month EU/Schengen visa for short-term visits, although often such abuse is exacerbated by the lack of sufficient legal avenues to take up employment.

VIII.4.3 Actions against those who facilitate irregular migration: addressing illegal recruitment, trafficking and smuggling, and employer sanctions

A recognized method of preventing or reducing irregular migration is to regulate more effectively the recruitment of migrant workers with a view to countering illegitimate recruitment practices and to penalizing those who assist and facilitate the movement and placement of irregular migrant workers.

Regulation of recruitment in countries of origin is discussed in Section III.2 above. Recruiters or private employment agencies (PEAs), in the form of temporary work agencies or other labour providers, also operate in destination countries and regulation of their activities is necessary. Ireland offers a good example of how to develop a regulatory framework for PEAs, as it has become a prime country of destination in a relatively short period of time (Textbox VIII.3).

To ensure that the regulatory framework operates successfully, monitoring and enforcement mechanisms should also be introduced. Monitoring mechanisms may include pre-licensing checks and on-the-spot inspections after issuance of the licence by the licensing authority or by labour inspection units, including unannounced visits following complaints or reports of suspicious practices from a wide range of sources. Enforcement activity may range from warnings to improve behaviour to administrative and/or penal sanctions, such as fines, revocation or withdrawal of licenc-

TEXTBOX VIII.3

The Development of the Regulatory Framework for PEAs in Ireland

Ireland is an interesting example of how a government adopted legislation on the operation of PEAs according to the changing nature of the labour market. The Employment Agency Act of 1971 laid down the principles for licensing recruitment agencies and introduced a licence procedure that established certain financial and managerial conditions, including inspection of suitable premises. Otherwise, the overall regulation was relatively liberal in its approach. It has to be borne in mind that, when the Act was adopted, recruitment agencies in Ireland were mainly engaged in recruiting Irish citizens for overseas work, primarily to the UK. The boom in the Irish domestic labour market led to labour shortages in the 1990s. In a relatively short period, Ireland changed from being a labour-sending country to a country of destination and this in turn led to an increase of the number of PEAs operating in Ireland and in other countries in order to recruit for the Irish labour market.

Faced with these developments, the Irish Department of Enterprise, Trade and Employment (DETE) prepared a discussion paper for the Review of the Employment Agency Act 1971 in May 2004. After receiving comments from organizations of employers (including the recruitment industry) and workers, individual PEAs, Revenue Commissioners, and the Immigrant Council of Ireland, the DETE published a "white paper" on the matter in June 2005 in which it recommended the drafting of a new Bill during 2006.

The proposed legislation is based on ILO Convention No. 181 and is expected to replace the current system of licensing with a registration procedure which includes a Statutory Code of Best Practices. A newly established Statutory Advisory/Monitoring Committee (comprised of representatives of DETE, social partners, and the National Recruitment Federation) will be responsible for monitoring and implementation of the Code. It is also planned to introduce a new complaint procedure.

Source: Ireland (2005c).

TEXTBOX VIII.4

The UK Gangmaster Licensing Authority (GLA)

Until recently, recruitment agencies, known as "gangmasters" provided labour for the agriculture and food-processing sector in the UK but functioned essentially without regulation. In 2003, as the result of a tragic incident which led to the death of some 20 migrant cockle pickers recruited through gangmasters, the government decided to change the UK system. This led to the drafting of a voluntary code of conduct by the multi-stakeholder Temporary Labour Working Group (TLWG). Enacted in 2005, the Gangmasters (Licensing) Act makes it compulsory for gangmasters to be licensed and to comply with the TLWG code of conduct. The Gangmasters Licensing Authority (GLA) was established in the same year and is responsible for licensing existing and prospective gangmasters. The Act introduces a criminal offence for gangmasters operating without a licence and penalties for employers ("labour users") resorting to the services of non-licensed gangmasters.

GLA is required to recover the full cost of its licensing procedure and this will no doubt have an impact on the level of fees. It will make use of inspections at the application stage and after the licence has been issued. However, application inspections for all labour providers would be very costly and, for this reason, GLA is seeking to implement a risk-assessment approach at the application stage. On the basis of a statistically sound risk profile, which is currently being developed, GLA will audit only those gangmasters whom it sees as constituting a medium to high risk of future non-compliance. In addition, GLA is seeking to follow a proportionate scoring system for compliance, using categories such as critical (safety), critical (other), reportable and correctable. In addition, compliance and the possible risk factor will be assessed on the basis of, for example, interviews with workers and labour providers, data collected from labour providers, and evidence collected by GLA officers. The risk assessment process is aimed at lowering the cost of the overall licensing regime, since labour providers who comply with the regulations will not be burdened with inspection and auditing costs and only those labour providers which are believed to constitute a risk to the rights of affected workers will be targeted for assessment.

Source: UK (2005a).

es, imprisonment, and seizure of assets. The UK Gangmaster Licensing Authority (GLA), established in 2005, is an interesting example of a recent initiative to monitor compliance of recruitment agencies in the agriculture and food-processing sector (Textbox VIII.4).

In addition to the efforts undertaken to halt illegitimate recruitment, punitive measures against a range of diverse actors, such as transport carriers (principally airlines, but also bus and shipping companies),[6] labour migration intermediaries or agents, migrant smugglers and traffickers, and employers, should be introduced. The imposition of sanctions on those who facilitate irregular migration is also supported in pertinent international standards: ILO Convention No. 143 (Part I), ICRMW (Part VI), and the Protocols to the recently introduced UN ICTOC discussed in Sections I.2 and VIII.3 above.

As is evident from the definitions found in the ICTOC Protocols and the recently adopted EU measures, there is now a consensus on the important conceptual difference between migrant smuggling and trafficking. First, trafficking, in comparison to smuggling, does not necessarily involve crossing international borders and second, trafficking should be considered a more serious criminal offence due to the use of coercion, deception, fraud, and violence.[7]

While the imposition of sanctions on those who facilitate irregular migration is considered to be a just method for tackling the abuses that occur, it is important that the penalties are sufficiently substantial to deter the activity. Often, the international criminal organizations involved in trade in human beings factor sanctions into the operation of their illicit business as a manageable loss.

It is important that any punitive measures adopted are uniform, in order that such organizations will not merely shift their operations to a country with the least effective controls and lower sanctions. It is also very important that laws already in place are properly enforced. For example, the number of successful prosecutions of persons facilitating irregular migration is very low in some countries.[8] However, increasing criminalization of this area also raises a number of problematic policy questions. Carrier and employer sanctions have been criticized for "privatizing" immigration control. For example, carrier sanctions have been denounced by the UNHCR as putting considerable obstacles in the way of refugees fleeing persecution so as to undermine the right "to seek and enjoy asylum" under Article 14 of the Universal Declaration of Human Rights. Employer sanctions have been criticized as increasing the risk of racial and ethnic discrimination against all workers, including national and lawfully resident migrant workers. There has also been some criticism of the type of sanctions imposed against smugglers and traffickers, particularly in the failure to distinguish between serious offences (which are related to international organized crime) and less serious offences. Finally, the criminal offences, if drawn too widely, might also criminalize charitable organizations, NGOs and individuals, providing humanitarian assistance to irregular migrants in destination countries.

VIII.4.4 Protection

As observed above, part of the comprehensive approach to prevent or reduce irregular migration should also include measures to ensure the protection of irregular migrant workers, who often face exploitation during travel or transit and in the workplace and who run the risk of serious violations of their human rights. Therefore, minimum guarantees for the protection of irregular migrants should be put into place and implemented as an integral aspect of a preventive approach,[9] without which a restrictive policy to prevent or reduce irregular migration would lack credibility. Importantly, such measures should take into account the gender different needs and concerns of male and female migrants with respect to the violations of their human rights (ILO, 2003c: Booklet 3, 39-97).

As underlined in Section I.1 above, fundamental human rights are conferred upon all persons without distinction in international human rights law. Consequently, irregular migrant workers should, for example, always be protected from slavery-like practices, forced labour,[10] and inhuman and degrading treatment, while being ensured their liberty and personal security (i.e., freedom from arbitrary arrest and detention). According to the Platform for International Cooperation on Undocumented Migrants (PICUM), a NGO involved in the protection of irregular migrants in Europe,[11] the four most important aspects of fair employment conditions

for irregular migrants relate to:

- the right to a fair wage;
- the right to compensation for work accidents;
- the right to defend these rights in the labour courts or tribunals of the country of employment;
- the right to organize.

A particularly exploitative practice concerns the inability of all migrants, whether lawfully resident or irregular, to claim their rights arising out of past employment, such as payment of past wages/remuneration and reimbursement of social security and other contributory benefits. ILO Convention No. 143 calls for equal treatment between irregular migrants and regular migrants in this area (Art.9(1)) (Section I.2.3). Effective implementation of the right to claim past wages would send a message to employers that labour standards will be enforced in respect of all their employees regardless of whether they are national workers (both those employed in the formal and informal labour markets), lawfully resident migrant workers, or irregular migrant workers. With regard to social security, it is not possible, in the absence of bilateral agreements (which, in any event, are normally only applicable to lawfully resident migrant workers), to recover contributions that have been paid. This is also the position for many third-country nationals working in EU Member States. However, where social security contributions have been made, their reimbursement in these circumstances would give irregular migrants a financial incentive to leave the territory voluntarily.

Proclaiming the rights to which irregular migrants should be entitled and securing those rights in practice are two entirely different matters. There are a number of legal and practical obstacles to the enjoyment of these rights. In many countries, criminalization of the provision of assistance to irregular migrants is a significant legal obstacle to the ability of irregular migrants to secure adequate accommodation. Moreover, the legal obligation imposed on officials to denounce irregular migrants (e.g. in Germany) to the immigration authorities can mean that irregular migrants are less able to rely on their rights. In practice, there is also inadequate information available to irregular migrants to enable them to assert their rights. For example, while access to emergency health care is available in most European countries to all persons without distinction of any kind, including legal status, irregular migrants are rarely informed of this right and doctors are frequently unaware whether such health care can be provided and to what degree (Cholewinski, 2005: 50-52).

Irregular migrants also fear coming forward to the authorities because disclosure of their identity will often trigger actions to remove or expel them from the territory. Clearly, removing these legal obstacles and informing irregular migrants about their rights constitute part of the solution to securing these rights in practice. Moreover, the immediate expulsion or removal of irregular migrants is obviously counter-productive, particularly in cases where action is taken to investigate and prosecute those who have exploited the migrant concerned.

A similar dilemma exists in respect of victims of trafficking or human smuggling. State authorities should consider delaying their removal, by granting them a period for recovery and reflection and a residence permit, depending on the victim's circumstances. Indeed, such measures are supported by the UN Protocol against Trafficking (Art.7(1))[12] and the Council of Europe's recent Convention on Action Against Trafficking in Human Beings (Council of Europe, 2005a: Arts.13-14). The EU has produced a Directive to this effect (2004c), which has to be transposed into the laws of Member States by 6 August 2006. The OSCE Action Plan to Combat Trafficking in Human Beings (APCTHB) also recommends "a reflection delay" for victims of trafficking to give them time to decide whether to act as a witness and the provision of temporary or permanent residence permits on a case-by-case basis taking account of factors such as the safety of the victim (2003: Part V, para.8). A further possible course of action would be to regularize the stay of those irregular migrants who make credible complaints to the authorities, especially employment tribunals and labour inspection authorities (Section VIII.4.5). It should also be possible to encourage irregular migrants to instigate court proceedings against employers by offering anonymity or by granting a power of attorney to their representatives, such as trade unions, to act on their behalf in such proceedings (Cholewinski, 2005: 56). Court proceedings of this kind are possible in Switzerland, for example.

VIII.4.5 Regularization

Regularizing the situation of irregular migrants poses a dilemma for host countries. On the one hand, regularization sends a signal that clandestine entry with a view to finding illegal employment or overstaying can be rewarded and may thus serve to encourage further irregular migration. In fact, this outcome is frequently assumed although there is not much evidence to support it. On the other hand, particularly where irregular migrants cannot be removed from the territory for legal, humanitarian or practical reasons (e.g. those

TEXTBOX VIII.5

Recent Regularization Measures in Southern European Countries

Italy

Regularization was introduced by a decree-law dated 6 September 2002, initially for the domestic workers market (i.e., nannies and care-workers for the elderly and disabled). It was then extended to other migrants working in illegal employment whose employers were willing to offer them an employment contract. Over 700,000 applications were received during the period between 11 September and 11 November 2002, of which just under 50 per cent were submitted by women domestic workers. A preliminary analysis of applications by nationality indicates: Ukrainians (27%), Romanians (19.3%), Ecuadorians (7.6%), Poles (7.3%), and Moldovans (6.9%). Applicants in other forms of employment were mainly men, of whom Romanians accounted for 22.4%, Moroccans 11.9%, Albanians 11.4%, and Chinese 8.5%.

Sources: OECD (2004a: 218; 2005: 212-213).

Portugal

During 2001, Decree Law No. 4/2001 of 10 January 2001 introduced a regularization programme which legalized the position of many irregular migrant workers in Portugal. This regularization programme enabled undocumented or irregular migrant workers, who were offered or had signed a valid employment contract, to regularize their situation. Between 10 January 2001 and 31 March 2003, 179,165 one-year renewable resident permits were issued under this programme. In practice, the regularization programme applied mostly to East Europeans (Ukrainians, Moldovans and Romanians), Russians and Brazilians.

Source: OECD (2005: 254).

Spain

The most recent regularization programme in Southern Europe was undertaken in Spain. The programme was one of the reforms introduced to the immigration legal framework by a Decree of 30 December 2004. The objective of the reform was to meet existing demands for labour by broadening legal channels and by also putting in place tougher measures against illegal employment. A summary of the 2005 regularization programme is provided below. The data collected from the 690,679 applications received indicates that the top three countries of origin were Ecuador (21%), Romania (17%) and Morocco (13%). Most of the applicants were employed in lower-skilled jobs. Moreover, 6 out of 10 applicants were male and the majority of female applicants were working in domestic services.

Summary of the Regularization Programme

Primary Objective: Reduce illegal employment by regularizing foreign workers

Eligibility Criteria:

- Residence (and registration) in Spain since 8 August 2004;
- No criminal record;
- Future employment contract for at least six months (three months in agricultural jobs).

Application period: 7 February 2005 to 7 May 2005
Number of Applications Received: 690,679
Status Granted: One-year residence and work permit (renewable)

Noteworthy Characteristics:

- Employers responsible for regularizing foreign workers (except in the case of independent domestic workers);
- Unprecedented cooperation between Ministry of Interior and Ministry of Labour and Social Issues;
- Consensus and support from employer organizations, unions, and NGOs;
- All other immigration applications and benefits procedures suspended until 8 August 2005;
- Regularization programme part of a larger, more comprehensive immigration reform.

Source: Arango and Jachimowicz (2005).

who have established economic and social ties with the host society), regularization is a viable policy option and should be seriously considered, as it serves to prevent their further marginalization and exploitation.[13]

There are clearly economic benefits for the host country in regularizing its irregular migrant labour force, in terms of increased taxes and social security contributions. Moreover, regularization can serve to combat the informal labour market by affording a legal status to irregular migrant workers who are gainfully employed in the shadow economy. A number of OSCE countries have resorted to regularization measures, particularly in Southern Europe (Greece, Italy, Portugal, and Spain, see Textbox VIII.5), where such measures have been introduced periodically. The most recent programme took place in Spain in 2005, where nearly 700,000 irregular migrants applied to legalize their status (Arango and Jachimowicz, 2005).

Given the large number of migrants working illegally in the Russian Federation, a pilot regularization was carried out in 10 regions in 2005. The scheme applied to migrant workers who had resided unlawfully and worked in the country for more than three months. Approximately 7,400 irregular migrant workers were legalized. The results of the scheme are currently being assessed with a view to determining whether more general regularization measures should be established (Textbox VIII.6).

TEXTBOX VIII.6

Pilot Regularization of Illegally Employed Migrant Workers who had entered the Territory of the Russian Federation on a Visa-free Basis (September – December 2005)

Given the considerable volume of migrants in an irregular situation in the Russian Federation, where 80-90 per cent of all irregular migrants are labour migrants, prompt measures are necessary to reduce this phenomenon. Regularization is the most effective procedure, since it leads to a rapid and considerable reduction in the number of irregular migrant workers while undermining associated illegal activities.

In order to develop a methodology for regularization of irregular migrant workers and to draw up proposals regarding its implementation throughout Russia, the Federal Migration Service, together with the Federal Tax Service and ROSTRUD (Employment Service), carried out a pilot regularization programme for irregular migrant workers who had entered the territory of the Russian Federation on a visa-free basis in ten regions* between 22 September and 1 December 2005.

For the first time, a new liberal procedure was adopted: all the services involved in the pilot project travelled to the action sites, and were thus able to regularize many illegally resident foreign citizens in a short period of time. In the course of the pilot process, approximately 7,400 irregular migrant workers employed in 403 companies and organizations were regularized. However, several factors hampered the operation, including:

- unreasonably time-consuming procedures for lodging an official application, due to the existence of additional and non-legal bureaucratic barriers in a number of Russian regions. These were caused by the presence of inter-agency commissions, which consider questions relating to the issuance to employers of permits to employ foreign labour;
- fixed rates of State tax regardless of the duration of the migrant's employment;
- complicated temporal residence registration procedures for migrant workers because of the unavailability of suitable housing, as provided for by law.

The findings of the pilot project demonstrated that, in order to create favourable conditions for the legal employment of foreign workers, the following steps are required:

- pursuit of liberalization and amendment of the legal normative acts providing for the use and employment of foreign labour;
- establishment of national and international ex-

TEXTBOX VIII.6

Pilot Regularization of Illegally Employed Migrant Workers who had entered the Territory of the Russian Federation on a Visa-free Basis (September – December 2005)(continued)

changes of foreign labour within the CIS region, the Common Economic Area and the Eurasian Economic Community;

- introduction of immigration inspections operating in close cooperation with the national body responsible for labour migration.

The pilot project also demonstrated that the liberal approach for filing official papers for employment resulted in employers taking a greater interest and assisting a significant number of migrant workers in their regularization. It also showed that there would be benefits for the national economy if regularization procedures were extended to the whole of the Russian Federation.

According to the Federal Migration Service, over one million irregular migrant workers could be legalized in a large-scale regularization exercise. This would lead to:

- a decrease in the number of migrant workers residing in the country without legal status;
- a reduction of the adverse impact of irregular labour migration on the labour market, on informal employment in general, and on other areas of the national economy and social life, including crime rates and corruption;
- a more efficient commitment to the potential that labour migration offers for Russia's economic and demographic development, in particular by increasing revenues for federal and regional budgets, due to the legalization of incomes earned by regularized migrant workers. Indeed, this regularization pilot programme injected approximately RUB 29.5 million into the budget through the payment of State duties following the issuance of work permits for 7,364 foreign workers. In addition, the budget will receive:
  - o approximately RUB 10 million per month in income tax;
  - o approximately RUB 20 million in individual social security tax payments.

For every year of regularized work, migrant workers will contribute approximately RUB 350 million to the State treasury, a figure which increases to nearly RUB 380 million, when State duties are included.

* The City of Moscow, the Moscow Oblast, Saint Petersburg, Ekaterinburg, Krasnoyarsk Krai, Omsk, Irkutsk, Primorski Krai, the Sakhalin Oblast and Krasnodar Krai.

Source: IOM Moscow, March 2006.

TEXTBOX VIII.7

Regularization – The Right to Earned Adjustment

"Countries would be better off regularizing the status of workers whom they cannot send back home. This benefits not only the migrants but the country as a whole. In this connection, a principle that seems to have wide implicit resonance in the regularization policies of many countries is that of earned adjustment. Migrant workers with irregular status may be said to earn a right to legal status if they meet certain minimum conditions: they must be gainfully employed, they must not have violated any laws other than those relating to illegal or clandestine entry, and they must have made an effort to integrate by (for example) learning the local language".

Source: ILO (2004: 120, para. 399).

As an alternative, or a complement, to more general 'unique' regularization measures, ILO has argued in favour of an individual right to "earned adjustment" for irregular migrant workers who cannot be removed and who have demonstrated that they have a prospect of settling successfully in the country concerned (Textbox VIII.7).

VIII.4.6 Return

An important component in preventing or reducing irregular migration is ensuring that irregular migrants leave the country in which they are residing in an irregular manner. This is frequently identified as an integral part of a well-managed and credible policy on legal migration.

Voluntary return is widely regarded as the "most dignified and least costly return option" (IOM, 1999:19; 2003d; 2004a), in contrast to measures of forced return. IOM implements a number of programmes, in cooperation with its Member States, to assist the voluntary return or departure of irregular migrants, unsuccessful asylum-seekers, as well as other migrants who wish to return home but experience difficulties in doing so. The assistance provided by IOM takes the form of a comprehensive range of measures applicable to the whole return process and may include:

- information dissemination within immigrant communities;
- counselling services for migrants interested in eligibility and reintegration options/support, particularly those who have been away from their countries of origin for a considerable period of time;
- assistance with documentation and travel arrangements, including during transit;
- reception on arrival, referrals and in-country onward transportation home;
- provision of further reintegration assistance in the home country, including financial, and/or in-kind support;
- monitoring of the reintegration process of returnees (IOM, 2006).

The OSCE Action Plan to Combat Trafficking in Human Beings also favours voluntary return in the context of repatriation (2003: Part V, para.5.1).

In practice, however, many of the measures adopted by individual countries relate to forced return, ei-

TEXTBOX VIII.8

Proposed Directive on common standards and procedures for returning illegal residents (EU, 2005c)

Key points

- It responds to a call by the European Council in the Hague Programme (December 2004) to establish common standards for persons to be returned in a humane manner and with full respect for their human rights and dignity.
- "Effective return policy is a necessary component of a well managed and credible policy on migration. Clear, transparent and fair rules have to be agreed which take into account this need, whilst respecting the human rights and fundamental freedoms of the person concerned".

Main features:

- A return decision is to be issued to any third-country national staying illegally on the territory.
- Voluntary return should be possible during an initial period of 4 weeks.
- A two-step procedure (return decision followed by a removal order) should be applicable.
- Forced return measures are to be applied proportionately.
- A re-entry ban is to apply for a maximum of 6 months.
- Minimum procedural safeguards should be put into place.
- Limited temporary custody (detention) is permissible where there are serious grounds to believe that there is a risk of the irregular migrant absconding and where application of less coercive measures is not sufficient to prevent this.
- Detention of irregular migrants should only take place on the basis of a temporary custody order issued by judicial authorities which should be subject to further judicial review at least once a month. Member States are obliged to ensure that third-country nationals in custody are "treated in a humane and dignified manner with respect for their fundamental rights and in compliance with international and national law".

ther expulsion or deportation. In the EU, it can be argued that insufficient attention has been devoted to voluntary return, where efforts have focused on promoting cooperation and facilitating forced returns.[14] Moreover, there are currently no harmonized standards for the return of irregular migrants and the law and practice relating to procedures and norms applicable in the return process differ from EU Member State to Member State.[15] However, in September 2005, the European Commission submitted a proposal to the Council of Ministers and the European Parliament for a Directive which, if adopted, will provide for common approach among EU Member States on this important question (Textbox VIII.8) (EU, 2005c). It is currently under deliberation by the EU Council of Ministers.

OSCE countries have concluded readmission agreements among themselves and with third countries. The EU and its Member States have also adopted EU-wide readmission agreements with third countries. One agreement with Albania, an OSCE participating State, has now come into force, and the agreement with the Russian Federation was initialled in October 2005 (EU, 2005e).[16] These agreements include reciprocal arrangements for contracting parties to take back their own nationals found residing without authorization in the other Contracting party and other irregular migrants arriving from the territory of that party.[17] Readmission agreements are considered necessary by destination countries as countries of origin are often reluctant to take back individuals, in the case of return enforcement, usually because of a lack of consensus on the evidence necessary to prove that the person is a national of that country or, if not a national, that he or she has indeed come directly from that country's territory.

VIII.4.7 Opening up more legal channels for labour migration

As observed in Sections VIII.1 above, irregular migrants clearly fill a gap in the labour markets of destination countries, particularly by undertaking those difficult and unattractive jobs that nationals no longer wish to perform (e.g. agriculture, construction, catering, cleaning, domestic services). Many countries and employers actively seek migrant workers for highly-skilled positions and increasingly for work in low-skilled sectors. While not necessarily a panacea for reducing irregular labour migration flows, these demands need to be addressed and opening up more legal channels for labour migration should be an integral part of a comprehensive policy-coordinated approach to irregular labour migration. Moreover, it is important that policies establishing legal migration routes are equitable and sufficiently attractive (for example, by accommodating more than nominal numbers of migrant workers and involving a minimum amount of bureaucratic procedures) to deter potential migrants from travelling by irregular means.

VIII.4.8 Inter-state cooperation

A further important component of these measures is bilateral and multilateral cooperation. On the multilateral level, as discussed in Section IX.1.7.1 below, ICRMW and ILO instruments on migrant workers specifically promote such cooperation between States, including on migration policies and regulations, conditions of work as well as measures to address irregular migration.

The adoption of readmission agreements (Section VIII.4.6 above) clearly forms part of this approach, although, in the EU context, it has been recognized that there are very few incentives for third countries to enter into such agreements. Although such agreements are reciprocal in nature, as they apply to both contracting parties, the principal beneficiaries are destination countries. To encourage third countries to enter into readmission agreements and promote more effective bilateral cooperation between origin and destination countries, readmission agreements could be combined with legal labour migration channels by setting up quotas for migrant workers from third countries. For example, Italy has reserved a fixed number of places in its annual immigration quota for nationals of certain countries with which it has concluded readmission agreements (Textbox VI.1). It has also adopted bilateral labour migration arrangements with these countries. The UK Government is also planning to restrict low-skilled legal migration routes to countries with which it has organized effective return arrangements (UK, 2006b: 29). On the EU level, facilitated admission for short-term visits and other purposes is being offered to third countries as part of an overall package deal on readmission. Thus, in concluding a readmission agreement with the Russian Federation, the EU also initialled a visa facilitation agreement

TEXTBOX VIII.9

EU-Russian Federation Agreement on Visa Facilitation

This agreement eases procedures for issuing short-stay visas (i.e., for intended stays of no more than 90 days) for Russian and EU citizens travelling to Schengen Member States (EU Member States except the UK, Ireland and Denmark) and the Russian Federation. The following facilitations are covered by the agreement:

- In principle, for all visa applicants, a decision on whether or not to issue a visa will be taken within 10 calendar days. This period may be extended by up to 30 days where further scrutiny is needed. In urgent cases, the period for taking a decision may be reduced to 3 days or less.
- The documents to be presented have been simplified for some categories of persons: close relatives, business people, members of official delegations, students, participants in scientific, cultural and sporting events, journalists, persons visiting military and civil burial grounds, drivers conducting international cargo and passenger transportation services. For these categories of persons, only the documents listed in the agreement can be requested for justifying the purpose of the journey. No other justification, invitation or validation provided for by the legislation of the Parties is required.
- Visa fees applied by Russia have been substantially reduced and aligned to the Schengen visa fee (35 €). This fee will be applied to all EU and Russian citizens (including tourists) and concerns both single and multiple-entry visas. It is possible to charge a higher fee (70 €) in case of urgent requests, where the visa application and supporting documents are submitted by the visa applicant three days or less before his/her departure. This does not apply to cases relating to travel for humanitarian reasons, health, and death of relatives. Moreover, for certain categories of persons the visa fee is waived: close relatives, officials participating in government activities, students, persons participating in cultural and educational exchange programmes or sporting events and humanitarian cases.
- Criteria for issuing multiple-entry visas are simplified for the following categories of persons:

  1. for members of national and regional governments and parliaments, Constitutional and Supreme Courts and spouses and children visiting citizens of the EU or the Russian Federation, who are legally resident but with limited duration for the validity of their authorization for legal residence: visa of up to five years;

  2. for members of official delegations, business people, participants in scientific, cultural and sporting events, journalists, drivers and train crews, provided that during the previous two years they have made use of 1 year multi-entry visas and that the reasons for requesting a multi-entry visa are still valid: visas for a minimum of 2 years and maximum of 5 years.

- Both Parties agree to undertake measures as soon as possible with a view to simplify registration procedures.
- Holders of diplomatic passports are exempted from the visa requirement for short stays.

Source: EU (2005g).

(Textbox VIII.9), and visa facilitation is currently being negotiated with the Ukraine.

Another form of bilateral cooperation is the exchange and posting of "immigration liaison officers". This has been taking place throughout the EU and in neighbouring countries and is now covered by EU Council Regulation 2004/377/EC (EU, 2004a). These immigration liaison officers are usually seconded to the other country's Interior or Foreign Ministry (but they can also be posted to the Labour or Overseas Employment Ministry) and may assist in identifying and preventing potential irregular flows of migrant workers, returning irregular migrants, and organizing legal labour migration.

A broader approach to inter-state cooperation on preventing and reducing irregular migration involves the integration of migration issues in regional cooperation and development activity, which is something that the EU has increasingly included in the external relations dimension of its migration policy (EU, 2005b). Relevant measures here may include promoting "brain circulation", enhancing the impact of remittances on development, harnessing the potential of the Diaspora to promote development in countries of origin, and targeting development assistance with a view to creating employment opportunities in regions in the country of origin identified as having a high potential for irregular migration.

ENDNOTES

1 For the purpose of this section, irregular migration encompasses migrant workers who enter a country clandestinely or illegally and those who have entered lawfully but who engage in employment without authorization. This understanding conforms to the definition in ICRMW (UN, 1990: Art.5), which stipulates that migrant workers and members of their families are considered to be in a non-documented or irregular situation if "they are [not] 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".

2 For example, 58 Chinese nationals died when they suffocated in an articulated lorry transporting tomatoes to England in 2000 (Reid et al., 2000).

3 For a recent human rights approach, see the Council of Europe's Convention on Action against Trafficking in Human Beings (2005a), which was opened for signature in May 2005. To date, 25 countries have signed this Convention, but not one has ratified it.

4 See Council Framework Decision 2002/629/JHA (EU: 2002b) on combating trafficking in human beings; Council Directive 2002/90/EC (EU, 2002d) defining the facilitation of unauthorized entry, transit and residence and Council Framework Decision 2002/946/EC (EU, 2002e) on the strengthening of the penal framework to prevent the facilitation of unauthorized entry, transit and residence. For "soft law" measures, see Proposal for a Comprehensive Plan to Combat Illegal Immigration and Trafficking of Human Brings in the European Union (EU, 2002a) and the EU Plan on best practices, standards and procedures for combating and preventing trafficking in human beings (EU, 2005a).

5 ICRMW contains provisions obliging States Parties to inform migrant workers of their rights under the Convention and job conditions in the country concerned (Art.33).

6 However, policy-makers, especially in poorer OSCE countries, should seriously consider whether the introduction of carrier sanctions (as introduced in EU Member States and elsewhere) would dissuade foreign airlines from operating, leading to an adverse impact on their economic development.

7 See the definition of "trafficking in persons" in UN (2000d: Art. 3(a)): "'Trafficking in persons' shall mean 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs". The OSCE Action Plan to Combat Trafficking in Human Beings is also based on this definition (2003: Part II).

8 E.g. in the UK, there were only 8 successful prosecutions against employers in the period 1998-2002 and, in 2002, only 53 employers were fined for immigration violations in the whole of the US (Ruhs, 2005: 214) (references omitted).

9 As noted in Sections I.2.2 and VIII.3 above, ICRMW adopts a dual approach to addressing irregular migration: it seeks to prevent and discourage clandestine movements and illegal employment (Part VI), while underlining the necessity of protecting the basic rights of irregular migrant workers and members of their families (Part IV).

10 The right not to be subjected to forced labour practices is also one of the fundamental human rights protected under the ILO Constitution, the Forced Labour Convention, 1930 (No. 29) and the Abolition of Forced Labour Convention, 1957 (No. 105), which, according to the 1998 ILO Declaration on Fundamental Principles, should be adhered to by all ILO Member States irrespective of whether they have accepted the relevant instruments (Section I.3 above).

11 For more information on PICUM's activities, see http://www.picum.org/. See also LeVoy and Verbruggen (2005).

12 Trafficking victims can also obtain residence status in a number of jurisdictions, such as Belgium and Italy, and victims of workplace exploitation can also be protected in this way in Spain.

13 E.g. the European Commission recognized (EU 2003b: 26) that regularizing irregular migrants who correspond to these criteria made sense from the standpoint of integration and the fight against social exclusion.

14 See e.g. the EU Council's Return Programme (EU 2002f: para. 12): "Notwithstanding the importance to be attached to voluntary return, there is an obvious need to carry out forced returns in order to safeguard the integrity of the EU immigration and asylum policy and the immigration and asylum systems of the Member States. Thus the possibility of forced return is a prerequisite for ensuring, that this policy is not undermined and for the enforcement of the rule of law, which itself is essential to the creation of an area of freedom, security and justice. Moreover the major obstacles experienced by Member States in the field of return occur in relation to forced returns. Therefore the programme to a large extent focuses on measures facilitating forced returns, although some of the measures are also relevant with regard to voluntary return".

15 However, a number of common safeguards relating to forced return (including detention) have been agreed at the level of the Council of Europe (Council of Europe, 2005b).

16 Agreements with Macao and Hong Kong have also entered into force, while negotiations with Algeria, China, Morocco, Pakistan, Turkey, and Ukraine continue.

17 Readmission agreements have been criticized by civil society organizations on the grounds that they may permit the return of persons to the other Contracting party based on limited evidence and that they contain insufficient guarantees against the return of those who may be in need of international protection.