IX. Inter-State Cooperation

This chapter of the *Handbook* focuses on cooperation between destination and origin countries in managing labour migration. Dialogue and cooperation among states involved in labour migration processes is essential if international labour migration is to benefit all the stakeholders involved (i.e. destination and origin countries, the migrant workers themselves, employers, trade unions, recruitment agencies, civil society, etc.). This chapter provides a broad overview of inter-state cooperation in managing labour migration outlining the different levels of cooperation, both formal and informal, in which States are involved at the bilateral, regional and global level.

IX.1 Formal Mechanisms

Formal mechanisms of inter-state cooperation are essentially legally binding treaty commitments relating to cooperation on labour migration, which states have concluded at the bilateral, regional and global level. These agreements may take the form of treaties solely concerned with this subject, as is the case with bilateral labour agreements[1] discussed in Section X.I.I below, or broader agreements, such as the specific regional and international conventions relating to the protection of migrant workers, which also include provisions on inter-state cooperation. The various forms of formal cooperation are also inter-linked. For example, a regional or international agreement will sometimes place obligations on contracting parties to cooperate (or at least encourage them to do so) at the bilateral level where success in a particular field is most likely to be achieved. This is a common approach in regional and international treaties on the protection of migrant workers and their provisions relating to social security (Section VII.5.4 above).

IX.1.1 Bilateral labour agreements

Bilateral labour migration agreements (BLAs) formalize each side's commitment to ensure that migration takes place in accordance with agreed principles and procedures. OECD countries alone have negotiated more than 170 wide-ranging BLAs currently in force (OECD, 2004d). However, access to labour markets is not the only reason for BLAs. The principal purposes are:

- ***Economic:*** as described in Section IX.1.1.1 below, BLAs on short-term employment of less than a year (seasonal employment) exist between a number of countries. Economic sectors with seasonal labour requirements (e.g. agriculture, tourism, construction) can find human resources lacking in the domestic labour market, while the migrant and the country of origin benefit from increased earnings.
- ***Political:*** BLAs may also be motivated by political reasons, whether to confirm friendly relations or reinforce cooperation in managing irregular migration (e.g. Italy and Spain). Such agreements may include quotas.
- ***Development:*** BLAs may be aimed at preventing indiscriminate international recruitment in sectors, such as health services, which have a direct bearing on development in poorer countries (e.g. health agreements with the UK).

BLAs can set up procedures for regulating the whole labour migration process from entry to return, with advantages for both destination and origin countries. For countries of origin, in particular, they ensure their nationals obtain employment and are adequately protected in the destination country.

IX.1.1.1 Inter-state BLAs[2]

Bilateral labour agreements offer an effective method for regulating the recruitment and employment of foreign short- and long-term workers between countries. They can take the form of formal treaties or less formal memoranda of understanding (MoUs), or even very informal practical arrangements, e.g. between national employment agencies. An important difference between BLAs as formal treaties and MoUs is that the latter are not legally binding, although the effectiveness of a bilateral agreement or a MoU is determined less by its legally binding nature, than by how it is implemented and enforced in practice. Moreover, any absence of references to labour protections in MoUs should not be seen as reducing the safeguards already in place under national labour legislation or the commitments contracted at the regional and international levels. Indeed, MoUs may contain explicit statements defining the application of national labour legislation to the employer-employee relationship.

Most global labour flows take place outside the scope of BLAs, whether through immigration or emigration programmes set up unilaterally by destination countries, or through regional arrangements (Section IX.1.3-6). Moreover, as noted in Chapter VIII above, many labour migration flows are irregular and clandestine in nature.

BLAs allow for greater state involvement in the migration process and offer human resource exchange options tailored to the specific supply and demand of the countries involved. By encouraging orderly movement of labour, they promote good will and cooperation between origin and destination countries. They can also address issues relating to temporary labour migration by including terms and procedures for return and flexible visa arrangements, where long-term or permanent options exist.

BLAs can provide arrangements for temporary employment of seasonal and low-skilled foreign labour. Industrialized countries requiring foreign labour enter into bilateral agreements with partner states for targeted labour exchange programmes that steer inward flows to specific areas of labour demand. However, as discussed later in this section, not all BLAs have been successful in meeting their objectives.

Countries began to negotiate BLAs during the second half of the 20th century, when large emerging economies in the New World chose to meet their huge needs for labour through immigration. They sought to establish bilateral agreements with countries of origin in order to overcome labour scarcity in the period following the Second World War. Between 1942 and 1964, the US admitted some 5 million farm workers under the Bracero programme signed with Mexico (Martin, 2003: 7). Canada, Australia and Argentina admitted large numbers of migrants, principally through agreements with European countries. In the 1950s and 1960s, European countries, such as Germany and France, actively recruited so-called guest workers,

mainly from Portugal, Spain, Turkey, and North Africa. These programmes came to an end with the economic downturn of the 1970s, triggered by the oil crisis.

During the last ten years or so, there has been renewed interest in BLAs. Among OECD countries, their numbers quintupled in the 1990s, and today stand at 176 (Bobeva and Garson, 2004: 12). In Latin America, half of the 168 agreements signed during the last 50 years were concluded after 1991. After the collapse of the Soviet Union, Central European, East European and Central Asian countries developed a wide range of agreements, some within the region or with neighbouring EU Member States, others with EU countries that had evolved from emigration countries to immigration countries, such as Portugal or Spain. A number were also signed with overseas countries, for example an agreement between Ukraine and Argentina.

In the CIS region, the 1994 regional framework Agreement on Cooperation in Migration for Employment and Social Protection of Migrant Workers, discussed in Section IX.1.6 below, was expected to be implemented through BLAs between the contracting parties. Armenia, Belarus and the Russian Federation have to date concluded the largest number of agreements with other countries in the region.[3] These BLAs may include clauses which:

- identify the competent authorities in each country responsible for fulfilling the obligations in the agreement;
- specify the rights and obligations of the contracting parties;
- confirm the rights of migrant workers which are to be protected;
- include provisions on preventing irregular migration.

As an example of a BLA, the main provisions of the recent agreement between the Russian Federation and Tajikistan are summarized in Annex 6.

BLAs abound between neighbouring countries (e.g. a BLA between Switzerland and EEA countries on the free movement of persons, which entered into force in 2002; a BLA signed by Argentina and Bolivia and Peru in 1998), or between countries on different continents (Spain with Ecuador (see Annex 8), Colombia, Morocco in 2001, and with the Dominican Republic in 2002).

TEXTBOX IX.1

24 Basic Elements of a Bilateral Labour Agreement

1. the competent government authority;
2. exchange of information;
3. migrants in an irregular situation;
4. notification of job opportunities;
5. drawing up a list of candidates;
6. pre-selection of candidates;
7. final selection of candidates;
8. nomination of candidates by the employers (possibility for the employer to provide directly the name of a person to be hired);
9. medical examination;
10. entry documents;
11. residence and work permits;
12. transportation;
13. employment contract;
14. employment conditions;
15. conflict resolution mechanism;
16. the role of trade unions and collective bargaining rights;
17. social security;
18. remittances;
19. provision of housing;
20. family reunification;
21. activities of social and religious organizations;
22. establishment of a joint commission (to monitor the agreements' implementation);
23. validity and renewal of the agreement;
24. applicable jurisdiction.

Source: Geronimi (2004: 23-26).

Since the adoption of the Migration for Employment Convention 1949 (No. 97),[4] ILO has been promoting BLAs and offers governments a ready-made model for temporary and permanent migration (Migration for Employment Recommendation (Revised) 1949 (No. 86), Annex) (Textbox IX.6), which has been used by various states (Argentina, Austria, Barbados, Chile, Cyprus, Colombia, Korea, UAE, Ecuador, France, Guatemala, India, Kenya, Lebanon, Mauritius, Myan-

mar, Portugal, Romania, Rwanda, Tajikistan and Uruguay). ILO has identified 24 basic elements of a bilateral labour agreement ranging from the identification of the competent authorities to the working conditions of migrant workers (Textbox IX.1).

Some items included in the model, such as social security or irregular migration, tend to be dealt with by states in separate agreements. Examples can be found in bilateral social security agreements signed by the US with 20 countries and readmission agreements signed between several European countries and countries of origin.

IX.1.1.2 Sector-specific MoUs

In addition to inter-state agreements, "bilateral arrangements", usually in the form of MoUs, have been adopted between the government of a country of origin, whether at the national or regional level, and representatives of the specific employment sector in the destination country for the recruitment of foreign workers for that sector. This type of MoU has been adopted between the Philippines Government and the UK Department of Health.

Such MoUs may involve agreements between associations of employers in a certain sector and local or regional governments in the host country. In Canada, employer associations in the tool machinist and construction industries and the Ontario provincial government signed MoUs with a two-year time-limit, in 2001, and there is currently a MoU to facilitate the admission of temporary foreign workers for employment on projects in the oil sands of the province of Alberta.[5]

A disadvantage of this second form of sector-based MoU, from the perspective of the country of origin, is that it is wholly internal. Its government is not involved in the negotiations for its adoption and thus not in a strong position for ensuring that worker protection guarantees are included. Bilateral labour agreements and inter-state MoUs, on the other hand, are part of external relations between the States parties, although the bargaining power of the two countries involved in the negotiations may differ considerably.

Provisions in sector-based MoUs may include the identification of longer-term measures to be taken by employers in that sector for filling labour shortages domestically. Consequently, they may provide for temporary foreign labour migration in the short-term, but preclude such migration becoming a permanent solution over the long-term. Moreover, employers may be subject to obligations to guarantee security in the workplace and provide basic language training necessary for undertaking the work. This latter obligation is also an important feature in terms of security, particularly in "dangerous work places" where it is important for migrant workers to be able to read warning signs, and safety documents.

IX.1.1.3 Destination country perspective

For the destination country, BLAs can meet labour market needs quickly and efficiently, whether for low-skilled seasonal workers in the agriculture, tourism and construction sectors or for more skilled medical, educational, and other personnel needed to meet more structural labour market shortages. In addition, they can usefully support broader regional, commercial and economic relations by aiding the development of the country of origin and facilitating its regional integration. Notable examples of this are the various agreements for temporary labour migration signed by Germany (Section VI.4.3.1 above), and other EU Member States with Central and Eastern European countries.

BLAs can help prevent or reduce irregular migration by offering alternative legal channels to migrate for employment, which, in turn, can provide a negotiation tool to secure country of origin willingness to cooperate on managing irregular migration (particularly on readmission of their nationals). In 1997, Italy and Albania signed a labour agreement in parallel with a readmission agreement, in which Albania accepts the return of its irregular nationals.

BLAs may also contain special provisions on return. For example, Spanish labour migration agreements with a number of countries require migrant workers to report to Spanish consular authorities on their return to their country of origin.[6] The purpose of this provision is to give migrants an incentive to return home by promising them a prospect of obtaining longer-term residence status in Spain, if they are offered employment in the future.[7]

Some agreements between Argentina and its neighbours (Bolivia, Peru) also offered regularization for undocumented workers. In July 2003, a bilateral agreement signed between Portugal and Brazil created a specific legal mechanism for reciprocal regularization of the nationals of each country residing without authorization in the other's territory.[8]

Finally, BLAs help strengthen ties between countries that share some cultural or historical links. The UK and other Commonwealth countries have mutual "Working Holiday Maker" programmes,[9] which allow young persons to live and take on part-time or casual work for an extended holiday of up to two years, though these are not always strictly-speaking BLAs.

IX.1.1.4 Country of origin perspective

Countries of origin see BLAs as a useful vehicle to increase access to the international market for their workers and to negotiate appropriate wages, living conditions, and job security for their nationals abroad. They offer the certainty of agreed definitions and terms of implementation and monitoring of workers' rights and entitlements. They can also facilitate the acquisition or enhancement of vocational skills and qualifications, such as training programmes for young professionals.

BLAs can also provide a basis for sustained remittance flows, technology transfers, and the general development of human capital, all of which constitute important contributions to the development of countries of origin. Agreements can also include measures for return migration or the repatriation of skills and knowledge. BLAs signed by Spain with Colombia and Ecuador, for example, provide for projects to facilitate the voluntary return of temporary migrants through training and recognition of the experience acquired in Spain, as well as through creation of small and medium bi-national enterprises, development of human resources and transfer of technology.

Agreed quotas for highly skilled workers can also form an integral part of the country of origin's human resource development strategy. They give the country a share in the international labour market, while managing the depletion of scarce human resources needed at home. In 2002, the Dutch and Polish Ministers of Health signed a letter of intent for the implementation of a project entitled "Polish Nurses in The Netherlands, Development of Competencies", in order to prepare nurses for employment in the Dutch health care system for a maximum period of two years, and to facilitate their return and reintegration into the Polish health care system after return. Thus, BLAs can give employers an opportunity to arrange pre-departure training for their labour immigrants, as foreseen in the agreements signed by Spain and in Italy's "second-generation" agreements, which were signed after the conclusion of a readmission agreement.

The Philippines has entered into 12 labour agreements (not including those on maritime and social security) with various host countries of Filipino labour. Of these, four are with European countries and these agreements tend to be more focused. The agreement with Switzerland involves an exchange of professionals and technical trainees for short-term employment; that with the United Kingdom aims to facilitate the recruitment of Filipino health professionals; while the Philippines-Norway agreement will develop cooperation in order to reduce the need for professionals in Norway's health sector and to promote employment opportunities for Filipino health personnel. The Philippines has recently entered into a labour cooperation agreement with Indonesia, itself a labour-sending country, in order to enhance the effective management of migration and thus promote and protect the welfare and rights of Filipino and Indonesian migrant workers (IOM, 2003b).

IX.1.1.5 Duties to cooperate in international and bilateral agreements

International and regional treaties for the protection of migrant workers often refer to bilateral agreements. As discussed in Section IX.1.1.1 above, ILO Recommendation No. 86 includes a model bilateral agreement, as an Annex, and this has been used by a number of countries to develop their own agreements.

A governing principle in many international and regional instruments is that the provisions therein are subject to the more favourable standards found in other multilateral treaties, bilateral agreements or national legislation.[10] Some specific international instruments on migrant workers also refer to bilateral agreements

with a view to broadening the categories of protected migrants or augmenting rights. For example, the definitions of self-employed migrant workers or dependant relatives of migrant workers in the UN Migrant Workers Convention can effectively be extended by virtue of bilateral agreements (Arts.2(h) and 4 respectively). Similarly, IRCMW imposed important obligations on States of employment with regard to giving family members an authorization to stay in the country after the death of a migrant worker or, if this is not possible, a reasonable time to settle their affairs before departure, yet these are subject to the more favourable provisions in bilateral agreements (Art.50(3)).

In a few instances, IRCMW also refers to bilateral agreements in the context of limiting rights (Art.52(3)(b)). For example, States parties are instructed to consider granting family members of migrant workers or seasonal workers, who have worked in the State of employment for a significant period of time, priority over other workers seeking access to the labour market, although these provisions are subject to applicable bilateral and multilateral agreements.[11]

Finally, specific ILO instruments on migrant workers, IRCMW, the European (Revised) Social Charter, the European Convention on the Legal Status of Migrant Workers and ILO and Council of Europe social security instruments recognize that the right of migrant workers to social security on a basis of equality with nationals cannot be adequately protected without further inter-state cooperation on the bilateral level.

IX.1.1.6 How effective are bilateral agreements?

The effectiveness of bilateral agreements is difficult to measure, as they often pursue several objectives simultaneously and give different weight to the various policy priorities. There has been little research on the implementation and impact of these agreements. The past failure of temporary labour migration programmes, which operated on the basis of BLAs, to prevent overstay has been documented (Textbox VI.17). Other programmes, however, have been more successful in this regard.

Do BLAs improve the management of labour migration? They can create more transparent mechanisms by involving the key players at different stages of design and implementation of the agreement, as seen in the way Italy has involved employers' groups, trade unions and other interested parties in setting quotas. The Spain-Ecuador/Colombia agreements involve selection committees in the country of origin, which include embassy and employer representation. Built-in encouragements for temporary migrants to return, such as in Canada's seasonal agriculture workers programme, which allow the migrants to be re-selected by the previous employer, seem also to have had a positive effect on potential irregular migration.

Nevertheless, some 25 per cent of bilateral agreements in OECD countries are apparently not implemented. The most operational seem to be those that obey the demand-supply imperative, as opposed to pursuing political objectives. These include the Canadian seasonal agriculture programme and the UK agreements on recruitment of foreign nurses with Spain, India and the Philippines. The extent to which employers will take advantage of BLAs depends on the efficiency of the system, geographic location of the workers (where the travel cost is borne by the employer), number of available irregular migrants, and employer-friendly nature of other immigration programmes.[12]

BLAs may also constitute a restraint on migrant workers or even exclude them from regular migration programmes, because of age limits, quotas and language requirements. The Hungary-Romania labour agreement does not seem to have been entirely successful since most Romanian applicants seem to prefer to commute over their common border to undeclared jobs in Hungary.

Negotiating a BLA is often a lengthy and time-consuming process. According to the Philippines government, although bilateral labour agreements have proved to be effective in addressing issues and concerns affecting the employment of workers, they take a long time to be developed and implemented. Thus, in recent years, the Philippines has steered away from the formulation of general agreements and worked towards the adoption of more focused agreements which are easier to negotiate and make operational in host countries.

Some major destination states are not particularly interested in entering into specific agreements, especially those in Asia which (with some exceptions) do not seek to engage the states of origin in bilateral or multilateral

TEXTBOX IX.2

IOM Assistance in the Implementation of Bilateral Labour Arrangements

IOM assists migrants, employers and governments in facilitating regular labour migration. It has facilitated two such initiatives with the Italian Government, one with Sri Lanka and the other with Moldova. Under both programmes, IOM offers its technical assistance for pre-selection, selection, vocational training/orientation, travel assistance and support to the social integration and labour insertion of migrant workers.

Both projects are supported by the Italian Ministry of Labour within the framework of the Italian Governmental Decree on Migratory Flows 2004, which envisages special entry quotas for Sri Lankan and Moldovan migrant workers, among others, and the Italian Law assigning a "preferential entry right" to workers trained abroad.

IOM has also established a third programme for the Canadian Province of Québec which assists the recruitment and transfer of Guatemalan agricultural workers on behalf of Québecois employers. This programme has been successful achieving circulation of labour and return of migrant workers to Guatemala after completion of their employment in Québec (Textbox VI.13)

Source: IOM, Labour Migration Division.

agreements to establish rules governing international labour migration. Without particular leverage or special relationship with the concerned destination country, many states of origin find negotiating BLAs in order to obtain privileged access to foreign labour markets particularly difficult to achieve.

Nevertheless, in the absence of a global regime for international labour migration, BLAs are an important mechanism for inter-state cooperation in protecting migrant workers, matching labour demand and supply, managing irregular migration, and regulating recruitment. Where BLAs have worked as a mechanism for the temporary employment of foreign workers, the main reasons seem to be that:

- they target specific sectors with a severe labour shortage;
- there is a quota or ceiling;
- recruitment is organized;
- employers are engaged;
- above all, there is circulation of labour (Baruah, 2003b).

The involvement of employers and their organizations in the implementation of BLAs contributes significantly to their efficiency.

Once established in principle, BLAs require special administration to ensure their smooth operation, including promotion of the programme in countries of origin, recruitment, testing and certification of applicants for the programme, timely data flow and information sharing between the two countries, migrants and consular offices concerned, and efficient travel logistics. IOM supports government efforts to put these elements into place or provides the services directly (Textbox IX.2).

IX.1.2 Regional integration and regional agreements: overview

As observed earlier, regional cooperation for the management of labour migration can be divided into formal mechanisms of regional integration and regional agreements, including free movement of labour initiatives and obligations to cooperate in regional treaties, and less formal mechanisms, such as regional consultative processes and other informal arrangements.

As far as formal regional mechanisms of integration are concerned, the free movement of labour regime of the European Union is the most comprehensive. It is discussed in some detail in Section IX.1.3 below. Other formal regional integration mechanisms are NAFTA (Section IX.1.4 below) and the Association of Southeast Asian Nations (ASEAN) free trade block in south-east

Asia. These play an important role in facilitating labour migration, although, as discussed below with reference to NAFTA, they are generally limited to business persons and highly-skilled professionals.

Visa-free arrangements applicable to OSCE participating States also exist on both intra-regional and inter-regional levels. A good example on intra-regional arrangements is the visa-free regime operating between the Russian Federation and other CIS countries, (see Section IX.1.5 below).[13] On the inter-regional level, the EU has adopted a "positive" list of countries, operational in 23 Member States.[14] Nationals from listed countries can travel to the EU without a visa for up to 3 months within a six-month period. The list includes Canada and the US, and countries set to join the EU, such as Bulgaria, Croatia and Romania.[15]

Labour migration is facilitated to a greater or lesser degree by regional integration processes, which are usually driven by economic factors, such as the establishment of free trade arrangements between countries in the region, with a view to optimizing the potential of markets and economic opportunities. They normally include provisions for the facilitation of the movement of nationals from participating Member States or Contracting parties for the purposes of employment and residence.

Such arrangements may range from extensive free movement regimes applicable to all categories of persons, including workers, as in the EU, to more limited provisions focusing on the movement of business visitors, professionals, other highly-skilled persons, and service providers, which is the position under NAFTA. The next section focuses in some detail on these two regimes and on developments in the Commonwealth of Independent States. Another example can be found in South America (Textbox IX.3).

TEXTBOX IX.3

Regional Integration and Free Movement in South America: the Andean Community and MERCOSUR

The Andean Community members (Bolivia, Colombia, Ecuador, Peru and Venezuela) have decided to work together to ensure that their inhabitants will be able to move freely through the sub-region, whether for purposes of tourism, work, or for a change in their customary place of residence. The "Andean Labour Migration Instrument" (Decision 545) was signed on 25 June 2003 with as its main objective the establishment of provisions which will progressively and gradually permit the unhampered movement and temporary residence of Andean nationals in the sub-region for employment purposes as wage workers. The unhampered movement of people is one of the preconditions for the gradual formation of the Andean Common Market, which was scheduled to be in operation by 31 December 2005.

MERCOSUR (Southern Common Market) Member States (Argentina, Brazil, Paraguay and Uruguay) signed the "Agreement on Residence for Nationals of MERCOSUR States, Bolivia and Chile" on 6 December 2002. The agreement has the objective of permitting nationals of one signatory member to obtain legal residence in another signatory State, if they so wish. Through the accreditation of their nationality and presentation of documentation, petitioners can obtain temporary residence for a maximum period of two years, which can be transformed into permanent residence after this initial period. The agreement provides for the right to family reunification and equal treatment of migrants with nationals concerning all civil, social, cultural and economic rights.

Sources: ILO, International Migration Programme (MIGRANT) (March 2006); Andean Community (2003) MERCOSUR (2002: Arts. 1, 4, 5 and 9).

IX.1.3 Regional integration: European Union

Labour migration in the European Union (EU) is examined on three levels:

- free movement of EU citizens for the purposes of employment;
- changes in this regime, as a result of the recent enlargement of the EU; and
- position of non-EU nationals or third-country nationals regarding admission to the labour market and treatment within EU Member States.

IX.1.3.1 EU citizens

The EU has the most extensive regional integration system for labour migration. Free movement of labour in the EU applies presently to 15 Member

States and will apply in full to the enlarged EU of 25 Member States by 1 May 2011. According to the transitional arrangements provided in the Accession Treaty (see Textbox IX.4) (EU, 2003c), it will not be possible to impose any limits on free movement of workers after this date. Free movement of workers in the EU covers all forms of employment:

- salaried or wage-earning employment (free movement of workers);
- self-employment (freedom of establishment);
- provision of services (freedom to provide services).

Free movement of EU nationals for the purpose of employment is accompanied by an extensive set of free movement rights, enshrined in the EC Treaty (Part III, Title III), based on the principle of equal treatment with nationals (or non-discrimination on the grounds of nationality) (Art. 12 EC).[16] These rights apply directly in Member States' laws and can be relied upon by individuals in domestic courts. Their application is interpreted and supervised by the European Court of Justice (ECJ), which is entrusted by the EC Treaty to ensure the consistent and uniform application of EU law. ECJ rulings are binding on all the Member States. The equal treatment principle goes beyond the context of employment to encompass other aspects relating to the legal status of migrant workers. Whereas the admission and residence of EU nationals (as well as their departure from the territory) is addressed by Council Directive 2004/38/EC (EU 2004b), which had to be transposed into the laws of all Member States by 30 April 2006, the following five areas relating to the equal treatment of EU workers while employed in other Member States and nationals continue to be covered by Council Regulation 1612/68/EEC (EU, 1968):

- work and employment conditions, in particular as regards remuneration and dismissal, and trade union rights;
- vocational training;
- social and tax advantages (including welfare benefits);
- housing;
- education of children.

EU rules also provide for social security entitlements (i.e. aggregation and transfer of benefits) to ensure that EU nationals who move for the purpose of employment are not disadvantaged as a result (Council Regulation 1408/71/EEC) (EU, 1971).

> The EU free movement of workers regime is accompanied by liberal family reunion rules which give the worker's spouse or registered partner, dependent children (under the age of 21) and dependent parents of the worker or spouse the right to join the worker. Admission of other dependant relatives living with the worker should also be facilitated. Moreover, the spouse and children of EU workers have free access to employment as soon as they arrive in the Member State.[17]

These free movement rights are supported by strong safeguards against expulsion. EU workers can be expelled from (or refused entry to) another Member State only if they constitute a serious threat to the public policy, public security or public health of that State (EU, 2002c, Art.39(3) EC). These criteria have been defined further in secondary legislation,[18] and interpreted restrictively by the ECJ, which has ruled that EU Member States can only expel citizens of other Member States if they constitute a present and serious threat to the fundamental interests of society. Criminal convictions alone are insufficient to constitute such a threat (ECJ, 1975, Case 36/75: para.22; ECJ, 1977, Case 30/77: para.28).

IX.1.3.2 EU enlargement and labour migration

EU enlargement to 25 Member States as of 1 May 2004 was preceded by the adoption of transitional arrangements under the Accession Treaty for free movement of workers with a view to protecting existing Member States (EU15) from disruption to their domestic labour markets for a period of a maximum of seven years. The arrangements apply to nationals of the new Member States in Central and Eastern Europe (CEEC)[19], but not to nationals of Cyprus or Malta. National restrictions can be retained by Member States for an initial period of two years, then for a further three years and, exceptionally, for a further two years (i.e. 7 years in total). Freedom of establishment (including self-employment) and freedom to provide services in other Member States are generally unaffected by these arrangements, although Austria and Germany can apply restrictions on the provision of cross-border services in certain

sensitive employment sectors involving the posting of temporary workers.

A8 nationals who were already employed in an existing Member State on the date of accession (1 May 2004) on the basis of a work permit or other authorization valid for 12 months or longer benefit from unrestricted access to the labour market of the Member State concerned.

Member States applying the transitional arrangements (Textbox IX.4) are required to give preference to A8 workers and service providers from the new Member States over non-EU nationals regarding access to their labour markets.

Even though the current enlargement is the largest to date and wage differentials between existing and new Member States are considerable, the European Commission concluded that, although mobility of EU workers has increased since enlargement, it has not been large enough to have a significant impact on the EU labour market in general (EU, 2006: 6, 13), which is in line with assessments of previous EU enlargements. Furthermore, there is no indication that migrant workers from new EU Member States are displacing or substituting national workers or competing for similar jobs. Indeed, there is some evidence that they are contributing in a complementary way to labour markets in the EU15 Member States by meeting labour shortages in certain areas (EU, 2006: 12, 14).

The UK *Accession Monitoring Report* observes that most nationals from the new Member States have come to work in the UK for short periods of time, as a form of *de facto* circular migration. The vast majority of A8 nationals are young and single persons, who are in full-time employment and do not have dependants living with them in the UK. As a result, they make few demands on the welfare system or public services. They fill gaps in the labour market in a broad range of employment sectors, but particularly in administration,

TEXTBOX IX.4

EU Accession Treaty Transitional Arrangements concerning Free Movement of Workers

Of the EU15 Member states, only **Ireland, Sweden** and the **UK** provide free access to their labour market for nationals of A8 nationals, although the UK is applying nominal restrictions through the implementation of a Workers' Registration Scheme which requires the worker to register with the Immigration and Nationality Department with details of the job, wage conditions, etc. The purpose of this registration scheme is to assist the UK authorities to determine how many new Member States nationals are employed, assess the impact of their employment on the national labour market, and protect workers from exploitation, for example by ensuring that they are paid at least the national minimum wage.

The remaining EU15 Member States are applying national restrictions for two years in the form of a work permit scheme, sometimes combined with quotas. **Hungary, Poland** and **Slovenia** are applying reciprocal restrictions to nationals from the EU15 Member States. However, these countries will have to review their position before the first two-year period has expired and notify the European Commission before 1 May 2006 if they wish to continue with these restrictions. **Greece, Finland, Portugal** and **Spain** have announced that they will no longer apply national restrictions from that date.

It is expected that some countries, particularly **Austria** and **Germany**, will retain restrictions for the full 7 years, although after 5 years they will have to convince the European Commission that there are "serious disturbances on [their] labour market or threat thereof" and to justify this requirement objectively.

The European Commission has recommended that all Member States consider opening up their labour markets after the initial two year post-enlargement period has elapsed on 1 May 2006.

Sources: EU (2006); EURES http://europa.eu.int/eures/home.jsp?lang=en

business and management, hospitality and catering, agriculture, manufacturing and food, fish and meat processing (UK, 2005d).

Moreover, it is expected that economic conditions in A8 Member States will improve and thus reduce pressures to migrate. Consequently, labour migration to the EU15 Member States is likely to peak and then drop off gradually. In the medium- to long-term, however, economic growth in the new EU Member States is likely to result in the creation of labour migration opportunities for EU nationals and for third-country nationals. Indeed, as noted in Section VI.3.3 above, one A8 Member State, the Czech Republic, is already actively seeking highly-skilled workers from specified third countries.

IX.1.3.3 Non-EU and third country nationals

While EU rules on free movement of workers relate to EU nationals taking up employment in another EU Member State, non-EU or third country nationals can also benefit from "derived rights" under EU law, because of their connection with the EU worker or company. As noted above, the non-EU spouse and children of EU workers benefit from all EU free movement rights. Therefore, a non-EU national spouse will have free access to the labour market in the Member State in which the EU worker is employed. The ECJ has also ruled that EU companies can move their non-EU workers to another EU Member State on a temporary basis in the context of the provision of services. Thus a Belgian company employing Moroccan workers, who were lawfully resident in Belgium, was permitted to deploy those workers to a construction project in France without first having to seek work permits for them.[20]

The EU Council of Ministers recently adopted Regulation 859/2003/EC extending the EU rules on social security provision to non-EU nationals resident in one Member State moving to another Member State to take up employment there (EU, 2003a). Moreover, third-country nationals who have acquired long-term resident status have the right to reside in another EU Member State for a period longer than three months and to take up employment there, although authorities in the second Member State retain the discretion to

TEXTBOX IX.5

European Commission's Policy Plan on Legal Migration (December 2005)

In December 2005, in response to the European Council's Hague Programme, the Commission presented its Policy Plan on Legal Migration, which defines a roadmap for policy-making in this field for the period 2006-2009. The Policy Plan describes the current situation and prospects of labour markets in the EU as a "need" scenario, thus clearly recognizing that the admission of both highly-skilled and less-skilled migrant workers from third countries should be facilitated. It proposes the adoption of a general framework directive guaranteeing a common set of rights to *all* third country nationals in legal employment in EU Member States. These rights would not be limited by reference to their length of stay although, at this stage, the level of the rights to be protected has not been specified.

The Policy Plan also recommends the adoption of four specific directives governing the conditions of entry and residence for highly-skilled workers, seasonal workers, Intra-Corporate Transferees (ICT) and remunerated trainees.

Other proposed actions include:

- establishment by the end of 1997 of an EU Immigration Portal on EU policies, news and information;
- extension of the services provided by the European Job Mobility Portal and the EURES network to third-country nationals;
- assistance to Member States on integration;
- cooperation with third countries, including the adoption of arrangements for managed temporary and circular migration and the provision of professional training and language courses in the country of origin for those leaving to work in the EU.

Source: EU (2005f).

apply the EU preference principle regarding access to the labour market (Textbox VI.3).[21]

Association agreements which the EU and its Member States have concluded with third countries constitute an important source of rights for nationals from these countries employed in EU territory. It is important to note that, in general, no EU Association Agreements can override the sovereignty of Member States regarding the control of admission of non-EU nationals into their territory for the purpose of employment. The rules are mainly concerned with workers who are already lawfully resident and employed in the territory. The agreement with Turkey (Ankara Agreement) dates back to 1963 (EU, 1963) and provides for the most extensive set of rights.[22] EEC-Turkey Association Council Decision 1/80, adopted under the Agreement, contains incremental rights concerning access to the labour markets of EU Member States for Turkish migrant workers already lawfully working in their territory. Employment restrictions are to be lifted gradually and free access to employment is to be provided after 4 years of lawful employment (EU, 1980: Art.6). The strong EU safeguards against expulsion mentioned earlier are also applicable (ECJ, 1997, Case 340/97).

In addition to these arrangements with Turkey, the EU has converted Co-operation Agreements with three Mahgreb countries (Algeria, Morocco and Tunisia) into fully fledged Euro-Mediterranean Association Agreements, which provide for equal employment conditions with nationals and social security rights for lawfully resident Mahgreb migrant workers in EU terriory.[23] Moreover, the EU has entered into "Europe Agreements" with Central and Eastern European countries to prepare for their eventual accession to the EU. Since many of these countries became EU Member States in May 2004, such agreements apply only to Bulgaria and Romania, scheduled to be admitted to the EU in 2007. The Europe Agreements provide lawfully resident workers from these countries equal treatment with nationals in respect of employment conditions and social security rights, and facilitate their right of establishment (EU, 2004e; Arts.38-39, 45-55).

The EU is also developing a common policy on migration and asylum towards third country nationals. Numerous measures have been adopted on asylum and irregular migration (Chapter VIII), but to date few on legal migration, with the exception of measures relating to family reunification, status of third country nationals who are long-term residents, and admission of students and researchers (see respectively EU, 2003d, 2003e, 2003i, 2005d). However, in its December 2004 Hague Programme on Strengthening Freedom, Security and Justice in the EU, which outlines the elements of a new multi-annual programme in this field for 2005-2009, the European Council, invited the Commission "to present a policy plan on legal migration including admission procedures capable of responding promptly to fluctuating demands for migrant labour in the labour market before the end of 2005" (EU, 2004g: Annex I). In December 2005, the Commission duly presented the Policy Plan, which refers to future proposals for the adoption of legally binding measures in this area, as well as other pertinent activities (Textbox IX.5).

While the explicit recognition of the need in the EU for migrant labour from third countries is a positive development, Member States will have to demonstrate considerable political will to ensure the speedy adoption and effective implementation of the legally binding measures and actions proposed in the Policy Plan.

IX.1.4 Regional integration: North American Free Trade Agreement

IX.1.4.1 NAFTA and intra-regional movement of goods, capital, and persons

Canada, Mexico and the United States signed the North American Free Trade Agreement (NAFTA) in 1994. It prescribes measures to facilitate the cross-border movement of goods, capital and services and to promote free and fair trade among the three countries. NAFTA operates on the presumption that freer trade generates greater economic opportunity and productivity.[24] Proponents also believed that the creation of a regional free trade area would maximize the continent's market power in relation to other states (Johnson, 1998). NAFTA also provides for greater movement of persons in connection with trade, although, as in most regional trade agreements, it does not enable general freedom of movement for all persons,[25] which is the principal difference between NAFTA and the EU regime.

NAFTA's impact on migration is limited to providing for the temporary entry of certain categories of persons and outlining members' obligations regarding the admission of nationals from the other two signatories. NAFTA addresses the temporary entry of both business persons and persons involved in the provision of services (Chapters 16 and 12 respectively). In addition, a side agreement, the North American Agreement on Labour Cooperation (NAALC), espouses deepened cooperation on the labour front, particularly with regard to enforcing labour laws.

IX.1.4.2 Temporary entry for business persons

Chapter 16 of NAFTA is dedicated to the temporary entry of business persons and contains the provisions that affect migration most directly. Mindful of the parties' commitment to facilitate and manage temporary entry, and to ensure border security and protection of domestic labour markets and permanent employment, Chapter 16 obliges parties to admit four categories of business persons:

- business visitors;
- traders and investors;
- intra-company transferees (ICTs);
- professionals.

NAFTA obliges parties to admit such individuals upon proof of citizenship and documentation of the purpose of entry and of the nature of the engagement, provided the individual would otherwise be allowed entry under domestic policy.[26]

Concerning entry of persons in all four categories, no party may require labour certification tests (Section VI.3.2.2 above) or similar procedures, or impose a numerical limit on the number of admissions.[27] In addition, parties may not require prior approval procedures, petitions, or similar procedures from business visitors and professionals. However, the Chapter allows visas to be required, prior to admission for each category, after consultation with the party whose business persons would be affected "with a view to avoiding the imposition of the requirement" (Annex 1603.D.3).

Appendices to these provisions lay out the categories of business visitors and professionals who may be admitted, together with minimum educational requirements for individuals in the professional category, which is the broadest category of business persons under NAFTA. Generally, they must have a Bachelor's degree or technical training or certification.[28] In practical terms, employment of professionals in other parties' territories is contingent on recognition of their qualifications. Some agreements and measures exist to facilitate recognition of qualifications where they are needed, but they facilitate movement between the US and Canada, rather than between the other parties.[29] NAFTA Chapter 12, discussed below, also addresses professional services and qualifications, but with a view to eliminating "unnecessary barriers to trade" rather than to creating employment opportunities (Ch. 12, Arts.1201 and 1210).

IX.1.4.3 The Trade NAFTA visa

Under Chapter 12, the US exercises the option to require visas of Mexican professionals seeking to temporarily enter its territory. The Trade NAFTA (TN) visa, commonly called the NAFTA Professional visa, allows admission for up to one year and may be extended by periods of one year, without limit. However, it is a non-immigrant visa and not for permanent residence. Individuals in designated professions, as evidenced by the attainment of specified minimum education requirements and credentials, may apply for the visa at US consulates.

The TN visa procedure imposes more requirements on Mexican professionals than on Canadians. Canadian citizens are not required to have a non-immigrant visa prior to entering the US and need only present proof of citizenship and professional employment at the border. Further, no numerical limitation was imposed on the number of TN visas granted to Canadians. Mexicans, contrarily, face tougher requirements. Applicants must schedule an interview, which includes a fingerprint scan, present the application forms, a letter of employment written by the employer,[30] and demonstrate that their stay is indeed temporary, along with a valid passport and photograph.[31] TN visas had an annual cap of 5,500 for Mexican nationals. Pursuant to the Agreement, however, that cap was removed in January 2004 (Condon and McBride, 2003: 277).

IX.1.4.4 Movement of persons in relation to provision of services

Chapter 12 applies to all measures regulating

cross-border trade in services, excluding financial services, air services, government procurement, government subsidies and grants, and services not covered by Chapter 11 on Investment. The text clearly distinguishes migration policy from the entry of service providers, stating that the chapter imposes *no obligation* on the parties to grant any rights regarding employment market access (Art. 1201). Chapter 12 is also not intended to affect the parties' capacity to provide social services or perform other government functions, such as law enforcement.

Chapter 12 attempts to reduce the barriers to trade imposed by states' licensing and certification requirements with regard to cross-border service providers through national treatment and Most Favoured Nation (MFN) treatment, and a prohibition on requiring local presence. Accordingly, states must provide other parties' service providers treatment no less favourable than their own or those of other states and cannot require another party's service provider to establish or maintain an office or residency in its territory as a condition for the provision of a service.

However, Chapter 12's liberalizing measures are tempered by caveats. Reservations to the above three principles were allowed and listed in Annex I of Chapter 12. Annex II specifies certain sectors, sub-sectors and activities where parties may retain or adopt more restrictive non-conforming measures as well. In addition, the MFN treatment requirement does not require any party to recognize qualifications (including education, experience, licenses and certifications) obtained in the territory of one party when it recognizes, either unilaterally or by agreement, qualifications obtained in another party or in a non-party. However, the admitting party must give the other party an opportunity to demonstrate that qualifications earned in its territory should also be recognized or to enter into a comparable agreement for their recognition.

Further, quantitative restrictions, licensing requirements and performance requirements are allowed, but the parties must commit to negotiate the liberalization or removal of such restrictions. Parties must ensure that licensing requirements are based on objective, transparent criteria (such as competence), are not more burdensome than necessary to ensure quality, and are not disguised restrictions on the cross-border provision of services. Chapter 12 describes the steps towards establishing mutual professional standards and specifically addresses legal, engineering, and bus and truck transportation services. NAFTA required all parties to eliminate citizenship and permanent residency requirements for the licensing or certification of professional service providers of another party within two years of its enactment, and to consult for the removal of such requirements for the licensing and certification of other service providers.

IX.1.5 Regional integration: Commonwealth of Independent States

Regional integration in the Commonwealth of Independent States (CIS) has been pursued at various levels, although the results have been mixed. In 1992, an Agreement on the free movement of CIS citizens through the territory of the Commonwealth was concluded, although half of the CIS countries, including the Russian Federation and Kazakhstan, subsequently denounced this agreement, preferring to adopt bilateral arrangements. Today, all CIS countries, with the exception of Georgia and Turkmenistan, have visa-free arrangements with Russia, although they only apply to admission to the territory and do not extend to a right to take up employment.

More recent developments have largely focused on further economic integration in the region. In May 2001, the Eurasian Economic Community (EAEC) was established comprising Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan.[32] EAEC's primary objectives are to develop a full-scale customs union and a common market. A further objective, relating specifically to migration, aims at developing common guidelines on border security.[33] EAEC is expected to merge with the Central Asian Cooperation Organization (CACO), established in 1991 as the Central Asian Commonwealth. CACO comprises the same Member States as EAEC, with the exception of Belarus, and its principal objective is to further economic integration in the region.[34]

The CIS countries have also adopted regional agreements relating to labour migration and the prevention

of irregular migration and these are discussed below.

IX.1.6 Regional agreements and inter-state cooperation

With regard to formal cooperation on labour migration at the regional level, Council of Europe instruments relating to protection of migrant workers, such as the (Revised) European Social Charter and the European Convention on the Legal Status of Migrant Workers (ECMW), include a number of provisions requiring contracting parties to cooperate with one another. For example, the (Revised) European Social Charter, in Article 19 on the right of migrant workers and their families to protection and assistance, requires States parties "to promote co-operation, as appropriate, between social services, public and private, in emigration and immigration countries" (Art.19(3). ECMW provides for cooperation between contacting parties on the exchange and provision of appropriate information to prospective migrants, inter alia, on:

- residence, conditions of employment and opportunities for family reunion, the nature of their employment, social security, housing, transfer of savings, etc;
- vocational training and retraining schemes to ensure that they cater as far as possible for the needs of migrant workers with a view to their return to their country of origin;
- arrangements, so far as practicable, for the teaching of the migrant worker's tongue to the children of migrant workers to facilitate, *inter alia*, their return to their country of origin;
- provision of information to migrant workers about conditions in their country of origin on their final return home (Arts.16, 14(5), 15 and 30 respectively).

ECMW also links certain contracting parties' obligations with the adoption of further multilateral or bilateral agreements in areas such as the transfer of savings, social security, social and medical assistance and double taxation (Arts. 17, 18, 19 and 23 respectively).

In 1994, all CIS Member States signed the Agreement on Cooperation in Labour Migration and Social Protection of Migrant Workers (15 April 1994). This agreement is based on ILO principles and contains the following provisions:

- mutual recognition of diplomas, other job evaluation documents and work records;
- rules of employment in the destination country;
- elimination of double taxation;
- equal treatment between migrant workers and nationals in respect of social security, social insurance, and medical care;
- transfer of earnings and savings.

However, the agreement is limited in scope since it only applies to lawfully resident migrant workers and excludes members of their families. It is also to be implemented through bilateral agreements and to date, these have not been extensively adopted (Section IX.1.1.1 above).[35]

In addition to the 1994 agreement, CIS countries elaborated a draft Convention on the legal status of migrant workers and members of their families in 2003, the first international document in the region aimed at protecting the rights of migrant workers and members of their families. The draft Convention contains a clause prohibiting discrimination on the same grounds as those defined in international human rights instruments. It also includes provisions protecting the fundamental rights of migrant workers, such as protection from torture and degrading treatment, slavery, and forced labour. The draft Convention provides for equal treatment of migrant workers and nationals, in respect of payment of wages, employment conditions, social security, access to the courts, etc. It also provides for special measures relating to the protection of migrant women and children. The text of the Convention has still not been finalized and work is ongoing, but it has received support from the International Confederation of Free Trade Unions, which conducted a special seminar on labour migration in the CIS and the protection of migrant workers in Moscow in November 2004.[36]

In 1998, the CIS countries also adopted an agreement on combating irregular migration, which contains provisions on the suppression of irregular migration, expulsion, readmission and exchange of information. It also defines an irregular migrant as including persons in illegal employment.

IX.1.7 Global level agreements

It should be noted at the outset that there is no comprehensive international migration regime operating at the global level. The admission of persons to States for the purpose of employment is regulated principally by national laws and policies. However, a number of formal mechanisms have been developed at the global level, under the auspices of international treaties, with a view to enhancing inter-state cooperation on labour migration or the movement of persons within the context of the international trade in services.

IX.1.7.1 Inter-state cooperation in international treaties

As discussed in some detail in Section I.2 above, a number of international conventions have been adopted with a view to protecting the rights of migrant workers in the migration process, namely IRCMW and the pertinent ILO instruments. But there are also important parts and provisions in these treaties dealing with inter-state cooperation.

While IRCMW establishes a principled framework for the protection of the human rights of all migrant workers and their families irrespective of status, it also acknowledges in a number of places and particularly in Part VI that such a human rights framework cannot be effectively applied without consultation and cooperation between states. This involves not only inter-state consultation and cooperation at the bilateral, regional and multilateral level, but also government consultation and cooperation with pertinent stakeholders, such as employers, trade unions and other organizations. In this way, therefore, consultative and cooperative processes on labour migration and acceptance of legally binding standards on the protection of the rights of all migrant workers and their families are viewed as mutually reinforcing, with the potential to benefit both migrants and the states concerned.

Part VI on the promotion of sound, equitable, humane and lawful conditions in connection with international labour migration is the principal section in ICRMW addressing inter-state consultation and cooperation. States parties are under the general obligation, by virtue of Article 64, to consult and cooperate "with a view to promoting sound, equitable and humane conditions in connection with international migration of workers and members of their families" and "[i]n this respect, due regard shall be paid not only to labour needs and resources, but also to the social, economic, cultural and other needs of migrant workers and members of their families involved, as well as to the consequences of such migration for the communities concerned". Part VI also discusses consultation and cooperation between States parties in respect of the following areas:

- consultation, exchange of information and cooperation between the competent authorities of States parties involved in the international migration of workers and members of their families (Art.65(1)(b));
- cooperation in the adoption of measures regarding the orderly return of migrant workers and members of their families to the State of origin, when they decide to return, or their authorization of residence or employment expires, or when they are in the State of employment in an irregular situation (Art.67(1));
- cooperation with a view to promoting adequate economic conditions for the resettlement of regular migrant workers and to facilitating their durable social and cultural reintegration in the State of origin (Art.67(2)).

IRCMW also attaches considerable importance to the role of bilateral, regional and multilateral arrangements and agreements, particularly in the context of furthering the rights of migrant workers and members of their families (Preamble). Indeed, if bilateral and other multilateral instruments in force for the State party concerned grant more favourable rights and freedoms to migrants, such instruments must be respected (Art.81(1)) (Section IX.1.1.5 above).

With regard to ILO instruments, there are also provisions imposing obligations upon States parties to cooperate with one another with a view to preventing abuses in the migration process and recommending further cooperation at the bilateral and multilateral level concerning the facilitation of legal labour migration and equality of treatment in respect of social security as well as maintenance of acquired social security rights (Textbox IX.6).

To date, however, these specific multilateral instruments have not received the wide-ranging acceptance, which would enable the development of a comprehensive framework for multilateral cooperation.

More informal cooperation at the global level has occurred, more generally, through the so-called Berne Initiative, a State-led process, supported by the Swiss Government and facilitated by IOM and, more specifically with regard to international labour migration, under the auspices of ILO in the context of the adoption of the Multilateral Framework on Labour Migration (ILO, 2005), which are discussed in Section IX.2.3 below.

IX.1.7.2 General Agreement on Trade in Services

The General Agreement on Trade in Services

TEXTBOX IX.6

ILO Instruments and International Cooperation on Labour Migration

Several ILO instruments relevant to migrant workers stress the importance of international cooperation in the area of labour migration, including the adoption of bilateral agreements. For example, ILO Convention No. 143 calls for the Member States concerned to adopt, where appropriate in collaboration with other Members, a number of measures to determine and suppress clandestine movements and illegal employment of migrant workers. At the international level, systematic contacts and exchanges of information on these matters is to take place between the Member States concerned. One of the purposes of this cooperation is to make it possible to prosecute authors of trafficking for the purpose of labour whatever the country from which they exercise their activities.

Although it is questionable whether bilateral agreements have been effective as a means for addressing structural labour shortages and curbing irregular migration, the conclusion of bilateral agreements [Section IX.1.1] may be a useful solution for providing better protection of migrant workers, either in respect to certain areas such as social security, or with regard to more vulnerable categories of migrant workers, such as domestic workers.

Increasingly, many States are turning to such agreements to regulate the most significant emigration and immigration flows as well as social matters of migration such as social security. Such a solution is also recommended by a number of ILO instruments: the *Model Agreement on Temporary and Permanent Migration for Employment, including Migration of Refugees and Displaced Persons, annexed to Recommendation No. 86 on Migration for Employment (Revised), 1949*, offers a useful framework for guidance on the kind of matters that could be regulated in bilateral or multilateral migration agreements. The Model Agreement provides for measures concerning, inter alia:

- exchange of information;
- action against misleading propaganda;
- conditions and criteria for migration;
- organization of recruitment and placing o f migrants;
- information and assistance to migrants;
- transfer of earnings;
- adaptation of permanent migrant workers;
- settlement of disputes;
- equality of treatment in a number of areas;
- contracts of employment;
- employment mobility
- the return of migrants;
- measures on the methods for cooperation and consultation between States parties.

It provides that bilateral agreements should include provisions concerning equal treatment of migrants and nationals and appropriate arrangements for acquired rights in the area of social security. In addition, Conventions Nos. 118 and 157 concerning equality of treatment in social security and maintenance of acquired social security rights also explicitly provide that ratifying States may give effect to provisions of the Convention concerning the maintenance of acquired rights and provision of benefits abroad through the conclusion of bilateral and multilateral agreements.

Source: ILO, International Labour Standards Department (NORMES) (March 2006).

(GATS) (WTO, 1994) operates under the auspices of the World Trade Organization[37] and contains some limited globally applicable rules of relevance to the mobility of workers in the context of the trade in services. These rules are found in Mode IV of the Agreement and enable "natural persons" to cross an international border from Member State A to Member State B for the purpose of providing a service, which is recognized as one of the four possible ways of trading a service under GATS. However, these rules are limited in practice in the Member State schedules to a narrow category of migrants, primarily to those working for multinational companies, such as executives, managers and specialists, and intra-company transferees. Further, this movement can only take place on a temporary basis, e.g. business visitors are generally permitted to stay for up to 90 days. Permanent presence in the country is therefore expressly excluded.[38] Moreover, GATS does not apply to measures concerning individuals independently seeking access to a Member State's labour market and it does not exempt natural persons from fulfilling any visa requirements.

In the context of recent WTO trade negotiations, delegations from developing and least developed countries (LDCs) have sought greater access to labour markets in developed countries, particularly by broadening the categories of persons who can enter and by simplifying admission rules. However, progress has been slow as revealed by the most recent round of trade negotiations (Textbox IX.7).

Outside of these negotiations, however, there have been concerted attempts to bring together trade and migration policy-makers and practitioners, as well as other stakeholders from business and civil society, with a view to realizing the potential that the mobility of persons might bring to the growth of the global economy by:

- exploring the links between international trade and migration;
- identifying the ways of improving the effectiveness of existing trade commitments under GATS Mode 4 regarding the temporary movement of persons as service providers;
- discussing possibilities for progress in the current GATS negotiations and for further trade liberalization in this field (Klein Solomon, 2006).

TEXTBOX IX.7

WTO Hong Kong Ministerial Conference, December 2005

At the Hong Kong Ministerial Conference on the Doha Work Programme, held on 13–18 December 2005, ministers from the WTO's 149 Member governments approved a 44-page Declaration. The principal merit of the Declaration is to put the Doha round trade negotiations "back on track". With regard to services, the text in reality satisfies neither those WTO Members who wanted the language in the Services Annex of the draft Declaration to be made more ambitious (e.g. the EU, in exchange for limited commitments on agriculture), nor those who sought to weaken the text.

Annex C on Services was the most controversial part of the Declaration. Specifically, on Mode 4, the text refers to "new or improved commitments on the categories of Contractual Services Suppliers, Independent Professionals and Others, de-linked from commercial presence", and of "Intra-corporate Transferees and Business Visitors, to reflect *inter alia* removal or substantial reduction of economic needs tests and indication of prescribed duration of stay and possibility of renewal, if any". This wording is not as strong as that suggested in the "alternative annex C" advanced by the G90 (including the group of African, Caribbean and Pacific countries, the LDC group and the African Union), which requested WTO Members to ensure that any negotiated commitments reflect "improvements in all four modes of supply both in terms of *market access and national treatment* and in particular Mode 4 liberalization in categories de-linked from commercial presence". Some trade analysts consider that the positive gains from Mode 4 along these lines will be limited, and for most developing countries will be outweighed by pressures to open up their markets in Mode 3. In this regard, the text calls for "enhanced foreign equity participation" and for "allowing greater flexibility on the types of legal entity permitted".

Sources: IOM, Migration Policy, Research and Communications Department; WTO (2005).

In this connection, three seminars have been organized since 2002:

(i) a Symposium, sponsored by the WTO and the World Bank, on Movement of Natural Persons (Mode 4) under GATS in April 2002 (World Bank, 2002; WTO, 2002);
(ii) a seminar, jointly organized by the OECD, World Bank and IOM, on Trade and Migration in November 2003 (OECD, 2004c; World Bank, 2003; IOM, 2003e); and
(iii) a follow-up seminar in October 2004, co-hosted by the IOM, the World Bank and WTO, entitled "Managing the Movement of People: What can be learned for Mode 4 of the GATS" (IOM, 2004b; World Bank, 2004; WTO, 2004).

IX.2 Less Formal and Consultative Mechanisms

Reaching formal commitments in focused bilateral labour agreements, regional integration mechanisms, and regional and international conventions is important for facilitating orderly labour migration and protecting migrant workers. When these agreements are difficult to achieve, as is often the case, other solutions can prove an effective tool for interstate cooperation. These include non-binding consultative mechanisms such as regional consultative processes, joint commissions on labour, and working groups.

IX.2.1 Regional consultative processes

Less formal regional arrangements, as opposed to the more formal mechanisms considered in Section IX.1 in the context of regional integration regimes and legally binding treaties, are regional consultative processes (Swiss Federal Office for Migration, 2005; IOM, 2005e). Regional consultative processes (RCPs) are an example of non-binding fora bringing together migration officials of states of origin and destination to discuss migration-related issues in a cooperative way.

IOM has been engaged in promoting dialogue and cooperation in managing migration among countries of origin, transit and destination at the regional and sub-regional levels, such as the Puebla Process for Central and North America, initiated in 1996. The Puebla Process (Regional Conference on Migration) was initiated by Mexico and its main goal is the management of irregular migration in and through the region. A Plan of Action was agreed in 1997, and new goals discussed in 2000. The Plan of Action was largely achieved: seminars on specific topics have been held, information exchange has occurred, technical assistance carried out, and there have been many instances of one-off assistance among states. IOM provided the Secretariat (von Koppenfels, 2001).

There are two basic characteristics common to RCPs. They are informal and the results, though consensual, are non-binding. Although the focus of regional processes depends on the interests of the parties involved, a key in the successful functioning of an RCP is the basic acknowledgement of a shared interest in migration management, despite national interests and experiences. The most important role RCPs can play is to encourage government representatives of various countries to talk to each other and address issues in a multilateral setting. Talking and sharing experiences serves to develop relationships, enhance knowledge and mutual understanding, and build the confidence and trust that are essential, in view of the complexity of the issues being addressed. As a result of a step-by-step approach to confidence building, areas of potential cooperation begin to expand. In this regard, regional consultative processes serve as a focal point for enhancing the understanding of the causes and effects of factors leading to migration trends, and also as a practical vehicle for maintaining and sharing reliable and up-to-date data and documentation on trends, programmes and policies related to these factors.

The most recent regional process, which focuses specifically on labour migration, is the Ministerial Consultations on Overseas Employment for Countries of Origin in Asia (Textbox IX.8)

A RCP in the OSCE European region that is proving significant is the Söderköping process,[39] established in early 2001 and involving ten countries along the eastern EU enlarged border.[40] The process is supported by EU, IOM, the Swedish Migration Board and UNHCR, and its objective is to support cross-border cooperation between

TEXTBOX IX.8

Ministerial Consultations on Overseas Employment for Countries of Origin in Asia: The Colombo Process

In response to a request from several Asian countries of origin, IOM organized ministerial level consultations in 2003, 2004 and 2005. The ten original participating States (Bangladesh, China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand and Vietnam) made recommendations for the effective management of overseas employment programmes and agreed to a regular follow-up.

The aim of the Ministerial Consultations is to provide a forum for Asian labour-sending countries to:

- share experiences, lessons learned and best practices on overseas employment policies and practices;
- consult on issues faced by overseas workers, countries of origin and destination;
- propose practical solutions for the well-being of vulnerable overseas workers;
- optimize development benefits;
- enhance dialogue with countries of destination.

Achievements so far have included:

- identification, at ministerial and senior official levels, of policy challenges and needs, and exploration of the range of possible responses and exchange of experiences in programme development;
- development of training curriculum for labour attachés and administrators and implementing joint training courses;
- preparation for establishing a common Overseas Workers Resource Centre;
- implementation of recommendations at the national level.

The third Ministerial Consultations at Bali Indonesia were greatly enriched by the participation of countries of destination, with delegations from Bahrain, Italy, Kuwait, Malaysia, Qatar, Republic of Korea, Saudi Arabia and the United Arab Emirates. Afghanistan was welcomed as a new member to the group after participating as an Observer in 2004. International and regional organizations participating in the Consultations included ADB, ASEAN, EC, GCC, DFID, ILO, UNIFEM and World Bank.

Source: Labour Migration Division, IOM.

participating countries on asylum, migration and border management issues. Another RCP is the newly established Pan-European Dialogue on Migration Management, the objective of which is "to set a platform for multilateral regional dialogue in order to shape coherent and transparent migration-related policy and programming priorities between the EU Member States and their neighbours".[41] There are also relevant inter-regional processes, such as the "5 + 5", involving the 5 countries of Southern Europe and 5 North African countries,[42] and the Intergovernmental Consultations for Migration and Asylum (IGC), which comprises 12 western European states and four new immigration countries.[43]

With the exception of the Colombo Process, none of these RCPs focus exclusively on labour migration, although this subject is becoming either an integral aspect or an increasingly important agenda item. For example, the Road Map of the Söderköping Process 2005-2007 refers to regional harmonization on labour migration and remittances as one of the aims of the process and identifies "support in regulating labour migration including ensuring access to information on foreign employment and travel opportunities" as an information-related need for beneficiary countries (Söderköping Process, 2005: 2, 4). IGC is also shifting its attention to non-asylum issues, and is discussing labour migration.

Another RCP of particular relevance to the OSCE European region is the Budapest process, which focuses on cooperation to prevent and reduce irregular migration, including trafficking and smuggling in human beings. The International Centre for Migration Policy and Development (ICMPD) acts as the Secretariat for the Budapest Group of countries.[44] At the recent Ministerial Conference of the Budapest Group, held at Rhodes in June 2003 (ICMPD, 2003), a number of important measures were proposed of particular relevance to labour migration. The Ministers invited destination countries "to assess the impact of current labour market policies with

regard to the prevention of irregular migration"; reaffirmed "the need for effective and deterrent sanctions on employers to suppress the employment of illegal migrants"; and recommended the initiation of a dialogue among Central and Eastern European countries on the "harmonization of rules for the admission of various categories [of migrants, such as *inter alia*] ... employed and self-employed persons [and] students".

Under the auspices of the Budapest Process, ICMPD is currently running a project on a re-direction of the process towards countries of the CIS region, with the objective of "furthering the development of an informal process for addressing irregular migration challenges in the CIS region, thus paving the way for a structured dialogue on these issues, both among the countries of the region and the neighbouring EU countries as well as other European countries of destination".[45]

IX.2.2 Other informal meetings

When effectively implemented, BLAs can promote orderly migration and protect migrant workers. In general, and particularly in the Gulf, countries of destination are increasingly inclined to establish less formal mechanisms for cooperating with countries of origin on the management of labour migration. Joint commissions on labour (JCLs) are now being held by Asian governments for achieving greater cooperation from governments of Arab states, as well as from Asian countries of employment (Abella, 2000). In essence, they provide a mechanism for informal consultations between administrative authorities of the countries of origin and destination (usually Ministries of Labour and Employment) on mutually agreed issues. Abella (2000) offers examples of how JCLs contributed to the reversal of rules found to be unfair to migrant workers.

Other formats for non-binding consultations between countries of origin and destination are round tables and study committees or working groups. There are still no established structures for regular consultations at a multilateral level among countries of labour origin and destination in Asia. In the past, ILO has organized round table meetings, with the aim of providing an opportunity for a frank exchange of views on contentious issues without pressure to agree or arrive at a formal conclusion. The three Arab-Asian Round Table Meetings held probably achieved this, but there was no follow-up machinery (Abella, 2000).

The formation of working groups, task forces, or what in international trade negotiations has been used to good effect, study committees can perhaps emerge as a way of achieving follow-up. The establishment of a multilateral working group or study committee on labour migration would be a non-contentious and practical way of coordinating migration policies of the major countries of origin and destination in a region.

IX.2.3 Global initiatives

IX.2.3.1 The Berne Initiative

The Berne Initiative was launched by the Swiss Government with the International Symposium on Migration on 14-15 June 2001. It is a State-owned consultation process with the objective of obtaining better management of migration at the national, regional and global levels through enhanced co-operation between states. The process assists governments in sharing their different policy priorities and identifying their longer-term interests in migration with a view to developing a common orientation to migration management.[46] The IOM provides a Secretariat for the Berne Initiative.

The most important outcome of the Berne Initiative has been the development of the International Agenda for Migration Management (IAMM) (Swiss Federal Office for Migration, 2005a; IOM, 2005d). IAMM is a non-binding source and broad policy framework on migration management at the international level, which was developed through a series of consultations involving interested states, as the main actors in this field with the advice and support of pertinent regional and international organizations, NGOs and independent migration experts (Nielsen, 2006).

IAMM sets out a number of common understandings and effective practices for a planned, balanced and comprehensive approach to the management of migration, including labour migration and the human rights of migrants. With regard to the latter, it emphasizes that "respect for and protection of the human rights and dignity of migrants is fundamental to effective migration management" (IOM, 2005d: 45).[47] The

TEXTBOX IX.9

International Agenda for Migration Management, Chapter 5 – Labour Migration*

"Domestic economies throughout the world are dependent on migrant workers, whether in countries of destination to fill skills or workforce gaps, or in countries of origin as sources of skills acquisition, training, investment and foreign exchange earnings through remittances. The demands of an increasingly global economy and workforce coupled with persistent disparities in demographic trends, development, wealth, political stability and wages, result in persons seeking work outside their own country on a scale that exceeds the capacity of existing and officially sanctioned labour opportunities abroad. The result has been a growing dependency of many employers and economies on the work of migrants in an irregular situation, as a cheap and reliable source of labour.

Migrants in an irregular situation are vulnerable and at risk of exploitation. Regulated labour migration may help to ensure the availability of labour when the host country needs it, provide safety and security for the migrants and regularize the inflow of migrant workers' remittances. In addition, it can contribute to preventing or stemming irregular migration. The challenge for policy-makers is to assess national workforce requirements and to develop a flexible and transparent labour migration policy to meet domestic needs, in view of changing international realities and the benefits of cooperation between countries of origin and destination in addressing these needs. The significant economic impact and potential of labour migration, and the challenge of how to manage it to best effect, needs however to take into account the human dimension.

Effective practices with regard to labour migration:

- Consideration of developing national measures that regulate supply of and demand for human resources that are linked to bilateral and multilateral efforts and are developed in consultations with key stakeholders.
- Consideration of labour migration schemes for highly skilled, skilled and lower skilled migrant workers that are systematically developed to meet labour demand in countries of destination and respond to labour supply and unemployment in countries of origin.
- Consideration of bilateral programmes in order to meet the specific needs of both source and destination countries, addressing the rights and responsibilities of all parties and providing for the protection of migrant workers including by ensuring access to consular officials of the country of origin.
- Transparency of legislation and procedures defining categories of labour migrants, selection criteria as well as length and conditions of stay.
- Consideration of consultation both at the national and international level bringing together relevant officials to address labour market and labour migration issues.
- Enhanced information-sharing and consultations on policy, legislation and procedures more systematically to identify surplus and deficits in respective labour markets and possibilities for matching labour demand and supply.
- Consideration of measures to prepare potential migrant workers for entry into foreign labour markets, and arrange for pre-departure assistance, such as language and cultural orientation, and vocational training as needed.
- Provision of information to departing migrant workers on working conditions, health and safety, their rights and sources of support potentially available in the country of destination.
- Exploration of measures for the mutual recognition of qualifications.
- Consideration of programmes to foster skills development and savings and investment schemes that will provide incentive for and assist migrants returning to their home countries.
- Protection of migrant workers through implementation of public information campaigns to raise awareness of migrants' rights, and ensuring that migrants receive the social and employment benefits that they are due.
- Promote the enjoyment by authorized migrant workers of the treatment accorded to citizen workers, such as access to training, minimum wage, maximum hour rules, prohibition of child labour and right to establish unions.
- Adoption of measures to ensure respect for the rights of female migrant workers.
- Provision of full access for temporary migrant workers to consular assistance.
- Adoption of measures for the integration of migrant workers in order to encourage cultural acceptance, and to ensure that the rights of migrants and members of their families are respected and protected.
- Implementation of measures to recognize and facilitate the use by highly skilled workers of their skills in the country of destination.
- Consideration of providing information on employment vacancies to potential migrants, on the recognition requirements for occupational qualifications and other practical information, such as taxation and licensing.
- Promotion of research and analysis on the impact of migrant workers on the local labour market."

* Labour or economic migration can be temporary or permanent, and consequently is addressed here as a separate section in addition to being treated under the temporary migration section [Chapter 4a, pp. 35-38].

Sources: Swiss Federal Office for Migration (2005a), IOM (2005d) 40-42.

IAMM devotes a whole chapter to labour migration (Textbox IX.9).

While the IAMM represents the views of migration officials and experts from all regions of the world, it remains a unique document because it has not been "adopted" on the basis of negotiations between states, and therefore does not purport to constitute a form of 'soft' law. Rather, it has been designed as a practical tool for State administrators to assist them in the development of coherent migration policies.

IX.2.3.2 The ILO non-binding multilateral framework on labour migration

Following a review of the main ILO Conventions and Recommendations relating to labour migration by the Committee of Experts on the Application of Conventions and Recommendations (ILO, 1999), the Government Body decided in 2002 to place on the agenda of the 92nd Session of the International Labour Conference (ILC) a general discussion on migrant workers based on an "integrated approach". This reflected the explicit recognition by ILO constituents of the crucial importance of international labour migration and the value of working on migration issues from a tripartite perspective. This general discussion, the first high-level international tripartite debate on labour migration since the International Conference on Population and Development in 1994, revealed the complex challenges, as well as the enormous opportunities, raised by the expansion of cross-border migration for employment in today's world. The Conference adopted by consensus a Resolution *concerning a fair deal for migrant workers in a global economy*, which called upon ILO and its constituents to implement, in partnership with other relevant international organizations, a plan of action on labour migration (ILO, 2004b: para.20-22).

A major element in this plan was "the development of a non-binding multilateral framework for a rights-based approach to labour migration which takes account of labour market needs, proposing guidelines and principles for policies based on best practices and international standards". The six other elements of the plan relate to the application of labour standards and other relevant instruments, employment promotion, capacity building and technical assistance, social dialogue, development of a knowledge base and a follow-up mechanism. In identifying the elements of the plan, Members of the ILO have underlined the need for a comprehensive and integrated approach to international labour migration.

In November 2004, the ILO Governing Body decided to convene a Tripartite Meeting of Experts, from the 31 October to 2 November 2005, to discuss the "ILO Multilateral Framework on Labour Migration: Non-binding principles and guidelines for a rights-based approach to labour migration" (ILO, 2005) and approve it, prior to its submission to the Governing Body in March 2006. The Framework underlines the importance of international cooperation in dealing with labour migration. There are four broad themes in the Framework:

- decent work for all;
- management and governance of labour migration;
- promotion and protection of migrant rights;
- migration and development.

The Framework is composed of 15 broad principles, each with corresponding guidelines and a follow-up mechanism. Annexes I and II contain, respectively, a list of international instruments relevant to labour migration and a compilation of examples of best practices in labour migration policies and programmes drawn from all regions.

The Framework has been developed within the overarching framework of the ILO "decent work" agenda. It deals only with international labour migration and addresses the concerns of both origin and destination countries, and of men and women migrant workers themselves. It takes a positive perspective on labour migration emphasizing its contribution to economic growth and development in countries of origin and destination and to the welfare of migrant workers themselves, when labour migration is properly organized. The Framework brings out the benefits of international cooperation in the organization of labour migration. Because of the special vulnerability of migrant workers due to their status as non-nationals in the countries where they work, the Framework is concerned with ensuring respect for their human and labour rights.

The principles and guidelines on migration policy included in the Framework are firmly grounded in international instruments adopted by the UN and

ILO (Chapter I) and in best practices observed in both countries of destination and origin. It recognizes the role of social dialogue and the importance of the participation of employers' and workers' organizations in the formulation and implementation of labour migration policies. In short, it is a response to the current global concerns with international labour migration.

Members of the ILO have decided that the Framework will be non-binding. Therefore, the text focuses on the principles and guidelines that should assist Member States in formulating labour migration policy measures and in implementing them. It is a flexible tool kit, which can be adapted to the diverse conditions facing different states.

The text presented by ILO and adopted by the Tripartite Meeting of Experts and Governing Body strictly adheres to the Organization's mandate in the world of work. Its focus is on issues of employment, labour and human rights, social protection and social dialogue, as they relate to labour migration. It does not deal with the sovereign rights of Member States to manage labour migration in accordance with their interests and priorities.

The Framework also rigorously follows the parameters set by the ILC Resolution in 2004. Paragraph 24 of the Conclusions, adopted by this Resolution, identifies 20 areas on which the guidelines should at least focus. The nine major issues in the Framework reflect ILO's concerns, as expressed in the ILC Resolution. They thus deal with:

- decent work;
- international cooperation;
- a global knowledge base;
- effective management of labour migration;
- protection of migrant workers;
- prevention of and protection against abusive migration practices;
- the migration process;
- social integration and inclusion;
- labour migration and development.

The Framework also includes a follow-up mechanism. Under each heading, one or more principles are proposed for each labour migration policy area, followed by specific guidelines for formulating policy measures.

The Multilateral Framework will contribute to rising to the challenges of international labour migration and to place the opportunities it opens at the service of Governments, employers and workers. ILO is confident that this Framework will further strengthen the foundations of a sustainable labour migration order.

IX.3 Concluding Remarks

In general, it can be concluded that inter-state cooperation is vital to an orderly and managed labour migration system. In the absence of a widely accepted international migration system for labour migration (i.e., expansion of GATS to encompass broader categories of service providers thus increasing worker mobility and further ratification of ICRMW and of relevant ILO instruments), there is a need to expand and develop concurrently international, regional and bilateral cooperation through formal and informal mechanisms on the basis of existing best practices. Cooperation should take the interests of all stakeholders into account: those of countries of origin and of destination, government at all levels (central, regional and local), migrant workers, social partners (employers, trade unions), and civil society.

ENDNOTES

1 Formal bilateral cooperation can also take place on a deeper level and work towards integration of the labour markets. For example, in 1996, Belarus and the Russian Federation, concluded an agreement on equal rights for their citizens in respect of employment, wages and the provision of other social and labour guarantees. As a result, citizens of one Contracting party are not considered "foreigners" in the territory of the other, they do not need to obtain a work permit, and they can freely change their job or place of residence. Information provided by IOM Moscow (March 2006).

2 This section is based in large part from Textbox 12.2 in IOM (2005a: 248-251).

3 Armenia has concluded BLAs with Russia (1994), Ukraine (1995), Belarus (2000); Belarus has concluded BLAs with Moldova (1994), Russia (1993) Ukraine (1995), Kazakhstan (1997); and Russia has concluded BLAs with Kyrgyzstan (1996; Additional Protocols 2003, 2005), Tajikistan (2005) and Ukraine (1993). There is also an agreement between Azerbaijan and Kyrgyzstan. Information provided by IOM Moscow (March 2006).

4 Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) and accompanying Recommendation No. 151 also emphasize the importance of bilateral cooperation, a position supported by the ICRMW (UN, 1990; Section IX.1.1.5 below).

5 Memorandum of Understanding for the Entry of Temporary Foreign Workers for Projects in the Alberta Oil Sands, http://www.sdc.gc.ca/en/epb/lmd/fw/mouforOilAlberta.pdf (visited March 2006).

6 E.g. Art.11 of the Agreement between Spain and Colombia for the regulation and control of labour migratory flows (21 May 2001); Art.12 of the Agreement between Spain and Ecuador for the regulation and control of migratory flows (29 May 2001) (see Annex 8); and Art.11 of the Agreement between Spain and Romania for the control of labour migratory flows between both States (23 January 2002). The agreements with Ecuador and Romania stipulate that migrant workers must report to Spanish consular authorities within a maximum period of one month of their return to the country of origin.

7 This is stated explicitly in the Labour Agreement between Spain and Morocco (25 July 2001) (Art.13), which stipulates that applications for residence and one-year and renewable work permits submitted by Moroccan workers who have exercised an activity as temporary workers for a period of four years, whether consecutively or not, will be examined with special benevolence by the Spanish authorities. See also Articles 14 of the Agreement between Spain and the Dominican Republic for the regulation and control of labour migratory flows (17 December 2001).

8 The deadline was set for 11 July 2003. By early September 2003, approximately 30,000 Brazilian migrant workers had registered to regularize their situation in Portugal (OECD, 2004a: 258).

9 For details on the UK programme, see UK Home Office, Immigration and Nationality Directorate, http://www.workingintheuk.gov.uk/working_in_the_uk/en/homepage/schemes_and_programmes/working_holidaymaker.html.

10 E.g., IRCMW, Art. 81(1); ECMW, Art. 32.

11 See IRCMW, Art. 59(2). Similarly, in Article 53(2), access to employment for migrant workers can be limited for up to a period of five years in pursuance of policies granting priority to nationals or persons assimilated to them for these purposes, by virtue of bilateral or multilateral agreements or national legislation.

12 Despite the existence of a BLA between Spain and Ecuador (see Annex 8), the number of Ecuadorians who went to work in Spain was lower than expected by the Ecuadorian government. This was due to the system allowing employers to choose a worker from a country having signed a bilateral agreement with Spain or any other country. Apparently, Spanish employers prefer to hire temporary workers from countries closer to Spain, such as Poland, than from Ecuador. This choice is dictated more by the cost of travel (for which they are responsible) than by cultural and linguistic links with the country of origin.

13 Another example of a visa-free regime was set up by the Economic Community of the West African States (ECOWAS), agreed by 16 member countries in 1979. It came into force in 1980 with the first provisions for visa-free entry. However, implementation of this regional framework has been slow and patchy.

14 Ireland and the UK do not participate in this measure.

15 Council Regulation 539/2001/EC (EU, 2001) lists third countries whose nationals must be in possession of visas when crossing external borders and those whose nationals are exempt from that requirement.

16 Rights to free movement are covered by Articles 39-42 EC (free movement of workers), Articles 43-48 (establishment), and Articles 49-55 (services), and are implemented by secondary legislation (Regulations and/or Directives).

17 Council Directive 2004/38/E (EU, 2004b) (Arts. 2(2) and 3(1)). The inclusion of registered partners is covered by Art. 2(2)(b) of this Directive.

18 Formerly Council Directive 64/221/EEC (EU, 1964), but superseded by Directive 2004/38/EC (EU 2004b), as of 30 April 2006.

19 Referred to as the Accession 8 (A8) states: Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovak Republic, Slovenia.

20 ECJ 1993, Case 42/93, and see also ECJ 1989, Case 113/89 and ECJ 2003a, Case 445/03.

21 Council Directive 2003/109/EC (EU, 2003e), Art.14.

22 See also the 1970 Protocol to the Ankara Agreement (EU, 1970).

23 See Euro-Mediterranean Agreements (1998, 2000, 2002), Title VI (Cooperation in Social and Cultural Matters).

24 The parties anticipated that Mexico, which had the lowest GDP of the three, would gain the most from NAFTA and that this rise in its GDP would create opportunities in its domestic labour market. See Martin (1998: 426).

25 At the time, public and political opposition to increased Mexico-US immigration was high in the US. NAFTA was seen as a means for reducing the flow of undocumented migrants, while ensuring that migration policies did not encumber trade (Johnson, 1988: 419; Cornelius, 2001).

26 Admission may be denied for reasons of public health and safety, and of national security or to those whose entry might have implications for an ongoing labour dispute (NAFTA, Art. 1603).

27 However, parties were permitted to establish numerical limitations on the admission of certain classes of professionals, unless the parties agreed not to establish such limits (NAFTA, Annex 1603.D.4). US limits on the entry of Mexican professionals were permitted for the longer of ten years after enactment or the duration of a similar policy between the US and another party, besides Canada, or non-party.

28 The categories of professionals are: medical professionals (dentists, registered nurses, pharmacists, vets, teaching and research doctors but not medical practitioners); scientists; teachers (employed in a college, seminary or university, but not schoolteachers); and a general category encompassing a number of professions, such as (this list is not exhaustive) accountants, architects, computer systems analysts, economists, engineers, hotel managers, interior designers, lawyers, librarians, research assistants, and social workers (NAFTA, Ch. 16, Appendix 1603.D.1).

29 E.g. Mexican lawyers and accountants have faced, or continue to face, greater procedural hurdles to practicing their profession in the US than Canadian lawyers and accountants (see Condon and McBride, 2003: 280).

30 The letter must describe the employment activity, purpose of entry, length of stay, qualifications or credentials, compliance with Department of Homeland Security regulations and/or State law, and arrangements for compensation. Proof of licensure is optional (see US State Department at http://travel.state.gov/visa/temp/types/types_1274.html).

31 In January 2004, the procedure for Mexicans was simplified by the removal of the requirement for petition approval and the filing of a labour condition application.

32 There are also three observer states: Armenia, Moldova and Ukraine.

33 See http://www.photius.com/eaec/

34 See Wikipedia – the Free Encyclopedia at http://en.wikipedia.org/wiki/Central_Asian_Cooperation_Organization. A related development concerns the Agreement on the Common Economic Space (CES), signed by Belarus, Kazakhstan, Russia and Ukraine in Yalta on 19 September 2003. CES is defined in the Agreement (Art.1) as a "common economic space uniting the customs territories of member countries which apply economic regulating mechanisms based on uniform principles providing [for] the free movement of goods, services, capital and labour resources within a common economic space, a single foreign policy and agreed tax, monetary and financial policies as required for assuring fair competition". CES' main objectives are: cooperation in trade and investment to ensure sustainable development of the economies of member countries; promotion of business; increase of economic potential in order to strengthen the competitiveness of these economies in international markets; and coordination of terms and conditions for joining the World Trade Organization (WTO) (Section IX.1.7.2 below) (Rakhmatulina, 2004). However, the changed political climate in Ukraine has muted development of the CES.

35 Information provided by IOM Moscow (March 2006).

36 Information provided by IOM Moscow (March 2006).

37 With the exception of Armenia, Georgia, Moldova and Kyrgyzstan, the remaining CIS countries are not members of the WTO. However, one of the objectives of the Agreement on the Common Economic Space for the four countries (Belarus, Kazakhstan, Russia and Ukraine) is to coordinate the terms and conditions for joining the WTO (Section IX.1.5 above).

ENDNOTES

38 GATS, Annex on Movement of Natural Persons Supplying Services under the Agreement (1994).

39 For the website of the Secretariat (based in Kiev, Ukraine), see http://soderkoping.org.ua/site/page2864-ns0.html

40 Belarus, Estonia, Hungary, Latvia, Lithuania, Moldova, Poland, Romania, Slovakia, and Ukraine.

41 See the website of IOM Brussels at http://www.belgium.iom.int/pan-europeandialogue/PanEuropeanDialogue.asp

42 For more information, see IOM's website at http://www.iom.int/en/know/dialogue5-5/index.shtml

43 The IGC Members are Australia, Austria, Belgium, Canada, Denmark, Finland, Germany, Ireland, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, UK and USA.

44 See ICMPD's website at: http://www.icmpd.org/default.asp?nav=budapest&folderid=376&id=-1.

45 See ICMPD's website at http://www.icmpd.org/default.asp?nav=budapest&folderid=376&id=-1&subfolderid=468.

46 More information on the Berne Initiative is available from website of the Swiss Federal Office for Migration at http://www.asyl.admin.ch/index.php?id=226&L=3 and the IOM's website at http://www.iom.int/en/know/berneinitiative/index.shtml

47 IAMM emphasizes also that "migrants in an irregular situation are entitled to protection of their human rights" (Swiss Federal Office for Migration, 2005a; IOM 2005d: 46), although it recognizes that they "are particularly vulnerable in practice to discrimination and to exploitation and do not enjoy access to a range of social services and other forms of protection of the host society". With regard to the principle of non-discrimination, IAMM recommends, as an effective practice, the "implementation of measures to ensure the appropriate treatment of migrants, regardless of their status, and to prevent racist or xenophobic actions and policies and to eliminate discriminatory practices against migrants" (Swiss Federal Office for Migration, 2005a; IOM 2005d: 47).