

Outside the Protection of the Law

The Situation of Irregular Migrants in Europe

A synthesis report commissioned by the Jesuit Refugee Service–Europe

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Introduction

The calamity of the rightless is not that they are deprived of life, liberty and the pursuit of happiness, or of equality before the law and freedom of opinion – formulas which were designed to solve problems within given communities – but that they no longer belong to any community whatsoever. Their plight is not that they are not equal before the law, but that no law exists for them (Arendt 1986: 295-296).

Over the last decade irregular migration has increasingly been recognised as an important problem for European states. With great vividness, newspapers and television have recounted stories of aspirant migrants being crammed into unseaworthy vessels or inadequately ventilated trucks in search of family, employment and safety. In many cases, those passengers lucky enough to survive the trip are forced into work in drugs or prostitution in order to pay traffickers for their trip to ‘freedom’.

European states have not stood idly by in the face of evidence of growing irregular migration. Often acting unilaterally, governments have employed a range of different and sometimes contradictory policy responses. In recent years, Belgium, Italy and Spain have regularised the status of substantial numbers of migrants with irregular status within their territories; France, the UK and Germany have boosted penalties on employers hiring undocumented workers or increased fines on commercial carriers who bring to their borders foreigners without proper documentation; and Germany and Spain have signed readmission agreements with countries such as Poland, Hungary, Morocco and Vietnam to enable the deportation of migrants without permission to reside.

Behind these varied policies lie highly uncertain and contradictory public and governmental attitudes to irregular migration itself. For many Europeans, the desperate conditions that people with irregular migration status are prepared to tolerate to arrive or remain in Europe are proof of the pressing need of these migrants for a new country of residence. If these migrants are not always refugees *per se*, they are clearly people driven from their homes by forces, like poverty and human rights violations, that they are helpless to stem.

Yet many do not share this sympathetic view. For some, migrants without regular status pursue a quest for economic betterment at the cost of denying opportunities to refugees. By filing and pursuing frivolous asylum claims, irregular migrants overload refugee determination procedures in European countries, and thereby bring the institution of asylum into disrepute. In response to asylum applicants of dubious credibility, European governments feel justified in implementing measures such as carrier sanctions, visa regimes and the use of detention which prevent or deter the arrival of asylum seekers. The result is that, as Newland and Papademetriou have recently observed, ‘more and more often [refugees] ... are treated like illegal aliens until and unless they can make the ever more difficult case that they are deserving of protection’ (1998-1999: 657).

The existence of both these perspectives on irregular migration demonstrates how the issue of irregular migration is currently entangled with that of asylum in Europe. The attempt to disentangle these concerns is likely to have important implications for the way we view both asylum and immigration policy. Yet for all its contemporary salience, irregular migration remains a very poorly understood phenomenon. In the midst of the cacophony of recent debates on asylum across Europe, there exists an important silence: the voices of migrants with irregular status themselves are rarely heard. Not only has this fact distorted most discussions of irregular migration, comforting those who prefer well worn stereotypes to an accurate appreciation of the realities of living with irregular migration status; it has also limited our understanding of this phenomenon. Discussions of irregular migration tend to concentrate on the difficulties and barriers illegals face in attempting to enter European countries, rather than on the circumstances they confront once they arrive.

The Silence on Irregular Migration

The reasons for silence are varied. On the one hand, states usually have little desire to trumpet failures in border control, not least because this is an area where they have many votes to lose. The injustices visited upon refugees are, furthermore, often implicitly accepted by governments because they act as a cheap and convenient deterrent to

others who might be tempted to try life as an irregular migrant. This silence of governments is rarely challenged because migrants with irregular status are usually in no position to give voice to their treatment and experiences. European states ritually condemn irregular migration and, from time to time, enact measures to combat it. But they have been extremely reluctant to examine closely the conditions faced by status-less migrants within their territory.

Non-governmental organisations (NGOs) and other groups that assist and advocate for refugees and immigrants also have little incentive to break the silence. These organisations usually have their hands full responding to regular migrants and those, like asylum seekers, at risk of being removed from the state. While they are often aware of the needs of irregular migrants, they rightly worry that involvement with them (or advocacy on their behalf) might tarnish the causes of their main constituency: regular migrants, asylum seekers or refugees. Migrants lacking regular status may be an intractable reality of European societies, but these migrants are, in the eyes of the state, criminals, violators of immigration law. Nonetheless, quietly, with little fuss and a minimum of advocacy, these voluntary organisations often provide important services to this group. The subdued way these organisations go about their task helps to maintain the silence.

Irregular migrants themselves are also often ill-placed to speak out about their circumstances and lives. Raising awareness of their experiences is usually tantamount to advertising their own illicit status. It is, moreover, in the nature of illegality that these immigrants live a rightless existence. One feature of this rightlessness is that they are deprived of a public stage on which they could express their grievances or explain what factors lead them to their situation.

Awareness of the day to day experiences of migrants with irregular status is thus limited by the fact that in contemporary Europe, all the main players have some kind of interest in silence. But there are important developments that make this an increasingly untenable state of affairs. Most obviously, the problem of irregular migration appears to be growing. The steep rise in migrant trafficking, increasing numbers of unsuccessful asylum seekers, the presence in European countries of refugees with temporary protection that has not been renewed, and large numbers of people who overstay legitimate tourist or work visas, together make up a veritable pot pourri of people present in Europe illegally. While some of these people constitute an underworld which law-abiding citizens rarely encounter, many people with irregular migration status live and work in the mainstream of these societies, their vulnerable status unnoticed or hidden from view.

Irregular Migration in Europe: A Synthesis

The desire to break the silence and to understand better the complex problem of irregular migration in Europe led the Jesuit Refugee Service in 1996 to commission three country studies on the issue. The countries chosen for examination were the UK, Germany and Spain. They were intended to provide a broad view of the problem of irregular migration across countries with diverse migration histories. The countries examined comprised, respectively, an island state, the country with the largest total volume of asylum seekers in Europe, and a state with little experience as a migrant destination until very recently. These studies resulted in three separate reports: *In a Twilight World: Illegal Migration in the UK*; *Illegal in Germany*; and *From a Life Project to Civil Death: Irregular Immigrants in Spain*. Each of these offers detailed insights into the situation of irregular migrants in these countries, gleaned from many hours of interviewing people in this situation and those who provide assistance to them. They have each been published separately.

From early on, it was evident that a synthesis report bringing together the findings of these national reports would help to focus attention on the situation of migrants with irregular status in Europe as a whole. This is that report. It is animated by three major aims. First, to provide an English summary of the national reports, written originally in English, German and Spanish respectively. In the three sections that follow, I shall outline the findings of each study in some depth. While I have striven to summarise these reports in a way that makes them speak to each other, I have not attempted to impose a unity on them. Each of the groups of researchers started with their own interests and methodologies, and were allowed a great deal of scope to undertake research in a way that best suited the national context they faced. Those seeking a fuller appreciation of the situation pertaining in each of the countries examined are advised to consult the national reports.

Second, this report aims to draw out some common themes from the national studies that are likely to be applicable across all European Union countries. As we shall see, the number of researchers, the amount of time spent gathering information, and the volume of interviewees consulted differed in each of the country reports. Yet the reports reveal that there are striking similarities (as well as important differences) in the circumstances faced by illegals across the three countries.

Third, this report proffers a number of recommendations for policy responses towards irregular migrants at European level. The policies advocated here are intended to form the basis of humane and rights-respecting responses by European governments to the phenomenon of irregular migration.

Methodologies

In commissioning the three projects that make up this synthesis, the JRS allowed the national teams a great deal of flexibility in their choice of methodology. This was considered appropriate because researchers faced very different circumstances in the countries they studied. Access to state officials, to NGOs and voluntary organisations and, most of all, to immigrants with irregular status themselves – who, of necessity, have little motivation to bring their existence to the attention of others – resulted in different styles of report across the three countries. The last issue, in particular, of how to construct tools of analysis that could respect the legitimate desire of irregular migrants for secrecy, proved an important challenge for the researchers. As with other aspects of methodology, the different national teams meet this challenge in different ways.

While full details of the methods used by each team can be gained in the three final reports (published separately), I want to outline briefly here some of the main features of the methodological approaches of each study.

The German study, *Illegal in Germany*, was undertaken by one author under the guidance of two academic supervisors. The study was made in one German city, Leipzig, located near the border with Poland in Eastern Germany. In all, some 77 interviews were conducted with 35 different irregular migrants. These interviews were supplemented by interviews with contact persons (those with first hand professional or personal experience with irregular migrants) on a further 60 migrants lacking regular status. Those in the latter group were either no longer living in Leipzig or had privacy concerns that prevented their involvement in the study. In addition to interviews, the files of some 87 irregular immigrants were also selected at random from official records and evaluated. In order to verify and to test the recounted experiences of migrants with irregular status, as well as to gain a broader insight into this social phenomenon, some 39 interviews were conducted with officials at Federal, *Land*, and local authority level; and another 60 interviews were undertaken with contact persons who have had direct knowledge and experience of the undocumented.

The UK study, *In a Twilight World*, was conducted on a smaller scale and over a shorter time period. A single researcher undertook field research on irregular migration in London for a period of six months between January and July of 1997. Interviews with irregular migrants (and those in similar situations) also lay at the core of this report. In all, the situation of some 16 immigrants was examined; in the case of three, information was gained through contact persons ('trusted representatives'). Of those interviewed, only three were women and every interviewee was aged between 26 and 40. As with the German study, the information gained in the interviews was supplemented and tested against the experiences of others with knowledge of irregular migration or irregular migrants, including representatives of migrant support and NGO groups. Representatives from formal legal and governmental organisations involved with migration, including officials from the Home Office, were also interviewed.

The largest research project, *From a Life Project to Civil Death*, was undertaken in Spain by a team of university researchers. A sample of some 100 migrants with irregular status volunteered to co-operate by sharing their experiences of entering and residing in Spain. In contrast to the other studies, the Spanish team attempted to conduct interviews in such a way as to get an accurate picture of the experience of irregular migration across the national polity as a whole. This was achieved, first, by ensuring the geographic diversity of the sample. Immigrants resident in five different social environments were interviewed: Cataluña (a metropolitan area of Barcelona, in the Province of Girona); Madrid (city and outskirts); Murcia (Province); Andalucía (Málaga, Almería, and Córdoba), and the Basque Country (Araba, Guipúzkoa, and Vizcaya). Because countries of origin impact upon the experiences of irregular migrants, the study also ensured a diversity of national origins amongst the interviewees, with people from the Maghreb, Latin America, Sub-Saharan Africa, China and Eastern Europe represented in the sample. The diversity of the sample not only increased the report's chances of accuracy; it also helped to ensure the anonymity of the people interviewed, an important consideration in the Spanish as in the other studies.

The ability to compare the situation of migrants with irregular status across the countries involved with scientific accuracy is limited by the different methodologies used by each team. However, despite their different methodologies, the researchers uncover striking similarities in the experiences of irregular migrants. Furthermore, the studies are fused together by one common methodological feature: at the core of each report are direct interviews with irregular migrants. Consistent with the original intentions of the JRS, these reports attempt to understand the experiences of irregular migration through the eyes of the people who find themselves in this situation. These experiences are, moreover, always reinforced by discussions with organisations which work directly with irregular migrants, including NGOs and ethnic community groups, and with experts in government and academia.

The analysis of irregular migration in Europe that follows is divided into four sections. The three synthesised country reports are first presented: the United Kingdom (based on Anderson 1999), the Federal Republic of Germany (based on Alt 1999), and Spain (based on Ruiz Olabuénaga *et al.* 1999). The concluding section of this report is devoted to Conclusions and Recommendations. Here, the main implications of the country reports for Europe as a whole are outlined and a number of policy and advocacy recommendations for responses to irregular migration are made.

The United Kingdom

The United Kingdom is an island state, simultaneously part of Europe, yet separate from the continental land mass. This feature of the UK has exercised a profound influence on its recent immigration and refugee policy making. It has given rise to a view that, as an island, the UK is uniquely able to secure itself against unwanted immigration. In contrast to Germany and Spain which possess large land borders, all immigration to the UK is channelled through a small number of tightly controlled sea and air ports. This perception of uniqueness has also had important consequences in policy terms. It has resulted in a very sceptical attitude at governmental level to European Union attempts to construct a 'frontier free' Union, evident in the UK's reluctance to participate fully in the Schengen Treaty and its decision to opt in to the Amsterdam Treaty only partially (see e.g. House of Lords 2000). The UK today remains one of only a handful of European countries to retain the right to check the passports of entrants from other European Union states.

Over the last few years this perception of uniqueness has begun to wear thin. Rising numbers of asylum seekers (more than 90,000 in 1999), huge backlogs in the refugee determination process, and the politicisation of immigration by William Hague's Conservative opposition have brought irregular immigration up the agenda of the current Labour government. In 1999 the government passed the Immigration and Asylum Act, arguably the most restrictive piece of legislation touching upon irregular migration in the last 20 years. In addition to other restrictive measures, the legislation brought an end to social security payments to asylum seekers and increased fines for lorries (and other carriers) bringing undocumented migrants to the UK. (See Bloch 2000 for a summary of recent UK legislation relating to asylum.) Both of these measures were justified on the grounds of preventing irregular migration. The public controversy generated by irregular immigration is perhaps greater now than at any time in recent memory, with both the major political parties striving to prove their credentials on preventing 'bogus' asylum seekers and illicit worker migration. Yet the experiences of migrants with irregular status actually residing in the UK have not figured in recent debates. Philip Anderson's *In a Twilight World* shows that the UK has long possessed the same netherworld of migrant trafficking, exploited status-less workers, and black marketeering in labour, housing and documentation as continental European states. Indeed, as the report indicates, there seems to be a relationship between the UK's success in operating tight border restrictions and irregular migration. The UK authorities' success in restricting entry has made internal controls (such as identity cards) unnecessary. The absence of internal measures has in turn enabled many undocumented persons to eke out an existence without the help or protection of the state.

The Context

The UK study was undertaken primarily between January and July 1997, a time of some public anxiety over rising numbers of asylum seekers. These concerns were given legislative force by the Conservative government of John Major (and previously Margaret Thatcher) which had carved out a reputation for toughness on unwanted immigration generally and on 'bogus' asylum applicants in particular. Between 1993 and 1997, the government enacted two important pieces of legislation (the Asylum and Immigration Appeals Act, 1993 and the Asylum and Immigration Act, 1996) which aimed, in large measure, to deter and prevent asylum applications. New restrictions on the ability of asylum seekers to claim welfare benefits and humanitarian residence status (referred to as 'Exceptional Leave to Remain'), an expansion in visa requirements and the boosting of fines on carriers bringing foreigners to the UK without proper documentation were introduced.

This anxiety over asylum seekers was, in reality, anxiety over irregular immigration. Low success rates in asylum determination proceedings, partly the result of restrictive application of the Geneva Convention, were generally taken as proof of widespread abuse of the asylum system by irregular immigrants. But the merging of asylum and irregular immigration concerns also appeared to be directly encouraged by the nature of the refugee determination process itself. Lack of resources and bureaucratic inefficiency led to large backlogs, with the result that asylum applicants could expect to wait a number of years for their claim to be decided. Over such a lengthy period of time, any asylum seeker could be expected to have established connections with the host community that made the possibility of living without the support of the state either feasible or even desirable. The failure of governments to remove (or deport) unsuccessful asylum applicants did nothing to reduce the number of people with irregular migration status present in the UK or to discourage an association of asylum with irregular migration in the public's mind.

Who are the Irregular Migrants?

Estimates vary widely on the number of irregular migrants residing in the UK. The Home Office, the government department responsible for immigration, has recently adjudged that there are some 40,000 such migrants. Unofficial estimates, however, go much higher, and even the most conservative sources usually concede that numbers are currently on the rise.

Total numbers, of course, tell one very little about the situation of individual immigrants. The British study looked

closely at the experiences of some fourteen individuals without official status in the UK. Their countries of origin reflected a great deal of diversity, but tended to be concentrated in Africa, with individuals from Nigeria, Morocco, Zaire, Sierra Leone, and Cameroon. There was also one migrant with irregular status from Turkey, a Kurd.

Just as the countries which generate irregular migration are diverse, so, too, are the ways that one can become 'illegal' in the eyes of the state. Irregular migration typically conjures up visions of surreptitious movement across borders under the cloak of night, but the term 'irregular migrant' is a catch-all category that obscures the varied ways that immigrants come to be outside the protection of the law. Amongst the interviewees, two primary groups of migrants with irregular status predominated. First, those who had never been given valid leave to enter by the UK authorities. This category included those who entered the country clandestinely (such as those trafficked into the country evading official ports of entry) and those who passed through entrance control but gained entrance fraudulently (for example, by withholding material facts from the authorities or using a fake passport). The second category comprises those who obtain valid leave to enter, but who breach the terms of their admission. The vast majority of this group is made up of those who overstay their period of entrance permission or violate its specific requirements (such as those who take up employment on a tourist visa). These two categories in no way exhaust the category 'irregular immigrant'. Many foreigners legitimately living in the UK, including asylum seekers and domestic workers, may find themselves facing circumstances very similar to irregular migrants because of lost or inadequate documentation.

The various pathways to illicit residence are mirrored in the complicated life histories that explain how individual immigrants come to be in this situation. An examination of those resident in the UK without proper documentation challenges the common view that the life of an irregular migrant results from an active and deliberate choice. There are indeed those who make such a clear choice. One interviewee, a Kurd from Turkey, who already possessed asylum in France, decided to come to the UK using false documentation in order to improve his employment and social welfare prospects. The growth of trafficking networks, moreover, means that deliberate and premeditated acts of illicit entrance are probably on the rise. Yet the vast majority of those interviewed for the study had entered the UK legally after having been given valid leave to enter, and decided to reside unofficially only after a period of residence that had seen them establish ties, contacts and connections in the country. The majority of the undocumented, then, *drifted* into the life of an irregular migrant. They entered a realm outside the basic protections of the law as much as the result of decisions they omitted to make as deliberate choices they did make. In a state, like the UK, where border control is very effective, there is reason for believing that this is the characteristic mode of irregular residence.

Even if many irregular migrants do not explicitly choose to be in this situation, they often have powerful reasons for preferring life without official status to the prospect of returning to their country of origin. Some of those interviewed claimed to have fled circumstances in their home country that would have made them eligible for refugee status under the Geneva Convention or, alternatively, some form of humanitarian status. These individuals fit the traditional distinction of those who had been 'pushed' out of their country rather than 'pulled' towards a new one. Why, then, did they not claim the official protection of the state through asylum? Entrance into official procedures usually promised a long drawn out period of limbo under conditions that might involve detention and meant restrictions on the right to work. For others, an asylum application risked bringing themselves to the attention of the state should their claim prove unsuccessful, thus rendering themselves liable for deportation; others still, had tried and failed in their asylum applications and had chosen a life underground to avoid being sent back to their home country, which they continued to see as posing serious risks to their security.

More commonly, however, continued life as an irregular migrant signalled a desire not to return to a country where economic and political instability are entwined and which result in migration flows that do not fit within the traditional categories of the push/pull distinction. Rather than facing persecution, those who do not wish to return may have left (or not wish to return to) a place where economic opportunities are limited by political corruption or where human rights violations are general and endemic. The list of countries from which the interviewees originated gives some, albeit circumstantial, evidence of the kinds of instability that leads many to try life as an irregular migrant.

Other factors also play a role in explaining the movement into a life outside the normal protection of the state. Access to jobs, relatively high rates of pay, the opportunity to learn English and to obtain an education were powerful incentives. More-over, as visa restrictions and carrier sanctions have closed off avenues for legal entrance to the UK for people from Southern countries and Eastern and Central Europe, those wishing to reside in the UK have turned to trafficking networks. Not only does a brief flirtation with these criminal networks open up the possibility that the immigrants themselves will be drawn into criminal activities, but those trafficked typically need to find work as quickly as possible upon arrival to reimburse traffickers. Following the legitimate route and claiming asylum is not an appealing option because it may result either in detention or, at least, in heavy restrictions on the right to work. Life as an irregular migrant, on the other hand, offers the possibility of gainful employment and settling accounts with traffickers.

Personal considerations are also a strong factor in explaining irregular migration. The drift into unofficial residence by overstayers often reflects a transformation in their goals, expectations and aspirations. Perhaps the most important transformation comes about because of personal relationships and children. For one Nigerian interviewed, it was only marriage and the birth of children that made remaining in the UK imperative. For another immigrant,

thirteen years of continuous residence slowly impressed upon him that the UK is home. In his case, this realisation was not the result of ties and relationships formed *within* the UK, but the cessation of ties to his country of origin. It was the death of his father that led him to reorient his view of home. Finally, many migrants with irregular status remain in the UK because they have no opportunity to go home without jeopardizing their ability to return to the UK. It is not uncommon for irregular immigrants who enter with false documentation to have to return this documentation to migrant traffickers immediately after arrival to enable its re-use. As a result, many people with irregular migration status are left stranded in the UK, unable or unwilling to return lest they be discovered by the authorities. One of the interviewees paid £4,000 for a visa of sufficient quality to enter the UK, but later discovered that the authorities are increasingly on the lookout for documentation of this sort. Poignantly, one interviewee recounted how the lack of proper documentation kept him from attending his father's funeral. The examples show the paradoxical effect of strict entrance control. The knowledge that it would be difficult to return to the UK should one go home often serves to convince immigrants with irregular status that they should remain permanently.

Life in the UK

The life of an irregular immigrant is a life lived outside most if not all of the usual protections of the state and its agents (the police, the courts, etc.). In order to survive, people with irregular migration status must therefore rely on their own wits and means or on the assistance of non-state authorities. The UK report examined, largely through interviews, a range of concerns which impact upon the lives of irregular migrants, including accommodation, employment, income, health, education and personal relationships. In the remainder of this section, I will summarise the study's main findings in these areas.

Accommodation The experiences of persons of irregular migration status in seeking and keeping accommodation in the UK are as diverse as the people within this category. Some live in council properties, many in private sector accommodation, some with family, friends or acquaintances, and a few in the sanctuary of churches or other religious institutions. The nature of this accommodation ranges from housing that has been occupied for years, to transient stopping points serving as a base from which to find permanent accommodation to temporary resting places in the battle to keep one step ahead of the authorities.

At the most desirable end of the accommodation market are those who have found various forms of state-sponsored (or council) housing. This form of accommodation is usually available only to overstayers who acquired the housing while legally resident and have managed to retain it despite the change in their status. However, at the time of the report, legislative changes were fast whittling away opportunities for both irregular migrants and asylum seekers to occupy public housing. The 1996 Asylum and Immigration Act removed from asylum seekers any entitlement to public housing if they failed to apply for asylum within a short time of entering the UK. The crisis in accommodation that resulted from this Act was partly lessened by a subsequent High Court decision that used the obligation of local councils to provide shelter under the 1948 National Assistance Act, to the benefit of asylum seekers. Restrictions on asylum seekers' use of public housing ensured that fewer people who might eventually become irregular residents (through, for example, the rejection of their asylum applications) could have access to this option. Other legislative developments, however, have impacted more directly on irregular migrants as a group. Following the Council Act of 1996, local councils were obliged to assure themselves that new tenants have official immigration status. The Act is a powerful deterrent to irregular migrants wishing to claim state-subsidised accommodation.

One effect of these legislative developments has been to reinforce the dependence of irregular migrants on the private sector. Here, established ethnic communities usually play an important role. In London migrants with irregular status often rely on fellow expatriates to direct them to a place where they can stay for a few days while looking for more permanent accommodation. Fellow expatriates are typically sources of valuable information on the availability of affordable and accessible places to reside permanently. Irregular migrants also draw on personal networks or rely on groups within civil society. One interviewee, an overstayer, was given sanctuary in a local church, with the full support of the parish at large (and sections of the local community including the local Member of Parliament). In another case, a supportive local council was described by one migrant with irregular status as being 'really excellent' in its provision of support. In a vulnerable situation, enjoying few of the protections official residents take for granted, irregular migrants are often met with generosity by private individuals and charitable organisations. But this generosity is a matter of charity, not of right. In many circumstances, the undocumented face egregious exploitation in the housing market; exploitation that, because of their rightless situation, they lack lawful means of correcting. Confined, as they typically are, to the cheapest, most run down and shadiest end of the property market, they have little chance of finding decent accommodation. The likelihood that landlords will live up to their minimal responsibilities may be slim if they are aware of their tenant's dubious status. In the case of one interviewee this kind of weak bargaining position led to a situation where the landlord refused to fix a hole in the roof of the rented property.

Threatened constantly by exposure to the authorities, people with irregular migration status are in a uniquely vulnerable market position. The threats they face can, moreover, come from unlikely sources. As well as assisting those in need, ethnic community groups can turn out to be the most dangerous exploiters of the irregular migrant population. Stories were recounted during the study of extremely cramped and exorbitantly priced accommodation being provided for incoming irregular migrants. The ties of ethnicity and nationality that so often serve to make survival without proper documentation possible can just as quickly turn into fetters that facilitate exploitation.

Employment and Income A major attraction of the UK to irregular migrants has been the prospect of work, especially as it has enjoyed relatively low rates of unemployment in recent years. Migrants with irregular status usually have little choice but to seek work because of their ineligibility for any form of government support including unemployment benefits. They typically work without the safety net of unemployment benefits or redundancy packages. Irregular migrants are thus required to get a job as quickly as possible and to keep it. Their pressing need for work often limits their ability to seek out the best possible pay and conditions, leaving them open to exploitation.

Most of the people with irregular migration status interviewed had managed to find work. Their success is rarely a matter of luck. Matching workers to employment requires the relaying and exchanging of information between potential buyers and sellers of labour. This task, as with accommodation, often falls on established ethnic networks, friends, relatives, acquaintances and other informal and semi-formal modes of communication. A good example of the latter is what is colloquially referred to as the 'Wailing Wall': the side window of a newsagent in London. Here, recent arrivals scrutinise cards written in a variety of different languages and scripts advertising accommodation, requests for lifts, and an array of job vacancies. Many agreements are reached in the surrounding cafés on matters that will determine the experience of irregular immigrants in the UK. Other meeting places play a similar role. One Latin American Saturday morning football league event doubles as a place where immigrants can learn of job opportunities and available accommodation.

In London irregular migrants find work in a vast array of different occupations, linked only by the ability of employers to pay workers 'off the books'. Most commonly, migrants with irregular status are employed as textile industry workers, couriers, mini-cab drivers, cleaners, food service workers and in the building industry. Amongst those interviewed were migrants working in bakeries, as a mini-cab driver, as a pasta chef, and as a musician. The report also pointed to at least one UK sector structurally dependent on irregular immigrants: the agricultural (in particular the fruit picking) sector in East Anglia. The source of this labour supply (which did not include any of those interviewed in this study) were workers recruited from Central and Eastern Europe who entered the UK in breach of immigration regulations on 'working holidays'. Physically isolated from the main urban centres, separated by language from those around them, and dependent upon their employers for language and food, these workers are highly vulnerable to exploitation.

The benefits for employers of a steady stream of irregular immigrants are obvious. Employers can hire them below the market (now the statutory minimum) wage rate and also avoid any kind of tax, pension or social insurance contribution. Many of the interviewees also appreciated the benefits of this arrangement. While for some, like one interviewee currently in detention, no work would be too menial should they be allowed to remain in the country, others were happy with their particular form of employment. The two interviewees who worked in bakeries both found the work satisfactory, in spite of long hours, onerous conditions and modest pay. Another interviewee had even managed to carve out a career with an upward trajectory for himself. He spoke with pride about his progress through a series of casual jobs to a position as a pastry chef. He lost his job when he was apprehended by immigration authorities and placed in detention.

The last example illustrates how the reality of being an undocumented worker can come crashing through at any time. It is a reality that occupies the minds of all people with irregular migration status. No amount of experience or success as a mini-cab driver can quell the anxiety that a routine stop by the police to check one's driver's licence will end with a request to view one's passport in order to verify immigration status. Recent developments, moreover, suggest that the state's hand may be becoming heavier. The 1996 Act introduced sanctions of up to £5,000 on employers caught hiring undocumented labour. Measures like this, which rely on employers as an internal arm for the enforcement of immigration controls, may enjoy some success in reducing irregular migration. But it seems likely that in the very diverse and decentralised black market for labour in London, the authorities will face an uphill battle preventing irregular migrants finding work.

Health In spite of its famed National Health Service, health problems are one of the greatest concerns of irregular migrants in the UK. According to the study, three major health issues occupy the minds of people in this situation: accidents, mental health, and AIDS. I shall now touch briefly on each of these concerns.

Typically, irregular migrants are young, physically fit and psychologically resilient. Dealing with the obvious challenges of life in this situation positively requires good health. Accidents, however, can strike down even the healthiest, adding a new layer of vulnerability to their experience in the UK. Concern about the consequence of accidents looms large for people with irregular migration status because they are often employed in relatively hazardous occupations, such as in kitchens, bakeries, or on construction sites. Moreover, as this work is part of the black

market, their employers have little incentive to uphold even minimal health and safety standards, let alone to compensate workers for time off due to injury.

In terms of mental health, some irregular migrants were found to face problems similar to refugees. Acute anxiety was a common complaint, as it is amongst those who have been tortured, or experienced a traumatic event, such as being forced violently from their home. This cross-over between the experiences of refugees and irregular migrants is not coincidental. As community health organisations have increasingly recognised, a proportion of migrants with irregular status are (*de facto*) refugees who have never entered the asylum process or have failed to gain asylum. The latter group usually have access to a similar standard of mental health care as when their asylum claim was being determined. The former, however, are often isolated and left to deal with their psychological problems on their own. The level of stress associated with maintaining an illicit existence in the state is a psychological burden that most irregular migrants have to bear.

Concerns about AIDS were also expressed by those interviewed. One interviewee who believed that he had contracted the illness, was worried that he would be forced to return to Peru, where he would receive substandard treatment, should the British authorities find out. Patients can, however, usually get treatment for the disease without registering with the National Health Service. Moreover, those who contract the virus may be eligible for a grant of Exceptional Leave to Remain (ELR), a form of humanitarian status offered on a discretionary basis by the Home Office. Yet the interviewee's concerns were still justified. In order to apply for ELR, he would have to bring himself to the attention of Home Office authorities. This would have been risky given that any progress of the illness into a state of remission might have justified his deportation.

Sometimes medical treatment is a pressing need. When this is the case irregular migrants generally resort to a number of strategies. Minor ailments are typically pushed aside or help in dealing with them may be sought within the individual's immediate social network. For more serious ailments, like injuries incurred through an accident at work, other courses of action are often pursued. One interviewee described how one could obtain a false National Insurance number. Recent changes, however, have made this process more difficult. Consequently, some resort to impersonating friends and using their National Insurance numbers in order to gain the treatment they need.

Education Migrants with irregular status in the UK have highly diverse educational backgrounds. Contrary to popular stereotypes that portray the undocumented as illiterate, rural dwellers from backward countries or fabulously-educated émigrés from Eastern Europe, the report shows that people in this category cover a whole spectrum of educational experience. Some interviewed had virtually no education, while others had engineering or chemistry degrees from respectable universities. These qualifications, however, tended to have little influence on their work prospects in the UK.

If it is difficult to generalise about irregular migrants' educational backgrounds, it is easier to do so with their motivation to learn. For some of the undocumented, typically East Europeans, time in the UK offered a chance to acquire or improve their English. Proficiency in English is a valuable commodity for those wanting to be successful in business back home. For others, the drive for self-improvement is no more clearly indicated than in the proportion of overstayers enrolled in courses of various kinds. Of the small sample that informed the UK study, five interviewees were enrolled in courses.

In the realm of education, there is, however, increasing evidence of a government clampdown that will ultimately affect irregular migrants. In April 1996 the Department of Education announced that in future those enrolling for higher education courses in the UK must give proof of their status as having 'Indefinite Leave to Remain' (the British equivalent of permanent residence) to be eligible for the discounted fees that nationals pay. This policy seems likely to be a two-pronged disincentive for migrants with irregular status. On the one hand, it will force those irregular immigrants (and asylum seekers) who cannot afford to pay fees at the international student's rate, out of education. On the other, many will be scared off by the fact that the new policy will result in an increasing likelihood that their immigration status will be checked.

Education also has a dramatic affect on the lives and prospects of children. According to the report, a number of directives were given to schools in the 1990s requesting them to check the immigration status of new pupils in order to deter overstayers who have children enrolled in state schools. Far from deterring irregular migrants, however, such measures sometimes resulted in them gaining the support of a local community outraged that children should be blamed for the 'sins' of the parent. Significantly, the two irregular migrants interviewed who have received the most support from their local communities to stay in the country both had their children in schools. The teachers and students of the schools played a key part (through letter-writing, petitioning, and demonstrating) in the campaigns to keep these families in the state. More generally, the report suggests that the governments have had to face a situation where schools are very reluctant to check children's immigration status lest they be viewed as an extended arm of immigration control.

Personal Relationships and Social Activities Overstayers usually have families residing with them in the UK. Irregular entrants, on the other hand, are more likely to be single. Nonetheless, many in the latter group find themselves going through familiar patterns of the human lifecycle while in the UK: partnerships are formed, children are born,

and friends are made. The stigma of irregular migration status casts a shadow over all these relationships, even if the shadow cast is slightly different in each individual case.

For one interviewee, the experience of living in the UK has been one of real loneliness and isolation. The uncertainty associated with living in a country without legal permission was seen as corroding his ability to create and maintain stable personal relationships. Two others interviewed spoke of a range of protective measures undertaken in their social lives – including avoiding the disclosure of personal details and pretending to be of a different nationality – in order to evade incriminating questions about their status. The financial austerities of life in this situation were also cited by one interviewee as a barrier to friendships. Lack of money made it difficult for this person to pay his own way at social gatherings.

Yet despair and loneliness alone do not capture the experience of migrants with irregular status. For one of those interviewed, the desire to attain regular migration status has become a driving motivation. Needless to say, entertaining this goal is far easier when one has the support of others, including the local community, for one's endeavours. For at least two interviewees, the threat of deportation has mobilised community interest in and support for their plight, leading them to make new friends. Support of this kind is more typical of overstayers who have experienced some extended time as a documented resident during which they have been able to establish contacts and ties with their local community.

Leisure activities provide an important source of contacts and networks for both overstayers and irregular entrants alike. While the free time of migrants with irregular status is typically limited by the need to work as much as they can because of their vulnerability and their concentration in jobs requiring overtime or shift-work, many of those interviewed enjoyed a range of leisure activities. The most common forms included church-going, sport and dance. The outlet for these activities was typically local ethnic and community organisations. A number of those interviewed also found time to undertake voluntary activity. Amongst the irregular migrants, one worked for an AIDS charity (the Terrence Higgins Trust), one gave counselling and spiritual advice to members of her local community, and another worked for a victims of war support group.

Life Planning The last area examined in the UK study was, fittingly, life planning: the ability of the migrants with irregular status to organise their current lives with an eye to future goals. Clearly such planning presumes a degree of autonomy and control over the forces that shape one's life that illegals often lack.

Some interviewees complained that their lives were characterised in large measure by uncertainty and unrest, though, for one, these tensions were eased by the pursuit of an educational course. More generally, some of the irregular migrants (especially the overstayers), who had drifted into their current situation were understandably preoccupied with their and their children's search for legal residence in the state. They found it very difficult to articulate any plans for the future beyond the goal of regularising their status. In the case of one interviewee living in church sanctuary – which he likened to a form of imprisonment – this was an understandable reaction. For those in detention, the prospect of a future life in the UK looked even dimmer. 'My life is broken', one of the interviewees observed.

Paradoxically, however, for some life as an irregular migrant is a way of guaranteeing at least a degree of autonomy. As UK state practices towards those seeking asylum are increasingly characterised by measures aiming to deter applications, such as restrictions on work and public housing and the increased use of detention, going 'underground' becomes a serious option for those wishing to retain control over key areas of their life. Remaining outside the official system seems even more rational when the costs associated with return are perceived to be persecution or great suffering. Yet the search for autonomy and independence from state authorities may prove to be fruitless. One irregular migrant, who was consistently on the run from the authorities, simply laughed when asked about the possibility of planning for the future.

Conclusion

In June 2000 customs officers at the port of Dover in the south of England opened a refrigerated lorry to find the bodies of 58 Chinese people who had attempted to enter the UK in this way. The consequences of this grim discovery for the debate on irregular migration have been mixed. On the one hand, the deaths impressed upon public opinion the need for a co-ordinated European strategy to crack down on trafficking networks, opening up the potential for greater cooperation with other European countries on the issue of illegal migration (see for example *The Guardian* 20 June 2000). Furthermore, the government has, in the aftermath of the deaths, seemed increasingly amenable to the need for some legitimate avenues by which aspiring immigrants might enter the UK (*The Independent* 21 July 2000). On the other hand, however, the events in Dover have served to reinforce the view that irregular migration is largely a problem of border control. While this remains the primary focus of the irregular migration debate, moves to ameliorate the plight of those migrants with irregular status actually living in the UK are likely to be limited.

The Federal Republic of Germany

The Federal Republic of Germany has attracted more asylum seekers than any other European country over the last twenty years. This is explained partly by the liberal provisions of the country's constitution which, until 1993, recognised a broad-ranging right of asylum for foreigners requesting asylum at or within Germany's lengthy land borders. But the numbers also reflect Germany's controversial history of guestworker (*Gastarbeiter*) migration, particularly from Southern Europe, Turkey and North Africa. This worker movement has, since the early 1950s, created extensive migration networks between Germany and a range of refugee and economic migration source countries (see for example Martin 1994). The migration pressures that have resulted have led consecutive German governments to espouse the ethos that the Federal Republic is 'not a country of immigration', despite the fact that it has in recent years experienced immigration levels on a par with those of the United States.

The pressures that recent asylum and immigration movements have placed on this public ethos have been explored in great depth in recent years. Literature has abounded on the impact of the *Aussiedler* (ethnic Germans from the former Soviet Union granted citizenship on arrival in the Federal Republic), asylum seekers, and European Union migration on German society. Much less attention, however, has thus far been paid to irregular forms of migration in the Federal Republic. Jorg Alt's study, *Illegal in Germany*, sets out to fill this gap. In the course of the work, those reasons why irregular migration is under-explored and poorly understood in the German context quickly become apparent. The existence of steady streams of migrants with irregular status challenges the comfortable view that the constitutional amendments of 1993 solved Germany's asylum crisis of the early 1990s, even if the annual number of official asylum applicants was 230,000 less in 1999 than it had been in 1992 (*Migration News* April 2000). An examination of irregular migration raises the possibility that more restrictive entrance policies simply divert asylum pressures on to illicit avenues for entrance. The existence of irregular migration also raises the question of whether this migration might serve an important economic function for a country that publicly denies its need for worker migration. Like the *Gastarbeiter* migration of the 1950s and 1960s, contemporary irregular migration offers a discreet way for economic and political actors to square the need for a ready, cheap and flexible supply of labour with Germany's desire not to allow immigration for permanent settlement.

The study *Illegal in Germany* was conceived as an empirical and analytical study of irregular migration in the Federal Republic. The study's aim was to discover how the problem looks from three different perspectives: from the viewpoint of irregular migrants themselves; from the view of those who assist and regularly interact with them; and from the view of experts familiar with the relationship between irregular migration and broader German society. Together these perspectives shed light on the lives of the men, women and children who make up the population of those with irregular migration status. Yet the study also furnishes answers to three central questions posed by irregular immigration in Germany. These questions are: How has the 1993 abridging of the country's constitutional right to asylum affected the relationship between irregular migration and refugees? What are the costs and benefits of irregular migration for Germany's society and economy? And, how efficient and effective are current measures used by the state to reduce irregular migration?

The German study was confined to examination of irregular migration in one German city between 1996 and 1998. The city, Leipzig, is the second largest city in East Germany and is located close to the Polish border. While the distinctiveness of examining only one city should not be exaggerated (the UK study focuses solely on London), the size of the city and its location as a border city in the former German Democratic Republic, make the undocumented population slightly unrepresentative of other undocumented populations in Germany. To wit, the majority of the irregular migrants in Leipzig are male, worker migrants, from Central, Eastern, and Southeastern Europe that do not have their families with them.

Who are the Irregular Migrants?

As in other European countries, there is little solid information available about the total number of persons with irregular migration status currently resident in Germany. While one official estimate has recently put the number at 500,000, the study suggests that that figure may represent a significant understatement. A figure closer to one million for Germany as a whole and of 8,000 for Leipzig alone appears nearer the mark.

The report identifies two major types of irregular immigrants currently present in Germany. First, those who have *entered Germany without permission*. This group is composed of those who did not possess valid entry papers upon arriving in Germany; if this violation were to be discovered by the authorities, they would most likely be deported or removed from the state. Those that successfully evade border control become unauthorised residents, people who do not possess valid residence papers for Germany and, because of the nature of their entry, are unable to possess them.

Irregular entrants are analytically distinguishable from another significant group in the German case: *bogus legal immigrants*. These are people who enter or reside in Germany on papers (passports, identification cards, visa stamps) that are false, but are assumed by the authorities to be legitimate. This category can be subdivided further into those who obtained their papers irregularly by, for example, evading official application procedures to obtain falsified

stolen documents, and those who gained legal entry papers through authorised offices after giving false information. The latter group includes those who entered Germany as tourists or visitors, hiding their intention to work. These different categories give an indication of how people come, in official terms, to be irregular migrants. But why do they choose to live in this situation in the first place? The study found that most of the irregular migrants interviewed were either *self-described refugees* or *labour migrants*. While other reasons occasionally motivated unauthorised entrance and residence (such as the desire to join family or relatives) a full two-thirds fell into these two groups.

Refugee Irregular Migrants A substantial proportion, though less than the majority, of those interviewed gave as their reason for entering Germany the desire to escape from persecution, violence or oppression. They claimed to have fled persecution by state (or state sponsored) authorities on the grounds enumerated in the Geneva Convention of 1951, or more generalised violence associated with war or the denial of human rights. A commonly cited individual reason for departure was fear of imprisonment without trial. The refugee irregular migrants resident in Leipzig were typically distinguishable from other migrants with irregular status by their country of origin. The majority of the refugees interviewed came from countries *outside* Europe; most came from Africa and Asia, though some were from Turkey. Some had entered Germany with their families. In general, they saw little option for return to their countries of origin and thus regarded Germany as the focal point of both their current and their future lives.

Labour Irregular Migrants The other major group, *labour or economic migrants*, came to Germany in order to improve their prospects for employment or in search of higher wage rates. Many were driven to find work outside their country of origin by an inability to get by on the income they earned at home. Unauthorised foreign work was thus seen as a way of addressing debts incurred through, for example, having children. With one exception, all of the interviewees in this group came from Central, Eastern, or Southern Europe. Some 95% expressed a desire to return to their country of origin, recognising it as their real home. This positive attitude towards return was reinforced by the existence of family and other dependants back home, who were typically in receipt of remittances sent by the irregular immigrants.

Migration Networks and Trafficking

In the UK study it was apparent that many people had drifted into a life without official migration status by overstaying. In Germany, the situation is quite different. While there were certainly cases of overstayers in the study, the situation in Leipzig is indicative of more organised and premeditated patterns of movement by irregular migrants. One indication of the systematic nature of irregular migration was the level of sophistication in the operation of networks that assist people with unauthorised entrance and residence. Individuals, family and village groups, and semi-formal and formal organisations, all played an important role in preparing for, facilitating and enabling irregular stays in Germany. The study confirmed the existence of three distinct types of networks available to irregular migrants. The first were *private networks*, composed of family, friends, and personal acquaintances that operated on a micro-level to facilitate entry. These networks are informal, idiosyncratic and typically do not attempt to make a profit out of the provision of their services. They are thus able to exercise a great deal of discretion in determining to whom they will offer their services. *Commercial networks* are more organised, coordinated and structured. They offer a wide range of services at the going market price, which is set by supply and demand and the degree of risk involved. The irregular migrants interviewed were generally very happy with the way these organisations worked. This is unsurprising because the success of this kind of network relies, as with any commercial enterprise, on customer satisfaction. A degree of responsibility thus usually exists between customer and client. Those who, for one reason or another, are unable to pay for the services rendered will find themselves on the receiving end of sanctions similar to those used by legal credit organisations (e.g., they risk having assets seized in lieu of payment). A final set of networks are those organised and run by criminal organisations, commonly referred to as *trafficking networks*. These networks share some important similarities with commercial networks: both are semi-formal organisations; both provide services in return for payment. But there are also important differences. Criminal networks are rarely interested in the goal of customer satisfaction. These organisations survive in spite of extortionate pricing and outright deception about the services they offer and the opportunities available in the destination country. They are in many cases simply front organisations intent on sucking potential immigrants into a netherworld of criminal activity, such as prostitution and drugs. Sanctions against non-payers by criminal organisations take a sinister form. Physical violence directed against non-payers makes the risks associated with using networks of this kind very high.

Private networks of the type described above have historically formed an important part of migratory movements. Access by potential irregular migrants to people with experience and knowledge of the country of destination lessens both the costs and the risks of international migration and facilitates integration. Commercial and criminal networks, on the other hand, flourish best under certain conditions, namely in the context of tight exit or entrance restrictions, where demand for exit or entry far exceeds supply and where there are powerful incentives for immigration. Those fleeing violent events and circumstances, like refugees, were found to be more likely to use organised migration

networks than labour migrants. The reasons were readily apparent in the German case. As we have seen, unlike labour migrants, refugees usually travel long distances from outside Europe to enter Germany, increasing the need for more elaborate preparation and assistance. Moreover, the fact that they are more readily identified as foreigners (through their physical appearance and language) means that they often need all the assistance they can get – or can pay for – to avoid bringing themselves to the attention of the authorities.

Living as an Irregular Migrant

There are important differences in the way that the experience of being an irregular migrant impacts upon the lives of individual immigrants. For example, life for unrecognised (*de facto*) refugees in Germany tends to be characterised by a particularly vulnerable and secretive existence. The same factors (race, country of origin, languages spoken) that push refugees to use commercial and criminal trafficking networks, make it imperative that they live an inconspicuous life while in Germany. They must undertake the search for accommodation and work under a veil of secrecy, as knowledge of their status is likely to lead to their removal and return back to the dangerous place from which they fled. Understandably, unrecognised refugees attach great value to anonymity. They take on work and accommodation that allows them to remain as inconspicuous as possible. Work in kitchens or as cleaners, for example, allows them to have minimal contact with the outside world and to avoid public spaces. This drive for anonymity, unsurprisingly, has an important effect on the individual's social relationships. Those that are unmarried often attempt to use marriage as a way of gaining official status in Germany; others attempt to buy papers that would give them a semblance of regular migration status. Unrecognised refugees are generally more likely to be dependent on the help and assistance of others in their struggle to survive, in particular employers and relatives. This dependence can be strained by the real psychological needs of unrecognised refugees which, according to the study, often manifested themselves in extreme paranoia and a sense of stigmatisation.

The situation of *labour* migrants differs significantly. For them, the fear of expulsion and deportation is not a significant factor in the organisation of their day to day lives. In contrast to refugees, deportation for labour migrants does not mean a return to a life-threatening situation. Deportation, should it occur, is merely a temporary disruption. There is always a strong possibility that one or two days after being removed from the country the deportee will be back in Germany at the same place of work. Moreover, as the vast majority of undocumented workers come from countries within Europe and often no further than Poland, they are typically harder to spot as undocumented. Secrecy and anonymity are thus not the same priority. The motivation of these migrants to reside in Germany only to work means that their entry into the state and the work they choose to do reflect the dynamics and requirements of the labour market. With the aim of seeking the highest wages (which in turn will generate the largest remittance payments), undocumented migrants are commonly drawn to building sites, despite the fact that these are relatively 'high profile' jobs.

The more relaxed disposition of undocumented workers manifests itself also in attitudes towards accommodation and social relationships. Their 'European-ness' enables them to form social relationships with little of the anxiety experienced by refugees. The relative youthfulness of these irregular migrants (the majority are males under the age of 40) tends to minimise the likelihood of significant health problems. As in the UK, however, accidents either at or outside work are an omnipresent threat. A trip to hospital makes it likely that their papers will be checked, thus rendering the migrant with irregular status vulnerable to expulsion or deportation.

While this view of labour migration makes for a rather positive picture of life as an undocumented migrant, recent developments have had a deleterious impact on the circumstances they face. Importantly, a distinct deterioration in the employment situation within the Leipzig building industry (where many irregular migrants are employed) has occurred. The signs of this deterioration have been lower wages, shorter periods of employment and, most alarmingly of all, frequent withholding of the earnings of undocumented workers by employers. Lacking the kind of safety net that provides protection to authorised residents – and able to seek redress from the authorities only at the risk of exposure – persons with irregular migration status are often denied the basic resources needed to survive. According to one interviewee, many undocumented workers currently find themselves spending a third of their time working, another third looking for work, and another third trying to collect unpaid wages.

The factors behind the recent deterioration in conditions make improvements in the current situation unlikely. The wage bargaining power of migrants with irregular status has been eroded by a steady flow of undocumented workers creating a surplus labour supply. Paradoxically, this deterioration – most marked in the building industry – has had the effect of encouraging longer (and even semi-permanent) stays in Germany by those who would previously have only been commuter immigrants. Lower rates of pay, increasing insecurity of employment, and the task of tracking down wages already earned, mean that the irregular migrants are forced to work longer in the country if they are to make their stay financially worthwhile. As they stay longer, their connections to home become weaker and ties with the Federal Republic are cemented. Consequently, undocumented workers become less likely to return home and, like refugees, seek to carve out a permanent life in a country in which they have no authorised status.

The Refugee Question

The study finds that increasing numbers of those seeking asylum are opting for a life without official migration status in Germany. It is not difficult to understand why worker migrants might choose to live undocumented in Germany for a period of time. Since the halt to migration of 1973, when the Federal Republic ended its guest worker programmes, avenues for the official entrance of unskilled and semi-skilled labour migrants from non-European Union countries have virtually disappeared. But the reasons why someone entitled to protection in the Federal Republic would choose life with irregular migration status are less clear. In the course of the interviews, a number of reasons emerged. It was evident, first of all, that in some cases border guards had ignored official procedures by failing to process applications for asylum by people claiming refugee status. These immigrants had thus effectively been denied access to the determination system. A second reason involved the difficulties associated with meeting the requirements of the 1951 Refugee Convention. A number of the interviewees explained that cultural barriers or a reluctance to relive traumatic experiences prevented them from recounting the story of why they needed protection in a way that satisfied immigration authorities. Together, these two reasons go some way towards explaining why there is a pool of people who have a powerful desire not to return home, yet lack official refugee status.

The presence of unrecognised refugees also reflects a stricter attitude towards asylum at government and administrative levels, manifested most clearly in the amendment of the country's broad ranging right of asylum in 1993. In particular, many irregular migrants with a case for asylum fail even to submit an application for refugee status. Anxious to avoid a fate similar to those temporarily protected Bosnian refugees and many failed applicants for asylum deported in large numbers by the German government, many decide not to join asylum queues. This lack of faith in the asylum system was reflected in the accounts of the unrecognised refugees themselves. Interviewees told of their belief that it was impossible as a matter of policy for the members of their particular ethnic group to get asylum and of concerns that they would be sent back to a 'safe country' that they had passed through on their way to the Federal Republic. On the other hand, for some who might otherwise gain refugee status, avoiding the official asylum determination system offered the advantage of a degree of autonomy – freedom from centralised accommodation, payment in kind, and work restrictions. Life as an undocumented migrant was, for most refugees, a life of great hardship and secrecy. Yet it held out the prospect of a kind of security and peace of mind that was infinitely preferable to life back home or an extended period in the determination system.

The study found that in spite of recent restrictive measures and a general decline in the number of official asylum seekers entering, Germany is facing a new asylum crisis. This is a silent and invisible crisis because the asylum seekers concerned gain protection through unofficial avenues. Yet it is a crisis nonetheless; a crisis not only for refugees, who are deprived of official state assistance (including accommodation and a right to work), but also for civil society – families, friends, charitable organisations and advice centres – that are increasingly taking on the role of providing assistance to these unofficial asylum seekers. Since 1993, Germany's 'asylum crisis' has gone underground; it has not disappeared.

The Costs of Irregular Migration

In the course of interviewing migrants with irregular status and examining their varied social milieux, the study considered the costs to German society of irregular migration. Some of the costs were at the local level and readily calculable. Hospital expenses, for example, incurred when undocumented migrants become involved in road or work accidents or if they require treatment as victims of crime, typically must be borne by the local social security authorities if no one else is responsible. In 1997 alone such expenses amounted to DM262,623 in Leipzig. The arrest and deportation of irregular migrants represented another clear cost. In Germany most of these costs, in particular air travel and interpreter expenses, are borne by the local Aliens Authority. In 1997 these expenses amounted to DM89,020 for a total of 229 persons.

It is significantly more difficult and controversial to determine the indirect costs (and benefits) of irregular migration. The difficulties stem in large measure from the fact that it is in the nature of irregular migration that those involved go out of their way not to have their activities recorded. Nonetheless, the study does provide a clearer picture of the economic costs associated with one area of irregular employment: the Leipzig building trade. In this industry, the demand for undocumented labour is particularly high. This is attributable, on the one hand, to the building industry's heavy reliance on large inputs of manual labour and, on the other, to the intensely competitive nature of the East German building industry. In the case of the latter, employers of labour face a situation where the local workers' requirement for relatively high wage rates and the holiday, superannuation, and sickness benefits associated with authorised employment conflict with the need for competitive bids for work in a cut-throat European construction market. The pressure to reduce labour costs in order to produce competitive tenders for contracts is one that some employers have found impossible to resist. Typically, legitimate companies subcontract to firms created specially for the recruitment of undocumented labour. The result is work for moonlighters (nationals paid 'off the books') and irregular migrants. The latter usually earn a fraction of the wage rate of locals.

The benefits of such labour are obvious. Employers win because they are able to keep their businesses alive and competitive and thus to make profits. Public and private clients win because the costs of construction are lower than they otherwise would be. And immigrants with irregular status win by being paid wages at rates which, while below those which nationals would accept, are above those they would receive in their country of origin. Those in the countries of origin of immigrants, such as the families of the labourers, also seem to benefit through the flow of remittances back home.

Do nationals that might otherwise have been employed in the place of undocumented migrants lose from this arrangement? Not obviously so. Rather than taking the jobs of legal local workers, irregular migrants often substitute for moonlighting workers (illicitly working nationals). Furthermore, on the national level, it is plausible that German firms win contracts that would otherwise be out of their reach. The economic benefits of these contracts spill over into other firms and businesses in Germany that provide services or materials to the construction sites. Irregular migration, then, may have personal and social costs, primarily to the irregular migrants themselves. But, in the case of the Leipzig building industry, the economic costs are not at all obvious.

Crime and Irregular Migration Another cost of irregular migration is rising criminal activity. Informed discussion about the relationship between irregular migration and crime is, however, often impeded by misinformation and stereotyping. In particular, most discussions fail to distinguish between the different types of criminal activity committed by persons with irregular migration status. Different types of crime often signify, furthermore, different types of motivation and thus character. The study points to three types of crime associated with irregular migration:

- entry, residence and work in violation of immigration law
- offences which stem directly from poverty and the circumstances of an undocumented existence
- deliberate, serious crimes motivated by a desire for personal enrichment

The first type of crime is the least serious. It is simply the crime of irregular migration itself: that is, the unlawful crossing of state borders, unauthorised residence in the state, and violations of employment regulations. The laws violated here are local and national laws, such as the Aliens Act. A great deal of confusion over criminality arises, however, from the inclusion in criminal statistics of violations of this Act. A form of double counting occurs where the unauthorised presence of these immigrants is used as evidence of their propensity to be involved in crime. Not only does this distort the real association between irregular migration and crime, but it obscures the fact that, as the study finds, a proportion of irregular migrants in Germany do not realise that entering, residing, and particularly working in the country is a punishable offence. When interviewed, some immigrants expressed surprise that 'honest work' that in their view was ultimately of benefit to the Federal Republic could constitute a violation of the law.

There is naturally a greater awareness of the impermissibility of a second type of crime: offences committed which stem from poverty and the condition of unauthorised residence. These acts typically involve shop-lifting and other types of petty theft. They are not rare, but they are crimes associated with circumstance rather than character. Typically, such crimes enable an undocumented migrant to tide over a temporary period of unemployment or to survive when their wages have been withheld. The gains from such activities are often used towards the maintenance of an uninterrupted flow of remittances back home, as much as towards supporting the individual him or herself.

The final category of crimes, those for personal enrichment, is also associated with irregular migration. This type of crime is usually committed by gangs who undertake a range of serious crimes, including car theft and burglary. It also includes much of the organised crime committed by mafia groups involved in the trafficking of human beings, drugs and prostitution. The first and most common victims of this type of crime are often the irregular migrants themselves.

Based on interviews, contacts and statistics, the German study estimates that of the three varieties of crime, the first two comprise approximately 95% of the crime associated with persons with irregular migration status. That is, notwithstanding widespread public perceptions of a close association between irregular migrants and serious crime, the overwhelming majority only transgress against immigration regulations or commit misdemeanours. By and large, migrants with irregular status are law-abiding residents, desirous of living as inconspicuous a life as possible. It seems likely, moreover, that such criminality as does exist is concentrated amongst particular sections of the irregular migrant population. The study found that refugees are least likely to be involved in serious crime because of their particularly strong desire to avoid contact with state authorities. The study concludes its discussion of criminality on a worrying note, however. The deterioration of the building industry, and the problems that migrants with irregular status face in securing payment for the work they do, may result, the author warns, in an increasing level of crime as more irregular migrants struggle to make ends meet.

The Efficacy of Control

The existence of irregular migration to and residence in Germany ultimately raises the question whether state authorities can control this phenomenon. Certainly, German governments have taken a number of measures recently to

increase their ability to restrict the entrance of unwanted foreigners. Multilateral and bilateral agreements between Germany and other European countries, including the Schengen Treaty and the Dublin Convention, have enabled Germany to close off many traditional avenues for entrance. First country asylum procedures, the harmonisation of visa requirements, bilateral repatriation agreements with border countries (including Poland, the Czech Republic and Hungary) have come, since the early 1990s, to assist increasing numbers of border guards in creating a *cordon sanitaire* around the Federal Republic. Nonetheless, the study points out that the effectiveness of these measures has been reduced by the ingenuity of private, commercial and criminal migration networks facilitating unauthorised entry and residence. Furthermore, as legitimate border crossing becomes more difficult, the hand of the least desirable of these organisations, the criminal networks, is strengthened further. For it is only the most powerful, tightly-organised, and unscrupulous trafficking and smuggling organisations that have the ability to respond to the increasingly sophisticated measures used by states to prevent unauthorised entry. Increasing levels of restriction can only be bypassed by corruption or bribery, or by sophisticated organisations that can match the levels of technology used by states.

Tackling the rise of irregular migration networks has in recent years become an important priority for German officials. Yet the success of attempts to infiltrate these organisations and prosecute those involved has been limited by a number of factors. First, the considerable degree of cooperation and support that these groups enjoy from populations both within and without Germany. Second, by the ethnic homogeneity of these organisations, a factor which makes infiltrating them and obtaining information especially difficult. And finally, by the fact that these organisations are typically led and coordinated from outside Germany and, in some cases, from outside Europe. The Federal Republic has certainly increased the costs of entry in recent years. But while demand for entrance remains high, one can assume that criminal trafficking organisations will not be short of customers.

Conclusion

Since the writing of *Illegal in Germany*, there have been signs that Germany has begun to move away from the fantasy of seeing itself as 'not a country of immigration' to rethink some of the assumptions that currently guide entrance and membership policy. From January 2000, national laws for the first time allowed those born in German territory to foreign parents to acquire citizenship (*Migration News* February 2000). In the same year, debates began in earnest on the need to recruit skilled foreign computer workers, encouraging, in some circles, a wider discussion on the country's need for a general immigration policy (*Migration News* April 2000). These are welcome developments, but they relate only indirectly to the problems that continue to attract unauthorised immigrants to Germany. The widely-held perception that the asylum reforms of 1993 were a success, and the view that irregular migration is a product of external pressures rather than of an internal demand for labour, need to be reconsidered if the challenge of irregular migration is to be adequately addressed.

Spain

In recent years Spain has come to share with Germany and the UK the dubious status of being a country that hosts large numbers of irregular migrants. Spain differs, however, from Germany and the UK in two important respects. First, Spain became a popular destination country for immigrants – both regular and irregular – much later than Germany and the UK, each of which had experienced substantial amounts of immigration in the 1950s and 1960s. During this period, Spain was a source country for worker migrants, with many of its citizens eager to leave behind them a relatively underdeveloped economy and an authoritarian state regime. Only with the end of the Franco regime in the early 1970s, and the country's integration into the European Community in 1986, did Spain experience the kind of political liberalisation and economic development that stemmed emigration and increased the country's attractiveness as a destination for non-European migrants. Second, Spain plays a distinctive role as a transit country for forms of regular and especially irregular migration from North Africa (the Maghreb) and Sub-Saharan Africa. Migration movements across the Mediterranean into Spain and then onward to the countries of Northern Europe have made Spanish border control practices of especial interest to the European Union. Germany and France, in particular, have expressed concern over what are perceived to be the country's relatively lax border controls. This question of Spain's borders has become particularly important since the implementation of the Schengen Agreement in 1991, which creates an internal zone of free movement between signatory European states. The success of this zone relies on those states, like Spain, which form the external periphery of the frontier to restrict the entry of non-EU migrants into Europe. Consequently, a great deal of resources have been invested in Spain in an attempt to assist the country in tightening and modernising its border controls (see Collinson 1997).

Yet it would be wrong to see Spain merely as a transit country for Europe's unauthorised immigrants. The rising number of immigrants with irregular status present (estimated by Spanish diplomats to have increased by 60% in 1999 alone) also reflects the fact that many can eke out an existence in Spain through construction or factory work, or on farms in the country's rural areas. The presence of undocumented workers is not uncontroversial. Early in 2000 hostilities between locals and undocumented farm workers resulted in violent conflicts in El Ejido and Lepe in the Southwest of Spain (*Migration News* March 2000). But the need for at least some worker immigration is acknowledged by the Spanish government, as the recent decision to issue short-term work permits for some 300,000 non-EU foreigners in the agricultural and construction sectors indicates (*Migration News* October 1999). A much greater volume of authorised migration would no doubt be required, if Spain were to be deprived of the steady and cheap supply of unauthorised workers that currently service its economy.

The effects of life as an irregular migrant on the immigrants themselves is examined in depth in *From a Life Project to Civil Death: Irregular Immigrants in Spain*. The study aims, in particular, to survey the day to day life of irregular immigrants that reside and work in Spain. As the study notes, these are people that by definition live outside the institutional legal structures that govern official immigration. Equally, they have no role in shaping those social practices (racism, xenophobia, exploitation) that determine the quality of their lives. They experience what Hannah Arendt has described as the fundamental condition necessary for a lack of human rights, 'the deprivation of a place in the world which makes opinions significant and actions effective' (1986: 296).

The Spanish study differs in an important respect from the two other studies commissioned by the Jesuit Refugee Service. As with the other studies, the bulk of the data gleaned for the report comes from direct interviews with irregular migrants, who originated from regions as diverse as the Maghreb, Latin America, Sub-Saharan Africa, China and Eastern Europe. However, those interviewed by the Spanish team did not come from one city alone; rather the team spoke to immigrants from five separate provinces in Spain to get a cross section of the experiences of irregular migrants in the country as a whole (see introduction). The Spanish study was driven by two distinct, though interrelated, concerns: first, to explain how the experience of irregular migrants in Spain differs from that of regular immigrants; and, second, to understand how the experiences of irregular migrants evolve after making the initial decision to reside in Spain. The study suggests that the experience of irregular migration is best understood as constituting a 'life project': a personal plan to escape economic deprivation, fulfil certain dreams of employment and social opportunity, or flee political persecution or human rights violations, through the process of entry, finding employment, settling and regularising their status in Spanish society. Frequently, as the study makes clear, the initial aspirations involved in the life plan turn out to be little but a cruel dream, exposed as such by the sad realities irregular migrants face upon arrival in Spain. They are therefore forced to reassess their life project. By offering a more accurate picture of the realities faced by migrants with irregular status in contemporary Spain, the study aims to contribute to the construction of life projects that take into account the true circumstances and opportunities for irregular migrants.

Who are the Irregular Migrants?

Spain has had very little recent experience in handling large-scale migration either in its authorised or unauthorised forms. The number of irregular migrants resident on its territory has probably risen in recent years. Conservative

estimates put the current number at between 50,000-60,000, while some experts suggest that the number of Moroccans alone might be higher than this figure. The interviewees probably come close to reflecting an accurate cross-section of the nationalities of all irregular migrants resident in Spain, with the majority being males from the North African countries of Morocco, Algeria and Tunisia and the remainder from Latin America, Sub-Saharan Africa, China and Eastern Europe.

The report differentiates between a number of ways that immigrants become irregular in the eyes of the Spanish state. Irregular migrants in Spain are defined as non-citizens who have either (1) settled in Spain without a residence permit or failed to fulfil the legally required conditions to be awarded one; or (2) resided in Spain without meeting the residence formalities required in their immigration permit. Alternatively, they may have become involved in activities which invalidated their right to reside in Spain. While for some irregular migrants the movement into an unofficial status was a result of an unanticipated set of circumstances, the study found that most deliberately chose to enter and reside in Spain without authorisation. The study, moreover, distinguished between four different types of irregular migrants on the basis of their motivation for entering Spain. They are described in the report as adventurers, survivors, investors, and refugees.

Adventurers This category constitutes a large proportion of all irregular migrants in Spain. They are typically young men drawn to the country by the attractive picture of Spain painted by the mass media and by friends who themselves have experienced life as an irregular migrant. The label ‘adventurers’ is intended to capture the risk-taking, future-seeking features of this category of migrant. The excitement they experience at the prospect of travel and exposure to a new cultural environment often blinds them, however, to the necessity of proper planning if their life as an irregular migrant is to be anything other than a disappointment. The study found that many in this category had failed to take into account the time, expense and difficulties associated with unauthorised entrance into and residence in Spain.

Survivors Arguably the majority of migrants with irregular status in Spain fall into the category of survivors, those who are pushed, either by necessity or simply by misery to seek life outside their own country. Sometimes the reason for their emigration stems from generalised situations of poverty and economic failure in their country of origin; often, however, the reasons emerge from more individual features of their situation, such as personal financial concerns. Migration becomes a way out for those whose country offers no welfare state – and no safety net – to cushion economic failure or unemployment. This group is typically composed of men and women who either intend to start a family or are trying to take care of one.

Investors Not every migrant with irregular status moves because of economic failure or the inability to survive in his or her country of normal residence. For some migrants, international movement is a sign of entrepreneurship rather than desperation; more a matter of wisely investing in the possibility of a better lifestyle in the future than an act of necessity. Confounding widespread stereotypes of irregular migrants, this group possesses sufficient resources to survive in their country of normal residence, possessing, *inter alia*, financial assets and an education. Their migration is driven by an attempt to maximise their economic opportunities, rather than to meet their basic subsistence or social needs.

Refugees As in other studies, the Spanish one found a significant proportion (though less than 20%) of migrants with irregular status gave as their reasons for entering Spain the fact that they had been persecuted at home on the basis of race, ethnic group membership, ideology, or political opinion or were attempting to escape generalised circumstances of violence or widespread human rights violations. While it is uncertain whether most of these people would have met a stringent interpretation of the Geneva Convention definition of a refugee, some claimed to have been forced to leave their country in order to avoid violence (often life-threatening violence) to themselves or to other members of their family. All the members of this group were unable to find in their country of origin a ‘normal, quiet life’ in which their rights were respected.

The Migration Project

In attempting to understand the distinctive experiences of migrants with irregular status, the Spanish study generalised about the ‘life project’ of typical irregular migrants. The study distinguished between four different and distinct phases which most irregular migrants pass through as a result of their situation:

- the formulation of the migratory project;
- the immersion in irregular migration;
- routine daily life as an irregular migrant; and finally,
- the reformulation of the migratory project.

I shall now summarise the main conclusions of the study with reference to each of these stages.

Formulation Reflection on the nature of unauthorised entrance and residence permeates the life of the potential immigrant long before departure from the country of origin. The implications of life as a migrant with irregular status are from an early stage the subject of much thought and planning. Irregular migrants usually come to the attention of the public only when they reach the borders of Spain. But for the migrants themselves this seemingly early stage in the migration process is usually the culmination of many months and, in some cases, years of organisation and planning.

The planning associated with unauthorised entrance and residence in Spain is typically the result of a collective process. Long before departure, relatives, friends and fellow workers are engaged in discussions on the likely costs and benefits of migration. This broad level of involvement reflects not only the substantial financial costs associated with the choice of migration: participants in the venture often have to borrow money for their trip, in many cases from shady profiteers or criminals. It is also indicative of less tangible costs and, in particular, the emotional costs associated with long-term separation from loved ones. These costs tend to fall particularly heavily on members of the aspiring irregular migrant's family.

In this early stage of planning discussion will also focus on what is needed for integration in the new country, something which may involve mastery of a new language. While immigration may be seen as involving a permanent separation from home, life as an irregular migrant is typically seen as a temporary, transient stage. The interviewees typically expected that once established they would be able to move into full authorised status as members of Spanish society.

Two important observations can be gleaned from this examination of the initial stages of the migratory project. First, the planning and resources required for successfully beginning life as an irregular migrant, mean that irregular migration is rarely a haphazard enterprise. Those, moreover, who make the decision to migrate are neither the poorest nor the least literate; they are neither indigent, nor suffering from poor health. On the contrary, migrants with irregular status are typically family representatives – those that bear the investment of others. Accordingly, they are usually relatively well-off, stable individuals in good health, and thus capable of paying the costs of the migratory project. A substantial proportion of those who enter as unauthorised immigrants are adventurers or even entrepreneurs, the makers of decisions that reflect calculated risks that make them a desired social type in many countries. Their departure is likely to represent a social and economic loss for the countries they leave.

It is evident, secondly, that each individual is representative of something more than a set of individual choices and decisions: each is a kind of social investment. An array of people, above all the family of the irregular migrant, have usually invested time, money and emotional support in making their trip possible. Thus, in the movement into irregular migration, these individuals carry with them not only their own hopes and aspirations, but also those of all who have assisted them in organising and seeing through their plans.

The Entry into Irregular Migration The experience of entering Spain is for many migrants with irregular status a defining act of the utmost social, emotional and legal importance. Notwithstanding their planning, the most common response upon arrival is tremendous disappointment. As the report makes clear, arrival in Spain typically constitutes the end of a dream for many unauthorised immigrants.

Entry into Spain for irregular immigrants does not differ markedly from the situation in the UK or Germany. According to the report, entry usually takes one of the following forms:

- *surreptitious entry*, where the immigrant enters the country stowed away or hidden in a ship or other type of transport. The undocumented migrant might masquerade as a co-driver of a vehicle, or hide him or herself on a train that does not pass through customs;
- *simulated entry*: here the person enters with a legitimate visa (a tourist, student, or business visa, for example), but stays on beyond the visa's expiration date;
- *manipulated entry*. In this case the immigrant uses (sometimes unknowingly) a criminal or commercial trafficking organisation to transport him or her across Spanish borders in return for a sum of money. These organisations usually offer transportation, unauthorised entry to the state, and the promise of a job upon arrival;
- Finally, *failed legal entry*, where the immigrant enters the country with a passport or legal visitor's visa and suffers some event (a theft, a loss, etc.) that deprives him or her of legal documentation and thus of official status.

It is evident from these different pathways that the condition of irregularity does not always begin with border crossing. Many irregular migrants experience crossing the border no differently from legal migrants because, at the time of entry, that is exactly what they are. It is only the act of overstaying or violating the conditions of their entry permit that will lead to a change in their status. For others, the border crossing occurs as a result of a degrading trip under intolerable conditions, during which some of their fellow travellers have perished. Their pathway to irregular-

ity has, even before reaching the border, been an extremely painful and costly one; they may have come to realise already that they have put their trust in a highly exploitative trafficking organisation. It may be obvious to them early on that their life in Spain will be a criminal one – possibly involved in drug selling – in order to pay back the exorbitant fees they owe.

For all these reasons, crossing the border and arrival in the country is for many irregular migrants the end of a dream. The dream nourished by ignorance, heavily embellished accounts of the success stories of other immigrants, and the promises of trafficking organisations eager to profit from inflated expectations, confronts head on the reality of a life without official status. For those who have entered with the help of criminal trafficking organisations, the very first day is the beginning of a life of virtual servitude. Their freedom to find a job or to go where they please is constrained by their obligations to the criminal organisations to which they are indebted. Those who enter the country surreptitiously – on their own or with the help of friends and family – also find the border crossing a pathway to misery, abandonment, loneliness and poverty. They possess at least one advantage over the criminally trafficked, however. They can convince themselves, for a while at least, that their situation as one of the socially and legally excluded is temporary.

Life as an Irregular Migrant According to the Spanish study, *legal* immigrants in Spanish society are typically *socially marginal citizens*. They face a variety of social barriers that distinguish their situation from that of full citizens in the polity, including social isolation, institutional and informal racism or xenophobia, a disproportionately small share of society's economic resources, and very restricted access to widely-valued occupations and positions. By contrast, *irregular* migrants in Spain are most accurately described as *civic dead citizens*. Not only do they fail to enjoy almost all the basic goods of citizens – legal protections, minimum of basic social respect – but they are locked into a position of social and political invisibility. The suffering that they experience is deprived of any social or political significance because people with irregular migration status have no public stage on which to articulate their grievances. The invisibility of irregular immigrants is doubly reinforced. On the one hand, they do not exist officially for the administration; on the other hand, this invisibility is what enables their continued residence in Spain.

Few things illustrate more starkly the difficulties associated with their new life in Spain than their lack of an official identification card, the acquisition of which soon becomes an *idée fixe* for the undocumented. The card, a practical remnant of the previous authoritarian rule in Spain, is a generalised and operative instrument of Spanish life. Possessed in several varieties by all legal residents in Spain, the card is needed to sign a valid contract of employment, to make a will, to register at a hospital, to get married, to have legitimate children, to gain welfare benefits, or to receive a pension. The desire to attain this guarantee of minimal inclusion in Spanish life leads immigrants with irregular status into a new round of law-breaking activity. Typically, they must bribe, steal or engage in an act of fraud to gain this token of recognition. The absence of such a card is, in the Spanish case, a defining feature of the civically dead.

While the lack of an identification card typifies the problems they face, people with irregular migration status are also victims of real social and economic abuses that are hidden from the light of the public realm. Employment for them is typically sporadic and conducted outside normal trade union and legal protections. Conditions for those reliant on criminal networks are often little less than informal versions of slavery, with some even press-ganged into criminal activity in the service of these networks. Any member of a society – regardless of migration status – can, it is true, be subject to private, informal networks of exploitation. What is truly distinctive about the situation of migrants with irregular status is not simply that they cannot approach those social representatives, like the police and civil servants, that would normally protect people from such exploitation; it is that these representatives, along with business people, often benefit systematically through bribery, fraud, kickbacks or simply cheap labour from the irregular migration industry in Spain. The collusion of public officials in exploitation often feeds in the irregular migrants a cynical and untrusting view of Spanish society and its institutions, bringing them to question whether there is a pathway out of irregular migration.

In addition to injustices of these types, the individual often faces problems associated with social isolation which grow over time. Separation from family, the inability to enter into marriage because of the lack of an identification card, and the difficulties associated with making friends in an environment where trust is a scarce commodity, all conspire to isolate irregular migrants and prevent them from maintaining or attaining the kind of networks that might provide them with comfort and support.

Why, in the midst of such misery, do they remain in Spain? Why do they not simply return home to a life that could scarcely be worse? The answers are varied. For the refugees, with the threat of violence or imprisonment facing them upon return, life simply *would* be infinitely worse at home; even for those who avowedly are not refugees, the economic circumstances they face in Spain are often better than those they would face upon return; for others still, effective enslavement to the criminal networks and the debts they have accrued provide the reason for remaining. Finally, many, even after all they have endured, still manage to cling to the hope that their situation in Spain will one day improve.

Reformulation The Spanish study found that migrants with irregular status were often obsessed with the idea of the

future. Every immigrant nourishes a dream that provides a reason for going on. Immigrants are people who have left their country, their social world, and their culture with the aim of improving their plight. The hardships of immigration are seen as a price to pay for a better future.

Regularisation, the grant of legal residence in Spain, is the usual focus for this dream. This goal might be achieved through a government-introduced amnesty on irregular migration, or by finding an employer willing to offer the irregular migrant an official contract of employment (that would lead to the gaining of a work permit). The hope for just such an occurrence is reflected in a survey of migrants with irregular status undertaken by the Spanish team. In that survey, some 60% of the interviewees who had been in Spain for less than six years still described themselves as 'hopeful' as opposed to 'despairing' about the future. Even after more than six years' presence in Spain, some 48% still felt 'hopeful'.

Significant as these figures are, however, they obscure the reformulation of the migration project that migrants with irregular status have undergone while in Spain and, in particular, the general lowering of their expectations. A situation they once thought would last months – their transition from unauthorised to authorised migrant status – turns out to take years. The wait may not result in complete despair, but it certainly makes migrants with irregular status increasingly desperate. For many, moreover, this wait will be prolonged by an ignorance – and distrust – of the pathways that might lead them out of their current situation to a state of what might be called 'civil resurrection'. In the social realm this resurrection might be achieved by the limited and important services provided by charitable institutions and NGOs that could furnish them with at least some of the social goods they need, including housing, health treatment and education. In the legal institutional realm, the limited avenues for lawful residence in Spain as immigrants (including occasional amnesties) might offer one way of improving their situation.

Spain and Irregular Migration

Irregular migrants entering Spain come into a country that still views itself predominantly as a country of emigration rather than a country of immigration. In the gap between this dominant view of Spain and the reality of immigration, irregular migrants dwell. Becoming a member of the society of unauthorised residents means, all too often, entering a world of emergency, bare subsistence, social isolation, exploitation, and insecurity.

One reason why such an undesirable state of affairs can develop and perpetuate itself is the lack of professionalism with which the project of irregular migration is planned and carried out. The sources of information that unauthorised migrants rely upon in making the life-shaping decision to migrate are typically informal and consequently distorted, deceptive and inaccurate. The lack of official – or even accurate, informal – information about the opportunities really available and experiences actually awaiting them in Spain leads to a dramatic mismatch between the aspirations of migrants with irregular status and the realities they confront. One suggestion made in the report is a much greater role for official organisations, in particular Spanish embassies or consulates in the countries of origin, in providing potential immigrants with a much more accurate picture of what they might face upon arrival in Spain. At the moment, there are too few informational correctives to the exaggerated accounts of many irregular migrants themselves or the self-interested perspectives of smugglers and traffickers.

The lack of professionalisation is indicative of governmental and societal myopia in the face of the reality of irregular migration in Spain. To be sure, some attempt to respond to the problem has recently been made through sporadic programmes of mass regularisation and a police-led approach that threatens mandatory deportation for those in violation of the country's immigration laws. But these responses do not yet amount to a coherent – let alone a rights-respecting – policy for dealing with irregular migration. They have, moreover, never been adequately supplemented by other measures that might make for a more comprehensive strategy, such as the opening up of avenues for temporary migration from source countries, or the promotion of voluntary return programmes for immigrants dissatisfied with their lot in Spain. If it is not completely accurate to say that people with irregular migration status do not exist officially for the administration in Spain, it is unfortunately true that they exist as a problem only fitfully.

The losers in the current state of affairs are not only the people with irregular migration status themselves, though they certainly bear the heaviest costs. Nor is it Spanish society, which is arguably robbed of the presence of an eager and willing group of people who might contribute more productively under the right circumstances. The quiet losers also include private organisations, such as NGOs and charitable institutions, which struggle to cater for the needs of irregular migrants with little support from the Spanish state. With the state prepared to ignore the problem of unauthorised residence, the task of aiding these men, women and children is effectively privatised, passed on to those organisations who find it more difficult to ignore an obligation to those in need.

Conclusion

By one recently published estimate 200 people perish each year attempting to cross the turbulent waters between Spain and Morocco (*Migration News* January 1999). There is little sign that the mixture of unemployment, unstable

social and political conditions, and the promise of a better life that drives people from their homeland and attracts them to Spain is becoming less powerful. Yet recent government measures have improved the lot of migrants with irregular status within Spain. A legalisation programme during February to July 2000 had attracted more than 80,000 applications by June 2000 (*Migration News* July 2000). A large number of irregular migrants are thus likely to rescue themselves from the position of being civic dead citizens. Their ranks, however, will quickly be replenished. It was announced in May 2000 by the head of the Spanish enclave of Ceuta that some 25,000 hopeful migrants were already waiting between Tangiers and Al Hocenja to enter Europe.

Conclusion and Recommendations

No democratic state can tolerate the establishment of a fixed status between citizen and foreigner... Men and women are either subject to the state's authority, or they are not; and if they are subject, they must be given a say, and ultimately an equal say, in what that authority does (Walzer 1983: 18).

The country reports which I have summarised all contain in their complete versions, a range of conclusions about how at local and national level the challenges associated with irregular migration might be tackled by governments and NGOs. The purpose of this final section is to consider what conclusions and recommendations regarding the phenomenon of irregular migration might be made for policy at European Union level. In the process of spelling out a range of conclusions and recommendations, I will also address here a number of other issues relevant to irregular migration. These include: the political constraints facing policy construction, the rationale behind the policies recommended, and why certain elements of an irregular migration policy are best focused at European Union level.

Conclusions about Irregular Migration in Europe

I will begin by outlining seven conclusions that can be derived from the country studies (Germany, the UK, and Spain) that appear of general relevance to all European Union countries.

First, the life of entrants and residents without regular migration status is usually a rightless existence without the basic protections of criminal and civil law and with no legal avenues by which to assert an entitlement to just and humane treatment. Irregular migrants in Europe typically find themselves in a position where they reside and work in a European country, but are without the basic protections associated with regular residence. They are, in the words of the Spanish report, the 'civic dead'. All the reports illustrate furthermore that migrants with irregular status are frequently prey – and always vulnerable – to exploitation and deception by: employers (who often refuse to pay them for work done); traffickers and irregular migration networkers (who often exploit or deceive them); and even members of their own ethnic communities (who often take advantage of their enfeebled market position in the area of housing or medical care). All immigrants are, of course, vulnerable in the process of adjusting to a new society. For people with irregular status, however, this state of vulnerability is permanent and dictated by the need to avoid the attention of the authorities if they are to remain in the country.

Second, the term 'irregular immigrant' (and resident) obscures the many diverse ways that individuals find themselves in this situation. Irregular immigrants that enter the state without governmental permission (such as those smuggled in or those who cross unofficially at the border) and those who enter with fraudulent or falsified documentation, receive the most public and media attention. However, many irregular migrants are irregular *residents*, not irregular *entrants* – people who have entered the state legitimately but whose permission to stay has expired or been invalidated. These people have often drifted into this irregular situation, have lived law-abiding lives in their countries of residence, established deep community ties, and have resided in the host state for many years. To distinguish between various groups of irregular migrants in this way brings into question the view that immigrants with irregular status are those whose residence has never been consented to by the host government. In the latter case, for example, consent to enter and reside has, at some point, been given to the immigrants, but it has later been taken away, or the terms on which it has been given have been violated.

Third, the term irregular immigrant (and resident) tells us nothing about the diverse and varied motivations that individuals and families have for becoming irregular. They may choose to enter temporarily or permanently reside in the state for one or more of the following reasons: they are *de facto* refugees escaping political persecution or violence; they desire economic advancement; they wish to generate remittances for family members back home; they wish to join family members in the host country; or they simply seek to leave behind them a situation of grinding poverty. Current debates about irregular migration usually proceed on a one-dimensional view of the phenomenon and the forces that motivate it. This has implications for the proper policy responses. Irregular migration cannot, for instance, simply be solved through economic measures, though they might form an important part of any response. Any attempt to reckon with the phenomenon must be multifaceted.

Fourth, *de facto* refugees form a substantial proportion of irregular entrants and residents in European countries. A range of factors, including distrust of state asylum determination procedures, reluctance to be detained, and fears about return, lead some refugees to choose life as a migrant with irregular status. The numbers of those in this

position are, moreover, probably boosted by the way that restrictive measures force legitimate refugees into illegal activities to enter the state in the first place, dragging them into an underworld that has its own entanglements and fetters. The phenomenon of the 'refugee illegal' results in a privatising of the assistance provided to refugees (in accommodation, health, and welfare, etc.) as ethnic communities, friends, relatives and non-governmental organisations become providers of support in lieu of governments. This results in significant social and economic costs for these groups and for the refugees themselves.

Fifth, restrictive entrance practices towards asylum seekers and irregular migrants (such as the use of visa regimes and carrier sanctions) have helped to empower criminal trafficking organisations and commercial illegal networks. These organisations owe their existence to a dramatic mismatch between the number of people demanding entry to Europe and the very limited legal avenues for entrance. As these practices grow increasingly restrictive, the organisations most prepared to bribe, forge, and use violence are likely to grow stronger and more dominant at the expense of more scrupulous informal networks. The cost of this growth will be increasingly large numbers of irregular migrants sucked into criminal activity, especially prostitution and drugs. The development of these organisations might not, in itself, present a reason for abandoning restrictive entrance practices (any more, for instance, than the existence of tax fraud is a reason for abandoning taxation), but it does show the wisdom of thinking of alternative ways of managing irregular migration.

Sixth, the relationship between irregular migration and crime resists popular stereo-types. As the German report makes clear, most of the crime committed by people living without a regular migration status is the result of circumstance, not character. Serious crimes for personal enrichment are rare, and crimes that stem simply from the reality of vulnerability and exploitation associated with irregular status and rightlessness are far more common. Irregular migrants themselves are probably more likely to be victims than perpetrators of crime. By increasing the protections which migrants with irregular status can avail themselves of, much of the petty criminality associated with this status would be likely to diminish. However, the ominous rise of criminal trafficking organisations may, if not stemmed, have important implications for the relationship between illegality and crime.

Seventh, some migrants with irregular status are dissatisfied with their experience of life without status and, failing a chance to regularise their residence, would probably return home if offered the opportunity. The reports indicate that many irregular migrants may not so much be resident in Europe, as trapped in it. Increasingly tight restrictions on entrance that make return migration difficult (as was evident in the British case) and the need to recoup unpaid earnings (evident in the German case) can prove strong barriers to return. If provided with the right kind of assistance, some (non-refugee) irregular migrants would no doubt cut their losses and return home. Furthermore, because the indignities of a rightless and secretive existence can rob illegals of the psychological resources required for returning and rebuilding their lives, current government policies that are implicitly built on the assumption that the deprivation of rights will encourage departure are problematical at best.

Eighth, in spite of active attempts by governments to clamp down on irregular entrance and residence, the number of irregular migrants in Europe does not appear to be declining in volume and is probably growing. Economic demands within host countries, steep inequalities in security and opportunities between states, the reliance of communities and families back home on the remittances, war, and widespread social and political violence are likely to continue to make an irregular existence relatively appealing for many people. Appalling as they may be, the conditions many migrants with irregular status face are preferable to the circumstances they would face back home, or represent a worthwhile trade off for a period of earning relatively high wages. While policies can be constructed which deter or prevent irregular migration from poorer, more unstable countries, the presence of large numbers of irregular migrants in Europe, and the injustices they face, are not going away in the near future.

Political Reality and Irregular Migration

These conclusions speak to the need for some general policy responses. The rightlessness of migrants without regular status in our midst, and the appalling conditions they daily confront, both to arrive and to survive in Europe, provide powerful ethical reasons for responding to their plight. This is especially true for countries claiming to be liberal democracies that declare their respect for the fundamental human rights of all people in their territory.

Important as the task of improving the situation of irregular migrants is, policy measures must be informed by considerations of what is practically possible. In particular, measures advocated should take account of the following considerations.

First, policies must recognise that European states will not abandon the right to control the entry of foreigners to their territory for the purposes of residence and citizenship. The problem of irregular migration is thus not going to be solved by the end of border control. While it is an interesting question whether immigration controls can be vindicated ethically (see Gibney 1999), state officials in European countries, and the citizens they claim to represent, believe overwhelmingly that control over entry – qualified by a duty of asylum – is one of the defining acts of a democratic community. Where this right has been ceded (as it has in the case of the EU countries), this has occurred only under tightly controlled circumstances. A distinction between regular forms of migration and irregular forms is

thus likely to be a feature of state policy for a long time to come. We may therefore assume that states will not assent to policy measures that are likely to lead to increased levels of irregular migration.

Second, the problem of irregular entrance and irregular residence is not going to disappear in the foreseeable future. Indeed, as I noted above, irregular migration movements are probably growing in volume. Irregular migration has been around for as long as states have claimed the right to exclude foreigners from their territory. But rising inequality in living standards between states, developments in transportation and communication, and growing migration networks have made irregular migration a significant and deeply intractable social phenomenon. This does not mean that measures to control irregular migration will prove futile. The volume of this migration may be reduced by policy responses by states. But irregular migration will not be ended completely. For this reason the question of the treatment we owe to irregular residents will remain an important one for states committed to upholding human rights.

Third, the goal of reducing irregular migration is potentially in conflict with the goal of improving the conditions faced by irregular residents. Extensive rights to health care, education, employment protection, political participation, or residence might serve to attract more people to life as a migrant with irregular status. European states are thus unlikely to recognise wide-ranging entitlements for irregular migrants lest they encourage more migrants to violate immigration laws. The recognition of such rights, one could argue, would make state officials vulnerable to the charge of hypocrisy for sending mixed messages to people with irregular migration status. This conflict should not be exaggerated. It seems plausible that granting well-defined, limited rights, such as a right of access to emergency health care, would not have much of a magnet effect on irregular migration. Furthermore, current practices hardly insulate officials from the accusation of hypocrisy. Is it not dubious for governments to proclaim the importance of human rights abroad and yet ignore egregiously exploited irregular migrants at home? Nonetheless, it is important that policy recommendations balance, on the one hand, the need to treat people with irregular migration status in a humane and rights-respecting manner with, on the other hand, the legitimate aspiration of states to avoid attracting increasing numbers of people to enter and reside without permission.

Recommendations for Action

Informed by these three considerations, I will now outline a set of recommended policy positions for those advocates aiming to improve the situation of migrants with irregular status in Europe. The recommendations that follow are not intended to amount to a complete, coherent policy programme for dealing with irregular migration. Advocacy organisations do not need such a programme. One can safely assume that over the next few years European governments will continue to develop policies that act to prevent and deter irregular migration through, for example, the signing of readmission agreements, facilitating the process of deportation and removal, and exchanging information about migration and trafficking networks. Rather, the following recommendations are policy positions that might be used at the European level to respond to irregular migration in a humane and rights-respecting manner. They can best be seen as a counterweight or supplement to the kinds of deterrent and preventative measures that European countries are likely to implement.

Concerning international cooperation on combatting the root causes of illegal migration

1. Support for comprehensive programmes to improve the human rights and economic situation in the countries from which irregular migrants originate, in part by assisting these countries, where possible, in safeguarding human rights standards and implementing democracy and practices of good governance, as well as by providing technological transfer, investment, and more equitable trading arrangements.

Rationale. Much illegal migration takes place because push factors such as war (including civil war), authoritarian governments, and economic destitution force people out of their home countries in search of a better future. As was noted in the Presidential conclusions of the EU summit at Tampere in October 1999, 'The European Union needs a comprehensive approach to migration addressing politics, human rights and development issues in countries and regions of origin and transit'. It is easier to recognise the need for a comprehensive programme than actually to construct (let alone to implement) one. Nonetheless, the increasing recognition of the need to address some of the more egregious inequalities between countries provides an opportunity for the development of practical policies that might improve prospects within the Maghreb region and Sub-Saharan Africa. Irregular migration will not, however, be completely eliminated through such policies. Many people come through irregular channels to Europe in search of asylum, not employment. But improving conditions at home is one important way of combatting irregular migration.

Concerning matters related to asylum and the protection of refugees

2. Continued support and advocacy for more inclusive asylum policies, in particular by operationalising categories of asylum for refugees and other forced migrants broad enough to capture the realities of the refugee experience.

Rationale: A substantial proportion of all people with irregular migration status are ‘refugees’, in the broad public understanding of that term, that is, people who have fled their country of normal residence to escape from violence in the form of civil war, militia groups or from conditions where the violation of basic human rights is widespread. Currently, interpretations of the Geneva Convention differ amongst states (note, for example, the reluctance of Germany and France to recognise as Convention refugees victims of non-state agents of persecution). One result of these differences is that *de facto* refugees who are denied or see themselves as unlikely to gain official asylum swell the ranks of irregular migrants, in the hope of finding protection informally. By operationalising at European Union level a relatively broad, common interpretation of those eligible for refugee and humanitarian status, many of those people who are currently without a regular status would receive the protection to which they are morally and in some cases legally entitled. The current process of the increasing informalisation of asylum could thus be halted.

3. Continued support and advocacy for the relaxing of measures that attempt to prevent and deter asylum seekers from entering European Union countries.

Rationale: It is increasingly obvious that measures that bar the entrance of asylum seekers and irregular migrants also bar the way of refugees. One result is that those who desperately need asylum are forced to rely on criminal traffickers for entry, whose grip many find difficult to shake off even long after they have entered the receiving state. For many others, deterrent measures, such as detention and the denial of welfare rights, which diminish the gap between the rights and protections available to legitimate asylum seekers and the life of a migrant with irregular status, make irregular residence relatively attractive. Even where the number of official asylum applicants in European states has gone down, there is reason to believe that the number of unofficial, unrecognised asylum seekers has gone up. The real costs of the current use of preventative and deterrent measures for legitimate refugees need to be made clearer and states need to take greater care to ensure that these practices do not result in the *refoulement* of refugees. States also need to acknowledge the intimate link between restrictive entrance policies and irregular migration.

Concerning labour migration

4. Consider supporting the implementation of temporary worker migration programmes specifically targeted at those groups of people who currently form the bulk of migrants with irregular status.

Rationale: Many see the cure for current migratory pressures to the EU in the creation of avenues for regular migration from Southern countries. The issue is far from simple. European governments are generally reluctant to accept temporary immigration from poorer countries because of the likelihood that immigrants would remain after their permission to stay expired. This problem should not be underestimated. However, there is a strong argument that moderate, controlled temporary migration schemes for young workers (the majority of those who enter irregularly for economic reasons) might be successful under the right circumstances. As the German and Spanish reports show, irregular entrance and residence is for many immigrants part of a family or community migration strategy of temporary work abroad for a specific purpose. Temporary migration schemes might enable states to work ‘with the grain’ of these community and family strategies, by offering migrants a brief, legal sojourn abroad. The likelihood that the migration would be temporary would increase if such schemes used positive incentives for return, such as requiring worker migrants to place some of their earnings in a superannuation-style scheme that could only be drawn on upon return home. Functioning temporary migration schemes that work would not only cut the ground from under migrant traffickers, but in addition might lead non-Europeans to see the migration policies of European countries as more legitimate and fair.

Concerning the return of ‘trapped’ migrants and regularisation

5. Support for offices that can provide advice, information and financial assistance for migrants with an irregular status who wish to return home.

Rationale: For some, life as a migrant with an irregular immigration status falls significantly short of the original expectations; rightlessness, poverty and a general sense of hopelessness can combine to create a situation where those with an irregular status lack the resources to embark on a return home. The provision of impartial travel advice and financial assistance – both with the return journey and with the costs of starting up again back home – would respond to the desires of many people currently stranded in the European Union states. Assistance in return is already commonplace for temporarily protected refugees; it would make a great deal of sense to consider its extension to immigrants with an irregular status. Any assistance to return would be sought voluntarily. The assistance given would be humanitarian in character. While it is recommended that the offices providing this advice and financial assistance be European Union sponsored, it is of crucial importance that the sponsorship does not impede the impartiality of the

advice or the humanitarian nature of the financial assistance received by irregular migrants.

6. Support for the establishment of bodies to which migrants with irregular status could apply to regularise their status in cases of hardship.

Rationale: General regularisation campaigns do not seem to be the best means to reduce the plight of those lacking regular migration status. On the other hand some mechanism is needed to permit the granting of legal status on humanitarian grounds. States should be obliged to consider the strength of an irregular migrant's (and his or her family's) claim to legal residence, preferably by allowing individual cases to come before an independent body including NGO and government officials and members of the state's citizenry. This body should make decisions concerning regularisation, taking due account of a range of factors, including the individual's family ties in the country, age- or gender-related criteria, length of irregular residence in the country, health, the hardships faced due to lack of regular migration status, the opportunity for return, criminal record etc. The more of these criteria come together in the case of an applicant, the better the claim for granting a status is justified. This mechanism would take into account both the right of states to regulate immigration and the need for a pragmatic approach to irregular migrants who would face great difficulty if they were forced to leave. The proposal outlined here suggests a minimum standard. States are encouraged to maintain or initiate whatever more generous practice on regularisation they are willing and able to implement.

Concerning the safeguard of basic human rights independent of status

7. Finally, there are basic human rights which have to be granted and guaranteed due to obligations arising from various human rights instruments articulated under established and developing European law. These guarantees apply to all people living in Europe, regardless of migration status.

Rationale: The duty of states to guarantee basic human rights to all people living *de facto* on their territory, by virtue of the human dignity of every person, does not contradict the right of states to grant or withhold legal residence. It is important both for the individual and the host state that these norms be respected. Conversely, respecting these rights does not automatically imply that a migrant with irregular status should have his status regularised. The minimum rights that those with irregular migration status should be able to enjoy include:

- the right to emergency health treatment;
- the right to education for their children;
- the right to shelter and food if destitute;
- a right of access to an ombudsman or other authority (independent of immigration enforcement agencies) to investigate instances of violation of contracts or health and safety laws by employers and landlords;
- the right to receive wages for work done;
- protection from criminal gangs, e.g. in case of forced prostitution or extortion.

Linked to this must be the guarantee that all those individuals and organisations who assist irregular migrants in obtaining these rights must not be liable to punishment under criminal law, e.g. under the accusation of 'prolonging unlawful residence'.

These basic rights capture the minimal responsibilities that any humane and democratic state has to individuals present for an extended period in its territory. They represent a minimal standard of treatment that reconciles the professed commitment of European states not to collude in exploitation and preventable suffering with the aim of not making the rights of migrants with irregular status so extensive that they serve to attract more people to this condition. If states have a valid right to exercise border control, immigrants with irregular status should not have the same rights as permanent residents lawfully admitted. However, anyone present in a European state should have the right to the minimum protections outlined above by virtue of their humanity. They should be able to exercise these rights free from the risk of penalty (in particular, deportation). The European Convention on Human Rights and Fundamental Freedoms and the new EU Charter on Fundamental Human Rights both offer sources of legal protection for persons with irregular migration status living in European countries. The implications of these human rights instruments for the responsibilities of states to migrants with irregular status need to be spelt out.

Conclusion: Our Responsibilities to Irregular Migrants

I began this report by suggesting that one reason why irregular migrants in Europe continue to suffer is that all the major players have powerful incentives for remaining silent. Yet there is another reason why the challenge of irregu-

lar migration remains largely unmet and why the responses of European governments to it have so far been sporadic and capricious: the complexity of irregular migration as an ethical, as well as a social and political, problem.

The political theorist Michael Walzer has invoked the fundamental principle that all those subject to a liberal democratic state's authority should, as a matter of right, be given a say in what that authority does (1983: 61). Many in Europe would accept the validity of this principle, originally formulated in response to the illiberal practices of Western European states during the 1950s and 1960s, who recruited guestworker migrants but deprived them of most civil and political rights. They would, however, be likely to balk at the idea that this principle has implications for how states should deal with irregular migrants. For those without status have not gained the *consent* of the state to enter or to reside where they are. Not only is there no explicit contract between the state and the irregular migrant over residence, but the migrant has transgressed the state's entrance laws. In response to any violation of their rights, European states and their members typically argue that these migrants should simply return home.

There is no simple way of rebutting this argument. Yet what the country reports summarised here clearly do is demonstrate the flaws in this traditional justification for neglecting the rights of irregular migrants. For the argument becomes highly questionable when governments turn a blind eye to illicit labour because it boosts failing industries or enables labour-starved areas of the economy to flourish. Demanding that those without status return home, furthermore, is an inadequate answer to those who are *de facto* refugees, people residing outside their country of origin because it has become a dangerous place to be due to war, human rights violations, or political persecution. Finally, an appeal to lack of consent cannot legitimate states ignoring systematic human rights violations within their own sphere of power and authority. Irregular migrants may not be owed the benefits of citizenship, or even permanent residence. But they are surely owed a modicum of protection against violence, intimidation and exploitation, vices many of them currently experience on a daily basis.

Our responsibilities to irregular migrants cannot, then, be magicked away by noting that the presence of these men, women, and children in Europe is *illegal*. As the practical pressures of illicit entrance grow over the next few decades, Europeans will be forced to confront questions about what kind of immigration policy they should implement and how they should limit human trafficking and migrant smuggling. But if they are brave enough, irregular migration will also lead them to question how serious they are about human rights. For the continent's response to irregular migration will help determine whether Europeans are able to create ethically defensible forms of society fit for a new millennium.

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Note

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The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is a United Nations multilateral treaty governing the protection of migrant workers and families. Signed on 18 December 1990, it entered into force on 1 July 2003 after the threshold of 20 ratifying States was reached in March 2003. The Committee on Migrant Workers (CMW) monitors implementation of the convention, and is one of the seven UN-linked human rights treaty bodies. have international protection needs. The term "irregular migrant" is used because it avoids the negative, and in many cases, overtly judgmental alternative labelling of "illegal" migrant. The term "illegal migrant" is clearly unhelpful since it also carries a connotation of criminality which, in many cases, may be inaccurate. 11. "irregular" immigration v. "illegal" immigration. The scope of irregular migration in Europe.

Migration and population changes in ageing Europe The weight of migration as a factor in population growth or decrease could be shown by these two extreme examples: " Countries with population loss which register more natural decrease than. States owe obligations under the Laws of the Sea and interna-tional maritime law to rescue those who are in danger Detention of Asylum Seekers and Irregular Migrants and the Rule of Law. The European Law Institute. Reporter BO TJAN ZALAR, JUDGE, SLOVENIA Members of the Project Team SAMUEL BOUTRUCHE ZAREVAC, JUDICIAL ENGAGEMENT COORDINATOR, BELGIUM MARC CLĂ%MENT, JUDGE, FRANCE MARK CLOUGH, QC, SENIOR COUNSEL, BELGIUM MARĂA-TERESA GIL-BAZO, SENIOR LECTURER IN LAW, UNITED KINGDOM SERGO MANANASHVILI, ADVISOR ON RETURN AND READMISSION, AUSTRIA PAMELA MCCORMICK, REGISTRY LAWYER, FRANCE ALA Ă ABANOVIĂŒ , PROJECT OFFICER, AUSTRIA SAĂ A SEVER, JURIST, LUXEMBOURG. The UNHCR says Spain has taken in 56,200 irregular migrants arriving by sea so far this year, Greece 28,700 and Italy 22,500. Overland arrivals in Greece have climbed sharply to 14,000, a three-fold increase on the same period last year. At present Spain, Italy and Greece take most of the strain owing to their geographical position on the Mediterranean Sea and the fact that, under EU law, asylum seekers must lodge their applications in the first EU country they enter. However, no one can agree on what to do: some countries want tougher external border controls, others fairer distribution of new arrivals.