# In a Constructive, Informal and Pragmatic Spirit

**30**
**Y E A R S**

**INTERGOVERNMENTAL CONSULTATIONS**
**ON MIGRATION, ASYLUM AND REFUGEES**
THE WORLD'S FIRST REGIONAL
CONSULTATIVE PROCESS ON MIGRATION

**igc** intergovernmental consultations
on migration, asylum and refugees

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The Intergovernmental Consultations on Migration, Asylum and Refugees is an informal, non-decision making forum for intergovernmental information exchange and policy debate on issues of relevance to the management of international migratory flows. The IGC brings together 17 Participating States, the United Nations High Commissioner for Refugees, the International Organization for Migration and the European Union.

The Participating States are Australia, Belgium, Canada, Denmark, Finland, Germany, Greece, Ireland, Netherlands, New Zealand, Poland, Norway, Spain, Sweden, Switzerland, United Kingdom and United States of America.

This report was prepared by Patrick Wall and edited by Kelly Ryan to commemorate the 30th anniversary of the founding of the IGC.

*Disclaimer: Any opinions expressed in this paper are those of the author or the attributed source and do not necessarily reflect the official policy or position of the Intergovernmental Consultations on Migration, Asylum and Refugees, nor any of its Participating States or Organisations.*

*We hope that these discussions will be frank
and free and be held
**in a constructive, informal and pragmatic spirit,**
and that we might part in the feeling that we have taken
one more step forward.
We also hope that there might be some opportunities
of continuing consultations like these,
if they prove to be useful.*

Opening statement by Anita Gradin, Swedish Minister for Migration Affairs and Equality between Women and Men (and later European Commissioner with responsibility for immigration, home affairs and justice), at the first meeting of what would become the Intergovernmental Consultations on Migration, Asylum and Refugees, Stockholm, 25 November 1985.

## COMMONLY-USED ACRONYMS

ACE       IGC Working Group on Admission, Control and Enforcement

CAHAR     The Council of Europe's Ad Hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons

CEAS      Common European Asylum System

COI       Country of Origin Information

EASO      European Asylum Support Office

EU        European Union

GFMD      Global Forum on Migration and Development

IGC       Intergovernmental Consultations on Migration, Asylum and Refugees

IOM       International Organization for Migration

LGBTI     Lesbian, gay, bisexual, trans and intersex

NATO      North Atlantic Treaty Organization

OECD      Organisation for Economic Co-operation and Development

RCP       Regional Consultative Process on Migration

UNESCO    United Nations Educational, Scientific and Cultural Organization

UNHCR     Office of the United Nations High Commissioner for Refugees

UNMIK     United Nations Mission in Kosovo


## A NOTE ON SOURCES

In preparing this publication, the author consulted a wide range of documents that are in the public domain, as well as a wealth of material from the IGC archives that—owing to the privacy that this publication describes as one of IGC's 'core operating principles'—is not. The author also had the benefit of the recollections and insights of more than two dozen individuals with direct personal experience of the IGC process, either as officials of Participating States or Organisations, members of the Secretariat, or—in a relatively large number of cases—both. The author is grateful to them for their time and thoughtful reflections.

Where a document that has been relied upon in this publication is in the public domain, or where an individual has consented to their views being attributed, that source is explicitly referenced. Sources not in the public domain are referred to either obliquely ('an IGC document from the time', for example) or not at all.

# Contents

# Foreword

**MS KELLY RYAN, COORDINATOR OF THE INTERGOVERNMENTAL CONSULTATIONS ON MIGRATION, ASYLUM AND REFUGEES**

Governments are responsible for migration governance. Carrying out effective migration and protection policies; comparing practices; analyzing data and other evidence; working together to develop policy responses; and sharing success and failure are all appropriate and efficient methods of intergovernmental engagement and cooperation.

The task is not easy. Fundamental questions of sovereignty are implicated. Effective migration and protection policies involve questions of the rights and responsibilities of the migrant, as well as the host country and country of origin. International treaty and customary international law are engaged.

It is fair to say that immigration and protection policy is one of the more complicated disciplines in the administrative public policy arena. There are, for example, a host of ways in which migrants are categorized, including skilled and lesser-skilled labor, temporary visitors, family-based, refugees and persons fearing torture in their home country, and trafficking victims. Tens of thousands of pages of legislation and regulation (both at national and EU levels) address the key areas of immigration, including who can be admitted on a temporary or permanent basis, detention, integration, citizenship, and more.

In addition to substantive complexity, there are structural challenges. Multiple government agencies have responsibility for various aspects of immigration, protection and integration policy. Countries throughout the world, especially those with highly developed systems, grapple to a varying degree with a legion of questions: how to give protection and subsidiary protection most effectively to those requiring it; how to streamline procedures to attract and facilitate labor mobility, temporary visits and permanent residence; how to address the special requirements of migrants who are in vulnerable situations, how to integrate successfully those who have immigrated; how to disrupt irregular movement and, of course, how to safeguard their country from migration-related criminal or national security threats.

The purpose of this report is to share with those interested the *raison d'être*, history and accomplishments of the Intergovernmental Consultations on Migration, Asylum and Refugees. The reader will gain an in-depth understanding of how and why Participating States began and have maintained the IGC process for more than thirty years. At the same time,

author Patrick Wall makes a strong case for intergovernmental cooperation on migration and protection matters in order to improve migration, integration and protection outcomes

In its early phase, senior officials in IGC Participating States and Organisations were looking for a way to work together, in a manner that did not yet exist, to create a space for dialogue, comparative evaluation and problem solving. As this report demonstrates, more than thirty years later, the IGC has preserved its informal approach and has expanded its membership and substantive engagement. While the IGC was the first migration-related Regional Consultative Process, it can also be viewed in some ways as a model for the eighteen similar processes now serving various geographic regions. IGC is, in my experience, the most advanced of these processes and it has evolved its substantive reach as both immigration agencies and expertise has developed across its membership.

The IGC contributions, as described in the report, are significant, from hosting a country of origin information workshop in 1989, the first meeting of its kind in the world, to playing a key role in the *de facto* convergence of asylum procedures, to its leadership as the first entity to collect multi government asylum, return and trafficking data. The report demonstrates that the IGC has been a place for innovation and thoughtful exchange of information and ideas on how to manage migration systems.

I have been privileged to be a part of IGC since the late 1990s: first as a junior attorney reviewing US submissions for legal sufficiency and accuracy and describing US protection policies; later as the head of the U.S. delegation; and now as the Coordinator. I am convinced that bilateral and multilateral/regional cooperation can benefit migrants, sending, transit and receiving countries. I also believe that regional cooperation is likely to be more fruitful in the short and long term than efforts to engage all United Nations Member States in normative migration governance rule-making.

While this report primarily looks backwards, it also points ahead to the clear need to continue the informal consultations and to fill a niche which more formalized processes cannot. Many of the challenges IGC Participating States faced in the mid 1980's when IGC officials first met have re-emerged, most obviously in relation to the resumption of large-scale arrivals of persons seeking asylum. More than thirty years on, our seventeen states continue to find value in learning from each other and cooperating. The coming decades will require a whole-of-government approach, thoughtful collaboration, evidence-based approach and a willingness to share failures and successes. As a result, I am convinced that the IGC will continue to play an important supporting role for officials who are trying to deliver the most effective migration and protection outcomes possible.

## ACKNOWLEDGEMENTS

I would like to thank first and foremost our highly-skilled consultant, Patrick Wall, who has rigorously reviewed IGC's history, through archival research, and conducted interviews with more than two dozen key players. I believe that this scholarly report will expand greatly the understanding of those who are not part of the IGC process. Hopefully, it will also dispel some myths that have arisen, partly because of the Chatham House nature of the consultations.

I would also like to thank the senior officials from governments and international organisations who actively participated in the consultations, previous coordinators and the former deputy coordinator, who shared reflections of their time at IGC.

It was valuable to seek reactions to the initial draft. I would like to thank Professor David Martin, Professor Randall Hansen, Ms Janice Marshall (former Deputy Director of UNHCR's Division of International Protection), Mr Gervais Appave (former IGC Coordinator), and Mr. Mike Bisi (former IGC Deputy Coordinator) for their time and thoughtful and knowledgeable input.

Regarding access to research, we acknowledge the United Nations Office of High Commissioner for access to its archives and the support of the International Centre for Migration and Policy Development, which returned archival materials from our first coordinator and founder of the IGC, Jonas Widgren, RIP.

The work of the Secretariat is discussed in the report and it certainly plays a crucial role in supporting Participating States and Organisations. It structures and contributes to their substantive engagement by creating the workplan and agendas, identifying key internal and external contributors, providing analysis, shepherding requests for information, running data collection and the working groups. While the size of the Secretariat is quite modest in contrast to its output and when compared to secretariats in other regional consultative fora, it punches far above its weight.

The IGC process has been enriched and strengthened by the dedication of the Secretariat, especially by the long-time service and devotion of key staff members including Mike Bisi, Laurent Dalmasso and Harald Friedrich.

Finally, I would close by offering sincere thanks to each current member of the Secretariat: Laurent Dalmasso, Harald Friedrich, Katrina Lourie, Anne Staver, Pierre Garnier, and Colette Doyle who contributed to this publication, and to those who have worked at the IGC Secretariat since 1985, too many to name, who have contributed to the IGC success.

# 1
## ▎ Introduction

In the early 1980s, a number of countries in Western Europe observed a significant increase in the numbers of persons entering their territories from the East and South. This phenomenon was aided by the removal of political barriers to the movement of people and the rise of affordable transport technologies, and was driven in part by the prevailing conditions the countries from which many of them came. Once they had reached Western Europe, large numbers of these people claimed asylum (most other immigration pathways having been closed in the preceding years). The sharp rise in the number of asylum applications—almost one third of which were made by applicants from Sri Lanka, Iran or Turkey—overwhelmed the asylum systems in place in Western European States, which had been designed with considerably smaller caseloads in mind. In Germany, for example, asylum procedures were so overwhelmed that there was a processing backlog of between six and eight years. The long processing times for applications, when combined with the facts (a) that applicants were permitted to stay in the country and—often—work while their claim was being processed and (b) that persons whose claims were ultimately rejected were rarely removed, contributed to the perception that asylum systems were being used as a pathway to immigration, rather than a mechanism for granting international protection to those in need of it.

In response to these challenges and following a meeting sponsored by the Office of the United Nations High Commissioner for Refugees ('UNHCR') in which informal consultative arrangements between European States were advocated, seven Western European governments and the High Commissioner for Refugees himself came together in Stockholm in November 1985 to discuss the ways in which they could safeguard both the States' immigration systems and the international refugee protection régime. Over the coming years, these interactions—initially the brainchild of Jonas Widgren, the Under-Secretary of State to the Swedish Minister for Migration Affairs—would become increasingly regular and structured. They would expand to include other States in Western Europe, North America and Australasia, as well as the International Organization for Migration ('IOM') and the European Commission. After a few name changes, they would become what are today the Intergovernmental Consultations on Migration, Asylum and Refugees, known more colloquially as 'the Informal Consultations', or simply 'IGC'. The unique operating principles of this forum would make it an attractive place for Participating States and Organisations to discuss shared challenges and opportunities relating to asylum and refugee issues, so

much so that their scope would eventually be expanded to include all issues of migration. Furthermore, the basic principles underlying the IGC process—informal, non-binding discussions—would be imitated around the globe. Other groupings of States, often in the same geographic region, would establish similar platforms to discuss common migration-related issues, giving rise to a new type of forum for international dialogue, known as a 'Regional Consultative Process on Migration', or 'RCP' (even though many of them, like IGC itself, are not strictly 'regional' in nature).*

How did this meeting of seven States in 1985 evolve into a forum that continues to be a key site for Participating States and Organisations to discuss, explore and debate migration, asylum and refugee policy more than thirty years and more than six hundred meetings later? What are the operating principles, structures and activities that have made the Informal Consultations useful for Participating States and Organisations, and for the other groupings of States that have subsequently established their own Regional Consultative Processes? What impact has IGC had on migration, asylum and refugee policy, and what lies ahead? These are all questions that this publication seeks to address.

The publication is structured as follows. The remainder of this first chapter uses the relevant academic and professional literature to provide an introduction to Regional Consultative Processes by explaining what they are and why they exist.

The second chapter examines IGC's history and evolution. After elucidating in greater detail the circumstances that led to the convening of its first meeting in 1985, it traces the maturation of the process through the creation of its small, Geneva-based Secretariat, the establishment of regular meetings between the senior officials and practitioners of Participating States and Organisations, and the changing of the agenda to meet their evolving needs.

Informed by this history, Chapter Three explores the IGC of today. Again with the assistance of the academic and professional literature on Regional Consultative Processes, it examines IGC's basic operating principles and explores the impacts that these have had on the Informal Consultations. It also describes IGC's present composition, structure and activities.

Chapter Four seeks to assess the impact that the IGC process has had. After examining the contribution that it has made to the development and *de facto* harmonisation of asylum procedures, the professionalisation of country of origin information, the systemisation of the collation and presentation of asylum and migration data, and the coordination of

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* Despite not having a membership that is purely regional, the IGC process has traditionally been understood by States, practitioners and academics alike to be a Regional Consultative Process on Migration (and, indeed, the original RCP). As of 2017, however, some have begun to draw a distinction between Regional Consultative Processes on Migration (which, they say, should have a strictly regional membership) and 'Inter-Regional Forums on Migration' (which need not, and so which include IGC). Both of these categories are said to fall under the broader banner of 'Inter-State Consultation Mechanisms on Migration': see, for example, International Organization for Migration, *Inter-State Consultation Mechanisms on Migration*: https://www.iom.int/inter-state-consultation-mechanisms-migration. Because of the role that IGC played in establishing the RCP genre, and because the academic literature proceeds on the basis that IGC is an RCP and draws on IGC's principles and activities to define and analyse RCPs as a group, this publication will retain the traditional understanding.

Participating States' engagement in other international migration fora, it concludes that the IGC process has made a subtle but significant contribution to the consolidation of asylum, refugee and migration systems.

Finally, Chapter Five concludes by offering some thoughts on what the future holds for the Informal Consultations.

Before turning to an examination of IGC's history, however, it is worth developing an understanding of the broader category of fora of which IGC was the first: the so-called Regional Consultative Processes on Migration.

## AN INTRODUCTION TO REGIONAL CONSULTATIVE PROCESSES ON MIGRATION

The remainder of this chapter will, therefore, draw upon existing academic and professional writings to examine what Regional Consultative Processes are and why they exist.

Three matters should be noted at the outset. First, as any reader paying close attention to the endnotes will observe, the literature concerning RCPs is limited in size and has largely been published over the course of the last decade. Secondly, although some authors recognise that RCPs 'vary greatly in their composition, history, purpose and organizational frameworks',[1] others assume a greater degree of similarity than is warranted. Both of these observations suggest that further research into RCPs is desirable.

Finally, it should be noted that this discussion seeks to give an overview of the key observations and conclusions contained within the existing academic and professional literature concerning RCPs. It does not necessarily reflect the views of the IGC Secretariat or any of IGC's Participating States or Organisations.

### What are Regional Consultative Processes?

Regional Consultative Processes are described in the literature as 'repeated, regional meetings of states dedicated to discussing migration'.[2] They create space for States 'with an interest in common migration patterns'[3] to 'come together for informal and non-binding dialogue and information exchange on migration-related issues of common interest and concern'.[4] As the Global Commission on International Migration has noted:[5]

> By ensuring that member states come to the table on an equal basis, [Regional Consultative Processes] have facilitated dialogue, helped governments to identify common interests and concerns, underlined the importance of establishing national migration policies and reinforced an awareness of the need for those policies to be the basis for regional cooperation.

The International Organization for Migration, which contributes to several RCPs in a participatory, secretarial and/or advisory capacity, lists eighteen active RCPs.[6] Although they

are a diverse group,[7] they do share a number of common characteristics. As shall be explored in greater detail in Chapter Three, they are non-binding fora for ongoing interaction that 'act informally, focusing on cooperative dialogue with an emphasis on information exchange and technical cooperation'.[8] This allows for the depoliticisation of sensitive issues, the open exchange of information and opinion between participating States and organisations, the building of trust, confidence and mutual understanding and the exploration of new ideas.

*Although generally non-binding and informal in nature, [Regional Consultative Processes] are important forums for exchanging information, addressing issues of mutual concern, identifying priorities, and developing coordinated responses. Regional consultative processes lay the groundwork for developing common policies and strategies by complementing bilateral approaches, and facilitating open coordination and exchange on sensitive issues that lead to concrete results.*

Office of the United Nations High Commissioner for Refugees, The 10 Point Plan in Action: Refugee Protection and Mixed Migration

The Office of the United Nations High Commissioner for Refugees has described Regional Consultative Processes as 'play[ing] a particularly useful role in facilitating dialogue'.[9] The 'dialogue' element of their activities cannot be emphasised enough: RCPs are 'consultative processes…not law-making organizations and not enforcement agencies'.[10]

### Why do Regional Consultative Processes exist?

The creation of this unique form of international governance has been explained in the literature by reference to two conflicting characteristics of the international politics of migration:* on one hand, migration is an issue that increasingly requires international cooperation but, on the other, it is not an issue that is well-suited to the usual forms of multilateral governance.[11] In order to overcome these seemingly conflicting characteristics, States have established new forms of international engagement on migration and related issues, including—but not limited to—Regional Consultative Processes.

Migration has been recognised by scholars and States as an issue in respect of which there is a growing need for greater international dialogue and cooperation.[12] There is 'an

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* NB: To avoid endless repetition, references to 'migration' in this publication are intended to encompass all forms of international human mobility, unless the context suggests otherwise. This is not, however, to conflate the categories of 'refugee' and 'migrant'. There are important differences between the two—as implicitly recognised in the name 'Intergovernmental Consultations on *Migration, Asylum and Refugees*'—and this publication seeks to distinguish between the two where these differences are relevant to the particular topic under discussion. For further information on the distinction between refugees and migrants, see UNHCR, *UNHCR viewpoint: 'Refugee' or 'migrant' – Which is right?* (2016) http://www.unhcr.org/news/latest/2016/7/55df0e556/unhcr-viewpoint-refugee-migrant-right.html

*At its very core, a regional consultative process is a platform that brings together like-minded countries to do three main things:*

*First, to understand the nature, causes and consequences of migration;*

*Second, to track migration trends and patterns; and*

*Third, to identify appropriate policy responses.*

**William Lacy Swing**, Director General of the International Organization for Migration

**Fifth Global Meeting of Chairs and Secretariats of Regional Consultative Processes on Migration, October 2015**

increasing recognition among policymakers and migration specialists that migration has now become a truly global process and that states need to cooperate more closely' in order to address the challenges and opportunities that it presents: 'the challenges posed by immigration cannot be met, and might indeed be exacerbated by unilateral action'.[13] As Nielsen argues:[14]

> The migration life-cycle is a process involving complex relationships between the migrant and various public and private stakeholders in the countries of destination, transit and origin. Effective management of this process and the relationships involved requires cooperation among all interested stakeholders in migration, including states, international organizations, NGOs, the private sector, civil society (including local migration associations), and the migrants themselves. It is only through such an effort that the international community will be able to fully and effectively address the challenges and opportunities of migration…Cooperation at the international level will contribute to more effective national policy development, avoiding overlap and duplication and facilitating a more efficient use of resources at national, regional and international levels.

Perhaps the clearest evidence for the importance that States place on greater international cooperation on matters of migration, asylum and refugees is the growth in the membership of organisational structures dedicated to these issues: in the two decades since 1998, the number of States members of the International Organization for Migration has expanded from 67 to 166. In the same period, the size of UNHCR's governing body, the Executive Committee, has almost doubled from 53 States to 101.

The need for international cooperation on migration matters is all the more pressing in the context of the growing importance of migration as a political issue at the domestic and international levels.[15] For previous generations, migration was 'largely confined to the realm of "low politics", which is to say that it was considered to be a domestic issue that did not rise to the level of international or "high politics"'.[16] Today, however, it is considered to be 'one of the most striking contemporary manifestations of globalization'[17] and has 'risen to the top of the global policy agenda' as improvements in transportation and information technology have

*Since the first RCP – the IGC – in 1985, State-led migration dialogue has expanded rapidly at the regional, inter-regional and global levels. What began with a European focus is now diverse: there are now eighteen RCPs covering almost every region in the world.*

*...*

*The spread and success of RCPs and inter-regional fora reflects an important change: States see the value of working together to address the global migration challenges on the basis of consensus, the value of sharing migration related benefits without compromising their sovereign prerogatives, and the value of overcoming migration challenges that might otherwise prove intractable.*

**William Lacy Swing**, Director General of the International Organization for Migration,

**Fourth Global Meeting of Chairs and Secretariats of Regional Consultative Processes on Migration, May 2013**

made it increasingly easy and affordable for people to move across international borders,[18] particularly when persecution, war, natural disasters or poverty make staying put intolerable.

In addition to being a functional necessity, cooperation in the refugee context is a requirement of international law: recognising in its preamble that refugee problems cannot be solved without international cooperation, the 1951 *Convention relating to the Status of Refugees* ('the Refugees Convention') legally obliges Contracting States to 'co-operate with the Office of the United Nations High Commissioner for Refugees…in the exercise of its functions'.[19]

Indeed, it can be argued that cooperation on all issues related to the international movement of people is a legal requirement as well. In 1970, the United Nations General Assembly adopted the *Declaration on Principles of International Law Concerning Friendly Relations and Co-operation among States in Accordance with the Charter of the United Nations*,[20] many of the provisions of which are considered to reflect (or to have become) customary international law.[21] One of the key principles enunciated in the Declaration—'[t]he duty of States to co-operate with one another in accordance with the Charter'—provides that:

> States have the duty to co-operate with one another, irrespective of the differences in their political, economic and social systems, in the various spheres of international relations, in order to maintain international peace and security and to promote international economic stability and progress, the general welfare of nations and international co-operation free from discrimination based on such differences.

Given that migration is an inherently international phenomenon that is strongly linked to international peace and security, economic stability and progress, it can be argued without much difficulty that the Declaration thus requires States to cooperate in the management of migration.

*UNHCR has a wide range of options when it comes to engaging with States on matters relating to refugee protection. On one hand, it can discuss such issues with a large, diverse group of States in fora such as UNHCR's governing body (the Executive Committee) and the United Nations General Assembly (to which the High Commissioner reports annually). On the other hand, UNHCR can have much deeper discussions with governments on a bilateral basis, including through its global network of country and regional offices and with those governments' representation to the United Nations in Geneva and New York.*

*Sometimes, however, it is advantageous for UNHCR to discuss particular issues or to socialise new ideas in an informal manner with a small group of States that have similar perspectives and interests. Often, Regional Consultative Processes, and the IGC particularly, provide the ideal setting for such exchanges by allowing UNHCR to advance its protection mandate and to learn from States in a dynamic, lively setting. In the early 2000s, for example, I was personally involved in UNHCR's successful attempt to use the IGC process as part of a wider strategy to persuade some IGC Participating States to extend refugee protection to persons who had been persecuted by non-State actors.*

*Regional Consultative Processes thus play a small but important role in the international refugee protection regime, and UNHCR can rightly be proud of the instrumental role that it played in supporting the establishment of the IGC, the world's first RCP.*

**Volker Türk**, Assistant High Commissioner for Protection, UNHCR

Such a conclusion is supported by other international instruments. The 1987 amendments to the Constitution of the International Organization for Migration, for example, speak of the need for 'close co-operation and co-ordination among States, international organizations, governmental and non-governmental, on migration and refugee matters'.[22] The General Assembly has also emphasised the importance of international cooperation on migration matters on numerous occasions.[23] The most notable of these is the 2016 *New York Declaration for Refugees and Migrants*; it noted that international cooperation on migration and refugee issues 'has never been more important' and referred in particular to the need for enhanced international cooperation on countering xenophobia, border control and management, search and rescue, trafficking and smuggling, humanitarian financing, data collection, and return and readmission.[24]

It must be observed, however, that none of these instruments mandate any particular form of cooperation, and that such cooperation 'can take various forms, ranging from dialogue

and sharing of information, experience and practices to cooperation in policy development and operational implementation'.[25]

Despite the necessity of international cooperation in matters related to migration, however, scholars and practitioners have recognised that these issues have not proved suitable for traditional forms of international cooperation, such as through 'the formal and inclusive multilateralism that characterised the post Second World War consensus'.[26] There is at present no overarching global régime for non-refugee migration, as there is in other areas of international cooperation.[27] The international law relating to migration has been described, for example, as being 'a giant unassembled juridical jigsaw puzzle'.[28] As Betts explains:[29]

> In most policy fields which involve trans-boundary movements across borders, such as climate change, international trade, finance, and communicable disease, states have developed institutionalised cooperation, primarily through the United Nations system. In relation to these other trans-boundary issues, states have developed a range of international agreements, often overseen by international organizations. These have been created based on the recognition that collective action and cooperation are often more efficient in meeting states' interests than unilateralism and inter-state competition.

> However, despite the inherently trans-boundary nature of international migration and the interdependence of states' migration policies, there is no [comprehensive] formal multilateral institutional framework regulating states' responses to international migration. There is no…international migration regime, and sovereign states retain a significant degree of autonomy in determining their migration policies. [Though, as Betts himself notes (see below), international migration is regulated in part by formal multilateral institutional frameworks that are not migration-focused.]

Scholars have posited at least two reasons why non-refugee migration is not the subject of a global régime. First and foremost is migration's close relationship with issues of State sovereignty. The governance of migration 'has remained largely the domain of sovereign states';[30] that is, States have continued to assert 'the sovereign right and responsibility to determine who may enter and remain in their respective territories and under what conditions, and generally have wide discretion in developing policies governing admission, residence, expulsion, and naturalization policies for non-citizens'.[31] In order to protect these sovereign rights, many States have expressed a 'strong desire…to maintain discretion and flexibility in the area of migration management',[32] leading some to describe the regulation of migration as 'the last bastion of sovereignty'.[33] Migration issues, in other words, have not yet become 'ripe' to be made the subject of an overarching global régime.

Secondly, migration is a particularly complex and contested issue that poses many 'impediments to cooperation', including 'an absence of trust between states (and even between government departments within states), fears of political or financial costs, adversarial international relationships, [and] a lack of understanding of the perspectives and concerns of others'.[34] It has also been very closely linked to a large number of other sensitive policy areas, including the national economy, security, public order and culture, with different

actors coming to wildly different conclusions about whether migration's effects in these areas are 'good' or 'bad'. All of these factors have combined to make migration a particularly sensitive issue for governments and the constituencies they represent.[35]

Furthermore, migration affects different States in different ways and there is no general consensus concerning the 'right' policy settings. Whereas States agree—broadly speaking—that international trade should be liberalised, that greenhouse gas emissions should be limited, and that the high seas should be free for peaceful navigation, for example, there is no similar consensus in relation to migration at the present time.[36] The lack of general agreement on the overall policy direction further hampers any attempt to establish a global régime.

A gap exists, therefore, between the need for international cooperation on issues of migration and the absence of overarching global structures to facilitate such cooperation (except in the case of the international refugee régime). In response, States have built a wide variety of institutions to fill this gap.[37] These institutions, according to Betts, constitute a 'global migration governance framework' that consists of '[a]n increasingly complex array of bilateral, regional and inter-regional institutions'.[38] Betts divides this complex array into two broad categories.

The first covers 'areas of global governance that are not explicitly labelled as "international migration" which nonetheless regulate states' responses to international migration'.[39] This category—which Betts calls 'embedded governance'—includes, for example:[40]

- the World Trade Organization's General Agreement on Trade in Services 'insofar as it prevents member states from discriminating against the temporary movement of "natural persons" (workers) across borders to provide services';
- conventions of the International Labour Organization that regulate how States treat migrant workers;
- Annex 9 to the Convention on International Civil Aviation, Chapter Five of which sets out standards relating to 'Inadmissible Persons and Deportees';
- human rights law, which protects the rights of migrants and prevents the expulsion of migrants in some circumstances;
- the law of the sea, which deals with numerous aspects of transport by sea; and
- transnational criminal law, which criminalises trafficking in persons and smuggling of migrants.

'Embedded governance' also includes the activities of a wide range of United Nations bodies and organisations outside the United Nations System—including the Security Council, the Economic and Social Council, the General Assembly (particularly its Second and Third Committees), the Department of Economic and Social Affairs, the Office of the High Commissioner for Human Rights, the Organisation for Economic Co-operation and Development, and the Council of Europe—when they address issues of migration.

Betts calls the second category 'multi-level governance'.[41] It consists of '*ad hoc* institutions

[of migration governance] that exist at different levels: bilateral, regional, inter-regional, and informal networks of states and other actors'.[42] There is a wide range of such institutions, including:[43]

- those within the United Nations System, such as:
    - the Council of the International Organization for Migration;
    - the United Nations Special Representative of the Secretary-General for International Migration;
    - the United Nations Special Rapporteur on the Human Rights of Migrants;
    - the Conference of the Parties to the United Nations Convention against Transnational Organized Crime and the Protocols Thereto (including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air);
    - the United Nations High Level Dialogues on International Migration and Development;
    - the International Organization for Migration's International Dialogue on Migration; and
    - the Global Migration Group; and
- various State-led initiatives, including:
    - the Global Forum on Migration and Development;
    - the Global Commission on International Migration;
    - the Nansen Initiative;
    - the Migrants in Countries in Crisis Initiative;* and
    - the Berne Initiative.

It is these many moving parts that have led to the global migration governance framework being described as 'substance without architecture'.[44]

Of the many forms of multi-level migration governance, however, Betts argues that Regional Consultative Processes are the 'most apparent'.[45] Indeed, the Berne Initiative described them as being 'key to the development of cooperative migration management'.[46]

In conclusion, the existence of RCPs has been explained in the academic and professional literature by the 'growing recognition of the need for a concerted, comprehensive and cooperative approach to migration management' in a world where an overarching institutional régime to govern migration is not yet feasible;[47] put another way, 'the current international migration system, developed in another era with other determinants, focal points and balance of power, is no longer sufficient for today's needs'.[48]

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* As shall be examined in more detail in Chapter Three, the Migrants in Countries in Crisis Initiative evolved out of discussions within IGC that were led by the United States.

Given the complexity of the global migration governance framework, however, it must be borne in mind that RCPs are but one of its many 'building blocks'.[49]

## Recent developments

Before concluding this consideration of the global migration governance framework and the role of Regional Consultative Processes within it, it should be noted that, in 2016, two events occurred that could, with time, bring significant change to the global governance of migration.

The first is the designation of the International Organization for Migration as a 'related organization' of the United Nations, with effect from 19 September 2016.[50] Although (a) IOM exists primarily as a service provider to States (though it also has, as a stated purpose, 'the promotion of cooperation and coordination of efforts on international migration issues'),[51] and (b) the agreement between IOM and the United Nations notes that the former will continue to be 'an independent, autonomous and *non-normative* international organization',[52] this remains a considerable change in the global migration governance framework that will give IOM (in the words of its Director General) 'a seat at the table and a much clearer voice in the dialogue'.[53] The full implications of this change may take some years to materialise.

The second key event was the adoption by the General Assembly of the United Nations—also on 19 September 2016—of the *New York Declaration for Refugees and Migrants*.[54] As a 'political declaration' that follows on from the commitment in Sustainable Development Goal 10.7 to '[f]acilitate orderly, safe, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies',[55] the New York Declaration contains a wide range of commitments by UN Member States aimed at better managing the movement of people across borders and 'fully protect[ing] the human rights of all refugees and migrants, regardless of status'.[56] Of particular relevance to the present discussion, the New York Declaration affirms that '[l]arge movements of refugees and migrants…are global phenomena that call for global approaches and global solutions' and emphasises the role of international cooperation in managing such movement 'in a human, sensitive, compassionate and people-centred manner'.[57]

In the Declaration, Member States commit to 'build on existing bilateral, regional and global cooperation and partnership mechanisms, in accordance with international law, for facilitating migration', and the role of regional consultative processes is specifically mentioned in this regard.[58] In particular, Member States commit to the adoption of two 'global compacts', one on refugees and the other for safe, orderly and regular migration.[59] It is envisaged that the second of these could cover a range of topics that includes '[t]he scope for greater international cooperation, with a view to improving migration governance'.[60] As with the new relationship between the International Organization for Migration and the United Nations, the New York Declaration—and the two proposed global compacts, if and when adopted—have the potential in coming years to bring substantial change to the global migration governance framework. What exactly this change will be, however, and the role that Regional Consultative Processes will play—both in bringing the change about and within the changed global migration governance framework—remain to be seen.

# ENDNOTES

1   Randall Hansen, *An Assessment of Principal Regional Consultative Processes on Migration* (IOM Migration Research Series, No. 38, International Organization for Migration, 2010), 12.

2   Hansen, above n 1, 12. See also Amanda Klekowski von Koppenfels, *The Role of Regional Consultative Processes in Managing International Migration* (IOM Migration Research Series, No. 3, International Organization for Migration, 2001), 7 (defining RCPs as 'non-binding and informal fora bring[ing] representatives of States, civil society (NGOs) and international organizations together at the regional level to discuss migration-related issues in a cooperative manner').

3   Hansen, above n 1, 11-12.

4   Michele Klein Solomon, *International Migration Management Through Inter-State Consultation Mechanisms* (Paper prepared for the United Nations Expert Group Meeting on International Migration and Development, July 2005), 4.

5   Global Commission on International Migration, *Migration in an interconnected world: New Directions for action* (Report of the Global Commission on International Migration, 2005), 70.

6   See International Organization for Migration, Global Map of RCPs: https://www.iom.int/sites/default/files/our_work/ICP/RCP/RCP-Map-2016.pdf

7   Hansen, above n 1, 12.

8   Amanda Klekowski von Koppenfels, 'Informal but Effective: Regional Consultative Processes as a Tool in Managing Migration' (2001) 39 *International Migration* 61, 61.

9   UNHCR, Refugee Protection and Mixed Migration: The 10 Point Plan in Action (UNHCR, 2016), 23.

10  von Koppenfels, above n 8, 68-69.

11  Maarten Vink and Claudia Engelmann, 'Informal European asylum governance in an international context' in Thomas Christiansen and Christine Neuhold (eds), International Handbook on Informal Governance (Edward Elgar Publishing, 2012), 534 ('Asylum policy [and, indeed, all migration policy] is a politically and normatively sensitive policy field that highlights particularly well the tensions between supranationalism and the prevalence of sovereignty. On the one hand, the movement and recognition of refugees has an undeniable cross-border character, determined by increasing interdependence of the nation-states. Hence there is a rationale for states to cooperate and develop common policies, especially at a regional level. Asylum policy is further closely linked to distributional questions, as some countries have to deal with a significantly higher number of asylum- seekers than others. On the other hand, asylum touches upon the very heart of state sovereignty because it deals with the question who can enter the country, and remain there, and who cannot').

12  Klein Solomon, above n 4, 4; Alexander Betts, 'Institutional Proliferation and the Global Refugee Regime' (2009) 7 Perspectives on Politics 53, 54; Berne Initiative, International Agenda for Migration Management (International Organization for Migration and the Federal Office for Migration (Switzerland), 2005), 23, 27; Global Commission on International Migration, above n 5, 3, 4; Volker Türk and Madeline Garlick, 'From Burdens and Responsibilities to Opportunities: The Comprehensive Refugee Response Framework and a Global Compact on Refugees' (2016) 28 International Journal of Refugee Law 656, 657-658 ('Given the transboundary nature of these movements, the necessity of collaboration between States to address the challenges they may pose is self-evident… There is a pressing need in today's context to reinforce international cooperation in order to ensure more effective, swift, and comprehensive responses to the needs of refugees for protection, assistance, and solutions, in ways that reflect States' commitments to the principles of solidarity and responsibility-sharing').

13  Bimal Ghosh, 'Managing Migration: Interstate cooperation at the global level: is the emergence of a new paradigm of partnership around the corner?' in Berne Initiative, *Interstate Cooperation and Migration* (Berne Initiative Studies, 2005), 131; Randall Hansen, 'Interstate cooperation: Europe and Central Asia' in Berne Initiative, *Interstate Cooperation and Migration* (Berne Initiative Studies, 2005), 9. See also Alexander Betts, *Global Migration Governance* (Working Paper 2008/43, Global Economic Governance Programme, University College Oxford, November 2008), 6.

14  Anne-Grethe Nielsen, 'Cooperation Mechanisms' in Ryszard Cholewinski, Richard Perruchoud & Euan MacDonald, *International Migration Law* (TMC Asser Press, 2007), 405.

15  Betts, above n 12, 54.

16  Caroline Brettell & James Hollifield, *Migration Theory: Talking Across Disciplines* (Routledge, 2014), 227-228.

17  Global Commission on International Migration, above n 5, vii; Betts, above n 13, 6; Berne Initiative, above n 12, 16.

18  See Paul Boyle, Keith Halfacree & Vaughan Robinson, *Exploring Contemporary Migration* (Routledge, 2014), especially Chapter 1; Nielsen, above n 14, 405.

19  *Convention Relating to the Status of Refugees* (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 137 (Refugees Convention), art 35(1).

20  United Nations General Assembly, Resolution 2625 (XXV): *Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations* (24 October 1970, UN Doc A/RES/25/2625).

21  *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States of America)*

*(Merits)* [1986] ICJ Rep 14, 100 ('The effect of consent to the text of such resolutions [as the Friendly Relations Declaration] cannot be understood as merely that of a "reiteration or elucidation" of the treaty commitment undertaken in the Charter. On the contrary, it may be understood as an acceptance of the validity of the rule or set of rules declared by the resolution by themselves'), 101 ('the adoption by States of this text [i.e. the Friendly Relations Declaration] affords an indication of their *opinio juris* as to customary international law on the question').

22  *Constitution of the International Organization for Migration (by Amendments adopted by resolution No. 724 (LV) of the Council of the Intergovernmental Committee for Migration at its 364th meeting)* (adopted 20 May 1987, entered into force 14 November 1989) 1560 UNTS 440 (Constitution of the International Organization for Migration), preamble.

23  See, for example, United Nations General Assembly, Resolution 54/212: International migration and development (1 February 2000, UN Doc A/RES/54/212), [2] ('The General Assembly…*Urges* Member States and the United Nations system to strengthen international cooperation in the area of international migration and development in order to address the root causes of migration, especially those related to poverty, and to maximize the benefits of international migration to those concerned').

24  *New York Declaration for Refugees and Migrants*, GA Res 71/1 (19 September 2016, UN Doc A/RES/71/1), [11], [14], [24], [28], [36], [38], [40].

25  Berne Initiative, above n 12, 27.

26  Betts, above n 13, 7. See also Vincent Chetail, 'The transnational movement of persons under general international law – Mapping the customary law foundations of international migration law' in Vincent Chetail and Celine Bauloz (eds), *Research Handbook on International Law and Migration* (Edward Elgar 2014).

27  Hansen, above n 1, 12; Betts, above n 12, 54; Sara Klam, 'Limits to Transnational Participation: The Global Governance of Migration' in Jönsson & Tallberg (eds), *Transnational Actors in Global Governance: Patterns, Explanations and Implications* (Springer, 2010) 134; Karen Alter & Sophie Meunier, 'The Politics of International Regime Complexity' (2009) 7 Perspectives on Politics 13, 12 ('It seems that every policy issue is nowadays the subject of multiple trans-border agreements').

28  Chetail, above n 26, 1. See also T. Alexander Aleinikoff, *International Legal Norms and Migration: An Analysis* (International Organization for Migration, 2002).

29  Betts, above n 13, 2.

30  Betts, above n 13, 6; Berne Initiative, above n 12, 23, 28; Global Commission on International Migration, above n 5, 3, 66.

31  Klein Solomon, above n 4, 2.

32  Klein Solomon, above n 4, 2.

33  Catherine Dauvergne, 'Sovereignty, Migration and the Rule of Law in Global Times' (2004) 67 *Modern Law Review* 588, 588.

34  Hansen, above n 1, 19.

35  Global Commission on International Migration, above n 5, 66.

36  Hansen, above n 1, 22

37  Klam, above n 27, 134.

38  Betts, above n 13, 2.

39  Betts, above n 13, 10-11.

40  Betts, above n 13, 11-12. See also Alexander Betts, 'The Impact of Global Migration Governance on UNHCR' in Khalid Koser & Susan Martin (Eds), *The Migration-Displacement Nexus: Patterns, Processes, and Policies* (Berghahn Books, 2011), 242-247.

41  See Betts, above n 13, 12-14.

42  Betts, above n 13, 11.

43  See, generally, Nielsen, above n 14 (discussing inter-state consultations, inter-agency groups, regional cooperation, thematic cooperation and bilateral cooperation).

44  T. Alexander Aleinikoff, 'International Legal Norms on Migration: Substance Without Architecture' in T. Alexander Aleinikoff & Vincent Chetail (eds), *Migration and International Legal Norms* (T.M.C. Asser Press, 2003).

45  Betts, above n 13, 13. See also Klam, above n 27, 140.

46  Berne Initiative, above n 12, 24.

47  Ghosh, above n 13, 132.

48  von Koppenfels, above n 8, 63.

49  Colleen Thouez & Frederique Channac, 'Shaping International Migration Policy: The Role of Regional Consultative Processes' (2006) 29 *West European Politics* 370, 371.

50  See International Organization for Migration, *IOM Becomes 'Related Organization' of United Nations*: https://www.iom.int/news/iom-becomes-related-organization-united-nations

51  See Constitution of the International Organization for Migration, Article 1(1) ('Purposes and Functions').

52  Agreement concerning the Relationship between the United Nations and the International Organization for Migration, GA Res 70/296 (8 July 2016, UN Doc A/RES/70/296), Article 2(3) (emphasis added).

53  Quoted in Michael Igoe, 'After 65 years, the IOM is part of the United Nations' (*Devex*, 20 September 2016), available: https://www.devex.com/news/after-65-years-the-iom-is-part-of-the-united-nations-88775

54  *New York Declaration for Refugees and Migrants*, GA Res 71/1 (19 September 2016, UN Doc A/RES/71/1) (New York Declaration).

55  Transforming our world: the 2030 Agenda for Sustainable Development, GA Res 70/1 (25 September 2015, UN Doc A/RES/70/1).

56  New York Declaration, [5].

57  Ibid, [7], [11].

58  Ibid, [54].

59  Ibid, particularly Annexes I & II.

60  Ibid, Annex II, [8(f)].

# 2

# The History and Evolution of IGC

The Intergovernmental Consultations on Migration, Asylum and Refugees were initiated when representatives of UNHCR and seven Western European States met in Stockholm in November 1985 to discuss the challenges brought about by a significant rise in the number of asylum seekers making their way to Western Europe, particularly from Sri Lanka, Iran and Turkey. Over the following three decades, the process would undergo substantial change: a total of nineteen States would participate in the IGC process at various times,[*] and UNHCR would be joined in its capacity as Participating Organisation by the International Organization for Migration and the European Commission. Early ad hoc meetings would be replaced by a more regular structure and political discussions would make way for more technical ones. Topically, the process' early focus on asylum issues would be expanded to encapsulate all aspects of the international movement of people, whether they be migrants, asylum seekers or refugees.

This chapter will trace the events that led to the founding of IGC in 1985 and the way in which the process evolved over the following three decades.

## MID-1980S: ASYLUM NUMBERS IN EUROPE RISE, AND IGC IS BORN

The Informal Consultations emerged in response to the major (and, as it turned out, enduring) changes in the international movement of people that began first to be observed in Europe in the late 1970s. Forty years on, it is easy to forget how constrained the movement of people—especially from South to North and from East to West—was prior to this period, due largely to political and physical obstacles and to the lack of affordable travel. Thanks to a range of factors, however—including 'the collapse of long-standing political barriers to movement

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[*] At the time that this report was written, Poland was an observer of the IGC process. In the second half of 2017, it became a Participating State. The text reflects IGC's membership as it was in the early part of 2017.

[particularly as a result of the collapse of the Soviet Union, the opening of China to the world and the steady march towards a borderless Europe[1]], the development of worldwide communication systems, the relative affordability of modern means of transport, wage and opportunity disparities between countries, and the changing need for labour and provision of services in many countries'[2]—the world began and continues to experience ever-growing global population mobility.[3]

By the mid-1980s, the steadily-increasing numbers of people moving into Western Europe and claiming asylum were beginning to overwhelm those countries' asylum systems (such as they were) and were causing political problems for the governments concerned. Although comprehensive asylum application statistics are not available for the period prior to IGC's commencement in 1985,* UNHCR statistics concerning its 'population of concern' in the nine European States that participated in IGC in its first two years of operation (i.e. 1985 and 1986) indicate very clearly the sharp increase in the size of that population in the mid-1980s. Chart 1 shows the population of concern in each of those nine States in the decade 1978-1987.[4] Whilst it may appear that the overall increase was due almost entirely to the increase in Germany, Denmark had far greater growth in percentage terms (a sixteen-fold increase over the decade) and there was also sizeable growth in Sweden and the Netherlands (increases of 550% and 200% respectively).

**Chart 1** Refugees or people in refugee-like situations in European states participating in IGC meetings in 1985 and 1986, 1978-1987



**Source** UNHCR Population Statistics Database

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* As we shall see, IGC played a pioneering role in the collection of asylum and refugee data and statistics.

It was also during this period that so-called 'mixed flows' of refugees and non-refugee migrants emerged as a major issue, both in government circles and in public debate. Although many of the asylum seekers reaching Western Europe had valid claims for protection under the Refugees Convention because they had been driven from their homes by persecution or conflict, others were seeking relief from various forms of adversity, either natural or man-made, and still others were looking for improved life opportunities for themselves and their families.

Analysing the rise in asylum applications in European States in the decade beginning in 1985, a joint publication of Eurostat (the Directorate-General of the European Union responsible for statistics) and the IGC Secretariat considered that the increase had been driven by four key factors.[5]

The first was the fact that most other opportunities for migration—aside from migration for the purposes of family reunification or formation—had been substantially curtailed in the preceding years,[6] in response—in part at least—to the economic effects of the oil crisis of 1973.[7]

Secondly, as a result of the closing of other migration channels, '[t]he asylum procedure… came to be seen as a *de facto* immigration mechanism in that it allowed asylum applicants to remain in the country and often work while the claim was being processed'.[8] It was also the case that asylum seekers whose claims were rejected were rarely removed from the country in which they had sought asylum.

Thirdly, 'a[s] the number of applications increased, the existing procedures which were designed to deal with small numbers of claims became less able to deal with the claims and the time taken to determine claims subsequently increased'.[9] As Martin wrote in 1990, 'the asylum adjudication systems [used at the time] were cobbled together in an era that permitted leisurely consideration of modest caseloads' and 'adapted poorly to an era when claims are numerous and subject to sudden escalation'.[10] This created huge delays in the processing of applications; in Germany, for example, the strain placed on asylum procedures by the increase in the number of applications led to a backlog of six to eight years.[11] In Switzerland, the waiting period was between four and six years.[12] As Eurostat and the IGC Secretariat noted:[13]

> This created a pull factor as regards abusive claimants who despite unfounded claims nevertheless managed to remain for the time it took to process the application. In view of the time it took to take a decision, the result was often that rejected asylum-seekers were allowed to remain not because they were in need of protection but because they had been in the country for such a long period that it was no longer possible to return them.

Finally, the Eurostat/IGC publication pointed to a series of other factors that had contributed to the rise in asylum application numbers, such as the improvement in communications and transport technologies and the rise in for-profit smuggling.

As for countries of origin, Chart 2 shows that the three major countries of origin of asylum applicants in the European Union in 1985 (the year of the first meeting of what was to become IGC) were:[14]

**Chart 2** Major countries of origin of asylum applicants
in the European Union, 1985



- SRI LANKA (16%)
- IRAN (9%)
- TURKEY (7%)
- POLAND (6%)
- LEBANON (5%)
- AFGHANISTAN (2%)
- VIETNAM (2%)
- ZAIRE (2%)
- ROMANIA (1%)
- YUGOSLAVIA (1%)
- OTHER (49%)

**Source** Eurostat

- Sri Lanka (16%), where the first phase of the civil war (known as Eelam War I)
  commenced in mid-1983;
- Iran (8%), where Ayatollah Khomeini had been consolidating power following
  the 1979 revolution whilst fighting a war against Iraq; and
- Turkey (7%), where the first civilian government since the 1980 *coup d'état* had
  ruled since December 1983.

Although none of them were in the top three countries of origin, there were also significant
numbers of asylum seekers coming from the States of Central and Eastern Europe,
especially Poland, Romania and Yugoslavia. These were a matter of serious concern to the
governments of Western Europe, not so much because of the numbers that had arrived, but
because of the much larger numbers of people in ex-Soviet countries who, it seemed, could
choose to make the comparatively simple journey to Western Europe at any time. As we
shall see below, these numbers would continue to rise in the second half of the 1980s and
the early years of the 1990s.

In response to these rising numbers—which led to 'a public debate characterized by
strongly held opinions, often based on questionable interpretations of a very slim body of
evidence'[15]—officials within some of the governments of Western Europe began to discuss
the situation amongst themselves, motivated by a common concern with the lack of
international dialogue on how to safeguard the institution of asylum when it was increasingly

under threat as a result of mixed flows and general migration pressures. Although this sounds unremarkable today, it was an important step forward; before this, there had been no real cooperation between the States in question on asylum law and policy. The only multilateral fora for the discussion of such issues were the Executive Committee of UNHCR and its Sub-Committee on Protection (which met once per year) and the Council of Europe's Ad Hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons ('CAHAR') (which met twice per year).

Officials in some Western European governments did not think that these bodies were appropriate fora to deal with the new developments, however, for two key reasons: first, they did not allow for the kind of informal discussions that would be needed in order fully to cooperate to address the situation and, secondly, they had large and diverse memberships, with many of their member States not experiencing the same pressures. Those not experiencing these pressures were, of course, less motivated to discuss them. In the case of CAHAR, this made it—in the words of a UNHCR document—'more and more difficult for it to agree on solutions which go beyond the lowest common denominator'.[16] Furthermore, it was felt by some government officials that UNHCR did not fully appreciate that national asylum systems were being abused by some applicants and that this was a threat to the sustainability of the institution of asylum. There was, therefore, a need to engage UNHCR in dialogue on this matter, but out of the public eye lest these concerns be misinterpreted as a lack of confidence in UNHCR or the refugee and asylum system as a whole, which could compromise public faith therein.

In order to facilitate such a dialogue, the United Nations High Commissioner for Refugees—Poul Hartling—convened a meeting in Geneva in May 1985 to conduct, as the meeting's title suggested, 'Consultations on the Arrivals of Asylum-Seekers and Refugees in Europe'.[17] The meeting—which UNHCR decided should be 'entirely informal' to facilitate a free exchange of ideas[18]—was attended by 35 States members of UNHCR's Executive Committee, as well as a number of international organisations and non-governmental organisations.[19] It focused on the fact that—in the words of the High Commissioner—'established asylum practices were being put under severe strain' by the rising numbers of applications in a time of 'economic stringency and high unemployment' and negative and xenophobic public attitudes.[20] The High Commissioner also recognised that, although the numbers of persons seeking asylum in Europe were significantly lower than in other parts of the world, '[s]uch arrivals can and do pose particular problems for countries where asylum-seekers are treated on an individual basis and entitled to significant socio-economic benefits'.[21]

The High Commissioner also described '[t]he prospects for further constructive co-operation between European Governments for the benefit of refugees' as 'potentially promising'; '[p]articular problem areas in which closer co-operation between European Governments could usefully focus include the duration of asylum procedures, responsibility for examining asylum requests, treatment during the pre-asylum period and the need to improve public awareness of the special position of the refugee/asylum-seeker'.[22] During the meeting, '[t]he need for informal *ad hoc* consultative arrangements among interested European Governments was furthermore recognized', it being envisaged that '[m]eetings could be called at the initiative of UNHCR or interested countries'.[23]

*The European Governments, however, lack the forum where [asylum and refugee] issues could be discussed ad hoc and in an informal, action-oriented and humanitarian spirit. Here, we see an obvious need for new modalities in order to discuss the situations at hand, and with an aim of working constructively towards the idea of concerted international action.*

*…*

*Hopefully we will be able to maintain momentum from these consultations and continue our dialogue when this meeting is over. Informal meetings could be called by any nation whenever issues of mutual interest so require. It is also my conviction…that these consultations will provide us with a fuller understanding of the cause and the nature of the problems before us, and thereby facilitate our search for solutions.*

*I have a feeling that we have not used our full potential in this respect and I think this is what the UNHCR has been trying to tell us in [the Note by the High Commissioner]. As governments we should work more closely together in the future, and naturally in very close collaboration with the UNHCR, so as to take all these new developments on the European scene not only as a threat but also as a challenge, a challenge to all of us who work for international solidarity and for the rights of refugees.*

**Jonas Widgren**, Under-Secretary of State to the Swedish Minister for Migration Affairs (and, later, the first IGC Coordinator),

**UNHCR Consultations on the Arrivals of Asylum-Seekers and Refugees in Europe, May 1985**

Later that year, the Government of Sweden called such a meeting and invited UNHCR (which was to be represented by the High Commissioner personally) and six like-minded States (Denmark, France,* Germany, the Netherlands, Switzerland and the United Kingdom) to a meeting in Stockholm to explore—in the words of the invitation—'the possibilities for closer constructive co-operation in relation to problems linked to the arrivals of asylum-seekers and refugees in Europe'. A further aim was to address the differences of opinion between the seven States and UNHCR concerning the extant asylum situation. This meeting—and, indeed, the underlying concept of regular, informal consultations as a way to bring about the improved cooperation that High Commissioner Hartling had called for—was the brainchild of Jonas Widgren. He had suggested the development of such a mechanism at the May meeting and chaired this November meeting in his capacity as Under-Secretary of State to the Swedish Minister for Migration Affairs.

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* France ceased participation in the Informal Consultations in 1997, recommenced participation in 2009 and ceased participation again in 2014.

In her opening address, the Swedish Minister for Migration Affairs and Equality between Women and Men, Anita Gradin, set the scene for the meeting as follows:

> We all know why we have gathered here. In all our countries we are increasingly facing problems in the field of refugee affairs. These problems are new in terms of size and complexity. At the same time, our countries have a long[-]standing humanitarian tradition in providing asylum to those who flee. In such a situation, we all feel a growing need of consulting each other, and also of jointly discussing with the High Commissioner on what to do.

Minister Gradin noted that the meeting was a follow-up to that which had been hosted by UNHCR in May, but emphasised that it was also

> an event in itself, since it might develop, if it works well, into [the] flexible, consultative *ad hoc* mechanism which many delegations asked for at the May meeting. Naturally, we will continue to deal with these problems also in UNHCR itself and in other international contexts. This goes without saying.

It appears that the meeting did work well because—after discussing at length the situation and the ways in which they could cooperate to address the challenges they were facing—the States present and UNHCR agreed to develop amongst themselves a 'clearing-house for statistics and information', an 'informal network of key persons', '*ad hoc* consultative mechanisms in emergency situations' and case studies on particular groups of asylum seekers and particular issues of concern. In agreeing also to the preparation of further meetings, the IGC process was born.

The Stockholm meeting immediately generated interest. Curiosity from the media led to a press release being distributed and, within three weeks, a number of States that had not participated—including the United States, Canada, Austria and Norway—had contacted the Swedish government asking for further information. This interest caused the list of Participating States to grow immediately: the initial seven were joined by Canada and Belgium for the Informal Consultations' second meeting in The Hague in April 1986, and two more (Austria* and Australia, the latter in an observer capacity at first) were added for the third meeting in Geneva in December that year.

The States participating in these meetings had a number of common characteristics: they were developed countries that were experiencing substantial immigration (rather than emigration) at the time, they possessed similar legal and administrative systems, they were all parties to the Refugees Convention, and they made significant financial contributions to relevant multilateral institutions (UNHCR in particular) and to development efforts in the South and East. Furthermore, they were concerned about the integrity of the institution of asylum and shared a conviction concerning the need to cooperate to ensure that the institution was able to adapt to the future challenges it would face.

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* Austria ceased participation in 1994, recommenced participation in 1998 and ceased participation again in 2005.

The evolution of IGC membership, 1985-1996

| 1985 | 1986 | 1987-1988 | 1989 | 1990 | 1991-1993 | 1994-1996 |
|---|---|---|---|---|---|---|
| Denmark | Belgium | Australia | Australia | Australia | Australia | Australia |
| France | Canada | Austria | Austria | Austria | Austria | Belgium |
| Germany | Denmark | Belgium | Belgium | Belgium | Belgium | Canada |
| Netherlands | France | Canada | Canada | Canada | Canada | Denmark |
| Sweden | Germany | Denmark | Denmark | Denmark | Denmark | Finland |
| Switzerland | Netherlands | France | Finland | Finland | Finland | France |
| UK | Sweden | Germany | France | France | France | Germany |
| | Switzerland | Netherlands | Germany | Germany | Germany | Italy |
| | UK | Norway | Italy | Italy | Italy | Netherlands |
| | | Sweden | Netherlands | Netherlands | Netherlands | Norway |
| | | Switzerland | Norway | Norway | Norway | Spain |
| | | UK | Sweden | Sweden | Spain | Sweden |
| | | | Switzerland | Switzerland | Sweden | Switzerland |
| | | | UK | UK | Switzerland | UK |
| | | | | USA | UK | USA |
| | | | | | USA | |

The major topics of discussion during these early meetings were the major asylum and refugee issues of the day: participants discussed the movement into Europe of asylum seekers from Iran (who came predominantly through Turkey and whose numbers expanded significantly in 1986) and Sri Lanka (whose numbers had peaked in 1985), as well as the reform of asylum procedures. Participating States had agreed from the very first meeting in Stockholm that cooperation of this kind between them was necessary to address the challenges that they then faced. In particular, they felt that informal meetings would be the best way to exchange information, test new approaches and actively engage on a plurilateral basis with UNHCR.

To this end, Joint Working Groups on Iranians and Tamil Sri Lankans, to be convened by UNHCR, were established at the April 1986 meeting in The Hague. Although these working groups had met four times over the summer of 1986, they did not achieve the kind of pragmatic and rapid collaborative action that Participating States had hoped for. As a result, and starting with a meeting in Gerzensee, Switzerland in February 1987, Participating States (whose number now also included Norway) and UNHCR began to adopt a more operational and pragmatic approach. Participating States discussed the possibility of conducting—with UNHCR—a trial scheme for dealing with the movement of Iranians from Turkey into Europe, and also considered a Danish paper on 'general global principles for a new refugee regime'. Three working groups met; respectively, they discussed control measures, a contingency plan for Iranians in Turkey, and the use of development assistance and other similar measures to address the root causes of refugee flows. Deeper cooperation was limited, however, by the fact that, to date, the Informal Consultations had no coordinating secretariat.

The evolution of IGC membership, 1997-2017

| 1997 | 1998-2001 | 2002-2004 | 2005-2006 | 2007-2008 | 2009-2014 | 2014-2017* |
|---|---|---|---|---|---|---|
| Australia | Australia | Australia | Australia | Australia | Australia | Australia |
| Belgium | Austria | Austria | Belgium | Belgium | Belgium | Belgium |
| Canada | Belgium | Belgium | Canada | Canada | Canada | Canada |
| Denmark | Canada | Canada | Denmark | Denmark | Denmark | Denmark |
| Finland | Denmark | Denmark | Finland | Finland | Finland | Finland |
| Germany | Finland | Finland | Germany | Greece | France | Germany |
| Italy | Germany | Germany | Ireland | Germany | Germany | Greece |
| Netherlands | Ireland | Ireland | Netherlands | Ireland | Greece | Ireland |
| Norway | Italy | Netherlands | New Zealand | Netherlands | Ireland | Netherlands |
| Spain | Netherlands | Norway | Norway | New Zealand | Netherlands | New Zealand |
| Sweden | Norway | Spain | Spain | Norway | New Zealand | Norway |
| Switzerland | Spain | Sweden | Sweden | Spain | Norway | Spain |
| UK | Sweden | Switzerland | Switzerland | Sweden | Spain | Sweden |
| USA | Switzerland | UK | UK | Switzerland | Sweden | Switzerland |
| | UK | USA | USA | UK | Switzerland | UK |
| | USA | | | USA | UK | USA |
| | | | | | USA | |

* Poland became a Participating State at the end of 2017

## 1987: THE FIRST COORDINATOR FOR THE INFORMAL CONSULTATIONS IS APPOINTED

Following the Gerzensee meeting, however, Poul Hartling's successor as High Commissioner for Refugees, Jean-Pierre Hocké, sought to give these *ad hoc* interactions a firmer footing by asking Jonas Widgren to work within UNHCR as 'Coordinator' for the Informal Consultations. As Coordinator, a position he formally took up in April 1987, Mr Widgren's main task was to assist in the further development of the Informal Consultations. He reported directly to the High Commissioner.

An early success of Mr Widgren's was to negotiate, on behalf of Participating States, an agreement with Turkey concerning Iranian asylum seekers on its territory. Under the terms of the agreement, which was concluded in June 1988 following five negotiating missions by Mr Widgren to Turkey, Turkey agreed not to return to Iran any Iranians deserving of protection, to better control irregular movements of Iranians into Europe, and to accept the return of UNHCR-registered Iranians from Participating States to Turkey; in return, Participating States agreed to resettle a total of 3,000 Iranians from Turkey each year.

## LATE 1980S: AN EXPANDING AGENDA CALLS FOR GREATER STRUCTURE

Beginning with the fourth meeting in Oslo in May 1988, the agenda for the Informal

Consultations began to expand so as to include discussions on anticipated future challenges and the kinds of long-term strategies that would be needed to meet them. The meeting in Semmering, Austria in June 1989, for example, had before it a dozen working papers—which had been prepared by Participating States, UNHCR and the Coordinator—concerning recent trends, long-term strategies, East-West migration, irregular movements, asylum procedures, asylum seekers in Turkey, unaccompanied minors seeking asylum, and repatriation to Sri Lanka (following the Indo-Sri Lanka Accord in 1987 which—it was hoped—would bring the civil war to an end). In 1989, Finland and the United States were added as Participating States, followed by Italy* in 1990 and Spain in 1991. Also in 1991, the International Organization for Migration was invited to participate on the same basis as UNHCR.

One particular item that made its way onto the agenda at this time was the collation, analysis and dissemination of information concerning the circumstances in asylum seekers' countries of origin (known as 'country of origin information' or 'COI'). Commencing with a workshop in Dardagny (near Geneva) in January 1989, Participating States began to use the IGC process to examine COI developments at the national level and to investigate possibilities for data exchange, access to computer systems and other methods of cooperation in the field. As is explained in greater detail in Chapter Four, IGC activities on country of origin information were the first of their kind in the world and played a significant role in the professionalisation of the field.

As the agenda expanded, however, it became increasingly clear that the Informal Consultations would be significantly more effective if their structure—which had, to this point, consisted primarily of *ad hoc*, single-issue meetings and brainstorming sessions convened by ministers and senior officials as and when required—were strengthened. This was to be achieved in part through the decision in 1989 to bifurcate the process for the Informal Consultations: a so-called 'Full Round of Consultations'—hosted each year by a different Participating State, who would act as the Chair of both the meeting and the process more generally for the year—would bring senior officials together on an annual basis for comprehensive, strategic and wide-ranging discussions, whilst two permanent working groups were established to enable the in-depth discussion of specific issues, namely East-West movements and long-term policy challenges.

The first of these—the Working Group on East-West Movements—was presciently established months before the fall of the Berlin Wall in November 1989, though of course East-West movements were of interest to Participating States and Organisations already. The Working Group represented the first opportunity for Participating States and Organisations systematically to discuss the potential impacts that social and political changes in the East would have on the movement of people, as well as the policies and programmes that could be developed to respond to these changes.

The Working Group on Long-Term Perspectives and Policies, on the other hand, aimed to develop a harmonisation of national strategies for refugee and asylum policy. The membership of both Working Groups included all Participating States and Organisations.
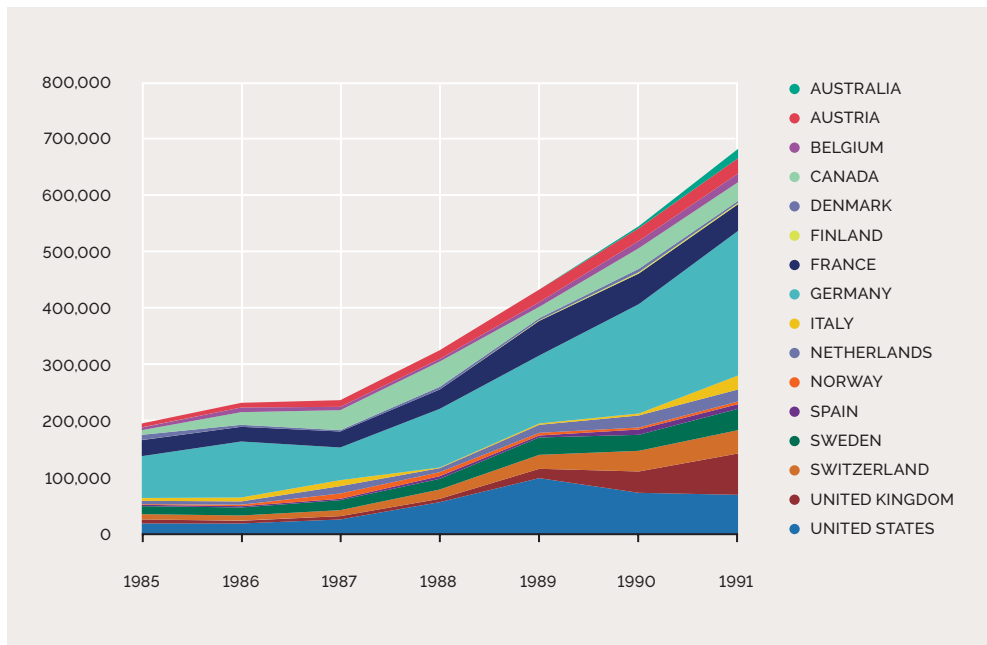
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* Italy ceased participation in 2002.

## EARLY AND MID-1990S: THE BREAK-UP OF YUGOSLAVIA AND THE USE OF IGC AS A FORUM FOR THE RAPID EXCHANGE OF DATA AND THE TESTING OF NEW IDEAS

Having been founded to address the large numbers of asylum seekers arriving in Western Europe in the mid-1980s, the statistics for which IGC became a repository show that—due largely to developments in Eastern Europe, particularly Yugoslavia—the numbers of asylum applications continued to rise throughout the second half of the decade and into the 1990s. As Chart 3 documents, total asylum applications in IGC Participating States rose from 200,000 in 1985 to almost 700,000 in 1991. Chart 4 shows the major countries of origin for those making applications in the European Union in 1991. It identifies that 20% of applicants were from Yugoslavia, 11% were from Romania, and 8% from Turkey.

It was against the backdrop of these large and growing movements into Europe—which were driving some to speak of an 'asylum crisis'[24]—that IGC Participating States started to explore with one another, with increasing frequency, what response options were available to them. Following the conclusion of the Dublin Convention in June 1990—which sought to allocate responsibility for examining an asylum application amongst members of the European Communities—IGC Participating States that were not Member States of the European Communities used IGC as a forum to explore ways in which they could become associated

**Chart 3** Asylum applications made to
IGC Participating States, 1985-1991



Legend:
- AUSTRALIA
- AUSTRIA
- BELGIUM
- CANADA
- DENMARK
- FINLAND
- FRANCE
- GERMANY
- ITALY
- NETHERLANDS
- NORWAY
- SPAIN
- SWEDEN
- SWITZERLAND
- UNITED KINGDOM
- UNITED STATES

**Source** IGC, Eurostat

**Chart 4** Major countries of origin of asylum applicants
in the European Union, 1991



- YUGOSLAVIA (20%)
- ROMANIA (11%)
- TURKEY (8%)
- BULGARIA (3%)
- SRI LANKA (3%)
- IRAN (3%)
- ZAIRE (3%)
- VIETNAM (2%)
- IRAQ (2%)
- AFGHANISTAN (2%)
- OTHER (44%)

**Source** Eurostat

with the Convention. The first meeting on this subject took place in November 1990 and resulted in a joint approach by the eight non-EC IGC Participating States to the twelve EC Member States requesting to be associated to the Dublin Convention. The combined efforts of the eight non-EC States contributed to the development of parallel arrangements being offered to certain European States not members of the European Communities.

A key concern expressed during early iterations of these meetings related to the information gap that existed: States had their own data about the inflows from Yugoslavia, but wanted a mechanism—not yet in existence—that allowed them quickly to learn more about the situation in other States, the measures being put in place in response, and their effectiveness. IGC was seen as an ideal forum for this kind of exchange, in line with the 'clearing house' function that was envisaged for it at its first meeting in 1985.

In the absence of more modern technologies for the rapid exchange of information, the IGC Secretariat contacted Participating States by telephone on a daily basis to collect the latest data and to learn about new or contemplated policy responses. Once collected, the data and information would be typed up, printed, driven to Participating States' missions in Geneva and sent to their capitals by facsimile. Secretariat staff members recall that the IGC fax machine often operated through the night during this period.

The data thus collected and disseminated showed that the asylum systems in some European Participating States risked becoming overburdened by the sudden volume of applications

from the former Yugoslavia. In response, and following the request of the High Commissioner for Refugees to extend temporary protection to persons who were in need of international protection as a result of the conflict in the former Yugoslavia,[25] Participating States began (in consultation with one another through the IGC process) to implement temporary protection arrangements. These usually consisted of suspending consideration of asylum applications and granting temporary stay *en masse* until the situation in Yugoslavia improved, with the possibility of making an asylum application when the period of temporary protection had come to an end.

Following this first experiment with temporary protection, the Secretariat produced a report that compared and analysed the arrangements that had been established in each Participating State, and that provided a framework for further discussion on temporary protection, including its legal basis, procedural issues, reception arrangements, the rights of beneficiaries, and the future of temporary protection in the international refugee régime. The report concluded that:

> In general, it can be said that temporary protection is particularly appropriate where large numbers of refugees or asylum-seekers and mixed categories of persons have moved relatively short distances, perhaps only into an immediately neighbouring State, and where there is a real likelihood that they can soon return home.

Temporary protection as an emergency measure continued to be discussed in IGC meetings. Despite this, however, temporary protection systems have not been widely used since, including in relation to subsequent large movements of refugees from Kosovo, Iraq and Syria into IGC Participating States. The European Union's directive on temporary protection—adopted in 2001—has never been applied.

The experience with the large number of people coming from the former Yugoslavia did have lasting effects on the IGC process, however. It showed that the process could effectively be used for the rapid collation and exchange of data and information that could then be used to inform decisions of Participating States when time was of the essence. It also demonstrated the way in which IGC could be used as a laboratory in which new ideas could be examined. IGC's rapid information exchange would later be applied to other subsequent mass inflows (Kosovo, Iraq and Syria ) and its role as a laboratory would be applied later to issues including burden sharing and reception in the region of origin.

## 1991: PARTICIPATING STATES AGREE ON A STRATEGY PLATFORM FOR DEEPER COOPERATION

The developments in the former Yugoslavia placed the international régime for refugee protection, which had developed in times of much smaller flows, under 'severe strain'.[26] Furthermore, they reinforced to Participating States and Organisations that further cooperation was required, and led to the cornerstone achievement of the Working Group on Long-Term Perspectives and Policies, namely the adoption in 1991 of an agreed 'strategy platform'. The Coordinator, Mr Widgren, described this as 'a considerable breakthrough':

*In the coming decades[,] migratory movements are bound to increase. Unemployment, poverty, political instability, civil strife, human rights violations, ecological disasters, population growth and general economic disparities are some of the factors which will contribute to this, in combination with increased travel facilitation and global communication. Thus, policies relating to the movements of people have to evolve in a broad political, social and economic perspective, posing new challenges but also [creating] new opportunities. Innovative thinking, as well as intensified cooperation among States, is required.*

**IGC**'s 1991 'strategy platform'

For the first time since the emergence of the asylum crisis in the mid-1980's, Government representatives decided to gather around a set of common policy objectives covering all pertinent policy areas, geared towards short-term as well as long-term solutions to the same crisis, in the interest of safeguarding the implementation of basic principles of refugee law.

The strategy platform's stated purpose was

to highlight policy guidelines currently discussed in participating States and aiming at reinforcing bilateral and multilateral co-operation in this area [i.e. asylum, migration and refugee policy], on the basis of three general policy objectives: the facilitation of free movement whenever this is possible, the mitigation of causes which cause forced movements, and the eventual harmonization of policies and action among States in regulating the movements of persons.

Expressing concern at the possibility that, in Participating States, the asylum system was 'developing into a costly and inadequate immigration mechanism' and that '[a]rrivals in large numbers of applicants with non-valid claims threaten[ed] to erode the internationally established right of refugees to obtain protection', the strategy platform argued that:

It increasingly becomes apparent that isolated policies are no longer sufficient to cope with this challenge, and that a coherent international strategy is needed. Such a strategy should ultimately aim at addressing factors which give rise to mass flows of people and at providing living conditions which do not create large-scale emigration. To leave the home country can in given situations be the best option for the persons who move, but does not represent a viable long-term alternative in terms of international action. Moreover, large-scale movements may threaten local and regional stability and security. The goal of the international community should, therefore, be to reduce mass movements by seeking to eradicate the factors which generate them and to establish international strategies to meet new migration and refugee challenges.

Such a strategy was expressed to be grounded in the following principles:

- the need to help refugees and displaced persons all over the world and to promote appropriate solutions, through international burden sharing;

- adherence to the Convention of 1951 and the Protocol of 1967 relating to the Status of Refugees;

- respect of the right of everyone to leave and to return to one's own country;

- acknowledgement of the principle that immigration and asylum policies pertain to national sovereignty;

- recognition of the obligations and responsibilities of States towards their own citizens; and

- reinforcement of international cooperation in all related areas.

The strategy platform was also to be based on 'Common Policy Guidelines', which emphasised the importance of international law, human rights (in particular, the rights of minorities and the right to freedom of movement), international refugee law, social and economic development, sustainable population growth, environmental protection, cooperation with and support for international organisations, exchange of information and experiences, and capacity building.

In terms of concrete areas for possible future cooperation, the strategy platform endorsed the harmonisation of asylum legislation and procedures, the 'elaboration of the safe country concept as a basis for asylum processing', programmes of assistance to countries of origin, 'the establishment of safe areas in countries of origin for orderly asylum processing and for return of applicants in safety and dignity', the exploration of other 'arrangements which provide opportunities for orderly movement from countries of origin' (such as for training or employment), the targeting of migration factors through development assistance, and the development of early warning systems. A number of the key features of the 1991 strategy platform would reappear the following year in the *Declaration on Principles Governing External Aspects of Migration Policy* adopted by the European Council.

It is worth pausing to reflect on the progress made between the first meeting in 1985 and the adoption of the strategy platform in 1991: in just six years, Participating States had advanced from a situation where their cooperation on asylum, refugee and migration matters was virtually non-existent to one where their cooperation was such that they could agree on a joint strategy platform that set out common policy objectives and the principles and guidelines that would be used to achieve them. The number of Participating States had more than doubled from the original seven to fifteen during this period, and UNHCR had been joined by the International Organization for Migration as an IGC Participating Organisation. IGC had well and truly established itself as a useful tool for Participating States and Organisations.

## 1991: INDEPENDENCE

Although the Informal Consultations had been a State-driven process since its inception,

the Coordinator reported to the High Commissioner for Refugees and worked from UNHCR premises, giving many the impression that the Informal Consultations were merely another part of the High Commissioner's Programme. In order to ensure that IGC was seen as an independent entity when interacting with non-participating States, organisations and fora, Participating States concluded an agreement in mid-1991 with the new High Commissioner, Sadako Ogata, to have the Secretariat become substantively independent from UNHCR (though still under UNHCR auspices for administrative purposes). For an initial trial period of eighteen months, the Secretariat was to be relocated away from UNHCR premises, with the Coordinator reporting to Participating States rather than the High Commissioner. This arrangement was to be fully financed by Participating States, with UNHCR and the International Organization for Migration being encouraged to continue actively to contribute to IGC activities.

Following this change, the Secretariat developed a work plan which focused on the situation in and relationships between Participating States and particular refugee source and transit countries, as well as more systematic issues, such as the collation and of analysis of country of origin information and the streamlining of asylum procedures, which were to be addressed in parallel with UNHCR work on these topics.

Commencing in 1991, country-specific working groups were also formed to take a systematic country-of-origin approach, whereby 'a consortium of interested receiving countries would gather in a concerted comprehensive effort, aiming at stemming outflows or stimulating returns to selected source countries'. This was referred to within the IGC process as the 'Country Assessment Approach' or 'CAA'. These working groups—which examined the situations in countries that included Romania, Sri Lanka, Albania, Turkey, Ghana, the former USSR and the former Yugoslavia—led, for example, to the financing of vocational training projects aimed at the needs of the Romanian economy and supporting the UNHCR-monitored return of failed Sri Lankan asylum seekers.

Another key development in 1991 was the publication by the Secretariat, following extensive input from Participating States, of a 70-page report entitled *Summary description of asylum procedures in States in Europe and North America*, which compared the asylum procedures used in each of IGC's Participating States.[27] This initial report and subsequent editions—which came to be known as the 'Blue Books' for the colour of their covers—would later be joined by similar reports presenting and comparing the policies and practices of Participating States in the areas of trafficking (the 'Yellow Book', first published in 1994), return (green, 1995), temporary protection (purple, 1995), unaccompanied minors (pink, 1997), family reunification (orange, 1997), and asylum and immigration systems (grey, 1999). In addition to reports comparing the law and policy of Participating States, the Secretariat also produced analytical reports on reception in the region of origin (1994 & 1995), readmission agreements (1994, 1998 & 2000) and illegal aliens (the 'Red Book', 1995).

Together, these publications would assist IGC to become what one official document would later describe as 'a "clearing house" for information on legislative and administrative policies and practices on asylum, countries of origin, return, trafficking, temporary protection, unaccompanied minors, and on family reunification'. Although updated

versions of a number of the comparative reports were produced during the 1990s and 2000s, the Blue Book has proved the most enduring; updated editions were produced in 1992,[28] 1994,[29] 1995,[30] 1997,[31] 2009,[32] 2012,[33] and 2015.[34] It has become an authoritative reference tool on asylum policies and procedures in IGC Participating States, as detailed further in the next chapter.

Towards the end of the independent Secretariat's eighteen-month trial period, differences of opinion between Mr Widgren and UNHCR made it impossible for him to continue to serve as Coordinator. He left IGC in 1993 and, later that year, became the founding director of the International Centre for Migration Policy Development in Vienna. Participating States selected Henrik Olesen—an international civil servant from Denmark who spent the majority of his career with the United Nations Development Programme—to become Widgren's successor.

Despite the circumstances of his departure, however, Mr Widgren's contribution to IGC was enormous: he was responsible in large part for the foundation of the Informal Consultations in 1985 and, under his leadership as Coordinator, they developed from a modest meeting point for a small number of European governments to discuss asylum issues to a dynamic mechanism for inter-governmental, inter-regional cooperation.
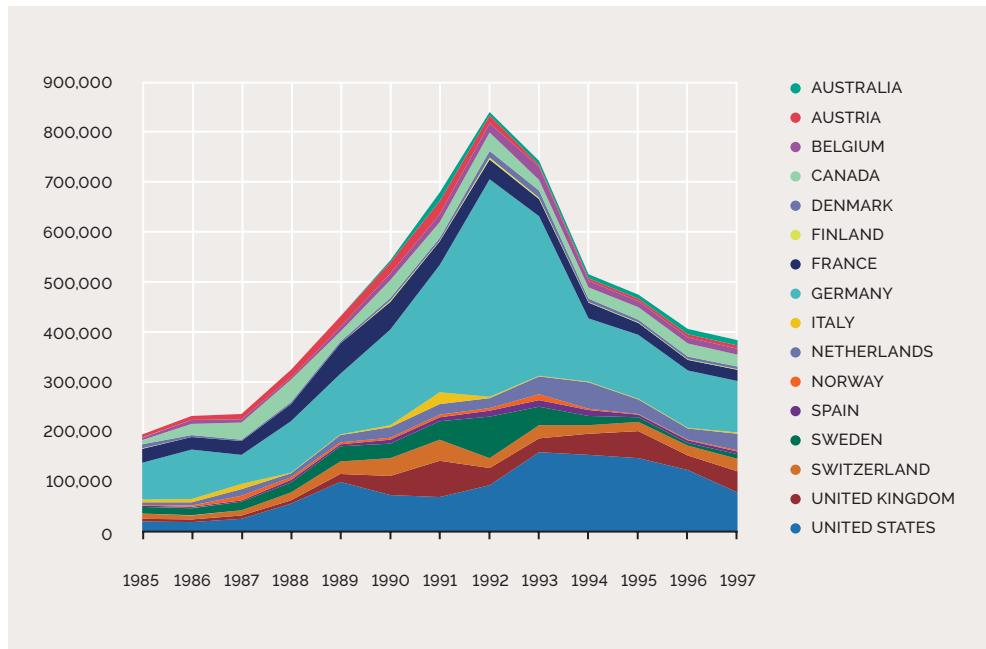

## 1993: REFINED INDEPENDENCE

The developments concerning Mr Widgren triggered a much wider series of discussions in the second half of 1992 concerning the future of the Informal Consultations. One of the key outcomes from these discussions was what might be described as 'terms of reference' for the IGC, entitled the *Administrative Arrangement for the Informal Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia*. This document, which came into force on 1 January 1993, established the IGC process as working exclusively for Participating States and enabled those States to use IGC to discuss virtually anything to do with refugees, asylum and migration. Although independent from it, the IGC Secretariat began also to be administratively hosted by the International Organization for Migration from 1993.


## MID- AND LATE 1990S: TODAY'S BASIC STRUCTURE EMERGES— LESS POLITICAL, MORE TECHNICAL

By the mid-1990s, the numbers of asylum seekers in IGC Participating States began to fall. As demonstrated in Chart 5, the number of applications for asylum fell from more than 800,000 in 1992 to less than 400,000 in 1997 (though number were still approximately double the levels of 1985, when IGC was founded). A major factor in this reduction was that there was no major crisis generating large numbers of applications for asylum in IGC Participating States; as Chart 6 shows, no individual country of origin was producing more than 10% of all

**Chart 5** Asylum applications made to
IGC Participating States, 1985-1997



Legend:
- AUSTRALIA
- AUSTRIA
- BELGIUM
- CANADA
- DENMARK
- FINLAND
- FRANCE
- GERMANY
- ITALY
- NETHERLANDS
- NORWAY
- SPAIN
- SWEDEN
- SWITZERLAND
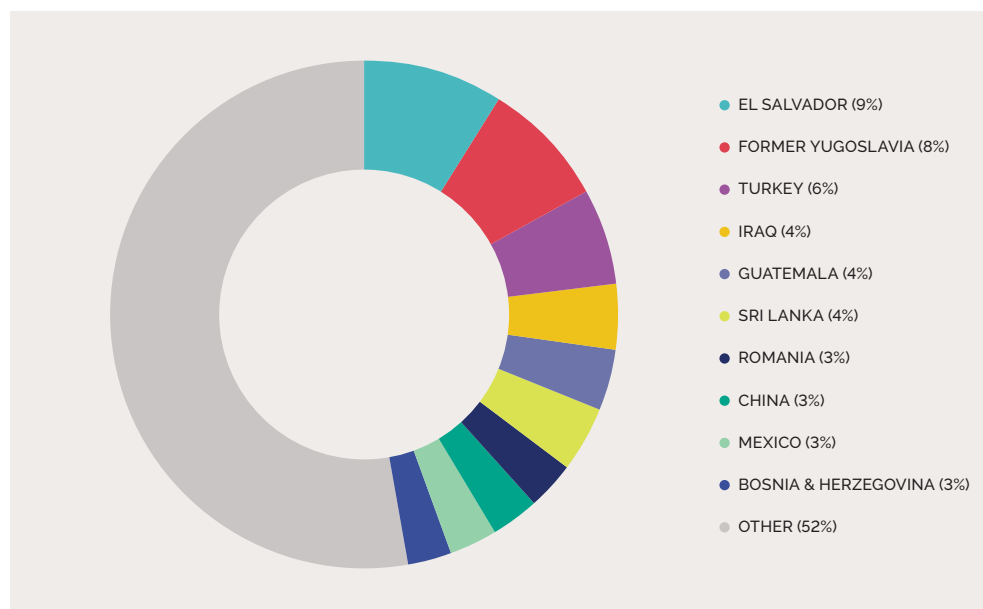- UNITED KINGDOM
- UNITED STATES

**Source** IGC, Eurostat

applications. IGC documents from the time also suggested that the reduction in application numbers was due, in part, to the implementation of policies that had been discussed at length in the IGC context:

> [T]he implementation in some countries of asylum of a more flexible Temporary Protection Status has lightened the overburdened asylum systems; the application in some countries of asylum of the safe country and the safe third country principles has resulted in sizeable decreases in the applications of manifestly unfounded claims; and thirdly, and related to the latter, a consequent rise in recognition rates has occurred in some participating States due to the proportion of persons genuinely in need of protection.

To these factors, the 1997 edition of the Blue Book added the streamlining and acceleration of procedures, increased staffing numbers and increasing staff specialisation in relevant bureaucracies, the use of technologies such as computerised determination procedures and fingerprinting to detect persons using different names to make multiple applications,* and the dissuasive effect of 'considerable reductions and even suppression of entitlements' for asylum seekers.[35]

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* A phenomenon that was estimated to comprise approximately 20% of all applications at the time.

**Chart 6** Major countries of origin of asylum applicants IGC
Participating States, 1994-1997



- EL SALVADOR (9%)
- FORMER YUGOSLAVIA (8%)
- TURKEY (6%)
- IRAQ (4%)
- GUATEMALA (4%)
- SRI LANKA (4%)
- ROMANIA (3%)
- CHINA (3%)
- MEXICO (3%)
- BOSNIA & HERZEGOVINA (3%)
- OTHER (52%)

**Source** IGC

Because asylum numbers had become a less urgent issue, Participating States and Organisations had more room within the IGC process to discuss an expanding range of issues. Whilst asylum remained the core of discussions, temporary protection, smuggling, trafficking, reception in the region, return, family reunification, unaccompanied minors, burden sharing and technology were also discussed. In addition, Participating States expressed the desire that IGC would operate as a 'think tank', with activities designed 'to address emerging issues in the field of migration and refugees, issues on which there is as yet no international consensus, or issues which are problematic for some or all participating States'.

The mid-1990s was also the time when the basic structure of IGC that persists to this day emerged. During Jonas Widgren's time as Coordinator, the Informal Consultations had relied very heavily on personal interaction between individuals at the ministerial and senior official level. Participants recall that the process was highly politicised. Widgren's successor as Coordinator, Henrik Olesen, and Participating States felt that, in order to maximise the Informal Consultations' effectiveness and to ensure their sustainability, more structure was required. There was also growing recognition that the potential for cooperation and coordination would be greatly enhanced if, in addition to meetings between senior officials, IGC facilitated regular interaction between practitioners from the Participating States, who would meet to achieve objectives defined at the senior official level. There was also a feeling that UNHCR and IOM should be encouraged to play a more active role.

*Having taken over the leadership of IGC after its first, very creative Coordinator, Mr Jonas Widgren, I was asked to reorganise the way IGC worked and make it into a small, coherent and well-defined process with a detailed, long-term work programme.*

*The general approach during this period was for the Secretariat to consult extensively with Participating States to identify the most burning issues of the day, to obtain agreement on how to address such issues, and to prepare for their discussion in IGC meetings, often with the assistance of a report prepared by the Secretariat. As a consequence, one, two or perhaps three main issues could be addressed per year followed up by continuing discussions between annual meetings.*

*One topic which was somewhat outside the usual scope of IGC activities and the focus of Participating States at that time was migration and development. With my own background from many years working in development and emergency operations, I felt the need for those in the migration and development fields to be brought together to discuss issues touching both. This was not easy, but some ground was covered, later to be taken over on a much larger scale by IOM and the UN.*

**Henrik Olesen**,
Second
IGC Coordinator,
1993-1996

In 1994, the first two practitioner-focused working groups were established. The first, the Working Group on Return, sought to identify problems and solutions in the development of policies and procedures for the return—in safety and dignity—of asylum seekers who had been found not to be refugees to their country of origin. Recognising that '[t]he return of those determined not to have genuine claims to asylum…is necessary to protect both the integrity and the credibility of refugee protection systems' and acknowledging that States have a duty in international law to readmit their own nationals, the Working Group on Return focused on countries in respect of which returns were difficult, the use of readmission agreements, the issue of travel documentation, the appropriateness of linking developmental assistance and return, and the provision of re-integration assistance to returnees. Under the Working Group sat an Expert Group on Return, which considered in more technical detail some of the subjects being discussed in the Working Group, including pre-removal detention, the documentation to be provided to undocumented persons in order to facilitate entry into their country of origin, and experiences dealing with specific countries of origin. The Expert Group also evaluated what the Working Group had achieved, identified what still needed to be done, and defined modalities for further IGC work on return.

The second, the Working Group on Smuggling and Trafficking, discussed the challenges of

and solutions to issues of smuggling and trafficking. It developed a model reporting format for information on source countries, an inventory of Participating States' anti-trafficking resources, and a system for exchanging data on smuggled and trafficked persons, routes and areas of exploitation. To this end, the Working Group developed a 'Trafficking Information Exchange System', which identified a common understanding of the meaning of the phrases 'trafficking' and 'smuggling', as well as the types of data concerning trafficking and smuggling that could be collected and shared so as to facilitate comparative analysis. The System was thus able to provide an accurate map, updated monthly, of trafficking patterns affecting Participating States. The Working Group on Smuggling and Trafficking was also supported by an Expert Group.

In 1995, two further working groups were added. The Working Group on Data—which was established in recognition of the fact that there can be no meaningful discussion on the management of migratory flows, no full understanding of their causes, and no formulation of effective policies without reliable statistics—explored ways to improve the sharing of statistical information between Participating States and to ensure that the data were used to make fair and accurate comparisons between Participating States. In the first instance, this work involved the establishment of the first international databases on asylum applications (in 1996) and on first instance asylum decisions (in 1998). The work done within IGC on asylum data would subsequently become the benchmark for the data collections of Eurostat and UNHCR.

The other, the Working Group on Technology, examined the ways in which technology could be used in asylum and refugee systems, and to facilitate cooperation between Participating States and Organisations on asylum and refugee issues. In its early period, it focused also on the computerised exchange of country of origin information and the collection, sharing and use of biometric information—primarily fingerprints—through the modality of two sub-working groups, one on fingerprinting and the other on country of origin information. In 1998, the formation of the separate Working Group on Country of Origin Information meant that this topic was no longer discussed in the Working Group on Technology.

In 1997, the exchange of data and information became even easier with the establishment of the secure IGC website, which initially took the form of online databases for the sharing of data on return and country of origin information. As an IGC document from the time noted, the '[w]ebsite is, in effect, an electronic meeting point which multiplies by 14 the sources of advice/information available to any individual officer in an IGC country'. IGC's work on data and statistics is further explored in Chapter Four.

The deepening of cooperation at the technical or practitioner level through the creation of working groups did much to foster professional development and the creation of networks of experts working on the same issues for different governments. It was also identified by Mr Olesen as one of the biggest changes that IGC underwent during his time as Coordinator. At the end of his term, he wrote that:

> IGC was established as a kind of governmental "think tank". During the years of Mr Widgren's tenure, it was very much a think tank; the documentation produced

*From my perspective, the mid- and late 1990s was when IGC really found its feet. Prior to this time, it was highly politicised; there was often a feeling of tension in the air, especially between the participating states and UNHCR.*

*From the mid-1990s, however, things changed significantly. The process became less political and more technical; this change could be observed in the people who were representing participating states (with fewer political appointees and more experts and policy makers), the increased role that was given to UNHCR and IOM, and the makeup of the Secretariat staff. It could also be seen in the nature of the activities pursued, with working groups of practitioners, technical reports and databases becoming more of a focus. The focus of IGC activities also expanded during this period beyond issues of enforcement and control, which had dominated discussions previously.*

*This was when IGC really developed into a laboratory for ideas and the IGC of today emerged.*

**Mike Bisi**,
Deputy Coordinator,
2000-2009
Member of the
IGC Secretariat,
1992-2009

by the Secretariat was not very cumbersome, but was more oriented towards general discussion among high officials. Since my arrival here, this has changed and IGC has become much more technical and has very much been dealing with technical substance and the production of the very comprehensive reports (red, blue, green books, etc.) has given the IGC another image.

This refocusing caused some difficulties, however. First, there was concern amongst senior officials that this 'think tank' function was being lost and that the focus on technicalities was reducing the time available for discussing strategic issues.

Secondly, and as a result of the fact that the practitioners meeting in working groups began to feel that they had a level of ownership over the process, there developed what was described as a 'communications gap' between the senior officials' meetings and the practitioner-level working groups. The working groups felt that the senior officials' meetings were not fully engaging with their work, whilst senior officials tended to feel that 'the Working Groups were taking on a life of their own' and needed to be refocused on issues of concern to the senior officials.

In response and starting in 1997, the so-called 'Mini Full Round' was established as an annual forum designed to allow senior officials to look beyond the operational topics of the IGC Working and Expert Groups to the larger policy issues that underlie them. These issues were to include, in particular, emerging issues, problems awaiting solution at the conceptual level

*A key development within IGC whilst I was Coordinator was the way in which the process embraced and utilized technology as a tool for developing a core of evidence on which policy discussions could be built. Shortly after my term commenced, the Swiss government agreed to fund the equipment and expertise needed to get the very first editions of IGC's databases up and running.*

*The databases solidified the role of IGC and gave it credibility because, in addition to lively policy debate, participation in the process gave States tangible products—comparative statistics and the coloured books that were based on them—that they could really make use of. Before this, Participating States would often raise the question of whether IGC was worth continuing with. Once these products were available, however, the question stopped being asked. This all pre-dated important databases like refworld, remember.*

*But it wasn't all smooth sailing. In the beginning, each Participating State was collecting data differently; for example, some were counting the number of asylum applications, some were counting the number of individual asylum seekers, and some were counting the number of asylum-seeking families. This made it impossible to make accurate comparisons of the situations in different countries. In time, however, the collection methods began to harmonise. As with other examples of harmonisation within IGC, this was not a matter of a formal decision being taken; Participating States simply realized how valuable it was to have consistent data.*

**Gervais Appave**,
Third IGC Coordinator,
1997-2001

and issues that were sources of conflict. The Mini Full Round also dealt with issues such as budget, priorities and activities, and oversaw and gave direction to the Working Groups. Furthermore, it allowed for a deepening of relationships between senior officials, who would henceforth meet in the IGC context twice a year, instead of once.

Also in the late 1990s, two noteworthy substantive issues made their way onto the IGC agenda. The first was the question of claims for complementary protection being made by asylum seekers under the European Convention on Human Rights, the Convention Against Torture and the International Covenant on Civil and Political Rights. In response to a rise in the numbers of such claims, a workshop on complementary protection was held in March 1999 to allow Participating States and Organisations to exchange their views, experiences and approaches. They discussed the circumstances in which individuals are entitled to complementary protection, best practices for dealing with such claims, and the status and entitlements of persons determined to be entitled to complementary protection. As

is detailed further in Chapter Four, the IGC process played a considerable role in the *de facto* harmonisation of policies and procedures relating to complementary protection in Participating States.

The other noteworthy issue was that of burden sharing (now more commonly referred to as 'burden and responsibility sharing' or simply 'responsibility sharing') in the international refugee protection régime. Although the question of burden sharing had been discussed in the IGC process from its very earliest days, 1998 saw the publication by the IGC Secretariat and the Danish Immigration Service of an in-depth *Study on the Concept of Burden Sharing*,[36] which explored the concept and ways in which it could be operationalised, and was accompanied by an 'IGC-supported meeting of participating States, interested States from all continents, international organisations, leading scholars, and non-governmental organisations discussing burden-sharing in an informal setting'.[37] It wasn't long until the insights of the report could be applied directly, with the IGC process playing a significant role in the Kosovo Humanitarian Evacuation Programme the very next year, as detailed in Chapter Four. In 2001, a follow-up to the study, *Responsibility Sharing: The Kosovo Humanitarian Evacuation Programme as a case study* documented the implementation of some of the ideas contained in the original report in response to the large refugee flows generated by the situation in Kosovo.[38]

## 1999: THE EUROPEAN UNION IS GRANTED COMPETENCE FOR MIGRATION AND ASYLUM, AND THE EUROPEAN COMMISSION COMMENCES IGC PARTICIPATION

A further key challenge that began to emerge in the late 1990s was the increasing importance of EU law and policy on topics of relevance to the IGC process. This was not the beginning of moves towards a borderless Europe or the European Union's involvement in migration, asylum and refugee issues, however. European States had acknowledged as early as 1974 the need for 'stage-by-stage harmonization of legislation affecting aliens and for the abolition of passport control within the Community' and had, at various points since, made legal agreements (most notably the Schengen Agreement and the Dublin Convention) or endorsed statements recognising the need for greater coordination—and even harmonisation of law and policy—on migration, asylum and refugee issues as the European integration project advanced. Because competence over these matters had not yet been granted to the European Union, however, the prospects for formal harmonization were limited.[39]

All of this was to change with the adoption of the Treaty of Amsterdam, which entered into force on 1 May 1999 and by which EU Member States decided to bring migration and asylum policy within the competence of the EU. At this time, IGC had sixteen Participating States—with Ireland having joined in 1998—and, as Diagram 1 shows, there was significant overlap between IGC and EU membership, with a large majority of States in either fora being a member of the other.

The key effect of the Treaty of Amsterdam (for present purposes) was that, following a five-

*Nowadays, the European Union has an extensive policy agenda and robust institutional apparatus when it comes to issues of migration and asylum policy. These policies and institutional arrangements did not develop overnight, however; in the beginning, the Commission was institutionally weak and had very little by way of policy in relation to these questions. There was no vision for what EU involvement in migration and asylum issues could or should look like.*
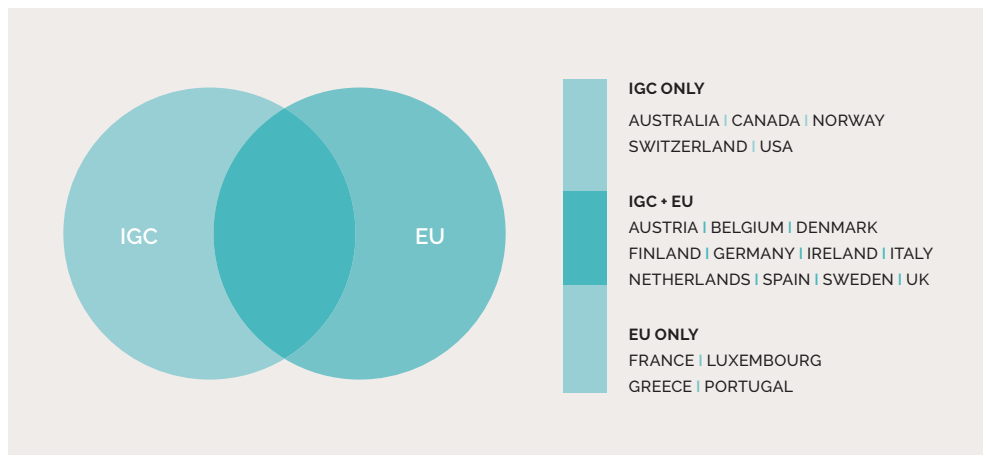
*In those early days, when we were taking the very first steps towards the development of what was not yet an EU migration policy, it was important for us to reach out to those who had much more experience than we did with these issues. IGC activities were a key forum for this to take place. I found IGC meetings to be an excellent place to have real conversations with States—particularly the United States, Canada and Australia, which did not participate in other European fora—and with UNHCR and IOM. Unlike other meetings, where we would read pre-prepared statements, IGC offered a real opportunity for interaction and exchange. It thus played an important role in assisting the early development of EU migration and asylum policy.*

**Jean-Louis De Brouwer**, former Director for Migration and Borders, Directorate General for Justice and Home Affairs of the European Commission

year transition period, primary responsibility for migration and asylum policy would reside with the EU and not its Member States. In particular, the Treaty of Amsterdam required the European Council to adopt, within five years, 'criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country' and 'minimum standards' on 'the reception of asylum seekers', 'the qualification of nationals of third countries as refugees', and 'procedures…for granting or withdrawing refugee status'.[40]

Shortly after the entry into force of the Treaty of Amsterdam, the European Council met in Tampere, Finland to discuss, amongst other matters, the establishment of a common EU policy on asylum and migration. The so-called 'Tampere Conclusions' recorded the agreement of Member States 'to work towards establishing a Common European Asylum System' ('CEAS') that was fully to respect international refugee law.[41] It was envisaged that the common system would comprise, at the outset, 'common standards for a fair and efficient asylum procedure', 'rules on the recognition and content of the refugee status', and 'measures on subsidiary [or 'complementary'] forms of protection'.[42] Furthermore, the Conclusions envisaged that, '[i]n the longer term, Community rules should lead to a common asylum procedure and a uniform status for those who are granted asylum valid throughout the Union'.[43]

As a result of these and subsequent developments, the informal exchange of views within the IGC increasingly took place alongside formal European structures, which naturally become a priority for the EU Member States participating in the IGC process. This process is explained

**Diagram 1** IGC & EU Membership, late 1990s



**IGC ONLY**

AUSTRALIA | CANADA | NORWAY
SWITZERLAND | USA

**IGC + EU**

AUSTRIA | BELGIUM | DENMARK
FINLAND | GERMANY | IRELAND | ITALY
NETHERLANDS | SPAIN | SWEDEN | UK

**EU ONLY**

FRANCE | LUXEMBOURG
GREECE | PORTUGAL

further in Chapter Four, where it is argued that, although the development of the Common European Asylum System drove significant *de jure* harmonisation in the asylum systems of the Participating States to which it applied, *de facto* harmonisation amongst IGC Participating States continued alongside—and, in fact, contributed to—the *de jure* harmonisation.

In recognition of the growing relevance of the European Union to the issues discussed in IGC activities, the question was raised of the appropriateness of the European Commission (the executive body of the EU) participating in the IGC in a manner akin to the participation of UNHCR and IOM. It had previously been represented in an observer capacity at selected IGC meetings and was regularly granted access to IGC information and statistics. Following a request by the Commission, IGC Participating States decided in 1999 to invite the Commission to become a Participating Organisation. Contemporaneous documents show that this decision was motivated by a desire on the part of Participating States (a) to have direct access to the Commission's thinking on migration and asylum issues, (b) to expose the Commission to the views, approaches and concerns of non-EU Participating States, (c) to avoid any incompatibility between the data collection and analysis undertaken in the IGC and EU contexts, and (d) to ensure that IGC discussions remained relevant to the majority of Participating States that were also EU members.

As we shall see below, the impact of the growing role of the European Union continued to be felt over the following years.

## EARLY 2000s: MIGRATION NEXUSES

The early 2000s were a period in which migration was increasingly understood as a cross-cutting issue that impacts on—and is impacted by—a wide range of other issues.

Experts began to speak of 'migration nexuses', in particular the 'migration-asylum nexus', the 'migration-development nexus', the 'immigration-integration-citizenship nexus' and—particularly after the attacks of 11 September 2001—the 'migration-security nexus'.

These trends in the outside world were mirrored within IGC. The Full Round of Consultations hosted and chaired by Australia in April 2001, for example, included extensive discussion on the nexus between asylum and migration. A paper prepared by the Secretariat, entitled *Understanding the Nexus between Asylum and Migration*, noted that:

> For IGC participating States, human mobility is both unavoidable and desirable: for most IGC participating States the number of transiting tourists, business travellers, and students each year far exceeds the number of citizens. For IGC participating States, international protection is also both unavoidable and desirable: all IGC participating States have asylum systems, fund UNHCR, offer refugee resettlement places, assist countries of first asylum, and intervene on a military, technical, financial or humanitarian level to attempt to resolve refugee-producing conflicts.

> It is the nexus between these two mandates which has proven [to be] the biggest challenge of the last decade. On the one hand, the existence of formal protection systems in IGC participating States almost inevitably attracts persons who are not in need of international protection but who hope to achieve either a permanent or temporary stay by applying for asylum. On the other, the regime of passports, visas, border controls and interceptions which are necessary elements of migration management make it more difficult for refugees to reach IGC participating States to apply for asylum.

The Secretariat's analysis went on to consider the impacts that protection systems can have on migration patterns, the impact that migration laws and policies can have on access to protection, and the interrelationships between legal immigration, irregular movement and asylum. The Secretariat's report was accompanied by papers prepared by Australia (concerning the use of cooperative strategies to address the challenges of irregular migration and the use of interim protection to maintain the international system of protection), Canada (on policies and procedures concerning asylum-seeking war criminals) and Denmark (on policies and procedures concerning asylum seekers who commit crimes whilst the refugee status determination procedure is ongoing).

The subsequent events of 11 September 2001 shifted IGC's focus towards the nexus between migration and security. At the Mini Full Round in November 2001, discussion focused on the numerous legislative and policy changes that had rapidly been made in the ten weeks since the attacks. These included changes in the areas of border control, registration, detention, tracking, data exchange, visa biometrics, information flow between security and immigration officials and the provision of extra resources to relevant authorities. Participating States and Organisations discussed the rules of exclusion contained in the Refugees Convention and their views on what the relevant exclusionary rules were for the complementary protection offered by other human rights instruments, which did not expressly address this question. They reaffirmed their commitment to their asylum and immigration systems, as well as the continuing need to facilitate legitimate travel and immigration, to balance security and

*I was initially scheduled to fly to Geneva to commence work as IGC Coordinator on 11 September 2001. The attacks on that day caused my trip to be delayed for about five days but, of course, the ramifications of that day on my time as Coordinator were much wider.*

*The attacks caused considerable reflection within IGC on the interrelationship between national security and migration, particularly in the first twelve to eighteen months. Whereas Participating States have had to deal for a long time with public perceptions of migrants as posing criminal and economic threats, it had now become all too easy for them to be seen as national security threats as well. In those first eighteen months, it was crucial for senior officials and subject-matter experts to have a safe space to discuss these challenges in an open and honest way, away from the emotionally-charged public debate. This really did help to move the domestic politics on these issues forward during a very difficult period.*
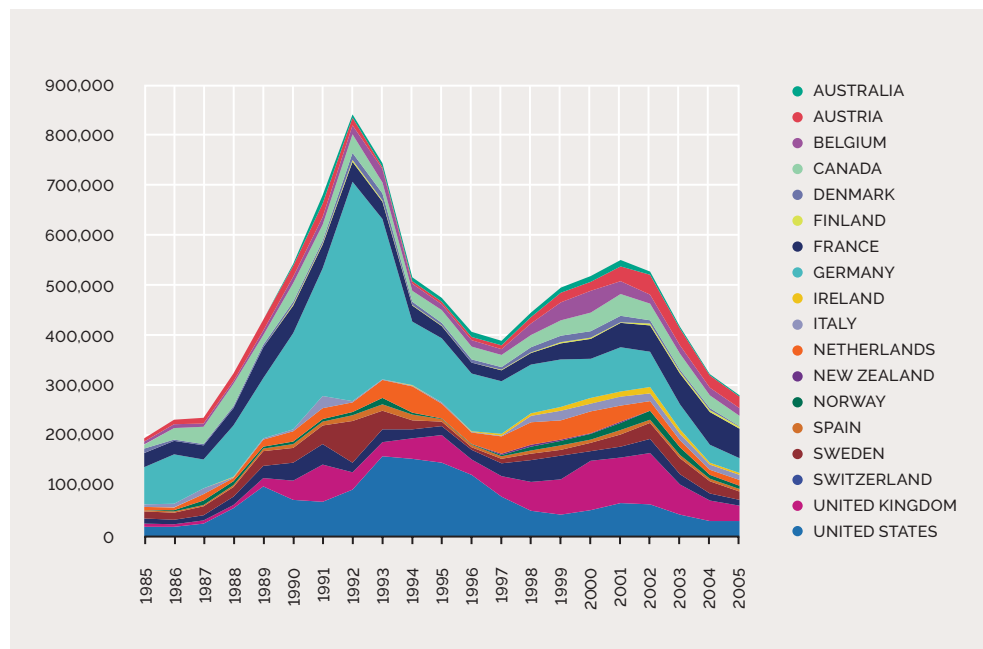
*Although the explicit discussions on security and migration subsided with time, those concerns have continued to drive activities within IGC, particularly the focus on identification and screening, as well as the questions of integration and dealing with migrants resistant to integration.*

**Gerry Van Kessel**,
Fourth IGC Coordinator,
2001-2005

protection issues, and to show the public that governments were in control and managing the process effectively.

To further cooperation in these areas, IGC convened a multidisciplinary workshop on immigration and security, as well as a specific workshop on the rules of exclusion contained in Article 1F of the Refugees Convention.[44] (IGC's multidisciplinary workshops are explained in further detail in Chapter Three.)

The focus on security did not slow the ever-increasing understanding of migration as a complex and cross-cutting issue, however. Aided by the fact that asylum numbers were falling in Participating States (see Chart 7), discussions within IGC expanded significantly in their focus in the early 2000s. The 'traditional' IGC topics of asylum procedures, return, smuggling, technology and country of origin information remained high priorities, but were joined by questions relating to immigration (including labour migration), nationalisation and citizenship, resettlement, registration and processing in the region. In 2001, for example, IGC started to collect statistics on migrants as well as asylum seekers. Working groups and workshops concerning issues such as return, data and technology (particularly biometrics) increasingly discussed all categories of entrant, given that these disciplines are not inherently limited to asylum and refugee issues.

**Chart 7** Asylum applications in
IGC Participating States, 1985-2005



AUSTRALIA
AUSTRIA
BELGIUM
CANADA
DENMARK
FINLAND
FRANCE
GERMANY
IRELAND
ITALY
NETHERLANDS
NEW ZEALAND
NORWAY
SPAIN
SWEDEN
SWITZERLAND
UNITED KINGDOM
UNITED STATES

**Source** IGC

To give focus to this expanding scope of topics under consideration, a practice emerged under the Australian Chair in 2000-2001 of having the chairing State select a theme for the year's Consultations to serve as a focus for discussions, both at senior officials' meetings and in relevant working groups. The 'Chair's Theme' is typically related to contemporaneous domestic or international developments. The chairing State typically hosts a workshop to explore its theme, embarks on an in-depth research project and/or produces a report for the benefit of Participating States.

One problematic consequence of the expanding scope of IGC's work, however, was the possibility that the process would lose focus, and that the 'communications gap' referred to above (which motivated the establishment of the Mini Full Round in 1997) would again widen. In order to reduce these possibilities, Participating States decided in 2002 to establish a Steering Group to examine discussions at senior officials' meetings and use them to set priorities and directions for practitioner-level activities, especially the working groups and workshops. The purpose of the Steering Group was to solicit comments on activities of the working groups and workshops, to discuss proposals for new workshops, to identify any issues for follow-up, to allow the next Chair to outline the work plan and priorities for the coming year, and to consider administrative and financial issues; one reflection described the purpose of the Steering Group as being to 'look up, look down, and pull the threads together'. Although meetings of the Steering Group were initially held separately from all

other meetings, it was decided in 2008 that meetings of the Steering Group should be held either during or immediately after senior officials' meetings. The matters discussed by the Steering Group were merged into the agenda for senior officials' meetings in 2013.

## EARLY AND MID-2000s: FORUM PROLIFERATION AND THE FIRST EUROPEAN ASYLUM DIRECTIVES

In addition to migration nexuses, another major phenomenon affecting the work of IGC early in the new millennium was the proliferation of international fora and initiatives dealing with asylum, refugee and migration issues, either as their sole focus or incidentally to their primary focus. Although this phenomenon had been emerging for some time—with the 1994 International Conference on Population and Development in Cairo being an important milestone—its pace quickened significantly in the early and mid-2000s as it became, in the words of one such initiative, 'increasingly recognized that the effective management of international migration will only be achieved through a comprehensive and balanced approach to migration, attained through regional and international dialogue and cooperation'.[45]

IGC activities frequently discussed the expanding range of fora and initiatives being created in response to this realisation; the Mini Full Round meeting held under the Norwegian Chair in November 2003, for example, received briefings from:

- UNHCR concerning:
  - the latest developments in its 'Convention Plus' initiative, 'an international effort initiated and coordinated by UNHCR…to improve refugee protection worldwide and to facilitate the resolution of refugee problems through multilateral special agreements';[46] and
  - the upcoming High Commissioner's Forum;
- IOM concerning:
  - the activities of the recently-established Geneva Migration Group (now called the Global Migration Group), a grouping of international agencies that 'aims to promote the wider application of all relevant international and regional instruments and norms relating to migration, and the provision of more coherent and stronger leadership to improve the overall effectiveness of the international community's and United Nation's policy and operational response to the opportunities and challenges presented by international migration';[47] and
  - the increased use of sessions of the IOM Council to discuss migration trends and policy responses relating to a selected theme;
- The European Commission concerning the proposal for an EU agency for the management of external borders, EU directives on the refugee definition and asylum procedures, and other developments relevant to migration, asylum and refugees;

- Switzerland concerning the Berne Initiative, 'a State[]-owned consultative process with the goal of obtaining better management of migration at the national, regional and global level through enhanced cooperation between States';[48]

- Australia concerning:

   - the Bali Process, a Regional Consultative Process that 'aims to address practical issues related to smuggling, trafficking and related transnational crime';[49] and

   - the Asia-Pacific Consultations on Refugees, Displaced Persons and Migrants, a now-dormant Regional Consultative Process for the Asia-Pacific region;[50]

- The Executive Director-designate of the Global Commission on International Migration concerning the mandate of the recently-announced Commission and the planning underway for its future work; and

- The International Labour Organization concerning planned discussions at the 2004 International Labour Conference concerning the impact of globalisation on migration, policy efforts for more orderly migration and the protection of workers.

In addition, the early 2000s saw the founding of IOM's International Dialogue on Migration, as well as the coming into force of two Protocols to the United Nations Convention against Transnational Organized Crime—one on trafficking in persons, the other on the smuggling of migrants—which gave the Conference of the Parties to the Convention a mandate to discuss trafficking and smuggling issues.

As a result of the proliferation of fora discussing matters related to migration, asylum and/or refugees, Participating States and Organisations began to use IGC meetings to monitor developments in other arenas, to share views on them and to examine the role that they played in the emerging 'global migration governance framework' (as it was described in the introductory chapter). This continues to this day.

A good example of this can be found in the discussions surrounding UNHCR's 'Convention Plus' initiative, referred to above. UNHCR first briefed IGC participants on the initiative at the Mini Full Round meeting in December 2002, where the discussion was focused on the form that the initiative would take and the results that it was seeking to achieve. Welcoming the initiative, Participating States gave their views on the key priorities they believed it should pursue and the way in which it should be organised. At the Full Round of Consultations in April 2003, this conversation continued, this time with the participation of High Commissioner Lubbers.

As the initiative gathered pace, so did the discussions about it between UNHCR and Participating States in IGC meetings. Under the Norwegian Chair in 2003-2004—during the course of which New Zealand became a Participating State—UNHCR discussed the progress that had been made under the three pillars of Convention Plus that had by then emerged, namely secondary movements, strategic use of resettlement and the targeting of development aid.

Under the Canadian Chair in 2004-2005, the IGC agenda was shaped to facilitate discussions on topics that were of relevance to Convention Plus. At the Mini Full Round for example, there were extensive discussions about developments in the field of 'protection in the region', which was explicitly linked to the 'secondary movements' pillar of the initiative. Moreover, the Canadian Chair's Theme—'New Partnerships for Durable Solutions'—sought to 'feed into the general discussions in Convention Plus' by:

- Developing a common understanding of policy concepts and current initiatives concerning durable solutions;

- Identifying the roles of existing partnerships in discussions related to the search for and implementation of durable solutions;

- Identifying opportunities to create new partnerships and to enhance existing partners in the search for durable solutions;

- Developing thinking on the whole-of-government approach to maximise the comprehensive and strategic use of durable solutions; and

- Exchanging views on best practices in identification and engagement with partners on how to best achieve a durable solution or the strategic combination of durable solutions for those in need of protection.

UNHCR 'welcomed the workshop on partnerships and durable solutions, the directions it took as well as the outcomes'.

As is discussed in greater detail in Chapter Four, IGC meetings were also used during this period to discuss the Global Forum on Migration and Development and its predecessor processes (the Global Commission on International Migration and the 2006 High-Level Dialogue on International Migration and Development).

Having a far greater impact on IGC activities than any other external development at the time, however, were those taking place in the European Union. Alongside the decision, discussed above, to establish a Common European Asylum System, a number of new European institutional structures were established to discuss migration and asylum, including the High Level Working Group on Asylum and Migration, the Strategic Committee on Immigration, Frontiers and Asylum, and the General Directors' Immigration Services Conference.

The EU also promulgated, between 2000 and 2005, its first round of secondary legislation on asylum. This first round comprised:

- The Eurodac Regulation, which establishes a database of asylum seekers' fingerprints;

- The Reception Conditions Directive, which deals with the access that asylum seekers have to housing, food, healthcare and employment whilst their claim is being considered;

- The Dublin Regulation, which deals with the allocation for responsibility for examining a claim for asylum amongst Member States (though its predecessor agreement, the Dublin Convention, was concluded in 1990 and entered into force in 1997);

*IGC meetings aren't negotiations. But when you meet someone that you know from IGC meetings in a negotiation context—as I often did during my time at the Permanent Representation of the Netherlands—it works much better. The trust and confidence that has been generated from your IGC interactions makes everything go much more smoothly.*

**Alexander Sorel**, European Asylum Support Office, Formerly of the Netherlands' Ministry of Justice and the Permanent Representation of the Kingdom of the Netherlands to the European Union

**Seconded to the IGC Secretariat, 1993-1995**

- The Qualification Directive, which specifies the grounds on which international protection should be given, as well as the content of that protection; and
- The Asylum Procedures Directive, which set out the procedures for making a claim for asylum and the rules to be followed in assessing it.
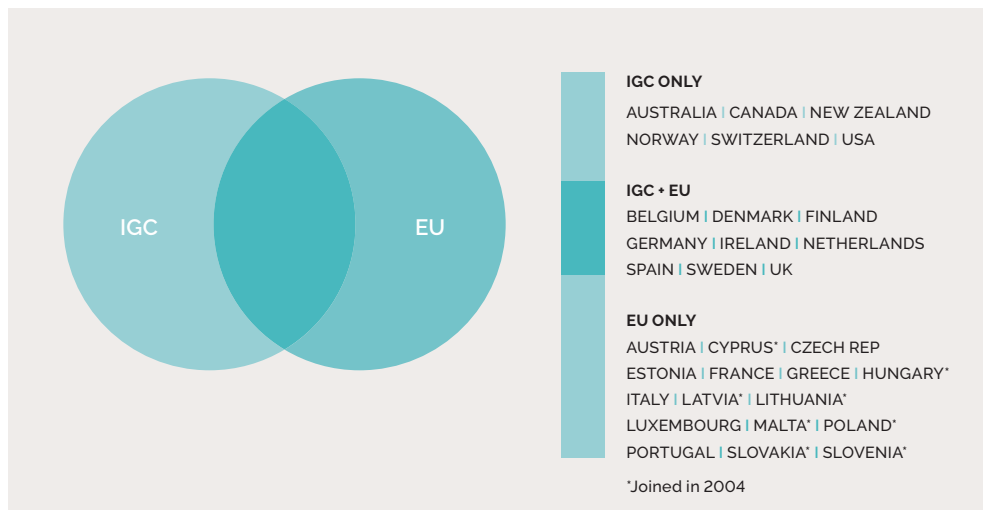
This was a considerable development for European Union Member States. No longer did they have free reign in the interpretation and fulfilment of their obligations under international refugee law and related bodies of law; rather, this freedom was constrained by the five pieces of secondary legislation.

Given that IGC Participating States who are also EU members are legally bound to follow EU law, they have a greater immediate stake in EU negotiations and other EU activities related to asylum and migration than they do in IGC activities. As a result, the adoption of these directives and regulations (and the negotiations leading up to them) caused a shift in the attention of the affected Participating States away from IGC and towards the European Union.

This did not render the IGC process irrelevant to EU Member States, however; the IGC process remained relevant because IGC's offering to Participating States was different to the EU's in five key ways.

First, formal negotiation formed and forms no part of IGC activities. As shall be explored further in the next chapter, this fundamentally changes the nature of the discussion and the relationship between the participants, and allows a much freer exchange of views than occurs in a negotiation context.

Secondly, and particularly following the accession of ten new States—mostly from Eastern Europe—to the European Union in 2004, IGC Participating States are, as a group, much more like-minded on migration, asylum and refugee issues than are the Member States of the

**Diagram 2** IGC & EU Membership (2005)



IGC

EU

**IGC ONLY**
AUSTRALIA | CANADA | NEW ZEALAND
NORWAY | SWITZERLAND | USA

**IGC + EU**
BELGIUM | DENMARK | FINLAND
GERMANY | IRELAND | NETHERLANDS
SPAIN | SWEDEN | UK

**EU ONLY**
AUSTRIA | CYPRUS* | CZECH REP
ESTONIA | FRANCE | GREECE | HUNGARY*
ITALY | LATVIA* | LITHUANIA*
LUXEMBOURG | MALTA* | POLAND*
PORTUGAL | SLOVAKIA* | SLOVENIA*

*Joined in 2004

European Union. The ranks of IGC Participating States also include like-minded States that are not EU Member States. This dynamic allows discussion within the IGC to be founded on a common set of experiences not present across the EU. (Diagram 2 compares IGC and EU membership in 2005.)

Thirdly, Participating States pursued within the IGC process a range of topics that did not—at this time—form part of the EU asylum and migration *acquis*, such as issues concerning trafficking and smuggling, country of origin information, and return.

Fourth, the IGC process had something to offer to EU Member States even on topics that were addressed by EU law: as is detailed further in Chapter Four, IGC meetings were regularly used to discuss how vague provisions of EU law should be interpreted and operationalised.

Finally, the IGC Secretariat pursued—and continues to pursue—a deliberate strategy of avoiding duplication with other fora (including, but not limited to the European Union) that involves staying abreast of the topics and priorities of those other fora, inviting representatives of other organisations to participate in relevant IGC meetings, and leveraging IGC's unique multi-regional makeup.

Together, these factors meant that there were a number of areas in which IGC activities could add value for EU Member States, even as EU law began to restrict the freedom that they previously enjoyed in setting asylum and refugee policy. The fact that EU Member States continued to find value in IGC activities is supported by the fact that the number of EU Member States participating in the IGC process is the same now as it was when the first round of EU asylum legislation was promulgated.

*In the early days, IGC really was in a league of its own as a mechanism for cooperation between participating states on asylum and refugee issues. The only real alternative was the UNHCR Executive Committee, and it was of a completely different nature.*

*Over the course of the last three decades, however, an enormous number of other fora have emerged for the discussion of these issues. These have included other Regional Consultative Processes (including other RCPs that IGC Participating States also participate in), multilateral processes such as the Global Forum on Migration and Development, and—of particular relevance to IGC—the European Union once it started to take on issues of migration, particularly asylum.*

*These external changes forced the IGC participating states and the Secretariat to think long and hard about the value of the IGC process and the ways in which it could best respond to the needs of participating states and organisations. This was not easy; as EU Member States paid increasing attention to asylum developments there, for example, participation rates and the level of representation in IGC meetings fell. There was also a decline in the consistency of representation, which had been a key element of the atmosphere of trust and confidence that had been developed at IGC meetings.*

*These developments also presented opportunities, though. The growing role of the European Union in asylum matters gave IGC the opportunity to look at migration much more broadly, a trend that was solidified following the Strategic Review in 2005. Likewise, the proliferation of multilateral fora for the discussion of migration issues gave IGC the opportunity to play a role in allowing its like-minded participating states to discuss their views on the major issues being considered elsewhere.*

**Mike Bisi,**
Deputy Coordinator,
2000-2009
Member of the IGC
Secretariat, 1992-2009

## 2005: STRATEGIC REVIEW LEADS TO BROADENED HORIZONS

Although, as previously outlined, changes were made to the IGC process in response to the shifting priorities of Participating States, the evolving understanding of migration and the proliferation of migration-related fora, it became clear in the mid-2000s that the global discussion on migration, asylum and refugee issues—as well as IGC's role in that discussion—was undergoing such fundamental change that it was time to conduct a full review of IGC's activities and working methods with a view to ensuring that it remained a useful forum for Participating States and Organisations.

Thus, in June 2004 Canada—as incoming Chair—undertook to use its term to conduct a strategic review of IGC.* The stated purpose of this undertaking was to assess the asylum, refugee and migration issues that Participating States and Organisations were facing and were likely to face in the following years and 'to determine how the IGC can assist them in better responding to these issues'. Noting that 'the original concerns that drove the IGC', especially asylum and related issues, were 'still compelling', the Canadians suggested that IGC might wish 'to explore deeper parts of its mandate that have taken on greater importance'. The highest priority was to be given to 'ensur[ing] that IGC remains relevant to evolving migration challenges and to facilitate greater linkages between senior and expert levels, while respecting participants' resource commitments'.

At a Strategic Review Workshop in January 2005—which was attended by Participating States, IOM and UNHCR—a number of key themes emerged that were to form the basis of a shared vision of the future of IGC. The first and most significant of these was a desire on the part of Participating States to expand IGC's traditional focus on asylum and refugee policy to include broader issues of migration. This expansion was driven in part by an increasing recognition of the complexity of migration and the impacts that it has on society, the fact that asylum application numbers had fallen in IGC Participating States to their lowest number since 1987 (see Charts 7 and 8), as well as the fact that labour market shortages were driving a need for skilled migration that had previously not existed in many Participating States.

The second major issue was that of security. As mentioned above, the attacks of 11 September 2001 had a profound effect on attitudes towards migration amongst members of the publics of Participating States. As the Strategic Review recognised:
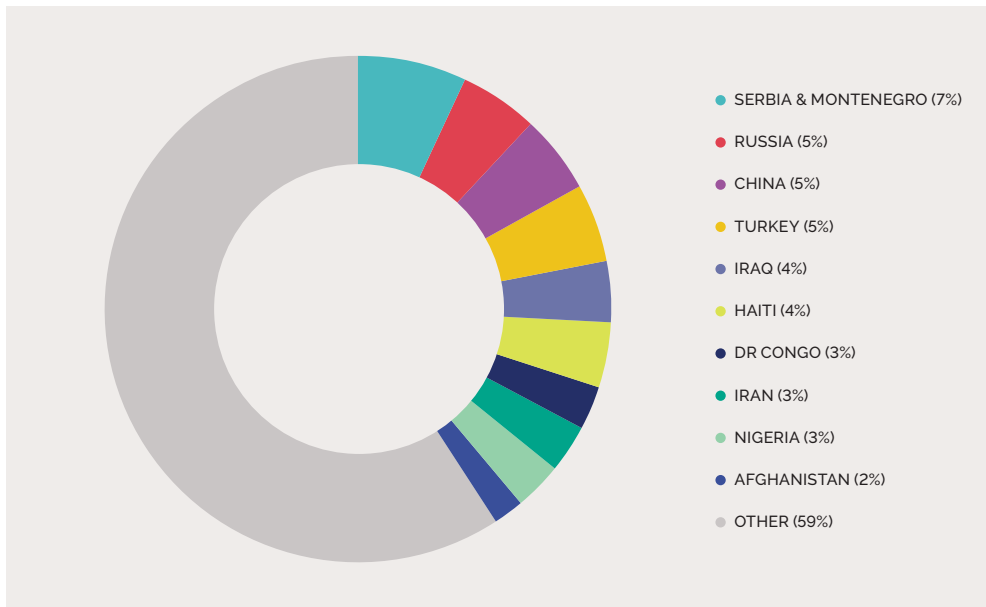
> Security issues related to border and admission management will continue to engage IGC states especially as global migration numbers are expected to grow. There was a recognition [during the Strategic Review process] that, while public security challenges are ongoing, state responses involving safety matters may affect public confidence and tolerance for migration, refugee and asylum systems.  States may wish to focus on closer cooperation, information sharing and technology, including biometrics, to help address these issues in a comprehensive manner.

Finally, there was a desire on the part of Participating States to break down 'silos' (both between Participating States and between different departments within their governments); in particular, Participating States wanted to identify issues that cut across multiple topics of relevance to IGC, to adopt a multidisciplinary approach to discussing those issues, and to ensure 'whole-of-government' participation in IGC activities.

In May 2005, the Full Round of Consultations in Whistler, Canada endorsed the outcomes of the Strategic Review. Reaffirming the importance of IGC as 'a flexible, informal, confidential

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* The Strategic Review had initially been suggested by Norway during its term as Chair, which immediately preceded Canada's.

**Chart 8** Major countries of origin of asylum applicants
IGC Participating States, 2005



- SERBIA & MONTENEGRO (7%)
- RUSSIA (5%)
- CHINA (5%)
- TURKEY (5%)
- IRAQ (4%)
- HAITI (4%)
- DR CONGO (3%)
- IRAN (3%)
- NIGERIA (3%)
- AFGHANISTAN (2%)
- OTHER (59%)

**Source** IGC

and responsive structure that addresses the needs of senior officials and experts', Participating States adopted six recommendations:

1. The IGC should support greater emphasis on migration and integration in its meetings as well as information/data collection and reports, consistent with the emerging interests of States and the existing IGC mandate.

2. Refugees and asylum should remain a core interest. The IGC should retain its existing strengths, in particular, the IGC's strong capacity to exchange information on asylum and refugee issues.

3. The IGC should identify and integrate cross-cutting, multi-disciplinary issues (i.e. security, intelligence, enforcement and migration flows) when revisiting working group and workshop structures.

4. The IGC must remain connected to the evolving international agenda where migration, asylum and refugee issues are taking more prominence.

5. The IGC Secretariat should explore ways of increased cooperation with Participating States and International Organizations in capturing and reporting data on migration.

6. The IGC should facilitate a "whole-of-government" approach to its activities, where appropriate, to ensure an even more productive dialogue within the IGC process through broader participation by relevant ministries.

*My time as IGC Coordinator was one of significant transition as the process' mandate expanded to formalize the consideration of issues of immigration and integration. Prior to the Strategic Review, which was conducted the year I arrived in Geneva, asylum was the core focus of IGC discussions. Broader issues were certainly considered, but this tended to be in an ad hoc manner at one-off workshops. Following the Strategic Review, these issues became very much part of IGC's institutional framework.*

*The expanded mandate was a positive development for Participating States and Organizations. Whilst asylum procedures had become largely harmonized—thanks in no small part to IGC—there were significant differences in immigration and integration policies and procedures. In particular, the European Participating States were very keen to learn from the traditional countries of immigration— the United States, Canada, Australia and New Zealand—about their experiences of building multicultural societies with comparatively high percentages of foreign-born residents. Fortunately, this was at a time when asylum was not a particularly 'hot' topic, and this created the space for officials to consider broader issues.*

*This was also the time when migration rose up the international political agenda, as reflected by the creation of bodies such as the Global Commission on International Migration and the Global Forum on Migration and Development. IGC's expanded focus meant that it was well placed to discuss these developments, and 'Developments in Other Fora' became a recurring agenda item.*

**Scott Busby**,
Fifth IGC Coordinator,
2005-2009

In order to best give effect to these recommendations, Participating States decided to refocus the work of IGC around three clusters of issues:

- Migration, which concerned 'all aspects of legal migration e.g., family reunion, labour migration, business and entrepreneurial migration, students, integration [including issues of social cohesion, language and credential recognition] and naturalization';

- Asylum and Refugees, concerning 'all aspects of domestic refugee protection including asylum processes and decision-making, temporary protection, exclusion and country of origin information[, as well as] all aspects of international refugee protection including protection in the region and durable solutions'; and

- Admission, Control and Enforcement, namely 'all aspects of managing the admission of persons as well as internal enforcement and control including visa

policy and operations, admission management, intelligence, anti-smuggling, compliance and fraud prevention and returns'.

These three clusters were to form the basis of specific policy discussions amongst senior officials at the Full Round and Mini Full Round meetings, and the practitioner-level working groups would be restructured to reflect the new foci. The Working Group on Asylum—which had been established in 2003—expanded its mandate to include all matters covered by the Asylum and Refugees cluster (and was re-named the Working Group on Asylum and Refugees), with the exception of country of origin information. A new Working Group on Admission, Control and Enforcement was established to address all issues of concern to that cluster; it replaced the previous Working Groups on Return, and Smuggling and Trafficking. The Working Groups on Data, Technology and Country of Origin Information were to remain, but their mandates were expanded so as to encapsulate and reflect the expanded focus of the IGC to include migration and integration issues. They were thus conceived of as cross-cutting working groups whose work sat astride the clusters. The Strategic Review also concluded that IGC's multidisciplinary workshops on specific themes or countries should remain, at the rate of approximately two per annum.

As for the Migration cluster, the Strategic Review concluded that issues that fell within its scope would become the subject of greater emphasis across all IGC's work, but left to a later date the decision of whether it would become the subject of its own working group. After a series of standalone meetings concerning immigration and integration, Participating States decided at the Full Round of Consultations in Amsterdam in May 2006 to establish a Working Group on Immigration and Integration to commence work in 2007. The growing importance of this work to the IGC is reflected not only in the fact that this working group was established, but also in the fact that it was divided into two working groups in 2008, one for immigration and the other for integration.

## MID- AND LATE 2000s: A FOCUS ON WHOLE-OF-MIGRATION APPROACHES

In the years immediately following the Strategic Review, IGC activities adjusted to the broader scope of the process' focus. The Working Group on Country of Origin Information, for example, examined how such information could best be used to inform and contribute to governmental activity on migration outside the asylum and refugee context, whilst the Working Group on Data explored the types of migration-related statistical information that would be most useful to Participating States. Perhaps the clearest manifestation of this broader scope, however, can be found in the annual themes selected by the chairing State to guide activities at the senior officials' and practitioners' levels.

In 2005-2006, the Netherlands decided to use its time as Chair to pursue the theme 'Whole of Government Approach: Towards a comprehensive approach to asylum, refugees and migration'. Recognising that the expanded focus of IGC since the Strategic Review meant that—more than ever—its discussions implicated a large number of governmental

portfolios, it examined ways for the different responsible departments or ministries to work together in finding common solutions and achieving consistent and well-coordinated policies. Given that, as discussed above, the issue of migration and development was high on the international agenda at the time, it is unsurprising that cooperation between policymakers in the fields of migration, development assistance and humanitarian relief was given a prominent place in discussions.

The following Chair, Ireland, chose as its theme 'Designing Effective Immigration Systems' and produced a comprehensive report on the theme. This involved consideration of all 'essential elements for developing immigration systems and policies in an internationally competitive economic environment or globalized world'.

Likewise, Sweden—the Chair for 2007-2008—decided to focus on 'Promoting Circular Migration' as a follow-up to the Irish theme. Noting that circular migration can have benefits for sending and receiving countries and the migrants themselves, activities undertaken pursuant to this theme examined the policy objectives of circular migration, as well as its barriers and facilitators. After focusing on circular migration during its time as IGC Chair, the Government of Sweden established an Independent Parliamentary Committee on Circular Migration and Development to examine the issue further. Circular migration was a key topic when Sweden chaired the Global Forum on Migration and Development in 2013-2014 and, in 2014, the Swedish parliament enacted a number of measures aimed at facilitating circular migration. Some of these measures, including the extension of the period of time for which persons with temporary or permanent residence permits can be outside Sweden before losing their permit, were matters that had formed part of the Chair's Theme discussions.

Finally, in 2009-2010, Finland chose the first integration-focused Chair's Theme, citizenship. The selection of this theme was motivated by contemporaneous reforms being made to the Finnish Nationality Act and the attendant national debate on citizenship and its meaning, and focused on the linkages between immigration, integration and citizenship. The theme aimed to allow Participating States to share and understand one another's approach to citizenship and its meaning and address major questions concerning citizenship, the meaning of belonging and identity, and the different notions of citizenship—active, civic or earned—used in IGC Participating States.

One challenge that arose as a result of the adoption of the 'whole-of-migration' approach, however, was that of attracting the appropriate representatives from Participating States to IGC meetings. As noted, the new approach took in the responsibilities of a number of government departments, many of which had not previously been involved in IGC activities, which had focused on issues (like asylum) that were not within those departments' remits. Finding the right people in the right departments and convincing them of the value of participating in IGC meetings sometimes proved difficult for some Participating States. This was particularly the case in relation to the Working Groups on Immigration and Integration during their early stages.

## LATE 2000s AND EARLY 2010s: THE 'GREAT RECESSION' AND THE ECONOMY-MIGRATION NEXUS

Commencing in 2007—the year in which Greece became a Participating State—the so-called 'Global Financial Crisis' wrought havoc on the global economy and led to the largest economic contraction since the end of the Second World War, dubbed by some the 'Great Recession'. It caused stocks to fall drastically, banks to collapse, trade and industrial production to fall, and unemployment to rise.

In this context, Participating States and Organisations used the IGC process to examine and seek to understand how migration and the economic crisis would affect one another. A key vehicle for this examination was, again, the annual theme selected by each Chair. In 2008-2009, Switzerland chose to focus on 'Cooperation on Skilled Labour Migration: Towards Policy and Management Coherence'. The workshop held on this theme in May 2009 heard from experts that the post-crisis economy would be characterised by, *inter alia*, higher levels of productivity and the commercialisation of new market sectors. Filling shortages in so-called 'knowledge jobs' would be key to recovery, though there was also a likelihood of shortages in skilled manual trades. Participants discussed strategies for promoting access to their labour markets, selection and processing, retention, and inter-State cooperation.

In 2012-2013, New Zealand used its year as Chair to examine 'The Role and Influence of Employers in Migration'. The theme examined areas of common interest between employers and governments that can give rise to opportunities for cooperation, but also highlighted those points where the interests might diverge. The role of employers in settlement and integration—especially in relation to asylum seekers—was a key focus, as was the consideration of strategies to adopt when employers exploit migrant workers, seek to fill jobs against the overall immigration plans of governments or knowingly employ illegal workers.

The following Chair—Denmark—chose as its theme 'Increasing economic and trade relations with emerging economies: Consequences for immigration systems', the aim of which was to contribute to a better understanding of the changing role of emerging economies as new global and regional migration hubs, including an analysis of the possible related implications for migration to Participating States. To this end, the Government of Denmark commissioned a report from academics based at the University of Copenhagen and Oxford University that took the Chair's Theme as its title, and brought government trade officials to the table for discussions about the linkages between migration and trade.

## EARLY 2010s: ESTABLISHMENT OF THE EUROPEAN ASYLUM SUPPORT OFFICE AND THE RECAST EUROPEAN ASYLUM DIRECTIVES

One of the biggest institutional developments impacting on the work of IGC in recent years has been the establishment of the European Asylum Support Office ('EASO') in 2011. Established by EU regulation, EASO's role is 'to help to improve the implementation of the Common European Asylum System…to strengthen practical cooperation among Member States on

asylum and to provide and/or coordinate the provision of operational support to Member States subject to particular pressure on their asylum and reception systems'.[51] Its duties include promoting best practices in asylum matters, gathering, promoting and analysing country of origin information, providing operational support and acting as a mechanism to support information exchange and coordination between EU members on asylum matters.

Robert Visser, EASO's first Executive Director and a former IGC Chair, briefed Participating States and Organisations on the newly-established agency's priorities and objectives at the 2011 Full Round of Consultations. Introducing EASO as a centre of expertise for operational support on all aspects of the asylum process (including claims, mixed flows, rejections and return) and as an instrument to build the Common European Asylum System and enhance European solidarity, Mr Visser set out EASO's two-year plan to assist Greece to reform its asylum system. EASO has continued to send representatives (including the Executive Director) to IGC meetings to provide briefings and contribute to discussions.

Alongside this major institutional development came corresponding legal developments, with the recasting of each of the five pieces of EU secondary legislation (referred to above) in the three years following the establishment of EASO. The recast procedure, which was undertaken with the aim of furthering the harmonisation project, also recognised that 'even after some legislative harmonisation at [the] EU level has taken place, a lack of common practice, different traditions and diverse country of origin information are, among other reasons, producing divergent results'; this, indeed, was recognised by the European Commission as a 'critical flaw'.[52]

It had been identified as early as 2004, in the Hague Programme of the European Council, that the second phase of the development of the Common European Asylum System would be 'the establishment of a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection',[53] an ambition that went well beyond the 'minimum standards' approach of the Treaty of Amsterdam and the first round of directives. This approach of 'common' or 'uniform' standards—rather than 'minimum' ones[54]—was solidified by the adoption of the Treaty of Lisbon, which entered into force in 2009 and which mandated the establishment of 'uniform' statuses of asylum and subsidiary protection and 'common procedures' for the granting or withdrawal thereof.

Whilst these developments advanced considerably the harmonisation of approaches to asylum and refugee issues for EU Member States, the differences of form and substance between the European Union and IGC (as discussed above) remained. The IGC Secretariat also continued actively to pursue a strategy of finding niches and avoiding duplication with other, larger actors; in 2013, for example, it established with EASO a 'framework for enhanced cooperation' whereby both organisations would 'endeavour to cooperate closely in the field of asylum and international protection, taking into consideration the interests of the EU, the EU Member States and associated countries and the IGC Participating States which are neither Member States of the European Union nor associated with EASO'.

*I had participated extensively in the activities of IGC—as a representative of the Dutch government—before taking on the position of Executive Director of the European Asylum Support Office when it commenced operations midway through 2011. I found IGC activities to be invaluable; IGC is, for me, a place where officials can come together to talk about issues that are too politically sensitive to be spoken about publicly, and to look together for solutions. In fact, I tried to emulate some of the elements of IGC's approach in establishing EASO's ways of working (though of course there are important differences, given EASO's different mandate). The use of data and statistics was an example of this; I had seen the way in which participating states used IGC data and knew that good comparative statistics would also be key to EASO's success. In this line of work, not having good statistics means you don't know what is happening.*

*I was also very keen to establish a strong link between EASO and IGC, because I knew that the exchange of information and assistance would benefit both organisations. This was particularly so for EASO in its early days, when it had to get its systems up and running very quickly. Fortunately for me, EASO's Management Board—including the representatives of EU Member States that do not participate in IGC—agreed on the importance of cooperation between the two organisations and consented to my pursuing deeper ties.*

*For EASO, IGC participation is not just important as a forum for interaction with those EU Member States who participate. Just as crucial is the access that it gives EASO to the thinking of non-EU countries on issues of asylum, and to observe and participate in the interactions between IGC participating states and UNHCR, IOM and the European Commission.*

**Robert Visser**,
Founding Executive Director,
European Asylum Support Office (EASO)

## EARLY AND MID-2010s: LARGE-SCALE MOVEMENTS RETURN, AND IMMIGRATION BECOMES HIGHLY POLITICISED AGAIN

In the last five years or so, asylum and refugee issues have again come to the fore in the public debate in IGC Participating States. This has been driven largely by the surge in asylum applications being made by persons from countries affected by the so-called 'Arab Spring' and its aftermath, most notably the conflict in Syria and Iraq, as well as the ongoing instability in Afghanistan. These countries together produced 47% of asylum applications made in IGC Participating States in 2015 (see Charts 9 and 10). By way of comparison, the top three countries of origin together produced 32% of applications in IGC Participating States in 1985, 39% in 1991, 23% in the period 1994-1997 and just 17% in 2005 (see Charts 2, 4, 6 and 8 above).

*The major change that the IGC grappled with during my time as Coordinator was the continued expansion of the role of the European Union in issues of migration, asylum and refugees, particularly through the establishment of the European Asylum Support Office.*

*Whilst this expansion has changed the role of IGC, it has certainly not rendered it redundant. The two organisations are very different: the IGC is an informal, confidential and—importantly—very flexible forum for discussion, whereas the EU is a supranational organization with extensive law-making powers. There are also clearly big differences in the membership of the two organizations. The IGC is much smaller and, although its participating states are located in North America and Australasia in addition to Europe (and of course include non-EU members Norway and Switzerland), they are probably more like-minded when it comes to migration, asylum and refugee issues than are European Union Member States, taken collectively.*
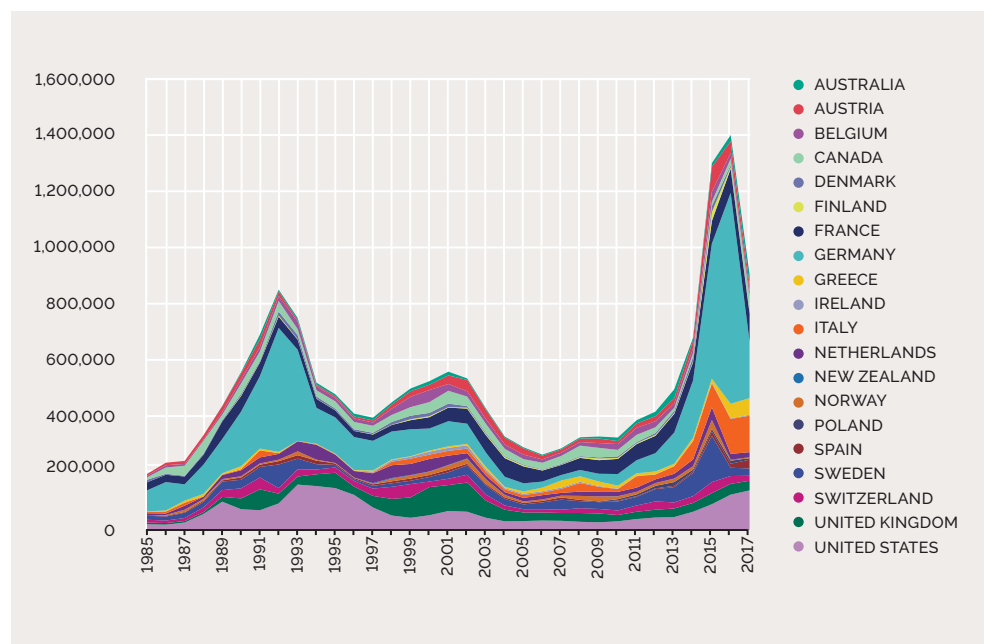
*Because they are so different, IGC and the EU can play complementary roles. The IGC process exposes non-EU states to developments within the EU, and EU member states and the Commission itself can learn from what is happening elsewhere. This is particularly true in relation to integration policy, which the North Americans and Australasians have a much longer history of. Whilst there can be no one-size-fits-all approach to integration, understanding the experiences of others can be of enormous assistance when formulating your own policy.*

**Friedrich Loeper**,
Sixth IGC Coordinator,
2009-2013

The first detailed discussion of the migration consequences of these developments was at the Full Round of Consultations in 2011, chaired by the United States. In her keynote address—entitled 'Democratic Reform, Civilian Protection, and the Formulation of Migration Policy'—Samantha Power (who was, at the time, Senior Director for Multilateral Affairs and Human Rights at the National Security Council, before becoming United States Ambassador to the United Nations) addressed developments in the Arab world, which also featured prominently during plenary discussions on recent developments impacting on migration-related issues in Participating States.

At the Mini Full Round later in 2011, participants received extensive briefings from IOM, UNHCR and the European Commission on the unfolding situation in the Middle East and North Africa. Libya and surrounding countries were the priority at that stage, but mention was also made of looming problems in Syria, Iraq and Yemen.

In September 2012, IGC hosted a two-day Workshop on Syria to allow participants to exchange information on the prevailing situation, exchange views on future outflows from Syria and

**Chart 9** Asylum applications
in IGC Participating States, 1985-2017



Legend:
- AUSTRALIA
- AUSTRIA
- BELGIUM
- CANADA
- DENMARK
- FINLAND
- FRANCE
- GERMANY
- GREECE
- IRELAND
- ITALY
- NETHERLANDS
- NEW ZEALAND
- NORWAY
- POLAND
- SPAIN
- SWEDEN
- SWITZERLAND
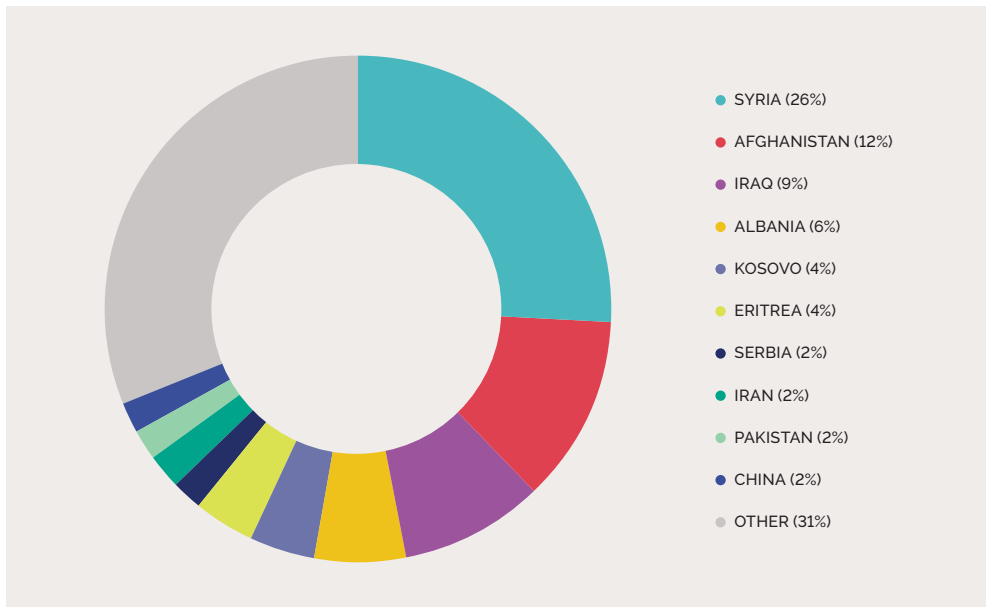- UNITED KINGDOM
- UNITED STATES

**Source** IGC. Eurostat data is included for Italy 2016 and 2017 and Spain 2017.

the region, discuss possible responses to challenges related to these future flows, and assess how practical cooperation between Participating States and Organisations could be improved. In addition to Participating States, the workshop was attended by representatives from UNHCR, IOM, the European Commission, EASO, Frontex, the United Nations Office for the Coordination of Humanitarian Affairs, and the governments of Italy and Turkey.

In October 2014, a follow-up workshop was held to allow participants to exchange information relating to the current situation inside Syria, the protection environment in host countries, the profile of the resettlement and asylum population, and experiences in adjudicating this caseload in both asylum and resettlement streams. Participating States were briefed by UNHCR and external experts on the evolution of the conflict and the major factors causing people to flee Syria, and to flee countries of first asylum.

In November 2015, IGC hosted a two-day training workshop on Exclusion in Non-Protection Situations, which was explicitly located within the context of the movement of large numbers of people from Syria and the risk that perpetrators of 'core international crimes' could be amongst them. Attacks at a number of sites across Paris had occurred less than a week before the workshop and—although the majority of attackers were European citizens— many had fought in Syria and had recently travelled to Europe. Attended by Participating States and UNHCR, the workshop highlighted tools and techniques that can be used to identify people to whom the provisions of the Refugees Convention do not apply because

**Chart 10** Major countries of origin of asylum applicants
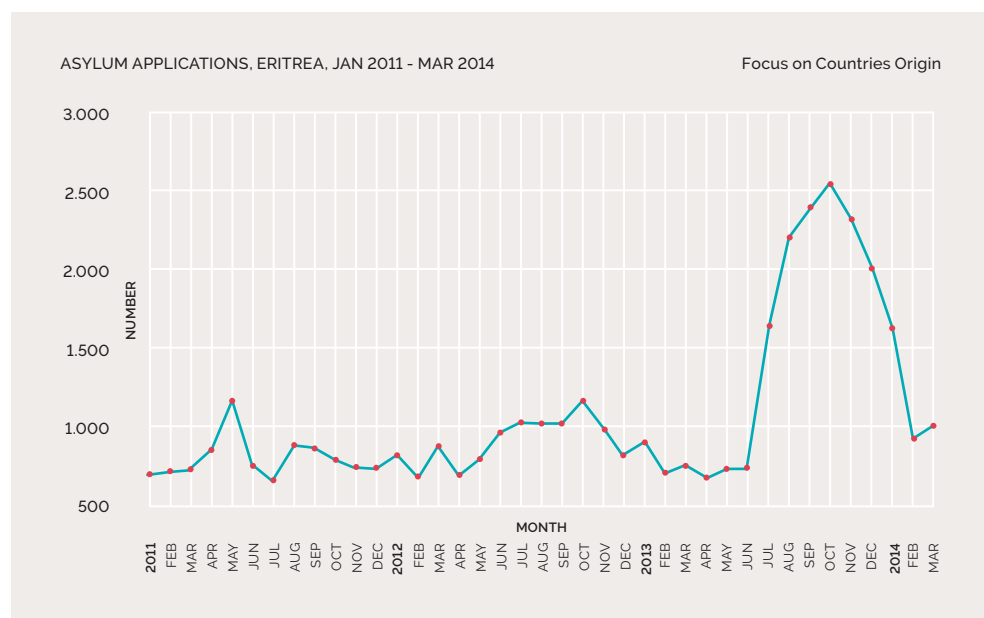IGC Participating States, 2015



- SYRIA (26%)
- AFGHANISTAN (12%)
- IRAQ (9%)
- ALBANIA (6%)
- KOSOVO (4%)
- ERITREA (4%)
- SERBIA (2%)
- IRAN (2%)
- PAKISTAN (2%)
- CHINA (2%)
- OTHER (31%)

**Source** IGC

they have, *inter alia*, committed war crimes or other serious non-political crimes.[55] It also examined techniques used by some Participating States to detect such people in non-asylum immigration streams, the recommendations contained in Human Rights Watch's 2014 report, *The Long Arm of Justice*, as well as questions of prevention, information sharing and international cooperation.

Throughout this period, the Full Round of Consultations and the Mini Full Round were regularly briefed by UNHCR's Director of International Protection and by the Executive Director of EASO on the situation on the ground. Discussions focused on ways in which Participating States could assist and strategies that had worked to cope with the increased numbers of asylum seekers. The conflict in Syria also drove a reconsideration within IGC of the security-migration nexus, particularly the issues of radicalisation and foreign fighters, as well as issues related to mass influx, especially root causes, forecasting, planning and the role of temporary protection.

The war in Syria was not the only situation causing large numbers of people to seek asylum in Europe at this time, of course. There had been a significant spike in the number of asylum applications in IGC Participating States from Eritreans in the summer of 2013, for example, as shown in Chart 11. In response, a multidisciplinary workshop on Eritrea was held in June 2014 to discuss protection issues, irregular migration, and smuggling and trafficking as they related to Eritreans. The workshop was attended by Participating States and Organisations (IOM, UNHCR, the European Commission and EASO), as well as Frontex, the International

**Chart 11** Data presented to the Full Round of Consultations
in May 2014 shows the spike in asylum applications
from Eritreans in the summer of 2013

ASYLUM APPLICATIONS, ERITREA, JAN 2011 - MAR 2014                Focus on Countries Origin

**Source** IGC, 19-21 May 2014, Copenhagen

Committee of the Red Cross and the Office of the United Nations High Commissioner for Human Rights. Professor Dan Connell of Boston University briefed the group on the human rights situation in Eritrea, the protection afforded to Eritrean refugees in neighbouring countries, as well as the conditions faced by Eritreans moving west from the Horn of Africa, through Libya and on into Europe. Thereafter, participants discussed the situation in Eritrea, responses to the smuggling and trafficking of Eritreans (particularly across the Mediterranean), the grounds upon which Eritreans were claiming asylum in Participating States, and the rates at which those claims were being accepted. Participating States and Organisations agreed that further engagement on the situation in Eritrea was warranted and would take place within the Working Group on Asylum and Refugees.

A particular issue of concern in relation to those making their way to Europe from Syria and via North Africa were the dangerous journeys being made by migrants and asylum seekers across the Mediterranean Sea. In order to address this issue, IGC hosted a workshop on 'Protection at Sea' in November 2014 to—in the words of the Chair's Summary of the event—'encourage like-minded IGC states to turn their attention to these critical issues with a view to supporting UNHCR's efforts'. (The annual High Commissioner's Dialogue on Protection Challenges, due to take place the following month, was scheduled to focus on protection at sea and would be used to launch UNHCR's Global Strategy on Protection at Sea.) The workshop was attended by Participating States and Organisations, as well as Italy (given

its role as a major reception country for those coming across the Central Mediterranean). Again in the words of the Chair's Summary, the workshop 'benefited from considerable input and support from UNHCR' and addressed issues including rescue at sea, disembarkation arrangements, responsibility sharing, and the need for comprehensive approaches and international cooperation. It brought together experience and lessons learned in relation to protection at sea from Europe, North America and Australasia and provided a forum to discuss ideas for moving forward, including UNHCR's Global Strategy.

In advance of the UN General Assembly Summit on Addressing Large Movements of Refugees and Migrants in September 2016, Special Adviser Karen AbuZayd addressed the Full Round of Consultations and discussed the ongoing negotiations for the meeting's outcome document, including the proposed global compacts, one on responsibility sharing for refugees and the other on safe, regular and orderly migration. This address was complemented by briefings from IOM on the World Humanitarian Summit, Switzerland on the Nansen Initiative, and the United States on the Migrants in Countries in Crisis Initiative and the Leaders' Summit on Refugees (the so-called 'Obama Summit') to be held the day after the General Assembly Summit. The discussion that followed these briefings focused on the importance of increasing resettlement places and complementary pathways for admission. Canada shared some of the lessons it had learned about rapid resettlement when accepting an intake of 25,000 Syrian refugees in just four months, including how best to work with international organisations and countries of first asylum, streamlined screening involving all actors in the region, transportation arrangements, and support to communities to welcome and to integrate refugees.

Following the General Assembly Summit, the Mini Full Round in December 2016 discussed the recently-adopted *New York Declaration for Refugees and Migrants* and the processes leading to the proposed global compacts, one on refugees and the other for safe, orderly and regular migration. Volker Türk, UNHCR's Assistant High Commissioner for Protection, briefed participants on the process that would lead to the former, whilst Colleen Thouez of the Office of the Special Representative of the Secretary General for International Migration discussed the upcoming report of the Special Representative, Peter Sutherland, on the latter. Michelle Klein Solomon of IOM also addressed the migration compact, in particular the issue of migrants in vulnerable situations. The Mini Full Round concluded with a discussion via videoconference between representatives of Participating States and the United Nations Secretary-General-designate, Antonio Guterres, about current issues in relation to international cooperation on migration, asylum and refugee issues, including the proposed global compacts.

During this period, the Chair's Themes chosen by Belgium and Norway also responded to these events. The 2015-2016 Belgian theme—'The Management of Borders in Light of Contemporary Migration Challenges'—involved a timely examination of the ways that Participating States could foster the benefits of globalised exchanges between people, cultures and economies whilst simultaneously managing risks and challenges to the integrity of borders and immigration systems.

For 2017-2018, Norway chose at its theme 'Preparing for Future Migration Scenarios: IGC States' Response to Large-Scale Movements of Refugees and Migrants'. Discussions under

this topic addressed the question of how governments could learn from the experiences of this period and, as a result, how they could prepare themselves for future rapid increases in the numbers of persons arriving. Recognising that IGC Participating States should be prepared to manage increased migratory movements in the years to come, the theme allowed officials to reflect on challenges posed by influxes of diverse populations, on how authorities can use trends and prognoses to prepare, on the kinds of crisis management techniques that can be used in such circumstances, and possible solutions that would alleviate pressures on immigrations systems and, more broadly, their societies.

Also in 2016, Poland was invited to observe the IGC process, with a view to it becoming a Participating State in the near future. Poland became IGC's seventeenth Participating State after this report was concluded in December 2017.

## CONCLUSION: 'CONTINUITY AND CHANGE'

When IGC reached twenty years of age in 2005, former coordinators Gerry Van Kessel and Gervais Appave noted that—to that point—IGC's development was characterised by 'both continuity and change':

> The continuity is the reliance on informality and confidentiality, the two critical aspects of the process that underpins the IGC approach to issues. The change is in the evolving issues and priorities that are of concern to States and the methodology, such as meetings and data bases, that IGC applies to the issues it examines.

This observation remains apt today, after thirty years of existence. Many changes have occurred as the international governance of migration has become increasingly important, and as the priorities of Participating States and Organisations have changed. A process that was once characterised by *ad hoc* political meetings has become one with a structure that is bifurcated between meetings where senior officials discuss 'big picture' challenges and solutions, and working groups and workshops where practitioners and experts exchange information and best practices. Topically, the Informal Consultations have expanded in focus to consider all forms of international migration, yet have remained flexible enough to respond rapidly to major developments (such as the Great Recession and the aftermath of the Arab Spring) when they occur. Institutionally, IGC has continually worked to ensure that—despite the proliferation of fora for the discussion of issues of migration in the increasingly complex global migration governance framework, most notably the European Union—it continues to provide value to Participating States and Organisations. The fact that they have continued to dedicate time and resources to IGC participation suggests that these efforts have been successful.

### Ireland and IGC in the 2000s

*For the vast majority of its history, Ireland has been a country of emigration. Generation after generation, Irish people left Ireland to flee hardship at home and to seek opportunity abroad. As a result, the Irish diaspora is amongst the biggest of any nation: we have a population of less than five million people, but an estimated 80 million people around the world are of Irish descent.*

*It was only in the 1990s that those arriving started to out-number those that were leaving. Fuelled by economic growth, net migration hovered around zero in the first half of the decade and has been strongly positive since 1997 (though it temporarily dropped below zero again as the Irish economy struggled in the early 2010s).*

*Making the adjustment from being a country of emigration to being a country of immigration wasn't easy for Ireland. We simply didn't have the necessary legislation, policies or operational systems in place, particularly in the area of migration and protection management, to deal with the numbers of people who were being drawn to the country by the opportunities presented by the so-called 'Celtic Tiger' economic boom in the late 1990s and early 2000s, and also for those applying for asylum. The major piece of immigration legislation, for example, was the Aliens Act of 1935. The fact that we had no real immigration programme to speak of meant that, for people wanting to move to Ireland, an alternative option was the asylum system, regardless of whether they had a valid protection claim or not. The benefits that Ireland provided to asylum seekers at the time whilst their applications were being assessed, the length of time that it took to process applications and the fact that those whose applications had been rejected were almost never returned home acted as pull factors undermining the integrity of the asylum system. Fewer than 100 asylum applications were received in 1993, but this figure had leapt to almost 4,000 in 1997 and was just shy of 11,000 in 2000. There was real concern that, unless something were done, the Irish asylum system would become overwhelmed.*

*In 2000, I was asked to lead the Asylum, Immigration and Citizenship Division of the Irish Department of Justice. My main task was to develop the legislation, policy and processing systems that Ireland would need as a country of net immigration. On the asylum front, we developed new legislation that introduced safe country concepts and allowed us to prioritise cases, conduct more efficient returns*

**Pat Folan**
Founding Director General, Irish Naturalisation and Immigration Service

IGC Chair, 2006-2007

*and enter into readmission agreements with certain countries of origin. We also moved to a reception centre model of providing for asylum seekers and held a successful referendum to amend the Constitution to, for example, ensure that persons coming to Ireland to seek protection did not abuse the Irish citizenship process. Organisationally, we boosted staffing numbers, established a National Immigration Bureau in the Garda (the Irish police) and brought all civil servants working on migration, asylum and refugee issues under a single umbrella agency, the Irish Naturalisation and Immigration Service, which was established in 2005. During the Irish Presidency of the European Union in 2004, I also led the asylum and immigration work of the Presidency which included reaching political agreement among Member States on important asylum dossiers as part of the establishment of the first phase of a Common European Asylum Policy.*

*A key element to this transition was international cooperation and, in particular, Ireland's membership of IGC. I regularly attended the senior officials' meetings and my colleagues were active participants in working groups. We also hosted a multi-disciplinary workshop in Dublin in 2003 focusing on asylum applications made by people from Nigeria, our major country of origin at the time which accounted for 35% of all applications.*

*In 2006-2007, Ireland served as Chair of the IGC process, and I personally chaired the senior officials' meetings. As our Chair's Theme, we selected 'Designing Effective Immigration Systems' and used the opportunity that this presented to explore the essential elements of effective immigration systems and policies, to collect and share the goals, principles, and approaches that underpinned these essential elements in IGC Participating States, and to identify the key challenges that lay ahead. To achieve this, we seconded an officer to the IGC Secretariat in Geneva, hosted a two-day workshop and produced a 128-page report. Recognising that there was a range of complexity and maturity amongst the immigration systems of Participating States, the key aim was to develop a better understanding of what made effective immigration systems tick. In particular, the Irish government was conducting a comprehensive review of its system at the time and the discussions around the theme were invaluable to this process. Although competing political priorities (most notably the global financial crisis) meant that the resulting legislative reforms were not proceeded with immediately, this work informs the development of the Irish immigration system to this day.*

*I found IGC meetings to be full of people who were facing similar challenges and who wanted to help one another to meet them. Participation in IGC activities gave us privileged access to the expertise of senior officials and indeed governments that had been dealing with high levels of immigration for much longer than Ireland had, and this enabled us to be much more effective in undertaking our reforms at home. As we improved our procedures, legislation and IT systems, other IGC Participating States shared their ideas and thinking, and these informed our strategy to a considerable degree. The most valuable element for me, however, was the feedback that we were able to receive from senior officials in countries with much longer histories of immigration—both during IGC meetings and elsewhere with people I had met at IGC events—on our own ideas. I can distinctly remember being told, on more than one occasion, 'Oh God, Pat! Whatever you do, don't do that!' Looking back, this was very good advice to have received.*

*As a result of the reforms we undertook, the numbers of unfounded asylum applications fell drastically and we were able to reallocate our resources to expand visa processing operations, commit to a fivefold increase in our UNHCR resettlement quota and develop a comprehensive immigration system.*

# ENDNOTES

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2   Berne Initiative, *International Agenda for Migration Management* (International Organization for Migration and the Federal Office for Migration (Switzerland), 2005), 15.

3   For the analysis of these and other global trends as presented to the IGC process and subsequently published in the *International Journal of Refugee Law*, see Switzerland, 'A Possible Swiss Strategy for a Refugee and Asylum Policy in the 1990s' (1990) 2 (Special Issue) *International Journal of Refugee Law* 252. See also Danièle Joly, 'The Porous Dam: European Harmonization On Asylum In The Nineties' (1994) 6 *International Journal of Refugee Law* 159, 162 ('the number of requests for asylum started to increase as air travel became more accessible, but also because it was difficult to be granted admission in other ways').

4   The data in Chart 1 are from UNHCR's *Population Statistics Database*, accessible at http://popstats.unhcr.org.

5   Eurostat & IGC Secretariat, *Asylum-Seekers in Europe* 1985-1995 (Statistics in Focus, 1996), 2-3.

6   See, for example, European Consultation on Refugees and Exiles, 'Fair and Efficient Procedures for Determining Refugee Status: A Proposal' (1991) 3 *International Journal of Refugee Law* 112, 114 ('During the 1970s most Western European countries introduced an immigration stop. In these countries it is now only possible to obtain a residence permit either by family reunification with a national living there or with a non-national holding a permanent residence permit or, indeed, as a recognized refugee'); Joly, above n 3, 162 ('the boom years had come to a halt in the seventies and Europe fell into an economic crisis triggered by the increase in oil prices. As a consequence labour immigration was stopped.'); Sweden, 'A Comprehensive Refugee and Immigration Policy' (1990) Special Issue *International Journal of Refugee Law* 191, 197 ('Few of the European countries have any form of immigration facility over and above the right of asylum where refugees are concerned. This in itself, of course, is the contributory reason why many people who are not really refugees none the less come to be applicants for asylum—there are no other doors to immigration available.').

7   Stephen Castles & Simona Vezzoli, *The global economic crisis and migration: temporary interruption or structural change?* (2009) 2 Paradigmes 68, 70, 73.

8   Eurostat & IGC Secretariat, above n 5, 2-3.

9   Eurostat & IGC Secretariat, above n 5, 2-3.

10  David Martin, 'Reforming Asylum Adjudication: On Navigating the Coast of Bohemia' (1990) 138 *University of Pennsylvania Law Review* 1247, 1252-1253.

11  'Sorgen um die Praxis des Asylverfahrens' (1983) 2(2) *Refugee Abstracts* 39, 39 (original unavailable to the author in English).

12  'Auf der Suche nacht Zukunft: Tamilische Fluchtlinge aus Sri Lanka – Analyse und Handlungsvorschlage' (1985) 4(3) *Refugee Abstracts* 60, 61 (original unavailable to the author in English).

13  Eurostat & IGC Secretariat, above n 5, 2-3.

14  The data in Chart 2 are derived from Eurostat & IGC Secretariat, above n 5, 4.

15  Stephen Yeo, 'Foreword' in Timothy Hatton, *Seeking Asylum: Trends and Policies* in the OECD (Centre for Economic Policy Research, 2011), ix.

16  Cited in Christina Oelgemöller, 'Informal Plurilateralism: The Impossibility of Multilateralism in the Steering of Migration' (2011) 13 *British Journal of Politics and International Relations* 110, 121.

17  See UNHCR, Note on the Consultations on the Arrivals of Asylum-Seekers and Refugees in Europe (4 July 1985, UN Doc A/AC.96/INF.174).

18  UNHCR, above n 17, Annex V, 1.

19  UNHCR, above n 17, [2].

20  UNHCR, above n 17, Annex I, [3], [18], [19].

21  UNHCR, above n 17, Annex I, [13].

22  UNHCR, above n 17, Annex I, [32]-[34].

23  UNHCR, above n 17, Annex V, 3.

24  Gary Freeman, 'Migration Policy and Politics in the Receiving States' (1992) 26 *International Migration Review* 1144, 1154.

25  Sadako Ogata, *Statement of Mrs. Sadako Ogata, United Nations High Commissioner for Refugees, to the International Meeting on Humanitarian Aid for Victims of the Conflict in the former Yugoslavia* (1992) http://www.unhcr.org/admin/hcspeeches/3ae68fac1a/statement-mrs-sadako-ogata-united-nations-high-commissioner-refugees-international.html ('all States, within or outside the region, should provide temporary protection to persons fleeing former Yugoslavia and who are in need of such protection').

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37  IGC & Danish Immigration Service, *Responsibility Sharing: The Kosovo Humanitarian Evacuation Programme as a Case Study* (March 2001), endnote 55.

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39  Vincent Chetail, 'The Common European Asylum System: Bric-à-brac or System?' in Vincent Chetail, Philippe De Bruycker and Francesco Maiani (eds), *Reforming the Common European Asylum System: The New European Refugee Law* (Brill Nijhoff, 2016), 5-9.

40  *Treaty of Amsterdam Amending the Treaty of European Union, the Treaties Establishing the European Communities and Certain Related Acts* (Treaty of Amsterdam), art 2(15) (new art 73k).

41  European Parliament, 'Tampere European Council 15 and 16 October 1999: Presidency Conclusions', [13].

42  European Parliament, above n 41, [14].

43  European Parliament, above n 41, [15].

44  Article 1F reads as follows: 'The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:
    (a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
    (b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;

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

45  Berne Initiative, above n 2, 13.

46  See http://www.unhcr.org/en-us/convention-plus.html

47  See http://www.iom.int/global-migration-group

48  See https://www.iom.int/berne-initiative

49  See http://www.iom.int/bali-process

50  See https://www.iom.int/apc

51  Regulation (EU) 439/2010, article 1.

52  European Commission, *Policy plan on asylum - An integrated approach to protection across the EU* (COM(2008) 360).

53  European Council, *The Hague Programme: Strengthening Freedom, Security and Justice in the European Union* (2005/C 53/01).

54  On this point, see Chetail, above n 39, 20, 22.

55  That is to say, people excluded from the régime established by the Refugees Convention by virtue of article 1F.

# 3

## IGC's Operating Principles, Composition, Structure and Activities

The previous chapter examined the history and evolution of the Intergovernmental Consultations on Migration, Asylum and Refugees, from the first *ad hoc* meetings commencing in Stockholm in November 1985 to the more mature, sophisticated structure that exists today. It is this latter part—the IGC of today—that is the focus of this chapter. Informed, of course, by the history of the Informal Consultations, it will first examine the principles that guide the IGC process and the impact that these have had. It will then turn to examine IGC's composition of Participating States and Organisations, its governance structure and, finally, the activities that are central to its operation.

### CORE OPERATING PRINCIPLES

The previous chapter concluded that, although IGC has undergone significant change over the past thirty years in terms of its structure, institutional form and the topics that it has concerned itself with, the basic principles that have guided its work have remained largely as IGC's first coordinator, Jonas Widgren, conceived them in the mid-1980s. There are, broadly speaking, five core operating principles that characterise the IGC approach, many of which have been recognised in the academic and professional literature as being characteristic of Regional Consultative Processes on Migration more generally. In short, the Informal Consultations are:

- flexible and non-hierarchical;
- informal and non-binding;
- private;
- comprehensive and multi-disciplinary; and
- evidence-based.

#### A flexible, non-hierarchical process, not a rigid institution

As was explained in the introductory chapter, scholars and practitioners commonly consider that the issue of migration is not yet ripe for a unified global governance régime, the hallmarks

of which are often a treaty and/or a rule-setting or rule-enforcing organisation. Regional Consultative Processes, however, are not of this kind; they 'are not organizations but arenas for discussions'.[1] They are 'processes and not institutions [or one-off events], even if it is true that some processes tend to become institutionalised as their objectives become clearer and their activities diversify'.[2]

From the very beginning, IGC has been—in the words of Jonas Widgren—'a *process*, not an institution':

> A process differs from an institution in that it thrives on the interplay of synergetic forces, and without such interplay, it dies. An institution can survive in spite of the lack of such organic processes, and without generating new ideas and spreading them through collective and comprehensive action.

Because they are processes and not institutions, Regional Consultative Processes tend to be flexible and non-hierarchical. As to flexibility, they can discuss any and all migration-related issues that Participating States and Organisations want to discuss at any particular point in time,[3] and can also examine migration comprehensively, utilising 'a pluralist…approach in which various dimensions of migration are aggregated'.[4] Indeed:[5]

> In reality, the majority of RCPs – even those which may initially have been control-oriented – address a wide range of issues, such as labour migration, migration and development, integration of migrants, protection of migrants' rights, human smuggling and trafficking, migration and health, and trade and migration.

This flexibility is also a characteristic of IGC. It is supported by a small secretariat that is not hampered by institutional constraints or bureaucratic rules. The Secretariat aims to be as responsive as possible to the needs of the Participating States, the Chair in particular, as well as anticipative and proactive in relation to future needs. This allows the Secretariat—and the IGC process as a whole—to have the flexibility to adapt to changing circumstances and the changing priorities of Participating States and Organisations.

Regional Consultative Processes also tend to be far less hierarchical in nature than other arenas of international cooperation, with officials coming together on equal terms;[6] 'all States are given a voice, and smaller, less powerful States are brought together on a level playing field often with larger, more powerful States'.[7] This is, again, the case in IGC activities, where the contributions of officials from small nations, like New Zealand and Ireland, carry the same weight as those of representatives of the United States.

### Informal and non-binding

A further characteristic of Regional Consultative Processes identified in the academic and professional literature is that they are informal and non-binding. They are fora for discussion, rather than negotiation or the making of formal decisions,[8] and there is no requirement for Participating States and Organisations to agree on a common solution to a particular problem. RCPs 'are not institutions intended to design standards, binding legal rules or agreements, nor do they have the [formal] responsibility to assess whether participating

governments respect their international commitments'.[9] This means that 'participants are not put in a negotiating position to defend national interests or political positions'.[10] This fosters an informal atmosphere,[11] where the focus is on 'cooperative dialogue with an emphasis on information exchange and technical cooperation'.[12]

Of course, the fact that RCPs do not create or assess compliance with legal standards does not mean that States are not bound by international law when they participate in RCPs, nor does it mean that they do not discuss their international legal obligations in the course of RCP activities. Any policy changes that occur as a result of participation in an RCP must still comply with relevant international legal norms and a great deal of time is spent discussing international legal obligations.

Informality has been present in IGC activities from the very beginning. As was noted in the previous chapter, the desire for an informal space to discuss migration and asylum issues lay at the very heart of the establishment of IGC: it was because of the perceived shortcomings of formal, public fora like UNHCR's Executive Committee that led to the first IGC meeting in 1985.

Informality was also something that Jonas Widgren considered essential to the success of IGC:

> Undoubtedly, the crux of the efficiency and dynamics of the Consultations have lied [sic] in their informality. There have been no (or few) binding general rules. There are no formulated membership criteria. There are no official meeting protocols. There are no formal decisions. Consensus (from the formal point of view) between all participating States has not been needed to initiate new activities. The Consultations have thus constructively evolved in a spirit of mutual trust between participating States and between them and the Co-ordinator and his staff.

In 2005, a review of IGC's first twenty years of existence concluded that:

> The single most important characteristic, on which there is unanimity among all of the persons interviewed in preparing this Paper, is the informality of the discussions. The IGC is not a decision-making body. There is no such thing as 'IGC Policy'. The IGC is not a body that 'sits with a text'. The aim of discussion is not to arrive at a consensus or a resolution or a recommendation; it is to exchange information and ideas with people in other States who are dealing with the same issues…States themselves decide whether or not to apply something they have taken out of the informal process.

The IGC process allows Participating States and Organisations to talk about what they are thinking and doing and to explore, share and assess policy options, best practices, mistakes and failures without having to fix on an agreed approach or policy. Consensus positions may be arrived at, but this is incidental to the true aim of the discussions. Any changes in law or policy emanating from IGC discussion are based on decisions taken by Participating States themselves—or by other appropriate bodies (such as the European Union)—based on their assessment of the best course of action, not because States are implementing what was 'decided' at an IGC meeting. They are, furthermore, subject to the same democratic checks and balances as any other change in law or policy.

*In other fora on migration, asylum and refugee issues, where discussions are public or decisions are made, participants are generally on the defensive. They read pre-prepared statements that have been washed of anything controversial and there are few truly interactive exchanges between participants.*

*IGC meetings are not like that. The discussion and personal interaction is very lively. The confidential, informal nature means that participants don't need to constantly defend their government's position; they can talk openly about both their successes and failures and the challenges of implementation that they face in a supportive environment. Everyone leaves their weapons at the door, so to speak. And because the participants are senior public servants, and not politicians, the discussion is very rarely political.*

*This makes IGC a unique space for discourse on migration, asylum and refugee policy that doesn't really exist anywhere else.*

**Gervais Appave**,
Third IGC Coordinator,
1997-2001

## Privacy

Supporting the informality of discussions within IGC is a further core operating principle: privacy.[13] Discussions that take place in Regional Consultative Processes are typically undertaken pursuant to the 'Chatham House Rule', meaning that 'participants are free to use the information received [during the course of RCP activities], but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed' to anyone outside the governments of Participating States.[14] The rule is utilised 'with the aim of providing anonymity to speakers and to encourage openness and the sharing of information'.[15]

As Hansen explains, the Chatham House Rule is essential for fostering free discussion within RCPs:[16]

> [I]t is essential that all actors respect the Chatham House [R]ule. If any member of the discussion report or, worse, attribute policy proposals to the press, then the essential basis of confidence is destroyed. When this occurs, policy ideas that might still be at a crude and preliminary stage, but have great potential, are killed for reasons of political necessity.

The Chatham House Rule helps to build an environment of trust and confidence where open and honest discussion is both allowed and encouraged. It allows Participating States and Organisations to ask questions, share successes, assess mistakes and failures, test new ideas and discuss emerging issues without having to worry that the discussion will be seized upon publicly by the proponents or opponents of immigration as evidence of a new policy direction. It has allowed IGC to become a 'laboratory' for new approaches and a forum for brainstorming possible responses to new challenges.

*[M]uch progress has been achieved through the consultations [in] the development of a multidisciplinary, coherent and comprehensive approach to the migration issue. It would probably not have been possible to carry through the strategy process of the consultations, initiated in 1988, in another (existing or non-existing) forum, given the special constructive informal environment created by the consultations' group. It seems as though this comprehensive approach, as formulated in the Strategy Platform…has had quite an impact in [the] countries and international organizations concerned.*

**Jonas Widgren**,
First IGC Coordinator,
1987-1993

It should be noted, however, that the Chatham House Rule can be departed from when the relevant Participating States and Organisations consent. Some RCPs, for example, issue joint communiqués following some meetings. The IGC Secretariat has produced a range of publications over the years—most notably the Blue Books—and, as we shall see in the next chapter, IGC Participating States made a joint public submission to the President of the General Assembly in advance of the 2013 United Nations High Level Dialogue on International Migration and Development. [See Annex 1.] Individual Participating States and Organisations may also make information or documents that they themselves have produced in the course of IGC activities public; documents of this kind produced by Switzerland and the United Kingdom, for example, have been published in the *International Journal of Refugee Law*.[17]

### A comprehensive, multidisciplinary approach

The IGC approach to issues aims to be as comprehensive and multidisciplinary as possible. Discussions within IGC take place at the strategic, policy and operational levels concerning issues across the migration spectrum from admission, control and enforcement, to labour and family migration, to refugee and asylum and temporary protection, to naturalisation and integration. They are both theoretical and practical. This also makes the IGC approach unique, since many other migration entities and agencies (such as UNHCR, Frontex and EASO) are not permitted by their mandates to approach migration, asylum and refugee issues from such a broad range of perspectives.

Because it adopted its comprehensive, multidisciplinary approach more than thirty years ago, the IGC process also benefits from the continuity of having examined the same issues and having asked the same questions over a long period of time.

### Evidence-based

Policy debates on issues of immigration are frequently politicised and emotional. In order to maximise the possible gains from immigration whilst minimising any potential side-effects, IGC Participating States and Organisations see it as important to approach the benefits and challenges generated by migration in a comprehensive and accurate manner, isolated from

toxic debates and distorted facts. IGC discussions are contextualised by extensive reporting, analysis, data and other documentation—for which the IGC website serves as repository—and this has assisted discussions to be firmly grounded in evidence.

## IMPACTS OF IGC'S OPERATING PRINCIPLES: THE ACADEMIC LITERATURE

The academic and professional literature on Regional Consultative Processes notes that the operating principles discussed above make RCPs a particularly useful tool for international cooperation in the field of migration policy for seven key reasons.

### De-politicisation

One of the key benefits of the Regional Consultative Process approach identified in the literature is that it has the ability to de-politicise an area of policy that is often highly politicised and emotionally-charged. As Hansen explains, public figures participating in other fora often 'have to choose their words carefully':[18]

> They know that what they say will be scrutinized, twisted, and attacked. The inevitable result is that, though ministers [and other officials] might be relatively frank with each other over coffee during breaks, once in an official capacity they retreat into established policy (as dictated by Berlin, London, Algiers or Tirana), and their official communiqués will be at best general and well-intentioned, and at worse banal. The greater the degree of press and public scrutiny of official deliberations, the more this tendency to policy conservatism will be reinforced… This conservatism can only be overcome and confidence built, when the process is depoliticized and "demediatized". It has to be removed from the partisan political debate, from nationalistic posturing, and from sensationalistic media coverage.

The non-hierarchical nature of RCPs also helps to de-politicise their proceedings:[19]

> [T]he equal-voice structure assists in overcoming the divisive power-dynamics often present in more hierarchical processes, and participants generally find that cooperating to further their common interests is more valuable than focusing on their diverging interests.

In such an environment, officials can '[defuse] explosive issues'[20] safe in the knowledge that the political costs of acknowledging uncertainty or admitting failure will be significantly reduced in an informal, non-binding, private setting.[21]

Importantly, however, de-politicisation does not mean a loss of democratic legitimacy because the activities of Regional Consultative Processes are but one input into the policy development process; as Hansen explains, '[t]he proper time for democratic input comes when concrete policy proposals are submitted to the legislature'.[22]

*States have a broad discretion when it comes to migration, asylum and refugee law and policy. So long as they comply with the relevant rules of international law—refugee law and human rights law in particular—they are free to approach these issues in accordance with their own legal systems and their own ideas about matters such as citizenship and the good society.*

*Within this discretion, the formulation of good migration, asylum and refugee policy is about trial and error. In order to maximise the trials and minimize the errors, it makes sense for states in similar positions to come together to discuss what they have tried that has worked, and what hasn't.*

*The IGC is a forum that brings the right people together to have these discussions openly and honestly. At a time when the public is increasingly concerned about migration, we desperately need fora where senior officials and subject matter experts can discuss these issues.*

**Gerry Van Kessel**, Fourth IGC Coordinator, 2001-2005

## Open exchange of information and opinion

Fostered by the de-politicised atmosphere, the absence of a need for agreement on all issues, and the fact that officials come together on equal—not hierarchical—terms, Regional Consultative Processes create space for information, opinions and policy options to be exchanged and explored openly,[23] often between practitioners of different disciplines trying to address similar issues. Questions can be asked, successes can be shared and—importantly—mistakes and failures can be discussed. As Hansen explains vividly:[24]

> As soon as a setting is formal, as soon as it is aimed at negotiating a treaty or reaching some other binding agreement, a specific dynamic is set in motion: people come with prepared statements, they have clear boundaries defining what they are willing to give and what they are not, and they are throughout guarded in their statements. In an informal process, by contrast, participants do not have to come with a prepared position; actors can share concerns, information, goals and proposals and expect that others will do the same. Under conditions of informality, participants can speak freely and honestly.

Scholars have associated this open exchange of information and opinion with numerous benefits. First, it allows States to learn from one another; 'instead of "reinventing the wheel", a State benefits from the experiences of other countries and can evaluate how an approach tried elsewhere might fit into its own policy or legal landscape on migration'.[25] This is particularly valuable for small States with limited financial and human resources, as well as for States that have only recently started to grapple with migration issues, or that are

faced with new and different issues.[26] It allows States to identify operational efficiencies and improvements, and also increases the number of possible solutions to any given issue being discussed, thus increasing the chances of a workable option being found.[27]

Secondly, free information exchange improves the ability of States to develop evidence-based migration policy by expanding the amount of evidence available to include data and information from other States with similar migration profiles.

Finally, because they do not require participants to make binding commitments, Regional Consultative Processes also facilitate discussion about topics of possible future cooperation, particularly where these cannot yet be discussed publicly or at the global level.[28]

### Trust and confidence

The academic literature recognises that Regional Consultative Processes 'provide a structure for routine meetings among actors whose interactions would otherwise be limited, and in many cases [would consist of] single events with little or no follow-up'.[29] When combined with the fact that these interactions are characterised by an open exchange of ideas and information, this helps to foster trust between States and between officials.[30] Indeed, 'the simple fact that participants from different countries sit at the same table and exchange views encourages civility, respect for the other's positions, and perhaps sympathy for them'.[31] As Hansen explains:[32]

> As officials meet more often and get to know each other, as they gain certainty from past meetings that their informal, unofficial utterances will not come to haunt them, trust and mutual confidence are built. These can serve as the foundations for a meaningful dialogue, for policy learning, and for policy transfer. Indeed, it is a prerequisite for this to happen.

### Mutual understanding

By encouraging the open exchange of information between participants, RCPs 'provide a venue and opportunity [for States] to come together, understand each others' perspectives, and identify common solutions'.[33] Repeated interaction assists also with the development of a 'common language' of migration, which improves understanding and fosters further exchange and cooperation.[34] As Klein Solomon explains:[35]

> [Regional Consultative Processes] improve the understanding of the nature of migration, including its causes and consequences at origin and destination, as well as its benefits and challenges. They also assist in identifying, defining and addressing the fundamental policy issues involved in the migration debate.

### Exploration of new ideas

In addition to allowing States to better understand each other's migration policies and experiences of migration, the academic and professional literature also highlights the fact that the particular characteristics of Regional Consultative Processes make them uniquely

*Through the diversity that migrants bring, countries like mine [the United States] remain resilient. RCPs can help countries that are not traditional migrant destinations manage their growing economic, social, religious and ethnic diversity.*

*RCPs [can] foster exchange of lessons learnt and experiences between the countries that have successfully managed migration and those that are reluctant to open their borders and hearts to newcomers.*

*RCPs can [also] be instrumental in promoting better migration systems so that people migrate under safe, legal, and better conditions, thereby allowing them to contribute optimally to the development of their communities.*

**William Lacy Swing**, Director General of the International Organization for Migration,

**Fifth Global Meeting of Chairs and Secretariats of Regional Consultative Processes on Migration, October 2015**

suited to the exploration of new ideas and the discussion of proposals that cannot yet be discussed publicly:[36]

> [Regional Consultative Processes] create a space for what might be called "ideational experimentation". Because they are uniquely flexible in their subject matter, RCPs can serve as…"breeding grounds", "testing grounds" and "laboratories" of new ideas. In some cases…the RCP served as a forum to think about issues that were still not "ripe" for the formal policy process at national level but which experienced officials saw ascending on the horizon and wanted to discuss with colleagues in the same area of expertise.

As Hansen explains, an atmosphere of informality and privacy is crucial if an RCP is to become a 'laboratory' for new ideas:[37]

> When policymakers are going "on record", and their statements will be reported back to their seniors, to third-country officials, and to the press, they are instinctively and inevitably guarded. They retreat into generalities, and the established official position. The result can only be limited progress, if not deadlock. If they are free to speak informally without fear of censure or reprisals, they are much more likely to depart from the official position and to step out of the national mind frame, and to suggest new departures from established policy.

## Coordination within governments

Scholars and practitioners have also noted that participation in Regional Consultative Processes can improve coordination between domestic agencies dealing with various aspects of migration policy. Although, in most national systems, one governmental department will have primary responsibility for migration matters, issues relating to migration will impact directly and indirectly on the work of a large number of other policy portfolios, including

justice, foreign affairs, labour and social affairs.[38] Participation in a Regional Consultative Process can help to counteract the problems that this division of responsibility can create:[39]

> [N]ot only are representatives of different States brought together, but representatives from different ministries of the same State are also brought together. Although migration issues are frequently cross-cutting, there is often limited inter-ministerial dialogue on migration issues. RCPs can facilitate better cooperation, coordination and coherence on a national basis, in a "whole-of-government" approach to policymaking.

### Dialogue between governments, international organisations, academia, civil society and the private sector

Finally, Regional Consultative Processes give Participating States and Organisations an excellent opportunity to engage with one another and with other relevant stakeholders in an atmosphere of trust and confidence.

As we saw in the previous chapter, engagement among Participating States and between Participating States and UNHCR was the driving force behind the founding of IGC in 1985, and the desire for further dialogue drove the expansion of the Informal Consultations to other States and organisations in subsequent years. IGC continues to be an important forum for dialogue on issues of common interest and concern that are not appropriate for public discussion and that are better discussed in a plurilateral—rather than bilateral—manner.

Furthermore, although they previously pursued a 'closed door' policy, the Informal Consultations have increasingly been used in recent years by Participating States and Organisations to engage with external experts and stakeholders from academia, civil society and the private sector, both at the senior official and practitioner levels. Over the last ten years in particular, there has been a steady rise in the number of keynote presentations delivered at senior officials' meetings by external experts and stakeholders. This has been mirrored in practitioner-level working groups and workshops, and such participation is now a standard feature of IGC meetings.

## COMPOSITION

### Participating States

A key characteristic of Regional Consultative Processes is that their membership is limited and not open to any State that wishes to participate. Whilst the term 'Regional Consultative Process' might suggest that all Participating States must be in the same region, this has not invariably been the case; the Bali Process, for example, includes States from Oceania, Southeast Asia, East Asia, South Asia, the Middle East and North America, with a number of European States having partner or observer status. IGC, too, is not strictly regional, even if twelve of sixteen Participating States are European.

Rather than being determined purely by geography, then, it is perhaps more accurate to describe the Participating States of a Regional Consultative Process as having some common interest insofar as migration, asylum and refugee issues are concerned. This may be because they have similar experiences of and approaches to migration (as is the case with IGC Participating States, which are all developed countries of net immigration) or because they are all affected by the same migratory flows (such as the Puebla Process, which engages the net emigration and net immigration States of Central and North America, and the Dominican Republic). Ultimately, however, '[s]ome sense of common purpose – whether highly developed or less so – is one of the necessary, if not sufficient, conditions for successful regional processes'.[40] There does not need to be *identity* of purpose, of course; there will always be some diversity of perspective, even among like-minded States.

Having a limited membership ensures that a Regional Consultative Process can maximise the degree to which mutual understandings can be reached;[41] it allows participants to discuss their similar concerns, interests and perspectives to a level of depth that would not be possible if participation were extended to States that do not share the same common interests.

This is not to say, of course, that the perspectives of those States are irrelevant. There are many other fora for IGC Participating States to interact with other States on migration, asylum and refugee issues, including in other RCPs. All IGC Participating States participate in other RCPs, including many that serve as a forum for interaction between States that have differing interests and perspectives, including:

- the Budapest Process, which has fifty-two Participating States from across Europe and Asia, including eleven IGC Participating States (and a further three as observers);
- the Rabat Process, with fifty-seven Participating States from Europe and Africa, including twelve IGC Participating States;
- the Puebla Process, with eleven Participating States from Northern and Central America, including IGC Participating States Canada and the United States; and
- the Bali Process, which focuses on smuggling, trafficking and related issues of transnational organised crime and which has forty-five Participating States from across Asia and the Pacific, including IGC Participating States Australia, New Zealand and the United States (and a further eleven IGC Participating States as observers).

Of course many of the States of these other regions also have their own RCPs that IGC Participating States are not involved in (or in which they may have permanent observer status).[42]

Moreover, RCPs are but one part of the complex global migration governance framework, many of the elements of which foster interaction between States with vastly different experiences of migration. However, fora with a wider, or even global, participation—such as the International Organization for Migration's annual International Dialogue on Migration— 'generally have not been characterized by the same level of open discussion, technical exchange and operational networking potential that is present in RCPs'.[43]

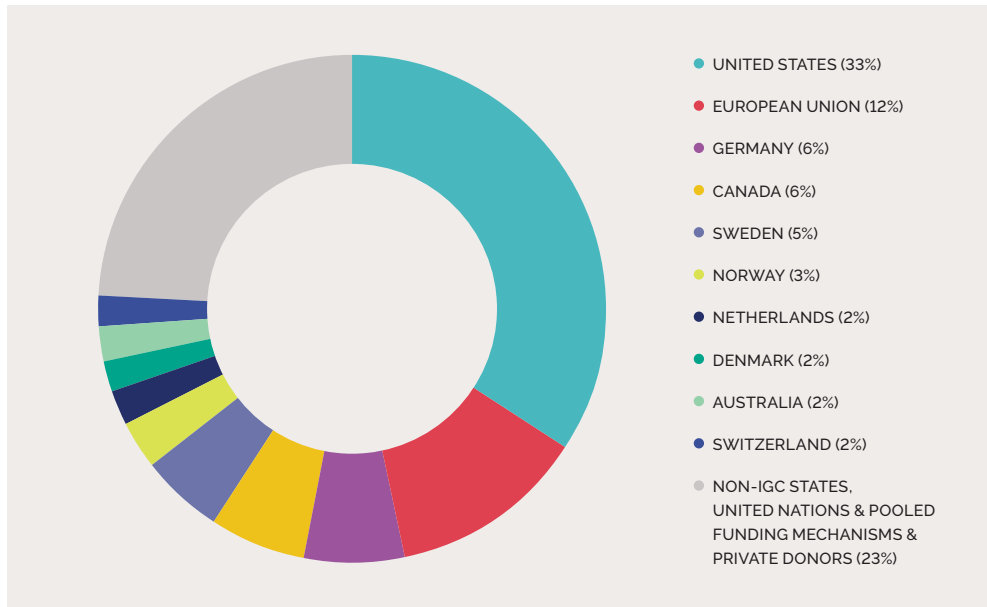| *IGC's Participating States (2017)* | | *IGC's Participating Organisations* |
|---|---|---|
| *Australia* | *Netherlands* | *UNHCR* |
| *Belgium* | *New Zealand* | *IOM* |
| *Canada* | *Norway* | *European Commission* |
| *Denmark* | *Spain* | |
| *Finland* | *Sweden* | |
| *Germany* | *Switzerland* | |
| *Greece* | *United Kingdom* | |
| *Ireland* | *United States* | |

As detailed in the previous chapter, IGC's composition has changed over the past thirty years. Seven States attended the first meeting in 1985, but that number grew quickly. Since 1990, the number of Participating States has fluctuated between fourteen and seventeen. It is currently sixteen, and a seventeenth—Poland—was an observer and became a Participating State at the end of 2017.* Other States are invited to participate in particular IGC activities on an *ad hoc* basis from time to time, particularly when the State in question has a particular interest in or perspective on the issue at hand.

All of IGC's sixteen Participating States and the one observer State are Members of UNHCR's Executive Committee and Member States of the International Organization for Migration. Ten of the Participating States (and the observer) are members of the European Union at present.

The decision as to whether to allow additional States to participate in IGC activities—on an *ad hoc* or permanent basis—lies with the Participating States. The decision to invite a State to participate in the IGC process is made by consensus. Participating States have recently expressed a willingness to consider inviting further like-minded States to participate, though there is also a general understanding that the process risks becoming unwieldy if the number of Participating States considerably exceeds its present size.

Although there are no formal membership criteria, IGC's Participating States have a number of characteristics in common. The key common characteristic is that they have similar experiences of migration in terms of their international responsibilities, the issues they face and the legislative and policy tools that they have at their disposal to address

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* As noted in Chapter Two, Poland was an observer of the IGC process at the time that this report was written. In the second half of 2017, it became a Participating State. The text reflects IGC's membership as it was in the early part of 2017.

**Chart 11** Contributions to UNHCR for the budget year 2016



- UNITED STATES (33%)
- EUROPEAN UNION (12%)
- GERMANY (6%)
- CANADA (6%)
- SWEDEN (5%)
- NORWAY (3%)
- NETHERLANDS (2%)
- DENMARK (2%)
- AUSTRALIA (2%)
- SWITZERLAND (2%)
- NON-IGC STATES, UNITED NATIONS & POOLED FUNDING MECHANISMS & PRIVATE DONORS (23%)

**Source** UNHCR

them (though of course there are considerable differences between them on many specific policy questions). IGC's Participating States are all developed, democratic countries that—in recent decades at least—have generally been destination countries for migrants, asylum seekers and refugees from around the world. (Some Participating States—most notably those in North America and Australasia—have, of course, been countries of high immigration for a much longer period of time.) Because of their similar immigration experiences, IGC States tend to be 'like-minded' in that they have similar perspectives on migration issues and similar interests in well-managed migration. This means that they can learn a lot from one another.

Furthermore, IGC Participating States tend to be major supporters of UNHCR, both in terms of financial contributions and resettlement. Early in the life of IGC, being a significant donor to UNHCR was said to be an informal criterion for membership. Whilst this view has subsided, it remains the case that IGC Participating States provide the vast majority of UNHCR's budget, and accept the vast majority of refugees resettled by UNHCR.

As Chart 11 demonstrates, IGC Participating States and the European Union directly contributed 77% of UNHCR's budget for the 2016 budget year.[44] If the contribution made indirectly by IGC Participating States—through United Nations and pooled finding mechanisms, as well as through tax deductions provided to persons making private donations to UNHCR—were included, this percentage would be higher still. Of UNHCR's top ten donor States, nine are IGC Participating States.[45]

IGC Participating States are also major participants in UNHCR's resettlement programme. As detailed in Chart 12, 97% of all refugees who departed for resettlement under UNHCR's resettlement programme in 2015 were headed for IGC Participating States.

IGC Participating States vary considerably in their size, and countries of different sizes have different experiences of IGC participation. Smaller States with fewer resources can use IGC to supplement their research and policymaking capacity by gathering a large volume of information quickly and efficiently to develop evidence-based policy and learn from the experiences of others (particularly when they are dealing with an issue for the first time). It can also be the case, however, that the demands of participating in IGC activities—by, for example, attending meetings, providing data and responding to requests for information— can stretch the limited staffing resources of small States. This is all the more so given the proliferation of international fora for the discussion of migration issues that, as was discussed in the previous chapter, has continued to gather pace since the early 2000s.
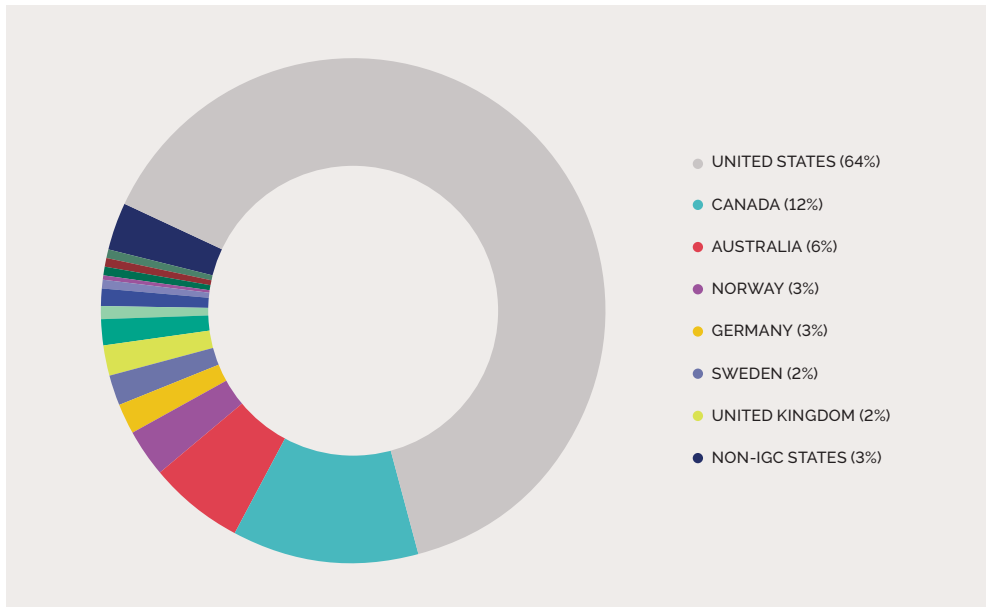
## Participating Organisations

IGC has three Participating Organisations: the Office of the United Nations High Commissioner for Refugees, the International Organization for Migration and the European Commission (including the European Asylum Support Office). As Jonas Widgren noted in 1993, it was because Participating States 'shared the conviction that they have to reinforce regional co-operation on asylum, refugee and migration issues [that] UNHCR has naturally enjoyed a privileged status in the informal consultations ever since their inception'. As noted in the previous chapter, the International Organization for Migration commenced participation in 1991, and the ranks of Participating Organisations were joined by the European Commission in 1999.

These institutions participate regularly in IGC meetings. Their presence enriches the scope and content of discussions and enhances the exchange of information on policies, activities and developments in relevant areas. The participation of these organisations has been beneficial for both Participating States and the organisations themselves, as it allows them to gain greater insight into the thought processes and trends occurring within the other. From the perspective of the Participating Organisations, IGC participation allows them to brief Participating States together on key issues, and to develop a better understanding of the policy priorities of Participating States.

A number of other organisations are invited to participate in IGC activities, normally when an issue of relevance to their work is due to be discussed, or when a representative of the organisation has been invited to give a keynote address. In recent years, such participants have included:

- the Bali Process Secretariat;
- the Council of Europe;
- The European Border and Coast Guard Agency (Frontex);
- Europol;
- the Geneva Centre for Security Policy;

**Chart 12** Number of refugees departed for
resettlement under UNHCR's resettlement programme, 2015



UNITED STATES (64%)

CANADA (12%)

AUSTRALIA (6%)

NORWAY (3%)

GERMANY (3%)

SWEDEN (2%)

UNITED KINGDOM (2%)

NON-IGC STATES (3%)

**Source** UNHCR Resettlement Statistical Database

- the Global Forum on Migration and Development;
- the Organisation for Economic Co-operation and Development;
- the International Centre for Migration Policy Development;
- the International Civil Aviation Organization;
- the International Committee of the Red Cross;
- the International Labour Organization;
- the International Organization of Employers;
- the United Nations Development Programme;
- the United Nations Office on Drugs and Crime;
- the United Nations Secretariat; and
- UNESCO.

As with the decision to allow additional States to participate, the decision to invite additional organisations to participate (either on an *ad hoc* or permanent basis) is made by the Participating States, who will also decide the level of access that such organisations have to IGC documentation and data.

## STRUCTURE

IGC has been deliberately structured with the operating principles discussed above in mind. It has an efficient, light administrative structure which emphasises ease and directness of communication among participants rather than adherence to formalised procedures. Consistent with this, there are only three administrative structures: the Chair, the Troika and the Secretariat.

### Chair

The IGC is overseen by a Participating State that volunteers to serve as Chair of the process. Generally, the IGC Chair serves a one-year term, which commences in June. There is no established approach to the sequence in which Participating States assume the IGC Chair, though there is a sense that the responsibility for chairing the process should be shared by all Participating States and that there should be a balance between European and non-European States, and between EU and non-EU States.

Broadly speaking, the Chair has four key roles. First, the Chair oversees the Secretariat. As noted below, IGC's small Secretariat does not have its own policies or institutional priorities. It aims to be as responsive as possible to the wishes of Participating States and, in this, it is guided primarily by the sitting Chair.

Secondly, the Chair hosts and chairs the senior officials' meetings (which are the subject of more detailed discussion below). The Full Round of Consultations is customarily hosted in the Chair country in April or May each year, whilst the Mini Full Round is held in Geneva in November or December. In consultation with the Secretariat, the Chair will decide upon the agenda and endorse the 'Chair's summary' of the meetings.

Thirdly, the Chair State often represents IGC Participating States in other fora, such as the Global Consultations of Chairs and Secretariats of Principal Regional Consultative Processes on Migration.

Finally, the Chair selects a theme around which the year's work is organised, which will usually be presented to Participating States and Organisations at the Full Round meeting immediately before the commencement of the Chair's term. The theme, chosen in consultation with the Secretariat and the other Participating States, typically concerns a matter of overarching relevance to the migration, asylum or refugee policies of Participating States, or to the global migration governance framework as a whole. The selection of a theme by the Chair ensures that the discussions remain fresh and relevant to the key concerns of Participating States and Organisations. It also gives the Chair State the opportunity to explore a priority issue or test policy proposals before implementing them.

The Chair State will usually organise a multidisciplinary workshop relating to the theme in around March and will present the results of the workshop to the Full Round of Consultations. Chairs also regularly commission research of relevance to their theme, and often second staff to the Secretariat for this purpose. The theme will also be used to focus discussions at meetings of senior officials and within relevant working groups.

**Table 1** Chairs' Themes

| YEAR | CHAIR | THEME |
|---|---|---|
| 2000-2001 | AUSTRALIA | COMPREHENSIVE APPROACH TO THE MANAGEMENT OF PEOPLE MOVEMENTS |
| 2001-2002 | UNITED KINGDOM | IMMIGRATION AND SECURITY, RETURN |
| 2002-2003 | BELGIUM | REGISTRATION |
| 2003-2004 | NORWAY | RETURN |
| 2004-2005 | CANADA | NEW PARTNERSHIPS FOR DURABLE SOLUTIONS |
| 2005-2006 | NETHERLANDS | WHOLE-OF-GOVERNMENT APPROACH |
| 2006-2007 | IRELAND | DESIGNING EFFECTIVE IMMIGRATION SYSTEMS |
| 2007-2008 | SWEDEN | PROMOTING CIRCULAR MIGRATION |
| 2008-2009 | SWITZERLAND | SKILLED LABOUR MIGRATION: OPPORTUNITIES FOR NATIONAL AND INTERNATIONAL COOPERATION |
| 2009-2010 | FINLAND | CITIZENSHIP AND THE IMMIGRATION/INTEGRATION PROCESS |
| 2010-2011 | UNITED STATES | HUMANITARIAN RESPONSES TO CRISES WITH MIGRATION CONSEQUENCES |
| 2011-2012 | GERMANY | MOTIVES FOR MIGRATION |
| 2012-2013 | NEW ZEALAND | ROLE AND INFLUENCE OF EMPLOYERS IN MIGRATION |
| 2013-2014 | DENMARK | INCREASING ECONOMIC AND TRADE RELATIONS WITH EMERGING ECONOMIES – CONSEQUENCES FOR IMMIGRATION SYSTEMS |
| 2014-2015 | AUSTRALIA | STRENGTHENING PUBLIC CONFIDENCE IN MIGRATION POLICY AND PRACTICE |
| 2015-2016 | BELGIUM | THE MANAGEMENT OF BORDERS IN LIGHT OF CONTEMPORARY MIGRATION CHALLENGES |
| 2017-2018 | NORWAY | PREPARING FOR FUTURE MIGRATION SCENARIOS: IGC STATES' RESPONSE TO LARGE-SCALE MOVEMENTS OF REFUGEES AND MIGRANTS |

Table 1 sets out the themes chosen by each Chair since this practice was initiated in 2000.

One Chair's theme of note in recent years has been that of the United States in 2010-2011, entitled 'Humanitarian Responses to Crises with Migration Consequences'. Inspired by the earthquake that devastated Haiti in January 2010, the theme was presented as an opportunity to discuss the impact that different types of crisis—including environmental disasters and violent social upheaval—may have on migration systems. Based on feedback received from other Participating States, the United States focused the theme's workshop in March 2011 on operational and practical responses to crises with migration consequences, with a key aim being:

> to facilitate the development of "tool-kits" of potential plans, policies, and procedures by and among IGC Participating States to support agile and compassionate responses of their immigration systems to future crises with migration consequences, while preserving the integrity of their immigration systems during the stresses inherent in such crises.

Assisted by a professional crisis simulation facilitator and an academic expert, participants made their way through five crisis scenarios (driven by political instability and violence, pandemic influenza, seaborne migration, extreme natural hazard, and famine) and discussed the practices and policies that they would or should put in place to deal with their migration consequences. In each of these cases, the aim was to balance the need for agile and compassionate responses of immigration systems to crises with migration consequences with the need to preserve the integrity of those systems. Tools identified as being of potential use in response to crises with migration consequences included the granting of temporary entry, the suspension of returns and the provision of assistance to the country in crisis and its neighbours. The workshop was complemented by a study, commissioned by the United States, on 'Frameworks for Responses' or the 'international, regional and national legal norms, policies, organizational roles and relations and good practices that are applicable to humanitarian crises with migration consequences'.

Following the United States' term as IGC Chair, there were a series of further humanitarian crises with significant consequences for migrants and migration—including violence in Libya, Hurricane Sandy in the United States, the 2011 Japanese tsunami, and the conflict in the Central African Republic—that highlighted the fact that, in such crises, refugee and migrants often struggle to ensure their own safety and/or access traditional humanitarian responses. The plight of migrants in such situations remained on the international agenda, with the Special Representative of the Secretary-General for International Migration, Peter Sutherland, calling on States to cooperate to develop joint responses.

Aided by the work it had done on the topic during its term as IGC Chair, the United States took on the role of co-chair—with the Philippines—of the Migrants in Countries in Crisis Initiative, a State-led process that:[46]

> seeks to improve the ability of States, the private sector, international organizations, and civil society to prepare for and respond to the needs of migrants in countries experiencing conflicts or natural disasters, including by protecting their rights and dignity and by alleviating suffering.

The Initiative featured wide-ranging consultations with States, international organisations, the private sector and civil society. The first of these was dubbed the 'IGC Plus Consultation' and featured IGC's Participating States, as well as Bangladesh, Japan, the Philippines and South Korea, and representatives of the European Commission, international organisations, civil society and the private sector.[47]

The Initiative launched the *Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster* in June 2016 and is now examining how they can best be implemented, including through the development of training tools and other capacity-building activities.[48]

### Troika

When taking major administrative, budgetary and management decisions—particularly those having effects that will last beyond the end of its one-year term—the Chair

is assisted by the previous and following Chairs; together, the three are known as 'the Troika'. This advisory body ensures continuity by giving the current Chair ready access to the experience of the previous Chair and the views of the next, whilst also preparing the next Chair for the types of questions that are likely to arise during its term. As with most other structures within IGC, the Troika operates in an informal manner and the extent of its activities has varied depending on the Chair's need for advice and the continued availability of senior officials in the Troika with IGC experience. The Coordinator is also involved in the discussions of the Troika and the Secretariat supports its activities. To ensure transparency, the Chair will report to senior officials' meetings regarding issues on which the counsel of the Troika was sought.

## Secretariat

The literature on Regional Consultative Processes notes that they tend to be administratively lean, with small secretariats that are often hosted by an international organisation. This helps to make them effective and efficient, since there is less 'administrative red tape' and 'no filter' between State representatives.[49]

The IGC process is assisted by a small Secretariat based in Geneva but, as Harns notes, IGC is 'unique among the RCPs' in that its Secretariat exists as an entity that belongs to the process itself (rather than being a function provided by a State or international organisation). Furthermore, the Secretariat is 'professionally staffed and funded' and 'charged with the responsibility and imbued with the resources to produce particular and substantive documents and data sets for its members' exclusive use, as well as other resources for public access'.[50]

The Secretariat facilitates the IGC agenda, but it does not set it; temptations to enlarge the Secretariat and expand its influence have been successfully resisted. That being said, the Secretariat is a repository for considerable expertise in the migration, asylum and refugee systems of Participating States, and is well-placed to advise on and prepare possible agenda items, both for senior officials' and practitioner-level meetings.

Currently, the Secretariat has seven staff members: the Coordinator, a Senior Programme Officer, three Programme Officers, a Senior IT Assistant and an Administrative Assistant. The Secretariat is also assisted, when required, by officials seconded from relevant ministries of Participating States, consultants and interns. Despite its modest size, which has remained more-or-less constant for many years, the Secretariat's output is impressive; in 2015, for example, the Secretariat:

- organised more than forty days of meetings, including senior officials' meetings, meetings of working groups and workshops on particular countries and issues;
- published the 500-page Blue Book on asylum procedures in Participating States;
- distributed the responses to nineteen requests for information from IGC Participating States (having already received and distributed the request, and clarified and collated the responses);

- uploaded more than one thousand documents (including reports, news reports and meeting documentation) to the IGC website; and
- updated the IGC statistical databases almost every day of the year.

(Each of these types of IGC activity is explored in greater detail below.)

A feature of the Secretariat worth noting is the length of service of some of its staff. As noted by Ms Kelly Ryan (the current Coordinator), the Senior Programme Officer and one of the Programme Officers have both been Secretariat members since the mid-1990s, and a number of former members, including the former Deputy Coordinator, also served the Secretariat for long periods of time. This continuity of staffing has given the Secretariat an excellent 'institutional memory' of the IGC process, especially concerning activities, topics and approaches that did or did not work well in the past. To complement this continuity, a deliberate policy has been pursued of filling the remaining Programme Officer roles—and that of the Coordinator—with civil servants from the governments of Participating States on a rotational basis so as to take advantage of their governmental perspective and experience, and to provide those Officers with learning and development opportunities outside their home ministries. This combination of institutional and governmental experience has made the Secretariat much more productive than its size would suggest.

The core of the Secretariat's mandate is to provide comprehensive professional advice and support to the Informal Consultations, particularly by operating as a 'clearing house' that facilitates the exchange of information between Participating States and Organisations and the development of transnational networks of experts. This occurs primarily through the organisation, preparation and management of meetings and workshops at both the senior officials' and practitioners' levels, as well as through the collation and analysis of data and other information relating to national and international developments, strategic matters and common issues of concern. When requested to by Participating States and Organisations, the Secretariat provides research, analysis and advice for policy development.

For ease of functioning, the Secretariat is housed administratively—but not physically— within the International Organization for Migration, and benefits from IOM's legal and diplomatic status, but it is in all other respects independent from IOM and accountable only to the Participating States. The functioning of the Secretariat is financed by Participating States, who make modest, equal, annual contributions to the IGC budget. These funds are administered by IOM, which charges an administrative fee to IGC.

## The Coordinator

The IGC Coordinator is the head of the Secretariat. He or she is selected by the Troika, in consultation with Participating States. The Coordinator is accountable to the Participating States through the Chair.

The Coordinator manages the Secretariat—including by selecting and recruiting its other members—and provides leadership and direction for its work. He or she is responsible for liaising with Participating States and Organisations to ensure political buy-in for IGC's work,

**IGC's Coordinators**

**1987-1993**
**Jonas Widgren (Sweden)**

**2005-2009**
**Scott Busby (United States)**

**1993-1996**
**Henrik Olesen (Denmark)**

**2009-2013**
**Friedrich Loeper (Germany)**

**1997-2001**
**Gervais Appave (Australia)**

**2013-**
**Kelly Ryan (United States)**

**2001-2005**
**Gerry Van Kessel (Canada)**

for establishing work priorities and working methods and for maintaining contacts with relevant authorities, institutions, international organisations and other asylum, refugee and migration organisations. An important part of the Coordinator's role is to 'keep an ear to the ground' for issues that are emerging in multiple Participating States, which are thus ideal candidates for IGC's focus.

Normally a senior official from the government of an IGC Participating State, the Coordinator must have proven experience in policy development and the implementation of asylum, refugee, migration, and/or integration policy, and have a good strategic sense of emerging issues at the international and regional levels. The Coordinator must be effective in providing counsel and responding to the needs of senior officials. The majority of Coordinators thus far have represented their government at IGC meetings before becoming Coordinator, but this is not a formal requirement. Coordinators typically serve for between three and five years, which permits the role to rotate amongst Participating States and ensures that the Secretariat remains attuned to their priorities.

## ACTIVITIES

Scholars examining Regional Consultative Processes have noted that they tend to foster transnational engagement at two levels: a technical level where subject matter experts—often from different disciplines—meet to exchange information and discuss their experiences, and a more senior level where ministers or senior officials engage in strategic discussions and provide direction and political support to the technical level.[51] Both levels are crucial to the success of an RCP: without the technical level, discussions would be too general to generate extensive exchange of information, experiences and understanding and, without the support of senior officials, discussions at the technical level would become detached from political realities and strategic considerations, and their ability to lead to improvements in practice and policy would be limited.

There are, broadly speaking, eight kinds of IGC activity, some of which take place only at the senior officials' or practitioners' levels, and some of which sit astride the two. They are:

- senior officials' meetings;
- working groups;
- multidisciplinary workshops;
- informal consultations on discrete issues;
- data collation, presentation and analysis;
- publications;
- requests for information; and
- the IGC website.

## Senior officials' meetings

Two IGC meetings of senior officials occur each year; the Full Round of Consultations is usually held in the Chair country over three days in April or May, while the Mini Full Round usually takes place over two days in Geneva in November or December. As each Chair's year commences in June, this means that the new Chair takes over shortly after the Full Round, has five or six months to prepare for the Mini Full Round, and then concludes the year in the Chair with the next year's Full Round.

As the name suggests, the senior officials' meetings are primarily attended by senior civil servants from Participating States' immigration, refugees and foreign affairs agencies. They are also attended by representatives of UNHCR (often the Assistant High Commissioner for Protection or the Director of the Division of International Protection), IOM (often the Director General or Deputy Director General) and the European Union (typically representatives of the Commission and EASO), as well as any other individuals or representatives invited by the Chair on behalf of Participating States.[52]

### Organisation of senior officials' meetings

Although originally designed to serve different functions (as outlined in Chapter Two), the Full Round of Consultations and the Mini Full Round are today broadly similar in their organisation and tend to have four common elements. The first is the discussion of the Chair's theme. The Chair State will usually summarise the activity undertaken as part of the Chair's theme—most notably the workshop—and open the floor for discussion. This will normally be supplemented by further activities, such as keynote presentations, panel discussions, breakout sessions or simulations related to the theme. For example, at the Full Round of Consultations in 2015, the consideration of the Australian Chair's theme—'Strengthening public confidence in migration policy and practice'—was aided by a keynote address on 'Strategic communication to build and maintain public confidence in migration policy and practice', a series of breakout sessions on topics of relevance (such as expanding the evidence base and engaging with the community), the presentation of research into the impact of social media on public confidence, and a panel discussion on stakeholder engagement.

*IGC meetings are the only time during the year where I have the opportunity to thoroughly reflect on some of the most complex migration and asylum issues and where I have the chance to share ideas and draw inspiration from the work of others.*

**Henrik Ankerstjerne**,
Deputy Permanent Secretary
Danish Ministry of Immigration, Integration and Housing

Secondly, participants will be briefed on data trends and policy developments. The Secretariat will update participants on recent policy changes in Participating States, as well as the latest data on matters such as asylum applications, unaccompanied minors, acceptance rates and return. This will be supplemented by briefings from UNHCR, IOM and EASO on situational, operational and policy developments. Participating States will often brief the meeting on policy developments at the international level as well; in 2015, for example, the United States gave an update on the Migrants in Countries in Crisis Initiative, whilst Switzerland gave an overview of the final phase of the Nansen Initiative and the likely role of migration in the Post-2015 Development Agenda.

Thirdly, participants will engage in discussions concerning one or more strategic themes or emerging issues, informed by background documentation that has been circulated in advance. For example, a thematic issue addressed at the 2016 Full Round of Consultations in Ghent, Belgium was 'Global Shared Responsibility for Protection and Migration Management'; its consideration involved a keynote address from Karen AbuZayd, Special Adviser for the UN General Assembly Summit on Addressing Large Movements of Refugees and Migrants, as well as briefings from IOM on the World Humanitarian Summit, the United States on the Leaders' Summit on Refugees, and UNHCR on complementary pathways for admission.

Finally, senior officials' meetings are also a forum for the making of key decisions concerning the IGC process, including deciding on priorities, approving budgets and endorsing the activities of working groups and workshops.

In addition, because it is the final senior officials' meeting before a new Chair assumes the leadership of IGC, the Full Round of Consultations typically concludes with an introduction by the incoming Chair of its theme for the upcoming year and a discussion of the activities that have been planned to advance it. The Full Round of Consultations often also features an optional series of activities before or after the official meetings, normally including one or more field visits. Before the opening of the Full Round of Consultations in Copenhagen in 2014, for example, participants visited two organisations of relevance to the Danish Chair's theme (which examined the relationship between trade and immigration): Kopenhagen Fur, the world's largest fur auction house and the centre of the international fur trade, and the Confederation of Danish Industry. Participants also visited the Sandholm Reception Centre, Denmark's largest reception centre for newly-arrived asylum seekers.

## Benefits of senior officials' meetings

Senior officials' meetings serve a number of functions. First, they provide a forum for senior officials to engage in strategic discussions about trends and developments in the fields of migration, asylum and refugees.

Secondly, they offer an opportunity for reflection on issues facing national administrations in a relaxed, informal setting. Participants are not limited by their national position on an issue, nor are they in 'negotiation mode'; they are there simply to share their views and experiences, and to hear from and learn from others. As an earlier review of IGC emphasised, '[t]his benefit cannot be overstated. It is a potent element for people who spend their time dealing with seemingly intractable issues'.

Thirdly, these meetings allow senior officials to create and strengthen relationships with their counterparts in Participating States and Organisations who may have had similar experiences or longer exposure to a particular issue.

Finally, senior officials' meetings provide a platform for senior officials to share and—if desired—coordinate the positions they will take in other international fora. We have seen in the previous chapter how IGC meetings have been used to discuss UNHCR's Convention Plus initiative, as well as the Global Forum on Migration and Development and its predecessor processes, and IGC's role in this respect will be expanded upon further in the next chapter.

## Working groups

IGC's working groups are the main form of organisation at the practitioners' level and, indeed, the site of the bulk of the work done within the IGC process. They are a forum for practitioners from within the bureaucracy of Participating States and Organisations to exchange information about current procedures and best practices, and to develop a wider appreciation of the realities in other Participating States and Organisations.

Each working group focuses on an issue or set of issues that Participating States and Organisations have agreed to discuss on an ongoing basis, in accordance with the mandate decided upon by senior officials. Working groups are usually established by decisions of the senior officials' meetings; these meetings also set each working group's terms of reference, approve their work plans and evaluate their performance.

Since 2008, there have been seven IGC working groups:
- Asylum and Refugees;
- Admission, Control and Enforcement;
- Immigration;
- Integration;
- Country of Origin Information;
- Technology; and
- Data.

*In Canada's experience, IGC's Working Groups provide a unique opportunity for practitioners and specialists to exchange ideas, compare experiences and discuss policy developments. In 2016, for example, Canada's Immigration and Refugee Board used the forum provided by the Working Group on Asylum and Refugees to seek the views of experts in other Participating States on the draft of a now-public guidance document concerning proceedings before the board involving sexual orientation and gender identity and expression. The feedback received was most valuable and added a crucial global perspective to the development of such an important document.*

**Lori Simpson**, Chief of Staff, Immigration and Refugee Board of Canada

Within their areas of competence, each Working Group's stated objectives typically include:

- exchanging information and exploring other forms of cooperation;
- identifying common concerns and responses to them;
- identifying best or promising practices; and
- examining and evaluating policies, projects, approaches, research, data and/or forms of international cooperation.

IGC's Working Groups are similarly structured. Membership is open to all Participating States and Organisations, and each working group is led by a Chair who has been selected by the members. Chairs typically serve for a few years and are assisted in their role by a member of the Secretariat.

The meetings of IGC's Working Groups also follow a common pattern. They are held bi-annually, usually at the IGC Secretariat's offices in Geneva, and they are sometimes held back-to-back with other relevant meetings so as to facilitate participation. (The meetings of the Working Group on Asylum and Refugees, for example, are often held shortly before or after the meetings of UNHCR's Executive Committee or Resettlement Working Group.) Meetings typically last for two days.

Working group meetings are open to all Participating States and Organisations, and representatives of other organisations with an interest in a working group's subject matter are often invited to participate, as are external experts and academics. The agenda typically includes a presentation of recent data trends of relevance to the working group, a *tour de table* of recent developments in the policies and practices of Participating States and Organisations, and an update on developments in other States, organisations and fora. The bulk of the meetings are usually dedicated to the discussion of a particular theme or themes of relevance, often linked to the Chair's theme and frequently catalysed by one or more presentations from a participant or external expert. The Chair and Secretariat are mindful of the need to ensure that discussions within the working groups do not duplicate activities or discussions in other fora.

**The evolution of IGC's practitioner working groups**

| 1994-1995 | 1995-1998 | 1998-2003 | 2003-2005 | 2005-2007 | 2007-2008 | 2008- |
|---|---|---|---|---|---|---|
| • Return<br>• Smuggling & Trafficking | • Return<br>• Smuggling & Trafficking<br>• Technology<br>• Data | • Return<br>• Smuggling & Trafficking<br>• Country of Origin Information<br>• Technology<br>• Data | • Asylum<br>• Return<br>• Smuggling & Trafficking<br>• Country of Origin Information<br>• Technology<br>• Data | • Asylum & Refugees<br>• Admission, Control & Enforcement<br>• Country of Origin Information<br>• Technology<br>• Data | • Asylum & Refugees<br>• Admission, Control & Enforcement<br>• Immigration & Integration<br>• Country of Origin Information<br>• Technology<br>• Data | • Asylum & Refugees<br>• Admission, Control & Enforcement<br>• Immigration<br>• Integration<br>• Country of Origin Information<br>• Technology<br>• Data |

## Working Group on Asylum and Refugees

Although questions of asylum drove the formation of IGC and have been central to the IGC process ever since, the practitioner-level Working Group on Asylum was established only in 2003. (The lack of a perceived need for a practitioner working group until that time reflecting, perhaps, the fact that questions of asylum were a core focus of senior officials' meetings, *ad hoc* workshops and the existing working groups.) Following the 2005 Strategic Review, the remit of the Working Group on Asylum was expanded in scope to include issues concerning refugees not seeking asylum in Participating States, and was re-named accordingly.[53] According to its terms of reference:

> The overall objective of the IGC Working Group on Asylum and Refugees [is] to exchange information on policy and practice in IGC Participating States
>
> 1) in implementing international protection obligations in relation to asylum-seeker caseloads; and
>
> 2) in respect of refugees in countries of first asylum and third countries with a view to providing better outcomes for refugees.

Specific topics that regularly arise in the Working Group on Asylum and Refugees include:

- National asylum determination policy and practice, including exclusion, cessation, gender-related protection, temporary and permanent protection, complementary protection, accelerated processing procedures, access to benefits, reception conditions, work rights, abuse of determination systems, identity fraud, specific asylum caseloads (e.g. specific countries of origin, unauthorised maritime arrivals, and minors);

- Protection issues related to rescue at sea;

- Treaty obligations and international customary law and standards relevant to the implementation of international protection obligations;

- Specific legal issues, such as the interpretation of the phrase 'particular social group' in the refugee definition;

- Training and quality assurance in adjudication and decision-making;

- International cooperation on asylum, including developments within the EU and UNHCR, bilateral or multilateral arrangements, information exchange, capacity-building in third countries, and responsibility sharing; and

- Access to durable solutions, including repatriation, local integration, resettlement, and enhancing protection capacity in third countries.

Meetings of the Working Group are attended by directors, case processing officers, decision-makers, managers and policy-makers in the asylum and refugee field. UNHCR and EASO are key participants, given the overlap between their mandates and that of the Working Group, and they regularly present the results of their research, analysis and field experience during meetings.

Given the volume of asylum and complementary protection applications that have been made in recent years, discussions have often centred on the question of how to adjudicate asylum claims speedily whilst rendering high-quality decisions. Recent thematic discussions have centred on:

- Triage and prioritisation when managing complex caseloads;

- Building flexible asylum systems to meet operational demands;

- Responding to surges in asylum applications;

- Streamlining decision-writing;

- Approaches to protection-sensitive border management;

- Cooperation between asylum and enforcement agencies;

- Complementary pathways for admission;

- Forecasting and early warning systems;

- Children in the asylum process;

- Post-decision non-refoulement safeguards;

- Approaches to reception; and

- Challenges to reliable credibility analysis and tools to test credibility.

These themes are typically introduced by a presentation by one or more Participating States or Organisations, or by a keynote address from an external expert.

The Working Group on Asylum and Refugees also contributes to the production of the Blue Books, which are detailed further below.

## Working Group on Admission, Control and Enforcement

As noted in the previous chapter, the Working Group on Admission, Control and Enforcement is a product of the 2005 Strategic Review. Its responsibilities include—but are in no way

*I found participation in IGC to be professionally very valuable. The Working Groups that I participated in—on Smuggling and Trafficking and, after 2006, Admission, Control and Enforcement— brought together individuals from around the world who had considerable expertise in these fields (including members of the Secretariat), and this made for some fascinating conversations that ranged from the practical to the strategic. The IGC approach was crucial in this regard—it was because the atmosphere was so welcoming and the focus was on exchanging ideas and experiences, instead of representing and sticking to official positions, that these conversations were able to take place.*

*These conversations also had considerable impact on the way in which we approached the issues we discussed once we were back at home. We came to realise that the issues that we were having weren't unique and that we could use IGC as a forum to learn from one another. A particular example of this that sticks in my mind was the discussion about difficulties in building relationships of trust with trafficking victims that followed an excellent presentation by a Swedish special prosecutor for human trafficking.*

*By pooling our knowledge, we were also able to gain a much better worldwide view of, for example, routes used by people smugglers and tactics employed by those engaged in human trafficking. This increased our ability to engage in evidence-based policymaking markedly.*

**Chris Hordal**, Canada Border Services Agency

Member of the Working Group on Smuggling and Trafficking and the Working Group on Admission, Control and Enforcement, 2001-2009

Chair of the Working Group on Smuggling and Trafficking, 2004-2006

limited to—those of the former Working Group on Smuggling and Trafficking and the former Working Group on Return, which were dissolved at the same time.

The Working Group on Admission, Control and Enforcement ('ACE') considers all aspects of the admission of persons, enforcement and control, including:

- Pre-entry, entry and admission of persons, including visa issuance policy and practice, interdiction and interception, border control, identity fraud, smuggling and trafficking;
- Internal control and enforcement, illegal stay, illegal work, identity fraud and the immigration-related activities of organised crime;
- Return and readmission, including pre-removal, transit, reception/reintegration, readmission agreements, barriers to return; and
- Cross-cutting issues such as security, intelligence, relationships with other stakeholders (transit countries, employers, local communities, private sector, etc.).

Representatives from Participating States are usually enforcement policymakers and officers.

The two meetings of the Working Group on Admission, Control and Enforcement that take place annually each have a different focus. The spring meeting usually focuses on issues of return, readmission and detention, while the autumn meeting usually focuses on topics of admission and in-country enforcement. In recent years, the thematic issues discussed in the return-focused spring meetings have included:

- Establishing the identity of returnees;
- Assisted voluntary return and reintegration;
- Strategies to overcome obstacles to return;
- The importance of return in the management of migration;
- Joint return operations; and
- The return of unaccompanied minors.

Admission and in-country enforcement discussion topics discussed in the autumn meetings have included:

- Smart borders and integrated borders;
- Alternatives to passports for travel documents;
- Issues surrounding the detention of people who may harm themselves or others;
- Illegal stay;
- Protection of children in admission, control and enforcement;
- Sanctions against the employment of illegal workers;
- Advance passenger information;
- Maritime border management;
- Prevention, identification and prosecution of trafficking;
- Support to victims of trafficking; and
- UNHCR's detention guidelines.

A review of the Working Group in 2015 concluded that the scope of the autumn meeting was too broad and that participants were deriving significantly more benefit from the discussions relating to pre-entry and entry issues (including irregular migration, smuggling, trafficking, deterrence, disruption and intelligence) than they were from those concerning in-country enforcement (such as illegal stay and illegal employment). Participating States decided, therefore, to limit the focus of the autumn meeting to pre-entry and entry issues. Issues of in-country enforcement are proposed to be dealt with in dedicated workshops to be held from time to time.

## Working Group on Immigration

As noted in the previous chapter, the Working Group on Immigration arose out of the 2005 Strategic Review of IGC, one of the key conclusions of which was that IGC should expand its focus to include broader issues of immigration, beyond asylum and refugee matters.

Although this did not result immediately in the creation of working groups to examine immigration issues (the focus was initially to be on multidisciplinary workshops), the Working Group on Immigration and Integration was formed in 2007, becoming the first State-led, multiregional forum on such issues. In 2008, integration issues were given their own working group, as discussed below.

The Terms of Reference for the Working Group on Immigration describe its overall objective as being 'to exchange information on policy and practice in IGC Participating States on immigration and the nexus between immigration and integration'. The Working Group's remit covers all forms of regular non-asylum migration, including for high- and low-skill workers, permanent and temporary migrants, and student, business and family migration.

The Terms of Reference envisage that the focus topics of the Working Group on Immigration will include:

- national immigration selection policy and processes;
- processing issues (including selection criteria, credential recognition, categories and permits, appeal possibilities);
- rights and obligations (including access to work, social assistance, health, education, training, family reunification); and
- the consequences of regulation policies on the integration process and the use of such policies to facilitate integration.

The Working Group's meetings are typically attended by policymakers and case officers from Participating States and Organisations, as well as—by invitation—representatives from the International Labour Organization and the OECD. Recent thematic discussions have focused on:

- Family migration, including economic and social impacts, programme management and delivery, the protection of vulnerable family migrants (in particular, victims of forced marriage), and programme integrity challenges;
- The future of migration, including global migration trends, managing the future demand for labour and the use of technology in immigration systems;
- Global youth mobility, including working holiday programmes, training programmes, international student mobility, and study-to-work transitions;
- Skilled migration, including competition amongst States for migrants with specific skill sets;
- Low- or medium-skilled migration and its use to address labour shortages,
- Investor and entrepreneur migration programmes; and
- Labour migration partnerships with employers.

## Working Group on Integration

The Working Group on Integration was formed in 2008 when, in recognition of the growing prominence of both immigration and integration policy in the IGC process, the recently-formed Working Group on Immigration and Integration was split into two. The Working Group's

overall objective is 'to exchange information on policy and practice in IGC Participating States on integration/settlement and the nexus between immigration and integration/settlement'.

Discussions within the Working Group on Integration are to focus on:
- Integration policies and models (multiculturalism and other models, differences in approaches) and accompanying institutional frameworks;
- Differing approaches to similar integration challenges, and the outcomes of the differing approaches;
- The role of language in integration;
- Social cohesion and the reduction of exclusion and radicalisation;
- Urban and spatial/locational issues, including rural settlement;
- The role of the private sector in facilitating integration;
- The development of integration indicators;
- Evaluation of integration outcomes (both at the programme and individual level), including the relationship between immigration selection criteria and integration, comparative outcomes for specific categories of migrant;
- Analysis of existing research and data collection on integration and, where necessary, designing IGC data collection;
- The role of citizenship policies in integration;
- Promotion of inter-cultural dialogue at local and national levels; and
- Furthering regional and international co-operation.

Meetings of the Working Group on Integration are usually attended by integration policymakers and experts from Participating States and Organisations, as well as representatives of the International Labour Organization, the OECD and, less frequently, the Council of Europe. In recent years, thematic discussions—which have examined issues of integration across the whole continuum from pre-arrival to citizenship—have centred on the following topics:
- The integration of adolescent and young adult migrants, which included a presentation by a White House official and discussions on specific challenges and vulnerabilities faced by adolescent and young adult migrants, supporting transitions to the labour market and/or higher education, and supporting social integration;
- The integration of refugees and other humanitarian cohorts, including reception, initial settlement, and educational and labour integration support;
- Linguistic integration;
- Recognition of foreign credentials, including pre-departure arrangements, alternative careers and bridging programmes;
- The integration of immigrant youth, including improving educational outcomes, smoothing the transition from education to the labour market and addressing obstacles to social participation;

*In 2008, I attended my first meeting of the IGC Working Group on Immigration and Integration in my capacity as the newly-appointed Director General of the Integration Branch in Canada's Citizenship and Immigration department. This meeting and the subsequent sessions organised under the Swiss Chair demonstrated to me the value of participating in an international forum to discuss immigration and integration issues informally and frankly with peers.*

*Shortly after the decision to create a dedicated Working Group on Integration, of which I was an enthusiastic supporter, I willingly volunteered to serve as the Chair of the group from April 2009 until March 2013, when I retired. This was truly one of the highlights of my forty-year career.*

*Canada invests significantly in its integration policies and programs and this unique opportunity to plan thoughtful, in-depth discussions on enduring and emerging integration challenges and to share national successes with counterparts from immigrant receiving countries has been remarkable.*

*Over the course of five years, we scoped out the phases of settlement and integration, from pre-arrival through to citizenship, and planned meetings to delve into strategic topics, such as the connection between immigration selection and integration outcomes, integration contracts and tests, migrants' sense of belonging in host societies and linguistic integration of adult migrants. Another strength has been a rigorous examination of integration indicators and the evaluation of policies and programmes, and the opportunity to hold joint sessions with other working groups. Finally, this cohesive group was also instrumental in facilitating in-depth examination of selected IGC Chairs' themes, in particular citizenship under Finland's Chair in 2010 and the role of employers under New Zealand's Chair in 2013.*

*In an increasingly complex environment on immigration and integration matters, the Working Group thrived because of the quality and relevance of the meetings, benefiting greatly from the participation of the European Commission, UNHCR, IOM, the Council of Europe and OECD, the contribution of well-known academic and experts as keynote speakers, and the support of my Canadian colleagues and the IGC Secretariat.*

*I was pleased when Germany chose Motives for Migration as its topic for the Full Round hosted in Berlin, with a strong focus on immigrant integration aspects, and one year later that my German successor, Ms. Uta Saumweber-Meyer, agreed to assume responsibility for the group. Noting the integration challenges that lie ahead for Germany following the recent huge increase in asylum flows to that country, the Working Group on Integration will surely provide a welcome platform for testing new ideas and approaches in that context.*

**Deborah Carson Tunis**, Former Director General

Integration Branch, Citizenship and Immigration Canada

Chair, Working Group on Integration, 2009-2013

- The formation of ethno-concentrated areas and their positive and negative impacts on migrant integration and social cohesion, including the factors that drive the formation of such areas, the impact of such areas on migrants and wider society, and the planning of government interventions; and

- Partnerships with employers and other labour actors for integration, including partnerships in the pre-arrival and settlement phases, partnerships for improving labour market outcomes, partnerships for improving other integration outcomes, and challenges to cooperation.

## Working Group on Country of Origin Information

As detailed in the next chapter, IGC can justifiably be regarded as a pioneer in the development of procedures concerning the collection and analysis of country of origin information ('COI'). Indeed, because of the Working Group on Country of Origin Information and other activities, IGC is the oldest international forum for cooperation on COI and has played an important role in the professionalisation of COI production, as well as the convergence in State practices in COI collection and analysis.

The Working Group on Country of Origin Information emerged from the Working Group on Technology, which originally had as a key focus the electronic exchange of country of origin information. In 1998, however, IGC Participating States and Organisations decided to examine country of origin information more holistically, and thus established a separate working group for that purpose.

The Working Group on Country of Origin Information is ordinarily attended by representatives of COI units, whose mandate is to provide information for asylum decision-makers to assist in the application of the 1951 Refugees Convention to specific applications.

Given their experience and expertise on country of origin information, UNHCR and EASO are also key participants. In particular, there has been extensive cooperation and coordination between the Working Group and EASO in recent years as the scope of the latter's COI activities has rapidly expanded, including through the creation of specialist country networks for key countries of origin. As with other examples of cooperation between IGC and other organisations and fora, the aim has been to ensure complementarity and avoid duplication of effort.

The Working Group's Terms of Reference define its 'overall objective' as being

> to exchange information on policy and practice on all aspects of country of origin information, including COI for asylum cases, protection, resettlement, enforcement (return and false documents), legal and illegal immigration and integration.

A further key objective of the Working Group on Country of Origin Information is to discuss managerial issues and to open informal channels for the sharing of COI reports amongst participants.

Although country of origin information is a topic that was traditionally looked at almost exclusively through the lens of refugee status determination, the expansion of the focus of IGC to include all migration issues following the Strategic Review in 2005 caused the role of the Working Group on Country of Origin Information to grow to include the provision of such information for other immigration purposes.

The key issues and topics dealt with by the Working Group on Country of Origin Information include:

- Best practices in COI work, COI collection standards and the operation of COI units;
- Co-operation with other ministries, international organisations and NGOs;
- Copyright issues;
- Training of COI researchers and information users;
- The use of COI research to support asylum decision-making;
- The use of COI research to support the national resettlement process;
- The use of COI in enforcement operations and cooperation between COI units and enforcement agencies;
- The use of COI to maximise integration outcomes for specific groups of immigrants and refugees; and
- The use of COI in assessing eligibility for visas issued on humanitarian, compassionate and medical grounds.

Meetings of the Working Group on Country of Origin Information are attended by COI unit heads and COI analysts. In recent years, the topics for thematic discussion have included:

- Electronic communication of COI;
- New methodological approaches to COI;
- Communicating COI;
- Overcoming language barriers in collating, analysing and communicating COI;
- Trend analysis and prognosis;
- COI tools to support asylum interviews;
- Asylum interview records as a source of COI;
- COI and exclusion, particularly in the case of war crimes;
- COI and asylum claims made by LGBTI individuals;
- COI and 'safe third countries';
- Social media and COI;
- The professionalisation of COI work;
- COI and risk assessment, forecasting and early warning; and
- Peer review of COI work.

*When I become the Head of Lifos, the Centre for Country of Origin Information and Analysis at the Swedish Migration Agency, in 2013, I had a long career behind me in international relations, but I was new to the migration field. I soon realized that, because of Lifos' unique and strategic role in communicating reliable country of origin information, I had no peers with similar tasks in the Migration Agency. Furthermore, as I had mostly research staff, I had to take different management and leadership approaches than my other colleagues in the agency.*

*In the Working Group on Country of Origin Information, I received tremendous support from my IGC peers in several areas. One was to understand international best practices and principles regarding COI. Another was to get helpful advice on management and to learn from the experience of the Heads of COI units in other countries.*

*These key factors allowed me, in close collaboration with the Lifos staff, to initiate a range of reforms during my years in Lifos. These reforms increased the unit's capacity and capabilities, including by increasing staffing by 50%, improving the quality of our country of origin information and enhancing the effectiveness of our communication with end users.*

**Dr Björn Holmberg**, Former Head of Lifos

Chair of the Working Group on Country of Origin Information, 2015-2016

## Working Group on Technology

Formed in 1995, the Working Group on Technology is—alongside the Working Group on Data— the oldest of IGC's working groups still in existence. It is a forum for discussion and information exchange on issues related to the use of technology in the immigration, integration, asylum, refugee, admission, control and enforcement activities of Participating States and Organisations. Discussions focus, in particular, on technological developments and emerging trends, the testing, adoption and implementation of new technological solutions, positive and negative experiences in the use of technological tools, and the interoperability and compatibility of the operating systems, standards and technologies used by Participating States and Organisations. The group aims, by its discussions, to improve the use of technology in all migration processes, including travel, temporary residence, permanent residence and irregular migration. Foci include border management, visa processing, biometrics, system architecture, identity management, document safety, and legal issues such as privacy and data protection. The Working Group also provides assistance to the technological aspects of other IGC activities.

Participants in the Working Group on Technology include those who work in IT infrastructure, border management, biometrics and fraud management. In recent years, thematic topics have included:

*The Working Group on Technology always delivered vibrant and interesting discussion on leading edge developments of the day. Some might be innovations from individual countries; some involving participation by multiple countries with a common interest.*

*Over the years that I chaired the group we saw real progress in several areas. For example, eGates evolved from being a very early experiment by a few countries in 2008 to mainstream technology for most countries by 2015. Looking back to some very early presentations around 2000 highlighted an even larger contrast: one country aspired to search 350,000 sets of fingerprints within an hour, a far cry from hundreds of millions in seconds now being achieved by larger systems, less than 20 years later.*

*Pushing the boundaries with innovations like these can't be done in isolation: the Working Group on Technology serves a vital role in connecting innovators, and sharing insights—despite national differences—so often we are solving the same problems.*

*A key highlight was the study tour to Australia and New Zealand in 2013. Our colleagues from New Zealand and Australia sold the idea, explaining that no amount of PowerPoint equates to using an eGate live, speaking to a border officer about it, and then the developer. It is still amazing how much we packed into just a week—a real revelation, and invaluable experience that we all took home with new insight.*

*The pace of technological development is not slowing. I encourage the group to continue to share experience as it has so successfully in the past.*

**Frank Smith**,
Chair, Working Group
on Technology,
2008-2015

- Analytics and big data;
- The future of biometrics;
- Automated border control gates;
- Smart borders and seamless passenger flow;
- Facial recognition technology;
- Self-service technologies and immigration processes;
- Case management systems;
- Overarching system architectures;
- System renewal and replacement;
- Customer service;
- eTA (Electronic Travel Authority);

- Multi-model biometrics;
- Key infrastructure;
- Mobile devices;
- Second generation ePassports;
- Challenges with poor quality fingerprints;
- Electronic visas;
- Advance passenger processing;
- Machine readable Refugee Convention travel documents;
- Regional capability-building; and
- Use of biometrics to track displacement during humanitarian crises.

## Working Group on Data

The Working Group on Data was established in 1995 and, as with other working groups, had its focus expanded following the 2005 Strategic Review. Its overall objective is 'to exchange information on policy and practice, maintain the current data collection on asylum, immigration, stocks of foreign-born/non-nationals, naturalisation and enforcement'. Topics of discussion envisaged in its Terms of Reference include best practices in the collection and analysis of data, using data to support policy discussion, and the maintenance and improvement of IGC's statistical databases.

The Working Group on Data is currently dormant. Its structure has been retained, however, so that it can easily be reactivated for *ad hoc* meetings as and when the need arises. One of the key roles of the Working Group on Data following the 2005 Strategic Review was to support the data needs of the other working groups; this is one of the functions for which the structure stands ready to be reactivated in the future.

### *Ad hoc*, multidisciplinary workshops

In addition to the regular meetings of senior officials (at the Full Round of Consultations and Mini Full Round) and practitioners (in working groups), IGC regularly holds multidisciplinary workshops concerning a particular country or a particular theme. Held at the request of senior officials (usually following a suggestion from a Participating State or Organisation, which will then chair the workshop), these workshops aim to:

- Provide a comprehensive overview of a relevant country or pertinent issue;
- Facilitate multifaceted discussions and cross-disciplinary approaches to the issue; and
- Improve coordination and cooperation mechanisms geared towards addressing the issue.

IGC's multidisciplinary workshops bring together senior officials, policy makers, practitioners and operational experts from Participating States and Organisations and, where the need is identified, representatives from non-IGC States and organisations, academics and external

specialists. Their multidisciplinary nature means that they aim to examine an issue from all possible angles.

Following each workshop, a summary of discussions and conclusions will be circulated and, where appropriate, further discussions will be held at senior officials' meetings and/or in relevant working groups.

## Thematic workshops

As noted above, IGC's multidisciplinary workshops can be thematic or country-specific.

Thematic workshops focus on the *ad hoc* exchange of information on themes affecting a wide range of asylum and migration issues and crosscutting topics covering policy and/or operational issues. Depending on the theme in question, these specific-purpose workshops can focus on laws, policies, practices, programmes and/or methodologies.

For example, the growing number of asylum claims in recent years based on sexual orientation and gender identity—coupled with a heightened awareness of the multiple vulnerabilities faced by lesbian, gay, bisexual, trans and intersex ('LGBTI') asylum-seekers and refugees in all stages of the cycle of displacement—was the motivation behind two workshops on the topic in recent years.

The first, a two-day workshop chaired by Canada in 2012, aimed at presenting the latest research on addressing asylum issues related to sexual orientation and gender identity, and identifying best practice. Key foci of the presentations by UNHCR, representatives of the 'Fleeing Homophobia' project and Participating States, and the ensuing discussions, included:

- Particular forms of persecution faced by people by reason of their gender, sexual orientation or gender identity, including female genital mutilation, domestic violence, forced marriage, criminalisation of sexual conduct, hate crimes and social stigmatisation;
- The importance of providing information to persons who may have a claim for protection based on gender, sexual orientation or gender identity, particularly given the wide-spread lack of knowledge amongst women and LGBTI asylum seekers that an asylum claim can be based on this specific part of their identity;
- Issues that arise in reception centres that relate to gender, sexual orientation and gender identity, and strategies to identify and address these;
- The provision of guidance to and training of caseworkers and interpreters in appropriate interviewing procedures, in particular those that encourage the building of trust and that reassure the asylum seeker that they are in a safe space where they can speak without being in danger; and
- The development of decision-making practices and guidelines that are sensitive to the needs of asylum seekers whose claims are based on gender, sexual orientation or gender identity, including on the use of case law and country of origin information, the assessment of credibility and sensitivity to the fact that,

due to social conditions in their country of origin, asylum seekers may never
have spoken about these highly personal issues before.

The workshop was so popular that a follow-up two-day workshop was held in 2013, where
participants—with the assistance of the expertise of Professor Nicole LaViolette of the
University of Ottawa—considered the development of professional training programmes
for personnel involved in LGBTI refugee claims, credibility assessments in relation to LGBTI
status, and the intersection between gender, sexual orientation and gender identity. Other
presentations and discussions focused on the tools and techniques that can be used to
improve the provision of information and the quality of decisions made in relation to asylum
applications based on gender, sexual orientation or gender identity. Methodologies—
including fact-finding missions—for the collection of country of origin information concerning
sexual orientation and gender identity were also canvassed.

By presenting the most cutting-edge research in the field, these workshops assisted
Participating States and Organisations to incorporate best practices into their training and
guidance on LGBTI issues. Furthermore, it would appear that these workshops contributed
to significant policy exchange in IGC Participating States. As the 2015 Blue Book noted:[54]

> Since the last report in 2012, many IGC Participating States have continued to
> develop policies and practices to improve protection outcomes for asylum cases
> based on sexual orientation or gender identity. Efforts to improve staff training
> are ongoing in almost all Participating States, including Australia, Ireland,
> Norway, Sweden, Switzerland and the United Kingdom, which have invested in
> enhanced training. In Canada, the Immigration and Refugee Board has updated
> its Chairperson's Guideline "Concerning Procedures with Respect to Vulnerable
> Persons Appearing before the Immigration and Refugee Board of Canada".
> Norway has issued new instructions on the interpretation of the 1951 Convention
> Relating to the Status of Refugees, and new instructions on claims related to
> lesbian, gay, bisexual, trans or intersex persons, female genital mutilation or
> gender-based persecution have been released. In Belgium, the Belgian Office
> of the Commissioner General for Refugees and Stateless Persons has revised
> practices for interviews and decision-making regarding the assessment of
> risk of female genital mutilation for girls and women. Improvements to the
> provision of information are also noteworthy; the Swedish Migration Agency
> website provides specific information for persons with lesbian, gay, bisexual
> and transgender related claims, available in English, Spanish, Arabic, French
> and Persian. Similarly, the Government of Norway has launched information
> pages on its website for lesbian, gay, bisexual or transgender persons and for
> victims of female genital mutilation, forced marriage, violence in domestic
> relations or human trafficking.

Further consideration of issues of gender, sexual orientation and gender identity in the
workshop format has been and continues to be supported by discussions on this topic
during regular meetings of the Working Group on Asylum and Refugees.

## Country-specific workshops

Country-specific workshops, which grew out of the 'Country Assessment Approach' referred to in Chapter Two, facilitate the exchange of information on:

- Country of origin information: existing reports and other assessments of the security/humanitarian situation;
- Data: caseloads, trends and data interpretation;
- Asylum determination practices: differences in recognition rates, grounds, statuses and the position of particularly vulnerable groups;
- Return issues: experiences in returning rejected asylum seekers, readmission agreements and issues concerning travel documents;
- Smuggling and trafficking issues: the *modus operandi* of smugglers, routes used and possible methods of deterrence and interception; and
- Immigration issues: labour migration, students, illegal migration and family reunification.

Specific issues and additional topics relevant to the country at stake are also often examined, for example:

- Identity documentation fraud: types of fraud experienced and measures to detect false identity;
- Secondary movements: techniques to detect secondary movers and prevention strategies to combat secondary movements; and
- Comprehensive plans of action.

In November 2016, for example, a country-specific workshop on China was convened in Geneva. The first half of the workshop was dedicated to the challenges faced by those undertaking country of origin research on China and, in particular, the sources that were available and the best strategies to employ in overcoming barriers to communicating with sources inside China. The second half focused on the question of religious minorities in China (and, in particular, house churches), the members of which had recently started to claim asylum in European Participating States, even though such claims had been familiar to officials in non-European Participating States for many years. Dr Marie-Eve Reny of the University of Montréal gave an overview of government action in relation to house churches in China, based on a forthcoming book that explained the characteristics that seemed to make house churches subject to government attention. Dr Bob Fu, a former house church leader who was granted refugee status in the United States in 1997, spoke from personal experience and that of his organisation—ChinaAid— about the Chinese government's approach to religious minorities, the activities of different types of house churches and the challenges faced by those trying to assess the credibility of persons making asylum claims based on religious persecution in China.

Other recent country-specific workshops—on Syria in 2012 and 2014, and on Eritrea in 2014— were discussed in Chapter Two.

Table 2 contains a list of country-specific and thematic workshops held in the period 2000-2016.

**Table 2** IGC thematic and country-specific workshops, 2000-2016

| DATE | TYPE | COUNTRY/THEME |
|---|---|---|
| SEPTEMBER 2000 | THEMATIC | ASYLUM-SEEKERS' ACCESS TO WORK AND WELFARE |
| SEPTEMBER 2001 | THEMATIC | ASYLUM DECISIONS |
| OCTOBER 2001 | THEMATIC | WAR CRIMINALS, PERSECUTORS AND NATIONAL SECURITY RISK CASES |
| FEBRUARY 2002 | COUNTRY | AFGHANISTAN |
| APRIL 2002 | THEMATIC | IMMIGRATION AND SECURITY (BRITISH CHAIR'S THEME) |
| MAY 2002 | THEMATIC | ARTICLE 1F OF THE REFUGEES CONVENTION |
| MAY 2002 | COUNTRY | IRAQ |
| NOVEMBER 2002 | THEMATIC | RESETTLEMENT |
| NOVEMBER 2002 | THEMATIC | REGISTRATION TECHNOLOGY |
| JANUARY 2003 | COUNTRY | NIGERIA |
| FEBRUARY 2003 | THEMATIC | REGISTRATION (BELGIUM CHAIR'S THEME) |
| MARCH 2003 | COUNTRY | RUSSIA |
| MAY 2003 | THEMATIC | BIOMETRICS |
| NOVEMBER 2003 | COUNTRY | THE BALKANS |
| FEBRUARY 2004 | THEMATIC | RETURN POLICIES (NORWEGIAN CHAIR'S THEME) |
| FEBRUARY 2004 | COUNTRY | IRAQ |
| MARCH 2004 | THEMATIC | LEGAL AND ILLEGAL MIGRATION |
| APRIL 2004 | COUNTRY | SOMALIA |
| DECEMBER 2004 | THEMATIC | ACCESS TO BENEFITS DURING AND AFTER THE ASYLUM PROCEDURE |
| FEBRUARY 2005 | COUNTRY | CHINA |
| FEBRUARY 2005 | THEMATIC | NEW PARTNERSHIPS FOR DURABLE SOLUTIONS (CANADIAN CHAIR'S THEME) |
| JUNE 2005 | THEMATIC | BARRIERS TO RETURN |
| NOVEMBER 2005 | THEMATIC | INTEGRATION POLICY |
| APRIL 2006 | THEMATIC | WHOLE-OF-GOVERNMENT APPROACH (DUTCH CHAIR'S THEME) |
| APRIL 2006 | THEMATIC | SECURITY |
| SEPTEMBER 2006 | THEMATIC | POINTS-BASED SELECTION SYSTEMS |
| OCTOBER 2006 | THEMATIC | THE ROLE OF VICTIM PROTECTION AND ASSISTANCE IN COMBATING TRAFFICKING IN PERSONS |
| MARCH 2007 | COUNTRY | IRAQ |
| MARCH 2007 | THEMATIC | DESIGNING EFFECTIVE IMMIGRATION SYSTEMS (IRISH CHAIR'S THEME) |
| SEPTEMBER 2007 | THEMATIC | TRAFFICKING FOR LABOUR EXPLOITATION |
| OCTOBER 2007 | THEMATIC | INTEGRATION OF IMMIGRANT YOUTH |
| APRIL 2008 | THEMATIC | CIRCULAR MIGRATION (SWEDISH CHAIR'S THEME) |
| MAY 2008 | THEMATIC | AUTOMATED PASSENGER CLEARANCE PROGRAMMES |
| OCTOBER 2008 | THEMATIC | HEALTH AND MEDICAL ISSUES IN ASYLUM AND MIGRATION PROCESSES |
| APRIL 2009 | THEMATIC | COOPERATION ON SKILLED LABOUR MIGRATION: TOWARDS POLICY AND MANAGEMENT COHERENCE (SWISS CHAIR'S THEME) |
| JUNE 2009 | THEMATIC | INTERNATIONAL DATA SHARING |
| DECEMBER 2009 | THEMATIC | UNACCOMPANIED MINORS |
| MARCH 2010 | THEMATIC | PROTECTION IN THE REGION |

| JUNE 2010 | THEMATIC | CITIZENSHIP (FINNISH CHAIR'S THEME) |
|---|---|---|
| OCTOBER 2010 | THEMATIC | CONTROL MECHANISMS IN MIGRATION MANAGEMENT |
| OCTOBER 2010 | THEMATIC | PREVENTING IRREGULAR MIGRATION |
| DECEMBER 2010 | THEMATIC | PROTECTION IN THE REGION |
| MARCH 2011 | THEMATIC | HUMANITARIAN RESPONSES TO CRISES WITH MIGRATION CONSEQUENCES (AMERICAN CHAIR'S THEME) |
| JUNE 2011 | THEMATIC | EXCLUSION |
| JUNE 2011 | THEMATIC | AGE ASSESSMENT OF UNACCOMPANIED MINORS |
| JANUARY 2012 | COUNTRY | SERBIA |
| MARCH 2012 | THEMATIC | MOTIVES FOR MIGRATION (GERMAN CHAIR'S THEME) |
| SEPTEMBER 2012 | COUNTRY | SYRIA |
| OCTOBER 2012 | THEMATIC | ASYLUM ISSUES RELATING TO GENDER, SEXUAL ORIENTATION AND GENDER IDENTITY |
| MARCH 2013 | THEMATIC | THE ROLE AND INFLUENCE OF EMPLOYERS IN MIGRATION (NEW ZEALAND CHAIR'S THEME) |
| MARCH 2013 | THEMATIC | INTERNATIONAL MIGRATION ENGAGEMENT |
| NOVEMBER 2013 | THEMATIC | ASYLUM ISSUES RELATED TO GENDER, SEXUAL ORIENTATION AND GENDER IDENTITY |
| MARCH 2014 | THEMATIC | INCREASING ECONOMIC AND TRADE RELATIONS WITH EMERGING ECONOMIES – CONSEQUENCES FOR IMMIGRATION SYSTEMS (DANISH CHAIR'S THEME) |
| JUNE 2014 | COUNTRY | ERITREA |
| OCTOBER 2014 | COUNTRY | SYRIA |
| NOVEMBER 2014 | THEMATIC | PROTECTION AT SEA |
| SEPTEMBER 2015 | THEMATIC | MANAGING THE PRESENCE OF PERSONS SUBJECT TO REMOVAL |
| NOVEMBER 2015 | THEMATIC | EXCLUSION IN NON-PROTECTION SITUATIONS |
| OCTOBER 2016 | THEMATIC | IDENTITY ESTABLISHMENT IN MIGRATION PROCEDURES |
| NOVEMBER 2016 | THEMATIC | MANAGEMENT OF BORDERS IN LIGHT OF CONTEMPORARY MIGRATION CHALLENGES (BELGIAN CHAIR'S THEME) |
| NOVEMBER 2016 | COUNTRY | CHINA |

### *Ad hoc* informal consultations on discrete issues

The IGC process is also used by Participating States and Organisations to hold short *ad hoc* informal consultative meetings on particular issues, frequently related in one way or another to international engagement on migration. These sessions, which sometimes last for just an hour or two, allow relevant officials to compare their views and positions in relation to the issue at hand, and to explore any options for further cooperation that present themselves.

For example, the informal consultation model has been used recently in relation to the UN General Assembly Summit on Addressing Large Movements of Refugees and Migrants in September 2016 and in the processes following the New York Declaration, which was adopted at the Summit.

In the lead-up to the Summit, three sessions of informal consultations were hosted at the IGC offices in Geneva. In May 2016, Participating States discussed the preparations for

the Summit, as well as the Leaders' Summit on Refugees that would follow it. They also discussed ways in which they could improve coordination between Geneva, New York and capitals on questions related to international engagement on migration, and shared their views on the possible inclusion of IOM in the United Nations System.

In June, Participating States discussed what the discussions at the recently-concluded session of UNHCR's Standing Committee would mean for the events in September; they also shared reflections on the suggestions that had been advanced for the proposed global compacts on refugees and migration.

In September, Participating States discussed the final outcome document of the General Assembly Summit (the New York Declaration) and shared first impressions on the processes by which the two compacts would be developed.

As these two processes unfolded, IGC convened a series of informal discussions on procedural and substantive questions relating to the proposed global compact for safe, orderly and regular migration, often linked to the six informal thematic sessions on the compact that took place over the course of 2017. In addition, the IGC Norwegian Chair and the Secretariat presented ideas on the governance of migration at the regional level during a side event on 'Tools and Good Practices in Migration Governance' during the third informal thematic session. Terje Sjeggestad, Director General of the Norwegian Migration Department, noted some areas of particular concern amongst Participating States that had emerged during IGC consultations on the migration compact:

> Substantially, the [migration compact] must focus on irregular migration and return. Shared guidelines on return, readmission and reintegration could be valuable in the search for more effective co-operation on return

> The best interest of the child is of main concern: Guidelines for the treatment of unaccompanied and separated children should be developed, while avoiding the call for an end of detention.

> …

> Finally, I would like to conclude by saying that a balanced approach is definitively needed in order to build a constructive dialogue between sending, transit and destination countries, but also to achieve concrete and durable outcomes for the [migration compact]. We should strike a balance between control measures, necessary to limit the negative effects of irregular migration, and migration facilitation and mobility programmes, to harness the benefits of orderly migration, and between the interests and the responsibilities of origin, transit and destination countries.

Although, as noted, these sessions often focus on questions of international engagement—possibly because their short, Geneva-based nature makes them more suited for diplomats also located in Geneva, rather than immigration officials based in capitals—there are no hard-and-fast rules in this regard. As with the IGC process more generally, Participating States and Organisations can use informal consultations in whatever manner they see fit.

### Data presentation and analysis

As has been noted in the previous chapter (and as shall be detailed further in the next), IGC was an early leader in the collection of asylum data and led and made major contributions to the establishment of the various asylum databases in existence today, especially those maintained by UNHCR and Eurostat. In the case of the latter, for example, the IGC Secretariat was part of the advisory committee that established the formats for the first version of its data collection.

Participating States (as well as former Participating States Austria and France and, since 2016, observer Poland) provide data to the Secretariat on a regular basis (monthly, quarterly or annually, depending on the data in question). The data relate to the number of applications for asylum received (including, as a subset, applications made by unaccompanied minors), first instance decisions made on those applications, numbers of pending cases, and various categories of returns. Immigration and integration data is also shared on an ad hoc basis as required. As with other IGC activities, the Secretariat seeks to avoid duplication with other data collections wherever possible.

IGC's statistics can be accessed by officials from Participating States through the state-of-the-art Business Intelligence Tool, a web-based, self-service access tool that allows users, including non-technical users, to customise the data sets so as to maximise their utility. Users can: gather, store, access and analyse data; import data from external sources for visual analysis; organise, transform and present disparate and dense data sets into simpler, more dynamic graphs and tables; navigate through different levels of data from the most summarised to most detailed; generate reports; export data to different formats; produce view sheets; and access statistical reports created by the IGC Secretariat in support of IGC meetings or special projects. For example, the Tool can be used to access a wide range of statistical information on asylum applications and decisions in Participating States, and users can access data on the number of applications or decisions broken down by month or year, country of origin and receiving country. Users can compare acceptance rates and the number of pending cases over time and across Participating States, for all or specified countries of origin. Applications for asylum made by unaccompanied minors are also specifically tracked.

### Publications

The IGC Secretariat produces two publications on an ongoing basis: the quarterly IGC Bulletin and the so-called 'Blue Book' report on asylum procedures, policies and practices in Participating States.

Four issues of the IGC Bulletin are produced each year and circulated to officials from Participating States and Organisations. The Bulletin highlights organisational changes in Participating States and Organisations and in the Secretariat, gives an overview of the latest news and legal and policy developments in Participating States and Organisations (with links to further information), summarises the latest data trends emerging from IGC's statistical databases and reminds officials of upcoming IGC meetings and relevant non-IGC events.

As noted in the previous chapter, the Blue Book is an authoritative description of asylum policies and procedures in Participating States. Eight editions have been produced, the first in 1991 and the most recent in 2015. Editions usually contains country chapters on asylum policy and asylum determination practices, as well as information on pre-entry measures, decision-making, reception, return, resettlement and integration, with special emphasis being placed on recent reforms and case law. Chapters are presented in an identical manner to aid comparison between States. Comparative sections include matrices as well as detailed statistical overviews and extracts of relevant provisions of regional and international law, including the Conclusions of UNHCR's Executive Committee. The Blue Book is a valuable, publicly-available reference tool on asylum policies and procedures in IGC Participating States, and is widely used by States, international organisations, NGOs and academia. The most recent edition runs to more than 500 pages.

### Requests for information

A further key element of IGC cooperation is the process that has been established for Participating States to request information from one another on topics of interest relating to migration, asylum or refugee policy. Usually such requests are made by a Participating State when it is addressing a particular issue, or reviewing or reforming a particular policy area. Typically, the aim of the request will be to learn—quickly and informally—whether other Participating States have confronted the same issue and, if they have, how they have responded to it.

Requests are made in a standardised format. The requesting State will set out the background to and a short explanation of the issue at hand, followed by a series of clearly stated questions and a statement concerning how the information will be used (that is, whether it will be made public or is for purely internal purposes). The request is circulated to the relevant official in each Participating State and, when the answers to the questions are provided, they are collated, summarised and analysed by the Secretariat. The request, the responses and the Secretariat's analysis is then uploaded to the IGC website so that all Participating States have access to the official, coordinated responses provided by other States.

In total, Participating States have made more than 350 requests for information since the late 1990s, when the information request facility was established by the Secretariat. These requests have covered a wide range of topics, including statelessness determination systems, migration induced by climate change, inter-country surrogacy, and the requirements that must be met for particular visa classes (including for professional athletes, religious workers and investors). The most commonly-recurring requests relate to:

- legal aspects of asylum determination procedures;
- case management of protection claims made by specific nationalities and groups (such as unaccompanied minors);
- asylum and removal statistics;
- approaches and initiatives to attract and retain skilled workers;
- border control measures to tackle irregular migration, smuggling and trafficking;
- experiences in return and readmission, including to particular countries;
- integration of recently-arrived refugees and migrants; and
- qualification requirements for citizenship.

IGC's requests for information are thus a tool for States to obtain coordinated, official information from other Participating States to assist with the development of migration, asylum and refugee policy that is grounded in evidence and the experiences of other States. They are an authoritative statement of comparative State practice and, for this reason, are often submitted to courts in cases where the approaches that comparable States take to a particular question are relevant.

### Website

The IGC website serves as both a tool for the smooth functioning of other IGC activities and an important IGC activity in its own right. The website is carefully secured and the majority of its content can only be accessed by authorised officials from Participating States and members of the Secretariat; as with other IGC activities, limiting access to the website facilitates the frank exchange of experiences and information.

The IGC website facilitates almost all other IGC activities. In addition to housing IGC's statistical databases in the custom-built Business Intelligence Tool, it contains key information for upcoming and previous meetings (senior officials' and working group meetings, as well as multidisciplinary workshops); this includes basic information (such as date and location),

background information to assist participants to prepare and—after the meeting—a summary of proceedings, copies of presentations and other documents of relevance. Users can register their attendance at upcoming meetings online, and the website also includes information about other meetings of relevance to Participating States and Organisations. The website is also the place where users can find the current and previous issues of the IGC Bulletin, as well as pending and completed Requests for Information.

The website is also a key repository for information that is not directly connected to other IGC activities. It contains regularly-updated news clips, reports and other publications produced by Participating States and others—categorised according to subject—so that users can stay abreast of developments in their field. It is the repository for the contact details of IGC participants in Participating States and Organisations, and thus facilitates open communication between relevant officials outside of IGC meetings.

# ENDNOTES

1  Sara Klam, 'Limits to Transnational Participation: The Global Governance of Migration' in Jönsson & Tallberg (eds), *Transnational Actors in Global Governance: Patterns, Explanations and Implications* (Springer, 2010), 141.

2  Colleen Thouez & Frederique Channac, 'Shaping International Migration Policy: The Role of Regional Consultative Processes' (2006) 29 *West European Politics* 370, 377. See also Randall Hansen, *An Assessment of Principal Regional Consultative Processes on Migration* (IOM Migration Research Series, No. 38, International Organization for Migration, 2010), 13; Amanda Klekowski von Koppenfels, 'Informal but Effective: Regional Consultative Processes as a Tool in Managing Migration' (2001) 39 *International Migration* 61, 6.

3  Michele Klein Solomon, *International Migration Management Through Inter-State Consultation Mechanisms* (Paper prepared for the United Nations Expert Group Meeting on International Migration and Development, July 2005), 6. See also Alexander Betts, *Global Migration Governance* (Working Paper 2008/43, Global Economic Governance Programme, University College Oxford, November 2008), 12-13.

4  Thouez & Channac, above n 2, 372.

5  Klein Solomon, above n 3, 7.

6  Randall Hansen, 'Interstate cooperation: Europe and Central Asia' in Berne Initiative, *Interstate Cooperation and Migration* (Berne Initiative Studies, 2005), 17.

7  Klein Solomon, above n 3, 9.

8  Thouez & Channac, above n 2, 377-378; Hansen, above n 2, 12; Von Koppenfels, above n 2, 63; Klein Solomon, above n 3, 6; Hansen, above n 6, 9; Klam, above n 1, 141.

9  Thouez & Channac, above n 2, 377-378; Hansen, above n 2, 12.

10  Hansen, above n 2, 12.

11  Von Koppenfels, above n 2, 61; Hansen, above n 2, 12; Klein Solomon, above n 3, 6; Hansen, above n 6, 9; Klam, above n 1, 141; Thouez & Channac, above n 2, 377.

12  Von Koppenfels, above n 2, 61.

13  Klam, above n 1, 141; Thouez & Channac, above n 2, 377.

14  See https://www.chathamhouse.org/about/chatham-house-rule

15  Ibid.

16  Hansen, above n 6, 26.

17  Switzerland, 'A Possible Swiss Strategy for a Refugee and Asylum Policy in the 1990s' (1990) 2 (Special Issue) *International Journal of Refugee Law* 252; United Kingdom Delegation (Geneva), 'Sending Asylum Seekers to Safe Third Countries' (1995) 7 *International Journal of Refugee Law* 119. The fact that the British document was 'presented by the United Kingdom delegation to the IGC' is noted in UNHCR's response to it in the same edition: UNHCR, 'The Concept of "Protection Elsewhere": A Comment with reference to the above Note submitted by the United Kingdom' (1995) 7 *International Journal of Refugee Law* 123, 124.

18  Hansen, above n 6, 24-25.

19  Klein Solomon, above n 3, 9.

20  Hansen, above n 2, 23.

21  Hansen, above n 2, 12.

22  Hansen, above n 6, 25.

23  Von Koppenfels, above n 2, 63 ('because agreement on all issues is not required, options can be explored openly'); Thouez & Channac, above n 2, 377-378 ('Since no formal commitment is sought (or imposed), participating governments approach subjects relatively freely, knowing that they will not be forced to accept common political lines or binding instruments'); Hansen, above n 6, 15-16, 17 ('they are entering into a dialogue with each other, with no commitments made in advance and no fear of subsequent binding pledges'); Anne-Grethe Nielsen, 'Cooperation Mechanisms' in Ryszard Cholewinski, Richard Perruchoud & Euan MacDonald, International Migration Law (TMC Asser Press, 2007), 425 ('The informal and non-binding nature of RCPs allows for a frank exchange of practices and experiences, as well as an immediate response to practical issues').

24  Hansen, above n 2, 19-20. See also 17, 23 ('by removing participants from formal contexts, by taking them out of the public spotlight, and by freeing them from the requirements of prepared statements, negotiating positions and "red lines", RCPs make state-to-state communication easier'); Klein Solomon, above n 3, 10 ('Because they are free to speak informally in a depoliticized environment away from the scrutiny of the media, where their discussions are not part of a negotiating process, they are often willing to explore positions and policies that may diverge from standard, established practice, lessening the likelihood of the stalemates that often accompany more formal processes').

25  Hansen, above n 2, 21.

26  Nielsen, above n 23, 406.

27  Von Koppenfels, above n 2, 63.

28  Hansen, above n 2, 22.

29  Hansen, above n 6, 17. See also Klein Solomon, above n 3, 9 ('RCPs provide a framework for regular meetings between persons who generally otherwise would not interact, or would interact only on an ad hoc basis').

30  Hansen, above n 2, 12, 17; Hansen, above n 2, 9.

31  Hansen, above n 2, 23.

32  Hansen, above n 2, 12, 17.

33  Hansen, above n 2, 11-12. See also Klein Solomon, above n 3, 9; Hansen, above n 2, 9, 12.

34  Hansen, above n 6, 18 ('Once issues are on the agenda, policymakers need a common language, a common set of concepts, terms, and definitions to approach them. This conceptual process is a prerequisite to any policy movement. Regional consultative processes provide the forum for the emergence of such a common language').

35  Klein Solomon, above n 3, 19.

36  Hansen, above n 2, 22.

37  Hansen, above n 6, 17.

38  Hansen, above n 2, 24.

39  Klein Solomon, above n 3, 9. See also Hansen, above n 2, 9, 24 ('Responsibility and competencies for migration are typically divided between some combination of the departments of justice, interior, foreign affairs, immigration and, increasingly, ministries of labour and social affairs [and] RCPs help overcome these divisions in two ways. First, the participation in external, multilateral discussions on migration obliges a government to coordinate internally. As such, they can bring officials from these different departments together and produce many of the same results they generate in state-to-state contact: new networks, mutual learning, an increased appreciation of the challenges faced by other departments, and constructive cooperation which may eventually lead to more coherent national policymaking. Second, in many RCPs it is common that the country delegations that attend consist of a mix of officials, typically from the department of foreign affairs, and / or of the department of interior and labour. By participating in the same discussions and exchanges, officials with different departmental backgrounds can enhance their knowledge of migration matters').

40  Von Koppenfels, above n 2, 68.

41  Nielsen, above n 23, 425 ('Another advantage over global processes lies in the manageable size of the consultations, and in the fact that the states involved usually share common interests and perspectives').

42  Betts, above n 3, 16 (noting that 'a number of Regional Consultative Processes have been conceived by Southern States as a means to enhance their global bargaining position' by allowing them to 'engag[e] in strategies such as issue-linkage, connecting migration to issues such as trade and development in ways that enhance their bargaining power vis-à-vis the North').

43  Klein Solomon, above n 3, 13.

44  Private donors in IGC Participating States contribute 4.6% of UNHCR's budget.

45  UNHCR, *Contributions to UNHCR for the budget year 2016*: http://www.unhcr.org/en-us/partners/donors/575e74567/contributions-unhcr-budget-year-2016-30-april-2016.html

46  Migrants in Countries in Crisis Initiative, Guidelines to Protect Migrants in Countries Experiencing Conflict or Natural Disaster (IOM, 2016), 13.

47  See https://micicinitiative.iom.int/consultations/igc-plus-consultation

48  See, generally, https://micicinitiative.iom.int/

49  Thouez & Channac, above n 2, 378; Von Koppenfels, above n 2, 63.

50  Charles Harns, *Regional Inter-State Consultation Mechanisms on Migration: Approaches, Recent Activities and Implications for Global Governance of Migration* (IOM Migration Research Series, No. 45, International Organization for Migration, 2013), 65-66.

51  Hansen, above n 2, 36-37.

52  As noted in the previous chapter, the number of persons attending senior officials' meetings not as representatives of a Participating State or Organisation has grown in recent years.

53  As discussed in the previous chapter.

54  IGC, *Report on Asylum Procedures: Overview of Policies and Practices in IGC Participating States* (IGC, 8th edition, 2015) 21-22.

# 4

## IGC's Impact

### A SUBTLE BUT SIGNIFICANT CONTRIBUTION TO THE CONSOLIDATION OF ASYLUM, REFUGEE AND MIGRATION SYSTEMS

Chapter Two of this publication examined the beginnings of IGC in the mid-1980s and the evolution of the Informal Consultations to the present day. Chapter Three focused on IGC as it is currently organised: its core operating principles, composition, structure and activities. In contrast to these largely descriptive accounts, the present chapter seeks to examine—from an analytical point of view—the impact that the IGC process has had over the past three decades. It concludes that IGC has made a considerable contribution to the consolidation of the asylum, refugee and migration systems of its participating States in four key areas: the development and *de facto* harmonisation of asylum procedures, the professionalisation of the collation and analysis of country of origin information, the collection and comparison of asylum and migration data, and the coordination and furthering of international engagement on migration and refugee issues. Furthermore, it has served as a forum for the sharing of ideas on a wide range of other topics, and as inspiration for the creation of other Regional Consultative Processes on Migration.

Given the limited administrative footprint of the IGC process—recall that the Secretariat has just seven staff members—it would be impossible for this chapter to contend that IGC is solely responsible for this consolidation, or that the consolidation would not have occurred if IGC did not exist. It makes no such claims. What this chapter does conclude, however, is that the open, honest discussions that the IGC process facilitates have made—in the words of its sub-title—a subtle but significant contribution to this process.

### DEVELOPING AND HARMONISING ASYLUM POLICIES AND PROCEDURES

The first area in which IGC has supported policy consolidation is that of asylum procedures; as shall here be contended, IGC activities have contributed significantly to their development and *de facto* harmonisation in Participating States.

The academic literature on Regional Consultative Processes on Migration notes that their

unique features lend themselves to supporting a degree of convergence in the migration policy and/or legislation of Participating States. The literature stresses, however, that—given their non-decision-making character—RCPs do not engage in formal policy harmonisation.[1] Nonetheless, 'repeated meetings, interaction and sharing of concerns, perspectives and best practices can lead, without much explicit direction, to a *de facto* harmonisation of positions across states'.[2]

Although there are methodological challenges in proving that policy harmonisation is caused by participation in Regional Consultative Processes—given the difficulties in applying scientific method to international cooperation,[3] the fact that 'States borrow heavily from one another but typically without any clear acknowledgement',[4] and the fact that the 'underlying politics' of migration are often similar in States with similar migration profiles[5]— there is a compelling case to be made that the IGC process has played a significant role in the development and *de facto* harmonisation of asylum procedures in Participating States.

### The importance of asylum procedures in the international refugee protection régime

Asylum procedures are key to a well-functioning system of international refugee protection. Although neither the 1951 Convention nor the 1967 Protocol require that a particular procedure be used to determine whether an asylum seeker meets the refugee definition,[6] status determination procedures are central to the international refugee protection régime; without them, there would be no way of knowing whether or not any particular individual was entitled to the rights conferred by international refugee law.[7] As Goodwin-Gill argues:[8]

> Legislative incorporation [of refugee law] may not itself be expressly called for, but effective implementation requires, at least, some form of procedure whereby refugees can be identified, and some measure of protection against law of general application governing admission, residence, and removal.

Despite their inherent necessity, however, the adoption by States of procedures for assessing refugee and asylum claims has lagged behind the acceptance of the legal obligations contained in the 1951 Convention and its 1967 Protocol, sometimes by decades. In 1977, for example—twenty-three years after the entry into force of the Convention and ten years after the entry into force of the Protocol—UNHCR's Executive Committee noted that 'only a limited number of States parties to the 1951 Convention and the 1967 Protocol had established procedures for the formal determination of refugee status under these instruments'; it further '[e]xpressed the hope that all Governments parties to the 1951 Convention and the 1967 Protocol which had not yet done so would take steps to establish such procedures in the near future'.[9] There were, in fact, only seventeen States with refugee status determination procedures at that time;[10] amongst them were just six of the sixteen States that participate in the IGC process today.[11] Simply put, the whole question of procedures was, in many States, 'left in a state of limbo for an unduly long period of time'.[12]

In addition to the necessity of *having* procedures, it has been argued that their transnational harmonisation—at the regional level at least—is a 'useful means of developing and improving the international protection of refugees'.[13] If the development of procedures lagged

behind the acceptance of legal obligations under the Convention and Protocol, however, the harmonisation of those procedures lagged further still; when discussing the small number of States with status determination procedures in 1977, the High Commissioner for Refugees noted that 'much still remains to be done in order to achieve some degree of uniformity of the criteria used, in the interest both of refugees and of the States parties to the Convention'.[14]

As this section outlines, however, there has been considerable *de facto* harmonisation between the approaches adopted in IGC Participating States (and others) since that time.[15] Although only one of a number of factors—particularly for those States participating in the Common European Asylum System—participation in the IGC process has made a subtle but significant contribution to this harmonisation.

The evolution in asylum procedures in IGC Participating States—from very limited, *ad hoc* practices in the late 1970s to precise, professionalised systems today—can be thought of occurring in four stages, each of which is outlined below.

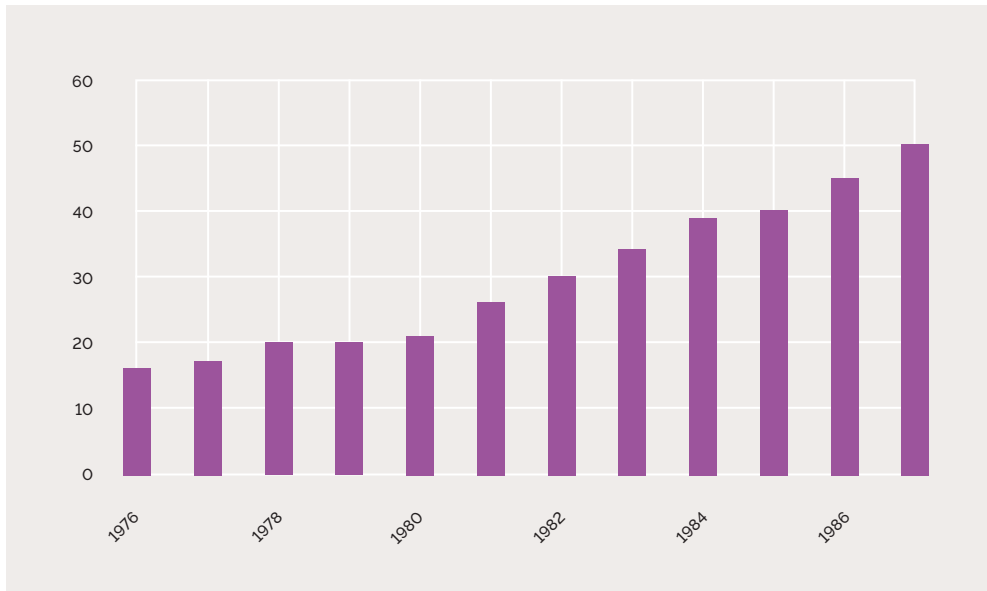### Stage One: States adopt asylum procedures, albeit disparate ones

The first stage of this evolution occurred largely during the late 1970s and early 1980s as increasing numbers of States adopted asylum procedures of one form or another. This trend is reflected in Conclusions issued by UNHCR's Executive Committee from the time; whereas in 1977 it had regretted the scarcity of asylum procedures, by the early 1980s it noted 'with satisfaction the measures taken by various States to ensure the effective implementation of their obligations under the Convention and Protocol, in particular as regards procedures for determining refugee status'.[16] It furthermore 'expressed the hope that such measures be taken by all States parties to the international refugee instruments'.[17]

As Chart 13 shows, the period 1976-1987 saw strong growth in the number of States with refugee status determination procedures, with the total number more than tripling from 16 to 50 over the period. The High Commissioner for Refugees noted in 1986, however, that—despite the rapid rate of adoption of status determination procedures—'the majority of State signatories to the 1951 United Nations Convention and the 1967 Protocol have still not adopted formal procedures to determine refugee status. It is hoped that more States will soon do so in order to facilitate the determination of refugee status in an efficient, fair and humane manner'.[18]

The fact that States were rapidly adopting procedures does not mean that those procedures resembled one another in any way; indeed, an examination of the procedures in place in IGC Participating States prior to the first IGC meeting in 1985 demonstrates that States had come up with very different answers to the question of how to handle applications for asylum.

In some States that were subsequently to become IGC Participating States, international refugee law had not been incorporated into domestic law at all; rather, 'the admission of refugees and special groups [was] determined by the government in the exercise of broad discretionary powers'.[19] Australia, New Zealand and the United Kingdom fell into this category.

**Chart 13** Number of states with formal status
determination procedures



**Source** UNHCR Annual Reports for each year

In the United Kingdom, applications for asylum were governed by general immigration legislation, which 'in common with that of many other states, [made] no special provision for refugees'.[20] The only reference to refugees came in the legislation's implementing rules, which were described as being 'more like rules of practice than of law'.[21] This led some to argue that 'the UK [asylum] system is simply "an informal administrative process"' or 'an informal, uncodified system'.[22]

In Australia and New Zealand, the granting of asylum was completely at the discretion of the relevant minister, who was provided with the non-binding advice of a committee of civil servants.[23] In Australia, the committee's 'expertise [was] limited, due to the fact that members receive[d] no training and serve[d] only in a part-time capacity while performing other duties within their ministries';[24] it was not permitted to interview asylum applicants,[25] and there was no right of appeal in respect of a refused application (though administrative and/or judicial review may have been available in limited circumstances).[26] UNHCR assisted the committee in an advisory capacity.[27]

In Canada, refugee status decisions were made by the relevant minister (or a delegate) on the basis of advice from a committee, the Refugee Status Advisory Committee,[28] which was composed of civil servants, 'Canadian citizens drawn from outside the government' and UNHCR in an advisory capacity.[29] The Committee was unable to interview the applicant personally and the applicant was never advised of adverse information in the Committee's possession.[30] Comparable systems were also in place in Greece[31] and Italy.[32]

Although international obligations to refugees had been incorporated into domestic law in Belgium, the relevant provisions 'appoint[ed] the Minister of Foreign Affairs as the sole authority to determine refugee status', a power that could be and had been delegated to UNHCR.[33] There was no right of appeal, and the only recourse available to a refused applicant was to petition UNHCR for reconsideration.[34]

Prior to 1980, asylum procedures in the United States had no statutory basis and were described by one expert as being characterised by the '*ad hoc* treatment of refugees and the use of selection criteria based on ideological, foreign policy and geographic considerations'.[35] Refugees were not identified on the basis of the definition in the 1951 Convention, for example, but rather one that derived from the *Refugee-Escapee Act of 1957*; it defined refugees as '[p]ersons from communist or communist-dominated countries or countries in the Middle East'.[36] In 1980, the Congress passed the *Refugee Act* to replace that definition with the one found in international refugee law,[37] and the *ad hoc* processing system with 'procedures which would achieve uniformity, fairness and neutrality in the determination of asylum claims':[38]

> With these new procedures, Congress sought to make the [asylum] process available to all applicants on a uniform basis; to ensure that each applicant would have a full opportunity to be heard and present his or her claim; and to ensure that each claim would be evaluated even[-]handedly under the neutral international standard adopted by the Act.

Despite these lofty aims, however, 'the law itself did little to define or prescribe the mechanics of obtaining [refugee] status'.[39] Administratively, a system was established whereby refugee status could be granted by the Immigration and Naturalization Service following application, or by an immigration judge in a deportation or exclusion hearing.[40] This system was criticised on the basis that 'the INS officers and immigration judges who make asylum decisions typically have not received adequate training in refugee law or asylum determination techniques, and often [were] not knowledgeable about conditions in countries of origin'.[41] Strictly speaking, there was no appeal from an adverse decision of the Immigration and Naturalization Service, though the correctness of its decision could be challenged before an immigration judge during any subsequent deportation hearing. One scholar concluded in 1983 that the system was 'at the point of collapse' because '[t]he unprecedented numbers of asylum seekers, as well as the steady stream of legal challenges to determination systems perceived as unjust, [were] overburdening an inefficient system'.[42]

In the Federal Republic of Germany in the early 1980s, asylum seekers faced a six- to eight-year wait before their asylum application would be processed.[43] Asylum procedures, which had been designed at a time during which Germany received a small number of applications, were simply too 'inefficient and unwieldy' to deal with the increasing caseload.[44] In response to these inefficiencies, which were caused in part by the fact that each application for asylum was considered by officials of the local *and* national governments,[45] new procedures were introduced in 1982;[46] these were largely similar to the procedures in place in many IGC Participating States today, and involved a hearing of

the applicant's claims by a specialised government agency followed by a reasoned, written decision, with a right of appeal.[47] Likewise, in France and Switzerland, an administratively independent office was charged with determining asylum applications and its decisions were subject to appeal.[48] In France, where the 'refugee status determination system [was] generally recognized…to be one of the most enlightened and least politically biased in the world',[49] this office was staffed by officers 'considered reasonably knowledgeable about the legal considerations of refugee status decision-making',[50] but in Switzerland the decision-makers had no legal background and 'thus tend[ed] to base their rulings on "common sense"'.[51] In Sweden, decisions were made by immigration officials that did not specialise in refugee status determination;[52] one expert is reported to have described them as being 'neither well-qualified nor well-trained for making refugee status decisions'.[53]

Broadly similar systems were also in place in Spain,[54] Finland,[55] Austria,[56] Norway and the Netherlands.[57]

At the time of the first IGC meeting in 1985, therefore, all of the States in attendance—and all but one of the States that were later to become Participating States—had adopted some form of asylum procedures.[58] (The sole exception, Ireland, was to develop an informal procedure with UNHCR in the month after the first IGC meeting; the Irish Supreme Court would later find this procedure, detailed in a letter from the Irish Minister of Justice to the UNHCR representative in Ireland, to be legally binding on the Minister.[59])

All of these systems had their flaws. After examining the asylum systems of ten developed countries—all of which were to participate in IGC in the process' first five years—as they stood at the beginning of 1983, Avery concluded that:[60]

> None of the ten countries…has devised a refugee status determination system that is beyond reproach…None has ensured that solidly competent, fully informed, and fundamentally impartial individuals conduct interviews, make decisions, and review determinations…None has managed to create a determination procedure which meets all of the recommended standards of practice [suggested by Avery]. It is not unreasonable to question whether each of these countries has fully complied with its obligation to implement the treaty obligations of the Convention and Protocol in good faith.

Furthermore, these procedures were—in the words of the fourth edition of the Blue Book—'defined chiefly by their differences'.[61] Somewhat more starkly, an early IGC analysis expressed the view that 'the diversity of determination systems, on paper as well as in practice…is astonishing'.[62] The kind of divergence of approaches evident in IGC Participating States was, according to Hathaway, harmful to the international protection régime:[63]

> The silence of the Convention on the procedural dimension of the protection regime—and indeed on whether or not there is even to be a formal determination procedure—has meant that states have been subject to relatively little interference in their autonomous determinations of the scope of the international protection system. In practice, the lack of any meaningful international scrutiny

of the procedural dimensions of refugee protection has allowed political and strategic interests to override humanitarian concerns in the determination of refugee status, has facilitated the interposition of domestic economic and social considerations in deciding which persons and groups are to be assisted, and has resulted in a variety of interpretations of the Convention, *thereby undercutting the universality of the protection mandate*.

### Stage Two: Convergence towards formalised, specialised decision-making

Coinciding with the commencement of the IGC process and the rapid increases in asylum application numbers that motivated it, however, asylum procedures in place in Participating States started showing their first real signs of *de facto* harmonisation, the trend being towards the formalisation of procedures that entrusted the first instance decision on applications to an asylum specialist. Some argued, in fact, that this was a requirement of international law:[64]

> Good faith observation of the principle of *non-refoulement* mandated by the Convention and the Protocol presumably would require parties to ensure that persons responsible for refugee status determinations be highly competent, informed, and impartial. States that allow individuals lacking such qualifications to make determinations set the stage for the return of genuine refugees to territories where they may face persecution.

Whilst, as we saw above, some Participating States already utilised such a process, many did not; the late 1980s and early 1990s, however, saw the emergence of an informal consensus amongst IGC Participating States that such an approach was best practice.

In 1988, for example, the Belgian Minister for Foreign Affairs' 'sole authority to determine refugee status' was revoked and a procedure established whereby an independent 'Commissioner General for Refugees and Stateless Persons' was given the responsibility for determining admissible asylum applications.[65] Also in 1988, Norway established the Directorate of Immigration, 'an independent central administrative office', which assumed from the Ministry of Justice the competence to make first instance decisions on asylum applications, *inter alia*.[66]

In Australia, asylum procedures were overhauled in 1989 'to reduce as far as possible the elements of discretionary decision-making' in the system and to ensure that 'visas and entry permits would be granted or withheld in accordance with criteria specified' in the relevant legislation.[67] In the new system, first instance decisions on asylum applications were no longer to be made by the Minister for Immigration; rather, this role was entrusted to case officers within the Determination of Refugee Status Section of the Department of Immigration and Ethnic Affairs.[68] An administrative review process was also established for unsuccessful applicants.[69]

Likewise, following a decision of the Supreme Court declaring the lack of an oral hearing in Canada's asylum procedures to be a violation of its Charter of Rights and Freedoms,[70]

the relevant minister's authority to make status determinations was handed in 1989 to the Immigration and Refugee Board, a 'quasi-judicial, independent and non-adversarial tribunal'.[71]

In 1991, the new Austrian asylum law took first instance jurisdiction in assessing asylum applications away from the security chiefs of each of the Bundesländer and gave it to a newly-created federal asylum agency, which was to contain 'specially qualified and informed staff members',[72] and in 1993 the United Kingdom formalised its procedures somewhat by enacting asylum-specific legislation so as to give a right of appeal against removal to any person who claimed that such removal would be contrary to the United Kingdom's obligations under the 1951 Convention or the 1967 Protocol.[73]

At the latter end of developments, the Dutch Immigration and Naturalisation Service was established in 1994 'as [a] largely autonomous agency acting under the political responsibility of the Minister of Justice'.[74] The Finnish Directorate of Immigration was established and given competence to decide asylum applications in 1995,[75] and '[t]he responsibility for the first investigation of an asylum request [was] transferred from the police to the [Swedish] Immigration Board' in 1996.[76]

This early convergence in the direction of formalised, specialised decision-making procedures for asylum applications coincided chronologically with IGC activities that focused on the determination of asylum applications as a specialised activity. In June 1988, the first IGC workshop dedicated to the exchange of information and experiences in the development of asylum procedures was held in Geneva. Occurring in the context—as described in the meeting's Background Note—of overloaded asylum procedures producing 'long delays [that] cause hardship for bona fide asylum-seekers', the meeting was addressed by the Deputy High Commissioner for Refugees and various government representatives, who 'outlin[ed] reforms [to status determination procedures] undertaken or underway in their own countries'. The meeting considered the necessity of applying certain 'standards in order to ensure that applications for refugee status are examined fairly and properly', including that 'all requests for refugee status should be examined within the framework of *especially established procedures by qualified personnel having the necessary knowledge of the subject matter* and an understanding of the circumstances of the applicant'.[77] There was general agreement that '[s]tatus determination should be carried out by a specialized, qualified and competent authority or body'. Background documents for a subsequent meeting explained that having a specialist decision-maker would 'improve the capability to take correct decisions at an early stage'.

The late 1980s, then, saw the first signs of policy convergence in IGC Participating States towards the formalisation of asylum procedures that use an asylum specialist to make the first instance decision; this was, furthermore, an approach that was specifically addressed by the earliest IGC meetings dedicated to the discussion of asylum procedures. Come the end of the decade, this early *de facto* harmonisation had already given rise to talk of the development of 'a coordinated European asylum law'.[78] Sweden was correct when it asserted in 1990, however, that 'European countries have a refugee policy which is [still] undeveloped and very little co-ordinated'.[79]

**Stage Three: Considerations of efficiency and reliability of asylum procedures drive further *de facto* harmonisation**

As asylum application numbers continued to rise in the early 1990s—as we saw in Chapter Two—relevant officials at both the senior official and practitioner levels of IGC Participating States were asking themselves how their procedures could be adapted to the challenges posed by these pressures and were turning to one another in search of possible answers. Having coalesced around a model of asylum procedures with a specialist decision-maker at its centre, the asylum procedures in IGC Participating States underwent further *de facto* harmonisation in the 1990s,[80] to the point where the 1997 edition of the Blue Book was noting—for the first time—a 'significant *de facto* harmonisation' of procedures in Participating States.[81] Although, as the Blue Book recognised, Participating States had 'responded in different ways and at different times to the pressures on their asylum procedures', it was becoming increasingly clear to Participating States that 'asylum procedures can only be effectively managed where a coherent package is used rather than *ad hoc* measures'.[82] Furthermore, it was increasingly possible, looking at 'the various approaches that have been adopted by participating States to maintain the integrity of asylum procedures…to discern a "toolbox" of solutions' available to States. No Participating State had employed a single tool, the report noted; all had 'followed a combined strategy'.[83] Institutionally, a tendency towards centralisation was noted.[84]

The 'toolbox' approach adopted by Participating States can be understood as a way of adapting to the fact that, as Martin wrote in 1990, '[l]ittle has been done to analyze carefully the various elements that go into the difficult determination of whether an asylum seeker has a well-founded fear of persecution, [despite the fact that] such analysis is integral to designing an effective adjudication structure'.[85] This, he argued, was causing significant problems as asylum numbers rose to unprecedented levels:[86]

> In nearly all Western countries, the asylum adjudication systems now employed were cobbled together in an era that permitted leisurely consideration of modest caseloads. In general, they have adapted poorly to an era when claims are numerous and subject to sudden escalation. Moreover, because most Western adjudication systems were built on the rough assumption (a product of the Cold War) that few claimants would be rejected, they avoided difficult questions about effective information-gathering and evaluation. Today's dilemmas [i.e. those of the late 1980s and early 1990s] require instead a sustained and sophisticated capacity to screen out unqualified applicants; hence, the difficult, previously latent questions have become inescapable. If adjudication systems are to say no to large numbers of applicants…*they must either cultivate callousness to the risk of returning true refugees, or else demand assurance that their outcomes are precise and reliable.*

These risks were very real. In 1990, Anker concluded that, despite the fact that the *Refugee Act* had been in force in the United States for ten years, the 'adjudicatory system [for asylum applications] remains one of *ad hoc* rules and standards':[87]

> [F]actors rejected by Congress [as ill-befitting a mature system of asylum procedures]—including ideological preferences and unreasoned and

uninvestigated political judgements—continue to influence the decision-making process. In other words, there is a significant disparity between the law 'as stated in the books', and the law as implemented and practised. The current process not only falls short of Congress' mandate for fair and evenhanded treatment of asylum claims, but bureaucratic inefficiencies…cause significant delays in reaching final determinations of cases.

It was because of concerns such as these that the third stage of asylum procedure evolution—which took place during the 1990s—was characterised by the adoption and refinement of measures aimed at making asylum procedures fairer and more efficient.

The need for fairness and efficiency in asylum procedures was recognised by a wide range of actors in the early 1990s,[88] among them UNHCR's Executive Committee, and by the agency itself.[89] It featured in academic writing,[90] and in the advocacy of civil society groups; in 1991, for example, a group of Western European NGOs concerned with refugee and asylum issues argued that 'as a fundamental principle an asylum seeker must have access to…a determination procedure that is properly administered and respects the dignity of the individual'.[91] This meant that '[a]ll requests for asylum, as well as all cases in which there is any indication that an asylum request might be involved, should be examined within the framework of specially established procedures by qualified personnel who have the necessary knowledge of the subject matter and an understanding of the facts and circumstances concerning the applicant'.[92] Furthermore:[93]

> [F]airness and efficiency need not be conflicting aims. In a democratic and open society fairness is [a] precondition for efficient procedures. The demand for fairness requires that procedures are also efficient.

Similar questions were also occupying the minds of policymakers in IGC's Participating States in the early 1990s,[94] where, as noted above, existing asylum procedures were characterised by some as being 'extremely inefficient in terms of wasted resources, and of very doubtful value for the protection [of] those whose need is greatest'.[95]

These concerns were reflected in the activities that Participating States pursued within the IGC process. The Background Note to a workshop on asylum procedures in 1988, for example, explained that '[t]he challenge is quite clear: to decrease waiting periods for the determination of asylum claims while maintaining adequate legal safeguards, thus arriving at procedures which are both efficient and fair'. The workshop summary noted that:

> While all participants agreed that there were certain physical and financial limits for the handling of an ever growing volume of applicants, they also firmly stated that the Geneva convention in all situations must be valid and respected, and that it in no case was [it] conceivable to refrain from carefully scrutinizing an application because of the volume of applications or because of staffing or financial constraints. Hence, a continued reform of procedures was necessary, without infringing upon their fairness and correctness.

The background documentation to a further 'Seminar on the Functioning of Asylum

Procedures' in 1990 again made quite clear what was seen at the time as 'The Challenge: Maintaining Fair and Efficient Asylum Procedures'. At both meetings, Participating States and UNHCR discussed a number of possible measures to improve fairness and efficiency, many of which would continue to be discussed in IGC meetings over the coming years and which would be implemented in Participating States in the following years; these included the necessity of allowing the applicant to be heard on their application, and to be provided with interpretative and legal assistance where required.

Measures aimed at making asylum procedures in Participating States fairer tended to focus on improvements to the decision-making process. In the United States, this involved 'enhanced training of adjudicators, improved policy and procedural guidance on various aspects of adjudications, and closer supervision of the adjudication process'.[96] The training and guidance sought to emphasise 'the unique nature of asylum and refugee adjudications as a process different from other [immigration] examinations or inspections—especially the need to assist applicants in the process of eliciting and developing possible avenues to an approvable claim'.[97] The high point of these efforts was, perhaps, the creation in 1990 of the Asylum Officer Corps, a specialised group of asylum decision-makers established to ensure that the United States' asylum programme was 'handled in an unbiased and impartial manner by professionals unprejudiced in their opinions';[98] this development was welcomed by UNHCR as a reaffirmation of the government's 'commitment to serious and professional asylum adjudication'.[99]

In Austria, reforms in 1991—which also enshrined in law 'an individual right of asylum'[100]— sought to bolster the ability of applicants to present their claim by, for example, requiring that the applicant be heard personally, with the assistance of an interpreter if required, and by providing free access to a legally-qualified 'refugee counsellor'.[101]

In Finland, Sweden, Australia and the United Kingdom, reforms aimed at improving asylum appeals processes, another key topic in IGC asylum procedures meetings at the time. In 1991, Finland gave a right of appeal against asylum application refusals for the first time,[102] whilst 'the Aliens Appeals Board was created [in Sweden in 1992] to replace the government as the second instance decision-making authority'.[103] In Australia, the previous system of 'in-house' administrative review of asylum application decisions was replaced in 1993 with an independent, fifty-seven member tribunal—the Refugee Review Tribunal—to review adverse decisions 'on the merits' (meaning that new information and evidence could be considered) and render a reasoned, written decision.[104] In the United Kingdom, a 'more inclusive approach' to appeal rights was adopted in 1993;[105] it included '[a] right of appeal before removal to the country of origin of *all* applicants refused asylum and exceptional leave [to remain]… regardless of their immigration status'.[106]

The efficiency of asylum procedures was also on the minds of policymakers in IGC Participating States at this time.[107] This was 'provoked by a shared concern in the industrialized countries about overburdening the structures they [had] in place to handle claims, rising costs of various types associated with running their systems, problems stemming from difficulties in applying refugee concepts to mixed groups of arrivals, and by a significant misuse of the systems'.[108] Particular emphasis was placed, therefore, on 'reducing the backlogs of asylum-

seekers and processing cases rapidly so that those in need of international protection obtain[ed] protection quickly and those who [were] not determined to require such protection receive[d] a final negative decision rapidly in order to facilitate their return'.[109]

Measures seeking these ends were often also linked to fairness, however, the argument being that 'a stricter implementation of refugee status criteria will improve the chances of bona fide refugees actually to obtain the protection they deserve'.[110]

In order to expedite asylum procedures,[111] the 'safe third country' and 'safe country of origin' concepts were introduced into a number of IGC Participating States in the early 1990s;[112] indeed, IGC participants Switzerland and Belgium were the first to introduce these concepts and, as Costello argues, '[i]nformal horizontal policy dynamics ensured the quick spread of these practices', specifically citing IGC in this regard.[113] By the end of the decade, 'virtually every Western European state implemented a safe third country policy',[114] though such policies have been notoriously difficult to operationalise. Although they were discussed in other fora, and were the subject of a non-binding European Union resolution in 1992,[115] they were also explored in depth in IGC meetings and were, in fact, specifically mentioned in the 1991 IGC strategy platform as one of a number of 'issues to be explored'.[116]

There was also a rise in the use by Participating States of expedited procedures for applications deemed 'manifestly unfounded' (which were used not only when the 'safe country' concepts were applicable, but also where the applicant did not disclose any reasons to believe that they had a well-founded fear of persecution).[117] These had also been discussed in IGC meetings, as was the importance of retaining the right to a personal interview and the right to have a negative decision reviewed for applicants subject to expedited procedures. Some States also introduced preliminary hearings to identify non-credible and ineligible applicants as early in the process as possible.[118] Although these developments were criticised by some,[119] their adoption must be understood against the seemingly inexorable rise in asylum application numbers at the time and the desire amongst IGC Participating States to safeguard their asylum procedures and the public confidence therein. As Martin argued in relation to the latter, 'it must be an ever-present concern of wise policy to shape asylum measures, including adjudication systems, so as to maximize continued domestic support'.[120] Without public support, of course, it is very difficult for any State to provide protection to even a small number of refugees.

Expedited procedures were not only introduced to shorten processing times for negative determinations, however. Austria and France introduced expedited procedures for manifestly *well-founded* claims,[121] whilst the United States introduced changes which made certain 'categories of persons [such as Soviet Jews and Indochinese in East Asian refugee camps] eligible for eased—although not "presumptive"—access to refugee status'.[122] Canada's reforms also had, as a key aim, 'doing away with some of the legal obstacles standing in the way of *positive* determinations'.[123]

The 1990s, then, saw further *de facto* harmonisation in the asylum procedures of IGC Participating States, with Participating States adopting a 'toolbox' approach to a range of policy measures aimed at improving the fairness and efficiency of asylum procedures, and

assisted by IGC activities directed at these same concerns. Whilst these factors continue to motivate asylum policymaking today, a further stage of harmonisation has become evident.

## Stage Four: Further *de facto* harmonisation amongst IGC Participating States, alongside but distinct from *de jure* harmonisation amongst European Union Member States

The fourth and ongoing stage of the development of asylum procedures, which commenced at about the turn of the century, has seen further *de facto* harmonisation take place amongst IGC Participating States, even whilst there has been considerable *de jure* harmonisation amongst the Member States of the European Union thanks to the still-ongoing development of the Common European Asylum System ('CEAS'). As outlined in Chapter Two, the key events in the move towards the Common European Asylum System were:

- the 1999 Treaty of Amsterdam, which gave the European Union competence for migration and asylum matters;
- the 1999 Tampere Conclusions, wherein European Member States decided to work towards the development of the Common European Asylum System;
- the first round of EU secondary legislation relating to the Common European Asylum System, promulgated between 2000 and 2005, which applied to nine of IGC's 16 currently participating States;*
- the establishment of the European Asylum Support Office in 2011; and
- the second round of EU secondary legislation, promulgated between 2011 and 2013, wherein the instruments of the first round were recast. The recast instruments apply to seven of IGC's 16 participating States.#

Although the Treaty of Amsterdam and the Tampere Conclusions set in train the development of the Common European Asylum System, true *de jure* harmonisation in the EU context did not commence until the promulgation of the first round of secondary legislation in the form of two regulations and three directives between 2000 and 2005.[124] For present purposes, the most relevant of these were the so-called 'Qualification Directive' of 29 April 2004 and the so-called 'Asylum Procedures Directive' of 1 December 2005.[125] Both of these instruments sought to harmonise the law and policy of EU Member States; the Qualification Directive sought to harmonise the grounds on which international protection should be granted and the content of that protection, whilst the Asylum Procedures Directive addressed the procedures to be used in granting and withdrawing refugee status.

Three important features of these instruments should be noted. First, they are directives, not regulations. This means that, rather than being directly applicable in the internal law of EU Member States, they must be 'transposed' into national law by the government or

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* All European Union Member States that currently participate in the IGC process were also part of the first stage Common European Asylum System with the exception of Denmark, which opted out. Although participating in parts of CEAS (most notably the Dublin System), Norway and Switzerland are not bound by the elements most relevant to the present discussion, namely the Qualification Directive and the Asylum Procedures Directive.

# The United Kingdom and Ireland are bound by the first generation of CEAS directives, but opted out of the second round of recast directives.

legislature of each Member State. This gives Member States a certain leeway in the manner in which they apply the directive; they are not required to put a certain form of words into their national law, but may choose the manner in which they achieve the objectives set out in the directive. In the case of the Qualification and Asylum Procedures Directives, this also means that asylum decision-makers and others must look to national legislation—not the directives—when determining whether a particular individual is entitled to international protection. Furthermore, 'the number of possible derogations, exceptions and optional clauses…was impressive'.[126] The Qualification Directive was to be transposed into national law by 10 October 2006; the deadline for the majority of the provisions of the Asylum Procedures Directive was 1 December 2007.[127]

Secondly, both the Qualification Directive and the Asylum Procedures Directive were expressly designed to be 'minimum standards' and expressly asserted that:[128]

> It is in the very nature of minimum standards that Member States should have the power to introduce or maintain more favourable provisions for third country nationals or stateless persons who ask for international protection from a Member State[.]

This meant that, in the case of these two Directives, Member States were given even greater leeway than usual when transposing them into domestic law.

Thirdly, the original Qualification and Asylum Procedures Directives were—the European Commission has admitted—too imprecise to permit anything more than a very limited degree of *de jure* harmonisation. The Qualification Directive was 'to a certain extent vague, which maintained divergences in national asylum legislation and practices', meaning that '[t]he chances of a person being granted international protection could vary tremendously depending on the Member State processing the asylum application'.[129] Likewise, the Asylum Procedures Directive's 'rules were often too vague' and 'derogations allowed Member States to keep their own rules, even if these went below basic agreed standards'.[130]

Together, these three factors gave Member States a great deal of room for manoeuvre when complying with the Qualification Directive and the Asylum Procedures Directive, which thus limited the ability of the Directives greatly to harmonise the law and policy of EU Member States on the matters that they address (though, as noted in the Tampere Conclusions, they were only ever intended as a first step towards the development of a comprehensive, harmonised Common European Asylum System).

This room for manoeuvre in the process of *de jure* harmonisation meant that there was still the possibility of pursuing *de facto* harmonisation, including through the IGC process. The record shows that this harmonisation continued to occur and, indeed, it can be argued that it assisted the process of European harmonisation in at least five ways.

First of all, the Qualification Directive and the Asylum Procedures Directive made clear the extent to which the asylum systems of IGC Participating States had already harmonised. This can be seen most clearly in relation to the Asylum Procedures Directive. Take, for example,

the obligation on Member States to 'ensure that…the personnel examining applications and taking decisions have the knowledge with respect to relevant standards applicable in the field of asylum and refugee law'.[131] As we have seen above, this is a matter on which IGC Participating States' approaches had differed greatly in the early 1980s but in respect of which an informal consensus had emerged in the late 1980s and early 1990s following IGC activities that focused on this very question. Likewise, the Asylum Procedures Directive permitted the use of accelerated procedures in respect of manifestly well-founded and manifestly unfounded applications, as well as where safe country concepts applied.[132] These were all matters that had been discussed at length in the IGC context and were the subject of a degree of *de facto* harmonisation between IGC Participating States in the early 1990s.

Indeed, and secondly, it can be argued that this *de facto* harmonisation that had already occurred between IGC Participating States (and which we have already examined) paved the way for *de jure* harmonisation in the European Union. As Zaun notes, the fears that *de jure* harmonisation within the EU would lead to a 'race to the bottom' appear to have been misplaced and, instead, the development of the Common European Asylum System would seem to have 'preserved the *status quo* or even raised protection standards'.[133] This is, she argues, because the strong regulatory States of Northern and Western Europe (many of which are IGC Participating States) succeeded in their attempt to 'introduce *their* standards into EU legislation' with the result that 'Member States in Southern and Eastern Europe would have to establish effective asylum systems which they did not previously possess';[134] in other words, '[a] systematic comparison of the standards in the directive and the *status quo ante* policies of Member States shows that EU asylum standards do not represent the lowest standard of all Member States but the lowest standards of the strong regulators.'[135] The fact that these 'strong regulators' in Northern and Western Europe had already undergone considerable *de facto* harmonisation, assisted *inter alia* by the participation of many of them in the IGC process, can only have facilitated the process that Zaun describes.

The third way in which the IGC process can be argued to have assisted European harmonisation was that it gave Participating States the opportunity to discuss how those provisions of the Directives not already reflected in domestic law should be transposed and how the domestic law provisions should be interpreted and applied. As the Blue Book has recognised, the first generation of EU legal instruments relating to asylum 'created minimum standards that still left room for different interpretations at the national level', meaning that there was still much for IGC Participating States to discuss.[136] Indeed, there was a period of time during which these issues were discussed at each and every meeting of the Working Group on Asylum and Refugees. The clearest example in this respect was the Qualification Directive and, in particular, article 15(c), which defines 'serious harm' for the purpose of qualifying for complementary protection as including a 'serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict'. This element of the definition—various aspects of which have been criticised as being 'unclear', 'problematic' and 'illogical'[137] —proved particularly challenging to transpose into domestic law (and, thereafter, interpret), so Participating States turned to the Working Group on Asylum and Refugees for assistance. In two consecutive meetings of the Working Group following the adoption of the Qualification Directive, EU Member States,

non-members, the European Commission and UNHCR all discussed at length their approach to the relationship between complementary protection and indiscriminate violence, their interpretation of article 15(c) and—for EU Member States—the manner in which they had or were planning to transpose it into domestic law. These discussions gave Participating States a greater awareness of the experiences of others in meeting this challenge, and also provided useful feedback to the Commission as it prepared for the next, updated set of common standards.

A fourth way in which the IGC process has assisted European harmonisation has been the way in which it has been used to discuss how broad, non-legislative obligations in the directives can be fulfilled by Member States. A good example of this is the issue of training and quality assurance in asylum decision-making. Whilst the original and recast Asylum Procedures Directives require that 'applications are examined and decisions are taken individually, objectively and impartially'[138] and that 'decision-makers have the appropriate knowledge or receive the necessary training to fulfil their obligations',[139] there is little further detail as to how EU Member States should ensure that decision-makers—in the words of the Recast Asylum Procedures Directive—'perform their activities with due respect for the applicable deontological principles'.[140]

At the same time, however, issues of training and quality assurance have been the subject of frequent, detailed discussion in IGC activities. Quality assurance has, for example been the subject of three day-long thematic discussions during the meetings of the Working Group on Asylum and Refugees in recent years. In those discussions, Participating States and Organisations have shared with one another the systems that they have developed for ensuring the correctness and consistency of their asylum decision-making and for identifying needs amongst decision-makers for further training or guidance. They have discussed the desirability of having quality assurance assessors outside the decision-maker's hierarchical chain, the systems that have been developed to allow UNHCR to participate in the quality assurance process, and the importance of establishing a culture of quality. The possibility of deeper international cooperation on quality assurance has also been canvassed, as has the possible application to asylum procedures of principles designed to improve efficiency in manufacturing. Issues of quality and quality assurance have also featured prominently in other thematic discussions concerning issues such as the asylum interview and the role of the caseworker/decision-maker, and continue to be a key topic to this day.

Furthermore, these discussions appear to have had real impacts on the asylum procedures in Participating States. In the lengthy period between the publication of the fifth and sixth editions of the Blue Book,[141] for example, Participating States had 'focused their attention on improving the ability of asylum authorities to make quality decisions that contribute to the integrity of the overall system'.[142] Measures taken to this end included the creation of training programmes for decision-makers, the use of technology and the sharing of information. By 2012, and in addition to further measures aimed at improving the integrity and efficiency of procedures,[143] Participating States were also 'increasingly recognising the need to monitor, maintain and improve the quality of refugee status determination processes' and, to this end, were observed to be implementing 'quality-assurance systems…that go beyond the regular

supervision of caseworkers and draft decisions'.[144] By 2015, these efforts included—in many IGC Participating States—'using the "lean" processing method to [optimise workflows and thus] streamline the asylum process'.[145]

The fifth and final way in which the IGC process contributed to *de facto* harmonisation alongside the *de jure* harmonisation being pursued by the European Union was to provide a forum within which Participating States could explore policy harmonisation beyond that required of them by EU law. The record shows that harmonisation of this kind continued to occur after the promulgation of the first round of directives, the clearest example being the movement towards the use of a single procedure for the assessment of entitlement to refugee status and complementary protection (referred to in the European Union as 'subsidiary protection'). As we have seen in Chapter Two, the Tampere Conclusions noted agreement on the need for 'measures on subsidiary forms of protection',[146] and the Qualification Directive provided both the definition of who was entitled to such protection and the rights that attached to it. Despite this, the subsequently-adopted Asylum Procedures Directive did not specify the type of procedure that should be used to determine whether or not complementary protection should be granted (though IGC Participating States the Netherlands, Sweden and Finland had proposed that applications for complementary protection be covered by the directive).[147]

Nonetheless, a harmonisation of approaches to complementary protection developed amongst IGC Participating States (and not just those who were EU Member States). By the time of the publication of the Blue Book's sixth edition in 2009, a consensus was emerging:[148]

> Over the past decade, a single procedure that allows decision-makers first to consider whether asylum applicants meet criteria for Convention refugee status and, failing that, whether they meet criteria for obtaining a complementary form of protection, has emerged as the preferred approach for a majority of IGC states.

As a result, it was concluded, '[t]he concept of complementary protection is today an integral element of asylum determination' in IGC Participating States, rather than 'a discretionary or *ad hoc* type of decision-making', as it had been previously.[149]

This *de facto* harmonisation coincided with increasing attention being paid to issues of complementary protection within the IGC process since at least 1999, when Denmark chaired an IGC workshop in Geneva that examined complementary protection, the desirability of harmonising Participating States' approaches to it and the ways in which harmonisation could be pursued. The workshop was briefed by the Secretariat on the complementary protection systems in place in Participating States, and by UNHCR on its views on complementary protection. Representatives of Participating States and Organisations also participated in a simulation exercise whereby they discussed what statuses and entitlements would be granted in specified hypothetical situations.

Thereafter, complementary protection was a regular topic of discussion and detailed information exchange between Participating States and Organisations. In the context of the Working Group on Asylum and Refugees, two major comparative studies were produced

on the law, policy and procedures in each Participating State relating to complementary protection. Key issues addressed in meetings also included: the factual conditions that must exist for complementary protection to be granted; procedures for assessing entitlement; whether the grant of complementary protection is mandatory or discretionary; the applicable rules of exclusion; appeal rights, status and entitlements; the interpretation of the relevant provisions of international human rights law; and the jurisprudence of the European Court of Human Rights, the United Nations Human Rights Committee and the Committee Against Torture, including the impact that such jurisprudence has had on State practice.

As a result of this *de facto* harmonisation that was occurring separately to the *de jure* European Union harmonisation, IGC Participating States were ahead of the game when the so-called 'Recast Asylum Procedures Directive' was adopted in June 2013.[150] That Directive, the bulk of which was to be transposed into national law by July 2015, introduced for the first time a requirement for Member States to adopt a single procedure for determining refugee status and entitlement to complementary protection.[151] As we have seen, however, the majority of IGC Participating States had adopted a single procedure by the time of the 2009 Blue Book; indeed, all IGC Participating States had adopted a single procedure in advance of the adoption of the Recast Asylum Procedures Directive, as was noted in the 2012 Blue Book.[152]

Of course, this is not to say that the European Union is the only relevant unit of analysis insofar as harmonisation during the fourth stage is concerned. Non-EU Participating States have participated equally in discussions concerning the relevant standards for the grant of complementary protection and the use of quality assurance mechanisms. Although these discussions may have been, to an extent, influenced by European developments (and, as has been suggested here, may have prompted some European developments), they have also been of relevance to the ongoing process of *de facto* harmonisation in the asylum procedures of all IGC Participating States, regardless of their relationship with the European Union.

In 2016, the European Commission announced that it was proposing to replace the Recast Qualification and Asylum Procedures Directives with regulations that, unlike the directives, will be directly applicable as law in the States to which they apply. The stated purpose of moving from directives to regulations is 'to ensure uniform standards for protection and rights granted to refugees and beneficiaries of subsidiary protection' and 'to establish a fully harmonised common EU procedure' for determining eligibility for those rights'.[153]

### What role has IGC played in this evolution?

Although the move towards further *de jure* harmonisation within the Common European Asylum System through the use of binding regulations has been justified on the basis that there has not yet been enough harmonisation of the asylum systems of Member States (as measured, often, by differing recognition rates across the European Union),[154] a slightly longer historical lens demonstrates that there has been an enormous amount of harmonisation in asylum systems since the late 1970s, particularly amongst IGC Participating States.

This is no coincidence; rather, as we have seen, the IGC process has been a key site for the exploration of asylum procedures and the sharing of experiences of success and failure.

Through the senior officials' meetings, the practitioner-level working groups, the secure website and the Request for Information process, IGC has facilitated a regular and ongoing exchange of information on asylum procedures that has contributed to this evolution and a *de facto* harmonisation of approaches.

A good example of how IGC activities support the evolution and *de facto* harmonisation of asylum procedures is the reform of Canada's asylum procedures in 2012.[155] In investigating options for improvement, Canadian authorities made extensive use of the Working Group on Asylum and Refugees and IGC's Requests for Information to learn as much as they could about the experiences of other IGC Participating States in reforming their own asylum procedures. This allowed them to make accurate and detailed international comparisons, to identify best practices and to examine lessons learned. Without a process like the IGC, this level of information exchange would have been extremely difficult and—in particular—it would have been impossible to generate the kind of trust required to have a frank exchange on what policy initiatives in other Participating States had failed to achieve their objectives.

Likewise, McAdam demonstrates how the practices of other IGC Participating States informed the parliamentary debate in Australia in advance of that Participating State's introduction of the 'safe third country' concept in the mid-1990s, as well as the introduction of a complementary protection regime in 2011.[156] She recognises that '[i]t is very difficult to identify precisely where ideas originate in asylum practices and how they cross-pollinate', but noted the description by the Australian government of the IGC process as '[a] principal source of information' when it wished to examine policies and procedures elsewhere.[157]

This is not, of course, to deny the significant contribution that other actors and other fora have played in promoting the development and harmonisation—*de facto* and *de jure*—of asylum procedures. The most notable of these, of course, have been the various pieces of EU law that impact on asylum procedures, but also the Conclusions of UNHCR's Executive Committee, UNHCR's Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status, the Views of the United Nations Human Rights Committee and the Committee Against Torture, and the decisions of the European Court of Justice and the European Court of Human Rights.[158] As has been noted above, efficiency measures such as the 'safe country' concepts and the use of expedited procedures for manifestly unfounded claims, for example, were endorsed by a non-binding EU resolution in 1992,[159] and the EU had previously adopted the Dublin Convention in 1990 to prevent asylum seekers from applying for asylum in multiple Member States.[160] Earlier still, the Council of Europe produced its first recommendation on the harmonisation of asylum policies and practices in 1976.[161]

It must also be recognised, however, that IGC's characteristics as an informal and non-political forum for the sharing of experiences and the testing of ideas is particularly well-suited to policy convergence, since it fosters the kind of detailed, in-depth discussion between subject-matter experts that—for the reasons discussed in Chapter Three—does not occur at the meetings of the Executive Committee or in negotiations in the European Union or the Council of Europe. The role of the IGC process in the evolution and *de facto* harmonisation of asylum procedures is not generally recognised in writings on the subject,[162] due in part no doubt to the informal and private nature of IGC activities.

*The Consultations form a process favouring the international harmonization of policies and measures in this area. As known from the EC context and elsewhere, one of the policy areas which Governments are most reluctant to harmonize is immigration, given the obvious and natural inclination to retain national sovereignty with respect to this highly sensitive issue. At the same time, Governments know that the future challenges regarding migration pressures can only be mastered through harmonized collective action. In this regard, the informal consultations, acting as an effective catalyst for international information exchange, have probably contributed to the harmonization process without Governments feeling constrained or formally committed hereto.*

**Jonas Widgren**,
First IGC Coordinator,
1987-1993

Even when not discussing the role of IGC in the evolution and harmonisation of asylum procedures, however, many authors nonetheless present the chronology of the process of evolution and harmonisation in a manner that neatly aligns with the discussion of the policy positions in question in IGC activities.[163]

As noted above, many have argued that well-developed, fair, efficient and harmonised asylum procedures are essential to refugee protection. Whilst the IGC process cannot be credited with being solely responsible for developing and harmonising the asylum procedures of its Participating States, it must be recognised that it has played a significant role in the development and *de facto* harmonisation process.

## PROFESSIONALISING COUNTRY OF ORIGIN INFORMATION

In addition to encouraging the development of harmonised asylum procedures, the IGC process has also supported Participating States to recognise the value of timely, accurate and up-to-date country of origin information ('COI') and to develop thorough and professional approaches to its collation and analysis.

### Country of origin information and the international refugee protection régime

As many experts in the international refugee protection régime have recognised, '[t]here can be no doubting the value of accurate, in-depth, up-to-date, and trustworthy information in the refugee determination context'.[164] It is needed to determine whether persons in the applicant's position face persecution in their country of origin,[165] it is crucial in testing the credibility of the applicant's assertions,[166] and it is invaluable to our understanding of—and ability to plan for—forced displacement.[167] Thus, as UNHCR argues:[168]

> Accurate and reliable information about the causes of refugee and other coerced population movements is essential for UNHCR and States alike: COI is decisive in determining who is in need of international protection and should be accorded asylum and protection, as well as to formulate solution strategies, including plans for voluntary repatriation. In addition, reliable, complete and up-to-date COI is essential in the determination of whether and when to invoke the cessation of refugee status and concerning repatriation decisions. COI is also essential to develop preventive approaches aimed at removing or reducing the reasons for flight. COI facilitates the identification of those who do not require international protection and can assist in the development, in other fora, of an effective international response to general migration questions. Finally, COI plays a critical role in academic research and scholarship.

As with asylum procedures more generally, then, country of origin information is widely considered to be essential to a State's compliance with the Refugees Convention and Protocol, even though neither document explicitly refers to it.[169]

In order to permit States to comply with their international obligations, country of origin information must be 'independent, reliable, and objective',[170] as well as 'as accurate, up-to-date and comprehensive as possible'.[171] Indeed, 'access to accurate and reliable information is a condition *sine qua non* for identifying who is, and who is not, in need of international protection, as well as for developing strategies for solutions, including plans for voluntary repatriation and cessation'.[172] If it is not these things, its utility is negligible.[173]

In order to ensure the production of accurate, in-depth, up-to-date and trustworthy country of origin information, UNHCR has recommended that States 'systematically develop full-fledged COI systems' that 'make provision for specialist researchers, or trained documentalists, to collate general or specific reports from public or internal sources'.[174] According to UNHCR, '[t]he underlying philosophy is to facilitate access to a wide range of opinions and information in an objective way. By comparing and contrasting information from a variety of different sources, decision-makers are assisted in forming an unbiased picture of prevailing conditions in countries of concern'.[175]

As was the case with asylum procedures, however, States were relatively slow to develop robust procedures for the production of timely, accurate and up-to-date country of origin information. Prior to the commencement of the IGC process in 1985, Participating States tended to approach country of origin information in a decentralised, *ad hoc* manner. There were few specialist country of origin analysts and the collation and analysis of country of origin information was often done by the individual decision-maker. Information was often provided by ministries of foreign affairs, but these rarely saw providing country of origin information to asylum decision-makers as a core part of their work. In Australia, for example, the country of origin information available to the committee charged with advising the relevant minister on asylum applications at the time was limited to whatever was provided by the Department of Foreign Affairs, and its quality was sometimes questioned; one senior official complained of 'an overall lack of hard information' on Iraq and described himself as being 'generally dissatisfied' with that state of affairs.[176] In France and Italy, the

relevant decision-making authority 'had no systematized in-house documentation center to assemble human rights information on countries of origin', instead leaving officers to 'rely upon their own sources';[177] the French Appeals Commission, on the other hand, established a 'modest documentation center' in 1982.[178]

An empirical study in the United States concluded that, despite the changes brought about by the *Refugees Act of 1980*, '[i]mmigration judges generally [did] not consider evidence of human rights and persecutory practices in the home country in determining the merits of an applicant's asylum claim', meaning that they often 'evaluate[d] asylum claims separate and apart from evidence regarding political realities in the home country'.[179]

There were exceptions to this rule, however. Germany, Canada, Sweden and Switzerland, UK had established libraries of human rights information or documentation centres, though these were mostly of limited scope and lightly staffed (if at all),[180] and it is not clear that their activities were a central part of the asylum decision-making process.[181]

### The development of country of origin information systems in IGC Participating States

Beginning in the late 1980s, however, States and academics alike began to pay greater attention to the importance of having timely, accurate and up-to-date country of origin information. As was observed in 1988, 'the information aspect of refugee work is finally emerging from its rather Cinderella-like status to be acknowledged for the fundamentally important activity that it is'.[182] There was a movement towards an approach to country of origin information that 'avoids, to the extent possible, biased or generalized assumptions which flow from reports on a country's democratic or near-democratic status, constitutional guarantees which may not hold in practice, and media and other accounts which often neglect information vital to a full understanding of the impact of events'.[183]

This growing awareness was reflected in the prominence that country of origin information was given in the activities of the fledgling IGC process at the time. A 1988 workshop on asylum procedures concluded that '[t]he need for adequate knowledge of conditions in the country of origin must be addressed', leading to a growing focus in IGC activities on the importance of well-functioning systems for the collation and analysis of country of origin information, This started with a 'Workshop on how to assess the situation in countries of origin of asylum-seekers' at Dardagny in January 1989, the Background Note for which explained that:

> It is widely recognized that a prerequisite for a proper determination of refugee status is the access to relevant and up-to-date information on the situation in countries of origin of asylum-seekers. The changing nature of the flows of asylum-seekers, and the diversity of countries of origin, have given rise to many problems in this regard. The efforts of national authorities to obtain proper information on objective facts in a specific country is also contributing to a protraction of asylum procedures.

States participating in the workshop—and UNHCR—determined that further cooperation on country of origin information would help them to address these problems. The 'need

to create a mechanism for the exchange of information, documentation and data-handling experience between refugee-receiving countries with respect to country of origin conditions' was recognised in a detailed 'Study on country of origin information' produced as a follow-up to the January 1989 workshop, and the 1991 IGC Strategy Platform called for 'reinforced information exchange on the situation in relevant countries of origin and on general assessments made in this regard'. As noted in Chapter Two, the Country Assessment Approach—which was pursued through a range of country-specific working groups that began to be formed in 1991—served as a forum to discuss Participating States' approaches to particular countries of origin, and this included questions of COI. Enhancing cooperation on country of origin information also figured prominently on the agenda for the Full Round of Consultations at Niagara-on-the-Lake in June 1992 and a further dedicated country of origin information workshop was held in Geneva in October the same year. Country of origin information continued to be discussed in informal exchanges about the future work of IGC. Although not yet fully systematic in nature (since they were either focused on specific countries or of an *ad hoc* nature), these early efforts at cooperation demonstrate the growing appreciation amongst IGC Participating States and Organisations of the special role that country of origin information had to play in asylum systems as they matured.

At the same time, IGC Participating States began to establish specialised units for the collation and analysis of country of origin information. One of the first States to do so was Canada,[184] which established the Immigration and Refugee Board Documentation Centre in 1988,[185] 'based on the belief that a maximum of knowledge—both of the claimants' country of origin and of pertinent law—will greatly facilitate reaching fair decisions'.[186] The country of origin information produced by the Centre was 'available to decision-makers, IRB staff, counsel and claimants'.[187]

As the Documentation Centre's Director noted in 1989:[188]

> A purely reactive analysis to refugee flows limits understanding to a simple relation of cause and effect. A fuller picture will show the historical origins, the protagonists, the prevailing policies (such as institutionalized and systemic discrimination against ethnic, religious, linguistic or economic groups); and the tactics (such as torture, abductions, or arbitrary killings). An in-depth approach to background and causes reveals the inadequacy, in the decision-making context, of facile assumptions about countries of origin, which flow from its supposed democratic or near-democratic status, or inclination to hold elections. The nature of the refugee definition requires close attention, above all, to individual circumstances, and to the facts, motives and fears that have brought them to flee and make their claim.

A trend towards the development within IGC Participating States of specialised units dedicated to the collection and analysis of country of origin information soon developed; the United States established such a unit in 1990,[189] and Germany reported the establishment of 'a special department on information and documentation' to IGC Participating States the same year. In the 1992 edition of the Blue Book, Australia reported that '[a] Refugee Documentation Centre has been established…to provide updated information and briefing on topical issues

relevant to current refugee concerns';[190] Finland and Norway, meanwhile, noted that they were in the process of establishing country of origin resources.[191] The same year, Denmark reported to the IGC Full Round of Consultations that it had established a Documentation and Information Centre to 'receive[] country situation reports from the Danish Ministry of Foreign Affairs, UNHCR, NGOs and others', to produce situation reports and to provide relevant country of origin information to asylum decision-makers. Sweden had established a 'central division' within the National Swedish Immigration Board, whose responsibilities included 'documentation and analysis of country of origin material', and Switzerland had established a 'special country of origin documentation unit' within the Federal Office for Refugees.

By the time of the 1994 Blue Book, further Participating States were systematising the collation and analysis of country of origin information, though not always in the direction of establishing specialised units. The Netherlands had established such a unit,[192] but the French government received its country of origin information through an arrangement with 'Documentation-Réfugiés', a private association of which it was an associate member.[193] The United Kingdom had adopted a model whereby each country of origin would be assigned to an individual caseworker 'who builds up expert knowledge about his particular country…and acts as a liaison point between the caseworkers and the [Foreign and Commonwealth Office]'.[194] A British caseworker was also on secondment as an Asylum Liaison Officer to the British Embassy in Ankara at the time 'to improve access to information about the conditions in Turkey'.[195] Five years after opening its doors, the Canadian Documentation Centre was maintaining more than 80 Country Profiles and had responded to more than 16,600 requests for information.[196]

This is not to say, of course, that those Participating States that had not established specialised country of origin information units were not engaging with a wide range of material and checking that material for accuracy. The United Kingdom reported in 1994, for example, that:[197]

> Information is obtained from the Foreign and Commonwealth Office (FCO) both by means of routine FCO telexes and by specific enquiry. Caseworkers have access to a wide variety of external publications, such as Europa Yearbooks, Watch Committee reports and Amnesty International reports, and most major daily and weekly journals are monitored for relevant items[. Caseworkers also] have full access to the extensive databases established by the UNHCR.

That a trend towards the establishment of specialised country of origin information units had emerged was undeniable by the time of the 1997 edition of the Blue Book.[198] Less than a decade after the establishment of some of the very first such units, eight of fifteen Participating States had reported having one. (In addition, New Zealand—which was not yet a Participating State in 1997—established a specialised unit in 1996.[199])

Aided by the systematisation of IGC country of origin activities in 1995 with the creation of the Working Group on Technology and its subsidiary Expert Group on Country of Origin Information (the name of which recognised the emergence of country of origin information as a specialised field requiring expert knowledge),[200] this trend continued: Belgium and the United Kingdom established their units in 1997, and Finland followed suit the next year,[201] when

the aforementioned Expert Group was extracted from the Working Group on Technology and became a fully-fledged IGC Working Group on Country of Origin Information. Ireland created a Refugee Documentation Centre in 2000, and Norway established a COI documentation unit in 2001.[202] Indeed, by the time of the next edition of the Blue Book in 2009, all but one IGC Participating States had established specialised COI units.[203] The coverage of specialised country of origin information units across IGC Participating States is now 100%.[204]

Despite the clear trend towards the establishment of specialised units for the collation and dissemination of country of origin information, however, Participating States' approaches—in terms of what is produced, how and within what kind of organisational structure—have not converged to the same degree as was observed above in relation to asylum procedures. A survey of COI units in IGC Participating States conducted in 2016 revealed, for example, significant differences between COI units in Participating States, both in terms of mandates and methodologies. As for the former, all Participating States have a COI unit whose core mandate is to provide information to assist in the determination of asylum applications, but there are significant differences when it comes to additional mandates: the majority of units reported having a role in the provision of medical country of origin information for the purposes of granting compassionate leave to remain and country of origin information for the purposes of resettlement and return activities, but a smaller number provided country of origin information for use in relation to regular migration streams and the integration of refugees and migrants into society. Methodologically, approximately half of the responding units described their approach as 'documentalist' (meaning that the focus was on locating and providing access to relevant information), whilst the other half said that there was also a large analytical element to their work. Another methodological difference was the conduct of fact-finding missions, with the survey revealing a relatively even mixture of units that conduct them regularly, occasionally, and not at all.

Despite these differences, however, the survey also revealed that the activities of the Working Group on Country of Origin Information were greatly valued by those who participate in them, with many describing the Working Group as a 'laboratory' within which they could test new ideas, share experiences, and discuss best and worst practices on topics ranging from individual countries of origin, COI methodologies and management issues faced by COI units.

## IGC's role

We have seen, then, that a professionalisation and specialisation of approaches to country of origin information occurred across IGC Participating States at about the same time that the specialised nature of country of origin information work received increasing prominence in IGC activities.

It is in their 'laboratory' capacity that these activities—the Working Group in particular—have helped to shape what was described in one meeting as 'the emergence of COI research as a specialised profession'. This has been in four key ways.

First, exchanges of experiences and good practices within the IGC process appear to have contributed to a common understanding among Participating States of the benefits of

establishing specialised units dedicated to the collation and analysis of country of origin information. As Ireland explained in the 2009 edition of the Blue Book, it was 'Building on Best Practices' when it established its specialised country of origin information unit, and used international processes like IGC in doing so. Before the special unit—the Refugee Documentation Centre—was established, 'there was no centralised COI service available to all asylum authorities, as COI research was being conducted within each individual organisation'.[205] The establishment of such units has been key to the professionalisation of country of origin information because it has increased the visibility of COI work, and required the recruitment and training of COI specialists. It is not just the establishment of specialised country of origin information units that can be traced to activities within the IGC process, but certain aspects of the operation of those units as well.

Secondly, IGC activities have contributed to the development of country of origin information methodology. Participating States and Organisations have used the Working Group to improve their COI methodologies so as to improve the quality of their COI products. Again as noted in the 2009 Blue Book, Ireland's Refugee Documentation Centre 'established early contacts with other COI offices in partner countries to identify best practices as well as with other relevant organisations and agencies both in Ireland and abroad'. As a result of the Centre's '[i]nvolvement in international COI meetings and networks…the training activities of the Centre have expanded from short courses developed in-house to intensive COI training programmes based on best practice models'.[206]

Efforts to this end have involved sharing strategies for countries of origin about which research is difficult, including experiences in posting liaison officers to diplomatic missions, best practices for fact-finding missions, joint fact-finding missions and the sharing of facts found. Participating States and Organisations (UNHCR in particular and, more recently, EASO) have discussed best practices for using oral sources of information, and the possibility of using asylum interview records to complement other sources of country of origin information. A recurring theme has been the development of more systematic approaches to quality assurance, including the development of manuals and guidelines, as well as supervisory, editorial and blind peer review. In recent years, and in response to the Arab Spring in particular, Participating States and Organisations have focused on their responses to new sources of information, including strategies to help researchers stay safe online and fulfil their research needs without compromising ethical standards.

Similarly, Participating States have used the Working Group on Country of Origin Information to explore the manner in which social media can and should be used to inform country of origin information work. In 2013, a meeting of the Working Group was attended by a leading expert on social media, who led the group through three distinct modules including operational security online, social media and COI and website evaluation for COI. Ideas discussed at that session have informed policy developments and guidance on social media in several IGC States, including Canada, the United States, and Belgium.

The third area in which IGC activities have contributed to the professionalisation of COI work has been to assist Participating States to respond to their evolving need for country of origin information. Whilst COI units still have the provision of information to asylum decision-makers

at the core of their mandates, many have been asked over the years to provide country of origin information for other purposes; these have included assisting settlement and resettlement, integration or return, investigating trafficking and smuggling, implementing regular migration programmes (such as labour, family, educational or skilled migration), and the development of migration, asylum and refugee policy. There has also been a need for them to expand their range of products from comprehensive country reports to one-on-one consultations, shorter issue-focused reports, safe country monitoring, in-court testimony, training of decision-makers on COI use and—in some Participating States—specific guidance for decision-makers. COI units in Participating States have faced similar pressures to diversify their services to cover these needs and have used IGC activities to help one another respond.

Finally, IGC activities have assisted managers of COI units in Participating States to discuss the management issues that they face, including the competencies and qualifications that they should require from new recruits, training programmes, feedback to staff, measuring end-user satisfaction and managing changes occurring within COI units (including as a result of the evolution of the Common European Asylum System, rapidly rising application numbers and the new uses for country of origin information).

Although not leading to the degree of policy harmonisation that has been observed in relation to asylum procedures, IGC activities have facilitated the growth of what is sometimes referred to as a 'community of practice' in COI work. As the academic literature has noted, Regional Consultative Processes 'provide a framework for regular meetings between persons [i.e. migration practitioners] who generally otherwise would not interact, or would interact only on an *ad hoc* basis'.[207] The international communities of practice thus established allow regular contact between officials working on similar issues for different States, permitting them to remain in contact and to continue to learn from one another. This often leads to opportunities for further cooperation that 'often takes place outside of, and is sustained independent[ly] of, the RCP process'.[208]

This sort of international cooperation has been recognised as being particularly important in the country of origin information field. As UNHCR noted in 2004 'national [asylum] procedures may differ from each other, [but] the type and quality of information needed in any procedure is the same'.[209] 'It follows that one way of improving the consistency in decision-making between, as well as within countries of asylum, could be the use of a common knowledge base and common assessments concerning the situation in countries of origin' and, to this end, mechanisms like the IGC Working Group on Country of Origin Information 'have become an important best-practice sharing mechanism'.[210] Indeed, the IGC country of origin information workshop held in Dardagny in 1989 is cited by UNHCR as the first meeting of its kind in the world,[211] though of course there are today many other fora that facilitate this kind of exchange.[212]

In the 2009 edition of the Blue Book, Norway reported on 'the increased professionalisation' that country of origin information work had undergone in the preceding decade, from the collation of country of origin information on paper by individual caseworkers to the establishment of a 'single, independent entity…staffed by [specialist analysts] who, in addition to undertaking fact-finding missions, may be called on to provide expert testimony in asylum

court proceedings, and to engage in COI training activities for immigration and asylum authorities'.[213] It was said that '[t]he outlook for [country of origin work] in Norway is one of continued development towards improving the quality and transparency' of country of origin information. Norway's experience is not unique; the professionalisation and specialisation of COI work has occurred in all Participating States, due in part to the community of practice that has been fostered through IGC activities.

## SYSTEMATISING THE COLLATION AND PRESENTATION OF ASYLUM AND MIGRATION DATA

A third key way in which IGC has contributed to the consolidation of migration, asylum and refugee systems has been to allow Participating States to cooperate in the sharing of data and thereby build a comparative evidence base that can be used to develop better migration policy.

Reliable data is instrumental in developing, monitoring and evaluating policy and legal issues in the field of asylum and migration. Its importance has been recently recognised, for example, by the United Nations General Assembly[214] and by UNHCR, which notes that, in relation to mixed migration flows:[215]

> Data collection and analysis are essential to understand and develop appropriate responses to mixed movements. Accurate, up-to-date data can assist in assessing and monitoring the scale of, and trends within, mixed movements, in establishing a basic profile of persons arriving within mixed movements, in identifying travel routes and means of transportation, and in designing, implementing and evaluating policy responses and programmatic interventions.

The importance of evidence-based migration, asylum and refugee policy and the role of cooperation on data sharing in developing it was recognised by Participating States and Organisations very early in the life of the IGC process. The first IGC meeting on data took place in 1987, for example; '[t]here was general agreement that it [was] necessary to further improve, streamline and exchange statistics on asylum-seekers and refugees'. By the time of the 'Seminar on the Functioning of Asylum Procedures' in 1990 (referred to above), this cooperation was already paying analytical dividends, with background documentation noting that:

> [T]he findings at disposal indicate a clear tendency during the period under study: the number of asylum applications increase from year to year (a fivefold rise during the last six years), and so do the backlogs (a doubling), in spite of heavy investments in new staff (a tripling). Thus, the protraction of procedures consume huge Government funds (a fivefold rise), presently representing ten times the total UNHCR budget. At the same time the Convention recognition rate is falling. On the other hand, a substantial share of asylum-seekers are granted (non-Convention) humanitarian status. Parallelly, the number and proportion of rejectees remaining in receiving countries is growing. The end result of

procedures seems to be that the vast majority of applicants factually stay, with an inherent inequality in the system, since half of them are deserving protection, and the other half not.

Although asylum and migration data were initially exchanged in the IGC process in an *ad hoc* manner, the increasing awareness that policies and strategies in the field of asylum and migration should be based upon a thorough knowledge of the flows drove the systematisation and extension of the collection and sharing of data. Following a number of workshops dedicated to discussing data exchange, the Secretariat established in 1994 a database on asylum application statistics—the first such comparative database in the world—to track asylum application statistics, including numbers of applications, countries of origin and, on an *ad hoc* basis at first, statistics on decisions and processing times. This was a considerable achievement, given the fact that many Participating States had previously not collected statistics that were internationally comparable; some States, for example, counted asylum applications, others asylum seekers and others still asylum-seeking families.

At the same time, IGC was also developing statistical products relating to return. In 1993, a report prepared by the Secretariat on the return of rejected asylum seekers (which was a precursor to the 'Green Book' on return, first published in 1995) highlighted the lack of reliable and comparable data on return and the challenges that this posed to efforts to measure the effectiveness of return policies. Facilitated by the establishment of the IGC Working Group on Return in 1994, Participating States decided to share more systematically information on their approaches, legal frameworks and practices related to return, and emphasised the importance of comparable statistics in this regard. First collected on an *ad hoc* basis and with a focus on rejected asylum seekers, the Secretariat developed a template for the collation of various statistics on return (including numbers, types and destinations) to assist in a more systematic and comprehensive comparative analysis of Participating States' return activities. The purpose was not to achieve a full harmonisation of return data, but rather to improve the level of comparability of outcomes achieved by the different practices and policies.

By 1996, background documentation to IGC meetings was recognising that:

> Compared to other international organisations the IGC Secretariat enjoys the advantage of having the most recent and comparable overall picture of the trends in the number of asylum applications in specific and/or all participating States which is being used to analyse recent inflows, eventually by nationality, or answer participating States' inquiries on asylum requests. In this regard, it should furthermore be noted that IGC data are increasingly being used officially by other organisations, inter alia, UNHCR, Eurostat (e.g. *Statistics in Focus*), academics, NGOs and the media.

The database was initially distributed to Participating States on 'diskette', but the establishment of the IGC website in 1997 vastly expanded the number of policymakers and practitioners with access to it and improved the recency of information contained within it. The Working Group on Data, which was established in 1995, worked with the Secretariat to ensure that the website was as user-friendly as possible and discussed ongoing issues

concerning the timeliness and comparability data and the statistical needs of Participating States that IGC could help to fill.

Also commencing in 1997 was the 'Trafficking Information Exchange System', a unique database which was the first source of comparative international statistics on trafficking and smuggling. It also helped Participating States to improve the quality of their national data on trafficking and smuggling.

In 1998, the IGC Secretariat established the first comprehensive database of first instance asylum decisions in the world. As the same time, the second generation of the asylum application database was developed and all historic data was re-collected in accordance with a revised collection methodology. IGC Participating States has access to data on:

- asylum applications, broken down by month and nationality;
- asylum decisions, broken down by outcome, year and nationality; and
- trafficking, broken down by nationality, gender, type of exploitation, last embarkation point, transit point, and destination point.

One internal document from 1998 suggested that IGC's ability to 'collect, compile and disseminate recent data…from participating States to policy makers' (every six weeks for asylum data and every three months for trafficking data, as compared with more than two years in other fora) was at the very heart of IGC's '*raison d'être*' at the time.

Over the next decade, Participating States made more than thirty changes to their national data collections on asylum applications and decisions so as to bring them into line with those of other IGC Participating States and thus facilitate comparative analysis. During this period, IGC was the main vehicle for the *de facto* harmonisation of asylum statistics and a major source of inspiration and guidance for the data collections of Eurostat and UNHCR. The IGC Secretariat also jointly published a number of statistical products with Eurostat in the mid-1990s.[216]

Just as the need for evidence-based policy remains, data continues to be central to the IGC process. IGC's data on asylum is the most accurate of any product available to Participating States and IGC's other statistical products are not far behind. In relation to return, for example, the IGC database provides Participating States with access to statistics relating to the number of return or removal decisions or orders, implemented forced and voluntary returns, refusals at entry, and 'absconders'; in the case of some States, this data reaches back to 1994. A parallel database provides key information on readmission agreements and arrangements between Participating States and third countries, including access to the full text of these instruments.

IGC provides Participating States with unique data and statistics, unavailable in other systems, which are often used to conduct analytical comparisons for use in Cabinet or Parliamentary briefings. As was noted in the assessment of the first twenty years of the IGC process:

At the State level, where the need for development of informed policy options is most acute, the work done by the IGC Secretariat in compiling and analysing data

submitted by the participating States and making this available in a timely way makes a unique contribution on a day to day basis. This work is recognized as being of a high quality. States also appreciate the extent to which the Secretariat is able to provide a level of comparative analysis that is not available anywhere else.

As a forum for improving the exchange and comparability of data across Participating States, therefore, IGC has again made a considerable contribution to the consolidation of Participating States' migration, asylum and refugee systems and, in particular, to the development of evidence-based policy.

## COORDINATING AND FURTHERING INTERNATIONAL ENGAGEMENT ON MIGRATION

As was noted in the introductory chapter, Regional Consultative Processes such as IGC do not exist in a vacuum, but are 'nested within a wider constellation of mechanisms, actors, agreements, and efforts in the realm of migration governance at the regional and international level'.[217] There is, indeed, '[a]n increasingly complex array of bilateral, regional and inter-regional institutions' that make up what was referred to as the global migration governance framework.[218] The result of the process for the development of a global compact for safe, orderly and regular migration—which was ongoing at the time of writing—is unlikely to change this basic fact (and could conceivably make the array more complex).

Regional Consultative Processes complement the other elements of the global migration governance framework, most notably those that are more politicised and/or more public. Whilst one critic argues that RCPs are in a damaging competitive relationship with the other elements and thus facilitate forum-shopping and régime-shifting,[219] others suggest that this misstates their role and their influence on the other elements of the system. They argue that, rather than replacing or competing with them, '[r]egional processes complement discussions on migration and decisions made in more formal and institutionalized settings'.[220] They are 'facilitators, not generators'.[221] States do not refrain from participating in UNHCR's Executive Committee or the Global Forum on Migration and Development, for example, because they have already discussed refugee or migration issues with UNHCR and other States within a Regional Consultative Process. Indeed, RCPs allow their Participating States—which, as has been noted, tend to have similar interests and experiences when it comes to migration—to share and discuss their preparations and positions for such fora, thus allowing them to identify areas of similarity and possible cooperation, as well as to iron out minor differences between their positions. They allow sensitive or politicised issues to be discussed between Participating States and international organisations in advance, and provide a space for possible solutions to be discussed freely. This contributes to what Alter and Meunier describe as a 'positive feedback effect that enhances cooperation and...effectiveness'.[222]

Furthermore, by socialising international cooperation, Regional Consultative Processes increase the likelihood of the further development of the global migration governance framework through 'bilateral or multilateral agreements on migration which otherwise might

not have had the necessary support'.[223] By 'identifying the shared interests of their members, allowing States to better understand each others' perspectives and needs', Klein Solomon argues that Regional Consultative Processes have 'served to build confidence in inter-state dialogue, information sharing, cooperation and exploration of collaborative approaches on migration issues' and have 'helped to create a climate conducive to the formation of other non-binding and informal platforms on migration management, including the Berne Initiative and IOM's International Dialogue on Migration'.[224] Others go further, arguing that the work of RCPs 'feeds into efforts to construct an international regime for migration'.[225] As Ghosh explains, Regional Consultative Processes[226]

> could be valuable building blocs [sic] for the establishment of a new global framework of understanding for [the] better management of migration…The regional and subregional consultations are also extremely useful as inputs to the process of developing global norms and principles in cases where they are still lacking. Furthermore, global efforts can draw support and inspiration from best practices already established at the regional/subregional levels.

This section will examine the ways in which the IGC process has facilitated coordination and cooperation between Participating States and Organisations through an examination of three case studies: the Kosovo Evacuation, the Global Forum on Migration and Development, and the negotiations for the trafficking and smuggling protocols to the United Nations Convention against Transnational Organised Crime.

### The Kosovo Evacuation

Following the outbreak of conflict in the Federal Republic of Yugoslavia in March 1999, large numbers of ethnic Albanians were driven from their homes in the province of Kosovo. Indeed, in the first few weeks, 400,000 of them had fled to nearby countries, mostly to Albania and the Former Yugoslav Republic of Macedonia. Amid concerns about the effect that this large influx could have, a system of international burden sharing was established whereby the Former Yugoslav Republic of Macedonia would continue to admit refugees to its territory on the understanding that some of them would be evacuated to third States on a temporary basis. This process, detailed further in the accompanying text box,[227] would come to be known as the Kosovo Humanitarian Evacuation Programme, and elements of the participation of IGC Participating States (and some others) in the Programme were coordinated through IGC.

The groundwork for IGC's contribution to the Kosovo Evacuation can be found in discussions between Participating States and Organisations that took place within the IGC process well before the need for any evacuation from Kosovo had emerged. The concept of international responsibility sharing for refugees (or 'burden-sharing', as it was more commonly called at the time) had been on the IGC agenda since at least 1992, when the IGC Secretariat produced a report on solidarity in the international refugee régime that considered issues of responsibility sharing. This was followed, in 1994, by another Secretariat report on reception in the region (revised in 1995), which also addressed burden sharing.

### The Kosovo Crisis: A Brief Overview

*The province of Kosovo in the Federal Republic of Yugoslavia has a majority-ethnic Albanian population but is considered by ethnic Serbs to have particular significance in their history. The [1999] crisis [had] its roots in the revocation of Kosovo's autonomy in 1989, followed by increasingly severe human rights abuses by the Serb government against ethnic Albanian civilians. Despite a variety of United Nations Security Council Resolutions deploring Serb government violence, threats by NATO of military intervention and a series of peace talks, violence—including forced expulsion of hundreds of thousands of ethnic Albanians from their homes and dozens of civilian deaths—erupted sporadically throughout 1998. Chances of a peace settlement restoring self-rule for the province broke down entirely in March 1999, with almost one-fifth of ethnic Albanians internally displaced and one-third of the Yugoslav military deployed in and around Kosovo, driving additional tens of thousands of ethnic Albanians from their homes.*

*NATO began airstrikes [on] 24 March 1999, and by early April 1999, almost 400,000 had streamed into neighbouring States and Montenegro. Inter alia, in an effort to persuade the Former Yugoslav Republic of Macedonia (FYR Macedonia) to keep its borders open, on 6 April 1999, the UNHCR convened a meeting of the Humanitarian Issues Working Group to request that European countries make formal pledges to take Kosovar evacuees. By 20 April 1999, the UNHCR had activated all pledges from European and closer region countries as the number of refugees in FYR Macedonia rose to nearly 130,000 with thousands more arriving each day. As refugees continued to stream out and FYR Macedonia again threatened to close its border, the UNHCR activated evacuations by overseas countries at the end of April, and asked the European and closer region to take additional cases.*

*By the end of May 1999, 90% of the population of Kosovo had been displaced, 745,500 in neighbouring countries and Montenegro, 580,000 internally displaced, and 70,000 evacuated. On 1 June 1999, after six weeks of intensive airstrikes, the government of the Federal Republic of Yugoslavia accepted a peace proposal, and by 20 June 1999, the UN Peacekeeping Force KFOR was in substantial control of Kosovo. Although initially warned that Kosovo was not yet safe, by mid-August 1999, 90% of the externally displaced, or about 850,000 people, had returned voluntarily. IOM announced that it had returned, voluntarily, over 70,000 from western countries, of which half were [Humanitarian Evacuation Programme] evacuees and half spontaneous arrivals. Donors contributed over $2 billion in reconstruction aid [equivalent to almost $3 billion in 2018], as well as individual repatriation grants offered by HEP evacuation countries to individuals who returned voluntarily. States which had offered temporary protection announced before the winter of 1999/2000 that forcible returns of (non-criminal) ethnic Albanian Kosovars would not begin until spring of the following year, at the earliest. However, in some states repatriation aid packages were most generous to those evacuees who agreed to return before 2000.*

More important, however, was the ground-breaking 'Study on the Concept of Burden-Sharing' produced by the Secretariat and the Danish Immigration Service in 1998 and supplemented by an 'IGC-supported meeting of participating States, interested States from all continents, international organisations, leading scholars, and non-governmental organisations discussing burden-sharing in an informal setting'.[228] The study reviewed the relevant international and regional texts and concluded that, whilst they reveal a 'solid international commitment to the principles of solidarity and burden-sharing', there is no legal obligation to share responsibility in situations of mass influx.[229] It concluded that 'a standing framework for the sharing of efforts and the coordination of action in response to mass influx situations' would enable the participating States to respond faster and more competently to a given emergency, thus providing the means to limit costs and offer more adequate protection to the persons in need of it.[230] Such an arrangement would also allow for differentiated contributions to the responsibility-sharing effort, ranging from monetary contributions to acceptance of large numbers of refugees and, where necessary, military intervention. The report stressed, however, that the absence of effective responsibility sharing cannot ever be used as an excuse for failing to comply with international legal obligations, especially that of *non-refoulement*.

The timing of this study could not have been better because, before the year was out, IGC Participating States were starting to see sharp rises in asylum applications from Kosovars. In response, an IGC meeting was held in November 1998 to allow Participating States and Organisations to assess population displacements, identify protection needs and discuss responses, including the statuses granted to Kosovar asylum seekers and the possibilities for family reunification.
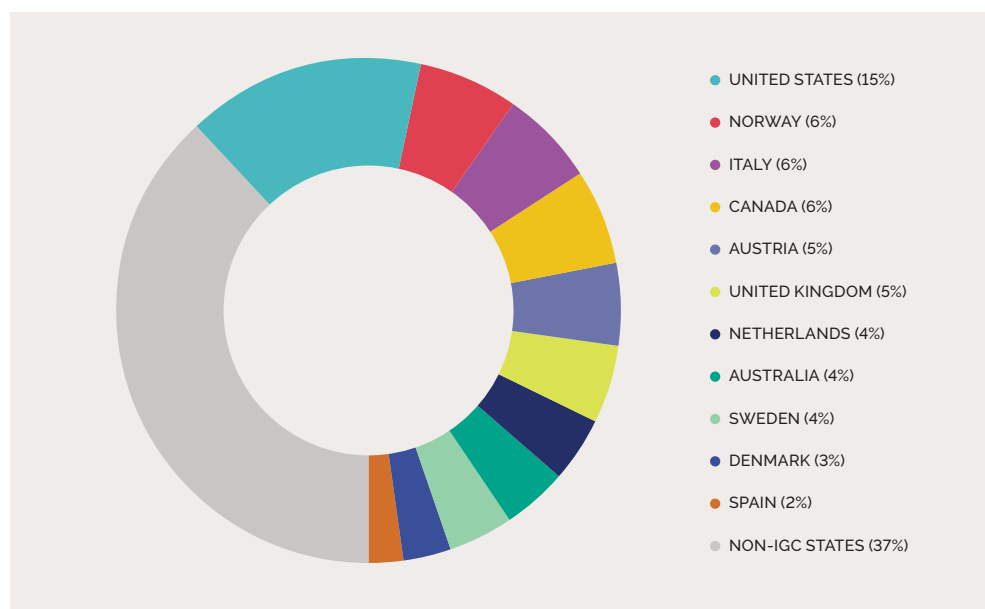
By the time of the Mini Full Round meeting in Bern on 22 March 1999, the situation on the ground in the Federal Republic of Yugoslavia had deteriorated considerably and it was widely anticipated that NATO was shortly to commence a bombing campaign. In anticipation, Participating States and Organisations discussed the displacement consequences that any such campaign could have in the Mini Full Round meeting and also in an IGC-arranged meeting the following day that included Central and Eastern European States that were also affected by major inflows of Kosovars. The States participating in these meetings used them to develop an understanding amongst themselves—and UNHCR—of the existing displacement situation and the likely consequences of the anticipated airstrikes. They discussed the numbers of Kosovars that would need to be evacuated, what status they would be given, and which States would be able to accept how many evacuees; indeed, several States made announcements of national evacuation quotas during the course of these meetings. Although the highest estimate of the size of the coming refugee outflow (200,000) was far too modest, 'the meeting[s] started participating States thinking about the need for a coordinated evacuation programme'.[231] In the event, the NATO bombing campaign commenced the following day and the first evacuations took place less than two weeks later.[232] Although these first evacuations took place without direct UNHCR involvement,[233] a meeting of the Humanitarian Issues Working Group in Geneva on 6 April marked the beginnings of the UNHCR-coordinated evacuation programme.

All IGC Participating States accepted evacuees. Indeed, as Charts 14 and 15 show, IGC Participating States together accepted more than half of all evacuees and contributed more than half of the pledges made to UNHCR for the Kosovo crisis.

Throughout the evacuation programme, IGC was a key site for discussion and debate. IGC meetings were convened regularly during the crisis and were used to discuss the management of the evacuation and spontaneous arrivals, human trafficking risks, visa classes, benefits, health care, accommodation, family reunification and even evacuation flight schedules. In particular, Participating States consulted with UNHCR about what temporary protection systems should look like in cases like Kosovo, where there are mass outflows in response to a situation that is likely to be short-lived. Participating States confirmed with one another—and to UNHCR—that they were not returning Kosovar Albanians to Kosovo whilst the crisis was ongoing, thus strengthening one another's resolve in this regard.
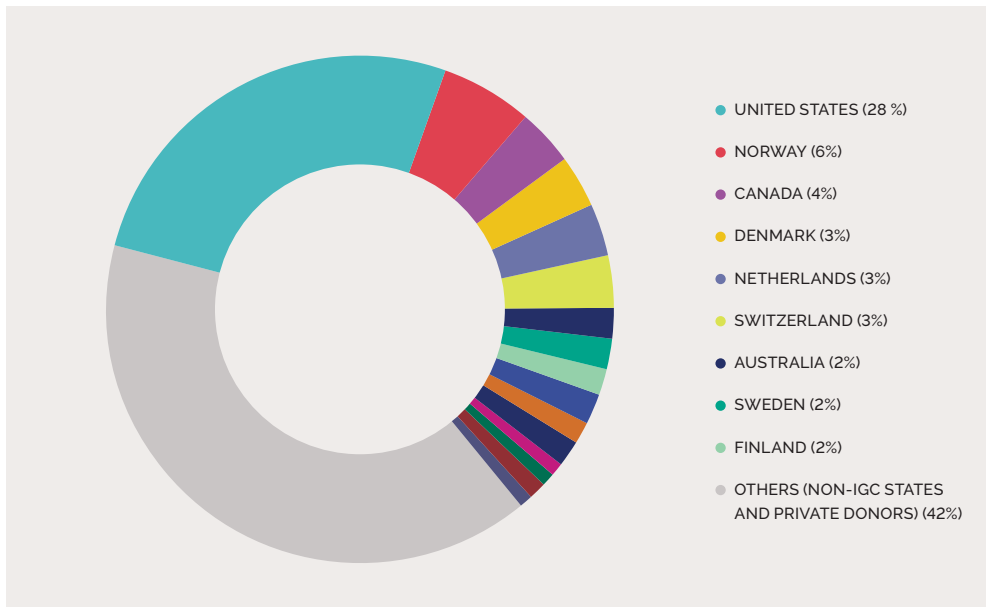
These meetings, which were facilitated by regular reports on the latest developments in Participating States by the Secretariat, actively contributed to the implementation of the UNHCR-coordinated Humanitarian Evacuation Programme by assisting Participating States to remain closely informed about developments in the field, to understand what provisions other Participating States were making for evacuees, and to align and adjust their policy responses as a consequence. They assisted Participating States, for example, to employ similar régimes of temporary protection for evacuees.

**Chart 14** Destination Country For Kosovar Refugees
Departed Under The Humanitarian Evacuation Programme



- UNITED STATES (15%)
- NORWAY (6%)
- ITALY (6%)
- CANADA (6%)
- AUSTRIA (5%)
- UNITED KINGDOM (5%)
- NETHERLANDS (4%)
- AUSTRALIA (4%)
- SWEDEN (4%)
- DENMARK (3%)
- SPAIN (2%)
- NON-IGC STATES (37%)

**Source** UNHCR

**Chart 15** Cumulative cash contributions (pledged) to UNHCR by major donors
for the Kosovo Refugee Emergency (As at 2 June 1999)



- UNITED STATES (28 %)
- NORWAY (6%)
- CANADA (4%)
- DENMARK (3%)
- NETHERLANDS (3%)
- SWITZERLAND (3%)
- AUSTRALIA (2%)
- SWEDEN (2%)
- FINLAND (2%)
- OTHERS (NON-IGC STATES AND PRIVATE DONORS) (42%)

**Source** UNHCR

Once the war came to an end in early June 1999 with the withdrawal of Serb troops, the end of the NATO bombing campaign and the commencement of the United Nations Mission in Kosovo ('UNMIK'), the situation on the ground in Kosovo improved rapidly and IGC became a key forum for  discussions and, in particular, for the exploration of options concerning the repatriation of Kosovars receiving temporary protection. Emphasising that the vast majority of displaced Kosovars returned independently and that the return of those who had not was essential to maintaining the credibility of temporary protection régimes into the future, Participating States exchanged information about their policies and practices in relation to Kosovar returns, especially concerning their voluntary assisted return programmes; these included a range of measures to assist with reintegration, including financial assistance to returnees and the provision of reconstruction assistance. They noted that the majority of Kosovars receiving protection were particularly eager to return home, but agreed nonetheless that the implementation of repatriation programmes would be assisted by the development of consistent approaches to be implemented in cooperation with relevant international organisations.

A key element of this phase of Participating States' response to the situation in Kosovo was a mission conducted by the Secretariat and the representatives of a number of Participating States in February 2000 to develop a sound, practical basis for orderly return. Meeting with UNMIK and the local UNHCR office, the mission sought to communicate the views of Participating States on return issues, to discuss the position of vulnerable evacuees and asylees, and to facilitate return arrangements, including through the provision of assistance to social and economic

reintegration. The mission also sought to open up effective communication lines between UNMIK and the local UNHCR office and the officials in IGC Participating States who were to be involved in the formulation, management or implementation of return arrangements.

Highlighting that, despite the end of the conflict, Kosovo remained tense and unstable, UNHCR and UNMIK emphasised that Kosovars granted temporary protection abroad would be returning to a society undergoing profound and sometimes unsettling change. They were also concerned about the impact that large numbers of returnees would have on the Kosovar economy, as well as housing, welfare and education systems and services. Their preference, in ideal circumstances, would have been for such returns to be delayed while the priorities of political, economic and social reconstruction were attended to, but they took note of the rationale for early return advanced by the IGC mission: that returns are essential to the maintenance of credible and effective systems of protection, that delayed returns would weaken public acceptance of a re-activation of temporary protection mechanisms in response to future mass outflows, and that delayed returns have a tendency to be more difficult, disruptive and traumatic for the individuals concerned. UNHCR and UNMIK expressed a willingness to cooperate with IGC Participating States in the implementation of orderly return. For its part, UNHCR agreed that—by that time—most Kosovar Albanians could return in safety, but considered that political dissidents and some ethnic minority groups would be vulnerable to persecution, violence, harassment and discrimination if returned.

Ultimately, UNMIK, UNHCR and the IGC mission reached a compromise solution acceptable to all parties: returns  would commence immediately so as to ensure public confidence in IGC Participating States, but they would be staged so as to minimise the possible negative consequences in Kosovo. At UNMIK's request, the IGC mission agreed that vulnerable groups—including single women, the elderly and certain ethnic minorities—would not be returned in the early stages and there would be no returns at all during winter, when it would be most difficult for returnees to re-establish their lives in Kosovo.

As a follow-up to the 1998 report on responsibility-sharing, Denmark and the IGC Secretariat produced a further publication—entitled 'Responsibility Sharing: The Kosovo Humanitarian Evacuation Programme as a Case Study'—in 2000 'to examine how responsibility sharing was implemented in the Kosovo [evacuation] and to discuss some of the strengths and weaknesses of that effort which can provide a starting point for discussing a co-ordinated response should another mass evacuation be necessary'.[234] The report concluded that the strategy of coupling temporary protection with safe and sustainable return was appropriate to that situation because 'it allowed large numbers of people to be processed and evacuated quickly, did not overload domestic asylum systems, and provided some time to allow the situation in the region to be clarified'.[235]

Noting the uniqueness of the Kosovo situation,[236] however, it concluded that '[h]umanitarian evacuations from the region will not be the appropriate response for most mass outflows'.[237] The Kosovo evacuation was unlikely to be a model for 'humanitarian crises involving mass displacement of persons who are not Geneva Convention refugees', chronic and long-term refugee situations, or mass displacement occurring not in Europe but in Africa, Asia or the Americas, or 'in regions without strategic significance and minimal likelihood that refugees

will have the resources to flee the region'; the conversation about appropriate forms of responsibility-sharing in these circumstances would need to continue.[238]

The response to the crisis in Kosovo was—according to the report—a reasonable, fair and equitable *ad hoc* responsibility-sharing exercise where approximately 40 countries from four continents responded to UNHCR's request to host evacuees. Although not without problems, the international community managed successfully to evacuate more than 90,000 refugees in approximately two months, making the Kosovo Evacuation one of the most efficient international responsibility-sharing efforts ever carried out. Not only did the evacuation provide protection to those who were evacuated, it most likely prevented the crisis in Kosovo from spilling over into Macedonia, thus ensuring the continued protection of refugees already in Macedonia and preventing the creation of more.

Although—again—only one factor amongst many, the IGC activities—including those that incorporated non-IGC States also receiving large number of Kosovars—were a key site of coordination that gave Participating States and Organisations access to information and analysis, helped to identify and explore options, and allowed Participating States to be comfortable that the responsibility truly was being shared.

### Multilateral engagement on the migration-development nexus

Another way in which Participating States have used the IGC process to further international cooperation on migration matters has been to share and—to some degree—coordinate their preparations and positions in multilateral fora addressing issues of migration. Although this has been a feature of IGC activity since the early days of the process (Jonas Widgren in 1993 described one of IGC's achievements to that time as being to 'more precisely and firmly formulate a consistent and goal-oriented multilateral agenda'), the most notable example is perhaps the activity related to the two UN High-Level Dialogues on International Migration and Development (in 2006 and 2013) and the annual meetings of the Global Forum on Migration and Development ('GFMD') (since 2007). In the nine years between 2005 and 2013 (inclusive), twenty-two IGC meetings and workshops were used to discuss the High-Level Dialogue and/or the Global Forum.

The first High-Level Dialogue on International Migration and Development was held in 2006 in the wake of the publication of the final reports of the Berne Initiative (the *International Agenda for Migration Management*) and the Global Commission on International Migration (*Migration in an interconnected world: New directions for action*), both of which had been released the previous year.[239] As was noted in Chapter Three, all three of these initiatives were discussed in IGC senior officials meetings at the time; at the Mini Full Round in December 2005, for example, the Executive Director of the Global Commission and two of the Commissioners discussed the work of the Commission with IGC participants, who 'expressed the hope that it would contribute to countering the negative attitude towards migration and migrants' and discussed the manner in which the international dialogue could be continued. There appeared to be 'broad consensus' that 'it is not desirable to establish yet another new UN or other institution on migration issues but that some sort of platform for ongoing international dialogue, preferably informal, could be useful'.

The 2006 Full Round of Consultations was used by Participating States to discuss national positions and priorities for the upcoming High-Level Dialogue. There was broad consensus that the agenda appeared to focus too heavily on migration and insufficiently on development, as well as general agreement that, although there was no need for a new international organisation for migration issues, an informal platform for ongoing international dialogue would be useful.

In line with these sentiments, the first High-Level Dialogue led directly to the establishment of the Global Forum on Migration and Development, an informal, voluntary, State-led forum for deepening international cooperation on matters of migration and development which the Secretary-General had proposed in the lead-up to the High-Level Dialogue.[240] The proposal met with 'widespread support', as was the offer of the Government of Belgium to host the first meeting of the Global Forum the next year.[241]

Belgium used IGC senior officials' meetings in the lead-up to the first meeting of the Global Forum to good effect. At the 2006 Mini Full Round, senior officials from Participating States and Organisations provided Belgium with suggested discussion items and stressed the need to achieve the right balance between migration and development, as well as the importance of civil society participation. At the 2007 Full Round of Consultations, Belgium presented its planning for the Global Forum and sought feedback from Participating States.

Since the first meeting of the Global Forum in 2007, four of the GFMD's nine hosts have been IGC Participating States and all four—Belgium, Greece, Switzerland and Sweden—have used the IGC process to varying degrees to discuss their planning, to ask for suggestions and to seek feedback on their preparations. A fifth IGC Participating State—Germany—is the co-chair of the Global Forum with Morocco in 2017 and 2018.

A high point of this coordination on multilateral engagement occurred in the lead-up to the second High-Level Dialogue in 2013. In a two-day workshop on international migration engagement held in March 2013, participants shared views and approaches to engagement on international migration and the roles of relevant actors. They discussed ways in which they could enhance communication and cooperation amongst IGC Participating States on matters of international engagement and developed a two-page 'Inventory of Ideas and Redlines' for discussions at the High-Level Dialogue on matters including human rights, integration, understanding global migration trends, effective partnerships with all relevant actors, the migration-development nexus, institutions and frameworks, and migrants in crisis situations. At a further two-day meeting in June 2013, participants identified priority actions within each of the areas subject to a dedicated roundtable at the High-Level Dialogue—and in respect of cross-cutting issues—and drafted an IGC submission to the President of the General Assembly that concluded that:

> Well-managed migration at national, regional and global levels is the overarching goal and considered a precondition for maximising the benefits and minimising the challenges of international migration, and to move forward on concrete issues that enhance the wellbeing of migrants, respect the human rights of all migrants regardless of immigration status, and recognise that migrants make

significant contributions to the cultures and economies of their host countries. IGC States additionally believe that there are many more issues that countries have in common than there are issues that divide them, and they are committed to advancing the debate on important substantive issues that all countries, developed and developing, can agree upon.

The seven-page submission (which can be found in the annex to this volume) provided an 'Inventory of Substantive Issues' that explored matters that could be addressed by each of the four planned roundtables; suggestions included the inclusion of migration in the Post-2015 Development Agenda, reducing the costs of and barriers to remittance transfer, ensuring the implementation of robust human rights protections for migrants, and strengthening partnerships for migration with relevant civil society actors.

Throughout the period 2005-2013, IGC discussions on matters of international engagement, the High-Level Dialogues and the Global Forum on Migration and Development focused on four key topics.

First, Participating States shared their expectations of what would be discussed at particular meetings and what the outcomes would be. They discussed the attitudes and positions that they expected non-IGC States to bring to these meetings, and suggested ways in which positions that did not align with the views of IGC Participating States could be approached. In particular, there was regular discussion on how IGC States could work to ensure that North-South divisions were not exacerbated.

Secondly, Participating States discussed topics in respect of which high-quality discussion and broad consensus was possible. Again, this was driven by the desire not to exacerbate potential divisions on migration issues. Topics discussed included measures to protect the human rights of migrants, countering human trafficking, combatting xenophobia and hate crimes, promoting effective integration policies, strengthening the migration evidence base, engaging the private sector and civil society, optimising labour migration, and including migration in the Post-2015 Development Agenda. This element of discussions was particularly useful to Belgium, Greece, Switzerland and Sweden in the lead-up to the meetings of the Global Forum that each of them hosted.

Thirdly, Participating States also used IGC meetings to reflect upon and discuss the institutional and management aspects of the High-Level Dialogue and the Global Forum, including whether either should have a permanent secretariat and whether either should develop into an independent institution or a UN agency. The relationship between IOM and the UN was also regularly discussed, as was the Global Forum's Assessment Process and the questions of whether an appropriate balance between migration and development issues, and between public, private and civil society sector participants had been struck. Another regular topic of discussion on institutional matters was the relationship between Geneva, New York and capitals; given that the High-Level Dialogues take place in New York but the migration expertise typically resides in Geneva and capitals, Participating States discussed ways in which they could close the gap between the three.

Finally, Participating States frequently used these discussions to share perspectives on the topics that should be avoided or the matters that should not make their way into outcome documents (i.e. their 'red lines').

Following the second High-Level Dialogue in 2013, Participating States expressed satisfaction with these coordination activities, 'which enabled participants to share views and align positions' and—ultimately—formulate a joint submission to the President of the General Assembly that contained an inventory of substantive issues for discussion. Looking to the future, Participating States 'stressed the need for a closer and regular evaluation of developments in selected processes and initiatives, in light of the effectiveness of the IGC consultations held on [the High-Level Dialogue and the Global Forum]. States acknowledged that this process will contribute to better preparations for negotiations and debates for upcoming major events and related deliverables'.

### The definitions of 'trafficking in persons' and 'smuggling of migrants' in the protocols to the United Nations Convention against Transnational Organised Crime

A final example of the way in which the IGC process has facilitated coordination and cooperation between Participating States in respect of international activities dates to the time of the negotiation of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* and the *Protocol against the Smuggling of Migrants by Land, Air and Sea*, both of which supplement the *United Nations Convention against Transnational Organized Crime*.

A key achievement of these negotiations was that they finally answered a fundamental question in this area, namely '[w]hat exactly is trafficking and how is it to be distinguished from migrant smuggling?'[242] Prior to the negotiations, discussions about trafficking and smuggling had been marked by a 'long-standing failure to develop an agreed understanding' about what the terms 'trafficking' and 'smuggling' meant, and how the concepts were different from one another.[243] It had been said that 'there [were] as many different definitions of smuggling and trafficking as there [were] organisations and governments concerned with addressing the issue[s]',[244] and that 'the distinction between smuggling and trafficking can be in the eye of the beholder'.[245]

The fact that different actors used different definitions was most certainly not a purely academic matter; 'one of the fundamental problems in combating trafficking until then had been the lack of international consensus on a definition and thus on precisely which practices should be combated'.[246] Combatting transnational crimes such as trafficking and smuggling requires effective cooperation between affected States that 'must include, but not be limited to, the exchange of information, co-ordination and harmonisation of national policies and laws, bilateral or multilateral agreements with respect to victim protection and repatriation and reintegration assistance, and extradition of criminals'.[247] If relevant organisations define the key concepts differently, then all forms of cooperation become more difficult; information about trafficking supplied by one country is not easily compared to that supplied by another, law enforcement agencies look for different kinds of behaviour as the indicators of trafficking and smuggling, and the 'dual criminality' requirement in many extradition systems—which

provides that extradition may only take place in respect of actions that are criminal in both the extraditing and receiving State—becomes difficult to satisfy.

It was because of the fundamental importance of having an agreed-upon understanding of these two key concepts that the definitions of trafficking and smuggling were amongst 'the most controversial and hotly debated issues during the negotiations' for the trafficking and smuggling protocols.[248] (The debate over the definition of trafficking was also complicated by the fact that it had to grapple with 'diametrically opposed views on sex work' promoted by different actors involved in the negotiations, particularly NGOs.[249] )

Two of the key questions when it came to defining trafficking and smuggling—and thus in establishing the differences between the two—were whether, in order to come within the respective definitions, a trafficked or smuggled person needed to cross an international border and whether a trafficker or smuggler needed to receive some form of financial or other material benefit.

The first issue was more prominent in the negotiations for the trafficking protocol. The first definition of 'trafficking' proposed by Argentina required that there be the crossing of an international border.[250] The United States proposed an alternative definition that did not, and the question of 'whether trafficking in persons would also include the transportation of a person within a State or whether it necessitated crossing an international border' was a live one throughout the negotiations.[251] Some States, for example, wanted to specify that the proposed protocol applied only to 'international trafficking', whilst others 'expressed the view that the protocol should protect all persons and that the inclusion of the word ["international"] would make its scope too limited'.[252]

The second issue—relating to the requirement for a financial or other material benefit—also created uncertainty throughout the negotiation process, primarily in relation to smuggling; indeed, it was 'the only contentious aspect of [that] definition'.[253] The initial draft of the smuggling protocol required that the smuggling be facilitated for profit,[254] but some States expressed the desire for this requirement to be removed, meaning that smuggling facilitated for free would also be criminalised.[255] This triggered 'lobbying by some States and intergovernmental organisations, in order to ensure that the activities of those who provide support to migrants on humanitarian grounds or on the basis of close family ties do not come within the scope of the Migrant Smuggling Protocol'.[256] Others suggested that profit could be an aggravating circumstance.[257]

The IGC Working Group on Smuggling and Trafficking followed the negotiations for the protocols closely, in particular the ongoing discussion about how 'smuggling' and 'trafficking' should be differentiated from one another. Led by Italy and the United States—two States that took leading roles in the negotiations for the Protocols—the Working Group came to an informal consensus that, while 'smuggling' should be defined so as to require the crossing of an international border *and* a material benefit to the smuggler, the definition of 'trafficking' should not be so limited; that is, the trafficking protocol should also cover so-called 'internal trafficking' and that it should not be necessary to prove that the trafficker received a financial benefit. This lower threshold for the offence of trafficking was to be

offset by the fact that trafficking requires the element of exploitation that does not exist in respect of smuggling.

Ultimately, this view prevailed in the negotiations. The trafficking protocol does not require that the victim cross an international border,[258] nor that the trafficker receive any form of benefit, but the smuggling protocol requires both elements. As the interpretive note to the definition of smuggling explains:[259]

> The reference to "a financial or other material benefit" as an element of the definition [of smuggling] was included in order to emphasise that the intention was to include the activities of organised criminal groups acting for profit, but to exclude the activities of those who provided support to migrants for humanitarian reasons or on the basis of close family ties. It was not the intention of the protocol to criminalise the activities of family members or support groups such as religious or non-governmental organisations.

The successful negotiation of agreed definitions of trafficking and smuggling thus 'firmed up very quickly' the differences between the two concepts,[260] and 'brought to a close decades of frustrating and inward-looking debate about the distinction between human trafficking and human smuggling'.[261] This was hailed as 'a true breakthrough' because '[b]y incorporating a common understanding of trafficking and migrant smuggling into national legislation, states parties will be able to cooperate and collaborate more effectively than ever before. Common definitions will also assist in the much needed development of indicators and uniform data collection procedures'.[262]

Again, the ultimate distinction between the definitions of trafficking and smuggling is not something that the IGC process can take all credit for. Many States, international organisations and NGOs took a great deal of interest in the negotiations and sought to influence their outcome, for the trafficking protocol and its approach to sex work in particular.[263] At the same time, however, it was noted as the negotiations were ongoing that there had developed a certain degree of consensus amongst European countries on how trafficking and smuggling should be defined, and the manner in which they were similar and different.[264] To the extent that it provided a forum within which such States were able to compare their various positions on this important point, and to reach this informal consensus, the IGC process should be acknowledged as having played a material part in the ability of the international community to arrive at definitions that have been able to achieve widespread ratification.[265]

### Conclusion: IGC as a forum to further international migration activities

In 2008, the Government of Canada conducted an evaluation of its participation in three transnational migration processes, including IGC. Key findings included that, in the period under review, IGC '[s]trengthened intergovernmental relationships and international networks' and '[p]rovided Canada with the opportunity to…influence policy discussions and thinking in international fora', meaning that 'Canada is more informed and effective in other international fora as a result of participation in IGC'.[266]

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### *The Definition of Trafficking*

*Trafficking Protocol, art 3(a)*

*"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs*

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### *The Definition of Smuggling*

*Smuggling Protocol, art 3(a)*

*"Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident*

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The preceding three case studies support such a finding. They strongly suggest that the IGC process has been used to good effect by Participating States to further their participation in other international migration activities. They used it to discuss and coordinate their participation in the Kosovo Evacuation, to share their positions for and their views on the High-Level Dialogues on International Migration and Development and the Global Forum on Migration and Development, and to harmonise their ideas about what should and should not be in the definitions of 'trafficking in persons' and 'smuggling of migrants' in the two protocols dedicated to those subjects. Overall, the picture that these case studies paint is one of IGC playing 'a complementary role' to other elements of the complex global migration governance framework,[267] rather than competing with or undermining them.

## CONCLUSION: A SUBTLE BUT SIGNIFICANT CONTRIBUTION TO THE CONSOLIDATION OF MIGRATION, ASYLUM AND REFUGEE SYSTEMS

Seeking to assess the impact that the IGC process has had over the course of its first three decades of operation, this chapter has argued that it has made a subtle but significant contribution to the consolidation of the manner in which Participating States approach migration, asylum and refugee issues at the national, regional and international level. To do so, it has examined the

*It is not well-known that the original idea for the EU's Visa Information System, which seeks to safeguard security of the Schengen system through the collection of photographs and fingerprints of visa applicants, came from a discussion in the margins of an IGC meeting shortly before the terrorist attacks of 11 September 2001.*

*Once the attacks had occurred, there was immediate pressure in Brussels for a comprehensive response on the part of the European Union to ensure that a similar tragedy could not occur in Europe, and ensuring the integrity of the Schengen system was a key element of this. In October 2001, European Heads of State endorsed cooperation to ensure visa security and, in June 2002, the European Council endorsed the development of what would become the Visa Information System.*

*Of course there was an enormous amount of work that needed to be done before the System could be operationalised, but everything followed that discussion in the margins of the IGC.*

**Jean-Louis De Brouwer**, former Director for Migration and Borders, Directorate General for Justice and Home Affairs of the European Commission

impact that IGC activities have had in four key areas: the development and harmonisation of asylum procedures, the professionalisation of country of origin information, the systemisation of data collection and analysis, and the coordination of international engagement.

It is important to emphasise that these four areas are not intended to represent the totality of the impact that the IGC process has had on the consolidation of migration, asylum and refugee systems. Rather, they have been chosen because the impacts that IGC activities have had in these areas are observable and demonstrable.

In addition to these specific topics, the IGC process has also served as a forum within which Participating States and Organisations can share ideas and experiences across the full range of migration, asylum and refugee policies, thereby allowing them to develop better evidence-based migration, asylum and refugee policies. Although this has not generally led to the degree of *de facto* harmonisation of the law and policy of Participating States that was observed in relation to asylum procedures, for example, it has given inspiration to policymakers and allowed Participating States and Organisations to identify operational efficiencies and improvements. The evaluation of Canada's participation in IGC referred to above, for example, concluded that IGC participation '[p]rovides Canada with access to current views and thinking of the European Union members and other countries' and is an 'access point to information on EU discussion and policies that informs Canada's own position'.[268] Furthermore:[269]

> Canada is more informed and effective in formulating domestic policy [as a result of IGC participation]. [A number of government departments] learn from others' experiences and this is reported to translate into the selection of 'best practices'

in policy and program development. *This type of information is often not widely shared as lessons learned are rarely openly discussed in more formal meetings or documented*.

Examples of this phenomenon in action can be seen across IGC's activities, particularly the working groups, workshops and requests for information.

The Working Group on Immigration, for example, has produced a range of 'products' in recent years to facilitate the sharing of ideas. Three editions of a comparative matrix of investor, entrepreneurial and start-up migration arrangements in Participating States have been produced, as have two editions of a similar document on family migration arrangements and one on student migration. In 2013, the Working Group developed a catalogue of best practices in developing partnerships between government and employers on immigration matters, with a focus on supporting employers to play a strong, productive role. The Working Group on Integration has developed similar documents focused on building and supporting welcoming societies, foreign credential recognition frameworks, refugee integration frameworks, and the integration of 16- to 25-year-olds.

Several concepts and ideas presented and discussed in the Working Group on Admission, Control and Enforcement (and its predecessor, the Working Group on Smuggling and Trafficking) have been adopted by a number of IGC Participating States. These ideas include:

- The creation of safe houses for trafficking victims, a policy first pursued by Belgium;
- The granting of temporary permits to regularise the immigration status of trafficking victims, a Swedish policy adopted prior to its inclusion in the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*
- The establishment of a national Anti-Smuggling and Anti-Trafficking Coordination Unit and the appointment of special prosecutors dedicated entirely to human trafficking, an idea first put into practice by the Netherlands; and
- The creation of positions for public prosecutors who specialise in human trafficking cases.

Furthermore, as the two accompanying text boxes attest, IGC activities were a key forum for the exchange of ideas that led to the development of the European Union's Visa Information System and the establishment of Ireland's asylum apparatus.

There can be no doubt that IGC's impact has been subtle. As has been reiterated many times throughout this chapter, it is difficult to pinpoint specific developments that the IGC process is solely responsible for. Likewise, it is difficult to say that a certain development would not have occurred if IGC had not been involved. Rather, IGC's impact is best understood as being valuable in its own right, but also—given IGC's size—as being complementary to other elements of the international migration governance framework.

Despite being subtle, however, this chapter has also demonstrated that IGC's contribution to the consolidation of migration, asylum and refugee systems has been significant. It has

*Switzerland participated in the founding, in 1985, of the Intergovernmental Consultations on Migration, Asylum and Refugees, which was established to provide a platform for regular, informal exchanges between States whose asylum and migration policy experiences and interests are similar. Over the following decades, the cooperation that has taken place between States in the context of IGC has been of benefit to Switzerland multiple times. During the Kosovo crisis in 1999, for example, Switzerland was IGC Chair and was able to use IGC to share experiences of the evacuation of Kosovars of Albanian origin; the IGC process was also of use when it came to repatriation following the end of the Yugoslav war.*

*Membership of IGC has also proven to be a useful tool for Switzerland in relation to multilateral activities on migration, where the IGC process has been used to consult other Participating States on the setting of priorities, the determination of positions and the drawing of red lines. Switzerland has repeatedly benefited from this, particularly in the launch of the Berne Initiative as part of the Swiss GFMD Chairmanship in 2011 and the second UN High Level Dialogue on International Migration and Development, which took place in 2013. IGC is also expected to play an important role in the development of the Global Compact for Safe, Orderly and Regular Migration, which will be adopted in 2018. The role of regional consultation processes is explicitly mentioned in the modalities resolution that Switzerland and Mexico have facilitated. Switzerland consulted with IGC Participating States on the modalities during the IGC Mini Full Round in December 2016. Further consultation on the Global Compact will be pursued at the Full Round of Consultations in May 2017 on Spitsbergen.*

*Last but not least, the regular exchange of ideas and experiences on various topics that takes place between IGC Participating States at the operational level is both useful and practical.*

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examined how the asylum procedures of Participating States developed and harmonised, and how country of information work became professionalised, in parallel with IGC activities that facilitated the sharing of experiences amongst Participating States in these two areas. It has looked at the world-leading role that IGC played in enhancing and facilitating the collection and comparability of migration, asylum and refugee data, and in the way in which it has facilitated the activities of Participating States at the international level.

As the world's first RCP, of course, IGC can also claim credit for providing providing much of the inspiration for the other RCPs around the world that have followed.

# ENDNOTES

1   Randall Hansen (a), 'Interstate cooperation: Europe and Central Asia' in Berne Initiative, *Interstate Cooperation and Migration* (Berne Initiative Studies, 2005), 15-16; Randall Hansen (b), *An Assessment of Principal Regional Consultative Processes on Migration* (IOM Migration Research Series, No. 38, International Organization for Migration, 2010), 23.

2   Hansen, above n 1(b), 26. See also Colleen Thouez & Frederique Channac, 'Shaping International Migration Policy: The Role of Regional Consultative Processes' (2006) 29 *West European Politics* 370, 385-386 ('gradually translates into a process of convergence and harmonization in practices and policies').

3   Hansen, above n 1(b), 16 ('the factors feeding into the migration governance process are always multiple and isolating the effect of a single one of them – i.e. the RCP – is tricky…[W]e can only truly understand the exact role of RCPs over the last two decades if we rerun migration history without them. It (obviously) cannot be done').

4   Jane McAdam, 'Migrating laws? The 'plagiaristic dialogue' between Europe and Australia' in Hélène Lambert, Jane McAdam & Maryellen Fullerton (eds), The Global Reach of European Refugee Law (Cambridge University Press, 2013), 67-68.

5   Alexander Betts, 'Institutional Proliferation and the Global Refugee Regime' (2009) 7 *Perspectives on Politics* 53, 57 ('On a methodological level, it highlights the challenge of attributing causality to institutional proliferation. The new institutional proliferation has taken place in the context of growing state concerns with migration and security. These concerns have been led by trends such as globalization and the post 9/11 era. This begs the question of the extent to which the underlying politics or the resulting institutional proliferation are driving the change in refugee politics. In reality, it appears to be both, demonstrating the difficulty in bracketing where overlap comes from; the causes and consequences of overlap may be closely intertwined').

6   UNHCR, Asylum Processes (Fair and Efficient Asylum Procedures) (UNHCR, 2001), 2; Avery, above n 20, 236-237.

7   Reinhard Marx, '*Non-Refoulement*, Access to Procedures, and Responsibility for Determining Refugee Claims' (1995) 7 *International Journal of Refugee Law* 383, 401 ('Neither the 1951 Convention nor the 1967 Protocol lay down an obligation to establish machinery for the determination of refugee status, nor do they specify guidelines for recommended procedures in such machinery. However, if a State is to implement its obligation towards refugees effectively and in good faith, it is evident that some sort of procedure is required. States retain choice as to the means for doing this, and often opt for a system which is consistent with the existing judicial or administrative structures of their national system. Nonetheless, the necessity to establish procedures is inherent in the *non-refoulement* principle: refugees will only be protected against *refoulement* if identified by proper processing of their claim. 74 Procedures are necessary to minimize the possibility of *refoulement*').

8   Guy Goodwin-Gill, *The Refugee in International Law* (1st Edition, Clarendon Press, 1983), 165.

9   UNHCR ExCom, *Conclusion No 8* (1977), (b) & (d).

10  UNHCR, *Report of the United Nations High Commissioner for Refugees* (1977, UN Doc A/32/12), [38]. See also Danièle Joly, 'The Porous Dam: European Harmonization On Asylum In The Nineties' (1994) 6 *International Journal of Refugee Law* 159, 161 (noting that 'in many cases, there was no special mechanism to deal with asylum applications' before the 1980s).

11  The current IGC states with formal procedures at the time were Belgium, the Federal Republic of Germany, Greece, the Netherlands, Switzerland and the United Kingdom. The non-IGC states were Algeria, Austria, Benin, Botswana, France, Italy, Morocco, Senegal, Tunisia, Yugoslavia and Zambia. (As noted in Chapter X, Austria, France and Italy have previously participated in the IGC process, but do not currently.)

12  Peter Barcroft, 'Immigration and Asylum Law in the Republic of Ireland: Recent Developments and Proposed Statutory Reform' (1995) 7 *International Journal of Refugee Law* 84, 87 (referring specifically to the development of procedures in Ireland).

13  Karoline Kerber, 'Temporary Protection: An Assessment of the Harmonisation Policies of European Union Member States' (1997) 9 *International Journal of Refugee Law* 453, 453, citing UNHCR ExCom, *Conclusion No 74* (1994), (o) ('The Executive Committee…Recognizes the desirability of exploring further measures to ensure international protection to all who need it') & (p) ('The Executive Committee…Acknowledges the value of regional harmonization of national policies to ensure that persons who are in need of international protection actually receive it, and calls upon States to consult UNHCR at the regional level in achieving this objective').

14  United Nations High Commissioner for Refugees, *Report on International Protection (submitted by the High Commissioner)* (1976, UN Doc A/AC.96/527), [29].

15  See, generally, IGC, *Report on Asylum Procedures: Overview of Policies and Practices in IGC Participating States* (IGC, 8th edition, 2015).

16  UNHCR ExCom, *Conclusion No 21* (1981), (d). See also

*Conclusion No 16* (1980), (h) ('Noted with appreciation that further States had adopted measures to implement the provisions of the Convention and the Protocol, especially as regards procedures for determining refugee status'); *Conclusion No 29* (1983), (h) ('Noted with satisfaction that further States have adopted national measures to ensure the effective implementation of the provisions of the 1951 Convention and the 1967 Protocol, particularly as regards procedures for the determination of refugee status, and stressed the importance for States to establish such procedures to ensure fair and equitable decision-making in line with the conclusions adopted by the Executive Committee at its twenty-eighth [No. 8] and thirty-third sessions [No. 28]').

17   Ibid.

18   UNHCR, Report of the United Nations High Commissioner for Refugees (1986, UN Doc A/41/12), [59].

19   Goodwin-Gill, above n 8, 15-16.

20   Goodwin-Gill, above n 8, 182-185. See also Christopher Avery, 'Refugee Status Decision-Making: The Systems of Ten Countries' (1983) 19 *Stanford Journal of International Law* 235, 319-328.

21   Goodwin-Gill, above n 8, 182-185.

22   Dallal Stevens, 'Re-introduction of the United Kingdom Asylum Bill' (1993) 5 *International Journal of Refugee Law* 91, 91 (quoting Amnesty International); Avery, above n 20, 326.

23   IGC, *Report on Asylum Procedures: Overview of Policies and Practices in IGC Participating States* (IGC, 6th edition, 2009), 23; Goodwin-Gill, above n 8, 167-172 (Australia), 180-182 (New Zealand); James Crawford, *Australian Immigration Law and Refugees: the 1989 Amendments* (1990) 2 *International Journal of Refugee Law* 626, 627; Claire Higgins, 'New Evidence on Refugee Status Determination in Australia, 1978–1983' (2016) 35 *Refugee Survey Quarterly* 71, 76, 86; Avery, above n 20, 244-250.

24   Avery, above n 20, 249.

25   Crawford, above n 23, 627; Higgins, above n 23, 76, 86.

26   Goodwin-Gill, above n 8, 167-172 (Australia), 180-182 (New Zealand).

27   Avery, above n 20, 246, 248.

28   France Houle, 'The Credibility and Authoritativeness of Documentary Information in Determining Refugee Status: The Canadian Experience' (1994) 6 *International Journal of Refugee Law* 6, 7; Avery, above n 20, 258-277.

29   Avery, above n 20, 260, 269.

30   Houle, above n 28, 7.

31   Goodwin-Gill, above n 8, 194.

32   Goodwin-Gill, above n 8, 194-195; Avery, above n 20, 297-303. Italy's procedures gave the power to determine applications to a 'Joint Eligibility Commission' comprised of representatives of the Ministry for Foreign Affairs, the Ministry of the Interior and UNHCR (each with equal voting rights).

33   Though Belgian authorities were involved in the early stages of the process and were empowered to determine the admissibility of an application.

34   Goodwin-Gill, above n 8, 172-173; Avery, above n 20, 250-258.

35   Deborah Anker, 'Determining Asylum Claims in the United States: Summary Report of an Empirical Study of the Adjudication of Asylum Claims before the Immigration Court' (1990) 2 *International Journal of Refugee Law* 253, 253. See also Ricardo Inzunza, 'The Refugee Act of 1980 Ten Years After—Still the Way to Go' (1990) 2 *International Journal of Refugee Law* 413, 416-417.

36   Gregg Beyer, 'Establishing the United States Asylum Officer Corps: A First Report' (1992) 4 *International Journal of Refugee Law* 455, 458 (fn 17).

37   Inzunza, above n 35, 417.

38   Anker, above n 35, 253. See also Avery, above n 20, 328-352; Inzunza, above n 35.

39   Beyer, above n 36, 458.

40   IGC, *Summary description of asylum procedures in Europe, North America and Australia* (IGC, 2nd edition, 1992), 90; Goodwin-Gill, above n 8, 185-189.

41   Avery, above n 20, 346.

42   Avery, above n 20, 345.

43   'Sorgen um die Praxis des Asylverfahrens' (1983) 2(2) *Refugee Abstracts* 39, 39 (original unavailable to the author in English).

44   'Asylsuchende Fluchlinge als Neue Zielgruppe Sozialer Arbeit' (1983) 2(2) *Refugee Abstracts* 40, 40 (original unavailable to the author in English).

45   See Rudolf Kraus, 'Asylum Seekers in the Federal Republic of Germany. Analysis of the Situation – Elements of a Solution' (1983) 21 *International Migration* 230, 232.

46   'Zielvorgaben und Methodenfragen fur die Verteilung, Unterbringung und Betreuung von Asylbewerbern' (1984) 3(2) *Refugee Abstracts* 26 (original unavailable to the author in English).

47   Goodwin-Gill, above n 8, 177-180; Avery, above n 20, 277-289.

48   Goodwin-Gill, above n 8, 173-176 (France), 201 (Switzerland); IGC, *Summary description of asylum procedures in States in Europe and North America* (IGC, 1st edition, 1991), 28-29 (France), 60-62 (Switzerland); Avery, above n 20, 289-297 (France), 311-318 (Switzerland).

49   Avery, above n 20, 295.

50   Avery, above n 20, 290.

51   Avery, above n 20, 313-314.

52   Avery, above n 20, 303-310.

53   Avery, above n 20, 305.

54   Spain had no asylum procedures during the time of the Franco régime and which operated under an administrative order until, in 1984, 'a procedure for dealing with applications for asylum and refugee status by a Commission established for this purpose' was enacted: UNHCR, *Report of the United Nations High Commissioner for Refugees* (1984, UN Doc A/39/12), [21]; Goodwin-Gill, above n 8, 199-200. See, generally, Concepción Escobar Hernandez, 'Asylum and Refugee Status in Spain' (1992) 4 *International Journal of Refugee Law* 57.

55   In Finland, applications for asylum were determined by the Ministry of the Interior, in consultation with the Ministry of Foreign Affairs, on the basis of an oral interview. Although there was no right of appeal, it was estimated that only five per cent of rejectees were 'expelled by active intervention by the authorities': IGC, *Summary description of asylum procedures in States in Europe and North America* (IGC, 1st edition, 1991), 25-26 (noting that the legal basis for this procedure was 'the Aliens Act of 26 April 1983', which pre-dated the first IGC meeting in 1985.

56   In Austria, the competent authority was the head of the Bundesland where the application was made, and the power to decide was usually exercised by the head of security: Goodwin-Gill, above n 8, 189-190.

57   Goodwin-Gill, above n 8, 197-198.

58   Goodwin-Gill, above n 8, 197 (Netherlands), 197-198 (Norway), 199-200 (Spain), 167-172 (Australia), 172-173 (Belgium), 173-176 (France), 177-180 (Germany), 180-182 (New Zealand), 182-185 (United Kingdom), 185-189 (United States), 189-190 (Austria), 191-192 (Canada), 192-193 (Denmark), 194 (Greece), 194-195 (Italy), 200-201 (Sweden), 201 (Switzerland); IGC, above n 55, 25-26 (Finland).

59   Barcroft, above n 12, 87; Emma Quinn et. al., *Handbook on Immigration and Asylum in Ireland 2007* (Research Series Number 5, The Economic and Social Research Institute, 2008), 194.

60   Avery, above n 20, 352. The ten States were Australia, Belgium, Canada, Germany, France, Italy, Sweden, Switzerland, the United Kingdom and the United States.

61   IGC, above n 23, 13. See also Joly, above n 10, 159 ('Before the mid-eighties…[t]here existed substantial differences between one country and another and little in the way of harmonization'); Goodwin-Gill, above n 8, 165 (noting that 'State practice understandably reveals widely divergent methods of implementation').

62   Another early analysis noted that 'the actual handling of applications in States concerned do, as a matter of fact, display more dissimilarities than similarities'.

63   James Hathaway, 'A Reconsideration of the Underlying Premise of Refugee Law' (1990) 31 *Harvard International Law Journal* 129, 167-168 (emphasis added).

64   Avery, above n 20, 237. See also 240 ('the authority conducting the personal examination should be trained in international refugee law and skilled in interviewing techniques designed to elicit information and discern credibility').

65   Jean-Yves Carlier & Dirk Vanheule, 'Belgian Bricks for Fortress Europe: Comment on the New Refugee Law after a Judgment of the Cour d'Arbitrage' (1994) 6 *International Journal of Refugee Law* 323. See also the Belgian country report in IGC, *Report on Asylum Procedures: Overview of Policies and Practices in IGC Participating States* (IGC, 5th edition, 1997).

66   IGC, above n 55, 46.

67   Crawford, above n 23, 627, 628. See also Brian Murray, 'Australia's New Refugee Policies: A Practitioner's Point of View' (1990) 2 *International Journal of Refugee Law* 620.

68   IGC, above n 23, 23; Jean-Pierre Fonteyne, 'Refugee Determination in Australia: An Overview' (1994) 6 *International Journal of Refugee Law* 253, 254.

69   IGC, above n 23, 23.

70   IGC, above n 23, 77.

71   IGC, above n 23, 77; Graham Howell, 'The Importance of Documentation and Databases in Canada's New Refugee Determination Procedure' (1989) 8 *Refugee Survey Quarterly* 1, 1. See also the Canadian country report in IGC, above n 65.

72   Erich Kussbach, 'The 1991 Austrian Asylum Law' (1994) 6 *International Journal of Refugee Law* 227, 236-237.

73   Asylum and Immigration Appeals Act 1993 (UK), especially ss 8 & 9. See also IGC, *Summary description of asylum procedures in States in Europe, North America and Australia* (IGC, 3rd edition, 1994), report on the United Kingdom, 1.

74   IGC, above n 65, 240.

75   IGC, above n 23, 123.

76   IGC, above n 65, 305.

77   Emphasis added.

78   Kay Hailbronner, 'The Right to Asylum and the Future of Asylum Procedures in the European Community' (1990) 2 *International Journal of Refugee Law* 341, 349-351, 356-357.

79   Sweden 'A Comprehensive Refugee and Immigration Policy' (1990) Special Issue *International Journal of Refugee Law* 191, 197.

80  IGC, above n 23 13.

81  IGC, above n 65 23.

82  IGC, above n 65 29.

83  IGC, above n 65 23. See also Timothy Hatton, 'Seeking Asylum in Europe' (2004) *Economic Policy* 5, 22 ('In the absence of a single EU-wide asylum policy, individual countries responded to mounting asylum pressures with increasingly restrictive asylum legislation. While their timing differed, they often formed packages of similar sets of measures').

84  IGC, above n 65 26.

85  David Martin, 'Reforming Asylum Adjudication: On Navigating the Coast of Bohemia' (1990) 138 *University of Pennsylvania Law Review* 1247, 1280.

86  Martin, above n 85, 1252-1253 (emphasis added).

87  Anker, above n 35, 255. See also Inzunza, above n 35. These shortcomings were also recognised by some within government: see, for example, Inzunza, above n 35, 418 ('our task in fully implementing the Act remains unfinished'), 423 ('Over the past year we have identified many of our weaknesses in the implementation of the Refugee Act of 1980…a number of initiatives are being undertaken to address long-standing criticisms of our policies and our procedures'). Inzunza was, at the time of writing, a Deputy Commissioner of the Immigration and Naturalization Service.

88  See, for example, *Conclusion No 55* (1989), (f) ('Emphasized in this context [applications by persons with no valid claim to be considered as refugees] the importance of quick and effective status determination procedures in accordance with internationally accepted criteria and appropriate legal guarantees'); *Conclusion No 68*, (1992), (g) ('Notes that effective and expeditious status determination procedures and access to them should be maintained by States with the advice and assistance of UNHCR, just as clear and intentional misuse of these procedures should be actively discouraged and recalls in this regard its Conclusion No. 65 (XLII), in particular paragraphs (n) and (o)'); *Conclusion No 71* (1993), (k) ('Stresses the usefulness of measures to promote the prompt determination of refugee status in fair procedures, and recognizes the advisability of concluding agreements among States directly concerned, in consultation with UNHCR, to provide for the protection of refugees through the adoption of common criteria and related arrangements to determine which State shall be responsible for considering an application for asylum and refugee status and for granting the protection required, and thus avoiding orbit situations'); *Conclusion No 73* (1993), (c) ('Calls upon States and UNHCR to ensure the equal access of women and men to refugee status determination procedures and to all forms of personal documentation relevant to refugees' freedom of movement, welfare and civil status, and to encourage the participation of refugee women as well as men in decisions relating to their voluntary repatriation or other durable solutions'); *Conclusion No 74* (1994), (i) ('Reiterates the importance of ensuring access for all persons seeking international protection to fair and efficient procedures for the determination of refugee status or other mechanisms, as appropriate, to ensure that persons in need of international protection are identified and granted such protection'); *Conclusion No 85* (1998), (r) ('Strongly urges States to devise and implement procedures for handling refugee claims which are consistent with protection principles provided for in applicable universal refugee instruments and in regional refugee instruments, consistent with international standards, as well as with the standards recommended by the Executive Committee'); *Conclusion No 93* (2002), (a) ('Recognizes the need to establish and apply fair and expeditious asylum procedures, so as to identify promptly those in need of international protection and those who are not, which will avoid protracted periods of uncertainty for the asylum-seeker, discourage misuse of the asylum system and decrease the overall demands on the reception system').

89  UNHCR, above n 6, 2 ('Fair and efficient procedures are an essential element in the full and inclusive application of the Convention. They enable a State to identify those who should benefit from international protection under the Convention, and those who should not').

90  See, for example, Howard Adelman, 'The New Refugee System: Success or Failure?' (1989) 8(4) *Refuge* 3, 3 ('Two criteria for judging the system are fairness to genuine refugees and efficiency and cost effectiveness in processing claims. As a by-product of such efficiency, bogus claims will be dramatically discouraged, further enhancing the efficiency of the system'); Howell, above n 71, 4 ('Fair and expeditious procedures not only help to reduce abuse of the asylum process by those seeking any way by which to prolong their stay in a particular country; but also satisfy both the need for justice on the part of the individual, and the cost and administrative interests of receiving States').

91  European Consultation on Refugees and Exiles, 'Fair and Efficient Procedures for Determining Refugee Status: A Proposal' (1991) 3 *International Journal of Refugee Law* 112, 113.

92  Ibid, 115.

93  Ibid, 115.

94  Colin Harvey, 'Restructuring Asylum: Recent Trends in United Kingdom Asylum Law and Policy' (1997) 9 *International Journal of Refugee Law* 60, 60 ('As with a number of other EU Member States, the United Kingdom has turned its attention to the restructuring of its asylum processes in the last decade').

95  Kay Hailbronner, 'The Concept of "Safe Country" and Expeditious Asylum Procedures: A Western European

Perspective' (1993) 5 *International Journal of Refugee Law* 31, 33.

96 Inzunza, above n 35, 423.

97 Inzunza, above n 35, 423 ('For example, the tremendous changes occurring in Eastern Europe emphasized the difficulty of adjudicating claims when country conditions are in a state of flux. We have issued policy guidance to ensure that claimants in such situations are afforded every possible consideration at the time of their interview').

98 Beyer, above n 36, 485. See also IGC, above n 23, 396; Arthur Helton, 'Final Asylum Rules in the United States: New Opportunities and Challenges' (1990) 2 *International Journal of Refugee Law* 642.

99 Helton, above n 98, 645.

100 Kussbach, above n 72, 231. See also the Australian country report in IGC, above n 65.

101 Kussbach, above n 72, 239-240, 241.

102 IGC, above n 65, 155.

103 IGC, above n 23, 319.

104 IGC, above n 23, 24; Fonteyne, above n 68, 255-258.

105 Harvey, above n 94, 64-65. See also Stevens, above n 22, 95-96.

106 IGC, above n 65, 343 (emphasis in original). The only exception to this was where 'removal from the United Kingdom has been personally decided upon by the Secretary of State on grounds of national security'.

107 See section 5 of each country report ('Streamlining/Administrative Reforms') in IGC, above n 65.

108 Erika Feller, 'The Evolution of the International Refugee Protection Regime' (2001) 5 *Journal of Law and Policy* 129, 135. See also UNHCR, above n 6, 2 ('there has been some debate in recent years about what constitutes "fairness" and "efficiency" in procedures, against the backdrop of mixed migratory movements, smuggling and trafficking of people and a degree of misuse of the asylum process for migration outcomes. States have legitimate concerns as regards procedures that are unwieldy, too costly, not necessarily able to respond effectively to misuse, and result in an unequal distribution of responsibilities'); Hailbronner, above n 95, 33 ('Notwithstanding different legal provisions, the picture in western European States is, to a large extent, that of mounting backlogs and steeply escalating costs. The more economic or social migrants come through the 'asylum door,' the longer the asylum procedure and the greater the chance to obtain a residence permit for humanitarian purposes, even after final rejection of the asylum application. After a long procedure, negative decisions are rarely enforced. In western Europe, it is estimated that some 80% of rejected asylum seekers stay on, whether they obtain a residence permit or not').

109 IGC, above n 65, 29.

110 Hailbronner, above n 95, 33.

111 Hailbronner, above n 95, 32 ('The concept of 'safe country' is an essential part of the efforts to devise more expeditious asylum procedures. The present system of examining asylum applications in a time[-]consuming case-by-case analysis in most European receiving States is on the point of collapse, faced with an ever increasing number of asylum seekers who use the process as a pretext to obtain a residence permit. It also threatens to undermine the possibilities for democratically elected governments to conduct a generous and politically acceptable refugee policy').

112 See section 4.6.2 in each country report in IGC, above n 65. See also Alberto Achermann & Mario Gattiker, 'Safe Third Countries: European Developments' (1995) 7 *International Journal of Refugee Law* 19 (examining, in particular, the use of the concept in Germany, France, Austria and Switzerland); Timothy Hatton, *The Rise and Fall of Asylum: What Happened and Why?* (Centre for Economic Policy Research, Discussion Paper No. 577, March 2008), 16 (referring to reforms in the United Kingdom in 1993 & 1996); Guy Goodwin-Gill, 'Safe Country? Says Who?' (1992) 4 *International Journal of Refugee Law* 248; Hailbronner, above n 95, especially 36-48 (discussing Austria, Belgium, Canada, Denmark, the Netherlands, Switzerland and Germany); Patricia Hyndman, 'The 1951 Convention and Its Implications for Procedural Questions' (1994) 6 *International Journal of Refugee Law* 245, 250-252; Federal Ministry of the Interior, 'Recent Developments in the German Law on Asylum and Aliens' (1994) 6 *International Journal of Refugee Law* 265, 266-268; United Kingdom Delegation (Geneva), 'Sending Asylum Seekers to Safe Third Countries' (1995) 7 *International Journal of Refugee Law* 119 (note initially presented to the IGC); UNHCR, 'The Concept of "Protection Elsewhere"' (1995) 7 *International Journal of Refugee Law* 123; Harvey, above n 94, 64, 67-68, 69-71; Cathryn Costello, 'Safe Country? Says Who?' (2016) 28 *International Journal of Refugee Law* 601.

113 Costello, above n 112, 605. Costello previously described the same phenomena as 'the administrative policy-sharing interactions characteristic of this field': Cathryn Costello, 'The Asylum Procedures Directive and the Proliferation of Safe Country Practices: Deterrence, Deflection and the Dismantling of International Protection?' (2005) 7 *European Journal of Migration and Law* 35, 50.

114 Rosemary Byrne, Gregor Nell and Jens Vedsted-Hansen, 'Understanding Refugee Law in an Enlarged European Union' (2004) 15 *European Journal of International Law* 355, 360.

115 Timothy Hatton, *Seeking Asylum: Trends and Policies in the OECD* (Centre for Economic Policy Research, 2011), 44; Joly, above n 10, 167-170; Eva Kjaergaard, 'The Concept of "Safe Third Country" in Contemporary European Refugee Law' (1994) 6 *International Journal of Refugee Law* 649.

116 The strategy platform is discussed in Chapter Two above.

117 Hyndman, above n 112, 249-250 ('Many States receive large numbers of asylum claims, and amongst these a considerable number may not contain any of the elements required to establish refugee status. Other claims may be made in abuse of the process. Refugee determination procedures are expensive. They are also likely to be extremely slow if spurious claims are allowed to proceed through the whole determination system. Delay can then have other ramifications. Not surprisingly, States have adopted a variety of measures to avoid these complications, to reduce costs and to increase the efficiency of their procedures'). Hailbronner, above n 95, 37-38 (referring to reforms in Austria in 1991), 39-40 (Belgium, 1991), 40-41 (Canada, 1988), 42-43 (Netherlands, 1991), 43-46 (Switzerland, 1990), 46-48 (Germany, 1992 & 1993); Harvey, above n 94, 65-67 (referring to reforms in the United Kingdom in 1993 & 1996); Inzunza, above n 35, 424 (referring to reforms in the United States in 1990; Kussbach, above n 72, 238-239 (referring to reforms in Austria in 1991); Hatton, above n 83, 22, 23 (referring to reforms in Germany in 1992 & 1993); Federal Ministry of the Interior, above n 112, 268 (referring to reforms in Germany in 1992 & 1993). See also the individual country reports in IGC, above n 65.

118 See, in relation to Canada, Adelman, above n 90, 3-4; Hailbronner, above n 95, 40-41.

119 See, generally, the literature referred to in the immediately preceding footnotes.

120 Martin, above n 85, 1257.

121 Kussbach, above n 72, 238-239; IGC, above n 65, 173 (in relation to France).

122 Inzunza, above n 35, 420.

123 Hailbronner, above n 95, 41 (emphasis in original) ('These consolidated the practice of the Immigration and Refugee Board in moving evidently well-founded claims forward rapidly').

124 For a broad overview, see *European Commission, A Common European Asylum System* (European Union, 2014).

125 Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted (Qualification Directive) [2004] OJ L304/12; Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status (Asylum Procedures Directive) [2005] OJ L326/13.

126 Vincent Chetail, 'The Common European Asylum System: *Bric-à-brac* or System?' in Vincent Chetail, Philippe De Bruycker & Francesco Maiani (eds),

*Reforming the Common European Asylum System: The New European Refugee Law* (Brill Nijhoff, 2016), 15.

127 Qualification Directive, art 38(1); Asylum Procedures Directive, art 43.

128 Qualification Directive, recital 8; Asylum Procedures Directive, recital 7. See also Qualification Directive, art 3 ('Member States may introduce or retain more favourable standards for determining who qualified as a refugee as a person eligible for subsidiary protection'); Asylum Procedures Directive, art 5 ('Member States may introduce or maintain more favourable standards on procedures for granting and withdrawing refugee status, insofar as those standards are compatible with this Directive').

129 European Commission, above n 124, 6. See also Lyra Jakulevičienė, 'Is there a need for an extension of subsidiary protection in the European Union Qualification Directive?' (2010) 2 *Jurisprudencija/ Jurisprudence* 215, 228 ('The current scope of subsidiary protection in the Qualification Directive is limited. The consequence of this is that significant disparities remain among [EU Member States'] legal decisions').

130 European Commission, above n 124, 4.

131 Asylum Procedures Directive, art 8(2)(c). See also recital 10 ('It is essential that decisions on all applications for asylum be taken…in the first instance, by authorities whose personnel has the appropriate knowledge or receives the necessary training in the field of asylum and refugee matters').

132 See Asylum Procedures Directive, recital 18, arts 23(4)(a)-(c) and the further articles referred to therein.

133 Natascha Zaun (a), *EU Asylum Policies: The Power of Strong Regulating States* (Palgrave, 2017), 5. See also Natascha Zaun (b), 'Why EU asylum standards exceed the lowest common denominator: the role of regulatory expertise in EU decision-making' (2015) 23 *Journal of European Public Policy* 136, 136.

134 Natascha Zaun, above n 133(a), 3-4 (emphasis added).

135 Natascha Zaun, above n 133(a), 80. On the negotiations leading to the Asylum Procedures Directive specifically, see Doede Ackers, 'The Negotiations on the Asylum Procedures Directive' (2005) 7 *European Journal of Migration and Law* 1.

136 IGC, *Report on Asylum Procedures: Overview of Policies and Practices in IGC Participating States* (IGC, 7th edition, 2012), 18.

137 See, for example, Jane McAdam, 'The European Union Qualification Directive: The Creation of a Subsidiary Protection Regime' (2005) 17 *International Journal of Refugee Law* 461, 479-487.

138 Asylum Procedures Directive, art 8(2)(a); Recast Asylum Procedures Directive, art 10(3)(a).

139 Asylum Procedures Directive, art 4(3). The Recast

Asylum Procedures Directive provides for a similar obligation but with reference to the types of training required to be provided by the European Asylum Support Office in its establishing regulation: see Recast Asylum Procedures Directive, art 4(3).

140 Recast Asylum Procedures Directive, recital 17.

141 i.e. between 1997 and 2009.

142 IGC, above n 23 15-16.

143 IGC, above n 136 16-17.

144 IGC, above n 136 15.

145 IGC, above n 15, 15.

146 European Parliament, 'Tampere European Council 15 and 16 October 1999: Presidency Conclusions', [14].

147 Ackers, above n 135, 7. The Asylum Procedures Directive did, however, provide that, '[w]here Member States employ or introduce a procedures in which asylum applications are examined both as applications on the basis of the Geneva Conventions and as applications for other kinds of international protection…they shall apply this Directive throughout their procedure'; '[m]oreover, Member States may decide to apply this Directive in procedures for deciding applications for any kind of international protection': Asylum Procedures Directive, arts 3(3) & 3(4).

148 IGC, above n 23 13-15. See also section 6.1.2 of each of the individual country reports, which deals with complementary protection.

149 IGC, above n 23 13-15.

150 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) (Recast Asylum Procedures Directive) [2013] OJ L180/60.

151 Recast Asylum Procedures Directive, art 10(2).

152 IGC, above n 136 15.

153 European Commission, Qualification: Reforming the Common European Asylum System (2016), 1; European Commission, Asylum procedures: Reforming the Common European Asylum System (2016), 1.

154 European Commission, Proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (COM(2016) 467) ('Notwithstanding the significant progress that has been made in the development of the Common European Asylum System, there are still notable differences between the Member States in the types of procedures used, the reception conditions provided to applicants, the recognition rates and the type of protection granted to beneficiaries of international protection. These divergences contribute to secondary movements and asylum shopping, create pull factors and ultimately lead to an uneven distribution among the Member States of the responsibility to offer protection to those in need').

155 IGC, above n 136, 96-98.

156 McAdam, above n 4, 28-34, 48.

157 McAdam, above n 4, 67.

158 As recognised in IGC, above n 136, 18.

159 Hatton, above n 115, 44; Joly, above n 10, 167-170; Kjaergaard, above n 115.

160 Hatton, above n 115, 44.

161 Joly, above n 10, 162. A later recommendation in 1981 '[did] not propose any formal system, but invit[ed] European States to check that their procedures and practices meet with standards recommended by the Council of Europe'. Many such initiatives were—like IGC—non-binding, with European States agreeing 'to maintain their national procedure for the handling of applications.

162 See, for example, Joly, above n 10; Hailbronner, above n 78; Hatton, above n 83; Kerber, above n 13; Kjaergaard, above n 115.

163 See, for example, Joly, above n 10, 162 ('In the mid-eighties the whole matter of European policy on asylum began to change, starting in several ways: policies which were liberal became increasingly restrictive, and a process of convergence replaced the separate policy-making which had obtained until then').

164 Guy Goodwin-Gill & Jane McAdam, The Refugee in International Law (Oxford University Press, 3rd Edition, 2007), 546. See also 545 ('Credible and trustworthy information is…increasingly recognized as the essential foundation for good decisions') and, generally, 545-547; James Hathaway & Michelle Foster, The Law of Refugee Status (Cambridge University Press, 2nd Edition, 2014), 122-128; Jo Pettitt, 'The Use of Country of Origin Information in Reasons for Refusal Letters' in Immigration Advisory Service, The Use of Country of Origin Information in Refugee Status Determination: Critical Perspectives (Immigration Advisory Service, 2009), 10-11 ('The need for COI in Refugee Status Determination procedures is well established in the literature on good practice in this field'); Howell, above n 71, 3 ('Credible, current and trustworthy information is the essential foundation upon which good decisions are necessarily premised'); Sharon Rusu (a), 'The Development of Canada's Immigration and Refugee Board Documentation Centre' (1989) 1 International Journal of Refugee Law 319, 319 ('Credible and trustworthy information is essential to good decision-making'), 323 ('Comprehensive, objective, current and trustworthy documentation is the foundation upon which good decisions are based. Good decisions, in turn, are those in which the possibilities of error are reduced as far as practicable; which are capable of reasoned explication; and which are coherent and internally consistent'); Elizabeth Williams, 'Preface' in Immigration Advisory Service, The Use of Country

*of Origin Information in Refugee Status Determination: Critical Perspectives* (Immigration Advisory Service, 2009), 6 ('It is generally accepted that Country of Origin Information (COI) is central to refugee status determination (RSD) in order to inform decision makers about conditions in the countries of origin of asylum applicants and to assist them in establishing an objective criteria as a whether an asylum claim is well founded'); UNHCR, *Country of Origin Information: Towards Enhanced International Cooperation* (UNHCR, 2004), 2 ('An objective and transparent COI system that can deliver rapid and reliable information is…central to any RSD procedure'); Sharon Rusu (b), 'Refugees, Information and Solutions: The Need for Informed Decision-Making' (1994) 13 *Refugee Survey Quarterly* 4, 6 ('With a rapidly disintegrating global picture as a backdrop and the reality of the need for stronger, more comprehensive measures to address effectively the situation of refugees in the 90s, information, especially country of origin information, plays a significant role…For the decision-maker, trustworthy information makes for justifiable decisions. Credible and justifiable decisions are readily defensible'); Natasha Tsangarides, 'The Refugee Roulette: The Role of Country Information in Refugee Status Determination' (Immigration Advisory Service, 2010), 7, 8 ('Country of origin information (COI) is an integral part of asylum decision-making…at all stages of the refugee status determination (RSD) process. COI details the social, political, judicial and human rights profile of a given country. This information is used within asylum decision-making to assess the risk upon return for individuals to their country of origin as well as the credibility and plausibility of individual claims. COI enables decision-makers to assess if an asylum seeker's subjective fear is based on objectively adverse circumstances, and therefore whether an asylum claim is 'well-founded'…If legal representatives, advisors or decision-makers are unable to properly access, understand and utilise country information, they cannot provide quality advice and representation to asylum seekers or make adequate decisions'); Maarten Vink & Claudia Engelmann, 'Informal European asylum governance in an international context' in Thomas Christiansen & Christine Neuhold (eds), International Handbook on Informal Governance (Edward Elgar Publishing, 2012), 546.

[165] Martin, above n 85, 1282-1284 ('the asylum applicant may prove to the factfinder's satisfaction, through his own detailed testimony, that he was active as a union organizer for two years before leaving for the [country in which he has applied for asylum] and that he heard stories of arrests of organizers in nearby towns before he left. But in order to assess the risk that the individual would face on return, the adjudicator must also learn from some source about relevant legislative facts. Does the government regard union organizers as opponents, subject to suppression? If so, what forms does the suppression take? Loss of a job or limitation of schooling options for organizers' children might not amount to persecution (even though it would

constitute a human rights violation), but beatings, jailings, or killings in reprisal for peaceful union activity certainly would. If there have been some reports of such violence, how widespread are the abuses? Were they based on the victim's union affiliation or on some other characteristic? In other words, is the current applicant relevantly similar to other persecution victims? And has there been a material change in the country since those events, such as a complete revamping of the police forces responsible for the earlier abuses, including reliable disciplining of the violators? Each of these questions will be difficult to answer, both because such patterns change over time, sometimes quite quickly, and because persecutors do not spell out the range of characteristics they seek in their victims'). See also Pettitt, above n 164, 10; Robert Gibb & Anthony Good, 'Do the Facts Speak for Themselves? Country of Origin Information in French and British Refugee Status Determination Procedures (2013) 25 *International Journal of Refugee Law* 291, 292 ('In order to demonstrate that their fear is indeed 'well-founded', asylum applicants need to show that people of their own political, ethnic, social or sexual background are likely to be at risk in their home country. In other words, there must be Country of Origin Information (COI) demonstrating the existence of such a risk'); Marco Formisano, 'Country of Origin Information: old problems, modern solutions' (2011) 38 *Forced Migration Review* 40, 40 ('In the challenging task of determining the legitimacy of a claim for refugee status, Country of Origin Information (COI) is a key element, complementing the testimonial of the applicant. It may, for example, corroborate or contradict the likelihood of the risk of persecution or help ascertain the relevance and reasonableness of available internal flight or relocation alternatives'); Avery, above n 20, 242 ('An informed refugee status determination cannot be made without systematic use of accurate, politically-balanced information from non-governmental sources, reflecting the current human rights situation in the applicant's country of origin').

[166] Martin, above n 85, 1284-1285 ('An adjudicator thus equipped [with accurate, in-depth, up-to-date, and trustworthy country of origin information] can better pick out those parts of the applicant's story that are most relevant, and can ask specific questions that will flesh out the testimony in the most helpful fashion. Such expert questioning can also help expose inconsistencies and falsehoods more effectively. Since there are so few other checks on the asylum seeker's story (given that he is likely to be the only available witness to the key events), the system badly needs to make use of whatever other tools might be available for such assessment. But equipping adjudicators with such expertise is not just a device for spotting weaknesses or magnifying contradictions. Properly applied, it can also assist confused or inarticulate applicants in presenting fully the particularized information that will cast positive light on their claims'). See also Gibb & Good, above n 165, 292 ('The focus is on

the credibility of the asylum applicant, in two senses. Is their story as internally consistent as might reasonably be expected, without implausible contradictions and confusions over dates and places; and is it externally consistent with available information about the situation in their home country? This second, external aspect of credibility obviously requires, yet again, that the applicant's narrative should be judged in relation to the available COI').

167 Rusu, above n 164(b), 8, 9 ('The violation of human rights leads to flight and refugees. Documenting why and how refugees flee is essential not only to better and greater understanding of the refugee situation in general but also for the protection of refugees…[It is] essential to a clearer understanding of flight, leading in turn to a clearer understanding of the motivation for flight and thus…allow for the formulation of strategies to meet changing times and circumstances within the context of international cooperation').

168 UNHCR, above n 164, 1. See also UNHCR, Handbook and Guidelines on Procedures and Criteria for Determining Refugee Status (UNHCR, 2011), [42] ('As regards the objective element, it is necessary to evaluate the statements made by the applicant. The competent authorities that are called upon to determine refugee status are not required to pass judgement on conditions in the applicant's country of origin. The applicant's statements cannot, however, be considered in the abstract, and must be viewed in the context of the relevant background situation').

169 UNHCR, above n 164, 1.

170 Hathaway & Foster, above n 164, 125.

171 UNHCR, above n 164, 3.

172 UNHCR, above n 164, 3-4.

173 The Council of Europe in 1976, for example, explained the wildly differing success rates of asylum applications in Member States—in part, at least—to their reliance on inadequate country of origin information: Rusu, above n 164(a), 322.

174 UNHCR, above n 164, 5. This standard is sometimes not met, however: 'In many administrations, COI is produced and managed only as an after-thought and remains chronically under-funded. Sometimes the only systematic collection of COI conducted is by the caseworkers themselves who create ad hoc collections of hardcopy folders of relevant background documents or randomly store electronic data in non-relational databases'.

175 UNHCR, above n 164, 2.

176 Higgins, above n 23, 86, 88. See also Avery, above n 20, 247.

177 Avery, above n 20, 292 (France), 301 (Italy).

178 Avery, above n 20, 294.

179 Anker, above n 35, 257.

180 Avery, above n 20, 267 (Canada), 280 (Germany), 306 (Sweden), 314-315 (Switzerland), 322-323 (United Kingdom).

181 Avery, above n 20, 280 ('According to one expert, as the refugee status determination processes of the [Federal Republic of Germany] has grown more restrictive, Agency officer have consulted Foreign Ministry reports more often, and other sources, such as Amnesty International reports, less often').

182 Philip Rudge & Morten Kjaerum, 'The Information Aspects of Refugee Work: Time for a Fullscale Information Strategy' (1988) 7 Refugee Survey Quarterly 1, 1.

183 Rusu, above n 164(a), 324.

184 Avery, above n 20, 267 ('Late in 1981, [Canadian asylum decision-makers] toured the human rights documentation center of the Federal Republic of Germany's Federal Agency for the Recognition of Foreign Refugees and were impressed by the facilities').

185 IGC, above n 55, 16.

186 Houle, above n 28, 6, 8, 19 ('since conditions inside foreign countries are important in forming an opinion on the objective fear of persecution, to evaluate these conditions in light of the Canadian experience may result in bias, or may simply reveal a lack of understanding of the situation. In order to make the fairest decision, Board Members owe a duty to claimants to use reliable and current information in determining refugee claims. Through the Documentation Centre, decision-makers are given access to information about world affairs so that they will be able to form the most accurate picture possible of what is happening in a country'). See also Howell, above n 71, 2-3 ('the objectives of the [Documentation Centre] are 1) to be the principal resource in Canada for the provision of credible and trustworthy evidence relevant to the processes of refugee determination, including country of origin information and information on jurisprudential questions; 2) to provide, actively and regularly, the latest country of origin information to the major actors in the process, including case presenting officers, refugee hearing officers, IRB members, advocates, claimants, academics and non-governmental organizations concerned with refugees; 3) to offer objective, reliable and cogent analysis and evaluations of such information; 4) to acquire, treat (for electronic storage and retrieval purposes), and disseminate such information, using both hardcopy and electronic means; 5) to initiate studies by recognized authorities on particular situations of concern to Canada, and 6) to participate in. and encourage arrangements for. the exchange of relevant material with human rights, refugee and other documentation centres'); Rusu, above n 164(a).

187 Houle, above n 28, 6.

188 Howell, above n 71, 3.

189 Beyer, above n 36, 457.

190 IGC, above n 40, 6.

191 IGC, above n 40, 31 (Finland), 60 (Norway).

192 IGC, above n 73, Report on the Netherlands, 13 ('The INS has a documentation centre which has a multitude of "on line" information on country conditions in refugee-producing countries computerized and at the disposal of asylum decision makers').

193 IGC, above n 73, Report on France, 10.

194 IGC, above n 73, Report on the United Kingdom, 11.

195 IGC, above n 73, Report on the United Kingdom, 11.

196 IGC, above n 73, Report on Canada, 9.

197 IGC, above n 73, Report on United Kingdom, 11.

198 See also Rusu, above n 164(b), 9 ('A number of governments, intergovernmental organizations and NGO's have already developed elaborate documentation systems for the collection, treatment and dissemination of information on refugees').

199 IGC, above n 23, 264-265.

200 As noted in Chapters Two and Three, the Expert Group on Country of Origin Information was originally established as subsidiary to the Working Group on Technology because of the prominence that the use of technology to exchange country of information had in early IGC activities on country of origin information.

201 IGC, above n 23, 66 (Belgium), 134-135 (Finland), 375-376 (United Kingdom).

202 IGC, above n 23, 218-219 (Ireland), 288 (Norway).

203 See IGC, above n 23, 154-155 (France), 307 (Spain).

204 IGC, above n 15, 222 (Greece).

205 IGC, above n 23, 218.

206 IGC, above n 23, 218.

207 Michele Klein Solomon, *International Migration Management Through Inter-State Consultation Mechanisms* (Paper prepared for the United Nations Expert Group Meeting on International Migration and Development, July 2005), 9 (italicization added).

208 Ibid, 9. See also Hansen, above n 1(b), 9, 25.

209 UNHCR, above n 164, 2.

210 UNHCR, above n 164, 2, 19.

211 UNHCR, above n 164, 18.

212 See the examples cited in Vink & Engelmann, above n 164, 546-550.

213 IGC, above n 23, 288.

214 New York Declaration, [40].

215 UNHCR, Refugee Protection and Mixed Migration: The 10 Point Plan in Action (UNHCR, 2016), 40.

216 See, for example, Eurostat & IGC Secretariat, *Asylum-Seekers in Europe 1985-1995* (Statistics in Focus, 1996); Eurostat & IGC Secretariat, *Asylum-Seekers in Europe in 1995* (1996); Eurostat & IGC Secretariat, *Asylum-Seekers in Europe in the First Six Months of 1996* (1996).

217 Hansen, above n 1(b), 9.

218 Alexander Betts, *Global Migration Governance* (Working Paper 2008/43, Global Economic Governance Programme, University College Oxford, November 2008), 2.

219 See Alexander Betts, 'The Impact of Global Migration Governance on UNHCR' in Khalid Koser & Susan Martin (Eds), *The Migration-Displacement Nexus: Patterns, Processes, and Policies* (Berghahn Books, 2011), 241-242, 247; Betts, above n 218, 14; Betts, above n 5.

220 Amanda Klekowski von Koppenfels, 'Informal but Effective: Regional Consultative Processes as a Tool in Managing Migration' (2001) 39 *International Migration* 61, 62.

221 Hansen, above n 1(b), 43.

222 Karen Alter & Sophie Meunier, 'The Politics of International Regime Complexity' (2009) 7 *Perspectives on Politics* 13, 14.

223 von Koppenfels, above n 220, 61, 62.

224 Klein Solomon, above n 207, 4. See also von Koppenfels, above n 220, 74 ('although detractors of regional consultative processes have argued that they have accomplished little concretely, it must be emphasized that the proximate aims of regional processes are not necessarily directed at immediate, concrete outcomes, but place a great deal of emphasis on long-term goals such as increasing cooperation, improving information-sharing and, through these vehicles, creating an atmosphere in which bilateral and multilateral agreements (which do have concrete outcomes) have a better chance of success').

225 Thouez & Channac, above n 2, 372.

226 Bimal Ghosh, 'Managing Migration: Interstate cooperation at the global level: is the emergence of a new paradigm of partnership around the corner?' in Berne Initiative, *Interstate Cooperation and Migration* (Berne Initiative Studies, 2005), 127.

227 The overview is reproduced from IGC & Danish Immigration Service, *Responsibility Sharing: The Kosovo Humanitarian Evacuation Programme as a Case Study* (March 2001), 15-16.

228 IGC & Danish Immigration Service, *Study on the Concept of Burden Sharing* (1998).

229 Ibid 7.

230 Ibid 83.

231 IGC & Danish Immigration Service, above n 227, annexe 2, endnote 55.

232 Ibid annexe 2.

233 Ibid annexe 2.

234 IGC & Danish Immigration Service, above n 227, 2.

235 IGC & Danish Immigration Service, above n 227, 5, 19.

236 IGC & Danish Immigration Service, above n 227, 2 ('It is difficult to discuss the Kosovo HEP without acknowledging its uniqueness: it was a crisis largely contained and addressed in the European region; it involved a rapid, targeted intervention with an equally rapid resolution; the initial mass outflow consisted primarily of refugees and others clearly in need of international protection; and there was an early, spontaneous, widespread return, even among those offered temporary or permanent residence outside the region').

237 IGC & Danish Immigration Service, above n 227, 5.

238 IGC & Danish Immigration Service, above n 227, 6, 32.

239 See https://www.iom.int/berne-initiative & http://www.iom.int/global-commission-international-migration

240 United Nations Secretary General, *International migration and development* (2006, UN Doc A/60/871), [40]-[41].

241 General Assembly, Summary of the High-level Dialogue on International Migration and Development (2006, UN Doc A/61/515), [20], [24].

242 Anne Gallagher, 'Human Rights and the New UN Protocols on Trafficking and Migrant Smuggling: A Preliminary Analysis' (2001) 23 *Human Rights Quarterly* 975, 977. See also John Salt, 'Trafficking and Human Smuggling: A European Perspective' (2000) SE *International Migration* 31, 33.

243 Anne Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010), 12. See also Anne Gallagher & Fiona David, *The International Law of Migrant Smuggling* (Cambridge University Press, 2014), 44 ('Right up to the late 1990s States, international organizations, and regional groupings were using a range of different terms interchangeably, such as "clandestine illegal migration", "alien smuggling", and even "trafficking of aliens" to denote the problem of illegal or irregular migration that was facilitated by third parties for profit').

244 Alexis Aronowitz, 'Smuggling and Trafficking in Human Beings: The phenomenon, the markets that drive it and the organisations that promote it' (2001) 9 *European Journal on Criminal Policy and Research* 163, 164.

245 Philip Martin & Mark Miller, 'Smuggling and Trafficking: A Conference Report' (2000) 34 *International Migration Review* 969, 975.

246 Melissa Ditmore & Marjan Wijers, 'The negotiations on the UN Protocol on Trafficking in Persons' (2003) 19 *Nemesis* 79, 79.

247 Aronowitz, above n 244, 190. See also Salt, above n 242, 34 ('The current uncertainties about concepts and definitions will hinder reaching a consensus on legislative and judicial frameworks to combat trafficking at national and international levels').

248 Ditmore & Wijers, above n 246, 79. See also Janice Raymond, 'The New UN Trafficking Protocol' (2002) 25 *Women's Studies International Forum* 491, 492, 493 (describing 'the debate over the definition of trafficking' as 'the most contentious part of the Protocol'); Gallagher, above n 242, 984 ('discussions around the definition to be included in the protocol proved to be the most controversial aspect of the negotiations').

249 Ditmore & Wijers, above n 246, 79. See also Gallagher, above n 242, 984.

250 United Nations Office on Drugs and Crime, Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (United Nations, 2006), 339 (defining 'international trafficking in children' to require that the act occur 'in a country other than that of the habitual residence of the child' and 'international trafficking in women' to require '[t]ransporting a woman to or facilitating her entry into another State').

251 See, for example, United Nations Office on Drugs and Crime, above n 250, 352, 355.

252 United Nations Office on Drugs and Crime, above n 250, 355.

253 Gallagher, above n 243, 25-26.

254 United Nations Office on Drugs and Crime, above n 250, 463.

255 United Nations Office on Drugs and Crime, above n 250, 464.

256 Gallagher, above n 243, 25-26.

257 United Nations Office on Drugs and Crime, above n 250, 465.

258 Note, however, that the trafficking protocol applies 'to the prevention, investigation and prosecution of [trafficking in persons] where those offences are transnational in nature and involve an organized criminal group'. 'Transnational in nature' and 'organized criminal group' are defined in Articles 3 and 2 (respectively) of the *United Nations Convention against Transnational Organized Crime.*

259 United Nations Office on Drugs and Crime, above n 250, 469.

260 Gallagher & David, above n 243, 44.

261 Jacqueline Bhabha, 'Trafficking, Smuggling, and Human Rights' (Migration Policy Institute, 2005), 2. See also Gallagher, above n 243, chapter 1 (which gives an overview of the historical development of the definition of trafficking and its relationship to smuggling).

262 Gallagher, above n 242, 1004. See also Anne Gallagher, 'Trafficking, smuggling and human rights: tricks and treaties' (2002) 12 *Forced Migration Review* 25, 26, 27.

263 See, for example, Gallagher, above n 242, 1001-1003.

264 Salt, above n 242, 33.

265 At the time of writing, there were 170 states party to the trafficking protocol and 142 states party to the smuggling protocol.

266 Citizenship and Immigration Canada, *Review of the Migration Policy Development Program* (February 2008), 'Executive Summary' <http://www.cic.gc.ca/english/resources/evaluation/mpdp/exe_summary.asp>, 'Key findings: Success' <http://www.cic.gc.ca/english/resources/evaluation/mpdp/key_success.asp>

267 Hansen, above n 1(b), 43.

268 Citizenship and Immigration Canada, *Review of the Migration Policy Development Program* (February 2008), 'Key findings: Success' <http://www.cic.gc.ca/english/resources/evaluation/mpdp/key_success.asp>

269 Citizenship and Immigration Canada, *Review of the Migration Policy Development Program* (February 2008), 'Key findings: Success' <http://www.cic.gc.ca/english/resources/evaluation/mpdp/key_success.asp> (emphasis added).

# 5

# Conclusion:
# What Next
# for IGC?

This publication has sought to examine the first three decades (or so) of operation of the Intergovernmental Consultations on Migration, Asylum and Refugees. Chapter One sought to provide context for this examination by introducing the publication and the broader category of forum to which IGC belongs, known as Regional Consultative Processes on Migration. Chapter Two sought to explain how the IGC process emerged from a single meeting in Stockholm in November 1985 and how it evolved to become a place for vibrant discussions of migration, asylum and refugee issues for some of the major countries of net immigration in Europe, North America and Australasia. Chapter Three focused on IGC as it exists and operates today by examining its core operating principles and what impact they have on the process, its membership of Participating States and Organisations, its governance structures and its key activities. Chapter Four sought to analyse the impact that the IGC process has had on the migration, asylum and refugee systems of its Participating States, and found that impact to be subtle but significant.

To conclude, this chapter will look to the future and ask: what will the coming years and decades hold for IGC? The future directions of the IGC process were discussed at length with many of the people who were interviewed for this publication, particularly the former coordinators and others who have had a long involvement in IGC activities, either as members of the Secretariat or as representatives of Participating States. Throughout these discussions, a number of common themes emerged concerning the trends that will profoundly affect migration, asylum and refugee policy in Participating States in the coming years and decades and the ways in which the IGC process could and should respond to those trends.

In terms of trends that will affect IGC's role, four are particularly noteworthy. The first is that people will continue to migrate in large numbers. Aided by advances in communications and transportation technologies, there are more people 'on the move' now than there ever have been in human history. Some of them have been forcibly displaced by persecution, famine, natural disaster, war or political instability, or are victims of trafficking. In the years to come, climate change will force many more from their homes. Others (the vast majority, in fact) move and will continue to move in search of economic opportunity, professional fulfilment, educational development, or to form or reconnect with family. Some will arrive and remain in their new countries of residence with the knowledge and consent of the

government, but others will not. These are all facts that States and others will need to accept and respond to.

Secondly, migration, asylum and refugee policy will continue to be a topic of great political importance, both at the national and international levels. Around the world, and most notably in a number of IGC Participating States, migration is a highly and hotly contested issue of public policy, with debates continuing to rage about the impact—economically, socially and in terms of national security—that migrants have on the countries and communities in which they live. Large sections of the public are greatly concerned about—and often hostile to— migration. This is not likely to change in the short- to medium-term, and the ability of states to manage their various migration channels and to ensure that migrants integrate into their new communities will be key to ensuring public confidence.

Thirdly, and as a result of these high levels of political interest, the prominence of multilateral fora for the discussion of and for cooperation in relation to migration, asylum and refugee matters will continue to grow. As we have seen, fora like the Global Forum on Migration and Development, the United Nations High-Level Dialogue on International Migration and Development and various state-led initiatives have grown in prominence in recent years. The latest developments in this regard are the new status of the International Organization for Migration vis-à-vis the United Nations, the New York Declaration for Refugees and Migrants, and the processes that it has set in train for the adoption of two global compacts, one on refugees and the other for safe, orderly and regular migration. If adopted, these are likely to lead to further mechanisms for international cooperation on migration, asylum and refugee matters at the multilateral level. IGC will, in other words, exist in an increasingly crowded and complex 'marketplace'.

Finally, the influence of EU law on the migration, asylum and refugee policies of IGC Participating States who are also Member States of the European Union, as well as those (such as Norway and Switzerland) who have specific arrangements with the EU on migration and related matters, will continue to grow. We have seen in Chapter Four, for example, the extent to which the development of the Common European Asylum System has influenced the law and policy of Participating States through the first and second rounds of directives. The replacement of these directives with regulations in the coming years will magnify this influence, with EU law on asylum becoming directly applicable in the States in question. The growing influence of EU law on migration, asylum and refugee policy will leave governments in the affected States less room for independent manoeuvring on certain topics, and this will influence the ways in which a forum like IGC can best be used by them.

On the question of how IGC should respond to these trends, those interviewed emphasised that IGC has adapted to changing landscapes before. As we saw in Chapter Two, IGC was in somewhat of a league of its own in its early years, when Participating States felt that the only alternatives—UNHCR's Executive Committee and the Council of Europe's CAHAR committee—were not really alternatives at all. Other fora for cooperation on refugee and asylum matters—ranging from the Common European Asylum System to the Global Forum on Migration and Development—would emerge (even if they were also qualitatively different to IGC, too) and IGC responded by working to ensure that it continued to provide Participating

States what they could not get elsewhere, including a place to discuss their approaches in those other fora.

In emphasising the need to adapt, those interviewed also noted that the IGC process has the capacity to do so. It has a freedom and a flexibility that many other fora do not enjoy; its mandate extends to any topic or activity that Participating States support. Its small size—both in terms of the number of Participating States and the number of Secretariat staff members—means that it is agile and can rapidly respond to new developments.

Indeed, history suggests that the time will shortly be ripe for Participating States and Organisations, as well as the Secretariat, to reassess again how the IGC process can best be adapted to their needs. As we saw in Chapter Two, there have been three peaks in asylum application numbers since the founding of IGC: in the early 1990s, the early 2000s and in 2015. Following the first of these, declining asylum application numbers meant that there was room for the core topics dealt with in the IGC process to expand beyond asylum to include matters such as trafficking, return, family reunification and unaccompanied minors; this was also the period when the basic structure that persists to this day emerged. Following the second peak in the early 2000s, IGC's 2005 Strategic Review again broadened the scope of topics under consideration to include issues of immigration and integration. Once the after-effects of the 2015 peak have subsided, Participating States and Organisations will again have the time and the incentive to consider again the ways in which they can most effectively use the IGC process, and the opportunity to push it in new directions once more.

A need to adapt to emerging trends should not be understood as a need for wholesale reform, however. Those interviewed stressed that IGC's core principles continue to be of great value, in particular informality, privacy (as guaranteed by the Chatham House Rule) and IGC's multidisciplinary, comprehensive approach. In particular, the need for a de-politicised space for rational, evidence-based discussion of migration, asylum and refugee matters is as important now—when migration is such a controversial issue and is often discussed publicly in such toxic terms—as it ever has been. IGC remains a key arena for the exchange of data and analysis, as well as for the holding of open and frank discussions on controversial topics that cannot or should not be discussed elsewhere, lest they descend into what one interviewee described as 'inflamed nonsense'. These qualities set IGC apart, and those interviewed emphasised the need for them to be retained. As one of them explained, things don't need to be fixed if they aren't broken, and the IGC process isn't broken.

In what ways should IGC adapt to these trends? Those interviewed emphasised that IGC's future was as a niche process. It should focus on being what other processes and institutions are not; a place for Participating States and Organisations to get what they cannot get elsewhere. Unless Participating States and Organisations want to greatly expand the size of the IGC Secretariat—and there is no indication that they do—the IGC process will not be able to compete with larger fora, and nor should it aspire to. It should aim to work on those topics that are not being worked on elsewhere, or on which IGC can add specific value or achieve a practical outcome. It should continue to be a laboratory that comes up with new ideas and fresh approaches, and that refines and improves existing

policies. It should not work on topics merely because they are important, and it should be willing to discontinue lines of work that are no longer having sufficient impact. As Hansen has noted, '[s]uch an ending by no means implies failure; on the contrary, it might imply that the RCP has done its job'.[1]

Three specific niche areas in which IGC could be of particular value to Participating States and Organisations were mentioned repeatedly in interviews.

The first was integration. It was emphasised that integration is at the centre of many of the more vicious public debates on migration, asylum and refugee policy today, particularly in relation to social impacts and national security. Despite this, there is no comparable forum for the open and detailed discussion of integration policy that takes place in IGC activities, particularly the Working Group on Integration and the integration-related topics chosen as Chair's Themes. This makes continued—and even expanded—work on integration an ideal niche for IGC. It is also a topic to which Participating States take vastly different approaches, especially between the traditional countries of immigration in North America and Australasia on one hand, and those without long histories of immigration on the other; Participating States therefore have a lot that they can learn from one another. Integration is far too complex an issue for one-size-fits-all solutions, but those interviewed emphasised that an understanding of the experiences of others (the good and the bad, the successes and the failures) is essential to the formation of good policy. As we have seen throughout this publication, IGC was specifically designed for this kind of exchange.

Secondly, overall structural issues were mentioned as being ripe for IGC discussion. Those interviewed emphasised that policymakers and practitioners in Participating States and Organisations—particularly those in Europe—have been forced in recent years to focus on day-to-day issues by the large numbers of those seeking entry and the intense public scrutiny that their activities have been under. There has been precious little time for reflection on the wider realities, again creating an opening for IGC activities that examine the drivers of migration and the root causes of displacement, push and pull factors, and the possible role that predictive models could play in helping Participating States and Organisations (and, of course, others) to anticipate and prepare for large-scale movements. One interviewee also emphasised the need to explore ways of building public confidence in migration programmes and the institution of asylum.

Finally, those interviewed emphasised the role that IGC can play in assisting Participating States to coordinate their participation in other, wider, more open fora for the discussion of migration, asylum and refugee issues. They noted that, because IGC Participating States approach such fora from similar perspectives, there is ongoing scope for them to use the IGC process to coordinate their positions to the extent possible. This has potential benefits for international cooperation on migration, asylum and refugee matters as a whole because, if

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[1] Randall Hansen, *An Assessment of Principal Regional Consultative Processes on Migration* (IOM Migration Research Series, No. 38, International Organization for Migration, 2010), 41. Hansen was referring to bringing entire processes to an end, rather than a particular line of work, but the point is equally valid in both contexts.

States with similar interests and views harmonise their positions (to the extent possible) prior to their discussions with States with different interests and views, the number of possible 'sticking points' is reduced and the chances for meaningful cooperation are increased. A number of those interviewed emphasised that—in order for IGC to be able to play this kind of role—it was essential for both interior/immigration ministries and ministries of foreign affairs to be actively engaged in IGC activities.

Ultimately, however, the Intergovernmental Consultations on Migration, Asylum and Refugees is a State-led process and the question of how it should adapt to the trends discussed here—and others—is a question for Participating States. This publication has sought to demonstrate, however, that Participating States and Organisations have made and continue to make good use of the IGC process to further their policies, practices and positions on migration, asylum and refugee issues, even as the international landscape has changed dramatically. It stands ready to continue to do so.

# Annex

## Submission of the Inter-governmental Consultations on Migration, Asylum and Refugees (IGC) to the President of the General Assembly

**HIGH LEVEL DIALOGUE ON
INTERNATIONAL MIGRATION AND DEVELOPMENT**

### INTRODUCTION

The December 2012 modalities resolution for the High Level Dialogue on International Migration and Development (A/RES/67/219), in Operative Paragraph 17, invited UN Member States, through appropriate regional consultative processes, to contribute to the HLD. The Inter-governmental Consultations on Migration, Asylum and Refugees (IGC) is one of the longest-standing inter-regional consultative processes (RCPs) on international migration. Established in 1985, it is a forum in which generally like-minded countries[1] exchange information on refugee, asylum, and migration issues in an informal and non-binding way. In addition to convening regular meetings under its annual work plans, the IGC often holds ad hoc meetings on topics of current interest.

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[1] The IGC is constituted by the following Participating States: Australia, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, United Kingdom, and United States.

IGC Participating States have been actively engaged in preparations for the HLD, taking part in a number of preparatory meetings, inter alia in Geneva, capitals, and New York. IGC Participating States believe the HLD provides an excellent opportunity to take stock of recent efforts on international migration and its links to development. Well-managed migration at national, regional and global levels is the overarching goal and considered a precondition for maximising the benefits and minimising the challenges of international migration, and to move forward on concrete issues that enhance the well-being of migrants, respect the human rights of all migrants regardless of immigration status, and recognise that migrants make significant contributions to the cultures and economies of their host countries. IGC States additionally believe that there are many more issues that countries have in common than there are issues that divide them, and they are committed to advancing the debate on important substantive issues that all countries, developed and developing, can agree upon.

To this end, the IGC convened a workshop in March, 2013 on International Migration Engagement to discuss the HLD. The objectives were to identify migration-related policies and areas of mutual interest that are most likely to be shared by a broad range of countries, and therefore could provide the basis to advance the international migration dialogue in the most constructive and positive way. The workshop resulted in an inventory of substantive issues that might form part of the deliberations of the HLD.

In developing this inventory, IGC Participating States recognised that a great deal of excellent work has already been accomplished and will continue to be driven very effectively in various international forums including the Global Forum on Migration and Development, the International Organization for Migration led policy discussions, the International Conference on Population and Development, the Regional Consultative Processes on migration, and the Human Rights Council, to name a few. In considering what issues are ripe for discussion in the HLD, IGC States attempted to identify those that (1) would build on this prior body of work; (2) represent new or emerging trends; and (3) by their very nature lend themselves to partnerships among many states rather than solely bilateral discussions.

It is important to note that the inventory of ideas set forth below does not represent a policy position of the IGC or of its Participating States. The IGC does not take formal positions on policy issues. Rather, the inventory is intended only as a set of ideas for positive, constructive dialogue and a potential "road map" for continued partnerships and dialogue within existing fora for all stakeholders.

## INVENTORY OF SUBSTANTIVE ISSUES

IGC Participating States have identified a set of practical issues of shared interest to all countries that fit into the four HLD roundtable topics. This inventory aims to support a constructive dialogue at HLD on concrete initiatives and partnerships in order to address, in a practical way, real challenges and opportunities related to migration.

*Roundtable 1*

*"Assessing the effects of international migration on sustainable development and identifying relevant priorities in view of the preparation of the post-2015 development framework"*

## 1.1 Developing a Better Understanding and Promoting the Links between Migration and Development

In recent years, extensive efforts have been undertaken by various stakeholders to better understand and articulate the links between migration and development and the potential relevance of migration to the post-2015 Development Agenda. In order to capitalise on these tremendous efforts, HLD roundtable 1 could be used to identify an agenda for concrete action and agree on these specific objectives:

i) Consider the inclusion of migration in the Post-2015 development agenda, potentially as an enabler for development, with indicators to monitor change (for example, increase labour mobility, explore more safe regular and orderly processes of migration, promote the preservation and portability of social security entitlements, seek to match skills to migration needs, promote migrants as agents of development in countries of origin and destination, lower recruitment and remittance costs, protect the victims of human trafficking including those subjected to exploitation, and develop migration and mobility partnerships with other states and development actors);

ii) Identify with greater precision the aspects of development that can realistically be linked to migration;

iii) Acknowledge the significance of migrant remittances to development and continue efforts to reduce the costs to migrants of sending funds home and promote productive and social use of remittances;

iv) Support policy coherence for development and the inclusion of migration, including refugee and returnee reintegration, in national poverty plans of developing states, for example, through the use of frameworks and tools such as Mainstreaming Migration into Development Planning Strategies and Migration Profiles;

v) Promote policies to enable diaspora groups to contribute to social and economic development and to be effective and recognised actors in development, for example by strengthening the diasporas' potential to function as a bridge for trade and investment, as well as skill transfer.

## 1.2 Engaging with Diasporas

Diaspora resources and engagement in support of development back home is an important aspect of efforts aimed at maximising the benefits of migration for development. Building on the impressive work that has been done so far on this topic, roundtable 1 could further

review strategies to facilitate remittance flows and better understand the role and use of remittances and Official Development Aid (ODA), and to identify ways to support and engage with diasporas as agents of development in their home country.

i) Promoting a better understanding of the role of diasporas as development actors in their countries of origin;

ii) Strengthening the capacity of both governments and diaspora organisations and promoting diaspora initiatives;

iii) Encouraging governments and other stakeholders to reduce costs and barriers to remittance transfer and set incentives and policy frameworks for sustainable investment, while noting that they are private funds that complement, not replace ODA.

### 1.3 Identifying and Understanding New Trends in Global Migration

While many positive efforts have been made to better understand migration-development links, the evidence base on migration trends and linkages with development is still weak, and this has a potentially negative impact on how much progress can be achieved in the migration and development dialogue. A robust evidence base is critical to advancing efforts to better link migration and development, including in the context of the post-2015 Development Agenda. Roundtable 1 could, therefore, examine practical ways to:

i) Strengthen the evidence base and understanding of the phenomenon and implications of North/South migration, intra-regional migration (including South-South), migration to emerging markets/BRICS, and other "migration futures" scenarios;

ii) Reinforce understanding of migration through the development of more coherent and consistent data capture and management, including through strengthening national capacities and cooperation;

iii) Map and evaluate existing initiatives to promote the positive contribution of migration to development and to reduce its negative effects.

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### *Roundtable 2*

*"Measures to ensure respect for and protection of the human rights of all migrants, with particular reference to women and children, as well as to prevent and combat smuggling of migrants and trafficking in persons, and to ensure orderly, regular and safe migration"*

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### 2.1. Safeguarding the Human Rights of Migrants

The well-being and human development of migrants and their ability to contribute to both countries of origin and destination depends crucially on whether the migration is regular

or irregular, whether their human rights are safeguarded, and whether they are protected from abuse, exploitation and discrimination. HLD roundtable 2 could take stock of effective practices and successful partnerships in the following areas, building on existing tools and frameworks:

    i) Maintaining robust human rights protections and support for improving the implementation at all levels;

    ii) Continuing efforts to counter human trafficking and smuggling including assistance to victims of trafficking in persons and their families;

    iii) Strengthening measures to combat xenophobia and hate crimes;

    iv) Acknowledging the "feminisation" of migration and seek ways to protect women and girls, who are especially vulnerable to human trafficking and other abuses, including through gender-sensitive migration and protection policies;

    v) Improving the protection of migrant children and adolescents;

    vi) Ensuring appropriate processes are in place to protect refugees in "mixed flows" scenarios;

    vii) Increasing partnerships at the inter-governmental level and between governments and other non-State actors to recognise the importance of all migrants for development.

## 2.2. Improving the Perception and Well-Being of Migrants

Perceptions of migration and migrants, whether positive or negative, have a significant impact on the well-being of migrants and their ability to contribute to their full potential to their country of origin as well as the country of destination. This issue could benefit from discussions under roundtable 2 and encourage the examination of practical initiatives in the following areas:

    i) Promoting effective integration policies through sharing good practices and policies and encouraging increased and diversified integration stakeholders;

    ii) Strengthening measures to address discrimination and xenophobia;

    iii) Raising awareness of the positive contributions that migrants can and do make to host and source societies;

    iv) Fostering welcoming communities;

    v) Promoting effective dialogues on readmission and reintegration programs in view of States' obligation to admit, reintegrate and protect their own nationals;

    vi) Targeting information toward potential migrants to increase understanding about the challenges of migration and to help them avoid scenarios of exploitation and abuse.

## 2.3. Addressing Migrants in Crisis Situations

Large-scale, complex migration flows resulting from a crisis involve significant vulnerabilities for the individuals and communities affected. The issue of migrants in need of assistance in situations of crisis has garnered strong consensus for practical action within the international

community. In support of collaborative initiatives in this area, roundtable 2 could further consider appropriate means of:

i) Providing assistance to migrants caught in crisis situations, considering lessons learned from the Libya crisis for example;

ii) Ensuring protection is provided to refugees in keeping with the UN Refugee Convention and its protocols;

iii) Managing and responding to mixed migratory flows, in particular effective ways to combat migrant smuggling and human trafficking;

iv) Promoting regional protection programmes and securing development initiatives targeting both refugee communities as well as host communities and host countries.

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### Roundtable 3

*"Strengthening partnerships and cooperation on international migration, mechanisms to effectively integrate migration into development policies, and promote coherence at all levels"*

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### 3.1. Partnering More Effectively with all Actors Involved in Migration

Promoting the concept of well-managed migration and recognising the importance of the contribution of all stakeholders to addressing the opportunities and challenges related to migration, HLD roundtable 3 could identify specific actions for strengthening partnerships among States, UN agencies and international organisations, as well as with civil society, private sector actors and local authorities, by focusing on ways to:

i) Seek to better understand and define the responsibilities and obligations of source, transit, and destination countries alike toward migrants and migration flows;

ii) Consider ways of improving coordination among UN agencies and international organisations dealing with migration, particularly the Global Migration Group (GMG), as well as to strengthen their interaction with Member States;

iii) Seek ways of strengthening the partnership with civil society that embraces their expertise and experience particularly in providing services to migrants on the ground and through their advocacy strategies;

iv) Engage and strengthen the accountability of the private sector, including inter alia employers and recruitment agencies;

v) Consider ways of broadening engagement with local actors of influence where migrants live and work – e.g. local governments, cities;

vi) Seek to develop a jointly-understood vocabulary among migration actors and encourage trust-building.

### 3.2. Promoting and Strengthening Existing Institutions and Frameworks

Roundtable 3 could further identify good practices and mechanisms for effective collaboration at the inter-state, regional and inter-regional, and global levels and agree on key objectives:

i) Recognise and support the International Organization for Migration (IOM) as the leading inter-governmental organisation in the field of migration;

ii) Recognise the role and achievements of the Global Forum on Migration and Development (GFMD) as an effective global mechanism for progressing migration issues;

iii) Promote Regional Consultative Processes that provide targeted and focused approaches to finding solutions between groups of stakeholders;

iv) Promote the comprehensive approach of regional and bilateral migration policies, including by strengthening the migration policy capacities of states through capacity building;

v) Recognise the significant contribution of the Special Representative of the Secretary General for International Migration and Development, and consider a clearer articulation of the role with regard to supporting and strengthening GMG coordination;

vi) Call for progress in relation to coordination and coherence of migration issues across the United Nations and other international organisations; in particular by addressing the role of the GMG in effectively meetings states' needs;

vii) Encourage greater cooperation and communication among States with respect to States' expectations of international organisations.

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### *Roundtable 4*

*"International and regional labour mobility and its impact on development"*

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### 4.1. Optimising Labour Migration

Labour migration is central to the migration and development nexus. Among key interests are labour rights, skills recognition, effective job matching, pension portability, and brain drain and waste. In many countries the dynamics in labour migration have changed in recent years, with the private sector's role increasing and that of states decreasing, the feminisation of the workforce, diversity of skills levels and needs, an increase of short-term employment and temporary migration, and the need to balance between control and facilitation. In addition there is the contribution and policy challenges of integrating other migrants into the labour market, including those who have moved on family or humanitarian grounds. HLD roundtable 4 could discuss the following topics with the objective of identifying practical solutions to maximise the benefits of labour migration for all:

i) Ensuring employment and labour rights in national migration policies;

ii) Fostering well-managed labour and mobility programmes, offering access to labour markets through regular channels, including circular migration and pathways to permanent migration;

iii) Ensuring gender sensitive labour policies which would take due consideration of the role of women in the labour force and their particular vulnerabilities;

iv) Regulating and monitoring the role of migration consultants, agents and intermediaries.

v) Encouraging governments and other stakeholders to reduce costs and barriers to remittance transfer.

In November 1985, officials from seven European States met with the United Nations High Commissioner for Refugees in Stockholm to discuss the challenges that they were facing as a result of the rising number of people coming to Europe to seek asylum.

Over the next three decades, this and subsequent meetings would become the Intergovernmental Consultations on Migration, Asylum and Refugees, which remains a key forum for States from Europe, North America and Australasia— as well as a number of intergovernmental organisations—to discuss, explore and debate migration, asylum and refugee policy. The Intergovernmental Consultations has also served as inspiration for other groupings of States and organisations to form their own 'Regional Consultative Processes on Migration'.

To commemorate thirty years of this work, this publication explores the history and evolution of IGC, its operating principles, structure and activities, and the impact that it has had on the law, policy and administrative arrangements of its Participating States.

'A thorough and perceptive account of an international institution whose careful, quiet contributions deserve far wider attention.'

**David A. Martin, Warner-Booker Distinguished Professor of International Law Emeritus, University of Virginia School of Law**

'In its thirty-year history, the IGC has emerged as one of the most important and influential fora for exchanging data, expertise, and proposals on global migration. As yet, there has been no attempt to evaluate rigorously the history, remit, and influence of the IGC. In this balanced and meticulously researched report, Patrick Wall does just that. His cautious and well documented conclusion is that the IGC has played a concrete and positive role in asylum and migration policy, one that is by no means limited to a control agenda.'

**Randall Hansen, Professor of Political Science, University of Toronto**

**igc** intergovernmental consultations
on migration, asylum and refugees