



## **Managed Migration: Review of Readmission Agreements and a Case Study of Sri Lanka**



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## Contents

<b>List of Tables</b>	<b>ii</b>
<b>List of Figures</b>	<b>ii</b>
<b>Acronyms and Abbreviations</b>	<b>iv</b>
<b>Acknowledgements</b>	<b>v</b>
<b>Executive Summary</b>	<b>vii</b>
1. Understanding Readmission Agreements	1
1.1 Overview of Readmission Agreements	1
1.1.1 What are Readmission Agreements?	2
1.1.2 Readmission Agreements and International Law	4
1.1.3 Types of Migration Agreements	5
1.1.4 What is the Need for Readmission Agreements?	8
1.1.5 Readmission Processes and Procedures	11
1.2 EU Readmission Agreements with Other Countries	15
1.2.1 Evolution of EU Readmission Agreements	15
1.2.2 Obligations	17
1.2.3 Drivers of Readmission Agreements in the EU	18
1.2.4 Drawbacks of Readmission Agreements	20
1.3 EU-Sri Lanka Readmission Agreement	20
2. Migration Analysis in the European Union	24
2.1 Overview of Migration Patterns in the EU	24
2.1.1 Origins of Immigrants	25
2.1.2 Illegal Migration	26
2.1.3 Return Migration in the EU	28
2.2 Migration Inflows into Key European Countries	29
2.2.1 Migration Inflows in General	29
2.2.2 Migration Inflows of Asylum Seekers	34
2.3 Migration Outflows out of Key European Countries	39
3. Sri Lankan Migration Agreements	42
3.1 Individual European Agreements	42
3.1.1 United Kingdom	42
3.1.2 Italy	45
3.1.3 Switzerland	47
3.1.4 Norway	48
3.1.5 The Netherlands	48
3.1.6 Denmark	49
3.2 Informal Migration Agreements	49

3.2.1 Australia	49
4. Potential Costs and Benefits to Sri Lanka of a Readmission Agreement	52
4.1 Does the EU-Sri Lanka Readmission Agreement Incorporate Best Practices of other Readmission Agreements?	52
4.2 Potential Benefits to Sri Lanka	52
4.2.1 Economic Benefits	52
4.2.2 Political Benefits	53
4.3 Potential Costs to Sri Lanka	54
4.4 Way Forward	55
References	57
Appendix I: Definition of Selected Terms Related to Migration	61
Appendix II: Agreement Between the European Community and the Democratic Socialist Republic of Sri Lanka on the Readmission of Persons Residing Without Authorisation	65

## List of Tables

Table I.1: Regional Distribution of Agreements Linked to Readmission Concluded between EU Member States and Non-EU Countries	7
Table I.2: Readmission Procedures	12
Table I.3: EU Readmission Agreements	16
Table I.4: Visa Facilitation Agreements	19
Table 2.1: Sri Lanka Migration Inflows into Selected European Countries, 2009	29

## List of Figures

Figure I.1: Comparison of GDP Per Capita across Selected Signatory Countries of EU RAs	22
Figure 2.1: Countries with the Largest Foreign-born Populations (2010)	24
Figure 2.2: Immigrants to EU-27 (from outside EU) by the Level of Development of the Country of Previous Residence (2008)	25
Figure 2.3: Estimated Illegal Foreign Residents in the EU	27
Figure 2.4: Sri Lankan Illegal Migrants in European Countries, Ordered to Leave and Returned, 2010	27
Figure 2.5: Numbers of Forced Removals from Selected EU Countries, 2007-2009	28

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Figure 2.6:	Total Migration Inflows into Key European Countries, 2000-2009	30
Figure 2.7:	Sri Lanka Migration Inflows into Key European Countries, 2000-2009	31
Figure 2.8:	Migration Inflows into Key European Countries from Signatory Countries of Readmission Agreements	32
Figure 2.9:	Migration Inflows into Key European Countries from Non-Signatory Countries of Readmission Agreements	33
Figure 2.10:	Total Inflows of Asylum Seekers into Key European Countries, 2000-2009	34
Figure 2.11:	Inflows of Sri Lankan Asylum Seekers into Key European Countries, 2000-2009	35
Figure 2.12:	Inflows of Asylum Seekers into Key European Countries, by Country of Origin (for Signatory Countries of Readmission Agreements)	36
Figure 2.13:	Inflows of Asylum Seekers into Key European Countries, by Country of Origin (for Non-Signatory Countries of Readmission Agreements)	36
Figure 2.14:	Departures of Sri Lankans to Key European Countries, by Occupation Category	38
Figure 2.15:	Departures of Sri Lankans to Key European Countries, by Skill Category	39
Figure 2.16:	Outflows of Migrants from Key European Countries, by Country of Origin of Migrant (for Signatory Countries of RAs)	40
Figure 2.17:	Outflows of Migrants from Key European Countries, by Country of Origin of Migrant (for Non-Signatory Countries of RAs)	41

## Acronyms and Abbreviations

ADS	Approved Destination Status
CCB	Central Coordinating Body
CPTD	Common Provisional Travel Document
CID	Criminal Investigation Department
EC	European Commission
EEC	European Economic Community
EU	European Union
GoSL	Government of Sri Lanka
GDP	Gross Domestic Product
GDP PPP	Gross Domestic Product Purchasing Power Parity
HWWI	Hamburg Institute of International Economics
HDI	Human Development Index
ICMPD	International Centre for Migration Policy Development
IOM	International Organization for Migration
ILO	International Labour Organization
JRC	Joint Readmission Committee
JHA	Justice and Home Affairs
LTTE	Liberation Tigers of Tamil Eelam
NCCR	National Coordination Committee of Readmission
NCMS	National Centre for Migration Statistics
NGO	Non-Governmental Organization
OECD	Organization for Economic Co-operation and Development
RA	Readmission Agreement
SCIS	Source Country Information System
SLHC	Sri Lankan High Commission
SIS	State Intelligence Service
TCN	Third-country national
UK	United Kingdom
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
VFA	Visa Facilitation Agreement

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# Executive Summary

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While Australia, Canada and the US remain the most popular destinations for Sri Lankan migrants, the EU is also becoming increasingly important for Sri Lankan nationals seeking employment opportunities. However, there is also evidence of a rise in undocumented Sri Lankan migrants entering the EU. Readmission agreements (RAs) arose as a means of addressing this issue.

A readmission agreement (RA) regulates the return and readmission of persons between two or more countries. RAs are most commonly used by the European Union (EU). While the act of returning illegal migrants to their country of origin is a common part of repatriation policies in countries around the world, the term, “readmission agreement” is unique to the EU. An RA is an agreement which stipulates the procedures for one state (requesting state) to return migrants illegally present on its territory to their home state or a state through which they passed (requested state) en route to the state which seeks to return them. The primary purpose of RAs is to facilitate the return of non-nationals who do not have permission to remain in the territory of a state, and to formalize the process of returning these individuals to their state of origin.

The RA between the EU and Sri Lanka was initiated in 2000 and signed in 2005. A key component of the agreement is the Joint Readmission Committee (JRC). The JRC, which includes representatives from both the EU and Sri Lanka, is expected to provide the contracting parties with advice on issues pertaining to the application and interpretation of the RA.

When comparing with other EU RAs, it must be noted that the EU-Sri Lanka RA does not incorporate all features used by other RAs. One such difference is the provisions used to identify an irregular migrant. The set of documentation to be used to establish the identity and travel history of a person is included in the annexes of the RA.

Another key difference is the provision of a Visa Facilitation Agreement (VFA). The incentive of a VFA has been provided to several other signatories of EU RAs and enables expedited visa processing and fewer requirements of submitting documentation for travellers to the EU. This incentive has not been negotiated during the preparation of the EU-Sri Lanka RA, although the facilitation of the granting of visas, particularly for employment purposes, is a potential benefit for Sri Lanka in the future.

When examining Sri Lanka’s RA with the EU and other migration agreements with individual European countries, one primary difference relates to third-country nationals (TCN). A common practice is for irregular migrants to enter the EU through neighbouring states, such as Eastern European or North African countries, through an irregular migration path or with forged documents obtained in a transit country. This practice induced the EU to include a clause concerning the category of TCNs in

all RAs. For remote countries like Sri Lanka, the relevance of this clause might be minimal.<sup>1</sup> However, the obligation exists and Sri Lanka might be requested to accept third-country nationals by an EU Member State while they are being processed to identify their state of origin.

It is worth noting that, despite the fact that the illegal presence of Sri Lankan citizens in the EU is much higher than that of EU citizens in Sri Lanka, the RA is established on a basis of reciprocity, and therefore EU member states and Sri Lanka have agreed to fulfill the same obligation.

Among the most notable costs of the RA is the obligation to readmit third-country nationals who have transited through Sri Lanka en route to the EU. The government of Sri Lanka may face costs related to their detention, including the provision of shelter, food, and other necessities. In addition, in order to deter third-country nationals from misusing Sri Lanka as a transit point, local authorities may have to tighten border security, thereby incurring financial and administrative expenses.

Perhaps the greatest cost of all is the impact on irregular migrants themselves. Many of them have left behind their livelihoods and loved ones to migrate to the EU. Employing irregular means to do so is, in many cases, their last resort. The RA would facilitate the forced removal of these individuals and return them to a life of limited opportunities.

There are, however, means to assist these migrants upon their return to Sri Lanka. Reintegration programmes, in collaboration with the EU, may be implemented to help provide vocational training, housing, and other forms of assistance. The primary aims of these programmes would be to help develop a sustainable means of income generation and deter future irregular migration.

Another recommendation is to establish a data-sharing mechanism that would be used to monitor the movements of Sri Lankan migrants. The mechanism would be controlled by a central body coordinating data received from various government agencies, including the Department of Immigration and Emigration, the Sri Lanka Bureau of Foreign Employment, and the Criminal Investigation Department, among others. Employing such a mechanism would enable local authorities to more efficiently provide the necessary documentation when responding to an EU request for readmission.

There is also a need for a central coordination mechanism whose purpose would be to provide policy advocacy and direction on all readmission matters. This body would be expected to evaluate any necessary changes to readmission policy and suggest ways in which the RA may better benefit both parties.

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<sup>1</sup> It is unlikely that the last port of embarkation for an EU Member State is Sri Lanka for a third country national because Sri Lanka is not a commonly used transit country for Europe, while for example, the Middle East could be a regular transit point on the migration path to Europe for Sri Lankan citizens.

# I. Understanding Readmission Agreements

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The need for countries to control, count and predict migration flows has never been as strong as it is today. The number of migrants has grown to a high amount of 214 million, from 150 million 10 years ago, and the figure could rise to 405 million by 2050, as a result of growing demographic disparities, the effects of environmental change, new global political and economic dynamics, technological revolutions and social networks.<sup>1</sup> Nearly all countries are concerned by migration, whether as sending, transit, or receiving countries, or as a combination of these. International migration has thus become an intrinsic feature of globalization. Estimates, while not exact,<sup>2</sup> suggest that only some 10-15 per cent of today's 214 million international migrants are in an irregular<sup>3</sup> situation, most of whom enter legally but overstay the period of authorized stay.<sup>4</sup> However, there is a general consensus that the number of irregular migrants has grown in recent years.

In response to these trends, many states are likely to need to invest in developing their migration management capacities. Border management, targeted assistance for return migration, passport and visa systems, determination of migrant status, and refugee protection are some of the areas of migration management discussed. Out of these, the concept of "return migration", the act of going back from a country (either transit or destination) to the country of previous transit or origin,<sup>5</sup> is particularly important in the context of the need to return irregular migrants to their countries of origin. Returns can be either voluntary, where migrants themselves decide to return home at their own will, or involuntary, which involves forced return by the host state. While voluntary return is the preferred option for both policy makers and those being returned, there is an inevitable need for enforced returns to take place in some cases - a balanced migration returns policy is one that will include enforced returns when voluntary returns are not possible, which will also safeguard the integrity of international protection mechanisms.<sup>6</sup>

## I.1 Overview of Readmission Agreements<sup>7</sup>

The concepts of return and readmission of states' migration policies are not a new phenomenon. Zolberg (2006) shows that, as early as the 19th Century, in the United States, "deportation did not constitute a punishment but was merely an administrative device for returning unwelcome and

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<sup>1</sup> IOM, 2010a, *World Migration Report 2010*, Geneva: IOM.

<sup>2</sup> Data on stocks and flows of irregular migration, at the local, national, regional and global levels, vary widely and are usually imprecise. There is also a lack of comparable data, both over time and between locations.

<sup>3</sup> Irregular migrant: Someone who, owing to illegal entry or the expiry of his or her visa, lacks legal status in a transit or host country. The term applies to migrants who infringe a country's admission rules and any other person not authorized to remain in the host country (also called clandestine/ illegal/undocumented migrant or migrant in an irregular situation).

<sup>4</sup> IOM, 2010a, *World Migration Report 2010*, Geneva: IOM.

<sup>5</sup> IOM, Return Migration. [<http://www.iom.ch/jahia/jahia/about-migration/managing-migration/managing-migration-return-migration/cache/offonce/>]

<sup>6</sup> Ibid.

<sup>7</sup> See Appendix for definition of selected terms in relation to migration.

undesirable aliens to their own countries."<sup>8</sup> However, at this time, return migration was primarily to do with migrants' own motivation to return home on a temporary or permanent basis and thus was simply a 'voluntary' occurrence. With the rapid increase in flows of both legal and illegal migrants into Western countries, 'involuntary' or 'forced' return became necessary, thereby leading to the implementation of various repatriation policies by host countries, which included provisions for the forced removal of migrants who no longer qualified to stay in destination countries to their countries of origin.<sup>9</sup>

During the two decades following the Second World War, in the context of the continual flow of particularly undocumented migrants with no proof of their country of origin, along with the enlargement of the European Union (EU), the necessity for the introduction of Readmission Agreements (RAs) as a means of coping with irregular migrants emerged, resulting in a number of bilateral RAs being concluded between the states in Western Europe. In the 1960s, member states of the European Economic Community (EEC) signed RAs to cope with irregular movements of persons amongst member states.<sup>10</sup> Since the mid-1980s and the fall of the Berlin Wall, political and migratory changes, deregulation of emigration, an increased interest in RAs emerged.<sup>11</sup> The conclusion of agreements gained momentum from the 1990s, particularly following the June 2002 Seville European Council which called for stronger cooperation in this field with non-EU countries. This trend reflects the fact that the issue of readmission is gradually pervading various policy areas, not only the migration and asylum policy of the EU and its member states, but also their trade and development aid policy, as well as their international relations.

### **1.1.1 What are Readmission Agreements?**

A readmission agreement regulates the return and readmission of persons between two or more states in a treaty of international law.<sup>12</sup> "Readmission" is an act by a state accepting the re-entry of an individual (own national, third-country national<sup>13</sup>) or stateless person, who has been found illegally entering or being present in another state.<sup>14</sup> Accordingly, an RA is an agreement which addresses procedures for one state (requesting state) to return illegal migrants<sup>15</sup> to their home state or a state through which they passed (requested state) *en route* to the state which seeks to return them.<sup>16</sup>

RAs are most commonly associated with the EU. While the act of returning illegal migrants are involved in other repatriation policies followed by different countries, the term "readmission agreements" is unique to the EU and its member countries. The European Commission (EC) defines EU RAs in the

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<sup>8</sup> Zolberg, Aristide, *A Nation by Design: Immigration Policy in the Fashioning of America* (Cambridge: Harvard University Press, 2006), pp. 225-226.

<sup>9</sup> Many of these were informal agreements, and thus no records are available.

<sup>10</sup> Bouteillet-Paquet, Daphne, "Passing the Buck: A Critical Analysis of the Readmission Policy Implemented by the European Union and Its Member States," *European Journal of Migration and Law*, Vol. 5. 359-377, 2003, p. 259.

<sup>11</sup> *IGC Report on Readmission Agreements*, Inter-Governmental Consultations for Asylum, Refugee and Migration Policies in Europe, North America and Australia: January 2002.

<sup>12</sup> Noll, G., 'Readmission Agreements' in Gibney/Hansen, *Immigration and Asylum*, ABC CLIOS, Santa Barbara, 2005, p. 495.

<sup>13</sup> Third-country national refers to an individual whose nationality is neither of a requesting state nor of a requested state.

<sup>14</sup> International Organization for Migration (IOM), 2004, Glossary on Migration. Geneva: IOM.

<sup>15</sup> The expression "irregular migrants" is also used to refer to illegal migrants.

<sup>16</sup> International Organization for Migration (IOM), 2004, Glossary on Migration. Geneva: IOM.

following way: "A Community Readmission Agreement is an international agreement between the European Community and a third country which sets out reciprocal obligations, as well as detailed administrative and operational procedures, to facilitate the return of illegally residing persons to their country of origin or country of transit".<sup>17</sup> The same definition usually applies for bilateral RAs, except that they do not involve the EU. Such agreements set out a number of conditions that, if fulfilled, impose upon the country of origin a contractual obligation to readmit the person in question onto its territory, in addition to the obligation already flowing from international law. The agreement sets out the precise conditions that are to be fulfilled in order for the requested readmission to be granted.

RAs also entail that the requested state must readmit to its territory, upon application by the requesting state, any third-country national or stateless person who does not fulfill, or who no longer fulfills, the conditions for entry to or residence in the territory of the requesting state, where it can be proved that such a person:

- has unlawfully entered the territory of the requesting state directly from the territory of the requested party.
- held, at the time of entry, a valid residence authorization issued by the requested state.
- held, at the time of entry, a valid visa issued by the requested state.

RAs entail certain Rights and Obligations on contracting parties. The requesting state usually has the following obligations:

- To prove that there are grounds for readmission (such as the nationality of the person or the fact that the person entered directly from the requested state).
- To liaise with the competent authorities of the requested state in order to obtain the necessary documents.
- To submit the formal application for readmission and supporting documents/evidence to the requesting state's competent authorities.
- To notify the requested state within the time frame permitted about the transfer of the person and the details of the transfer.
- To transfer the person to the competent authorities of the requested state.
- To cover the expenses related to the transfer up to the border of the requested state and to cover all the expenses related to the transit through the territory of the transit country (this depends on the respective agreements).
- To take the person back if the grounds for readmission were found to be non-existent after the transfer of the person to the requested state.
- To respect the confidentiality of personal data of the transferred person.

The rights of the requesting state derived from the RA mean that it can benefit from the facilitated procedure for readmitting persons who do not have legal grounds to stay in its territory and obtain cooperation from the requested state regarding the implementation of the readmission process.

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<sup>17</sup> Council of Europe: Parliamentary Assembly, 2010, Readmission Agreements: a Mechanism for Returning Irregular Migrants.

RAs can impose the following obligations on the requested state:

- To accept to its territory its own nationals, foreign nationals or stateless persons transferred by the requesting state in accordance with the conditions set in the RAs.
- To issue travel documents to persons returned or transferred by the requesting state.
- To identify foreign nationals or stateless persons in order to return them to their countries of origin.<sup>18</sup>
- To reply to the application for the readmission within the defined time limits.
- To respect the confidentiality of the personal data of the transferred person.
- To allow the transit of the person returned by the requesting state through its territory.

RAs generally confer more obligations than rights to the requested state. Among its rights, the following are important:

- The right to readmit returned persons to the requesting state when it appears that the grounds for readmission were found to be erroneous after transfer to the requested state.
- The right to refuse the transit of persons returned by the requesting state on the grounds clearly defined in the agreement.

### **1.1.2 Readmission Agreements and International Law**

Issues dealing with both documented and undocumented migrants have always been a concern of the international community. The 1951 Convention relating to the Status of Refugees and its 1967 Protocol constituted a crucial step in improving the fate of refugees, and in establishing global management of this issue. The International Labour Organization (ILO) has elaborated two Conventions that aim at protecting migrant workers.<sup>19</sup> In the 1970s, it was recognized that migrants constitute a vulnerable group and that the promotion of human rights for this population required a special UN convention. The outcome was "The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families," which entered into force in July 2003. Its primary objective is to protect migrant workers and their families from exploitation and the violation of their human rights. This Convention defines the rights of migrant workers under two main headings:

- Human Rights of migrant workers and members of their families (Part III) : applicable to all migrant workers (undocumented included).
- Other Rights of migrant workers and members of their families (Part IV): applicable only to migrant workers in a regular situation.

The individual right to leave any country and return to one's country of origin can be found in the following international instruments:

- "Everyone has the right to leave any country, including his own, and to return to his country."<sup>20</sup>

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<sup>18</sup> The Requesting state is not required to identify the foreign national before the transfer; it is sufficient to prove that this person is a national of or arrived from the territory of the requested state.

<sup>19</sup> Convention 97 (1949) and Convention 143 (1975).

<sup>20</sup> Article 13 (2) of the Universal Declaration of Human Rights of 1948.

- “No one shall arbitrarily be deprived of the right to enter his own country.”<sup>21</sup>
- “State parties undertake...to guarantee the right of everyone...to leave any country, including one's own, and to return to one's country.”<sup>22</sup>

It is thus clear that the state of nationality cannot put any limitation on returns of its nationals under international law.<sup>23</sup> As pointed out in the *Manual on Readmission (2010)*, a difference however exists between 'admission' and 'readmission' of a state's own nationals. By admitting a national, a state responds to an individual's claim to meet the human right to return to one's own country by an obligation to accept this person. In case of readmission, i.e., under an instrument of forced return, the will of the person is lacking and a state instead is facing an international right of another state to expel a non-national. The right to remove non-nationals from a territory constitutes a principle of customary international law. In order for this right to be effective, there must be another state which has an obligation to accept the expelled person. The obligation to accept the return of a person is linked to the issue of nationality: only the state whose nationality the person possesses is obliged to receive him/her.

However, the question of whether the state has an obligation to readmit its national is not addressed explicitly in international law. It is, hence, a consequence of the right of a state to remove non-nationals. The obligation of a state to readmit its nationals on the ground of the claim from another state is provided mostly for in RAs. Besides, there is no clear obligation under international law for states to accept the return of stateless persons or third country nationals. Therefore, it is evident that requirements involved in RAs go beyond the general principles envisaged in international law.

### **1.1.3 Types of Migration Agreements<sup>24</sup>**

There are five basic types of RAs, which include three types of formal RAs, - bilateral, multilateral and model agreements - agreements with readmission provisions and informal arrangements on readmission and return.

#### ***Bilateral Formal Agreements***

Most RAs are bilateral, which is most likely to do with it being easier to negotiate on bilateral terms than on multilateral. Besides saving a lot of negotiating, another advantage is that detailed provisions can be adapted to the special circumstances and the special relations between the two parties.<sup>25</sup> A disadvantage is that a growing number of bilateral agreements can complicate future negotiations between states that already have entered into many agreements and have a preconceived view of which provisions should be included.<sup>26</sup> Examples of bilateral RAs include the agreements between Chile and France, Spain and Romania and Germany and Bulgaria among many others.

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<sup>21</sup> Article 12 (4) on the International Covenant on Civil and Political Rights of 1966 States.

<sup>22</sup> Article 5 (d) (ii) of the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 States.

<sup>23</sup> IOM, 2010b, *Manual on Readmission: Selected Foreign Readmission and Return Practices*. Moscow: IOM.

<sup>24</sup> Arnarsson, Bjartmar Freyr, 2007, *Readmission Agreements: Evidence and the Prime Concern*, Faculty of Law, University of Lund, Master Thesis.

<sup>25</sup> *IGC Report on Readmission Agreements*, 2002, Geneva: IGC Secretariat.

<sup>26</sup> *Ibid.*

### **Multilateral Formal Agreements**

A few of the existing RAs are multilateral, including Schengen, Schengen and Poland and a few recent EU RAs with Macao, Hong Kong and Sri Lanka, which are based on the EU Model agreement but in essence are multilateral. A multilateral RA is often the consequence of a decision by several states to ease their internal border control. Such agreements ensure a certain degree of uniformity in readmission practice within the participating states, but often require long negotiations and detailed provisions. This can be harder to achieve the higher the number of countries involved, where the issues of readmission are more of a priority to some states than to others.<sup>27</sup>

### **Model Agreements**

A third type is the model agreement, which is an agreement with standard clauses, which could act as a stop gap mechanism until regional or international conventions are concluded.<sup>28</sup> The EU RAs with Macao, Hong Kong and Sri Lanka are all based on a model agreement established by the EU. Advantages are reduced negotiation times and increased consistency in implementation, but a disadvantage is that the provisions in a model agreement can be too general to deal with specific readmission problems between two states. For example, while the Macao and Hong Kong agreements are nearly identical, the Sri Lankan agreement is slightly different.<sup>29</sup>

### **Readmission Provisions**

A fourth way of dealing with return is having readmission provisions in agreements not specifically on readmission. An advantage is that states are more likely to fulfill their readmission obligation as to not lose the other benefits from the agreement. The main disadvantage is the possible lack of precision, which can hamper the effective implementation of the readmission provisions.<sup>30</sup>

### **Informal Arrangements**

Finally, some states engage in informal arrangements concerning readmission. An advantage of an informal agreement is that being in written or oral form, the terms are more easily re-negotiable due to changed circumstances, and perhaps even more adaptable to individual cases. With a formal agreement, re-negotiations could be lengthy. Also, an informal agreement may very well be sufficient for an effective readmission procedure between the two states. States have even pointed out that these informal arrangements lead to a more 'formal' and efficient procedure than do normal formal agreements owing to simpler negotiation processes. Other states lean towards the view that it is not the type of agreement that matters but rather how well established communications and good intentions between the two states in question are.<sup>31</sup> A main concern with informal agreements, from a human rights perspective, would be the lack of insight of the actual procedure. Moreover, these alternative patterns of cooperation linked to readmission but not formalized as RAs are by nature difficult to detect. Being

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<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Differences between certain readmission agreements, including those relating to Macao, Hong Kong, and Sri Lanka, will be discussed in more detail later on.

<sup>30</sup> *IGC Report on Readmission Agreements*, 2002, Geneva: IGC Secretariat.

<sup>31</sup> Ibid.

informal, they are not usually recorded in official documents.<sup>32</sup> Examples include exchanges of letters and memoranda of understanding<sup>33</sup> or broader frameworks of cooperation including additional forms of mutual assistance (e.g., police cooperation agreements).

To summarize, the type of RA used by participating states depends on factors such as:

- the state of origin/state to which the person is to be returned
- the type of problem
- the numbers involved
- who is asking for the agreement
- at what level the agreement is

Table I shows the regional distribution of all agreements linked to readmission. While most formal RAs have been concluded with non-EU countries in Eastern Europe and the Balkans (87 out of 132), more than two-thirds of the informal agreements linked to readmission (memoranda of understanding, exchanges of letters, police cooperation agreements including a clause on readmission and other deals) are with countries in the South and East Mediterranean and Africa (32 out of 46).

**Table I.1**  
**Regional Distribution of Agreements Linked to Readmission Concluded between EU Member States and Non-EU Countries<sup>34</sup>**

	Non-EU Countries in Eastern Europe and the Balkins	Maghreb Countries <sup>a</sup>	Other Countries in the South and East Mediterranean	Rest of Africa	America	Asia/Oceania	Total
Formal RAs	87	8	2	3	21	11	132
Memoranda of understanding	1	5	2	1	1	4	14
Exchange of letters	0	5	0	0	0	1	6
Police cooperation agreements	3	6	6	0	1	3	19
Other cooperation deals	0	0	0	7	0	0	7
Total	91	24	10	11	23	19	178

Note: Algeria, Libya, Mauritania, Morocco and Tunisia.

Source: Cassarino, Jean-Pierre, "Informalising Readmission Agreements in the EU Neighbourhood," *The International Spectator*, Volume 42, No. 2, June 2007.

Thus there are two geographic ensembles (Eastern Europe and the Balkans, and the South Mediterranean and Africa) which differ from one another in terms of patterns of cooperation on readmission issues

<sup>32</sup> For example, in Italy, in accordance with Article 4 of Decree 286/1998, the Ministries of Foreign Affairs and of the Interior are by law entitled to conclude bilateral repatriation deals with third countries. The Italian executive may conclude such bilateral deals without the prior authorization of the Parliament (Cassarino, 2007).

<sup>33</sup> An example of an informal agreement is the MoU between USA and Mexico signed in 2004.

<sup>34</sup> Unfortunately, the most recent data is only available for 2007.

with the EU member states. The differences stem not only from the number of agreements concluded, but also from the patterns of cooperation: they are rather homogenous in the case of Eastern European and Balkan countries (87 out of 91 agreements are formal RAs) and extremely heterogeneous in the case of Southern and Eastern Mediterranean countries, particularly those in the Maghreb.<sup>35</sup>

#### **1.1.4 What is the Need for Readmission Agreements?**

##### ***In Favour of RAs: Perspective of Requesting States***

The overall aim of RAs is to facilitate the return of non-nationals who do not have legal grounds to stay in the territory of a state, to the state they originated from or transited through, by addressing the procedures of return, and to formalize the effective return process and to prevent the occurrence of difficulties in this field.<sup>36</sup>

One may question the need for an RA, given the obligations to readmit persons already existing under international law. A response to this from requesting states has been that normal removal procedures are sometimes hampered by a lack of cooperation from the country of origin of the person to be removed. When there is an RA, the country of return works under the obligations accepted in that agreement, within defined time limits for the procedure, through the institutions/authorities/agencies responsible for its implementation and with all the technical aspects regulated, and in doing so contributes to a quicker implementation of the removal.<sup>37</sup> This means that the authorities of the requested state have an obligation to provide the person in question with the necessary documents to enable his/her readmission within a relatively short time frame. This is not the case in forced removal procedures between states that are not party to an RA, where consular authorities do not have time limits for issuing documents.

Furthermore, as explained previously, countries of destination of migration flows have shown a keen interest in RAs because their requirements make it possible to go beyond the general principles included in international law. While other bilateral or multilateral migration agreements generally impose reciprocal obligations on the contracting parties to readmit their nationals, the distinctiveness of RAs is the extension to cover persons who are not nationals of the contracting parties, but who transited through the territory of one of the parties en route to the other. This inclusion is important, given that persons to be returned are most of the time undocumented, with no proof of citizenship from their country of origin. As stated by Osowska (2010), the EC views RAs with transit countries as an alternative to repatriation to countries of origin of irregular migrants, whose itinerary, but not their identity, can be established.

In response to many human rights concerns raised with regard to readmitting non-nationals, RAs have been justified as a "more cost-effective, extremely useful and efficient instrument in the EU's fight against illegal immigration".<sup>38</sup> They argue that the added economic, diplomatic and political pressure

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<sup>35</sup> Cassarino, Jean-Pierre, "Informalising Readmission Agreements in the EU Neighbourhood," *The International Spectator*, Volume 42, No. 2, June 2007.

<sup>36</sup> IOM, 2010b, *Manual on Readmission: Selected Foreign Readmission and Return Practices*. Moscow: IOM.

<sup>37</sup> Ibid.

<sup>38</sup> Statewatch, 2002, *EU seeking readmission (repatriation) agreements with 11 countries*. [<http://www.statewatch.org/news/2002/oct/06readm.htm>]. (cited in Roig and Huddleston, 2007).

that they can exert collectively would make the conclusion of RAs more rapid, efficient and productive. However, The EU has only received a limited number of mandates from 1999 to 2010, some of which are stalled. The reason behind these stalled negotiations thus merits further investigation.

### ***In Favour of RAs: Perspective of Requested States***

While the interests of a destination country seem obvious, the interest of a country of origin may be less evident. As pointed out by Cassarino (2007), benefits for requested states may include various compensatory measures, such as special trade concessions, the accession to a regional trading bloc, preferential entry quotas for economic migrants, technical cooperation, increased development aid, and entry visa facilitations, which have been the most common incentives used by EU member states.<sup>39</sup> An intangible benefit from cooperation on readmission highlighted in the literature<sup>40</sup> is that entering into an RA carries with it the implication that the EU acknowledges the source country as a 'safe' place for repatriation of migrants, thereby enhancing the credibility of the source country in the international arena, which can in turn lead to the securing of economic and political benefits.

### ***Arguments against RAs***

RAs have been endorsed as an essential part of the instruments aimed at dealing with the issue of unauthorized migration and protecting the integrity of the immigration and asylum systems in most destination countries, and has been used as an argument in favour of security-oriented methods and means of implementation.<sup>41</sup> As pointed out by Cassarino (2008), cooperation over re-admissions with undemocratic regimes in neighbouring countries has even been justified in official discourses as a 'necessary evil'. The argument that 'there is no other option' has led to the use of solutions that are seen as a necessary evil, disregarding any alternative solutions.

These arguments, however, need to be questioned. Why has the issue of return been primarily associated with security concerns in the mechanisms that have been implemented so far by states? As shown by Cassarino (2008), this may be partly attributable to the way these policies, which are primarily designed to secure the effective departure of unauthorized migrants, are labelled. Upon examination of the content of RAs, the terms 'expulsion' or 'removal' - rather than 'return' and 'readmission' - seem to be far more consistent with the actual rationale for these policies. The term 'readmission' seems to be a less harsh way of depicting these agreements.

Another primary concern relates to the obligations involved for both parties entering into an RA. According to the wording, these agreements are being signed on the basis of the principle of "reciprocity",

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<sup>39</sup> Some Central Eastern European countries (Bulgaria and Romania), with a real prospect of accession to the EU at the time of readmission talks and negotiations, and which are now EU member states, were quite collaborative during these discussions, which led to the conclusion of numerous bilateral agreements with EU member states. Similarly, for those Eastern European countries wishing to keep the European door open, even though they have no clear long-term prospect of EU membership (for example, Ukraine and Moldova), substantial progress has been made on readmission talks and visa facilitations. Conversely, bilateral negotiations on readmission with Mediterranean countries which have no prospect of accession to the EU have been lengthier and much more complicated.

<sup>40</sup> Cassarino, Jean-Pierre, "Informalising Readmission Agreements in the EU Neighbourhood," *The International Spectator*, Volume 42, No. 2, June 2007.

<sup>41</sup> Cassarino, Jean-Pierre, 2008, "Return and Readmission in States' Migration Policies."

which means that all contracting states must be prepared to readmit both their own citizens and third country nationals on the same terms. However, as emphasized by Trauner and Kruse (2008),<sup>42</sup> in the case of most RAs, the argument of reciprocity is hypocritical because requested states would not have problems with expulsions to requesting states. Moreover, this reciprocity of obligations does not mean that the contracting parties benefit equally from the conclusion and implementation of RAs. To use Robert Keohane's words, RAs characterize "relations among unequals",<sup>43</sup> above all when they involve two signatory countries that have a significant level of developmental asymmetry, which is more often than not the case.<sup>44</sup> Cassarino (2008)<sup>45</sup> argues that RAs, which have been presented as necessary instruments for deterring and combating unauthorized migration, has turned the disparities between countries of origin and destination (in terms of undemocratic governance, political instability, disastrous environmental conditions, under-employment and poverty) into secondary causes, although they are the very factors that prompt numerous migrants to leave and seek better living conditions abroad. To quote Cassarino (2008), "the expulsion or re-admission of migrants from the territory of destination countries has been prioritized, regardless of whether the country of re-admission has the capacity to respect the fundamental rights and protect the dignity of re-admitted persons."<sup>46</sup>

Furthermore, the perceived costs and benefits of RAs differ substantially for the contracting parties. While the interest of a destination country seems obvious (the effective removal of unwanted migrants), as explained before, the interest of a country of origin may be less evident, when considering that its economy remains dependent on the revenues of its (legal and illegal) migrants living abroad, or when migration continues to be viewed as a solution to domestic unemployment. On the other hand, the costs of an RA are borne predominantly by the requested state. While the costs for the requesting country may be linked to the uncertainty surrounding the full implementation of the agreement, those for the requested state arise from the substantial structural institutional and legal reforms required, which could have a disruptive impact on state-society relationships and on the domestic economy.<sup>47</sup> For example, requested countries may need to invest in programmes that aid returnees to obtain training in vocational jobs or seek employment in their home country. These countries may also need to set up services that provide psychological counselling and financial assistance to returnees. It is thus evident that the balance between the costs and benefits to both parties are unequal, and added to that is the complication of the possibility of costs and benefits changing over time. In the long run, the concrete benefits might turn out to be too weak with respect to the unintended costs of the bilateral cooperation on readmission. This change of value might negatively impact on the effective implementation of an RA and lead gradually to defection.<sup>48</sup>

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<sup>42</sup> Trauner, Florian and Imke Kruse, 2008, *EC Visa Facilitation and Readmission Agreements: implementing a new EU security approach in the neighbourhood*, Centre for European Policy Studies, Working Document No. 290.

<sup>43</sup> Keohane, R., 1986, "Reciprocity in International Relations," *International Organization*, 40(1): 1-27.

<sup>44</sup> Cassarino, Jean-Pierre, "Informalising Readmission Agreements in the EU Neighbourhood," *The International Spectator*, Volume 42, No. 2, June 2007.

<sup>45</sup> Cassarino, Jean-Pierre, 2008, *Return and Readmission in States' Migration Policies*.

<sup>46</sup> Ibid.

<sup>47</sup> Cassarino, Jean-Pierre, "Informalising Readmission Agreements in the EU Neighbourhood," *The International Spectator*, Volume 42, No. 2, June 2007.

<sup>48</sup> Ibid.

For example, Morocco and Spain concluded an RA in February 1992 which covered readmission of nationals of the contracting parties as well as removal of illegal third-party nationals and stateless persons. To date, this agreement has never been fully implemented owing to the reluctance of the Moroccan authorities to accept readmission of third-country nationals originating mainly from sub-Saharan Africa who purportedly transited through Morocco before being apprehended on Spanish territory. Morocco agreed to sign the RA as part of a reconciliation process with its Spanish neighbour which followed the signing of a Treaty of Good-neighbourliness and Friendly Cooperation on 4 July 1991. At the time, the migration of sub-Saharan nationals transiting through Morocco en route to Spain and the EU was not viewed as significant. Also, Morocco's acceptance to conclude this agreement was motivated by its ambition to acquire a special status in its political and economic relationships with the EU.<sup>49</sup> This illustrates how the emergence of unexpected costs of the implementation of the agreement could lead to defection.

### **1.1.5 Readmission Processes and Procedures**

RAs mainly concern three actors: the state that requests readmission (requesting state), the state that is requested to readmit (requested state), and the person to be readmitted (irregular migrant). Their interests are very different. While the first two actors decide upon the legal framework of readmission, the third one is its mere object. Another important actor involved is the Joint Readmission Committee, an appointed committee of experts, who are in charge of monitoring the overall implementation of the agreement. Besides these actors, in each country there will be a number of institutions handling RAs at different stages of implementation, such as the Ministry of Foreign Affairs, embassies and consular authorities abroad, Ministry of Labour etc. Table 2 summarizes readmission processes and procedures and the issues involved at each stage.

While the target is to follow a standard approach in negotiating RAs, during negotiations, adjustments are required according to the respective country's objections and demands, so that ultimately agreements will differ, which in turn reflect the many complexities involved in negotiating RAs with diverse countries. As pointed out by Trauner and Kruse (2008), these differences reflect the different geographic conditions, political situations and histories of contracting parties.

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<sup>49</sup> Mrabet, E. A., "Readmission Agreements: The Case of Morocco", *European Journal of Migration and Law*, 5 (2003): 379-85.

**Table 1.2**  
**Readmission Procedures**

<b>Processes/Procedures</b>	<b>Description</b>	<b>Issues</b>
Establishing evidence regarding nationality	While the number of grounds sufficient to prove the nationality of a person varies with each agreement, <sup>50</sup> the following documents are the most common: Passports (ordinary, diplomatic or official duty, passport substitutes), personal identity cards/documents, provisional identity cards/papers, military passes and certificates, certificates of nationality, children's identity documents in lieu of a passport, documents of consular registration.	Issues relating to presentation of forged documents.
Presumption of nationality <sup>51</sup>	Expired documents listed as proof of nationality, copies of documents listed as proof of nationality, driving licences or copies thereof, birth certificates or copies thereof, company employee identity cards or copies thereof, testimonies of witnesses, language tests, social insurance certificates, particulars supplied by the person concerned, documents issued by authorities of the requested state which show the identity of the person concerned, official statements of the person concerned in judicial or administrative proceedings, expired authorization documents of residency, military cards/documents.	
Entry	Visa and/or residence authorization issued by the requested state, entry/departure stamps made by the border control authorities of the requested state, previous entries made in the person's passport by the authorities of the state, statements by border guard officials who can prove the border crossing of the person in question from the requesting to the requested state, air or any other transport tickets with the name of the passenger and the route.	
Third country nationals (TCNs)/stateless persons	With TCNs, there are much fewer types of evidence to consider and differences between agreements are larger.	Identifying a TCN or stateless person and proving their entry across an external border is not a straightforward task. Means of showing evidence of identity is lacking in many RAs regarding TCNs and stateless persons.

<sup>50</sup> For example, there are three in the agreement between Chile and France, five in EU agreements with third countries, the Ukraine-Poland agreement and the Spain-Romania agreement, seven in the agreement between Germany and Bulgaria, and eight in the implementing protocol between Germany and Poland.

<sup>51</sup> If proof of nationality is not available, nationality can be presumed on certain grounds.

Processes/Procedures	Description	Issues
Time limits: Application for readmission <sup>a</sup>	<p>If the person to be readmitted has a valid identification or travel document (in case of nationals) or a valid visa or residence permit (in the case of foreign nationals or stateless persons), such a person can be returned without an application for readmission.</p> <p>RAs which operate within an accelerated readmission procedure usually provide for a 48-hour period for submission of the application. There is no unified approach concerning the period allowed for finding the fact of irregularity of entry/stay of the person and the application for readmission by the requesting state. The requesting state must submit readmission applications for third-country nationals at most one year after becoming aware of the facts.</p> <p>Replies to applications have to be provided in writing within a set time limit (exact number of days vary for each agreement) from the date of receipt of the readmission application. For some RAs this time limit is reduced if the individual is apprehended in the border region of the requesting state. By contrast, it may also be extended by a maximum of six days in certain circumstances.</p>	<p>Lack of cooperation between the contracting states in adhering to specified time limits in submitting and responding to readmission applications.</p>
Reply to application	<p>If a reply is not provided, the approval for transfer is considered granted, and the readmission process can begin. If the application is rejected, the readmission shall not take place, given that rejection decisions are justified by the requested state. If the application is accepted, the readmission shall take place. In principle, transfers are organized within the three months following acceptance. This deadline may be extended.</p>	
Transit provisions	<p>Contracting parties are required to notify in advance in writing the details of the transit operation, which should contain the following information: type of transit (by air, sea or land), intended final destination, route of transit, particulars of the person concerned (given name, surname, date of birth, nationality, number and type of travel documents), envisaged border crossing points, time of transfer and possible use of escort.</p> <p>The transit country can refuse the transit on the following grounds:</p> <ul style="list-style-type: none"> <li>• if the foreign national or stateless person runs the risk of being subject to torture, inhuman treatment, punishment and death penalty or of persecution because of his/her race, religion, nationality, membership of a particular social group or political conviction in the state of destination or transit.</li> <li>• If the person shall be subject to criminal prosecution or sanctions in the requested state or state of transit.</li> </ul>	

Processes/Procedures	Description	Issues
Costs	<ul style="list-style-type: none"> <li>• Grounds of public health, public security, public order or other national interest of the requested state.</li> </ul> <p>The request for transit should be answered in writing with confirmation of the details of the transfer or refusal thereof. In the case of transit by air, the person and the escort (if any) are visa exempt on condition that they do not leave the airport transit zone.</p> <p>In readmission operations, all transport costs as far as the border of the state of final destination will be borne by the requesting state. After the transfer at the border point, i.e., within the territory of the requested state, the expenses are covered by the requested state. In case of transit, all the expenses are borne by the requesting state.</p>	<p>Some requested states may not have the resources required to cover expenses related to returned migrants and may thus fail to fulfill this responsibility.</p>

Note: Any transfer of an individual to be readmitted must follow an application known as a "readmission application" submitted by the requesting state to the requested state. However, no application is required when the person is in possession of a valid travel document or an identity card and, where necessary, a visa or a residence permit issued by the requested state. Readmission applications must include the following information and documentation concerning the person concerned: surname, other names, date and place of birth, last place of residence, documents confirming his/her nationality, photograph, a note as to whether he/she requires help or care and information on any other protection or security measure which may be necessary for his/her transfer.

## **1.2 EU Readmission Agreements with Other Countries**

### **1.2.1 Evolution of EU Readmission Agreements**

The concept of an RA arose as a means of combating illegal flows of migrants into the EU. According to Europol, between 400,000 and 500,000 people cross into the EU irregularly every year.<sup>52</sup> It is estimated that around three million irregular migrants currently reside within the EU.

The idea for EU RAs can be traced back to the two decades following the Second World War. During this period, several bilateral RAs were concluded between Western European countries. In the late 1950s, two multilateral agreements (Convention on the Waiver of Passport Controls at the IntraNordic Borders and the Benelux Convention) were signed, which took into account readmission clauses within its framework for border control. RAs within Europe continued to be signed in the 1960s but died down during the decade that followed. However, this interest was reignited in the 1980s, following changes in migration flows into Europe and renewed attention within state politics in the continent. This renewed interest led to the signing of a "second generation" of RAs in the 1980s within Europe.<sup>53</sup> These covered more possibilities of identifying potential illegal migrants. For example, they included a provision for individuals who had illegally stayed in a country, whereas the original provisions covered only illegal entry. The second generation of agreements also included broader provisions for establishing nationality. Presumptions of nationality were used in the second generation of agreements, rather than just proof of nationality as had been used in previous agreements.

The accession of Central and Eastern European countries into the EU in the 1990s further heightened the need for migratory control. Western Europe hoped to stem the flow of illegal migrants by signing RAs with Central and Eastern European countries, which were subsequently expected to tighten their borders and prevent third-country nationals from using them as transit points on their way to other European states. These agreements also served the purpose of holding these new Central and Eastern EU member states accountable for migratory movements of their own citizens. Between 1990 and 2000, 302 RAs were concluded, of which 155 were signed between Western European and Central and Eastern European countries. Only 49 agreements were signed in the 1990s between Western European and non-European countries of origin.<sup>54</sup> Table 3 summarizes the latest available standing of EU RAs with non-EU countries.

One particular arrangement from which second-generation agreements evolved took place in 1991. It was based on the decision to abolish visa requirements between Poland and the members of the Schengen Agreement, taken on 29th March 1991. As is quoted in an OECD publication,<sup>55</sup> this

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<sup>52</sup> Trauner, Florian and Imke Kruse, 2008, *EC Visa Facilitation and Readmission Agreements: Implementing a New EU Security Approach in the Neighbourhood*, Centre for European Policy Studies.

<sup>53</sup> *IGC Report on Readmission Agreements*, Inter-Governmental Consultations for Asylum, Refugee and Migration Policies in Europe, North America and Australia: January 2002.

<sup>54</sup> *IGC Report on Readmission Agreements*, Inter-Governmental Consultations for Asylum, Refugee and Migration Policies in Europe, North America and Australia: January 2002.

<sup>55</sup> Henry de Lary, *The Legal Bases and Practical Methods of Control of Migratory Movements in the Context of the EC after 1 January 1993*, OECD: Paris, 1993.

**Table 1.3**  
**EU Readmission Agreements**

Country	Mandate received	First Round	Agreement Signed	Entry into force
<b>1. Agreements in Force</b>				
Hong Kong	April 2001	October 2001	27 November 2002	1 March 2004
Macao	April 2001	October 2001	13 October 2003	1 June 2004
Sri Lanka	September 2000	July 2001	4 June 2004	1 May 2005
Albania	November 2002	May 2003	14 April 2005	1 May 2006
Russia	September 2000	January 2003	25 May 2006	1 June 2007
Ukraine	June 2002	18 November 2002	18 June 2007	1 January 2008
The former Yugoslav Republic of Macedonia	November 2006	1 December 2006	18 September 2007	1 January 2008
Bosnia and Herzegovina	November 2006	20 December 2006	18 September 2007	1 January 2008
Montenegro	November 2006	15 December 2006	18 September 2007	1 January 2008
Serbia	November 2006	4 December 2006	18 September 2007	1 January 2008
Moldova	December 2006	9 February 2007	10 October 2007	1 January 2008
Pakistan	September 2000	April 2004	26 October 2009	1 December 2010
<b>2. Agreements Signed</b>				
Georgia	November 2008	2 April 2009	22 November 2010	1 March 2011
<b>3. Ongoing Negotiations and Negotiations not yet Formally Launched</b>				
Morocco	September 2000	April 2003	15th formal round on 10 May 2010	
Turkey	November 2002	May 2005	7th formal round on 17 May 2010	
			Additional meeting between the negotiators on 14 January 2011	
Cape Verde	June 2009	13 July 2009	12 October 2010	
China	November 2002	-	-	
Algeria	November 2002	-	-	
Armenia	September 2011	27 February 2012	-	
Azerbaijan	Mid 2011	1 March 2012	-	
Belarus	June 2011	-	-	

**Notes:**

a: China signed an Approved Destination Status (ADS) Agreement in 2004, which is not an EU RA, but rather a memorandum of understanding facilitating the entry of Chinese tourists into EU member states. Article 5 of the memorandum includes a series of provisions requiring China to take back its nationals who overstay and to cooperate on their readmission. Formal negotiations on an EU RA have not started yet (Cassarino, 2010a).

b: The authorities of Belarus had not responded, as of March 2012, to the EU mandate sent in June 2011 (Delegation of the European Union to Belarus, 2012).

Source: Delegation of the European Union to Armenia, 2012, *EU Launches Negotiations on Visa Facilitation and Readmission Agreements with Armenia*, Accessed 14 March 2012. [[http://eas.europa.eu/delegations/armenia/press\\_corner/all\\_news/news/2012/2012.27.02\\_en.htm](http://eas.europa.eu/delegations/armenia/press_corner/all_news/news/2012/2012.27.02_en.htm)].

Delegation of the European Union to Azerbaijan, 2012, *Press Release: Negotiations on Visa Facilitation to be launched on 1 March*.

Delegation of the European Union to Belarus, 2012, *Relations between Belarus and the EU - an Outline*. Accessed 14 March 2012.

[[http://eas.europa.eu/delegations/belarus/eu\\_belarus/political\\_relations/index\\_en.htm](http://eas.europa.eu/delegations/belarus/eu_belarus/political_relations/index_en.htm)].

European Commission, 2011, *EU Readmission Agreements: Brief Overview of State of Play*, Commission Staff Working Document, Brussels.

Risteska, Marija, 2011, *Eastern Neighbours Join the Race for Visa-Free Travel to the EU*, Policy Association for an Open Society.

arrangement, similar to the RAs to come after it, "provides for the taking back "without delay" by the state concerned of persons in an illegal situation on the territory of the requesting state. However, these persons may be of Polish nationality or be of other nationalities and have transited via Polish territory before entering the common area." This agreement between Poland and the Schengen states formed the model for future RAs to be signed, many of which included almost identical phrasing with regards to repatriation, with notable differences to be discussed later.

## **1.2.2 Obligations**

### **Non-EU Member States**

The readmission obligations of non-EU member states cover two main areas. The first area of obligations relates to the readmission of its own nationals, and the second relates to the readmission of third-country nationals and stateless persons. The first set of obligations stipulates that the non-EU member state must readmit all nationals of its own, while the latter stipulates that it must readmit all third-country nationals or stateless persons given that they meet certain criteria. These include holding a valid visa or residence authorization issued by the non-EU member state or having entered an EU-member state unlawfully, coming directly from the non-EU member state by air or ship without entering another country in between. This obligation does not apply if the third-country national or stateless person has only been in airport transit in the non-EU member state, or if this person holds a valid visa or residence authorization from the EU-member state in question.

There are also obligations concerning the transfer of persons to be readmitted. As is stated in the EU-Sri Lanka RA, "before returning a person, the competent authorities...concerned shall make arrangements in writing and in advance regarding the transfer date, the point of entry, possible escorts and other information relevant to the transfer." It goes on to state that no means of transportation will be prohibited, and as such, the person to be readmitted may be transferred by land, sea, or air. Signatories of these agreements must also conduct these transfers "within a reasonable time limit, in due respect of their duties under their national legislation and international agreements on human rights and the protection of the status of refugees."<sup>56</sup>

### **EU-Member States**

A similar set of obligations applies to EU-member states, with one group of policies relating to the readmission of its own nationals and another group of policies referring to the readmission of third-country nationals and stateless persons. The difference between the two sets of obligations is much the same as that which exists for non-EU member states. As above, the first set of policies states that the EU-member state must readmit its own nationals while the second set states it must also readmit all third-country nationals and stateless persons given similar criteria as mentioned above. As before, the readmission obligation does not apply if the third-country national or stateless person to be readmitted has only been in airside transit in an international airport of the non-EU member state or if this person has been issued a visa or residence permit by the non-EU member state.

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<sup>56</sup> Cassarino, Jean-Pierre, "Informalising Readmission Agreements in the EU Neighbourhood," *The International Spectator*, Volume 42, No. 2, June 2007.

Nonetheless, despite this apparent reciprocity, it has been pointed out that the content between certain RAs differ in key ways. Evidence has been uncovered of how RAs between two developed states are in certain cases more favourable for the requested state compared to RAs between one developed state and one less developed state. For example, developed states like Macao and Hong Kong have deals with the EU that include fewer provisions for establishing the identity and travel history of irregular persons when compared to less developed states like Albania and Sri Lanka.<sup>57</sup> Having more provisions for establishing such information means there is a higher likelihood of the irregular person being identified as having originated from the requested country or having transited through the requested country as a third-country national or stateless person. For example, the Sri Lanka and Albania agreements allow for the use of expired passports to be used as identification, whereas the Macao and Hong Kong agreements lack this provision. A more detailed discussion of such differences follows in Section 1.3, which deals with the EU-Sri Lanka RA.

### **1.2.3 Drivers of Readmission Agreements in the EU**

As mentioned above, one of the primary reasons for requesting countries to seek RAs is to stem migratory inflow. Western Europe sought to control immigration by signing RAs with Central and Eastern European countries, which were seen as transit points for third-country nationals on their way to other parts of Europe. As the EU grew and incorporated more states throughout the 1990s, it sought to tighten its external borders and control immigration from outside the Union. It sought RAs with countries which were seen as key sources of irregular migrants and asylum seekers, including China, Russia, Serbia, and Sri Lanka. All of these aforementioned countries have either begun or concluded their RAs with the EU. Eurostat data indicate that China constituted 11 per cent of all asylum applicants in Ireland in the 3rd quarter of 2010, while Russia contributed 11 per cent to Belgium in the same period, Serbia contributed 12 per cent to Germany, and Sri Lanka contributed 6 per cent to France and 7 per cent to Cyprus and the United Kingdom (UK), respectively.<sup>58</sup>

Despite being framed in a reciprocal manner, RAs carry mutual obligations but unequal costs for the two contracting parties. As Cassarino (2010) explains,<sup>59</sup> these imbalances are due to the varying institutional capacities of the two parties with regard to managing readmission. Developing countries may lack sufficient institutional mechanisms to deal with readmitting irregular persons. In many circumstances, persons who have been readmitted may need temporary accommodation, medical services, legal assistance, and financial aid.<sup>60</sup>

Since there exist imbalances between contracting parties, EU member states have needed to offer certain incentives to encourage readmission cooperation, usually relating to compensatory measures.<sup>61</sup> For example, Italy and Egypt signed an RA in January 2007 following discussions in key policy areas.

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<sup>57</sup> Arnarsson, Bjartmar Freyr, 2007, *Readmission Agreements: Evidence and the Prime Concern*, University of Lund Faculty of Law, Master Thesis.

<sup>58</sup> Albertinelli, Anthony, *Asylum Applicants and First Instance Decisions on Asylum Applications in Third Quarter 2010*, Eurostat: 2011.

<sup>59</sup> Cassarino, Jean-Pierre, 2010b, "Dealing With Unbalanced Reciprocities: Cooperation on Readmission and Implications," *Unbalanced Reciprocities: Cooperation on Readmission in the Euro-Mediterranean Area*. Ed. Cassarino, Jean-Pierre, Middle East Institute.

<sup>60</sup> *Dangers of Readmission Agreements*, Social Watch: 2009.

<sup>61</sup> See section 1.14.

These discussions have led to Egypt enjoying a bilateral debt swap agreement, trade concessions in agricultural produce, and temporary entry quotas for Egyptian nationals in Italy.<sup>62</sup> A potential benefit not directly related to a compensation scheme is the chance to be seen as a credible international participant, which could build the country's reputation in the global arena. This was the case with Egypt, whose heightened international standing gained from its cooperation with Italy helped it enter the G14 group of countries.<sup>63</sup> As in cases like Ukraine and Moldova, the potential for accession into the EU may be another driving factor that encourages readmission cooperation.

Another incentive that is quite commonly used is the Visa Facilitation Agreement (VFA). The purpose of this agreement is to facilitate the issuance of visas to citizens of non-EU member states, in many cases for a stay of up to 90 days, during their stay in an EU-member state. This also includes swift visa processing times and offering minimal requirements when the national of a non-EU member state must present documentary evidence regarding the purpose of a trip. Nonetheless, this agreement is not offered to all signatories of RAs. Out of the 12 countries that have enforced RAs with the EU, only eight have been offered a VFA, two of which were offered the agreement when readmission negotiations had stalled. As of February 2011, Sri Lanka had not been offered a VFA. Unfortunately, there is no evidence available as to why certain countries have been offered a VFA and others have not. Table 4 indicates the countries that have been offered such an agreement.

**Table 1.4**  
**Visa Facilitation Agreements**

Country	Offer of a Visa Facilitation Agreement
Hong Kong	No
Macao	No
Sri Lanka	No
Pakistan	No
Albania	Yes - after readmission agreement had already entered into force
Russia	Yes - after readmission negotiations were stalled
Ukraine	Yes - after readmission negotiations were stalled
Former Yugoslav Republic of Macedonia	Yes - offered during readmission negotiations
Bosnia & Herzegovina	Yes - offered during readmission negotiations
Montenegro	Yes - offered during readmission negotiations
Serbia	Yes - offered during readmission negotiations
Moldova	Yes - offered during readmission negotiations

Source: *EU Readmission Agreements: Brief Overview of State of Play*, European Commission: February 2011.

<sup>62</sup> Cassarino, Jean-Pierre, 2010b, "Dealing With Unbalanced Reciprocities: Cooperation on Readmission and Implications," *Unbalanced Reciprocities: Cooperation on Readmission in the Euro-Mediterranean Area*. Ed. Cassarino, Jean-Pierre, Middle East Institute.

<sup>63</sup> The G14 group of countries include Brazil, Canada, China, Egypt, France, Germany, India, Italy, Japan, Mexico, Russia, South Africa, the United Kingdom and United States

### **I.2.4 Drawbacks of Readmission Agreements**

Despite the above advantages, there are several costs of enforcing EU RAs that need to be taken into account. For source countries, and in particular developing countries, there may be significant institutional reforms that need to take place in order to enforce the RA. Certain developing countries may not have in place the necessary readmission institutions to cope with the psychological and emotional trauma of persons who have been living abroad illegally or who have had their asylum claims rejected overseas. One example is Mali, whose many undocumented workers currently reside in Europe. Numerous Malian migrants who are being repatriated involuntarily return home after years of absence and have very limited financial resources upon arrival. Many of them come from rural areas and have no family in Bamako where they are flown into. There is a lack of state-funded institutions prepared to help these returnees, and there is very little official aid for them. A handful of civil society organizations offer help to these people in the form of accommodation, medical care, legal assistance, and financial aid to help them return to their homes.<sup>64</sup>

A further criticism of RAs is the potential clash with international human rights conventions. When signing RAs, both parties are obligated to follow certain internationally recognized agreements, including the 1951 Geneva Convention Relating to the Status of Refugees and its 1967 protocol, the 1966 International Covenant on Civil and Political Rights, the 1984 UN Convention against Torture, and the 2000 European Charter on Fundamental Rights. These conventions prohibit states from "expelling persons (whether migrants or not) to countries and territories where their life or freedom would be threatened in any manner whatsoever."<sup>65</sup> Human rights organizations in Europe have criticized RAs for their lack of transparency when removing irregular persons. One group called Migreurop, a French organization that campaigns for migrants in Europe, requested the EU to show increased transparency in the negotiation and implementation of RAs, fearing that these arrangements may have negative "consequences...on migrants' lives and the enjoyment of their rights."<sup>66</sup>

### **I.3 EU-Sri Lanka Readmission Agreement**

The RA between the EU and Sri Lanka shares many similarities with other EU RAs. Like other RAs, its purpose is to "establish...on the basis of reciprocity, rapid and effective procedures for the identification and safe and orderly return of persons who do not, or no longer, fulfil the conditions for entry to, presence in, or residence on the territories of Sri Lanka or one of the member states of the European Union, and to facilitate the transit of such persons in a spirit of co-operation."<sup>67</sup> Furthermore, the agreement between the two parties aims to "strengthen their co-operation in order to combat illegal immigration more effectively" amid "the significant increase in the activities of organized criminal groups in the smuggling of migrants and other related criminal activities."<sup>68</sup>

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<sup>64</sup> *Dangers of Readmission Agreements*, Social Watch: 2009.

<sup>65</sup> Cassarino, Jean-Pierre, 2010b, "Dealing With Unbalanced Reciprocities: Cooperation on Readmission and Implications," *Unbalanced Reciprocities: Cooperation on Readmission in the Euro-Mediterranean Area*, Ed. Cassarino, Jean-Pierre, Middle East Institute.

<sup>66</sup> *Dangers of Readmission Agreements*, Social Watch: 2009.

<sup>67</sup> *Agreement between the Democratic Socialist Republic of Sri Lanka and the European Community on the Readmission of Persons Residing without Authorization*, Commission of the European Communities: March 2003.

<sup>68</sup> *Ibid.*

The development of the agreement between the EU and Sri Lanka was initiated in 2000. On 8th September of that year, the Justice and Home Affairs (JHA) Council took the decision to authorize the EC to negotiate an RA between the EU and Sri Lanka. In January of the following year, the EC transmitted a draft RA to the government of Sri Lanka. Written correspondence took place between the two parties, and in July 2001 the first round of formal negotiations was held in Brussels. In March 2002 a second round of formal negotiations took place, this time in Colombo, Sri Lanka. After further discussions, the agreement between Sri Lanka and the EU was signed in June 2004 and put into force the following year in May 2005.

While there is no publicly available information regarding the specific reasons why Sri Lanka signed its readmission agreement with the EU, information obtained from discussions with relevant stakeholders such as Sri Lankan government representatives as well as embassy officials of certain European consulates do provide some insights. Key benefits revolve around obtaining assistance when dealing with the Liberation Tigers of Tamil Eelam (LTTE), as well as potential economic benefits such as the opening up of labour markets to legal migrants. For further discussion of these benefits, please refer to Section 4 of this report.

The Joint Readmission Committee (JRC) is an essential component of the agreement. The Sri Lankan Ambassador to Brussels had stated in April 2005 the need to set up a JRC but had suggested the EC take the first step, as the RA was the Commission's own initiative.<sup>69</sup> The JRC is to include representatives from both the EU and the government of Sri Lanka (GoSL) and would have the authority to make decisions regarding changes to the agreement. In November 2010, discussions between the EU and GoSL took place relating to the formation of the JRC and are currently ongoing as of end August 2011.

The content of the EU-Sri Lanka RA can be broken down into the following pertinent points. The request for readmission of an irregular person must be made within one year of discovering that a person does not possess the necessary authorization to remain in the requesting state. The requested state is expected to respond to the request within 30 days. If it does not do so, a common provisional travel document will be used for return purposes.<sup>70</sup>

The requested state must readmit all such persons if they are either a) nationals of the requested state, or b) third-country nationals or stateless persons who hold a visa or residence permit issued by the requested state, so long as they have not transited through another country in between and do not hold a valid visa of longer validity issued by the requesting state. The obligation to readmit does not apply if the person has only passed through the requested state on airside transit. Nationality of an irregular person can be proved through documents such as a passport, national identity card, driver's licence, certificates, and other authorized papers. When the nationality is in question, authorization is given to Embassies in the requesting state to interview the said person to establish their identity. Once

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<sup>69</sup> *Briefing Note on the EU-Sri Lanka Readmission Agreement*, Obtained from the office of Sri Lanka's Ambassador to Belgium and the European Union, Embassy of Sri Lanka to Belgium, Luxembourg and the European Union: 12 April 2011.

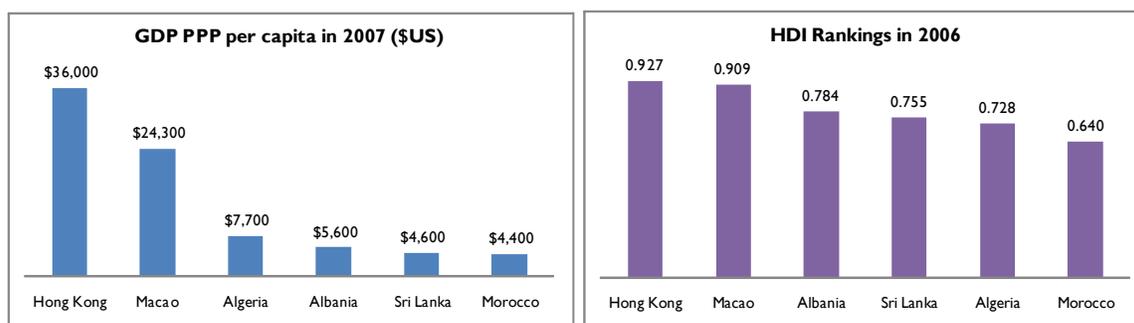
<sup>70</sup> This is an identifying document specifying details of the traveller with regard to travel itinerary and personal details, including name, date of birth, place of birth, gender, height, distinguishing marks, personal identification number, nationality, and address in requested state, with an attached photograph.

his or her nationality is established, the GoSL and the EU state must agree on a transfer date, point of entry, and possible escorts. The costs associated with such a transfer will be borne by the requesting state.

The primary difference the EU-Sri Lanka RA has with certain other EU agreements relates to the evidence used to establish the nationality of irregular persons. Unlike the RA the EU has with other, more developed states like Hong Kong and Macao, the Sri Lanka agreement stipulates a more flexible set of provisions with regard to establishing the identity of irregular persons.<sup>71</sup> This allows for a wider range of documents to be used to determine the nationality and travel history of such persons. It is important to note that with these broader provisions, there is a higher likelihood of Sri Lanka having to readmit third-country nationals and stateless persons who have transited through the country.

The reasons behind the differences between various RAs may relate to the bargaining power of the requested countries. Freyr (2007), using two indicators-the Gross Domestic Product Purchasing Power Parity (GDP PPP) per capita and the United Nations Development Programme's Human Development Index (HDI), categorizes non-EU member states into two groups. Group 1 countries refer to those which have a GDP per capita of over \$24,000 and an HDI of 0.8 or above, while Group 2 countries refer to those with a GDP per capita of less than \$9,000 and an HDI between 0.5 - 0.799. Both Hong Kong and Macao fall into Group 1, while Sri Lanka and Albania fall into Group 2. Due to these substantial differences in income and development, Group 1 countries have significantly more bargaining power when concluding RAs when compared to Group 2 countries.<sup>72</sup> Figure 1.1 compares GDP per capita and HDI figures among several signatory countries of RAs.

**Figure 1.1**  
**Visa Facilitation Agreements**



Source: Arnarsson, Bjartmar Freyr, 2007, *Readmission Agreements: Evidence and the Prime Concern*, University of Lund Faculty of Law, Master Thesis.

<sup>71</sup> Readmission agreements with certain other countries, like Albania, also stipulate more flexible arrangements for establishing the identity and travel history of a suspected irregular migrant.

<sup>72</sup> Arnarsson, Bjartmar Freyr, 2007, *Readmission Agreements: Evidence and the Prime Concern*, University of Lund Faculty of Law, Master Thesis.

The issue of third-country nationals and stateless persons are a point of potential difficulty for the GoSL. If a third-country national illegally residing in the EU were to be found to have travelled through Sri Lanka, it would become the burden of Sri Lanka to readmit this person if he possessed a valid Sri Lankan travel visa. The data regarding third-country nationals passing through Sri Lanka en route to Europe is not readily available, and thus it is difficult to establish if the readmission of third-country nationals does indeed pose a significant problem. However, it is imperative that the GOSL keeps in mind the potential hurdles involved with the obligation to readmit non-Sri Lankan nationals.

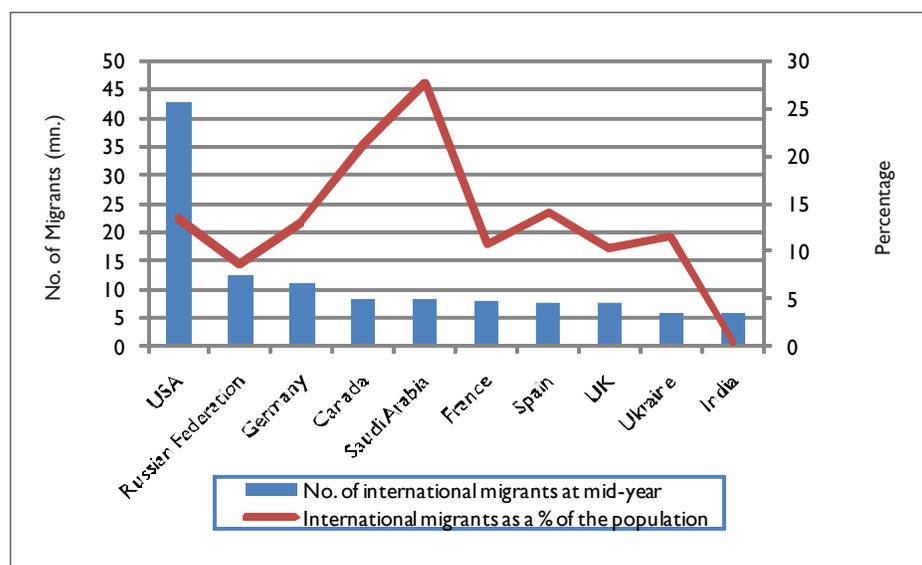
## 2. Migration Analysis in the European Union

### 2.1 Overview of Migration Patterns in the EU

The total number of international migrants worldwide in 2010 is estimated to be 214 million persons. This figure has remained relatively stable as a share of the global population, increasing only by 0.1 per cent, from 3.0 per cent to 3.1 per cent between 2005 and 2010.<sup>73</sup> The USA still hosts the largest migrant stock of any country worldwide, while six of the top ten countries with the largest foreign-born populations (France, Germany, the Russian Federation, Spain, Ukraine and the UK) are found in Europe (Figure 2.1).

Looking at international migrants as a proportion of the total population in these host countries shows that Saudi Arabia has the highest percentage at 27.8 per cent followed by Canada. Spain records a value of 14.1 per cent which is the highest out of the European countries followed by Germany at 13.1 per cent. The share of international migrants in the USA is 13.5 per cent.

**Figure 2.1**  
**Countries with the Largest Foreign-born Population (2010)**



Source: United Nations, Department of Economic and Social Affairs, Population Division (2009), *Trends in International Migrant Stock: The 2008 Revision*. [<http://esa.un.org/migration/p2k0data.asp>] (accessed on 16 November 2011).

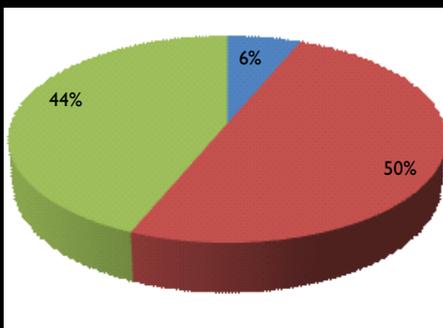
<sup>73</sup> United Nations Department of Economic and Social Affairs (UN DESA), 2009, *Trends in the International Migrant Stock: The 2008 Revision*, POP/DB/MIG/Stock/ Rev.2008, UN DESA, Population Division, New York.

Migration plays a significant role in the population dynamics of European societies. In recent years, the increase in the population of the EU-27 member states has mainly been due to high net migration rates.<sup>74</sup> The share of international migration in total population growth in the EU has varied. From 2004, the population of EU member states increased, on average, by 1.7 million per year.<sup>75</sup> Although immigration to the EU-27 member states fell in 2008 mainly owing to the global crisis,<sup>76</sup> net migration still contributed 71 per cent of the total population increase.<sup>77</sup> In 2008, 3.8 million people migrated to and between the EU-27 member states and at least 2.3 million emigrated from them, resulting in a net gain of 1.5 million residents.<sup>78</sup> The stock of immigrants in Europe and Central Asia stood at 27.3 million or 6.8 per cent of the population in 2010 (compared to 215.8 million or 3.2 per cent for the world).<sup>79</sup>

### 2.1.1 Origins of Immigrants

It is estimated that more than half (55 per cent) of immigrants to the EU in 2008 were previously residing outside the EU.<sup>80</sup> Immigrants to the EU can be further differentiated according to the level of development of the country of previous residence based on the Human Development Index (HDI). According to this indicator, half of all immigrants to the EU previously resided in medium developed

**Figure 2.2**  
**Immigrants to EU-27 (from outside EU) by the Level of Development (2008)**



Source: Eurostat (online data code: migr\_imm5prv) and Eurostat estimates (cited in the Demography Report 2010, EC).

<sup>74</sup> The expression 'total net migration' of the EU member states is to be distinguished from the expression 'total net migration to/from the EU as a whole': the former also includes international migration between the EU states.

<sup>75</sup> European Commission, 2010, *Demography Report 2010*.

<sup>76</sup> Following many years of continuous increase, a fall in labour migration became apparent since the second half of 2008 in virtually all EU countries, due to a significant decline in international recruitment by employers.

<sup>77</sup> European Commission, 2010, *Demography Report 2010*.

<sup>78</sup> Includes also migration between EU-27 member States.

<sup>79</sup> The World Bank, 2011, *Migration and Remittances Factbook 2011*, 2nd Edition, Washington DC: The World Bank.

<sup>80</sup> European Commission, 2010, *Demography Report 2010*.

countries, slightly fewer in highly developed countries (44 per cent) and only 6 per cent arrived from less developed countries (Figure 2.2). The share of Sri Lankan immigrants in the EU as a whole stood at 0.6 per cent in 2009.<sup>81</sup>

### 2.1.2 Illegal Migration

The majority of migration is fully authorized. Estimates, while not exact, suggest that only some 10-15 per cent of today's 214 million international migrants are in an irregular situation.<sup>82</sup> Data on stocks and flows of irregular migration, at the local, national, regional and global levels, vary widely and are usually imprecise. There is also a lack of comparable data, both over time and between locations. In the absence of an authoritative single source on irregular migrant numbers, analysis inevitably depends on widely fragmented sources, some of which are significantly out of date.<sup>83,84</sup> Nevertheless, there is a general consensus that the number of irregular migrants has grown in recent years. Some data sources from countries of destination, such as law-enforcement statistics and census data, can be used to give an indication of the number of migrants in irregular situations.

Irregular migration is a top priority in the EU. The International Centre for Migration Policy Development (ICMPD) interdisciplinary project, 'Clandestino - Undocumented Migration: Counting the Uncountable Data and Trends Across Europe,' was designed to support policy makers in developing and implementing appropriate policies regarding undocumented migration.<sup>85</sup> It essentially aims to provide an inventory and comparative analysis of data and estimates on undocumented migration (stocks and flows) in selected EU countries. In Europe between 2005 and 2007, around 1.4 million people were apprehended for being illegally present in EU countries, and almost 760,000 removals were undertaken (EC, 2009).<sup>86</sup> The Clandestino Project, meanwhile, estimates that there were between 1.9 and 3.8 million migrants in an irregular situation in the EU-27 in 2008, between 7 and 13 per cent of the overall migrant population.<sup>87</sup>

The Hamburg Institute of International Economics (HWWI) has produced aggregated estimates of irregular foreign residents in the EU. The results for 2002, 2005 and 2008 show a clear decline in the stocks of irregular resident populations in the EU over time (Figure 2.3). However, estimates have to be interpreted with care.<sup>88</sup>

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<sup>81</sup> Own calculation based on OECD data.

<sup>82</sup> IOM, 2010a, *World Migration Report 2010*.

<sup>83</sup> There has been no global update on estimates since a 2002 study estimated that 10-15 per cent of the migrant population in OECD countries was irregular. More recent estimates suggest that around one third of all migration from developing countries could be irregular.

<sup>84</sup> IOM, 2010a, *World Migration Report 2010*.

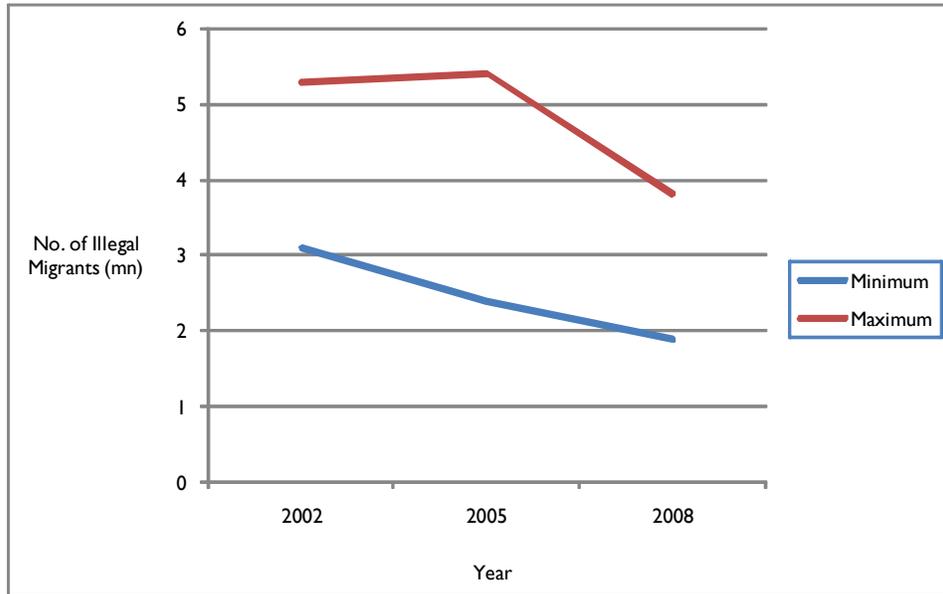
<sup>85</sup> The main output of the project is a database (<http://irregular-migration.hwwi.net/>)

<sup>86</sup> IOM, 2010a, *World Migration Report 2010*.

<sup>87</sup> HWWI, 2008, *Database on Irregular Migration*. [<http://irregular-migration.hwwi.net/>]

<sup>88</sup> The EU estimates rely on a collection, adjustment and classification of individual country estimates in all EU member states, which involve methodological complications. Also, the decline could be primarily due to the global economic downturn.

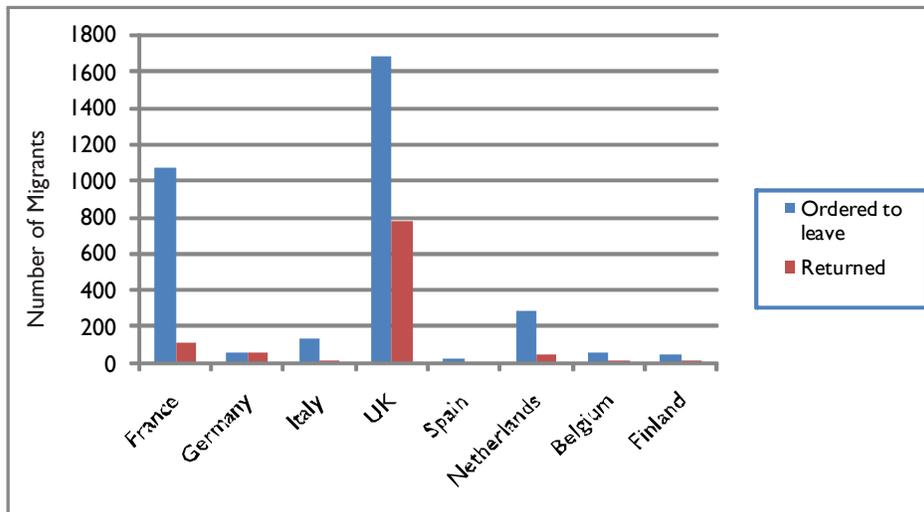
**Figure 2.3**  
**Estimated Illegal Foreign Residents in the EU**



Source: HWWI 2008, Database on Irregular Migration: Stock Estimates for the EU.

The number of Sri Lankan migrants in European countries who have been ordered to leave and those who actually returned are shown in Figure 2.4 below. The numbers are significant for the UK, France and the Netherlands. The highest number of illegal migrants in 2010, in terms of those staying back despite being ordered to leave are in the UK, followed by France.

**Figure 2.4**  
**Sri Lankan Illegal Migrants in European Countries, Ordered to Leave and Returned, 2010**



Source: IOM, 2011.

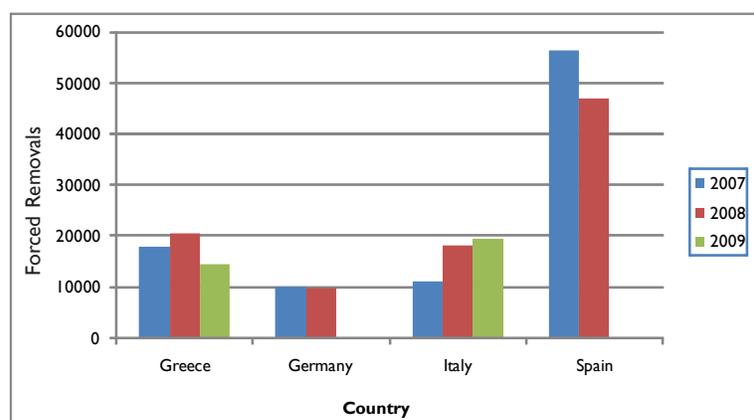
In the case of refugees and asylum seekers, the Office of the United Nations High Commissioner for Refugees (UNHCR) estimates that there were 15.2 million refugees worldwide at the end of 2009, out of which 16 per cent resided in Europe, which amounts to a population of 1.6 million. Furthermore, in 2009, the total number of asylum-seekers in industrialized nations remained stable, with about 377,000 applications, despite significant regional disparities. The number of applications in southern Europe fell by 33 per cent, with 50,100 claims, driven by significant declines in Italy (-42 per cent), Turkey (-40 per cent) and Greece (-20 per cent).<sup>89</sup>

### 2.1.3 Return Migration in the EU

An increasing pattern of return migration has been observed within the free mobility regime of the EU when economic conditions and job opportunities in migrant destination countries (such as Ireland and the UK) deteriorated more than those in origin countries (such as Poland).<sup>90</sup> In September 2008, Spain enacted a law to encourage the return of migrant workers to their country of origin, by providing reintegration support.<sup>91</sup> The offer was taken up by 8,724 migrants, representing approximately 10 per cent of the beneficiary population.<sup>92</sup>

Increased forced return measures have been taken in France, Italy and Ukraine.<sup>93</sup> There are varied reports from source countries about the changes in the number of migrants returning from destination countries. In many cases, data are not available and, when available, do not distinguish between forced and voluntary returns. Figure 2.5 shows the numbers of forced removals in some selected EU countries.

**Figure 2.5**  
**Numbers of Forced Removals from Selected EU Countries 2007 - 2009**



Note: Data for 2009 are based on IOM projections of data available up to April 2009. Figures for 2009 are not available for Germany and Spain.

Source: IOM, 2010, *World Migration Report 2010*.

<sup>89</sup> UNHCR, 2010, *Statistical Yearbook 2009*, Geneva: UNHCR.

<sup>90</sup> IOM, 2010a, *World Migration Report*.

<sup>91</sup> These laws differ from Readmission Agreements in that return is not forced and still voluntary, but encouraged by providing compensatory provisions.

<sup>92</sup> IOM, 2010a, *World Migration Report*.

<sup>93</sup> IOM, 2010a, *World Migration Report*.

The next section of the report analyzes migration trends into the EU, distinguishing between countries that have signed an RA with the EU and those that have not, in order to identify varying patterns in migratory flows between these two groups of countries. In addition to total migration inflows and outflows, trends relating to the inflows of asylum seekers in different countries are examined, with a specific focus on Sri Lanka. Unfortunately, lack of data limits the discussion to these main aspects.

## 2.2 Migration Inflows into Key European Countries

### 2.2.1 Migration Inflows in General

While Australia, Canada and the US remain the most popular destinations for Sri Lankan migrants, the EU is also becoming increasingly important for Sri Lankan nationals. Table 2.1 provides information on Sri Lankan migration flows into selected European countries for 2009.<sup>94</sup> As can be seen, the UK, Italy, France and Germany receive the highest number of Sri Lankan migrants. Besides the absolute number of migrants, it is also important to look at the share of Sri Lankan migrants among migrants from all countries - which measures the importance of Sri Lanka to the destination country - and the share of Sri Lankan migrants as a proportion of the population in each destination country - which gives an indication of the political power or influence of Sri Lankans in a given country. As in the case of the number of Sri Lankan migrants in destination countries, the UK, Italy, France and Germany stand out in terms of the share of Sri Lankan migrants both as a proportion of other migrants and their population. Figures for other European countries are negligible.

**Table 2.1**  
**Sri Lanka Migration Inflows into Selected European Countries, 2009**

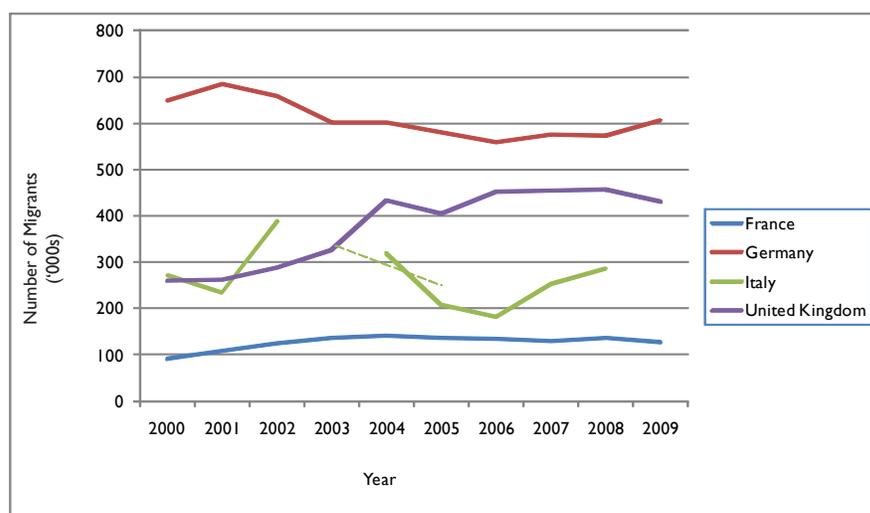
Country	No. of Migrants (mn.)	Share of Sri Lankan Migrants out of Total Migrants (%)	Share of Sri Lankan Migrants as a Proportion of Population (%)
Austria	0.05	0.05	0.0006
Belgium	0.05	0.05	0.0005
Denmark	0.09	0.23	0.0016
Finland	0.09	0.5	0.0017
France	2.59	2.03	0.0041
Germany	1.21	0.20	0.0015
Italy	6.46	2.26	0.0108
Netherlands	0.12	0.002	0.0007
Spain	0.06	0.01	0.0001
Sweden	0.15	0.002	0.0016
UK	7	1.63	0.0115

Source: OECD, *International Migration Database*.

<sup>94</sup> The European countries given here are limited to those which are characterized as OECD countries, as migration data by country is available only for OECD countries.

In analyzing migration inflows into European countries, these four key countries - France, Germany, Italy, and the UK - were chosen, given the significance of Sri Lankan migrants in each country. Before focusing on Sri Lankan migration trends however, it is useful to look at migration trends of the entire foreign population, as illustrated in Figure 2.6.

**Figure 2.6**  
**Total Migration Inflows into Key European Countries, 2000-2009**



Source: OECD, *International Migration Database*.

Figure 2.6 which shows total migration inflows into key European countries indicates that the European country with the highest migration inflow of foreign population between 2000 and 2009 is Germany. This may have much to do with a spike in immigration into Germany in the years following German reunification in 1990. By the beginning of the following decade, the country recorded annual migration inflows among ethnic Germans alone of over 100,000 in 2000 and 2001.<sup>95</sup> Germany was also a key destination for Afghani migrants until 2002, with over 6,000 migrants registered as entering the country in 2000 and 2001 alone. However, inflows were drastically reduced in the following years and reached around 1,500 in the middle of the decade. Similarly, inflows of Iraqi migrants were also substantially reduced in 2003, dropping from over 13,000 in 2002 to around 6,500 the following year, and dropping further still during the next three years.

The UK is another country which has attracted a large number of migrants for much of the decade. A key reason for large numbers of migrant inflows is formal study. In the year 2010 alone, there were 234,000 overseas students that entered the UK.<sup>96</sup> One can see a rise in migration flows from 2000 to 2004; part of these large inflows is due to high refugee and asylum seeker outflows from conflict-affected countries.

<sup>95</sup> Oezcan, Veysel, "Germany: Immigration in Transition," *Migration Information Source*, July 2004. Accessed 15 November 2011. [<http://www.migrationinformation.org/Profiles/display.cfm?ID=235>]

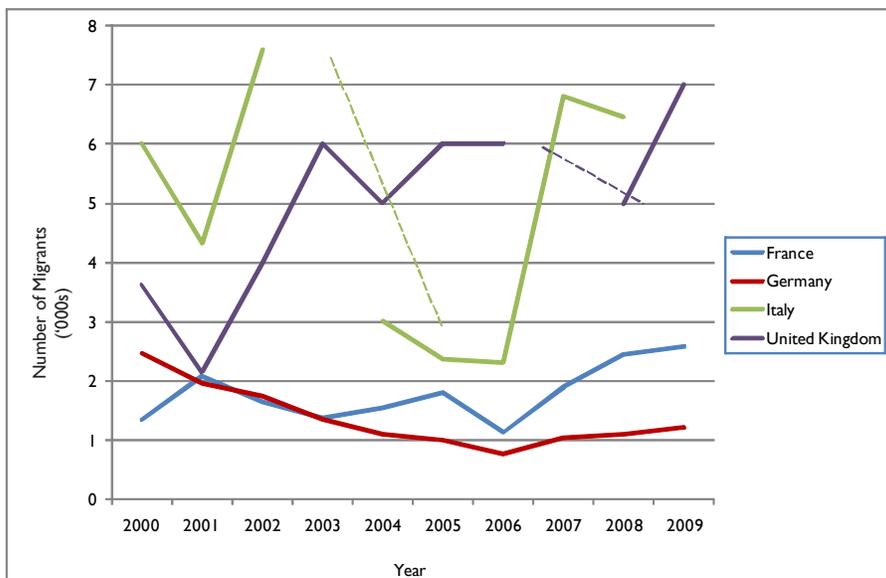
<sup>96</sup> *Immigration to the UK: the statistics*, The Guardian, Accessed 17 November 2011. [<http://www.guardian.co.uk/news/datablog/2010/jun/26/non-eu-immigration-uk-statistics>].

On a separate note, the Indian subcontinent, particularly Bangladesh and India, was a source of large migrant inflows into the UK in the 21st century. By the beginning of the decade, over 100,000 migrants from South Asia were entering the UK.<sup>97,98</sup> After a steady rise from 2000 to 2004, the UK kept its migration inflows in the range between 400,000 and 500,000 persons per annum, which may be explained by the UK's immigration policy for 2005 aimed at maintaining migrant inflows.<sup>99</sup>

On the other hand, Italy's immigration policy for 2005 was aimed at lowering migrant inflows.<sup>100</sup> This is reflected in the dip in immigration numbers for Italy in the figure above during the middle of the decade. Like the UK, Italy was a key destination for refugees and asylum seekers fleeing conflict-affected countries like Afghanistan, Sudan, and Rwanda in the early 2000s, reflected in the rising migrant inflows for the country during the same period.<sup>101</sup>

France, in contrast to the countries above, seems to have more stable migration inflows, as indicated by the relatively steady trend line that floats just above 100,000 migrants annually for much of the decade.

**Figure 2.7**  
**Sri Lanka Migration Inflows into Key European Countries, 2000-2009**



Source: OECD, *International Migration Database*.

<sup>97</sup> *UK Migration Controversies: A Simple Guide*, Royal Geographical Society: December 2008.

<sup>98</sup> Hatton, Timothy J. *Explaining Trends in UK Immigration*, Springer-Verlag 2005.

<sup>99</sup> *International Migration 2006*, United Nations Department of Economic and Social Affairs, Population Division, United Nations: March 2006.

<sup>100</sup> *International Migration 2006*, United Nations Department of Economic and Social Affairs, Population Division, United Nations: March 2006.

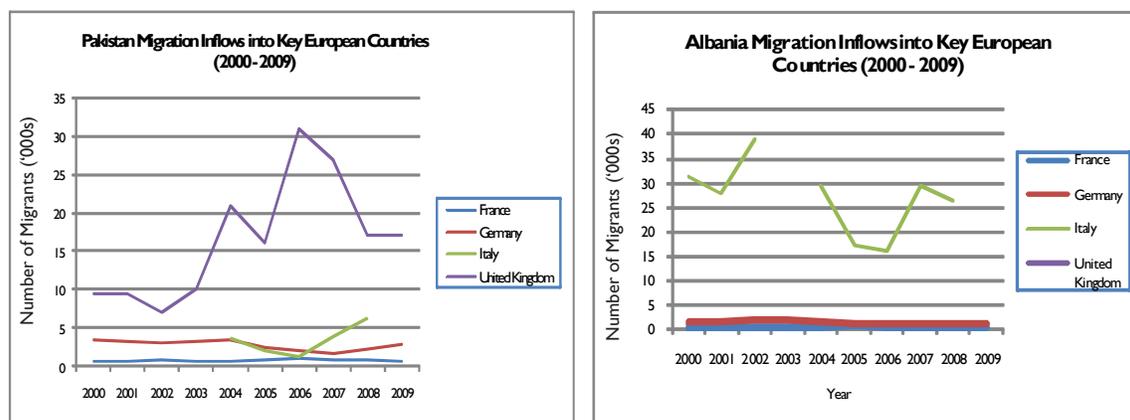
<sup>101</sup> The data point for 2003 is unfortunately not available, and as such, a dashed line is used to connect the two available data points (this method is used throughout the chapter).

Figure 2.7 above shows Sri Lanka migration trends into key European countries within the same time period. In contrast with the total migration inflows of Figure 2.6, Italy is among the top two destinations for Sri Lankan migrants. Employment is among the primary reasons for Sri Lankans entering Italy. The Italian government grants 3,500 non-seasonal work visas to Sri Lankan migrants on an annual basis. Furthermore, 60,000 seasonal work visas in total are granted annually to a collection of 20 countries, of which Sri Lanka is a member.<sup>102</sup> The distinction between seasonal and non-seasonal work relies on two points: one, that certain work is required only during particular seasons, for example, fruit-picking during spring and summer months, and two, that certain holiday periods like Christmas and Ramadan influence the demand for work visas.<sup>103</sup>

France is another European hotspot for Sri Lankan migrants, rising steadily in the latter half of the decade and reaching over 2,500 persons in 2009. Germany, however, has seen a continual decrease in Sri Lankan migrant inflows from 2000 to 2006, picking up slightly in the next three years that followed.

The charts that follow show trends of migration inflows from signatory countries of RAs and non-signatory countries. The signatory countries comprise Pakistan and Albania and display similar characteristics to their fellow signatory country, Sri Lanka. When looking at inflows into the UK, Pakistan exhibits a trend line similar to that of its southern neighbour, rising in a volatile fashion to reach a high point in 2006 and subsequently dropping back down again in 2008. Pakistan's levels of migration, however, are much higher than those of Sri Lanka, with the former reaching a peak of 31,000 immigrants in 2006, whereas Sri Lanka was only 6,000 at that point. Albania also offers similar migration patterns to that of Sri Lanka, with inflows into Italy being one of the key migration destinations for Albanians. All three signatory countries have relatively low migration inflows into France and Germany, compared to the UK and Italy.

**Figure 2.8**  
**Migration Inflows into Key European Countries from Signatory Countries of Readmission Agreements**  
**Sri Lanka Migration Inflows into Key European Countries, 2000-2009**



Source: OECD, *International Migration Database*.

<sup>102</sup> Interview with the Embassy of Italy.

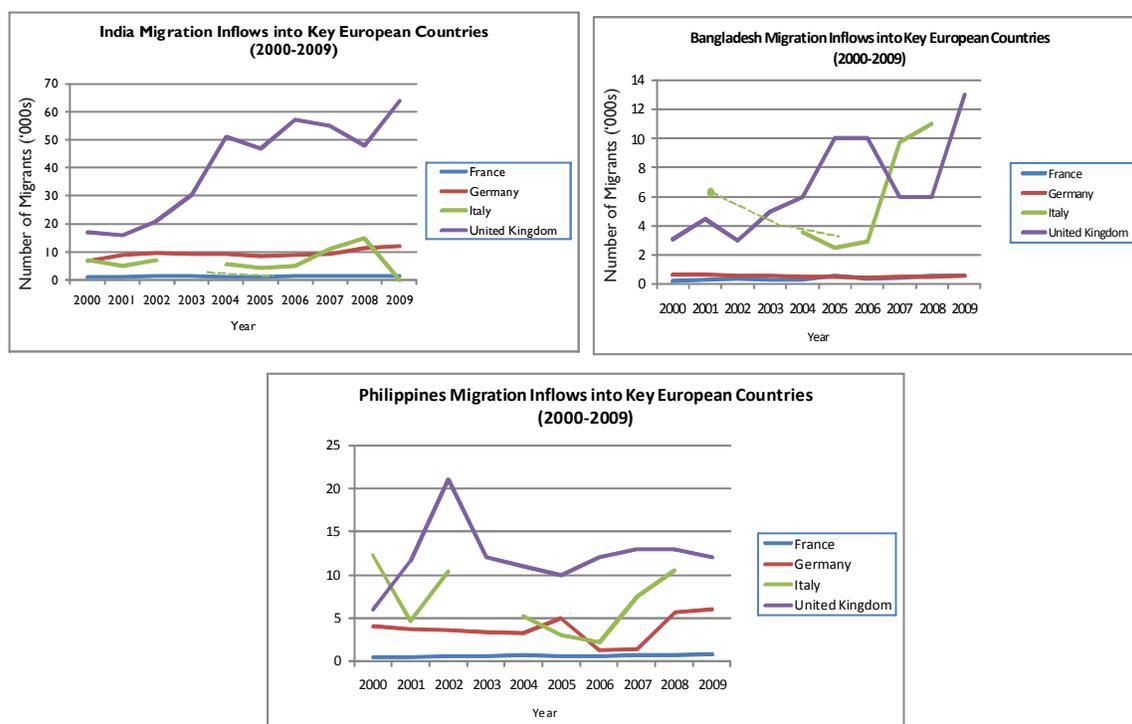
<sup>103</sup> International Labour Organization, 2011, *Manual on the Measurement of Volunteer Work*, Geneva: ILO.

The migration patterns of non-signatory countries seem to share some common trends (Figure 2.9). The flows of India, Bangladesh, and the Philippines into the UK are all relatively high compared to their migration flows into the three other European countries. The UK is host to a large Indian and Bangladeshi migrant community. Many Indian and Bangladeshi nationals immigrate to the UK to join family members or spouses already working and residing there. The UK is also a hotspot for Filipino migrants, particularly nurses. Health care workers from the Philippines have been the focus of targeted recruitment drives initiated by the UK, which anticipated a large shortfall in the number of nurses the country will need in the next 10-20 years.<sup>104</sup> One reason for targeting Filipino workers is the over-supply of health care professionals in the Philippines.<sup>105</sup>

Inflows for the signatory countries into France and Germany are relatively low, perhaps because these particular European countries may not have initiated such targeted recruitment drives of skilled labour.

However, Italy seems to be an increasingly popular destination for migrants from the Philippines and Bangladesh, with rising trends from 2006 onwards for both non-signatory states.

**Figure 2.9**  
**Migration Inflows into Key European Countries from Non-Signatory Countries of Readmission Agreements**



Source: OECD, *International Migration Database*.

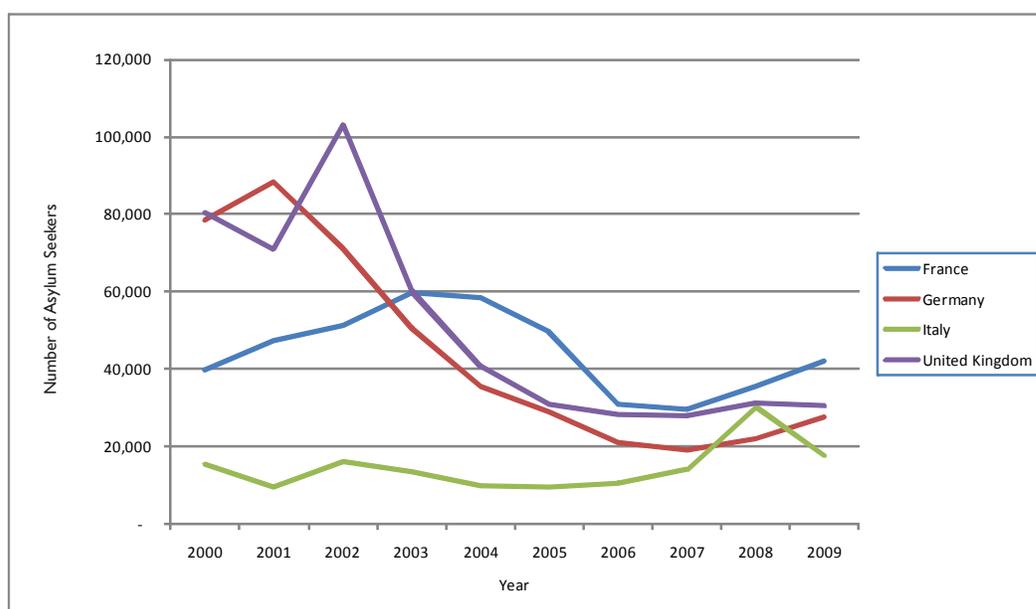
<sup>104</sup> Stilwell, Barbara, Khassoum Diallo, Pascal Zurn, Marko Vujicic, Orvill Adams, Mario Dal Poz, *Migration of Health-care Workers from Developing Countries: strategic approaches to its management*, Bulletin of the World Health Organization: August 2004.

<sup>105</sup> Ibid.

## 2.2.2 Migration Inflows of Asylum Seekers

In narrowing the focus to analyze trends of illegal migration into European countries, a key category for which data is available is asylum seekers.<sup>106</sup> The data for inflows of asylum seekers into key European countries show some clear trends for the foreign population as a whole. Germany and the UK exhibit trend lines that follow a steady decrease from 2002 to 2007, but pick up slightly in the years that follow. The UK processed over 100,000 asylum seeker cases in 2002, the highest among OECD nations. Conflicts in Afghanistan, Iraq, Rwanda, Democratic Republic of the Congo, and Sudan during the first half of the decade contributed to asylum applications in the UK. In 2001 alone, close to 9,000 Afghani nationals sought asylum in the UK soon after the US-led invasion of Afghanistan, jumping from around 5,500 the year before.<sup>107</sup> Likewise, subsequent to US plans to invade Iraq, which were made public in mid-2002, asylum-seeker inflows from Iraq jumped to 15,600 in 2002 from 6,600 the year before.<sup>108,109</sup>

**Figure 2.10**  
**Total Inflows of Asylum Seekers into Key European Countries, 2000-2009**



Source: OECD, *International Migration Database*.

<sup>106</sup> The data available on asylum applications vary from country to country and in some circumstances may only register an asylum seeker when he/she has submitted an application. As such, this person would be registered in the database upon receipt of the application and not upon his or her arrival in the destination country.

<sup>107</sup> Organization for Economic Cooperation and Development (OECD), *International Migration Database*. Accessed 18 November 2011. [<http://stats.oecd.org/Index.aspx?DataSetCode=MIG>].

<sup>108</sup> *Top Secret Polo Step*, The National Security Archive: February 2007. Accessed 18 November 2011. [<http://www.gwu.edu/~nsarchiv/NSAEBB/NSAEBB214/index.htm>].

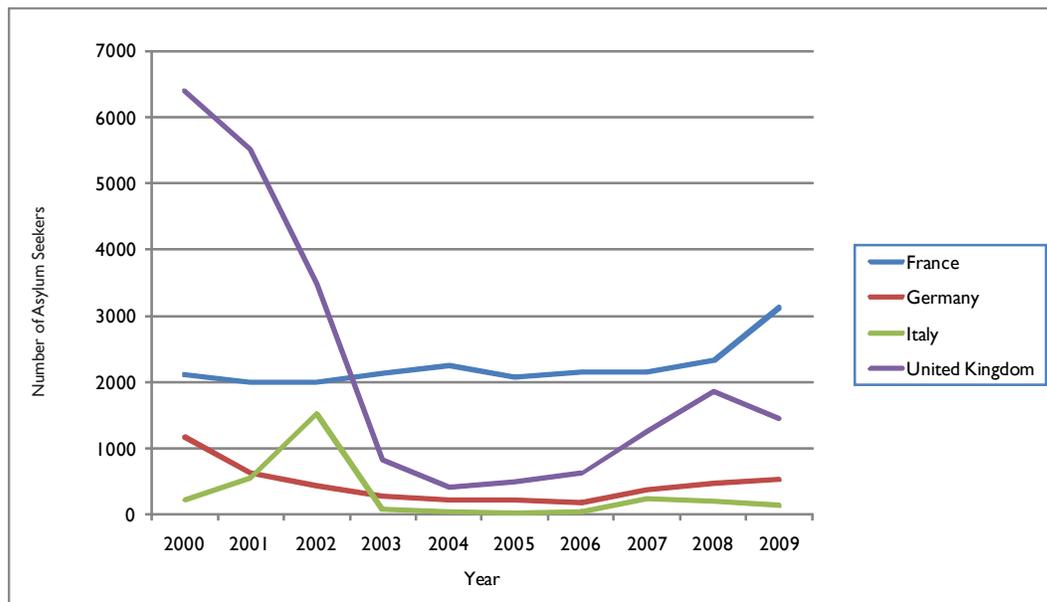
<sup>109</sup> Organization for Economic Cooperation and Development (OECD), *International Migration Database*. Accessed 18 November 2011. [<http://stats.oecd.org/Index.aspx?DataSetCode=MIG>].

France exhibits a pattern that follows a gradual rise and fall between 2000 and 2006, at which point it picks up again to reach a level of just over 42,000 in 2009, the highest among the four European countries. While not as popular as the UK among asylum seekers, France was still an important destination for refugees fleeing conflicted-affected regions during the first half of the decade.<sup>110</sup>

Italy has a relatively low level of asylum seeker inflow through the decade, with a rise towards the later years reaching just over 17,000 in 2009 (Figure 2.10). Many of the asylum seekers filing applications in Italy came from Iraq during the first half of the decade. Towards the end of the decade, Nigerian and Somalian asylum seekers were among the highest numbers entering Italy.<sup>111</sup>

When looking at inflows of Sri Lankan asylum seekers, several trends can be noted comparable to those shown in the previous chart. Sri Lankan inflows into the UK exhibit a similar plummet from the early part of the decade to 2004, at which point the trend line picks up gradually to reach a peak in 2008, much like the pattern exhibited among total foreign population. Sri Lanka's asylum seeking inflows into France remain relatively steady until 2007, at which point it begins a rise similar to that shown in Figure 2.11. Germany and Italy have relatively low levels of Sri Lankans applying for asylum, with a sharp rise in Italy in 2002 mirroring a less pronounced ascent among foreign population, but falling back down to less than a 1000 applications a year and maintaining this level for the remainder of the decade.

**Figure 2.11**  
**Inflows of Sri Lankan Asylum Seekers into Key European Countries, 2000-2009**



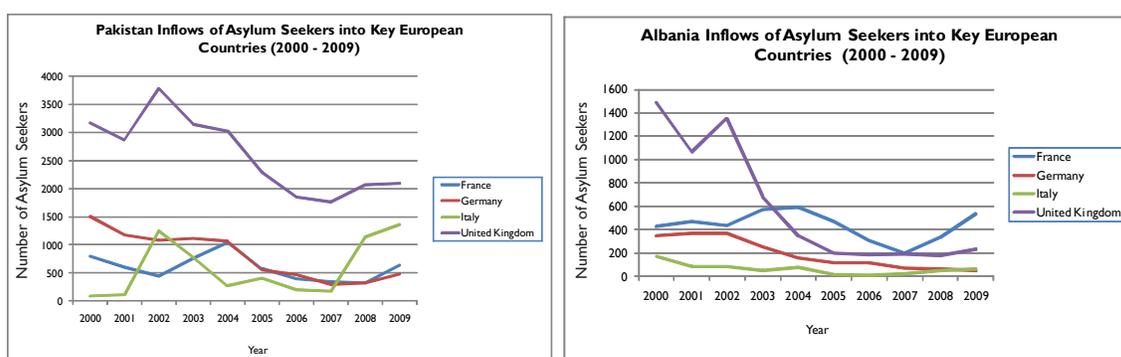
Source: OECD, *International Migration Database*.

<sup>110</sup> Ibid.

<sup>111</sup> Ibid.

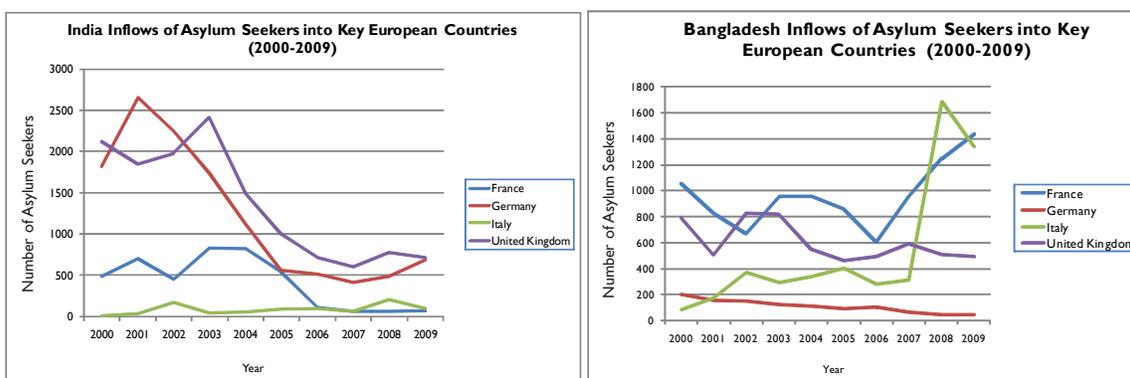
Figure 2.12 shows migration patterns among asylum seekers for the two other signatory countries, Pakistan and Albania. Inflows into the UK for all three signatory states show a sharp fall in asylum applications beginning in 2002, but Albanian inflows seem to level out in 2005 whereas Pakistani inflows appear to rise slightly in 2007. Both Pakistan and Albania reach a peak in asylum seeker inflows into France in 2004 and subsequently fall back down before picking up towards the end of the decade. When looking at flows into Germany and Italy, the three signatory states all experience decreases in asylum applications in 2002 and continue to decline for the next 4-5 years.

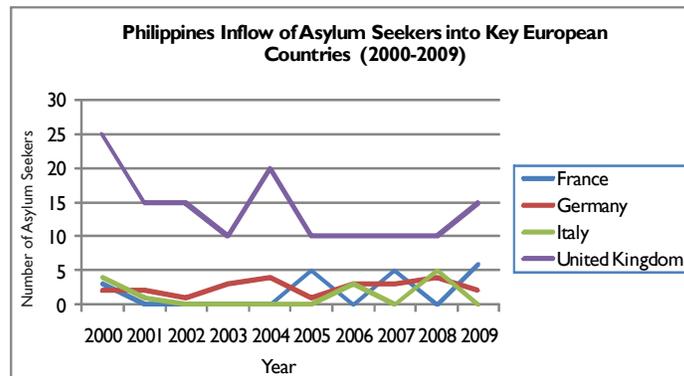
**Figure 2.12**  
**Inflows of Asylum Seekers into Key European Countries, by Country of Origin**  
**(for Signatory Countries of Readmission Agreements)**



Source: OECD, *International Migration Database*.

**Figure 2.13**  
**Inflows of Asylum Seekers into Key European Countries, by Country of Origin**  
**(for Non-Signatory Countries of Readmission Agreements)**





Source: OECD, *International Migration Database*.

The migration patterns among asylum seekers for non-signatory countries do not seem to share many similar traits (Figure 2.13). India's number of asylum applications in Germany and the UK are rather different from those of Bangladesh and the Philippines, with sharp falls in Indian applications not mirrored by the volatility of Filipino application patterns and the relatively calm nature of Bangladeshi application patterns. The volatility of Filipino asylum seeker trends is also reflected in applications in France and Italy, but this may be due to the low absolute number of asylum seekers originating from the Philippines. Indian and Bangladeshi patterns of applications in France and Italy are distinctly different, particularly towards the end of the decade. Indian levels reach numbers well below 500 applications per year from 2006 onwards, whereas Bangladeshi levels shoot up in the same period, reaching well above 1200 per year towards the end of the decade.

A more detailed look at Sri Lankan migration trends into Europe, illustrated by departures of Sri Lankan workers based on employment category from 2004 - 2008 is given in Figure 2.14. Each graph shows migration trends into a particular European country, where the countries comprise the top three European destination countries for Sri Lankan workers, according to data from the National Centre for Migration Statistics (NCMS).<sup>112</sup>

The NCMS database indicates that Cyprus, the UK, and Greece are the top employment destinations in Europe for Sri Lankans, despite OECD data indicating that Italy, the UK, and France are the top destinations for Sri Lankan migrants in general. One possible reason for this discrepancy may be that these latter countries are hotspots for other types of migrants, but there is no conclusive evidence to support this.

When comparing migration trends into Europe among Sri Lankan workers based on employment category - professionals, middle-level, and clerical - it can be noted that the number of Sri Lankan professionals choosing to work in selected European countries decreased over the period analyzed. In

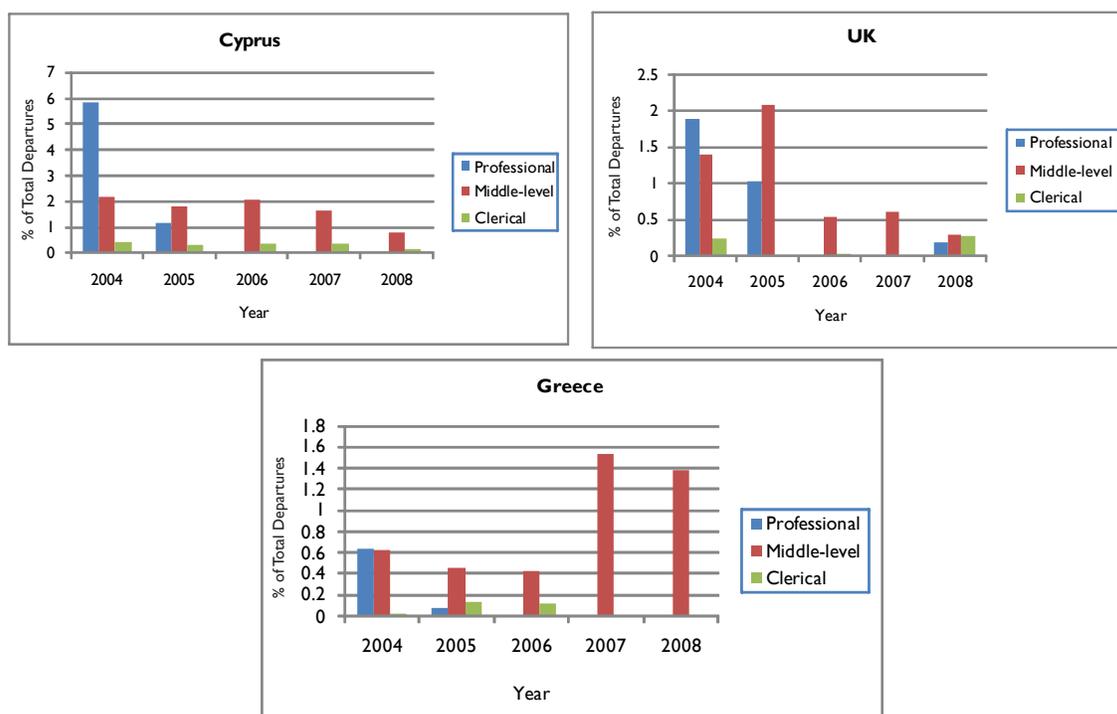
<sup>112</sup> Department of Census and Statistics, 2009, *National Centre for Migration Statistics: Sri Lanka Bureau of Foreign Employment*.

Cyprus, the percentage of departures plummeted from close to 6 per cent in 2004 to roughly 1 per cent the following year. In the UK, levels dropped from roughly 1.8 per cent to just over 1 per cent over the same period.

Workers in the middle-level employment category seemed to prefer Cyprus throughout much of 2004 - 2008. The percentage of total Sri Lankan departures for employment overseas remained close to 2 per cent during much of the time period, but decreased to levels below 1 per cent in 2008. The UK experienced a substantial drop in middle-level workers from 2005 to 2006, decreasing further still in 2008. Greece, on the other hand, saw an increase in these workers from 2006 to 2007 and a slight decrease thereafter.

Workers in the clerical category constitute a relatively low portion of total departures for employment overseas. The data for Cyprus, Greece, and the UK all indicate that the percentage of total departures is below 1 per cent throughout 2004 - 2008 for each destination.

**Figure 2.14**  
Departures of Sri Lankans to Key European Countries, by Occupation Category



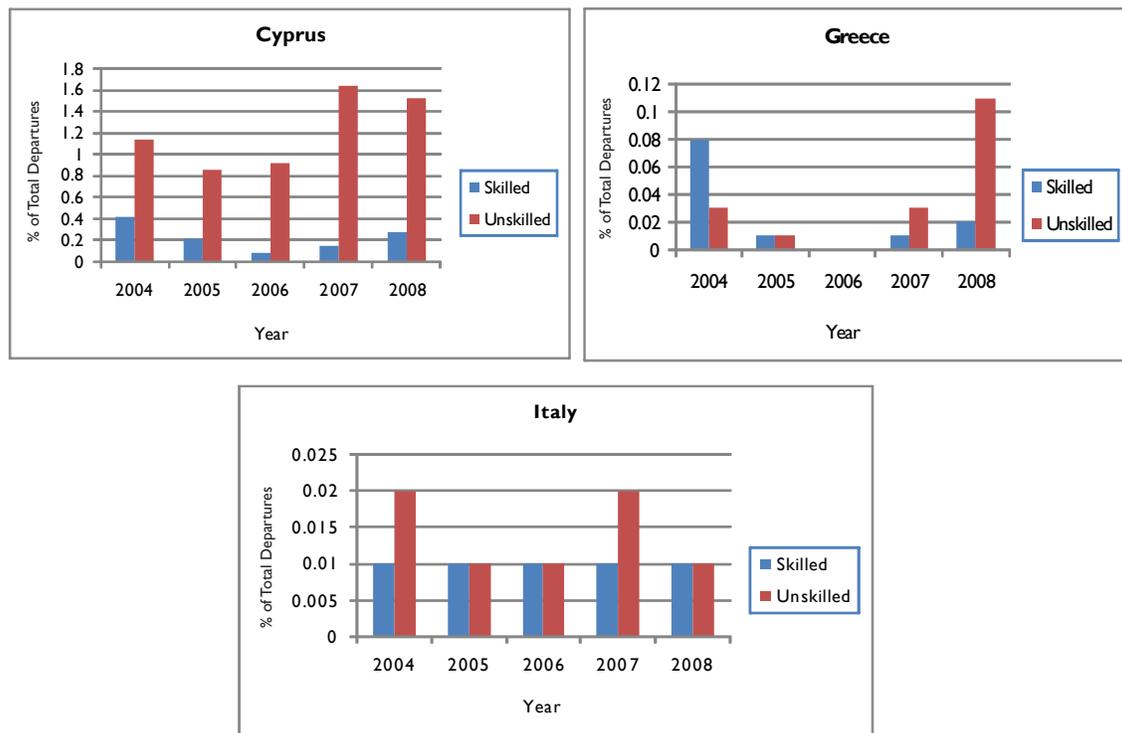
Source: Department of Census and Statistics, National Centre for Migration Statistics.

The charts below show the percentage of departures for Europe based on skilled vs. unskilled jobs. The countries chosen are Cyprus, Greece, and Italy and reflect the top European destinations with available data.<sup>113</sup> One can see that, between 2004 and 2008, Cyprus was the top destination for unskilled workers, reaching 1.5 per cent of total departures in 2008, whereas Greece and Italy constituted

<sup>113</sup> Data on skilled vs. unskilled Sri Lankan workers departing for the UK were not available.

only 0.1 per cent and 0.01 per cent respectively. When looking at trends among skilled Sri Lankan workers, one can see that both Greece and Cyprus exhibited decreasing levels from 2004 to 2005 and increasing levels thereafter. However, these countries constituted less than 1 per cent of all Sri Lankan departures for employment overseas, with the majority of workers travelling to the Middle East to seek opportunities.

**Figure 2.15**  
**Departures of Sri Lankans to Key European Countries, by Skill Category**



Source: Department of Census and Statistics, National Centre for Migration Statistics.

### 2.3 Migration Outflows out of Key European Countries

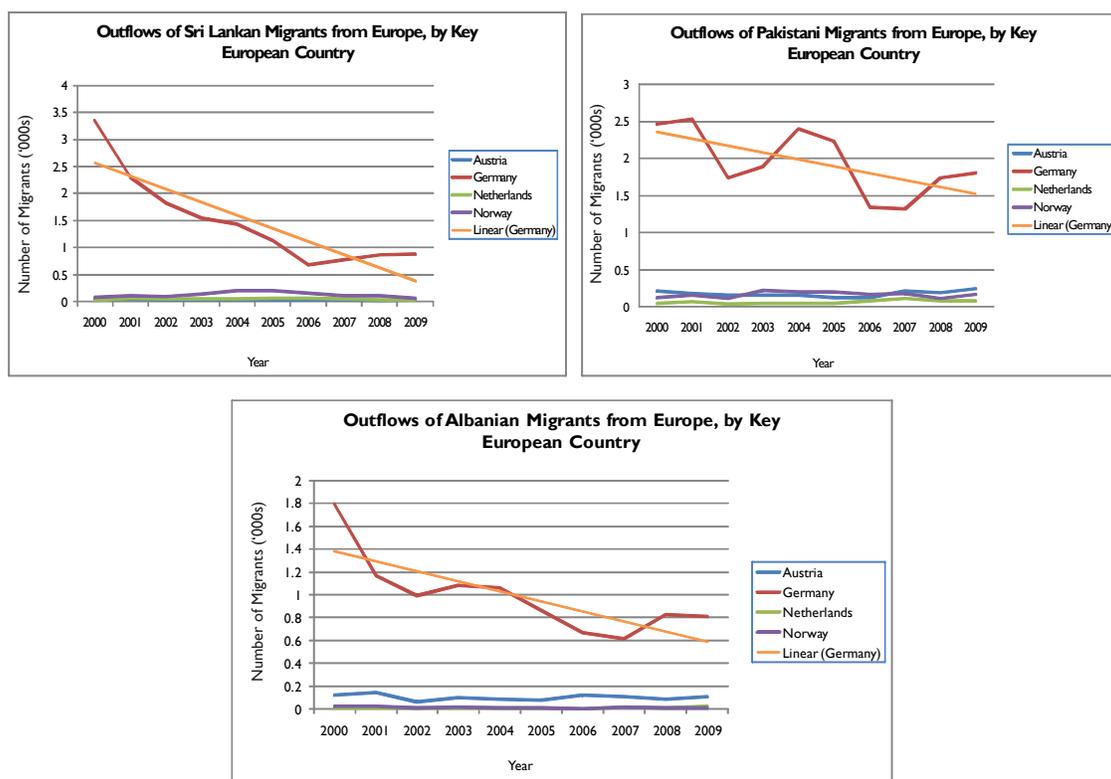
When looking at migration outflows out of Europe, one may notice an interesting distinction between signatory countries and non-signatory countries. This distinction lies particularly in the trend line for outflows out of Germany and is apparent when looking at the entire decade.<sup>114</sup>

When looking first at signatory countries, it is easy to see that there is an overall downward trend in migration outflows out of Germany. Despite the local peaks and troughs seen in some of the plotted data, there is a clear downward trend in outflows among Sri Lankan, Pakistani, and Albanian migrants from 2000 -2009. This is most notable after adding a trend line, shown as the straight orange line

<sup>114</sup> Data on migration outflows for other key European countries such as France, Italy, and the UK were not available from the OECD migration statistics database.

running through the plotted data for Germany.<sup>115</sup> For each signatory country, one can see that migration outflows decrease over the course of the decade. Sri Lanka exhibits the steepest decline, followed by Albania and subsequently Pakistan. Sri Lankan migration outflows out of Germany drop relatively quickly, starting at over 3,000 persons in 2000 and plummeting to roughly 600 persons by 2006, with a slight rise thereafter. In a similar fashion, Albanian outflows start at a high point in 2000 and decrease over the course of the next six years, only to rise up toward the end of the decade. Pakistani flows are much more volatile than Sri Lanka and Albania, but continue the downward pattern exhibited by its fellow signatory countries.

**Figure 2.16**  
**Outflows of Migrants from Key European Countries, by Country of Origin of Migrant (for Signatory Countries of RAs)**

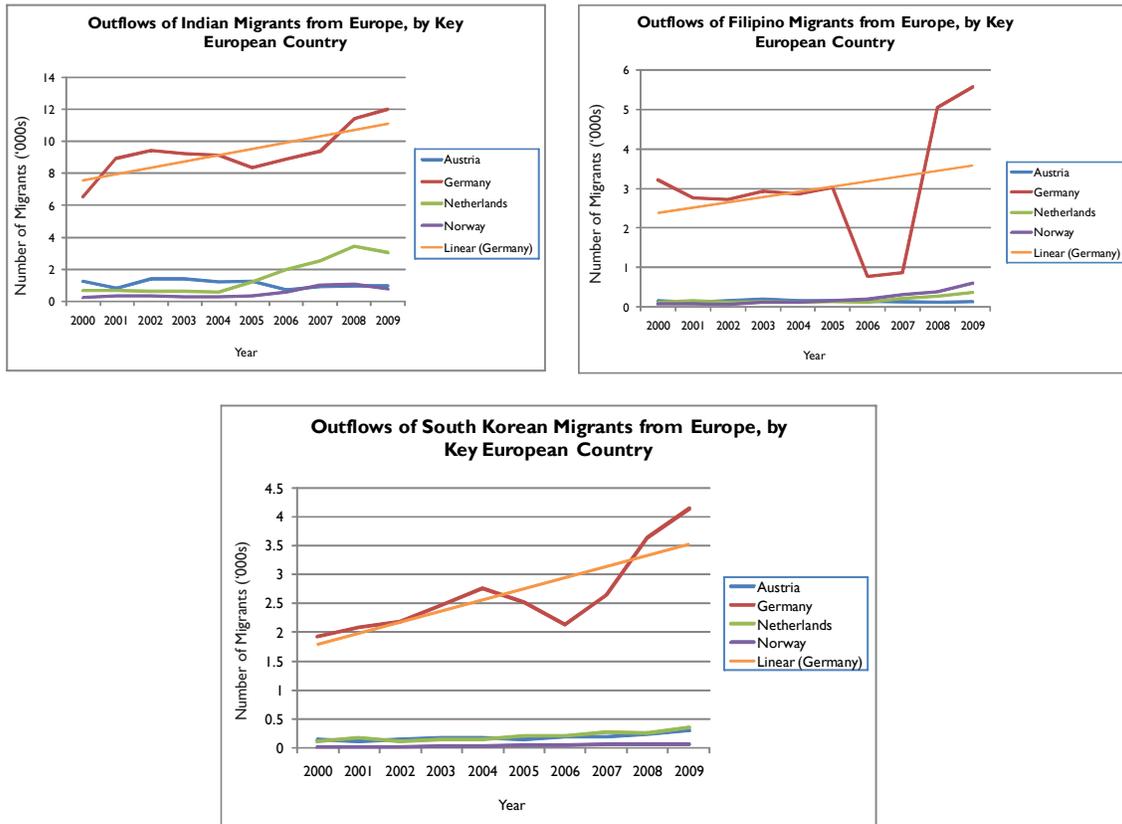


Source: OECD, *International Migration Database*.

In contrast, non-signatory countries seem to exhibit an upward trend through the course of the decade (Figure 2.17). Among non-signatory states, the three most significant sources of migrant outflows out of European countries from 2000 to 2009 were India, the Philippines, and South Korea. When looking at their outflows from Germany, and upon plotting a trendline to fit the data, it is clear that they all follow upward trends. They all seem to experience a dip in the middle of the decade, followed

<sup>115</sup> A linear regression trendline was used in each case.

**Figure 2.17**  
**Outflows of Migrants from Key European Countries, by Country of Origin of Migrant (for Non-Signatory Countries of RAs)**



Source: OECD, *International Migration Database*.

by a general rise in migration outflows thereafter. India's outflows are among the highest, reaching a peak of 12,000 persons in 2009. Outflows among Filipinos and Koreans also reach their respective peaks in 2009, with close to 5,500 Filipinos and roughly 4,000 Koreans leaving Germany at the end of the decade.

When comparing outflow migration trends between signatory and non-signatory countries, one may be tempted to draw a potential correlation. When evaluating the abovementioned states, one can note that signatory countries have a notably decreasing trend in outflows out of Germany, a key migration hotspot in the last decade. One can also note that the non-signatory countries chosen have a markedly increasing trend in outflows out of Germany. It is tempting to draw a correlation from these observations and conclude that EU RAs are being signed with countries that have decreasing levels of outflows from key migration destinations. However, since the analysis involves only six signatory and non-signatory countries altogether, it is advisable to avoid drawing any conclusions before extending the analysis to more countries.

## 3. Sri Lankan Migration Agreements

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### 3.1 Individual European Agreements

The following section will deal primarily with official migration agreements signed between Sri Lanka and individual European countries, termed 'partner countries.' The section will encompass, for each partner country, a discussion on the obligations for both parties, and the benefits and drawbacks brought about by signing and adhering to the agreement. The countries examined include the UK, Italy, Switzerland, Norway, and the Netherlands.

The benefits brought about by signing these agreements for European countries revolve primarily around curbing irregular migration. This is the primary reason behind individual European countries requesting Sri Lanka to engage in discussions on migration.

One key difference between Sri Lanka's migration agreements between the EU and individual European countries is the clause in the EU-Sri Lanka RA concerning third-country nationals. As discussed previously, the EU-Sri Lanka RA requires the requested state to readmit a national who is not from the requested state if this person has been granted a travel visa from the requested state or whose last port of embarkation is in the requested state. However, individual European migration agreements do not contain any clause relating to the return of third-country nationals.

#### 3.1.1 United Kingdom

##### *Obligations*

The first arrangement between the UK and Sri Lanka, to facilitate and make provision for the return to Sri Lanka of Sri Lankan citizens who do not have the right to enter or remain in the UK, was signed in November 1999, and subsequently updated in January 2004 and April 2006. Similar to the RA signed between Sri Lanka and the EU, the obligations stipulated in the RA between Sri Lanka and the UK follow a reciprocal nature. In addition to a common set of obligations to which both parties must adhere, particular obligations for each country have been specified in the arrangement. These obligations, as per the respective arrangements, are listed below.

Obligations for both Sri Lanka and the UK:

- Work together actively to promote the voluntary return from the UK of failed asylum seekers from Sri Lanka.
- Mutually work out the necessary partial modalities within the framework of this Arrangement for its implementation.
- Protect the "safety and dignity" of persons being returned pursuant to the Arrangement.
- Consult each other whenever there are compelling circumstances which make it necessary to consider further measures in the implementation or amendments to the terms of the Arrangement.

- Jointly issue a Common Provisional Travel Document (CPTD)<sup>117</sup> to facilitate the return of Sri Lankan citizens to Sri Lanka.

Obligations for Sri Lanka:

- Accept persons whom the British authorities decide to return, subject to the "availability of acceptable proof" that such persons are citizens of Sri Lanka.
- Establishment of a Source Country Information System (SCIS) in Sri Lanka which would provide evidence of nationality.
- With respect to returnees whose Sri Lankan citizenship is established, issue valid travel documents prior to their departure, such as a passport or other document of identity.
- The Sri Lankan High Commission (SLHC) in London will reply to a request for a travel document accompanied by a completed questionnaire "as expeditiously as possible".
- Accept up to 100 returnees per month.
- The SLHC should respond to all requests for a returnee under this Arrangement within five working days of receiving details of the returnee, confirming whether or not the individual is acceptable for return. In doubtful cases the SLHC can seek extension of this time limit within five working days and respond to the request within the agreed extended time limit. If no reply is received and no extension is sought within the five days, it will be "deemed that the returnee is provisionally acceptable to Sri Lanka".
- Returnees will be subject to further interview by the Sri Lanka Immigration authorities on arrival at the Bandaranaike International Airport.

Obligations for the UK:

- Ensure that the attached questionnaire is completed to the fullest extent possible in respect of each returnee, including returnees who refuse to cooperate in this process.
- A reply to any inquiry regarding the completed questionnaire from the Home Office as to the progress, should be made within fifteen days of such an inquiry.
- Recognition and acceptance of the principle that Sri Lankan citizens with valid and subsisting leave to enter or remain in the UK do not fall within the scope of this Arrangement.
- Provide the SLHC with the details of each person to be returned to Sri Lanka under the terms of this Arrangement (eg: given name, surname, maiden name, earlier names, nicknames or pseudonyms, date and place of birth, sex, physical description, father's and mother's name, language, civil status, name of spouse, children (if any) or other next of kin, last place of residence, passport or identity card number, driving licence, schools attended). The information will be conveyed by courier, fax, email or any other mutually agreed means. Additionally, the UK will forward any evidence of nationality provided by the SCIS in Sri Lanka with a covering letter certifying that after due investigation they are satisfied that the returnee is a Sri Lankan citizen.
- Where it is decided to return Sri Lankan citizens by means of charter flight, the UK should provide Sri Lanka with a minimum of two week's notice of its intention. A list of

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<sup>117</sup> The CPTD is a document annexed to the draft Readmission Agreement between the EU and Sri Lanka.

- those persons will be provided at a minimum of one week's notice. If Sri Lanka objects to the return of any individual before the departure of the charter flight, the UK will consult separately with Sri Lanka about arrangements for the return of any such individual.
- Meet the full cost of travel to Sri Lanka for each returnee and provide the necessary funds for onward transportation to the town or village of origin.
  - In situations where subsequent checks reveal that a person removed under this Arrangement is not a citizen of Sri Lanka, the UK will accept the return of that person for further examination, at the expense of the UK.
  - Act as a liaison between the Government of Sri Lanka and NGOs in Sri Lanka with expertise in this field, to facilitate establishing reintegration assistance, in the form of vocational skills based on training for Sri Lankan citizens returning under this Arrangement.
  - Meet the additional administrative costs that the Consular Section at the SLHC in London incurs in order to fulfill the terms of this arrangement.
  - Where possible, extend assistance in response to requests received from Sri Lanka for training in immigration and in the prevention of forged documentation.

### ***Benefits and Drawbacks of Signing and Adhering to this Migration Arrangement***

The UK has historically been a destination country for hundreds of thousands of irregular migrants over the years, including Sri Lankan migrants. The estimated amount of Sri Lankan diaspora in the UK is approximately 180,000,<sup>118</sup> which could include a significant number staying illegally. Many arrive clandestinely, travel using forged/counterfeit documents, others are imposters and many enter by deception. Additionally, once in the UK, many overstay and remain unlawfully. RAs are one of the main measures used by the UK to control such irregular migration. It allows the UK to return nationals back to their country of origin and lays down guidelines to assist in the re-documentation and return process.<sup>119</sup> There also exists the possibility of implementing timescales and capacity building projects, where the UK works closely with source (Sri Lanka) and transit countries to assist the return process.

Unfortunately, there is not much publicly available information regarding the benefits for Sri Lanka coming from this agreement. However, one benefit is the assurance that Sri Lanka will be able to continue exporting its migrant workers under a well-structured framework. Without such a framework, it is likely that labour migration between Sri Lanka and the UK will not flow as smoothly. As a result of cooperation between the two states in the context of migration, the UK has opened up its labour market to receive migrant workers from Sri Lanka.<sup>120</sup>

The drawbacks in implementing a migration arrangement between the two countries involve the arrangements becoming outdated with changes in the situation in the countries and the widely fluctuating current bilateral political relationship between the countries.<sup>121</sup>

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<sup>118</sup> Kulasekara, Shantha, *Migration and National Development*, International Organization for Migration. Online Powerpoint Presentation. Accessed 20th October 2011.

<sup>119</sup> Interview with the British High Commission.

<sup>120</sup> Interview with Delegation of the European Union to Sri Lanka and the Maldives.

<sup>121</sup> Interview with the British High Commission.

A recent example is the case of fifty Sri Lankan immigrants being sent back to Sri Lanka from the UK in September 2011, the majority of whom were Tamil failed asylum seekers. This led to a number of protests by several human rights groups, mainly owing to concerns as to whether any arrangements were in place to monitor the safety of Tamil deportees.<sup>122</sup> Despite claims from the Home Office in the UK that arrangements to monitor the welfare of the deportees had been sub-contracted to the International Organization for Migration (IOM), this was denied by the IOM, and the Border Agency conceded that the only measure being taken to ensure the safety of Tamils who are forcibly removed from the UK to Sri Lanka is to give them the telephone number and address of the British High Commission in Colombo.<sup>123</sup> The response from both the Foreign Office as well as domestic authorities was that protection of Sri Lankan deportees was no longer necessary given that the civil war was over. IOM is of the view that, based on years of assistance to returnees in Sri Lanka, it has not been aware of complaints from returnees of rights abuses after arrival.

However, it is not abundantly clear whether individuals of Tamil ethnicity face unnecessary harassment during certain incidents. In particular, in March 2012, the Foreign and Commonwealth Office of the UK pointed out on its website that, in the context of political rallies in Sri Lanka, "detentions do occur, particularly of people of Tamil ethnicity."<sup>124,125</sup> In this context, one may need to take a closer look at the stipulated obligation in the Arrangement for both parties to protect the safety and dignity of persons being returned pursuant to the Arrangement.

### 3.1.2 Italy

First Arrangement signed in 2001.<sup>126</sup>

#### **Obligations**

Much like the RA signed between Sri Lanka and the EU, the obligations stipulated in the RA between Sri Lanka and Italy follow a reciprocal nature. This means that there is a common set of obligations to which both parties must adhere. The obligations are similar to those drawn up in other RAs, like the one between Sri Lanka and the EU. The agreement between Sri Lanka and Italy states that the requested country must cooperate with the requesting country during the readmission process, with respect to providing documentation that would help identify the nationality of a person suspected of overstaying, verifying the documentation provided by such a person, and readmitting the person back into the requested country. This does not extend to financial assistance or providing any form of humanitarian assistance.

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<sup>122</sup> Cobain, Ian, *The Guardian*, "UK Not Monitoring Safety of Tamils Deported to Sri Lanka", 29th September 2011.

<sup>123</sup> Ibid.

<sup>124</sup> Foreign and Commonwealth Office, 2012, *Travel and Living Abroad: Sri Lanka* (<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/asia-oceania/sri-lanka>)

<sup>125</sup> On a similar note, the website of the Foreign Affairs and International Trade Department of Canada had, as of March 2012, advised that "some Canadians of Tamil origin report difficulties, including arrest and/or detention, during screening and security operations." ([http://www.voyage.gc.ca/countries\\_pays/report\\_rapport-eng.asp?id=276000](http://www.voyage.gc.ca/countries_pays/report_rapport-eng.asp?id=276000))

<sup>126</sup> Interview with the Embassy of Italy

## **Benefits**

The reasons for Italy's request for an RA with Sri Lanka revolve around Italy's desire to curb over-migration from its many source countries. There are approximately 81,000 Sri Lankan nationals legally residing in Italy.<sup>127</sup> Most migrant workers from Sri Lanka are working in established occupations, but a handful of Sri Lankan nationals are irregular migrants who may be involved in prostitution, drugs, and/or criminal activity. In such cases, an RA would help avoid criminal activity among irregular migrants by facilitating the repatriation of these persons.<sup>128,129</sup> As such, the Italian government would benefit from the agreement by ensuring that it receives cooperation from the Sri Lankan government during repatriation of irregular migrants.

For Sri Lanka, the benefits derived from signing the RA relate to greater opportunities for Sri Lankan migrant workers seeking employment in Italy. Italy currently has a preferential quota system which grants 3,500 non-seasonal work visas to Sri Lankan workers on an annual basis. These visas last a minimum of one year and permit the holder to work in a non-seasonal occupation (as opposed to seasonal work like fruit-picking). Italy also grants 60,000 seasonal work visas to 20 countries, including Sri Lanka.

By signing the RA with Italy, the Sri Lankan government has kept the window of opportunity open for Italy to continue granting such visas and to maintain the current quota system. This system enables Sri Lankan migrant workers to seek employment opportunities across Italy.<sup>130</sup>

Furthermore, the Sri Lankan government's cooperation regarding migration has helped lead to a labour migration agreement signed between the two states on 20th October 2011. The agreement authorizes the establishment of a Local Coordinating Office at the Embassy of Italy in Colombo, which will help regulate the recruitment of Sri Lankan migrants in accordance with the abovementioned annual preferential quota. In addition, the Italian government is expected to provide assistance with linguistic and vocational training to Sri Lankan workers in accordance with market demands in Italy.<sup>131,132</sup>

## **Drawbacks**

Despite Italy initiating the RA, there do exist drawbacks for Italy. One key issue is the financial cost involved during the readmission process. It is expensive for the Italian government to fund the readmission of each and every irregular migrant sent back to their home country. Funding provided by the Italian government covers several stages of the readmission process, from the first stage of redocumentation, which is the verification of nationality and identity where there is no supporting

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<sup>127</sup> Correspondence with the International Organization for Migration.

<sup>128</sup> Interview with the Embassy of Italy.

<sup>129</sup> Exact numbers of Sri Lankan nationals engaging in criminal activity in Italy are currently not available.

<sup>130</sup> Interview with the Embassy of Italy.

<sup>131</sup> *Italy and Sri Lanka sign Bilateral Agreement on Labour Migration*, 20th October 2011, Embassy of Sri Lanka in Rome. Accessed 26th October 2011. Available < <http://www.srilankaembassyrome.org/en/press-releases/462--italy-and-sri-lanka-sign-bilateral-agreement-on-labour-migration-.html>>.

<sup>132</sup> *Sri Lanka, Italy to sign agreement on labour migration*, 8th October 2011, Lankanewspapers.com. Accessed 26th October 2011. Available < <http://www.lankanewspapers.com/news/2011/10/71400.html>>.

documentation or where a potential returnee is uncooperative, to return, which in most cases involves booking seats on regular flights but in some cases requires charter flights.

It is in the best interests of Italy to adhere to the RA, since it is Italy which initiated the discussions preceding the agreement. As such, the probability that Italy would break the agreement is quite low and does not warrant extensive discussion.

For the following countries, there is no concrete information that is publicly available regarding the benefits and drawbacks arising out of the respective agreements. The information that is used in this report was obtained from written correspondence on migration agreements between the governments of Sri Lanka and of the respective country.

### **3.1.3 Switzerland**

First Arrangement signed in January 1994 and updated in February 2004.<sup>133</sup>

#### ***Obligations***

The agreement signed between Sri Lanka and Switzerland in 1994 is technically not an RA that refers to migrants in general, but rather an agreement focusing specifically on the return of asylum seekers. Furthermore, it is not reciprocal in nature like the RA between Sri Lanka and the EU. The obligations stipulated in the agreement in fact focus primarily on Sri Lankan authorities, and can be summarized as follows.

- The agreement deals with regulating the return of Sri Lankan nationals who have had their application for asylum in Switzerland rejected.
- Both parties have agreed on the need to ensure the secure and dignified return of the individuals involved.
- The government of Sri Lanka "will accept" persons whom the Swiss authorities have decided to return, "subject to the availability of acceptable proof that such persons are in fact citizens of Sri Lanka." The acceptable proof relates to a questionnaire that each returnee is to complete, which would enable Sri Lankan authorities to ascertain the citizenship of the returnee.
- Sri Lankan authorities will need to issue valid travel documents including passport or other identification document prior to the returnee's departure from Switzerland.
- Both parties agree to conduct the return process in a phased manner in order to control the number of returnees. The exact details of this phased return process are not available.
- The UNHCR will be requested to act as a liaison between the returnees and the two parties and to assist in particular problems encountered by the returnees.
- The Sri Lankan authorities are expected to provide each returnee with a document with the returnee's identification details and contact details of the Swiss Embassy in Colombo, the UNHCR office, and the relevant Sri Lankan authorities in case the returnees need to bring to attention any problems they face.

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<sup>133</sup> Correspondence on migration arrangements between Sri Lanka and Switzerland sent on 11th January 1994.

- The Sri Lankan authorities are to issue "as expeditiously as possible" any necessary documentation to the returnee upon his/her arrival in Sri Lanka, for the purpose of residence in the country.
- Returnees will not be forced to proceed to "un-cleared areas" against their will. Sri Lankan authorities are expected to make appropriate provision for returnees to reside in temporary holding centres until "conditions permit the returnees to return to their original place of permanent residence." The temporary holding centres may be administered by the Sri Lanka Red Cross in cooperation with Sri Lankan authorities.

### **3.1.4 Norway**

First Arrangement signed in March 2000.<sup>134</sup>

#### ***Obligations***

The migration agreement signed between Sri Lanka and Norway in 2000 is somewhat different to that signed with Switzerland. The Norwegian agreement is not specific to asylum seekers and deals more generally with the repatriation of Sri Lankan nationals who do not have the right of residence in Norway. It also entails fewer obligations as discussed below.

The two parties are obligated to carry out the return of such persons in a phased manner, and in particular, will not exceed 350 persons in the first year. This figure does not include Sri Lankan nationals returning on their valid original passports.

- As with the Swiss agreement, the Norwegian agreement stipulates that the Sri Lankan authorities must accept all persons whom the Norwegian authorities have decided to return, subject to the availability of acceptable proof that these persons are in fact Sri Lankan nationals. This proof may come in the form of the person in question filling out a questionnaire that asks about the person's family and personal details. It is the responsibility of the Norwegian authorities to ensure the person completes the questionnaire to the fullest extent possible.
- Once a person's Sri Lankan nationality has been established, it is the duty of the Sri Lankan authorities to issue travel documents prior to their departure from Norway.
- Any changes and compelling circumstances will be discussed between the Sri Lankan and Norwegian authorities. There is no mention of bringing in third-party consultants like the UNHCR as mentioned in the Swiss agreement.

### **3.1.5 The Netherlands**

First Arrangement signed in October 1997.<sup>135</sup>

#### ***Obligations***

The obligations stipulated in the migration arrangement signed between Sri Lanka and the Netherlands is also reciprocal in nature, with both common and separate responsibilities for the two countries.

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<sup>134</sup> Correspondence on migration arrangements between Sri Lanka and Norway sent on 6th March 2000.

<sup>135</sup> Correspondence on a migration arrangement between Sri Lanka and the Netherlands sent on 24th October 1997.

While the obligations for each separate country are not as wide-ranging as those in the Sri Lanka-UK Agreement, much of the common obligations are the same for both agreements.

- Both parties must accept that Sri Lankan nationals who do not or no longer have the right to residence in The Netherlands will return "in conditions of safety and dignity".
- The repatriation referred to above will be carried out in a phased manner by both parties, and not exceed 350 persons for the first year, to be reviewed after the lapse of one year from date of exchange of these notes.<sup>136</sup>
- Consult each other whenever there are compelling circumstances which make it necessary to consider further measures in the implementation of this arrangement.
- Mutually work out the necessary practical modalities within the framework of this arrangement for its implementation.
- Sri Lankan authorities must accept persons whom the Netherlands authorities decide to return "subject to the availability of acceptable proof that such persons are in fact citizens of Sri Lanka".
- The Sri Lankan Government is expected to issue valid travel documents in respect of returnees whose Sri Lankan nationality is established prior to their departure, such as a passport or other document of identity.
- It is the duty of the Netherlands to ensure that the attached questionnaire is completed to the fullest extent possible in respect of each returnee.

### **3.1.6 Denmark**

Arrangement signed on August 1998 and updated on 18th August 2004.<sup>137</sup>

The migration agreement signed in August 1998 between Sri Lanka and Denmark deals with the repatriation of Sri Lankan nationals who do not have the right of residence in Denmark. Unfortunately, the agreement is not publicly available and as such, we are unable to discuss the obligations and implications for both parties.

## **3.2 Informal Migration Agreements**

The following section will deal primarily with the informal migration agreement between Sri Lanka and Australia. The section will encompass, as in the preceding sections, a discussion on the expectations for both parties, and the benefits and drawbacks brought about by the informal arrangement.

### **3.2.1 Australia**

Australia is one of the most popular destinations for Sri Lankan migrants. The Sri Lankan Diaspora in Australia is estimated to be 40,000.<sup>138</sup> Approximately 15,000 Australian visas are provided annually for regular migrants, for those visiting relatives, student visas and skilled permanent migration. Irregular

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<sup>136</sup> Sri Lankan citizens returning home on their valid original passports issued by the competent SL authorities will not be counted within this number.

<sup>137</sup> Correspondence on migration arrangements between Sri Lanka and Denmark sent on 27th April 2005.

<sup>138</sup> Kulasekara, Shantha, *Migration and National Development*, International Organization for Migration. Online Powerpoint Presentation. Accessed 20th October 2011.

migration of Sri Lankans has also been an issue since the early 1990s. Irregular migration occurs both by air and by boat, with the latter being more frequent as well as problematic.<sup>139</sup> Maritime arrivals are much more difficult to identify as opposed to those who arrive by air, are most costly in terms of detention-related costs, and there are also issues of danger. Around 1000 illegal migrants travelling by boat have died during the process. At present, approximately 15 who arrived illegally by air are returned to Sri Lanka, whereas the number of irregular maritime arrivals returned is almost 100.<sup>140</sup>

### **Obligations**

There are no formal obligations for either party. There exists no written, signed agreements. Rather, the arrangement is based primarily on goodwill.

However, there are certain expectations for both parties. Australia is to provide all necessary information to the Sri Lankan High Commission in Canberra regarding the return of the potential returnees. The documentation provided will aid the Sri Lankan authorities in the identification of the citizenship of the returnees. Once the citizenship of the potential returnee has been established as Sri Lankan, it is expected that the authorities in Sri Lanka will readmit such individuals.<sup>141</sup>

### **Benefits**

For Australia, the benefits brought about by maintaining an informal arrangement on return migrant issues with Sri Lanka is that negotiating a formal RA would involve prolonged discussions over an extensive period. Furthermore, Australian authorities have commented on the good relations and high level of cooperation between the Australian High Commission and Sri Lankan authorities regarding return migrant issues, stating that the current situation is quite satisfactory and works well on an ad-hoc basis.<sup>142</sup>

The benefits for Sri Lanka revolve primarily around a strong support system for returnees set up by Australian authorities in Sri Lanka in conjunction with the IOM office in Colombo. This system involves the following components:

A cash payment programme was provided for returnees by the Australian government until 2009. Due to issues in the returnees' management of the cash, the programme was discontinued and replaced by a reintegration programme in collaboration with the IOM. This involves a six-month process, which begins with creating a personal profile for each returnee based on their employment potential. The programme involves identifying which occupational areas the returnee may engage in, and in many cases providing funds to help them engage in such activities. For example, funds may be provided to purchase three-wheelers, tractors, livestock, and take part in vocational training. The main purpose is to develop a sustainable income stream to help them reintegrate and prevent them from migrating again.

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<sup>139</sup> Sri Lankan illegal maritime arrivals picked up in 2008 and 2009, and is approximately 1000 per year.

<sup>140</sup> Interview with the Australian High Commission in Colombo.

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

Another benefit for Sri Lankans is in the form of assistance provided by both the Australian government and the IOM upon their arrival at the Bandaranaike International Airport. For instance, IOM and Australian embassy officials meet returnees and remain with them during the interview process conducted by the Criminal Investigation Department (CID) and the State Intelligence Service (SIS) during immigration clearance.<sup>143,144</sup> This particularly applies to involuntary returnees. Furthermore, the Australian government and IOM may arrange transport for returnees from the airport to their respective home towns.

The Australian High Commission has also started community-based projects in the North and East of Sri Lanka in 2011, given that most of the irregular migrants are from these areas. These involve developing industries within the villages of returnees, and include rice mills, dairy co-operatives, and have amounted to 30-40 small scale projects so far.<sup>145</sup>

### **Drawbacks**

There are no clear drawbacks extending from the informal arrangement for either party. Australian officials have stated that Sri Lankan migrants are relatively more compliant with regard to repatriation, and roughly 80 per cent of Sri Lankan nationals return voluntarily.

Once the Sri Lankan nationality of irregular migrants has been identified and proved, they are sent back to Sri Lanka on charter flights. This process involves several stages which are illustrated below:

- Appeal rights of identified irregular migrants, which include both administrative and judicial appeal rights.
- Interview process dealing with more detailed identification of the returnee and inquiries into what opportunities the returnee will have once returned to Sri Lanka.
- Issuance of a travel document - an emergency passport - by the Sri Lankan High Commission in Canberra.
- The process of return via charter flight.
- Upon arrival at the Airport, the returnee will be met by an official from the IOM or the Australian High Commission, and where necessary, a medical escort or physical security guard, and will be interviewed by the SIS and CID at immigration clearance.
- The respective official will provide transport to the returnee to his/her home town.

This return process takes place relatively smoothly with regard to Sri Lankan returnees. Most issues, if any, would be encountered in Australia during the process of appeal rights, where for example there have been cases of self-harm. However, such issues have not been encountered with Sri Lankans, who are relatively compliant and cooperate with the Australian officials. The interview process by the SIS or CID at the Airport could at times be extensive and cumbersome for involuntary returnees. In such situations, officials from the IOM or the Australian High Commission would step in and assist such returnees.<sup>146</sup>

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<sup>143</sup> Interview with the Australian High Commission in Colombo.

<sup>144</sup> Interview with the International Organization for Migration.

<sup>145</sup> Interview with the Australian High Commission in Colombo.

<sup>146</sup> Interview with the Australian High Commission in Colombo.

## 4. Potential Costs and Benefits to Sri Lanka of A Readmission Agreement

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### 4.1 Does the EU-Sri Lanka Readmission Agreement Incorporate Best Practices of other Readmission Agreements?

The RAs negotiated between the EU and other countries usually follow a standard arrangement. However, as discussed in Section I of this report, there do remain some key differences between the EU-Sri Lanka RA and certain other RAs. One discrepancy refers to the identification of irregular migrants. The EU-Sri Lanka agreement permits a wider variety of documentation to be used to establish the identity and travel history of a person, thereby leading to a higher likelihood of Sri Lanka having to readmit third-country nationals and stateless persons who have transited through the country. This may lead to complications for Sri Lankan authorities, since a third-country national illegally residing in the EU but having travelled through Sri Lanka would become the burden of Sri Lankan authorities upon deportation from the EU.<sup>147</sup> Other RAs, like those between the EU and Hong Kong and Macao, respectively, do not entail such broad provisions regarding the identification of irregular persons and their travel history.<sup>148</sup>

Another difference relates to certain compensatory measures offered by the EU. For example, eight out of the twelve countries, with which the EU has signed an RA, have been offered a Visa Facilitation Agreement.<sup>149</sup> Sri Lanka is among the four countries that have not been offered such a provision.

Minor differences could exist in each stage of the readmission process, such as in terms of the number of committee members appointed in the joint readmission committee, or the number of days required to submit documentation regarding proof of nationality etc. However, according to a review of existing documentation of RAs and discussions with EU officials, a few other disparities exist in terms of the content of the agreement, where similar EU clauses apply to all agreements.<sup>150</sup>

### 4.2 Potential Benefits to Sri Lanka

#### 4.2.1 Economic Benefits

There are no specific economic benefits to Sri Lanka from entering into an RA with the EU. The main advantage to Sri Lanka, as discussed in Section I of the report, is the fact that the RA provides an organized means of assisting the return of Sri Lankan nationals who are found in illegal situations in the EU. It is also possible that the EU will assist in the reintegration process of irregular migrants if they are returning to Sri Lanka on a volunteer basis.<sup>151</sup> This could involve assistance for returnees to start

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<sup>147</sup> For a more extensive discussion of the difference between certain readmission agreements, please refer to Section I of this report.

<sup>148</sup> Arnarsson, Bjartmar Freyr, *Readmission Agreements: Evidence and the Prime Concern*, University of Lund Faculty of Law, Master Thesis: 2007.

<sup>149</sup> Please see Section I.2.3 for a discussion of Visa Facilitation Agreements.

<sup>150</sup> Interview with Delegation of the European Union to Sri Lanka and the Maldives.

<sup>151</sup> Interview with Ministry of External Affairs of Sri Lanka.

vocations/livelihoods through organizations such as the IOM, and community programmes implemented by local administrations and councils to assist in finding housing and applying for refugee status.<sup>152</sup> However, such programmes are currently not in place under the EU-Sri Lanka RA.

Another potential benefit of signing the RA involves the possibility for the GoSL to negotiate better deals with the EU with regards to development assistance.<sup>153</sup> Programmes already in place, such as the European Union to Support Socio-Economic Development (EU-SEM),<sup>154,155</sup> could be expanded to cover return migrants after implementing the RA.

In addition to post-arrival support, Sri Lanka may have the possibility of negotiating for certain economic benefits such as facilitation of visas for bona fide travellers and legal migrants, seeking more legal and skilled employment opportunities in European countries and other technical assistance,<sup>156</sup> as have been secured by some other countries who are party to RAs with the EU.<sup>157</sup> Other potential benefits include special trade concessions, preferential entry quotas for economic migrants and increased development aid.<sup>158</sup>

Another important advantage that has been discussed between the EU and Sri Lanka is the possibility of an opening up of labour markets in the EU upon signing the RA.<sup>159</sup> For example, bilateral migration agreements negotiated with Sri Lanka by the UK and Italy, which involve the opening up of their labour markets to legal and skilled migrants, are conditional upon Sri Lanka entering into RAs with these countries.<sup>160</sup> As pointed out by the Embassy of Italy, an RA helps ensure that migrants with valid work permits are not crowded out of employment opportunities by irregular migrants, since these agreements aid in the removal of such migrants.<sup>161</sup>

However, at present such benefits are not apparent in the case of the EU-Sri Lanka RA. The implementation of the RA may create space for Sri Lanka to discuss the labour migration issue with member states.

#### **4.2.2 Political Benefits**

The importance of the EU-Sri Lanka RA appears to be centred on the securing of political benefits to Sri Lanka. For instance, the primary reason underlying the signing of the agreement between the EU

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<sup>152</sup> Interview with Ministry of External Affairs of Sri Lanka.

<sup>153</sup> Interview with Department of Immigration and Emigration of Sri Lanka.

<sup>154</sup> The EU-SEM provides funding for projects which aim to support sustainable development in the North and East. EU-SEM has agreed to provide a package of EUR 16 million in grant funding over the period 2011-2014, covering areas like the rehabilitation of abandoned cultivation lands, construction of irrigation tanks, support for the dairy and fisheries sectors, and improvement of the health and education sectors.

<sup>155</sup> Delegation of the European Union to Sri Lanka and the Maldives, *European Union Support to Socio Economic Measures in North and East Sri Lanka*, Available [http://eeas.europa.eu/delegations/sri\_lanka/press\_corner/all\_news/news/2012/20120216\_en.htm].

<sup>156</sup> Interview with Ministry of External Affairs of Sri Lanka.

<sup>157</sup> See Section 1.2 for a discussion on countries entitled to such benefits.

<sup>158</sup> Cassarino, Jean-Pierre. 2007, *Informalizing Readmission Agreements in the EU Neighbourhood*, *The International Spectator*, 42(2), pp. 179-196.

<sup>159</sup> Interview with Delegation of the European Union to Sri Lanka and the Maldives.

<sup>160</sup> Ibid.

<sup>161</sup> Interview with the Embassy of Italy.

and Government of Sri Lanka in 2005 is attributed to the Government's attempts at obtaining assistance from the EU in dealing with LTTE terrorist activities.<sup>162</sup>

Another positive consequence of the EU-Sri Lanka RA to Sri Lanka is the fact that enacting an RA suggests that the EU recognizes Sri Lanka as a safe place for returnees, without any potential risks to their well-being. Sri Lanka receives a certain amount of positive publicity in the international arena, given the acknowledgement by requesting countries that Sri Lanka is safe for returnees.<sup>163</sup> This may be beneficial to Sri Lanka when negotiating with other countries on developmental assistance.

### **4.3 Potential Costs to Sri Lanka**

Despite the above benefits, there are potential costs and issues to Sri Lanka of enforcing an RA with the EU that need to be taken into account.

#### ***Lack of Coordinating Mechanisms***

Currently, there are no mechanisms in place to coordinate the information gathered by various government agencies that deal with migration. While agencies such as the Department of Immigration and Emigration, the CID and the National Intelligence Bureau address migration-related issues, there is no centralized body to coordinate the monitoring of migrants, particularly upon return to Sri Lanka. Without such a body, the GoSL may be incapable of dealing effectively with the monitoring and reintegration of migrants returning from the EU.<sup>164</sup>

Furthermore, there is no data-sharing mechanism in place to coordinate identification procedures between agencies in Sri Lanka and the EU. Such a mechanism would facilitate the identification process and avoid potential misidentification and delays in locating necessary documentation.

#### ***Dealing with Third-Country Nationals***

Relating to the identification of irregular migrants is the issue of third-country nationals. A third-country national found to be illegally residing in the EU and having travelled through Sri Lanka on his way to the EU would have to be readmitted by Sri Lanka. This may pose significant difficulties for the GoSL in terms of costs associated with detention including shelter, food, and other services. Furthermore, in order to deter third-country nationals from misusing Sri Lanka as a transit point to and from the EU, the GoSL would have to tighten border security at airports and seaports, which would be an additional cost.

#### ***Costs Incurred by the GoSL Associated with Readmission and Reintegration***

The GoSL will incur financial and administrative costs associated with the RA. These will include the use of administrative resources needed to provide identification documents when a request for readmission is made by an EU member state as well as costs involved in carrying out investigations and possible detention of return migrants upon arrival by the CID.

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<sup>162</sup> Interview with Ministry of External Affairs of Sri Lanka.

<sup>163</sup> Ibid.

<sup>164</sup> Interview with Department of Immigration and Emigration of Sri Lanka.

### ***Challenges Faced by Return Migrants***

The cost of enforcing the EU-Sri Lanka RA may be greatest for the irregular migrants themselves. Many of these migrants, who have given up their livelihoods and left behind their families and homes, travel to the EU in search of a better life. In many cases, using irregular means to migrate abroad is their last resort. An RA would facilitate the forced removal of such migrants and return them to a life from which they were hoping to escape. Currently, there are no effective government-sponsored reintegration programmes in place to help migrants adjust to society upon their return.

### **4.4 Way Forward**

The above analysis of costs and benefits to Sri Lanka of enforcing an RA reveals that most of the benefits are merely anticipated, rather than guaranteed. On the other hand, many of the costs appear to be more realistic. However, given the fact that the GoSL has already signed the RA with the EU, the next step would be to look at ways of minimizing the abovementioned costs and repercussions. The following recommendations are suggested as the best way forward:

#### ***Establish a Data-sharing Mechanism***

Among the most pressing issues for the GoSL is the lack of a coordinating mechanism to share information on Sri Lankan migrants both within Sri Lanka and across international borders. Data-sharing should ideally occur at each stage of the entire migration process with the aid of a central coordinating body (CCB) managed by the GoSL.

A migrant's application for a visa to travel to the EU would constitute the first stage of data-collection. The respective EU consulate in Sri Lanka would receive details on the migrant's purpose of travel and authorized duration of stay, and this information would then be relayed to the CCB. This body would then create a profile based on information gathered from both the EU consulate and local government agencies concerned with migration. The CCB would coordinate information held by the Department of Immigration and Emigration, Sri Lanka Bureau of Foreign Employment, Ministry of External Affairs, CID, and National Intelligence Bureau. Such information would enable the CCB to establish a comprehensive profile of each migrant with regard to travel and employment history, as well as any record of unlawful activity.

The next stage of data-collection would occur once the traveller reaches the intended destination. Upon a migrant's arrival in an EU country, it would be the responsibility of border control services within that country to relay information on the arrival of Sri Lankan nationals to the GoSL. This information would then be verified by the CCB and cross-checked against the existing profile and used to track the activity of the migrant.

This system would be useful when an irregular migrant is identified by an EU member state and a request is made for their return to Sri Lanka. The GoSL, through the CCB, would then be able to provide the necessary documents of identification using relevant details of the established profile, thereby minimizing the time needed to respond to the request and streamlining the identification process.

The system would also be beneficial when dealing with requests to admit third-country nationals to Sri Lanka. When such a national transits through Sri Lanka on their way to the EU, the CCB can create a profile based on information gathered by the relevant local government authorities, which would come in use later when a request is made for their return.

### ***Set up a Coordination Committee***

There is a need for a central coordination mechanism in Sri Lanka. Efforts are currently being made to establish a National Coordination Committee on Readmission (NCCR) representing all relevant stakeholders including government agencies, such as the Department of Immigration and Emigration, Ministry of External Affairs, Sri Lanka Bureau of Foreign Employment, CID, and National Intelligence Bureau. The NCCR would be expected to examine the need for any changes to readmission policy that may bring greater benefits to both parties involved. Moreover, it could provide policy advocacy and direction on all readmission matters covering the entire readmission process.

### ***Extend EU funds to Support Reintegration of Return Migrants***

Reintegrating return migrants into society could prove to be a challenging task, requiring a significant amount of resources. Many migrants who return would need assistance in securing sources of income and in developing a skill set necessary to obtain employment.<sup>165</sup> The EU can extend funds to the GoSL to help set up training programmes for this purpose, through a National Reintegration Fund to which all participating states in the EU can contribute.

For example, as previously discussed,<sup>166</sup> the Australian government has a reintegration programme in collaboration with the IOM that covers a six-month period. The programme identifies occupational areas that match the profile of a returnee and provides funding for the pursuit of employment in these areas. The EU could provide funding for a National Reintegration Fund for a similar programme to support the reintegration of those returned under the EU RA. Potential areas for funding could be technical education in various vocations or training in entrepreneurship skills to start businesses. The primary purpose of such support would be to help the returnee develop a sustainable income stream and deter them from resorting to illegal migration again.

### ***Negotiate for Compensatory Measures***

One way of minimizing the costs to Sri Lanka associated with the RA is to request for compensatory measures. One measure which has been offered to other signatory countries is a Visa Facilitation Agreement.<sup>167</sup> Such arrangements could facilitate the movement of legitimate Sri Lankan nationals travelling to and within the EU. Negotiating for the opening up of labour markets in the EU for legal migrants is another incentive which could help offset the costs. In order to fully identify the possible benefits for Sri Lanka, it is important to undertake future in-depth research on measures which the GoSL can request from the EU, and to draw up appropriate strategies and work plans to implement such measures.

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<sup>165</sup> Interview with Department of Immigration and Emigration of Sri Lanka.

<sup>166</sup> Please see Section 3.3.1.

<sup>167</sup> Please see section 1.2.3.

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# Appendix

## Appendix I Definition of Selected Terms Related to Migration

Term	Definition
Admission	The granting of entry into a state. An alien has been "admitted" if s/he passed through a checkpoint (air, land or sea) and is permitted to enter by border officials. An alien who has entered clandestinely is not considered to have been admitted.
Alien	A person who is not a national of a given state.
Asylum seeker	Persons seeking to be admitted into a country as refugees and awaiting decision on their application for refugee status under relevant international and national instruments. In case of a negative decision, they must leave the country and may be expelled, as may any alien in an irregular situation, unless permission to stay is provided on humanitarian or other related grounds.
Bilateral	Involving two parties or two states.
Border	Line separating the land territory of one state from another.
Convention	An international agreement concluded between states in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.
Country of origin	The country that is a source of migratory flows (legal or illegal).
Country of transit	The country through which migratory flows (legal or illegal) move.
Deportation	The act of a state in the exercise of its sovereignty in removing an alien from its territory to a certain place after refusal of admission or termination of permission to remain.
Documented migrant	A migrant who entered a country legally and remains in the country in accordance with his/her admission criteria.
Entry	Any entrance of an alien into a foreign country, whether voluntary or involuntary, legally or illegally.
Exclusion	The formal denial of an alien's admission into a state. In some states, border officials or other authorities have the power to exclude aliens; in other states, exclusion is ordered by an immigration judge after a hearing.
Expulsion	An act by an authority of the state with the intention and with the effect of securing the removal of a person or persons (aliens or stateless persons) against their will from the territory of that state.

*Contd.../-*

Term	Definition
Illegal entry	Act of crossing borders without complying with the necessary requirements for legal entry into the receiving state ( <i>Art. 3(b), UN Protocol Against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000</i> ).
Illegal migrant	Someone who, owing to illegal entry or the expiry of his or her visa, lacks legal status in a transit or host country. The term applies to migrants who infringe a country's admission rules and any other person not authorized to remain in the host country (also called clandestine/irregular/undocumented migrant or migrant in an irregular situation).
Illegal migration	Movement that takes place outside the regulatory norms of the sending, transit and receiving countries. There is no clear or universally accepted definition of irregular migration. From the perspective of destination countries it is illegal entry, stay or work in a country, meaning that the migrant does not have the necessary authorization or documents required under immigration regulations to enter, reside or work in a given country. From the perspective of the sending country, the irregularity is for example seen in cases in which a person crosses an international boundary without a valid passport or travel document or does not fulfill the administrative requirements for leaving the country. There is, however, a tendency to restrict the use of the term "illegal migration" to cases of smuggling of migrants and trafficking in persons.
Immigration	A process by which non-nationals move into a country for the purpose of settlement.
Involuntary repatriation	Repatriation of refugees to the country of origin induced by the receiving country by creating circumstances which do not leave any other alternative. As repatriation is a personal right (unlike expulsion and deportation which are primarily within the domain of state sovereignty), as such, neither the state of nationality nor the state of temporary residence or detaining power is justified in enforcing repatriation against the will of an eligible person, whether refugee or prisoner of war. According to contemporary international law, prisoners of war or refugees refusing repatriation, particularly if motivated by fears of political persecution in their own country, should be protected from refoulement and given, if possible, temporary or permanent asylum.
Irregular migrant	See <i>illegal migrant</i> above.
Migration management	A term used to encompass numerous governmental functions and a national system of orderly and humane management for cross-border migration, particularly managing the entry and presence of foreigners within the borders of the state and the protection of refugees and others in need of protection.

Contd.../-

Term	Definition
National	A person, who, either by birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil and political rights and protection; a member of the state, entitled to all its privileges. A person enjoying a nationality of a given state.
National territory	The geographical areas belonging to or under the jurisdiction of a state.
Readmission	Act by a state accepting the re-entry of an individual (own national, third-country national or stateless person), who has been found illegally entering or being present in another state.
Receiving country	Country of destination or a third country. In the case of return or repatriation, also the country of origin. Country that has accepted to receive a certain number of refugees and migrants on a yearly basis by presidential, ministerial or parliamentary decision.
Refoulement	The return by a state, in any manner whatsoever, of an individual to the territory of another state in which his/her life or liberty would be threatened, or s/he may be persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion; or would run the risk of torture. Refoulement includes any action having the effect of returning the individual to a state, including expulsion, deportation, extradition, rejection at the frontier (border), extraterritorial interception and physical return.
Refugee	A person who meets the criteria of the UNHCR Statute and qualifies for the protection of the United Nations provided by the High Commissioner, regardless of whether or not s/he is in a country that is a party to the Convention relating to the Status of Refugees, 1951 or the 1967 Protocol relating to the Status of Refugees, or whether or not s/he has been recognized by the host country as a refugee under either of these instruments.
Regular migration	Migration that occurs through recognized, legal channels.
Repatriation	The personal right of a refugee or a prisoner of war to return to his/her country of nationality under specific conditions laid down in various international instruments ( <i>Geneva Conventions, 1949 and Protocols, 1977, the Regulations Respecting the Laws and Customs of War on Land, Annexed to the Fourth Hague Convention, 1907</i> , the human rights instruments as well as in customary international law). The option of repatriation is bestowed upon the individual personally and not upon the detaining power. Repatriation also entails the obligation of the detaining power to release eligible persons (soldiers and civilians) and the duty of the country of origin to receive its own nationals. Repatriation as a term also applies to diplomatic envoys and international officials in time of international crisis.

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Term	Definition
Return migration	The movement of a person returning to his/her country of origin or habitual residence usually after spending at least one year in another country. This return may or may not be voluntary. Return migration includes voluntary repatriation.
Stateless person	A person who is not considered as a national by any state under the operation of its law ( <i>Art. 1, UN Convention relating to the Status of Stateless Persons, 1954</i> ). As such, a stateless person lacks those rights attributable to nationality: the diplomatic protection of a state, no inherent right of sojourn in the state of residence and no right of return in case s/he travels.
Third country national	An individual whose nationality is neither of a requesting state nor of a requested state.
Transit	A stopover of passage, of varying length, while travelling between two or more countries, either incidental to continuous transportation, or for the purposes of changing planes or joining an ongoing flight or other mode of transport.
Undocumented migrant workers/migrant workers in an illegal situation	Migrant workers or members of their families, who are not authorized to enter, to stay or to engage in employment in a state.
Voluntary return	The assisted or independent return to the country of origin, transit or another third country based on the free will of the returnee.

Source: International Organization for Migration (IOM), 2004, *Glossary on Migration*. Geneva: IOM.

**Appendix II**  
**Agreement between the European Community and the Democratic Socialist Republic of Sri Lanka on the Readmission of Persons Residing without Authorisation**

THE EUROPEAN COMMUNITY, hereinafter referred to as "the Community",  
and  
THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA, hereinafter referred to as "Sri Lanka",  
hereinafter referred to as "the Contracting Parties",

DETERMINED to strengthen their cooperation in order to combat illegal immigration more effectively,  
CONCERNED at the significant increase in the activities of organised criminal groups in the smuggling  
of migrants and other related criminal activities,

DESIRING to establish, by means of this Agreement and on the basis of reciprocity, rapid and effective  
procedures for the identification and safe and orderly return of persons who do not, or no longer, fulfil  
the conditions for entry to, presence in, or residence on the territories of Sri Lanka or one of the  
Member States of the European Union, and to facilitate the transit of such persons in a spirit of  
cooperation, EMPHASISING that this Agreement shall be without prejudice to the rights, obligations  
and responsibilities of the Community, the Member States of the European Union and Sri Lanka under  
International Law, CONSIDERING that the provisions of this Agreement, that falls within the scope of  
Title IV of the Treaty establishing the European Community, do not apply to the Kingdom of Denmark,  
in accordance with the Protocol on the position of Denmark annexed to the Treaty on European  
Union and the Treaty establishing the European Community,

HAVE AGREED AS FOLLOWS:

ARTICLE I  
Definitions

For the purpose of this Agreement:

- (a) "Member State" shall mean any Member State of the European Union, with the exception  
of the Kingdom of Denmark.
- (b) "National of a Member State" shall mean any person who holds the nationality, as defined  
for Community purposes, of a Member State.
- (c) "National of Sri Lanka" shall mean any person who holds the citizenship of Sri Lanka.
- (d) "Third-country national" shall mean any person who holds a nationality or citizenship  
other than that of Sri Lanka or one of the Member States.
- (e) "Stateless person" shall mean any person who does not hold a nationality. This shall not  
include persons who have been deprived of, or who have renounced, their nationality  
since entering the territory of Sri Lanka or one of the Member States respectively unless  
such persons have at least been promised naturalisation by that State.

- (f) "Residence authorisation" shall mean a permit of any type issued by Sri Lanka or one of the Member States entitling a person to reside on its territory. This shall not include temporary permissions to remain on its territory in connection with the processing of an asylum application or an application for a residence authorisation.
- (g) "Visa" shall mean an authorisation issued or a decision taken by Sri Lanka or one of the Member States which is required with a view to entry in, or transit through, its territory. This shall not include airport transit visa.

## SECTION I READMISSION OBLIGATIONS BY SRI LANKA

### ARTICLE 2 Readmission of own nationals

1. Sri Lanka shall readmit, upon application by a Member State and without further formalities other than those provided for in this agreement, all persons who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of the requesting Member State provided that it is proved, or may be validly established on the basis of prima facie evidence furnished, that they are nationals of Sri Lanka.
2. At the request of a Member State, Sri Lanka shall, as necessary and without delay, issue the person to be readmitted with the travel document required for his or her return that is of a period of validity of at least 6 months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, Sri Lanka shall extend the validity of the travel document or, where necessary, issue a new travel document with the same period of validity expeditiously, which shall normally be within 14 calendar days and not exceed 30 calendar days. If Sri Lanka has not acknowledged receipt of the request of a Member State within 30 calendar days, it shall be deemed to accept the use of the common provisional travel document for return purposes, which is attached as Annex 7 to this Agreement.

### ARTICLE 3 Readmission of third-country nationals and stateless persons

1. Sri Lanka shall readmit, upon application by a Member State and without further formalities other than those provided for in this Agreement, all third-country nationals or stateless persons who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of the requesting Member State provided that it is proved, or may be validly established on the basis of prima facie evidence furnished, that such persons:
  - (a) at the time of entry held a valid visa or residence authorisation issued by Sri Lanka; or
  - (b) entered the territory of the Member States unlawfully coming directly from the territory of Sri Lanka. A person comes directly from Sri Lanka within the meaning of this subparagraph if he or she arrived on the territory of the Member States by air or ship without having entered another country in-between.

2. The readmission obligation in paragraph 1 shall not apply if:
  - (a) the third country national or stateless person has only been in airside transit via the Colombo International Airport; or
  - (b) the requesting Member State has issued to the third country national or stateless person a visa or residence authorisation before or after entering its territory unless that person is in possession of a visa or residence permit, issued by Sri Lanka, which has a longer period of validity.
3. At the request of a Member State, Sri Lanka shall, as necessary and without delay, issue the person to be readmitted with the travel document required for his or her return that is of a period of validity of at least 6 months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, Sri Lanka shall issue a new travel document with the same period of validity expeditiously, which shall normally be within 14 calendar days and not exceed 30 calendar days. If Sri Lanka has not acknowledged receipt of the request of a Member State within 30 calendar days, it shall be deemed to accept the use of the common provisional travel document for return purposes, which is attached as Annex 7 to this Agreement.

## SECTION II READMISSION OBLIGATIONS BY THE COMMUNITY

### ARTICLE 4 Readmission of own nationals

1. A Member State shall readmit, upon application by Sri Lanka and without further formalities other than those provided for in this agreement, all persons who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of Sri Lanka provided that it is proved, or may be validly established on the basis of prima facie evidence furnished, that they are nationals of that Member State.
2. At the request of Sri Lanka, a Member State shall, as necessary and without delay, issue the person to be readmitted with the travel document required for his or her return that is of a period of validity of at least 6 months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the Member State concerned shall extend the validity of the travel document or, where necessary, issue a new travel document with the same period of validity expeditiously, which shall normally be within 14 calendar days and not exceed 30 calendar days. If the Member State concerned has not acknowledged receipt of the request of Sri Lanka within 30 calendar days, it shall be deemed to accept the use of the common provisional travel document for return purposes, which is attached as Annex 7 to this Agreement.

## ARTICLE 5

### Readmission of third-country nationals and stateless persons

1. A Member State shall readmit, upon application by Sri Lanka and without further formalities other than those provided for in this Agreement, all third-country nationals or stateless persons who do not, or who no longer, fulfil the conditions in force for entry to, presence in, or residence on, the territory of Sri Lanka provided that it is proved, or may be validly established on the basis of prima facie evidence furnished, that such persons:
  - (a) at the time of entry held a valid visa or residence authorisation issued by the requested Member State; or
  - (b) entered the territory of Sri Lanka unlawfully coming directly from the territory of the requested Member State. A person comes directly from the territory of the requested Member State within the meaning of this subparagraph if he or she arrived in Sri Lanka by air or ship without having entered another country in-between.
2. The readmission obligation in paragraph 1 shall not apply if:
  - (a) the third country national or stateless person has only been in airside transit via an International Airport of the requested Member State; or
  - (b) Sri Lanka has issued to the third country national or stateless person a visa or residence authorisation before or after entering its territory unless that person is in possession of a visa or residence permit, issued by the requested Member State, which has a longer period of validity.
3. If two or more Member States issued a visa or residence authorisation, the readmission obligation in paragraph 1 is for the Member State that issued the document with a longer period of validity or, if one or several of them have already expired, the document that is still valid. If all of the documents have already expired, the readmission obligation in paragraph 1 is for the Member State that issued the document with the most recent expiry date.
4. At the request of Sri Lanka, a Member State shall, as necessary and without delay, issue the person to be readmitted with the travel document required for his or her return that is of a period of validity of at least six months. If, for legal or factual reasons, the person concerned cannot be transferred within the period of validity of the travel document that was initially issued, the Member State concerned shall issue a new travel document with the same period of validity expeditiously, which shall normally be within 14 calendar days and not exceed 30 calendar days. If the Member State concerned has not acknowledged receipt of the request of Sri Lanka within 30 calendar days, it shall be deemed to accept the use of the common provisional travel document for return purposes, which is attached as Annex 7 to this Agreement.

SECTION III  
READMISSION PROCEDURE

ARTICLE 6  
Principle

1. Subject to paragraph 2, any transfer of a person to be readmitted on the basis of one of the obligations contained in Articles 2 to 5 shall require the submission of a readmission application to the competent authority of the requested State.
2. The readmission application may be replaced by a written communication to the requested Contracting Party within a reasonable time period prior to the return of the person concerned provided that:
  - (a) the person to be readmitted is in possession of a valid travel document and, where applicable, a valid visa or residence authorisation of the requested State; and
  - (b) the person to be readmitted is willing to return to the requested State.

ARTICLE 7  
Readmission application

1. To the extent possible, the readmission application is to contain the following information:
  - (a) the particulars of the person to be readmitted (e.g. given name, surname, maiden name, earlier names, nicknames or pseudonyms, date and place of birth, sex, physical description, father's and mother's name, current and any previous nationality, language, civil status, names of spouse, children (if any) or other next of kin, last place of residence, passport or identity card number, driving licence, schools attended);
  - (b) indication of the means with which proof or prima facie evidence of nationality, transit and unlawful entry and residence will be provided.
2. To the extent possible, the readmission application should also contain the following information:
  - (a) a statement indicating that the person to be transferred may need help or care, provided the person concerned has explicitly consented to the statement;
  - (b) any other protection or security measure which may be necessary in the individual transfer case.
3. A common form to be used for readmission applications is attached as Annex 5 to this Agreement.

## ARTICLE 8

### Means of evidence regarding nationality

1. Proof of nationality pursuant to the paragraphs 1 of Articles 2 and 4 can be particularly furnished through the documents listed in Annex 1 to this Agreement, even if their period of validity has expired. If such documents are presented, the Member States and Sri Lanka shall mutually recognise the nationality without further investigation being required. Proof of nationality cannot be furnished through false documents.
2. Prima facie evidence of nationality pursuant to the paragraphs 1 of Articles 2 and 4 can be particularly furnished through the documents listed in Annex 2 to this Agreement, even if their period of validity has expired. Prima facie evidence of nationality cannot be furnished through false documents.
3. Save in the case of availability of authentic documents as listed in Annex 1, the competent diplomatic representation of Sri Lanka or the Member State concerned may, whenever necessary and upon request, make arrangements to interview the person to be readmitted without undue delay in order to establish his or her nationality.

## ARTICLE 9

### Means of evidence regarding third-country nationals and stateless persons

1. Proof of the conditions for the readmission of third-country nationals and stateless persons laid down in the paragraphs 1 of Articles 3 and 5 shall be particularly furnished through the means of evidence listed in Annex 3 to this Agreement; it cannot be furnished through false documents. Any such proof shall be mutually recognised by the Contracting Parties without any further investigation being required.
2. Prima facie evidence of the conditions for the readmission of third-country nationals and stateless persons laid down in the paragraphs 1 of Article 3 and Article 5 shall be particularly furnished through the means of evidence listed in Annex 4 to this Agreement; it cannot be furnished through false documents. Where such prima facie evidence is presented, the Member States and Sri Lanka shall deem the conditions to be established, unless they can prove otherwise. In doubtful cases the Contracting Parties will consult with a view to interviewing, without undue delay, the person to be readmitted.
3. The unlawfulness of entry, presence or residence shall be established by means of the travel documents of the person concerned in which the necessary visa or other residence authorisation for the territory of the requesting State are missing. A statement by the requesting state that the person concerned has been found not having the necessary travel documents, visa or residence authorisation shall likewise provide prima facie evidence of the unlawful entry, presence or residence.

ARTICLE 10  
Time limits

1. The application for readmission must be submitted to the competent authority of the requested State within a maximum of one year after the requesting State's competent authority has gained knowledge that a third-country national or a stateless person does not, or does no longer, fulfil the conditions in force for entry, presence or residence. Where there are legal or factual obstacles to the application being submitted in time, the time limit shall, upon request, be extended but only until the obstacles have ceased to exist.
2. A readmission application must be replied to without undue delay, and normally within a period of 15 calendar days and not exceed 30 calendar days; reasons shall be given for refusal of a readmission request. This time limit begins to run with the date of receipt of the readmission request. If there was no acknowledgement of receipt within this time limit the transfer shall be deemed to have been agreed to.
3. After agreement has been given or, where appropriate, if no acknowledgement was given within the 30 calendar day time limit, the person concerned shall be transferred without undue delay and, at the most, within three months. Upon application, this time limit may be extended by the time taken to deal with legal or practical obstacles.

ARTICLE 11  
Transfer modalities and modes of transportation

1. Before returning a person, the competent authorities of Sri Lanka and the Member State concerned shall make arrangements in writing and in advance regarding the transfer date, the point of entry, possible escorts and other information relevant to the transfer.
2. No means of transportation, whether by air, land or sea, shall be prohibited. Return by air shall not be restricted to the use of the national carriers of the Contracting Parties and may take place by using scheduled flights as well as charter flights. In the event of escorted returns, such escorts shall not be restricted to authorised persons of the requesting State, provided that they are authorised persons from Sri Lanka or any Member State. Sri Lanka and the Member State concerned shall carry out prior mutual consultations on the modalities of charter flights.

SECTION IV  
TRANSIT OPERATIONS

ARTICLE 12  
Principles

1. The Member States and Sri Lanka should restrict the transit of third-country nationals or stateless persons to cases where such persons cannot be returned to the State of destination directly.

2. Sri Lanka shall allow the transit of third-country nationals or stateless persons if a Member State so requests, and a Member State shall authorise the transit of third-country nationals or stateless persons if Sri Lanka so requests, if the onward journey in possible other States of transit and the readmission by the State of destination is assured.
3. Transit can be refused by Sri Lanka or a Member State
  - (a) if the third-country national or the stateless person runs the risk of persecution, or could be subject to criminal prosecution or sanctions in another State of transit or in the State of destination, or could be threatened by criminal prosecution on the territory of the requested State; or
  - (b) on grounds of public health, domestic security, public order or other national interests of the requested State.
4. Sri Lanka or a Member State may revoke any authorisation issued if circumstances referred to in paragraph 3 subsequently arise or come to light which stand in the way of the transit operation, or if the onward journey in possible States of transit or the readmission by the State of destination is no longer assured.

#### ARTICLE 13 Transit procedure

1. An application for transit operations must be submitted to the competent authorities in writing and is to contain the following information:
  - (a) type of transit (by air, land or sea), possible other States of transit and intended final destination;
  - (b) the particulars of the person concerned (e.g. given name, surname, maiden name, nick names or pseudonyms, date of birth, sex and - where possible - place of birth, nationality, language, type and number of travel document);
  - (c) envisaged point of entry, time of transfer and possible use of escorts;
  - (d) a declaration that from the viewpoint of the requesting State the conditions pursuant to Article 12(2) are met, and that no reasons for a refusal pursuant to Article 12(3) are known of.

A common form to be used for transit applications is attached as Annex 6 to this Agreement.

2. The requested State shall, without undue delay and in writing, inform the requesting State of the admission, confirming the point of entry and the envisaged time of admission, or inform it of the admission refusal and of the reasons for such refusal.
3. If the transit operation is effected by air, the person to be readmitted and possible escorts shall be exempted from having to obtain an airport transit visa.

4. The competent authorities of the requested State shall, subject to mutual consultations, support the transit operations, in particular through the surveillance of the persons in question and the provision of suitable amenities for that purpose.

## SECTION V COSTS

### ARTICLE 14 Transport and transit costs

Without prejudice to the right of the competent authorities to recover the costs associated with the readmission from the person to be readmitted or third parties, all transport costs incurred in connection with readmission and transit operations pursuant to this Agreement as far as the border of the State of final destination shall be borne by the requesting State.

## SECTION VI DATA PROTECTION AND NON-AFFECTION CLAUSE

### ARTICLE 15

#### Data Protection

The communication of personal data shall only take place if such communication is necessary for the implementation of this Agreement by the competent authorities of Sri Lanka or a Member State as the case may be. The processing and treatment of personal data in a particular case shall be subject to the domestic laws of Sri Lanka and, where the controller is a competent authority of a Member State, to the provisions of Directive 95/46/EC and of the national legislation of that Member State adopted pursuant to this Directive. Additionally the following principles shall apply:

- (a) personal data must be processed fairly and lawfully;
- (b) personal data must be collected for the specified, explicit and legitimate purpose of implementing this Agreement and not further processed by the communicating or by the recipient in a way incompatible with that purpose;
- (c) personal data must be adequate, relevant and not excessive in relation to the purpose for which they are collected and/or further processed; in particular, personal data communicated may concern only the following:
  - the particulars of the person to be transferred (e.g. given names, surnames, any previous names, nicknames or pseudonyms, sex, father's and mother's name, date and place of birth, current and any previous nationality, last place of residence, schools attended, civil status, names of spouse and children, if any, and names of other next of kin);

- passport, identity card or driving licence (number, period of validity, date of issue, issuing authority, place of issue);
  - stopping places and itineraries;
  - other information needed to identify the person to be transferred or to examine the readmission requirements pursuant to this Agreement;
- (d) personal data must be accurate and, where necessary, kept up to date;
- (e) personal data must be kept in a form which permits identification of data subjects for no longer than is necessary for the purpose for which the data were collected or for which they are further processed;
- (f) both the communicating authority and the recipient shall take every reasonable step to ensure as appropriate the rectification, erasure or blocking of personal data where the processing does not comply with the provisions of this article, in particular because that data are not adequate, relevant, accurate, or they are excessive in relation to the purpose of processing. This includes the notification of any rectification, erasure or blocking to the other Party;
- (g) upon request, the recipient shall inform the communicating authority of the use of the communicated data and of the results obtained therefrom;
- (h) personal data may only be communicated to the competent authorities. Further communication to other bodies requires the prior consent of the communicating authority;
- (i) the communicating and the receiving authorities are under the obligation to make a written record of the communication and receipt of personal data.

## ARTICLE 16

### Non-affection clause

1. This Agreement shall be without prejudice to the rights, obligations and responsibilities of the Community, the Member States and Sri Lanka arising from International Law and, in particular, from any applicable International Convention or agreement to which they are Parties.
2. Nothing in this Agreement shall prevent the return of a person under other formal or informal arrangements.

SECTION VII  
IMPLEMENTATION AND APPLICATION

ARTICLE 17  
Joint Readmission Committee

1. The Contracting Parties shall provide each other with mutual assistance in the application and interpretation of this Agreement. To this end, they shall set up a joint readmission committee (hereinafter referred to as "the joint committee") which will, in particular, have the task:
  - (a) to monitor the application of this Agreement;
  - (b) to decide on implementing arrangements necessary for the uniform execution of it;
  - (c) to have a regular exchange of information on the implementing Protocols drawn up by individual Member States and Sri Lanka pursuant to Article 18;
  - (d) to decide on specific implementing arrangements aiming at an orderly management of return flows;
  - (e) to decide on amendments to the annexes to this Agreement;
  - (f) to recommend amendments to this Agreement.
2. The decisions of the joint committee shall be binding on the Parties.
3. The joint committee shall be composed by representatives of the Community and Sri Lanka; the Community shall be represented by the Commission of the European Communities, assisted by experts from Member States.
4. The joint committee shall meet where necessary at the request of one of the Contracting Parties.
5. The joint committee shall establish its rules of procedures.

ARTICLE 18  
Implementing Protocols

1. Sri Lanka and a Member State may draw up implementing Protocols which shall cover rules on:
  - (a) the designation of the competent authorities, the border crossing points and the exchange of contact points;
  - (b) the conditions for escorted returns, including the transit of third-country nationals and stateless persons under escort;
  - (c) means and documents additional to those listed in the Annexes I to 4 to this agreement.

2. The implementing Protocols referred to in paragraph 1 will enter into force only after the joint readmission committee (Article 17) has been notified.
3. Sri Lanka agrees to apply any provision of an implementing Protocol drawn up with one Member State also in its relations with any other Member State upon request of the latter.

#### ARTICLE 19

##### Relation to bilateral readmission agreements or arrangements of Member States

The provisions of this Agreement shall take precedence over the provisions of any bilateral agreement or arrangement on the readmission of persons residing without authorisation which have been or may, under Article 18, be concluded between individual Member States and Sri Lanka, in so far as the provisions of the latter are incompatible with those of this Agreement.

#### SECTION VIII FINAL PROVISIONS

#### ARTICLE 20

##### Territorial application

1. Subject to paragraph 2, this Agreement shall apply to the territory in which the Treaty establishing the European Community is applicable and to the territory of Sri Lanka.
2. This Agreement shall not apply to the territory of the Kingdom of Denmark.

#### ARTICLE 21

##### Entry into force, duration and termination

1. This Agreement shall be ratified or approved by the Contracting Parties in accordance with their respective procedures.
2. This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties notify each other that the procedures referred to in the first paragraph have been completed.
3. This Agreement is concluded for an unlimited period.
4. Each Contracting Party may denounce this Agreement by officially notifying the other Contracting Party. This Agreement shall cease to apply six months after the date of such notification.

ARTICLE 22  
Annexes

Annexes 1 to 7 shall form an integral part of this Agreement.

Done at Colombo on the fourth day of June in the year two thousand and four in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish, Sinhala and Tamil languages, each of these texts being equally authentic.

For the European Community    For the Democratic Socialist  
Republic of Sri Lanka

**ANNEX I**

COMMON LIST OF DOCUMENTS  
THE PRESENTATION OF WHICH IS CONSIDERED  
AS PROOF OF NATIONALITY

(ARTICLE 2(1); ARTICLE 3(1);  
ARTICLE 4(1) AND ARTICLE 5(1))

- valid or expired passports of any kind, issued by official authorities of the Member States or Sri Lanka (national passports, diplomatic passports, service passports and, where applicable, collective passports and surrogate passports including children's passports);
- valid identity cards of any kind, issued by official authorities of the Member States or Sri Lanka (including temporary and provisional ones);
- citizenship certificates or other official documents that mention or indicate citizenship;
- service books and military identity cards;
- seaman's registration books and skippers' service cards.

**ANNEX 2**

COMMON LIST OF DOCUMENTS  
THE PRESENTATION OF WHICH IS CONSIDERED AS  
PRIMA FACIE EVIDENCE OF NATIONALITY

(ARTICLE 2(1); ARTICLE 3(1);  
ARTICLE 4(1) AND ARTICLE 5(1))

- photocopies \* of any of the documents listed in Annex I to this Agreement;
- photocopies \* of citizenship certificates and other official documents that mention or indicate citizenship;
- driving licenses or photocopies \* thereof;
- birth certificates or photocopies \* thereof;
- any other official document issued by the authorities of the requested State;
- company identity cards or photocopies \* thereof;
- statements by witnesses;
- statements made by the person concerned and language spoken by him or her.

**ANNEX 3**

COMMON LIST OF DOCUMENTS  
WHICH ARE CONSIDERED AS PROOF OF THE CONDITIONS FOR THE  
READMISSION OF THIRD COUNTRY NATIONALS AND STATELESS PERSONS

(ARTICLE 3(1);ARTICLE 5(1))

- entry/departure stamps or similar endorsement in the travel document of the person concerned or other evidence of entry/departure (e.g. photographic);
- documents of an official nature, such as hospital in-patients' and out-patients' tickets, which clearly show that the person concerned stayed on the territory of the requested State;
- tickets and/or passenger lists of air or boat passages which show the presence of the person concerned on the territory of the requested State;
- information showing that the person concerned has used the services of a courier or travel agency;
- official statements made, in particular, by border authority staff and other witnesses who can testify to the person concerned crossing the border;
- official statement by the person concerned in judicial or administrative proceedings.

**ANNEX 4**

COMMON LIST OF DOCUMENTS  
WHICH ARE CONSIDERED AS PRIMA FACIE EVIDENCE  
OF THE CONDITIONS FOR THE READMISSION OF  
THIRD COUNTRY NATIONALS AND STATELESS PERSONS

(ARTICLE 3(1);ARTICLE 5(1))

- description of place and circumstances under which the person concerned has been intercepted after entering the territory of the requesting State, issued by the relevant authorities of that State;
- information related to the identity and/or stay of a person which has been provided by an international organisation;
- reports/confirmation of information by family members;
- documents of an unofficial nature, such as hotel bills, car rental agreements or credit card receipts, which clearly specify the name and passport number or other identifying feature of the person concerned.

**ANNEX 5**



[Emblem of Sri Lanka]

..... (Place and date)

.....  
(Designation of requesting authority)

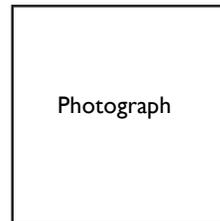
Reference:.....  
To

.....  
.....  
.....  
(Designation of receiving authority)

**READMISSION APPLICATION**  
**pursuant to Article 7 of the Agreement of ..... between**  
**the European Community and the Democratic Socialist Republic of Sri Lanka**  
**on the readmission of persons residing without authorisation**

**A. PERSONAL DETAILS**

- 1. Full name (underline surname):  
.....
- 2. Maiden name:  
.....
- 3. Date and place of birth:  
.....



- 4. Sex and physical description (height, colour of eyes, distinguishing marks etc.):  
.....
- 5. Father's and mother's name :  
.....
- 6. Also known as (earlier names, nicknames or pseudonyms):  
.....
- 7. Nationality and language:  
.....
- 8. Civil status:       married       single       divorced       widowed  
If married :      name of spouse.....  
Names and age of children (if any).....  
.....  
.....
- 9. Names of brothers/sisters and other next of kin:  
.....  
.....  
.....

- 10. Last address in the requesting State:  
.....
- 11. Previous address in the requested State:  
.....
- 12. Names (and periods) of schools attended in the requested State:  
.....
- 13. Profession and names of former employers in the requested State (if any) :  
.....
- 14. Names and addresses of doctors/dentists in the requested State:  
.....
- 15. Date and means of leaving the requested State (by air - name of airline, ship etc.):  
.....
- 16. Date and means of entry to the requesting State :  
.....

**B. SPECIAL CIRCUMSTANCES RELATING TO THE TRANSFEREE**

- 1. State of health  
(e.g. possible reference to special medical care; Latin name of contagious disease):  
.....
- 2. Indication of particularly dangerous person  
(e.g. suspected of serious offence; aggressive behaviour):  
.....

**C. MEANS OF EVIDENCE ATTACHED**

- |                               |                           |
|-------------------------------|---------------------------|
| 1. ....                       | .....                     |
| (Passport No.)                | (date and place of issue) |
| .....                         | .....                     |
| (issuing authority)           | (expiry date)             |
| 2. ....                       | .....                     |
| (Identity card No.)           | (date and place of issue) |
| .....                         | .....                     |
| (issuing authority)           | (expiry date)             |
| 3. ....                       | .....                     |
| (Driving licence No.)         | (date and place of issue) |
| .....                         | .....                     |
| (issuing authority)           | (expiry date)             |
| 4. ....                       | .....                     |
| (Other official document No.) | (date and place of issue) |
| .....                         | .....                     |
| (issuing authority)           | (expiry date)             |

**D. OBSERVATIONS**

.....  
.....  
.....

.....  
(Signature) (Seal/stamp)

**ANNEX 6**

[Emblem of Sri Lanka]



.....  
(Place and date)

.....  
(Designation of requesting authority)

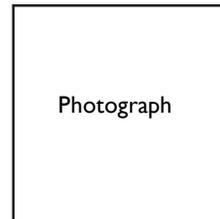
Reference: .....  
To

.....  
.....  
.....  
(Designation of receiving authority)

**TRANSIT APPLICATION**  
**pursuant to Article 13 of the Agreement of ..... between**  
**the European Community and the Democratic Socialist Republic of Sri Lanka**  
**on the readmission of persons residing without authorisation**

**A. PERSONAL DETAILS**

- 1. Full name (underline surname):  
.....
- 2. Maiden name:  
.....
- 3. Date and place of birth:  
.....



- 4. Sex and physical description (height, colour of eyes, distinguishing marks etc.):  
.....
- 5. Also known as (earlier names, nicknames or pseudonyms):  
.....
- 6. Nationality and language:  
.....
- 7. Type and number of travel document:  
.....  
.....  
.....

**B. TRANSIT OPERATION**

1. Type of transit

by air

by sea

by land

2. State of final destination

.....

3. Possible other States of transit

.....

4. Proposed border crossing point, date, time of transfer and possible escorts

.....

.....

.....

5. Admission guaranteed in any other transit State and in the State of final destination  
(Article 12 paragraph 2)

yes

no

6. Knowledge of any reason for a refusal of transit  
(Article 12 paragraph 3)

yes

no

**C. OBSERVATIONS**

.....  
.....  
.....  
.....  
.....

.....  
(Signature) (Seal/stamp)

**ANNEX 7**



[Emblem of Sri Lanka]

.....  
 ..... (Place and date)

.....  
 (Designation of issuing authority)

Ref.:.....

**COMMON PROVISIONAL TRAVEL DOCUMENT**

pursuant to Articles 2 to 5 of the Agreement of ..... between  
 the European Community and the Democratic Socialist Republic of Sri Lanka  
 on the readmission of persons residing without authorisation

Valid for a single return journey from ..... (issuing State)  
 to..... (point of entry/country of destination)  
 via ..... (transit countries)  
 by ..... (mode of transportation)  
 leaving on ..... (date of departure)

**This travel document expires on .....and must be produced to the Immigration  
 Officer on arrival in ..... (point of entry/country of destination)**

Name..... Forename..... Date of birth ..... Place of birth ..... Sex ...../ Height..... Distinguishing marks (if any) .....	Holder's Photograph
Personal Identity card No. .... Nationality .....	Signature

Address in Sri Lanka (if known) .....  
 .....

.....  
 (Signature) (Seal/stamp)

#### JOINT DECLARATION ON ARTICLE 2(1)

The Parties take note that, under Sri Lanka's constitution and according to its current citizenship laws (Citizenship Act N° 18 of 1948), it is not possible for a Sri Lankan national to be deprived of his or her Sri Lankan nationality without acquiring the nationality of another State. Similarly, the renunciation of nationality by a Sri Lankan national acquires legal validity only if he or she has acquired the nationality of another State.

The Parties agree to consult each other in due time, should this legal situation change.

#### JOINT DECLARATION ON ARTICLE 3(1)(b) AND ARTICLE 5(1)(b)

The Parties agree that mere airside transit stays in a third-country shall not be considered as "having entered another country in-between" in the meaning of those two provisions.

#### JOINT DECLARATION CONCERNING DENMARK

The Contracting Parties take note that this Agreement does not apply to the territory of the Kingdom of Denmark. In such circumstances it is considered appropriate that Sri Lanka and Denmark should conclude a readmission agreement on the same terms as this Agreement.

#### JOINT DECLARATION CONCERNING ICELAND AND NORWAY

The Contracting Parties take note of the close relationship between the European Community and Iceland and Norway, particularly by virtue of the Agreement of 18 May 1999 concerning the association of these countries with the implementation, application and development of the Schengen acquis. In such circumstances it is considered appropriate that Sri Lanka and Iceland and Norway should conclude a Readmission Agreement on the same terms as this Agreement.

JOINT DECLARATION ON THE FACILITATION OF  
LAW ENFORCEMENT COOPERATION

The delegations of the Community and Sri Lanka commit themselves to a joint effort to fight against illegal immigration. They agree that if the problem of illegal immigration originating from Sri Lanka is to be comprehensively dealt with, effective cooperative measures flowing from this situation would need to be instituted.

In addition, both Parties recognise the need to take measures against organised criminal activities, such as human trafficking, migrant smuggling and financing for terrorist purposes, which have become grounds for growing concern.

Accordingly, the European Community, in conformity with all relevant international instruments including the Palermo Protocols against the Trafficking of Human Beings and the Smuggling of Migrants, and acting within its sphere of competences, will encourage and facilitate the cooperation between law enforcement, immigration or other relevant authorities of Member States, as appropriate, with their counterparts of Sri Lanka, in accordance with their domestic law.

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