International economics

INTERNATIONAL LABOUR MOBILITY

MOBILITY

PART 2

The Regulation of International Migration

1. An Historical Overview

International migration has played a key role in the rise and fall of empires, states, and coalitions of states as the world moved through the major political and economic stages of mercantilism, colonialism, industrialization, post-industrialization, and globalization. The modern history of international migration can be conveniently, if approximately, categorized into *four broad stages*: European dominated, colonization-driven migration from about 1500 to 1800, industrialization-driven migration from Europe to the New World from about 1800 to 1915, limited international migration in the inter-war years and up to about 1950, and the post 1950 emergence of migration as a complex multi-faceted global phenomenon (Massey, 1990).

From the early formative period of the monarch-lead territorial state, through the differentiation and separation of the institutions of government from the monarch as a person, to the post French Revolution concept of the sovereign nation-state, the "state" has had the role of creating and implementing solutions and regulations for human state-boundary crossing movement in the form of legislative immigration policies and administrative implementation of those regulations (Hammar, 1992; Delbrük, 1994; Calavita, 1994).

When international immigration began to emerge as a durable phenomenon with profound and far-reaching consequences, control of immigration became a pertinent issue for governments, and *four dominant state strategies for monitoring and controlling immigration emerged:* **external controls** applied through diplomatic mechanisms abroad (embassies) and by immigration authorities at borders; **internal alien controls** of residence and work permits and programs, employer sanctions, the maintenance of alien registers, and deportations; **the granting of permanent residence** in a country of destination; and **naturalization** to full citizenship (Hammar, 1992:250-253).

2. International governance of migration

Global governance can be either top-down or bottom-up.

Supra-national governance comes from the top: governments cede some part of their sovereignty to a higher level of authority, which 'governs' their actions in a manner analogous to the way that a federal authority governs its component states, provinces, lander or cantons.

That is, the supra-national authority makes rules, constrains actions, monitors compliance and sanctions defiance. The principle of subsidiarity (decisions are to be made at the lowest level possible and the highest level necessary to be effective) may limit its scope, but within the acknowledged areas of its authority, the supra-national institution trumps national sovereignty.

The substantial political obstacles to supra-national governance of migration are

significant. Immigration, including particularly unauthorized immigration, plays an important role in maintaining competitiveness and labor-market flexibility; precisely because the unauthorized are not protected, they form a labor reserve that can be expelled from the labor market with fewer political and economic repercussions than when citizens lose their jobs. Promoting the rights of foreigners is in many countries unpopular with the citizen electorate. Even where the need for greater cooperation and coordination among states is acknowledged, supra-national organization is not seen by many states as the preferred avenue of international governance. An alternative to the top-down model is more promising.

International governance from the bottom up stitches together the common threads of governmental responsibilities for problem-solving purposes, often on the basis of intensive interactions among government officials (bureaucrats, regulators, legislators, judges) with similar functional portfolios. Anne Marie Slaughter of Princeton University describes these 'policy networks' as the building blocks of world order for the age of globalization. In this kind of governance, she says, 'the same officials who are judging, regulating, and legislating domestically are also reaching out to their foreign counterparts to help address the governance problems that arise when national actors and issue spill beyond their borders.

The European Union offers an example of government networks calling forth, over time, supranational institutions with legislative, judicial and executive responsibilities. The

European Commission in the early days of the European Communities was chiefly a secretariat to intergovernmental meetings. As it grew in stature because of its expertise, both technical and political, the member states gave the Commission a seat at the negotiating table; then a right to co-initiate legislation; then the right of sole initiative. When the EU moves to majority voting, the Commission will behave very much like a supranational body. Nonetheless, ultimate decision-making power will still reside in the Council of Ministers, made up of heads of national governments, and in the functional Councils made up of ministers with corresponding portfolios. The EU is a highly evolved government network, and the European Commission has developed authority by serving its needs – not least in the development of a common migration and asylum policy.

Freedom of movement for workers from the member states within the EU was from the beginning a basic principle of the Common Market, established in the Treaty of Rome in 1957. Implemented gradually, it was fully realized for the original six member states by 1968. Members that joined later had to go through a transition period to reach the same privilege.

Removal of internal border controls in the EU began in 1985 with the adoption of the Schengen Agreement. Controls had been removed among 13 of the 15 members (excepting Ireland and the United Kingdom) by 2001. With the removal of internal border controls, control of the EU external borders assumed great importance, as did the harmonization of member states' immigration and asylum policies; with free movement within the continental EU, anyone admitted to one of the 13 states would have easy access –

physically if not legally – to all of the others. Thus, in 1999 at the EU Summit in Tampere, Finland, EU governments agreed to work toward a common policy on immigration and asylum, to be in place by 2004. At the end of 2004, under the Dutch Presidency of the EU, member states were ready to adopt a statement of principles concerning migration.

The search for enhanced multilateral governance of international migration should begin with a consideration of what functions it would need to carry out for the good of countries of origin, destination and transit and for migrants themselves. The platform for the development of international governance of migration will have to begin with a limited number of widely agreed functions that respond to felt needs of states and address real issues in the societies affected by

migration. A short list to begin with would likely include the following *nine functions:*

• Data collection, dissemination and analysis; monitoring of trends
• Policy research and development
• Technical assistance and training
• Provision of services
• A platform for discussion
• Support for negotiations
• Anti-trafficking initiatives
• Promotion of migration-related development initiatives
• Coordination.

3. The roles and functions of existing organizations.

Some elements of the functions of international governance already exist, mostly in a limited way, within the major existing institutions and arrangements that deal with migration. There remain more gaps than duplications within the system. The combined resources devoted to governance of international migration fall far short of the magnitude needed to address the challenges of international migration today. The following is a brief description of the roles of the major multilateral institutions involved in migration issues.

3.1 International Organization for Migration (IOM)

IOM provides migration services to its member states and to some migrants. Founded in 1951 to help resettle European displaced persons after World War II, IOM

now has 105 member states and 41 state observers. It has over 4000 staff, and offices or sub-offices in more than 100 countries. It is not part of the UN system. IOM's Constitution was revised in 1989 and establishes the following purposes and functions of the organization:

• Make arrangements for the organized transfer of migrants to countries offering opportunities for orderly migration

• Concern itself with the organized transfer of refugees, displaced persons and other individuals in need of international migration services for whom arrangements may be made between the Organization and the States concerned, including those states undertaking to receive them.

• To provide, at the request of and in agreement with the states concerned migration services, such as recruitment,

selection, medical screening, orientation, and so forth

• To provide similar service for voluntary return migration

• To provide a forum to states as well as international and other organizations for the exchange of views and experiences, and the promotion of cooperation and coordination of efforts on international migration issues, including studies on such issues in order to develop practical solutions.

Currently, IOM projects include managing the dispersal of compensation to victims of Nazi slave labor; returning rejected asylum seekers interdicted by Australia in the South Pacific; helping to process applicants for the US refugee resettlement program; running mass information campaigns warning of the perils of trafficking in Eastern Europe, and administering small return-of-talent programs.

3.2 World Trade Organization (WTO)

The WTO purpose is to bring about "reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade" among its 144 members. The movement of people comes into WTO trade negotiations through the General Agreement on Trade in Services (GATS). GATS recognizes four modes of trade in services, one of which (Mode 4) involves service providers who are "natural persons" (human beings as opposed to "juridical persons" such as corporations) providing services in another country. The GATS does not confer any right on an individual to live and work in another country, but it does call on governments to reduce barriers and improve market access to Mode 4 foreign suppliers of services, whether they be bankers or construction workers. The existing Mode 4 commitments are heavily

tilted toward highskill persons. Only about 17 percent of the commitments apply to low-skilled personnel.

A number of big questions remain unanswered within the GATS framework, such as whether foreign service-providers who work for domestic companies are covered.

3.3 International Labor Organization (ILO)

The ILO is a standard setting body with a unique tripartite structure in which representatives of labor union confederations, employers' association and governments play an equal role in decision-making. Founded in 1919, it is the only surviving body created by the Treaty of Versailles and became the first UN specialized agency in 1945. According to its Constitution, one of the purposes of the ILO is protection of the interests of workers employed in countries other than their own.

The tripartite structure may explain in part why the ILO has been relatively quiescent on migration issues; unions, employers and governments have not seen eye-to-eye on development of standards for labor migration, with the union confederations being particularly concerned about the effect of migrant labor on the rights, conditions and remuneration of the domestic labor force.

3.4 UN High Commissioner for Refugees (UNHCR)

UNHCR's role in migration is, in formal terms, strictly after the fact. Once people have left their home countries because of a well-founded fear of persecution, UNHCR is mandated to ensure that they receive international protection in place of the national protection they have lost, and are not returned to a place where they would be in danger of losing their lives or liberty. (States are not obligated to admit refugees, but they

are obligated not to return them once they have managed to enter). The organization also is tasked with seeking durable solutions to the plight of refugees, either by helping them to return voluntarily to their country of origin or by assisting them to form an enduring tie with another state that will protect their rights and allow them to integrate socially and economically.

3.5 The United Nations Secretariat and General Assembly

The Department of Economic and Social Affairs is responsible for follow-up to the ICPD. The Population Division collects data on migration and monitors trends. In 2000, it issued a report on "Replacement Migration", which projected the numbers of immigrants that would be required in selected countries to maintain a) current population levels, b) current size of the working-age population, and c) current dependency ratios.

The report played a significant role in focusing attention on the role that migration might play in countries (especially in Western Europe and Japan) experiencing a "birth dearth". The Population Division continues to explore the implications of migration trends, and emphasizes the importance of high-quality data collection.

The Population Division also convenes annual 'coordination meetings' among UN agencies and departments, with governments and independent experts also invited to attend. The first of these, in 2002, focused on data issues; the second on the migrationrelated activities of the participating entities; and the third and most recent on preparations for the High Level Dialogue in the General Assembly in 2006. The meetings provide a valuable opportunity for information-sharing and brainstorming, but do not really perform a coordination function

beyond that. DESA will be responsible for much of the preparation for the High Level Dialogue, which many see as an important platform for discussion in itself, and which could lead to a more continuous platform.

3.6 The Human Rights Commission

The 53-member United Nations Commission on Human Rights (CHR), created in 1947, is the main UN body that deals with human rights. Its functions include standard setting and drafting of conventions and treaties as well as the elaboration of a number of country and thematic mechanisms to deal with violations of human rights – civil and political, as well as economic, social and cultural – in all world regions These mechanisms monitor compliance by States with international human rights law and investigate alleged violations of human rights. The thematic mechanisms include a Special Rapporteur on the Human Rights of Migrants,

appointed in 1999, whose mandate is "to examine ways and means to overcome the obstacles existing to the full and effective protection of the human rights of this vulnerable group, including obstacles and difficulties for the return of migrants who are non-documented or in an irregular situation. " In 1997 the Human Rights Commission established a Working Group on Migrants, with the mandate to a) gather information on obstacles to the protection of the human rights of migrants and b) to elaborate recommendations to strengthen the promotion, protection and implementation of the human rights of migrants.

3.7 UN/Bretton Woods Economic Organizations

Given the importance of remittances from international migrants in the economies of many developing countries, it is remarkable how little and how unsystematically

international economic institutions have dealt with migration processes. Since shortly after the turn of the millennium, however, the World Bank has begun to do (and commission) research and analyze data relating to migrant remittances, and some of the other linkages between migration and development. It is also cooperating with a number of other national and regional organizations to explore remittance issues. Attention to the subject of migration has grown considerably in the last two or three years, but the subject does not earn the attention one might expect for the second- or third-largest source of foreign exchange in country after country. The UN Development Program remains on the sidelines with respect to migration; the TOKTEN return-of-talent program is its sole systematic activity.

4. Policy options

A number of specific proposals have been put forward to fill the governance gap in the arena of international migration. Some of the most prominent are briefly evaluated below.

Create a new agency

The de novo creation of a World Migration Organization within the United Nations system was discussed above as an example of governance from the top down. The advantage of doing so would be to consolidate responsibility for the many overlapping categories of forced and voluntary migrants into one entity, thereby reducing problems of coordination, overlap, and gaps. States, especially the major migrant-receiving countries, are unlikely to agree to the creation of a new agency, for financial and even more for substantive reasons. Most would see it as encroaching upon domestic policy-making prerogatives

and fear that it would foster dissension between North and South. The inability to reach wide agreement on a world migration conference as a follow-up to the ICPD, and the low ratification of the ILO and UN migrant labor treaties, are indicative of the lack of enthusiasm for a WMO at this stage.

Designate a 'lead agency' from among existing agencies

UNHCR and ILO are the most likely candidates in the UN system for permanent lead agency for migration, an institutional arrangement that has the advantage of avoiding a divisive and probably fruitless debate on the creation of a new agency. Neither has the expertise to cover the full spectrum of migration issues, however; furthermore, the ILO's unique tri-partite structure would probably disqualify it in the eyes of many states that would not accept the participation of employer and trade union

associations in decisionmaking on migration policy. (This is why the Convention on the Rights of Migrant Workers and their Families came out of the General Assembly rather than ILO.) ILO does not have the operational expertise to provide relief and protection in the field to refugees and internally displaced people. UNHCR lacks the economic expertise required to address labor migration issues. Many would undoubtedly see an attempt to bring labor and family migration into UNHCR's portfolio as detracting from its refugee protection mandate. Other UN agencies that deal with some aspect of migration are likely to object to having their expertise subsumed or dominated by the lead agency, as was seen with the IDP lead-agency debate.

Bring IOM into the UN system

The International Organization for Migration has the broadest mandate for migration issues

of any international institution. There is strong interest within IOM's leadership and among some member states of its Council, in seeing IOM become a specialized agency of the United Nations. This could happen either directly, by a vote of the General Assembly and the IOM Council, or indirectly, by a gradual rapprochement between IOM and other agencies with migration responsibilities. In the latter process, IOM would gradually assume some of the functions of other agencies and emerge as the de facto WMO. This path could avoid raising states' fears about dealing with the unknown quantity of a brand-new organization, and give them the opportunity to check the process if the result was not developing in a way that met their needs. Three kinds of problems could arise with this option. First, there would likely be substantial bureaucratic resistance from other agencies, funds and departments to the

absorption of some of their functions. This could perhaps be overcome if states were consistent in their support for the new arrangement. More serious is the likely problem of resources. Although IOM has grown rapidly in size and reach, it remains an agency with limited capacity. Its strategy paper presented at the 88th session of the IOM Council (November, 2004) noted that 'financial contributions from Member States have not always allowed IOM to increase its capacities to the extent required to best be able to fulfill the agreed…objectives. A third problem that would need solving is IOM's limited mandate: in particular, it has no protection mandate or standard-setting mechanism. The organization in 2004 has proposed a revised set of strategic objectives which includes the injunction to 'work toward promoting international migration law including enhanced protection of migrants

rights and welfare', but that is not yet incorporated in the IOM's constitutional mandate.

A coordination model

Analogous to the 'Comprehensive Approach" for Internally Displaced People, this model has been quite heavily discredited by the lack of commitment of participating agencies genuinely to coordinate their migration-related work. It does, however, create some synergy and visibility for the issue in question and encourages agencies to give higher priority to it. A stronger version might build on the experience of the internal displacement issue, and create a Special Representative of the Secretary General simultaneously with a dedicated research and technical unit. It remains, however, a weak option for moving toward global governance.

A leadership model

One objective of this avenue would be to forge greater cooperation among agencies, but the emphasis would be on conceptual and policy leadership for member states as well as for international agencies and programs – including, importantly, the Bretton Woods institutions and the regional development banks. It would require the establishment of a small, high-powered unit within the Office of the Secretary-General with the stature and expertise to command the respect of actors outside the UN system and the attention and cooperation of those within. In addition to the agencies, funds, departments and programs of the UN system and IOM (whether IOM is incorporated into the UN system or not), it would relate to the General Assembly and member governments' migration experts, as well as regional and ad hoc processes. It would not be operational, but would act as an

internal think tank for policy development. It could take on the functions of a 'leading Secretariat'' to the Geneva Migration Group, with the right of initiative on matters of policy coordination and coherence. One of its most important functions would be to convene 'policy networks' of migration officials from national governments, intergovernmental organizations, and other stakeholders. This option is relatively economical in terms of financial resources, but high-risk, as they effectiveness of the migration secretariat would be dependent on the ability to produce ideas and analysis of a quality that has not very often been a hallmark of efforts within a large bureaucracy.

A WTO model

Another option would be to replicate the World Trade Organization model and proceed through successive rounds of negotiation toward multilateral agreements on specific

migration issues. This route is lengthy and painstaking, and riddled with compromises that would undoubtedly be painful to those in whose minds migrants' rights are uppermost. The WTO model rests on the assumption of mutual self-interest in a wellfunctioning trading system; an analogous assumption is also a practical (and justified) starting point for international cooperation on migration.

The international consensus on migration issues is probably too weak and fragmented at this time to support the creation of a powerful and well-resourced global organization. A policy network built on high-quality analysis and initiative may be the most promising because the most open-ended. Changes in the international migration regime must be built from the ground up with the hard work of policy development and consensus building.