

## Setting Immigration Policy: From Westphalian Sovereignty to Supranational Management?

The central factor in the rise of the less developed countries is globalization: the increasing integration of the world economy as a result of the international mobility of capital, technology, and organizational know-how and the intensification of international trade in goods and services. This development until recently encompassed only a fraction of the world's population, being largely limited to the economies of the older industrialized countries—Western Europe, Northern America, Japan, and countries of relatively small demographic weight, notably the “tiger” economies of East Asia. In the last two decades the process, enhanced by formal agreements among countries, such as the World Trade Organization (WTO), has accelerated, increasingly assuming a truly global character.

The institutionalized free (or at least much freer, in comparison to past times) movement of capital and technology and of goods and services, however did not and does not include the free movement of the other crucial factor of production: human labor. International migration, and specifically, immigration policy, has remained, at least as a fundamental principle, under the sovereign control of national states, to be regulated in the national interest as country governments define it. The Universal Declaration of Human Rights expresses the special status of migration regulation. Paragraph 13 of the Declaration tersely states: (1) Everyone has the right of freedom of movement and residence within the borders of each state; and (2) Everyone has the right to leave any country, including his own, and to return to his country.

Thus, freedom of movement across national boundaries is not a right, and the right to leave one's country is a right that can be exercised only if another country is willing to accept the would-be migrant.

This unilateral authority of each state to set the rules of immigration has been increasingly questioned in modern times. Desultory attempts in the interwar years, notably through the International Labor Office of the League of Nations, toward bringing international migration under some degree of supranational regulation amounted to little.

Indeed, international migration in the 1930s reached its nadir in modern times. After World War II, reconstruction and rapid economic development created strong demand for imported labor in the leading capitalist countries, resulting in increasingly liberal provisions as to the permitted level of immigration, both in the United States and in Western Europe. In some cases these took the form of bilateral arrangements for importing workers on a temporary basis—such as the *bracero* program in the United States and a variety of guest worker programs in Western Europe. Further on, legal permanent immigration was allowed on a larger scale, barriers to non-legal immigration were only loosely enforced, and illegal immigration, through periodic legalization, came to provide an important back door to permanent residence or even to formal citizenship. Thus, astonishingly, the present-day United States population contains 12 million-plus

foreigners well incorporated in the American labor force yet in a formal legal status of deportable law-breakers.

Not surprisingly, the reality and the perception of large-scale immigration as a problematic transformer of the domestic economy and society have become an increasingly controversial issue in the receiving countries. This is amplified by the expectation that recent inflows may be only a harbinger of even larger-scale immigration in the coming decades. The economic logic of capitalist international development would clearly favor weakening or abolishing national barriers to the creation of a globalized labor market. Grass-roots sentiment and often official government policy in populous low-wage countries are supportive of this tendency. Yet freedom of international labor movements has effects that are qualitatively different from the consequences of free international trade of goods and services and of capital and technology. Under national control the latter can be modified should the balance of economic and social costs and benefits suggest that some roll-back of globalization is advantageous for a given country. But labor movements entail settlement of people that to a large measure tends to be permanent. Roll-back then is not even a theoretical option.

The notion that regulating immigration in the spirit of the prevailing Westphalian system, that is, in the national interest, however defined, is an unsatisfactory arrangement for the international community at large has led, in recent years, to increasingly frequent proposals for reform. Countries of large immigration have resisted such proposals and prevented the creation of formal international bodies occupied with the issue on an operational level, such as within the WTO. Discussion of international migration even at talk fests such as the series of intergovernmental population conferences has been only perfunctory, in deference to the wishes of major immigration countries. A number of United Nations General Assembly resolutions have nevertheless addressed the question of migration, typically exhorting member states to strengthen international cooperation “at all levels” in the area of international migration “in order to address all aspects of migration and to maximize the benefits of international migration to all those concerned.”

Eventually, in December 2003, “acting on the encouragement of UN Secretary-General Kofi Annan,” the Global Commission of International Migration was established as an independent body. The mandate of the Commission was to “provide the framework for the formulation of a coherent, comprehensive and global response to the issue of international migration.” The work of the Commission was assisted by a Geneva-based Secretariat and a “Core Group of States,” including 32 governments from all world regions, that acted as an informal consultative body to the Commission. The Commission presented its Report in October 2005 in New York.

Formal recognition of the principle that the formulation of immigration policy is properly a task for the government of each individual state did not prevent the Global Commission from urging further steps that would continue its work. One aim of the Report was to serve as input to the High-Level Dialogue on the nexus between international migration and development that took place in September 2006 at the UN General Assembly. A

voluminous report of the UN Secretary-General on that subject, issued in May 2006, that largely reflected the Commission's work, was also debated at the Dialogue.

In effect the ultimate aim of these activities appears to be achievement of some degree of supranational regulation of migratory movements, much in the same spirit as this was first proposed in 1927 by Albert Thomas, the then Director-General of the International Labor Office. Given the resistance to such ideas by many of the affected governments, this promises to be a slow process, with uncertain outcome. The key proposal of the Commission, stated in the closing paragraph of its Report, was "the immediate establishment of a high-level inter-institutional group to define the functions and modalities of, and pave the way for, an Inter-agency Global Migration Facility. This Facility should ensure a more coherent and effective institutional response to the opportunities and challenges presented by international migration." This proposal was heeded, but what has ensued to date falls far short from a WTO-like creation. The Facility is complemented by the also newly formed Geneva-based Global Migration Group, with membership of 10 UN organizations "involved in international migration and related issues." The Group "seeks wider application of all relevant international and regional instruments and norms relating to migration, and to encourage the adoption of more coherent, comprehensive and better coordinated approaches to the issue of international migration."

The High-Level Dialogue also spawned a Global Forum for Migration and Development, a gathering that first assembled in Brussels in July 2007, hosted by the Government of Belgium. Yearly meetings to follow, the 2008 one in Manila. The overall tone is one of the promotion of international migration. In the words of the Belgian minister welcoming the opening of the web site of the Forum and praising its logo: "it shows movement, dynamism, enthusiasm, which is for us characteristic of the migration and development phenomenon. It symbolizes exchange of ideas, collaboration and integration. People are moving more and more, not only from the South to the North, and vice versa, but also from the South to the South and within States." The migration phenomenon, the minister said, is "probably the most important stake of the twenty-first century."

This paper traces and documents the intellectual and institutional history of the evolving doctrines concerning regulation of immigration, focusing on the last 110 years. It also explores likely directions of future developments in this domain.