Managing Migration: Whither the Missing Regime?

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“We are still far from a shared understanding of the principles that should guide international migration. In the meantime the objective must be to build, on the basis of the interests of the countries concerned, a framework that is more just and equitable than the present one.”


“The US immigration system is failing to meet the social, economic and security demands of the nation. The mechanisms of US immigration system are out of touch with current realities and unable to adjust to economic and demographic trends.”

Keeping the Promises: Immigration Proposals from the Heartland
Report of the Task Force on migration set up by the Chicago Council on Foreign Relations. 2004

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Human mobility, in terms of the number of persons moving across countries, has never been as high as it is today. More are still in the queue—willing and waiting to move. The number of countries where migrants exceed 10 per cent of total population has jumped from 43 in 1960 to 70 in 2000 (United Nations, 2004). Paradoxically, we are also living at a time when governments, inadequately equipped to constructively manage these flows, are showing an increasing resistance to inflows of migrants, alongside a seemingly declining tolerance of foreigners in many receiving societies. Significantly, in 1976 only seven per cent of the UN’s 150 member states viewed immigration as too high; by 1993 the percentage jumped to 35 per cent—a five-fold increase in less than three decades. Today, 40 percent of the UN’s 193 member states have policies aimed at reducing immigration (United Nations 2002).

The migration mismatch and the need for a change

Germane to this paradoxical situation is a growing mismatch in the world migration system. On the one hand, there is a rising emigration pressures in sending countries, accentuated by the attraction, including powerful demand pull, in the destination countries. Opportunities for legal entry, on the other hand, are dwindling. Despite some feeble signs of a change, existing migration policies are proving inadequate to bring these conflicting trends into a sustainable and dynamic harmony. Mostly reactive and inward-looking in their orientation and thrust, and with a focus on unilateral immigration control rather than on migration management through

cooperative or multilateral action, these policies are proving inadequate to meet the new challenges of international migration or exploit the opportunities it presents.

Worse still, these policies have been producing some perverse result. Indications abound. Many receiving countries have sharply increased personnel and expenditures to prevent irregular migration. And yet the number of irregular migrants has been rising faster than ever. As I have argued elsewhere (Ghosh, 1998), when there are high emigration pressure in sending countries, and powerful demand pull in the destination countries and especially when the two converge, restrictions on admission do not, by themselves, stop migration; they only drive the movements into irregular channels. This is precisely what is happening today.

In the US, for example, the INS (Immigration and Naturalization Service) budget, at least half of which is devoted to enforcement, including preventing irregular immigration, rose 20-fold from $250 million in 1980 to about $5 billion in 2000, alongside a sharp increase in its enforcement personnel. And yet, the stock of irregular immigrants has risen nearly three-fold from 3 million to 9.3 million (despite several legalisation programmes), with a yearly increase of some 700,000 since the late 1990s (Passel, Urban Institute, 2004; Chicago Council on Foreign Relations, 2004). Other industrial countries have had similar experiences. In Western Europe, for example, stringent measures and increased costs to control immigration have coincided with a rising level of irregular immigration, now estimated at 500,000 a year. To put differently, at least one in every two persons entering the US or Western Europe is doing so in defiance of existing laws and regulations.

Human trafficking, increasingly interlocked with trafficking in drugs, arms as well as with prostitution of women and child abuse is rising, too, with anything between 10 and 12 billion US dollars being channelled annually into this business. Such large-scale movements in defiance of the established laws, and often associated with a wide range of criminal activities, have generated a seemingly widespread fear that migration is getting out of control. Should new policy-making take place in a climate of crisis management, and continue to be based on a reactive, fragmentary and lopsided approach, this would most likely create a vicious circle of further immigration restrictions and more irregular immigration.

Other human costs associated with the current situation are equally disquieting. Since 1993 thousands of persons have died while trying to move, often with the help of traffickers, into western Europe. For the same or similar reasons, on average, every day one person is dying on the Mexico-US border. Concurrently, anti-immigrant and xenophobic feeling is rising in many receiving societies, leading to race riots and civil strife and placing strains on inter-state relations. These are not surely shining examples or signs of the efficacy of the present policies; nor do they testify to the smooth working of the system.

2 Admittedly, draconian measures might slow down the process. Indeed, preliminary figures seem to suggest a temporary fall in irregular entries into the US coinciding with the measures taken in the aftermath of terrorist attacks on 11 September. Liberal democracies cannot however hold on to them for any length of time except at the risk of deep erosion of the fundamental rights and values on which they are based.

3 Total number of irregular migrants was estimated at 9.3 million by the task force on immigration set up by the Chicago Council on Foreign Relations in 2004; the Urban Institute raised the figure from 8.5 million in 2000 to 9.3 million in 2004.
If, as we have just seen, the restrictive and unilateral migration policies have not been working well, should we opt for a policy shift to the other extreme of full freedom of movement? We had rather not. This paper would argue that a regime of unfettered migration, however attractive at first sight, is not likely to do much better than the current policies and that its political viability, at least from a short to medium term perspective, is highly problematic. Instead, we should strive for a regime of managed migration that is based on the concept of regulated openness and sustained by close inter-state co-operation. But before rushing to any such conclusion we need to look a little more closely at the implications and viability of a regime of “migration without borders”. This is done below from three different perspectives: economic, human rights and state security.

**Migration without borders**

**Economics of open borders**

There is a litany of theories that seek to explain economic migration. But none is more straightforward or assertive than the classical and neo-classical theories of economic migration to claim its all-round beneficial effects. Given that these theoretical models also eschew any government intervention in migration, it seems appropriate to start discussing the economic merits of an open doors policy by using them as a frame of reference.4

According to these theories, when workers move from labour–surplus, low–wage countries to capital-rich, high-wage countries, it leads to a more efficient use of labour and narrows inter-country wage differences. The receiving country gains as immigration removes labour scarcity, facilitates occupational mobility, and often adds to the country’s human capital stock. By doing so it reduces wage-push inflationary pressure, helps fuller unitisation of productive capital and thus boosts economic growth, including exports. For the sending country the movement implies less unemployment and a boost for economic growth through access to strategic inputs and returning skills. The migrants themselves gain from higher wages and improved productivity in the receiving country. These theories also suggest that with wages rising in the sending country and falling in the receiving country, factor costs eventually equalised between the two countries come to a stop.

Should these theories be right, how much can the world gain? In 1984, Hamilton and Whalley made an assessment of possible efficiency gains. They used a simple methodology to infer differences in the marginal productivity of labour between countries and across regions owing to barriers to inward mobility of labour and came to the conclusion that when these barriers were removed, the efficiency gains could double the world income. More recently, Dani Rodrik postulated that since wages for similarly qualified workers in developed and developing countries differ sharply –by a factor of 10 or more as against a difference for commodities and financial assets that rarely exceed a ratio of 1:2—the gains from openness could be enormous, roughly 25 times larger than the gains from liberalisation of movement of goods and capital (Rodrik, 2002)5. In a simplified world with no national borders and no

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4 For a summary of the empirical evidence of the economic consequences of previous migration flows see chapter ---(by Mehmet Ugur) in this volume. See also Bimal Ghosh “Economic consequences of migration: A synoptic over view; in IOM: World Migration Report 2005 (forthcoming). The latter paper refers to some of the consequences in both sending and receiving countries. It should be noted however that under a policy of “migration without borders” not only the level of international migration but also its whole configuration is likely to change profoundly; so would its consequences.

5 Rodrik estimated that even a modest relaxation of the restrictions on the movement of workers-- temporary admission of poor country workers numbering no more than 3 per cent of rich countries’ labour force— could
limits to the internationally free movement of labour, migration overcomes country-specific scarcities or surpluses in factor endowments and enhances global welfare.⁶

These theoretical models bring out the positive outcome of free movement of people and suggest that it makes economic sense to strive for a policy of migration without borders. But there is an important snag: these models are based on a set of fixed assumptions, which are seldom valid. For example, it is assumed that labour is homogeneous; that perfect competition and mobility exist in labour markets; that there are no public goods and no public intervention; and that both economies of scale in production and the out-put mix in the economies remain unchanged. The reality is often different. Immigrant labour may be skilled or unskilled; even within the same skill category labour may not be fully homogeneous across countries; competition in the labour market may be hindered due to rigidities and segmentation of the labour market.

The more we relax these neo-classical assumptions, whether on theoretical or empirical grounds, the more we see that, despite its positive contribution to global economic efficiency and income, free movement does not lead to economic convergence between sending and receiving countries; nor does it imply that its benefits will be equally shared by different groups of population within the countries. To illustrate, a regime of open borders is likely lead to a massive outflows of skills from poorer to richer countries, fuelled by high unmet demand for skills in these countries. This will also be helped by the fact that skilled persons in the poorer countries have better access to market information, wider social contacts as well as more financial resources to migrate. As the endogenous growth theories indicate, the positive externalities of the deployment of such skills, and capital inflows, reinforced by their spill over effects, will help accelerated growth in the richer countries, while the large-scale depletion of their human capital will restrain growth in the poorer countries.

True, trans-national networking can help countries of origin tap some of the skills and talents of the diaspora community, but there are limits to the extent that this can be done. Given the importance of human capital as a complement to capital and technology, skilled migration tends to depress wages of unskilled workers and worsen the situation of those left behind. It can aggravate poverty in sending countries.⁷ Free movement of persons can thus contribute to a process of further polarisation of the world society and undermine domestic stability.

yield a benefit of $ 200 billion for the developing world. Feasible Globalizations, Kennedy School of Government, Working paper Series RWP02029, July 2002. pp.19-20. Already in 1992, working with UNDP we estimated that if, in the absence of restrictions, even 2 percent of the labour force of the developing countries moved to the rich countries each year, they would earn $220 billion a year.

⁶ The economic gains from free movement to migrant–sending countries are thus used by some as an argument based on social justice for open borders. According to this argument, since immigration controls by rich countries perpetuate international economic inequality, they should be removed. “Citizenship in western democracies” is thus “the modern equivalent of feudal privilege.” See Joseph Caren, “Aliens and citizens: The Case for Open Borders” in Robin Cohen (ed.) Theories of Migration, Cheltenham, Edward Elgar, 1996 P. 252

⁷ This will be the case for two reasons (i) shifts in the distribution of wages and salaries in favour of highly skilled workers and against low skilled workers and (ii) possible decline in the average incomes of those left behind. See Keith Griffin and A.R.Khan, ‘Globalization and the developing world: An essay on the international dimensions of development in the post Cold War era’.1992. Occasional Papers. Human Development Report Office UNDP, New York, p.34.
While the receiving country benefit from the positive externalities associated with skilled immigration, this can at the same time create distributional tension between immigrants and the local population within the host society. To the extent that there may be segmentation and rigidities in its labour market, part of its labour force may fail to benefit from the high growth, high wages sector. Wider wage and income disparities could then exacerbate the feeling of relative deprivation of those left behind. In such a situation inflows of unskilled immigrants could make matters worse as they are likely to compete with those at the lower end of the local labour force. The average wage of these local workers will then fall and they may very well feel that their jobs are threatened.

Under a regime of free movement receiving countries could also be exposed to negative externalities of a non-economic nature. Massive inflows of foreigners could place a heavy strain on the receiving country’s physical infrastructure and public services, including housing facilities, transport system, schools and medical services. Costs of integration could be particularly high when foreigners have a sharply different ethnic, cultural and religious background from that of the resident population. If they overtook the over-all capacity of the receiving society to integrate them, exceeding the margin of tolerance of foreigners, tension and even conflict could follow, threatening economic growth and social stability.

To sum up, while a regime of open borders seemingly leads to substantial efficiency gains in the world economy, its distributional impact and its positive as well as negative externalities are likely to widen wage and income disparities both within and between rich and poor nations, and generate both domestic and international tension. The over-all economic case for open borders is further weakened by non-economic considerations. If, as is likely, a regime of free movement leads to massive inflows of foreigners, the institutions and social services of the host country, as well as its capacity to integrate them could come under heavy strain, undermining social stability.

International political economy and free movement

Looking at the issues involved from the perspective of international political economy some analysts have expressed doubts about the existence of a valid basis for the emergence of a regime of free movement. They have further argued that, even if such a regime did emerge, it is not likely to survive, given the divergence of interest and bargaining power between the two parties. Their basic argument is that co-operation between the migrant-sending and migrant-receiving countries lacks in some of the essential ingredients that could lead to the emergence of a true multilateral regime and subsequently sustain it. Most importantly, there is no common or collective good and no need for collective action binding the two groups (Meyers 2002). This is because the (richer) destination countries can individually guarantee an adequate supply of labour to meet their needs. Given this situation, a regime of free labour mobility would be inherently unstable because a destination country could stop immigration at its will (e.g. in times of recession and due to domestic political pressure following large waves of immigration) and a (poorer) country of origin would not be able to reciprocate in kind. This is different from the case of trade, where reciprocity works because the flows as well as the benefits are assumed to be bi- or multi-directional.

Using some empirical evidence across regions this line of argument also predicts that the more countries diverge in income and economic development, the less likely it is that an agreement for free movement will emerge; and even if it does the more likely it is that it will suffer a setback. To put it differently, multilateral agreements on free mobility of labour
between countries of similar levels of income and economic development, and involving relatively small number of migrants, are the ones that are most likely to emerge and survive. However, somewhat paradoxically, this goes directly against the allocational efficiency argument, which, as discussed above, shows that, other things being equal, the higher the inter-country wage disparity, the greater are the efficiency gains under the free movement model.

Although some of the assumptions underlying the view that a regime of freedom of movement is non-viable are open to question, it nonetheless cogently points to some of the inherent weaknesses of multilateral agreements based on full freedom of movement, as reflected in various setbacks suffered by a number of regional or sub-regional agreements providing for freedom of movement.

**Ethics of human rights and freedom of movement**

To what extent does a rights-based approach implicit in the concept of freedom of movement lend support to an open border policy for movement of people? Some analysts consider freedom of movement as an essential part of personal liberty, arguing that it is fundamental to the dignity and development of individual personality (Dowty, 1987). If so, should he/she not have the right to move freely between countries? A rights-based argument also maintains that since freedom of movement for those lawfully present within a country is widely recognized human right, there are no convincing grounds why this should not be extended across countries.

Free movement of persons, like free circulation of information and ideas, has also been a cherished ideal for Western democracies for a good part of their history. Western Europe takes pride in its liberal and humanistic tradition of freedom of movement, now enshrined in the EU treaties. Should this not be extended to the world at large?

But in dealing with the outside world the EU member states have so far applied the concept only selectively in the light of contextual political circumstances and ideological considerations. For example, western democracies, including the EU-15, had long pressed for freer emigration from the former Soviet Union and the communist countries of Central and Eastern Europe as a measure of their liberalisation: The doctrine is enshrined in the Helsinki Accord. In the wake of the fall of the Berlin Wall many in the latter countries had imagined that the doctrine gave them an open access to countries of their choice in the West. But when the ex-communist states stopped restricting exit, liberal democracies in the West imposed new restrictions on entry. In reality, the doctrine was never intended to recognise the individual’s right to enter a state other than his/her own.

What about the juridical position? Numerous international and regional instruments, starting with the 1948 Universal Declaration of Human Rights (1948), affirm the right of persons to leave any country and return to his or her own country. But, none of them expressly grants non-nationals the right to enter a foreign state. And in the absence of such right to enter, freedom of movement remains an “incomplete” right. The right to leave is conceded, but there is no corresponding obligation for states to receive non-nationals on their territory. A state can thus refuse a non-national’s entry. Some limitations are however imposed on a state’s

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8 The eastward enlargement of EU-15 did not imply that eastern workers had automatic and immediate free access to the labour markets of the existing members states; only three of them –Great Britain, Ireland and Sweden-- relaxed the restrictions. In the former two countries, free access did not carry with it immediate entitlement to social benefits.
prerogative to deny admission --- when this could adversely family life, or the welfare of the child, or entails discrimination. In addition, the right to leave is completed in one specific context---“the right to seek asylum” and the corresponding duty of states not to impede the exercise of the right by returning the individual to a country where he or she may face persecution, torture or other serious violation of human rights. Although the receiving state may send the individual to a safe third state, in practice the right of *non-refoulement* amounts to a right to enter at least until an alternative safe state of refuge has been found. However, these are very specific situations, and do not make a general case for open borders allowing free movement of persons.

Nevertheless, some of the internationally recognised principles governing fundamental human rights are of relevance to this discussion. For example, under the Universal Declaration of Human Rights, “All human beings are born free and equal in dignity and rights.” The Preamble to the Charter of the United Nations reaffirms “faith in fundamental human rights in the dignity and worth the human person”. And the Annex to the ILO Constitution affirms that “all human beings ....have the right to pursue both material well being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity”. Conceptually at least, such norms and principles can be used to justify free movement and open borders. And yet, as Godwin –Gill puts it, “the doctrine of inalienable rights, inherent in the individual, has frequently had to give way to sovereignty, considered in its high positivist sense, as an absolute assertion of right and power in a society of competing nation states.” (Goodwin-Gill, 2000). Not surprisingly, efforts made in the 1980s in the UN Human Rights Commission to complete the right to free movement by dealing with the correlative right to enter failed to make any headway.\(^9\)

In short, existing human rights norms do not provide an adequate basis to allow free movement of people. It is the primacy of state sovereignty that prevails. *Freer* movement of persons is likely to be better achieved, as argued below, through mutually convenient agreement between states, based on the principle of regulated openness, and within a multilateral framework.

### Sovereignty, security and open borders

Can open borders and free movement be reconciled with state sovereignty and security? Basic to the concept of sovereignty is a state’s prerogative to protect its borders and security. Control of immigration—the authority to decide who may or may not enter its territory—is a core attribute of such prerogative. Sovereignty and security are therefore frequently cited as an overriding factor that rules out free movement in a world without borders. How valid is this argument? Although there is no comprehensive international law on state security and migration, exclusion and expulsion of persons thought to pose a threat to its security is firmly established in state practices. In the wake of the terrorist attacks of September 11 the issue of state security has gathered an added significance and a new urgency. The UN Convention Against

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\(^9\) See, UN documents, E/CN.4/sub.2/1989, including a draft declaration by Special Rapporteur Mubanga-Chipoya and E/CN.4/Sub.2/1989/47. The case for open borders is also sometimes challenged on the grounds that communities and, by extension, members of nations have the right to preserve their integrity and exercise at the collective level the equivalent of autonomy granted at the individual level. See David Miller, “The Ethical Significance of Nationality” in Cohen, (ed.) op. cit. p. 654
Transnational Organized Crime and the two Protocols (to the UN Convention Against Transnational Organized Crime) dealing, respectively, with human smuggling and trafficking, adopted in 2000, are an affirmation of this trend.

The concept of state sovereignty, as it emerged in Westphalia in 1648, should not however be seen as a static one. Modern states have constantly adapted themselves in response to exigencies of transnational forces and changes in world society. The inter-penetration of markets and economies, the growth of the transnational communities, including systems of dual nationalities and the emerging concepts of post-national human rights and citizenship are no doubt having a discernible impact on the traditional authority and behaviour of the nation state, with a shift of attention, especially since the end of the Cold War, towards inter-state cooperation and coalition. These changes in its behaviour or its modalities of operation are an expression of the evolution of the nation state to preserve its authority and influence in a changing world—and not one of its diminished concerns for its territorial integrity or security. If anything, the concern for security is now heightened in the wake of the terrorist attacks of September 11 and subsequent events.

However, even while admitting that states’ legitimate concern for security may circumscribe its willingness to admit non-nationals, thus leading to restrictions on freedom of movement, one needs to be clear about the concept of security in relation to migration. Broadly, a distinction can be made between (a) security defined in terms of the territorial integrity and military capability of the nation state and (b) security interpreted more widely to include human security, domestic political and economic stability and social and cultural cohesion of its population. The realist—or high politics—approach to international relations seeks to emphasize the narrow, geo-strategic and political dimension of security. Sovereign states shape international relations in which only war and peace really matter. Anything that threatens state sovereignty or circumscribes its self-seeking interest may be considered a security threat (Keohane, 1984), which arises principally from outside its borders and which primarily, if not exclusively, is of a military nature (Ayoob, 1994). The low politics approach, on the other hand, widens the concept of security by highlighting transnational relations as a factor that can significantly affect internal stability and subvert or undermine the authority and integrity of the nation state. State security is thus inclusive of the sustained ability to preserve dominant patterns of culture and behaviour within a society. Or, to put it differently, it includes the absence of threats—or a low risk of damage—to the acquired values and established culture in a national society. (Wolfers, 1962; Baldwin, 1997).

Despite these differences the two broad approaches focusing on external and internal security, respectively, are largely complementary rather than contradictory or mutually exclusive (Keohane and Nye 1977). Taking such a broader view of security, some analysts such as Myron Weiner have argued that population movements can destabilize societies and regimes, both in the industrial democracies and (especially) in the developing world and that such destabilization could affect the receiving as well as the sending countries. Migration, he argues, is thus a security issue (Weiner 1995).

There is little doubt that certain types of population movement and activities associated with them have a security dimension. These include irregular migration and human trafficking, intertwined with trafficking in drugs and arms. In the summer of 1993, when a series of smuggling ships with irregular Chinese migrants entered the US, President Bill Clinton declared that the tactic posed a threat to national security and authorised the National Security
Council to direct the response (New York Times, 16 September 1994) Experience in Africa shows that the presence of large numbers of irregular migrants can provide a ready reserve of recruits to create public disorder or support other subversive activities. The riots in Kano, Nigeria, in 1980 and 1982 in which illegal immigrants from five West African countries were alleged to be involved has been cited as an example of the security risk associated with irregular migration (Adepoju 1983). Clearly, under a regime of free movement without borders, risks associated with irregular migration and human trafficking would cease to exist.

On the other hand, when groups involved in civil conflicts have ethnic, cultural, religious or ideological links across national borders, the conflicts—as the crises in Bosnia and Kosovo in Europe and in the Great lakes region have shown—can suck the neighbouring states into a wider conflict, threatening national and regional stability. The situation could be worse when the conflicts generate refugee flows spilling over the neighbouring states. In such situations a policy of open borders could easily aggravate the security risk, with refugees acting both as agents and victims of conflict. Significantly, during the Gulf crisis of 1991 it was the potential destabilizing effect of refugee flows on neighbouring states that was cited in the UN Security Council resolution (no 68) as the immediate threat to international peace. The same argument—threat to regional stability due to refugee flows—was frequently used to support NATO intervention in Kosovo. In the current conflict in Iraq it is the porous borders of the country that are viewed by many as helping insurgent activities, and thus undermining Iraqi security. Under a regime of free movement, international criminal gangs are likely to have an easy run across countries, threatening the stability especially of weak and vulnerable states.

The security dimension of migration can of course be overblown. For example, in April 2000, the governor of Tokyo, suggested that foreigners and sangokujin (a highly charged term to describe Korean and Chinese immigrants) could stage an uprising during a natural disaster such as an earthquake (Financial Times, 12 April 2000). The Japanese government was of course quick to distance itself from the governor’s remark. However the concern of a relatively homogeneous society over the entry and presence of a large, highly visible and culturally dissimilar foreign population cannot be lightly dismissed. Preservation of a national identity and social cohesion is often a cherished goal even for countries that are not closely wedded to a societal model of complete cultural homogeneity. Switzerland, with its structural labour shortages has followed a liberal immigration policy since the 19th century. But, in 1963 when the number of foreigners reached the level of one million constituting one-eighth of total population an increasing belief in a political danger that national traits would be debased gained ground. In the wake of the fall of the Berlin Wall sudden waves of East-West migration caused great concern in western states: population movement came to be perceived as a security threat, although in the event massive flows did not materialize.

Should borders be thrown wide open it may be difficult for the potential receiving states to avoid concerns that massive immigration would undermine their culture and social harmony just as the sending states may feel threatened because of the loss of their human resources. In the post September 11 climate the threat could well be perceived to be on national security itself in the potential receiving states.

10 See, for example, Schlesinger, 1992 and Huntington, 1996
11 Switzerland now has a total population of 7.4 million of which 21.1 percent are foreigners.
Managed migration and regulated openness

Before we go further to make a case for managed migration, juxtaposing it against a regime of free movement, we need to know more about what it really means. Central to managed migration is the establishment of a regime that is capable of ensuring that movement of people becomes more orderly, predictable and productive and thus more manageable. Based on the principle of regulated openness and sustained by close cooperation between nations, the new arrangement will avoid knee-jerk reaction to the rising emigration pressure and will seek, instead, to bring emigration pressure and the opportunities for legal and orderly entry into a sustainable harmony. In doing so, it will balance and harmonise the needs and interests of the sending, receiving and transit countries and the migrants themselves. Basic to the whole approach are three main conditions:

a. in keeping with their joint commitment to the above objectives labour-abundant sending countries shall take all necessary measures to reduce the pressure for disorderly and unwanted migration. For their part, migrant-receiving rich countries shall take measures to support the sending countries’ efforts to reduce pressures for disorderly migration. In addition, they shall provide new opportunities for legal entry to meet their own real labour market and demographic needs, both current and projected, and fulfil their human rights and humanitarian obligations.

b. both groups of countries would agree to work jointly and adhere to a set of specific guidelines or norms to ensure coherence of policies and action to attain the above objectives. Nations will retain their right to determine the level of immigration levels in a flexible manner, but they will be guided by the agreed set of norms and principles. The normative framework will also help avoid policy contradictions, whether at home or abroad. In other words, migration policy objectives shall be factored into the formulation of policies in other related areas such as trade, aid and, investment, human rights and the environment.

c. the arrangement must be comprehensive to embrace all types of migratory flows—labour migration, family reunification, asylum-seeking and refugee flows. While each type of these flows has its own characteristics, experience also shows that movement of people is being increasingly influenced by mixed motivations and composite factors. This accounts for the current trends towards “category jumping”: when one entry channel is closed, a potential migrant seeks entry thorough some other channel which may seem more promising. To avoid undue pressure on one channel due to diversion of the flow from some other channel or channels, the arrangement must be based on a comprehensive strategy.

Specific objectives of the managed migration regime

Using the above as the broad policy parameters the specific objectives of the managed migration regime can be summed up as follows:

a) help capital-rich industrial countries meet their labour market and demographic needs through increased, planned and orderly intakes of migrants and through more effective integration policies, while enhancing the contribution of migration to the development of sending countries;

b) increase the efficiency of the global economy through a more rational allocation of human resources, including through freer trade- and investment-related movements and other forms of temporary migration;
c) encourage short-term inter-country exchanges conducive to scientific progress and cultural enrichment of human society;
d) enhance the credibility of the international migration system and the confidence of the public, including the potential migrants, in it by making national migration laws and practices more predictable and transparent;
e) create conditions to make immigration control more cost-effective and minimize the negative externalities, including inter-state tensions, associated with irregular and disruptive movements;
f) facilitate the return of migrants, including rejected asylum-seekers and irregular migrants, in conditions of human dignity and their effective re-integration in the country of origin;
g) ensure on grounds of both human rights and humanitarian considerations effective protection and assistance, as required or genuinely needed under varying circumstances, to migrants, asylum-seekers and refugees on a more predictable basis.

Comparative advantages of managed migration

A regime of managed migration, juxtaposed against the one based on free movement of people, clearly has some distinctive merits and operational advantages.

From an economic point of view, open borders have the merits of ensuring a more efficient allocation of available human and other resources from which both the world economy and the migrants gain. However it also creates losers and gainers both between and within countries. As free movement unleashes a powerful but polarised processes of development, its distributional effects could be explosive. A regime of regulated openness, based on a set of mutually agreed norms and principles between nations, can secure a good part of the efficiency-related benefits of openness while avoiding much of the distributional tension and negative externalities that free movement would generate. For example, Rodrik estimated that even a modest opening of the borders—temporary admission of poor country workers numbering no more than 3 per cent of rich countries’ labour force—can yield a benefit of $200 billion for the migrant workers, (part of which will be sent to the source countries), while avoiding much of the distributional tension or negative externalities that massive immigration under free movement are most likely to entail.

Unlike in the case of open borders, where asymmetries of interest could weaken the basis of cooperation between sending and receiving countries, a regime of regulated openness is likely to be more sustainable as it seeks to ensure orderliness and predictability in population movement in which all states have a common interest and also because of its in-built linkages to other issue areas such as trade and human rights in which they have shared stakes.12

As for human rights, an adequate case cannot be made for an open borders policy on the basis of the provisions on freedom of movement in existing international human rights laws. Nor such a regime is likely to be directly concerned with the protection of human rights. A regime

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12 Linking migration with other issue areas, notably trade, is not new. In the past the US, for example, has used the leverage of migration–trade linkage to achieve specific goals. In 911 the US Congress abrogated the bilateral Russo-American trade treaty containing MFN treatment because of Russian restrictions on immigration of American Jews. (See US Congress, Senate, Committee on Foreign Relations, Treaty of 1832 with Russia. Washington D.C. Government printing Office 1911). More recently, it used the linkage in connection with emigration issues when it passed the Jackson-Vanik amendment to the Trade Act of 1974 withholding MFN treatment to any non-market economy that denied it citizens the right or opportunity to emigrate.
of managed migration, by contrast, has a direct stake in the protection of human rights. This is because orderliness and manageability of movement depends to large extent on the protection of human rights. Gross violation of human rights in countries of origin is one of the principal causes of disorderly and disruptive movements of people. Experience has also shown that when the movements are disorderly and especially when they are irregular, and unwanted (as disorderly movements often are), the risk is greater for further violation of human rights in countries of transit and destination. When this happens, management of migration becomes more difficult and costly; it also entails heavy social and human costs. By straining inter-state relations or provoking conflicts the situation could even threaten regional and international stability.

Nation states must be prepared to protect human rights, including those of migrants on their own territory from another perspective as well. A state has a basic, internally driven and widely recognised, obligation to protect the rights and welfare of its own citizens, even when they are in another state as migrants. It cannot effectively meet this obligation except through inter-state cooperation based on reciprocity. Obviously such reciprocity between states can best guaranteed within a multilateral framework or regime. This requires a state to treat non-nationals in the same manner as it would like its nationals to be treated abroad (Ghosh 2003). Thus, those anxious to defend the human rights of migrants and those involved in managing migration clearly share a common interest (ibid). This two-way linkage between protection of human rights and orderliness in the movement of people finds due recognition in the proposed regime of managed migration.

Finally, viewed from the perspective of security, the case for an open doors policy is particularly weak, especially if security is interpreted in a wide sense. As already noted, free movement across borders could be seen as direct challenge to state sovereignty. Exercising their sovereign rights nation states can of course decide to accede to a regime of free movement, as EU member states have been trying to do among themselves. But at a time when receiving countries are “erecting an ever increasing number of barriers to all types of migratory movements” (UN 1997), and, as noted earlier, nations are becoming less and less enthusiastic about migration, it is difficult to imagine that they would be willing to give up control over their borders. In the post-11 September climate it seems even less likely.

True, the nation state cannot just be concerned with its own security. It needs to be sensitive to its other vocations and obligations as well, and must respond to the demands from the various groups of its citizens. For instance, if due to perceived threats to its security, a state systematically follows a policy of immigration restriction, it will fail to take advantage of the global labour market and address the needs and demands of powerful business groups; and the academic community and intellectuals will feel frustrated for lack of opportunities to interact with their peers who might otherwise have come from abroad. States, as discussed, above have an obligation to protect the human rights of its citizens abroad and those of the non-nationals on its territory.

A regime, which is based on regulated openness, and is cooperatively managed should make it easier for the state to strike a balance between its genuine concern for security and its other obligations and vocations. It is also likely to have easier, or at least less difficult, acceptance from the governments for a number of reasons. First, governments will not lose control over the national borders or the level or types of intakes, (although they will be guided by a set of agreed principles). Second, given the active participation of governments in managing and monitoring the arrangement, they would also have the feeling of owning it. Third, the transparency and predictability of the regime, coupled with the close inter-state co-operation
on which it is based, should help building confidence among governments in protecting national security. Further, to the extent that the arrangement succeeds in enhancing orderliness in movements and lessening the current pressure and confusion affecting the immigration control systems it will be more difficult, “for potential terrorists to take advantage of systematic vulnerabilities” (Chicago Council on Foreign Relations 2004).13

Three pillars of the regime

To explain further the configuration of the proposed regime, it will have three main pillars: a set of shared objectives; a normative framework and coordinated institutional arrangements. The objectives of the regime and the normative principles in the form of guidelines setting forth the obligations and commitments of the participating states have already been briefly discussed above. What about the institutional arrangements?

Coordinated institutional arrangements

A normative framework, however sound, is not enough to achieve the policy objectives outlined above. Also needed is an adequate institutional arrangement at the global level to promote, and mobilize support for, the policy objectives; to provide timely assistance, when needed, to governments, migrant groups and others involved and to monitor progress in the implementation of the agreed principles and approaches. The present global institutional arrangement, marked by multiplicity of agencies, proliferation of programmes and fragmentation of approach, is highly diffused, leading to at least three major negative consequences. It leaves a number of gaps in institutional mandates; several situations affecting groups of migrants and refugees tend to be ignored or are given only marginal attention. At the same time, the multiplicity of agencies leads to wasteful overlapping and duplication of international effort. Finally, the fragmented institutional set-up inhibits a comprehensive and coherent policy approach to the multi-dimensional problem of migration management. (Ghosh, 1995).

Under the proposed new regime existing international arrangements would be streamlined and better coordinated with a view, inter alia, to (a) promoting internationally harmonised migration policies and principles; (b) ensuring a coherent and concerted response to the various interrelated issues affecting international migration; and (c) monitoring the progress made and the results achieved.

Will it be useful to have a single international body—a world migration organisation—to bring the proposal into fruition? An increasing recognition of the present malaise in the world migration system has led some policy analysts and scholars alike to argue for the establishment of a World Migration Organisation. Jagdish Bhagwati of Columbia University, for example, has been strongly pleading for a WMO (Bhagwati, 2003). His two inter-related arguments are that such a central organisation would be in a position to (i) compile existing migration laws and regulations and codify “enlightened” immigration policies and best practices; and (ii) establish a comparative “immigration scoreboard” showing the degrees of openness of different countries towards immigration to pressurize countries with restrictive immigration policies to open up. It is doubtful however if these two arguments are strong

13 Significantly, in a speech in October 2002 James Zigler, former commissioner of the INS in the US made a similar remark suggesting that the US “needs to find a way “to satisfy the growing labour demand so that the INS could “focus on the bad guys coming across –not the flow of people who just want to get into the county to work”. Cited in Migration News, November 2002.
enough to justify the establishment of a whole new international organisation. Compilation of existing migration laws and regulations, while clearly useful, could well be done by existing legal and technical bodies of the United Nations system, in collaboration with other concerned inter-governmental agencies such as the OECD, with some limited funds made available for the purpose.

As regards the scoreboard, we need an internationally agreed set of criteria to serve as a yardstick to evaluate country performances. Migration is a sensitive and complex subject: different governments and individuals may have different ideas as to what constitute “enlightened policies” and “best practices”. The OECD’s annual table of development aid performance or the WTO’s trade policy review is credible and meaningful precisely because of the existence of a set of well defined and previously agreed norms and principles in each of these fields.\(^{14}\)

Will it be useful to have a single international body—a world migration organisation—to bring the proposed regime of managed migration into fruition? For sure, the existence of a WTO, if wedded to that objective, could be of enormous help in developing and negotiating the new international regime, including a set of agreed norms serving as a yardstick to evaluate country performances. But, as matters stand now, governments seem hardly anxious to start a whole new organisation to deal with international migration. On the other hand, the adoption of the proposed multilateral regime—or even a sufficiently broad global consensus towards it—can enhance the case for a strong WMO just as the adoption of the UN Convention on the status of refugees in 1951 accompanied the establishment of the UNHCR in 1951. Clearly, if and when a new migration regime is adopted by the international community, a strong international body will be needed to facilitate and oversee its application, monitor the progress made and ensure all necessary follow up action.

**What it is not or does not do**

In order to avoid any possible confusion about the nature of the proposed regime it is useful to explain further what it implies and what it does not.

**A comprehensive arrangement to complement and reinforce existing international instruments, not to supplant them**

The proposed regime reinforces and complements, but does not supplant existing sub-regimes dealing with cross border movements, namely, the 1951 UN Convention on the Status of Refugees and the 1967 Protocol and the GATS (General Agreement on Trade in Services) covering temporary movement of trade-related movement of service providers, or the UN Convention Against Transnational Organized Crime (2000) and its two Protocols dealing, respectively with trafficking in persons and smuggling of migrants. Likewise, it reinforces, but does not otherwise impinge on existing international instruments for the protection of rights of migrant workers such as the UN Convention on the Rights of All Migrant Workers and their Families, 1990, and the series of Conventions and Recommendations adopted by the ILO on the subject.

**An inter-state accord of convenience: not a supra-national construct**

\(^{14}\) See, in this connection, B.Ghosh, “Progress has been made towards better management of migration” *Financial Times* (Leaders & Letters), 10 November 2003.
The new regime is not to be seen as a supra-national construct, imposed upon nations by an external authority but as a freely negotiated arrangement of convenience between sovereign states to better control its borders and increase its capacity to manage migration. Globalisation has enhanced the importance of transnational or extra-territorial issues. Nation-states forge alliances between them, as they have always done, to manage these important matters in the transnational space, to preserve territorial integrity and to meet obligations to their own citizens. Migration is one of such issues. Participation in the new regime thus only strengthens and enriches the sovereignty of the nation-state. It implies evolution of the nation-state, not its erosion.

A hard or a soft instrument?

It is not a hard instrument with provision for sanctions in case of non-compliance with its principles or norms but a framework agreement enjoining states to adhere to a set of agreed guidelines. In particular, as already noted, it does not impose any national quota for immigrant intakes. Although a binding agreement with provisions for sanctions has the advantage of discouraging free riders, two important considerations would seem to rule it out. On a technical level, it is doubtful if the comprehensive nature of the regime and especially the wide range of promotional measures included in it could lend themselves as subjects of a hard instrument. The framework agreement can however be complemented or reinforced by hard instruments in certain specific areas that are ripe for, and amenable to, such action—such as human trafficking as exemplified by the UN convention of 2000, or readmission and return of migrants, already covered in a series of bilateral agreements and also addressed under the NIROMP process (further discussed below).

A global or a regional approach? A false dichotomy

Global vis-à-vis regional approach: A false dichotomy

If close inter-state cooperation is a central feature of the new arrangement, how best to achieve this? Would it not be easier to develop such cooperation at least in the initial stage through regional, rather than global, approach? Two arguments are usually advanced in favour of a regional approach. First, confidence building is supposed to be easier and negotiation less difficult, within a small group of contiguous countries especially when they have a high degree of economic and social convergence as in the case of the EU. Second, a significant proportion of cross-border movements is intra-regional. Countries within a specific region are therefore more likely to have a shared concern and a common interest to manage migration through joint action.

In reality, however, an exclusive reliance on a regional approach suffers from serious limitations. Confidence building may prove to be more, rather than less, difficult within a specific region, especially when it is marked by glaring intra-regional disparities. As experience shows, fear and mistrust of the hegemonic influence of powerful neighbours often create tension and hold up progress towards genuine co-operation. Second, migration today is a veritable global process. The main source and destination counties are not necessarily located in the same region. In fact, contrary to the popular impression, much of the migratory inflows to the US and the EU, for example, stem from outside the respective regions (e.g. in 1990-4 almost 48 per cent of permanent immigrants to the US were from Asia, compared to 36 per cent from the American region) (United Nations, 1998, Table 11.9) As for Europe,
figures for recent years showed that almost half of the foreign population resident in industrial (northern and western) Europe was from outside the European region.\(^ {15}\)

Indeed, it is difficult to imagine how the pressure for emigration can be effectively absorbed within the confines of each specific region. Contemporary migration defies such a seemingly tidy geographical arrangement. Also, as exemplified by the constantly changing pattern of human trafficking, migration flows today can change directions at short notice in response to changing circumstances, suggesting the need for a global approach. This is reflected in the global approach and scope of the UN instrument against transnational organised crime and its two more recent protocols dealing, respectively, with human trafficking and migrant smuggling. In short, efforts at the regional and global levels can be mutually supportive as long as there is a common global framework to ensure policy coherence. If however different regional groupings move in different directions, tensions between them might be unavoidable. For example, tightening of immigration control by destination countries in one region (e.g., Western Europe) is likely to divert the flows to other regions (e.g. North America), and vice versa, creating inter-regional tension. As in the case of trade, they could then turn out to be stumbling blocks rather than building blocks constraining global co-operation. In short, efforts at the regional and global levels can be mutually supportive—combining the advantages of both “bottom up” and “top down” approaches, but for this to happen the global and the various regional processes must move in the same direction, inter-locked by shared objectives and common principles.\(^ {16}\)

### The tasks ahead

Over the past few years there has been an increasing recognition of the rising financial, political and human costs of the malaise in the world migration system and of the need for reforming it. One of the significant indications of this is the speed with which the international community moved to adopt in 2002 new international instruments against organized crime, including human trafficking and migrant smuggling. But mobilizing international efforts for punitive action against criminal and dehumanizing activities is one thing; launching comprehensive and pro-active policy measures to address the root causes of the migration malaise is quite another. The latter calls for more sustained and painstaking efforts for consensus building involving different stakeholders with conflicting as well as convergent interests and concerns.

Some tangible progress has however been made in this direction. Already in 1993, at the invitation of the Commission on Global Governance, I submitted a paper outlining the a proposal for the establishment of a new, more coherent and comprehensive global regime to better manage movement of people\(^ {17}\). Following upon this proposal, an ambitious project,

\(^ {15}\) For example, in 1997 immigration into the EU from outside Europe accounted for around 41 per cent of the total flow; if Eastern Europe is excluded (from the European region), the percentage would be as high as 55 per cent.


\(^ {17}\) The 28-member commission was co-chaired by Ingvar Carlsson, then Prime Minister of Sweden and Sridath Ramphal, former secretary-general of the Commonwealth Secretariat, London. The Commission’s report, *Our Global Neighbourhood*, was published in 1994 (Oxford University Press, Oxford, England).
dubbed *New International Regime for Orderly Movement of People* (NIROMP), was launched in 1997 with the financial support of UNFPA and several European governments. An inter-regional meeting, which was held in Geneva (September 1997) under the aegis of the project, generally endorsed the concept and objectives of a global migration regime and encouraged follow-up action. A second interregional meeting, also held in Geneva (December 1999) to help develop a common framework for return and reintegration of migrants, generally agreed on a set of guidelines as a preliminary basis for an internationally harmonised approach to return and readmission. Subsequently these guidelines found an echo in the Declaration and Programme of Action adopted at the West African ministerial conference on migration held in Dakar in 2000.\(^{18}\)

In 2001 the findings of the NIROMP project were widely debated in a series of meetings held in a number of capitals and university centres in Europe and the US. The positive reactions from these meetings as well as from an important section of the press seemed to indicate a growing interest in a new multilateral regime to manage migration. With its consensus building activities through research, publications and networking NIROMP seems to have been successful in setting into motion a process that is likely to gather further momentum in the years ahead, thus carrying forward the proposal presented in 1993 to the Commission on Global Governance.

This increasing interest in the matter is already reflected, for example, in a new initiative, dubbed The Bern Initiative, which was launched in 2001 by the Swiss Government to mobilize support for closer inter-state cooperation and develop a coherent policy approach to better manage international migration.\(^{19}\) The Hague Declaration on the Future of Asylum and Migration Policy, which was launched in November 2002 in the presence of the UN secretary-general Kofi Annan and the heads of several international organizations concerned, is still another example of the growing recognition of the need for developing a concerted global approach to migration management and of the gathering support for it.\(^{20}\) It is now hoped that the work of the Global Commission on International migration, established in 2003 by Switzerland, Sweden and several like-minded governments, will spur further action in this direction\(^{21}\). The Commission is expected to submit its final report to the United Nations secretary-general and other stakeholders in the summer of 2005.

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\(^{18}\) See “The NIROMP process—An overview”, 2001., IOM/UNFPA

\(^{19}\) See “The goal of the Berne Initiative”, April 2003; “A global consultative process for inter-state cooperation on migration management”, Information Note II, (undated), Federal Office for Refugees, Bern


\(^{21}\) The mandate of the Commission, which is co-chaired by Ms. Mamphela Ramphele and Mr. Jan O. Carlsson, is to: place international migration on the global agenda; analyze gaps in current policy approaches to migration and examine inter-linkages with other issue-areas


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